Establish a Baseline

Hiltonmail

sent: Wednesday, March 23, 2011 6:52 PM
To: Glowacki, Margaret;
Cc: fmmargaret@qwestoffice.net;

Somebody needs to do an in-depth study of what Lake Union is all about - a current snap shot -- B4 proceeding to set lofty goals to create an idyllic setting that does not balance existing and future interests across a wide range of public and private interests. We need to know the baseline. My guess is that this task has never been done.

- How many business front on and use the lake?
- What does this represent in number of employees, payroll, revenue?
- How many people live on the Lake?
- How many people play on the lake - rowing, sailing, etc?
- How many public places can people touch the lake (street ends, parks, moorages, etc.)?
- How many trips per year do people make to use public resources? Private resources?

Look at the Lake as an economic engine; as a societal engine; as a revenue engine for the city and private interests.

With this baseline then do the planning to balance the interests of the past, present and future.

If every business and residence on the lake contributed $100 we would have many times more money than needed to fund such a study by a responsible third party not married to any interest. They did this on the waterfront and it changed the course of the planning. It showed the DPD that the planning was economically and societally misdirected.

It is not too late, but it will be after May.

Hilton Smith
Founder/CEO

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We have MOVED! Please note our new address.

May 31, 2011

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via electronic mail
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RE: Shoreline Master Program

Dear Ms. Glowacki,

I'm writing to you on behalf of the Association of REALTORS®[1] to offer written comments of record regarding the update of the Shoreline Master Program. Thank you for the opportunity to comment.

I have attached a *White Paper* and request that it be included in the record - along with these written comments - because it outlines what we believe are appropriate considerations for achieving the kind of balanced shorelines program required by state law.

In addition, it also discusses in some detail the appropriate standards by which the City's plan must be evaluated. We trust you will find it helpful.

As REALTORS® we are strong supporters of the environmental values embodied in the State's Shorelines Act.

As you may know, our local Association established the 'First in the Nation' **REALTORS'® Environmental Council** that not only provides environmental education and classes for REALTORS®, we also annually undertake a significant environmental remediation or enhancement project here in King County:

- During the last three years our REALTORS® from throughout King County have planted thousands of riparian and wetland plants, shrubs and trees; In fact, by the end of this year we expect the total will exceed 20,000 plantings.

[1] Our 6,000± REALTORS® on whose behalf these comments are submitted are members of the SEATTLE *KingCounty* REALTORS®, Washington REALTORS®, and the National Association of REALTORS®.

- Our efforts have remediated and enhanced locations as diverse as the Hylebos in Federal Way, the Mercer Slough and wetland areas of Kelsey Creek Farm in Bellevue. Last fall, we undertook an invasive species removal and native species replacement planting project at Seward Park in Seattle.

There are a few issues we wish to raise for your consideration.

Overall, we urge that the City remain cognizant of the wide range of uses along the city's shorelines. These uses are critical to the quality of life and economic vitality of our city. We believe that thoughtful and reasonable public policy is an essential component to a thriving community.

Residential setbacks

We ask that the city reconsider its proposed setback requirements on residential lots. Currently, in compliance with the Environmentally Critical Areas (ECA) regulations, the setback requirement for residences is 25 feet. The proposal adds another 10 feet, for a total set back of 35 feet. We believe the additional 10 feet of setback will place an undue burden on property owners in Seattle, without a commensurate environmental benefit. Many lot depths along Seattle shorelines are shallow, particularly north of Magnuson Park. An additional 10 foot setback will restrict use and shoreline enjoyment.

Shoreline stabilization and bulkheads

In regards to shoreline stabilization and bulkhead standards, we seek less ambiguity in regulating whether a homeowner may repair or replace an existing bulkhead. And we urge greater flexibility. Due to land use and development constraints, shoreline stabilization and bulkheads play an important role in residential access to water and protecting existing uplands.

Residential Uses on the Water

One issue that has emerged as in connection with the SMP update is residential uses on the water. These include floating homes, house barges and vessels.

A floating home is a house on a raft semi-permanently moored to a dock. It is always attached to city utilities, including the sewer and is subject to an array of regulations in the city building code. The Seattle Shoreline Master Plan defines a floating home as a *single-family dwelling constructed on a float that is moored, anchored, or otherwise secured in waters. Seattle construction standards regulate floating homes comparably to ones built on land. Floating homes are required to be located in approved "floating home moorages" and have direct connections to sewer and water utilities, in addition to other location and design restrictions. The number of authorized moorage locations is very limited.*

House barges appear to be an attempt to offer a floating home or houseboat product without the regulation or ability to operate as a vessel. These dwellings tend not to be

bound by the construction or utility requirements applied to floating homes. Of particular concern is their lack o connection to sewer.

It is not our intention to preclude the opportunity for people to live aboard a vessel which we view as capable of being able to travel on the water, under their own power, fitted with all necessary steering, propulsion, navigational and nautical systems.

We encourage the city to continue to distinguish between these categories and support the SMP's proposed approach. We support the philosophy that moorage restrictions on house barges are intended to preserve moorage space for boats or vessels rather than residential applications in the form of house barge moorage.

Thank you again for the opportunity to offer these comments.

Sincerely,

Randy Bannecker
SEATTLE *KingCounty* REALTORS®

Washington REALTORS®

Presents

A Background Paper on the Shoreline Master Program Updates

April 2010

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Introductory Note from Washington REALTORS®

The Washington State Legislature mandated that all cities and counties with shorelines of the state update their local shoreline plans consistent with the Shoreline Management Act and regulations adopted by the State Department of Ecology. These local plans, called Shoreline Master Programs, must contain land use regulations governing all shorelines of the state which include all saltwater shorelines as well as lakes 20 acres or more and larger rivers. The purpose of this paper is to provide background information about the updating of these Shoreline Master Programs.

Many of our members have asked for more information about the Shoreline Master Programs and the scope of the regulations that may be imposed on private property. We want to thank attorney Charlie Klinge and his firm Groen Stephens & Klinge LLP for contributing this paper so that our members can be better informed about the Shoreline Master Program Updates.

Introductory Note from the Author

Thousands of shoreline property owners are facing a Shoreline Master Program Update process that could result in new and more restrictive land use regulations on their properties. This paper grew out of a need to prepare these property owners and others to be effective advocates in the Shoreline Master Program Update process by providing them with important background principles and other information. We appreciate this opportunity to assist the Washington REALTORS®, its members, and these property owners by providing this paper.

Sincerely,

Charlie Klinge
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DISCLAIMER: This paper is intended to provide general information only and is not intended to provide legal advice. Legal advice requires direct communication with an attorney that can review the precise facts and circumstances of an individual case.

Table of Contents

The purpose of this paper is to set forth background principles that underlie the Shoreline Master Program (SMP) update process in Washington State. Much more could be written on this subject, but this paper is limited to providing background principles and other information. Endnotes are used to provide specific citations with less interruption to the reader.

I. BACKGROUND AND PLANNING PRINCIPLES

A. Background and Relationship of SMA, and Comparison to GMA

The background and relationship of the Shoreline Management Act (SMA) and the Growth Management Act (GMA) is important to any discussion about updating the SMP. The SMA was enacted by a vote of the people as Initiative 43B in 1971. "The vote reflected the decision of the voters choosing between a citizen initiative and the legislature's alternative."[1] *Id.* As such, "[t]he SMA embodies a legislatively-determined and voter-approved balance between protection of shorelines and development."[2] In balancing these goals, local jurisdictions containing "shorelines of the state" must prepare a SMP setting forth desired goals, and use and development regulations for shoreline areas, and must in doing so follow the current guidelines promulgated by Ecology.[3] The SMP is defined as the "comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020."[4] The SMA also requires local governments (cities and counties) to periodically update their SMPs and many local government are currently in the update process required by state law.[5]

Under the SMA, regulation of shorelines of the state, "is done [by the state] in coordinated fashion, in conjunction with local governments."[6] Specifically, once a local jurisdiction approves a SMP, it must be approved and adopted by Ecology before it is effective.[7] Preparation of a SMP requires each local jurisdiction to employ "the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern," including an inventory of the local jurisdictions' shorelines.[8] For any "shorelines of statewide significance," the local jurisdiction must also establish shoreline designations that give preference to the uses enumerated in the SMA, namely public access, recreational use, single-family residences, and protection of property rights, among others.[9] Only after Ecology reviews the proposed SMP for compliance with the SMA and approves the SMP, do the shoreline regulations become valid state regulations governing the use and development of shoreline property.[10]

Compared to the SMA, which was enacted in 1971, the GMA is a relative newcomer. The GMA was enacted in 1990 and 1991 (with almost annual amendments) to manage "uncoordinated and unplanned growth…[via] comprehensive land use planning."[11] The GMA imposes a general obligation to adopt comprehensive land use regulations, including critical areas regulations, by balancing various expressly non-prioritized planning goals and requirements, including, in relevant part, designating and protecting critical areas while protecting private property rights.[12] Local jurisdictions that are subject to the GMA must periodically review and, if necessary, update their comprehensive plan and development regulations.[13] The jurisdictions must designate and protect critical areas by including "best

available science" in its record and developing locally appropriate regulations based on local circumstances and the Act's various planning goals and requirements.[14]

Unlike the SMPs, which require state approval via Ecology, the GMA is premised upon local control.[15] A recent decision by the Washington State Supreme Court assists in drawing the stark differences at the core of the SMA and GMA:

> The GMA has substantial requirements when actions might affect areas defined as "critical areas." RCW 36.70A.172(1). Among other things, the GMA was amended in 1995 to require local governments to designate and protect critical areas using the "best available science"—a benign term with often a heavy price tag. **The SMA, with its goal of balancing use and protection, is less burdensome.**[16]

The SMA recognizes and accepts development of shorelines within the system coordinated planning in shoreline areas:

> [T]he SMA does not prohibit all development in the shoreline. Rather, its purpose is to allow careful development of shorelines by balancing public access, preservation of shoreline habitat and private property rights through coordinated planning, i.e., shoreline master plans which must be approved by DOE.[17]

In this regard, the SMA mandates that shoreline property owners have the right to certain permissible uses of property and/or priority shoreline development.[18]

B. Reviewing Available Science, Public Input, and Making Reasoned Decisions

The Shoreline Guidelines provide the foundation for updating the SMP and frequent return to those Guidelines is strongly encouraged. The Shoreline Guidelines implement the SMA's requirement to utilize science in developing updated SMPs.[19] The Guidelines carefully describe the utilization of science and technical information in the update process, but also clarify that information from every source should be reviewed, and that the local jurisdiction retains the authority to make final decisions regarding conflicting data.

The Shoreline Guidelines summarize the utilization of science by stating that local jurisdictions shall, "base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available."[20] The entire Guidelines provision is similar to, but not identical to, the GMA requirement to include "best available science" or "BAS" when designating and protecting critical areas under the GMA jurisdiction.[21]

At the same time, the Shoreline Guidelines recognize and respect that other information may be very important in adopting an updated SMP. The same provision of the Guidelines states as follows:

> The requirement to use scientific and technical information in these guidelines **does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties** as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201(3)(b).[22]

The Guidelines then clarify the role of the local jurisdiction in sorting through all the information collected, including the "information, experience, and anecdotal evidence provided by interested parties." Namely, the local jurisdiction is to make a "reasoned, objective evaluation" of the conflicting data:

> Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.[23]

This decision making process is similar to the inclusion of BAS in the GMA context, namely that the local jurisdiction is **not required** to "follow" BAS when reliance on other reasonable factors is established: "Moreover, the GMA does not require the county to follow BAS; rather, it is required to 'include' BAS in its record." "Thus, the county may depart from BAS if it provides a reasoned justification for such a departure." *Swinomish Indian Tribal Community v. Western Wa. Growth Mgmt. Hrgs. Bd*, 161 Wn.2d 415, 430 (2007) (citing *Ferry County v. Concerned Friends,* 155 Wn.2d 824, 837-38 (2005)). The similar requirements stated in the Shoreline Guidelines indicate the same rule for updating the SMP—the City must review and consider available science but then shall make reasoned decisions about conflicts in all the data, including the science and other information.

C. No Net Loss of Ecological Functions: Protection and Restoration

The Shoreline Guidelines implement a standard of "no net loss of ecological functions" referring to "no net loss" based on current conditions. The Guidelines seek to implement this standard through protection and restoration of shoreline resources.

As a preliminary matter, the Guidelines are clear in distinguishing **policies and nonregulatory programs** from **development regulations,** and the SMP is to include both. For example, the Guidelines set forth as another Governing Principle that:

> The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, **only one of which is the regulation of development.** Other means, as authorized by RCW 90.58.240, include, but are not limited to: The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public

> or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.[24]

The next Governing Principle emphasizes the importance of these other means of implementing the planning policies and that careful implementation of development regulations is necessary to protect private property rights:

> The policy goals of the act, implemented by the planning policies of master programs, **may not be achievable by development regulation alone.** Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights [with reference to the Attorney General's publication on avoiding Unconstitutional Takings].[25]

In other words, development regulations serve an important role, but must be utilized in a manner to protect property rights. The SMP should give significant attention to other means of protecting and restoring the shorelines—other local government programs for improving habitat.

The "no net loss of ecological functions" concept is stated as one of the "Governing Principles" of the Guidelines. The Governing Principles are comprehensive in nature but the basic principle states: "Local master programs shall include **policies and regulations** designed to achieve no net loss of those ecological functions."[26] A later provision provides more definition to the concept and recognizes that the purpose is to protect existing environmental conditions, but also recognizes that development can and will occur:

> **The concept of "net" as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist**. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020 [including priority for single family uses and recreational moorage], master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before

> implementing other measures designed to achieve no net loss of ecological functions.[27]

Thus, the "no net loss of ecological functions" applies to no net loss of existing conditions through sequencing applied to authorized new development to ensure that the end result maintains existing conditions—sequencing refers to avoid, minimize, mitigate in that order.

The Guidelines then apply this "no net loss" standard to new development or redevelopment as follows:

> (i) Local master programs shall include regulations and mitigation standards ensuring **that each permitted development** will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.
>
> (ii) Local master programs shall include regulations ensuring **that exempt development in the aggregate** will not cause a net loss of ecological functions of the shoreline.[28]

Thus, the Guidelines specifically impose a "no net loss" standard on new development or redevelopment, but distinguish "permitted development" from "exempt development." That difference is reviewed later in this report.

Next, the Guidelines address "restoration" and distinguish "restoration" from the "no net loss" standard applied to development. The Guidelines explain that restoration of areas with impaired ecological functions is an important goal of the SMA as follows:

> For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals.[29]

However, the Guidelines then make it clear in the same provision that **the SMP is to implement nonregulatory policies and programs to achieve restoration**, and **not to use SMP development regulations** to directly impose restoration requirements as a condition of new development:

> These master program elements regarding restoration **should make real and meaningful use of established or funded nonregulatory policies and programs** that contribute to restoration of ecological functions, and should appropriately

> consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.[30]

Some restoration may indirectly flow from regulations and mitigation, but restoration cannot be mandated as a condition of new development. "No net loss" encompasses "protection of existing," but does not mandate restoration or enhancement. The definition of "restoration" is "the reestablishment or upgrading of impaired ecological shoreline processes or functions" and the definition goes further to state that: "Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions."[31] In short, "restoration" means "enhancement" in the practical sense and does not require environmental perfection or a "turning back the clock" attempting to recreate the same natural shoreline that existed 200 years ago.

In this way, the SMA and Shoreline Guidelines follow the GMA in requiring new development to protect existing conditions, but not to mandate restoration or enhancement. The Supreme Court's clear 8-1 decision in the *Swinomish Indian* case also made this point in relation to the GMA requirement that critical areas be protected.[32] The Tribe argued that: "where an area is already in a degraded condition, it is not being protected **unless that condition is improved or enhanced**."[33] The Supreme Court rejected the Tribe's position that enhancement was mandatory and held that the county's "do no harm" standard met the statutory requirement because it "protects critical areas by maintaining existing conditions."[34]

The Shoreline Guidelines are even more explicit by defining the "no net loss" standard and requiring new development to protect existing conditions, but not to affirmatively restore or enhance the shoreline as a condition of construction. Importantly, the Guidelines also recognize and encourage regulatory incentives for new development and other voluntary methods to achieve restoration and protection:

> The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.[35]

The intent of the Guidelines is clear. The SMP must regulate new development and redevelopment to ensure "no net loss of ecological conditions," but "no net loss" does not mean "no development" or "no impact." Rather, the SMP must balance competing objectives. New development and redevelopment in the shoreline area is expected to occur based on, for example, the SMA's priority for single family uses and recreational moorage. At the same time, the SMP must endeavor to avoid, minimize, and mitigate shoreline environment impacts caused by that new development or redevelopment. The regulation should accomplish this on a project by project basis when shoreline permits are required, and on an overall, aggregate basis for projects exempt from shoreline permitting. In addition, the SMP should promote restoration efforts through nonregulatory programs and through promotion of voluntary actions by property owners proposing new development.

D. Early Attempts to Integrate the SMA and GMA Originally Resulted in an Erroneous Conclusion that All Shorelines of the State Were Critical Areas Under the GMA

In 1995, the Legislature partially integrated the SMA and the GMA by adding the SMA's goals and policies as an additional GMA planning goal and transferring jurisdiction for appeals of shoreline master programs from the shorelines hearings boards to the growth management hearings boards.[36] However, this partial integration lead to confusion regarding the regulation of shoreline areas as critical areas, which affected all jurisdictions with regulated shorelines since all cities and counties were required to adopt critical area regulations under the GMA even if not subject to the GMA comprehensive planning requirements.[37] A controversial Growth Board decision ("Everett Decision") concluded, in the words of Justice Chambers that, "shorelines of statewide significance under the SMA were categorically critical areas under the GMA, and thus, shoreline management often had to comply with both acts."[38]

E. Despite Controversy Over the Timing, The Updated SMP Will Govern Critical Areas Within the Jurisdiction of the SMP

The Growth Board Everett Decision "so conflicted with the law and the established practices that the Legislature acted the next session by enacting a law explicitly rejecting that board's interpretation."[39] The amended law, also commonly known as the "Everett Fix Bill," unequivocally stated that critical areas located within shorelines are to be regulated exclusively under the SMA:

> The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act.[40]

However, controversy developed regarding whether critical area updates adopted after 2003 would apply in shoreline areas, or whether changes to shoreline regulations could only be done through the SMP Update process in compliance with the regulatory requirements established by the Department of Ecology (known as the Shoreline Guidelines or Guidelines).[41] Put another way, there was controversy about what rules applied **during the interim period** until the updated SMPs were adopted and approved by Ecology.[42] The Supreme Court issued a split decision in the *Futurewise* case in 2008, and now that case has been followed up by other cases that are subject to different interpretations and new legislation.[43]

Despite that controversy, there has been no dispute that **updated SMPs** would exclusively govern critical areas that were located within the jurisdiction of the SMA. The primary decision of Supreme Court stated that in ESHB 1933, "the legislature meant what it said....critical areas within the jurisdiction of the SMA are governed *only* by the SMA."[44] The dissent did not disagree with that principle, but believed that the time when that occurred was when Ecology approved a new SMP: "The 2003 legislature intended to transfer protection of the relevant critical areas from the GMA to the SMA as municipalities enact, and Ecology approves, new shoreline master programs."[45] Thus, despite controversy over the timing, there is no dispute

that the protection of critical areas within shoreline jurisdiction must be encompassed within the updated SMP.

In addition, the Growth Board has made it clear that existing critical area rules cannot be blindly incorporated into the updated SMP. Rather, existing critical area rules must be re-evaluated for compliance with the Shoreline Guidelines and must be subject to full public participation before incorporation of any part of the existing rules into an updated SMP. The Growth Board quoted directly from the Shoreline Guidelines and ruled that the public was, "entitled to 'an opportunity to participate in the formulation of the regulations' including 'their incorporation into the master program.'"[46] This approach only makes sense to ensure that rules for critical areas in shoreline areas comply with the Shoreline Guidelines and to ensure that the public fully participate in the making of an updated SMP.

F. The Updated SMP Protects Only Those Specific Areas Located Within Shorelines That Qualify for Critical Area Designation

The GMA requires designation and protection of critical areas, which are defined to include the following: wetlands, aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and geologically hazardous areas.[47] Thus, according to the GMA, shorelines are not defined to be critical areas simply because they are shorelines governed by the SMA.

Whether shorelines were automatically critical areas was another issue involved in the Growth Board Everett Decision, which held that "shorelines of statewide significance are critical areas subject to both the GMA and SMA."[48] As previously indicated, ESHB 1933 was enacted to respond to the Everett Decision that, "so conflicted with the law and established practices that the legislature acted the next session by enacting a law explicitly rejecting the board's interpretation." The Legislature adopted a provision in ESHB 1933 that was directly counter to this conclusion. Namely, ESHB 1933 included RCW 36.70A.480(5), which reads as follows:

> **Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by [GMA]** and have been designated as such by a local government pursuant to [GMA].[49]

By requiring that the designation of shorelines as critical areas be limited to "specific areas," the Legislature unequivocally rejected the notion that blanket designations of all shorelines of the state as critical areas was acceptable.

The Growth Board confirmed this understanding in the Whatcom County SMP decision.[50] The Growth Board referenced the parties, including even the Department of Ecology, and said that: "The parties are in agreement that shorelines of the state are not automatically critical areas and the Board concurs." The Growth Board ruled that it was improper to designate all shorelines as critical areas, "without consideration of whether those shorelines qualified as critical areas." Whatcom County designated the waters as critical areas—the marine waters and

shoreline lakes and rivers, and the Growth Board upheld this designation despite contrary evidence. Thus, the local government may choose not to designate the entirety of the waters where local circumstances and evidence warrant.

The SMP Update process involves review of the entire area under the jurisdiction of the SMA, which is generally all regulated lakes and rivers, plus the adjacent upland within 200 feet of the ordinary high water mark (OHWM). The SMA calls that upland area "shorelands" or "shoreland areas."[51] The statutory reference that "shorelines of the state" are not automatically critical areas must be viewed based on the term "shorelines of the state," which defined to mean the entire area under the jurisdiction of the SMA. The critical areas most at issue in this regulated area are fish and wildlife habitat conservation areas (FWHCA) and wetlands. FWHCAs are defined to include the waters (whether marine, lakes, or streams), and are not defined to include the upland areas—the "shorelands" in SMA terminology. Thus, it is important to ensure that local governments designate only the waters as FWHCAs, and possibly not even all waters. Then, the SMP Update process must determine the appropriate measures to ensure protection for these critical areas, which should include local government sponsored restoration programs in addition to regulations.

G. Shoreline Critical Area Buffers, One Size Fits All, and Property Rights

Although a GMA case, the Supreme Court's 8-1 decision in the *Swinomish Indian* case is also instructive on the important issue of buffers for shoreline critical areas. The Court addressed the conflict between encouraging agriculture and protecting critical areas since both are goals of the GMA. Specifically, the case involved the vast productive agricultural lands in the Skagit and Samish River Deltas which were identified as the "most significant watershed in Puget Sound" with protection of fish important under both the Endangered Species Act and as the resource for the fishing industry. As discussed above, the county adopted a "no harm" standard that was similar to the same as the "no net loss" standard of the Shoreline Guidelines. The county also concluded that mandatory buffers were not required to achieve the "no harm" standard, and that conclusion was challenged and decided by the Supreme Court in the *Swinomish Indian* case.

The Supreme Court's observations are pertinent here. The Court carefully described the competing issues by starting with an explanation of buffers: "Buffers are strips of land contiguous to a watercourse, usually containing indigenous shrubs and trees." These natural buffer areas are often protected as Native Growth Protection Areas such as City of Bellevue's requirement that such an area is to be "kept free from all development and disturbance" to preserve "native vegetation, existing topography, and other natural features."[52] Skagit County determined that the natural environmental was substantially impaired, and that, "the vegetation that had made up the riparian buffers along streams and rivers was cleared long before there was a legal impediment to doing so." Based on that fact, the County reviewed the BAS but decided not to impose mandatory buffers. As the Court explained: "Here, the county justified its decision to not require mandatory riparian buffers on the basis that doing so would 'impos[e] requirements to restore habitat functions and values that no longer exist.'" The Supreme Court upheld the County's decision not to impose mandatory buffers under those circumstances, and explained that imposing buffers:

> would impose an obligation on farmers to replant areas that were lawfully cleared in the past, which is the equivalent of enhancement. Without a duty to enhance being imposed by the GMA, however, we cannot require farmers within Skagit County to replant what was long ago plucked up. The county need not impose a requirement that farmers establish riparian buffers.[53]

The same principle applies to the "no net loss" standard of the Shoreline Guidelines.

The *Swinomish Indian* case highlights the inherent problem of seeking to establish "natural" buffers where the natural features have been substantially "degraded" or completely "altered." For example, the Shoreline Inventory utilized by Whatcom County for its SMP Update makes it clear that much of Lake Whatcom is developed with dense and moderately dense urban area, while other areas have medium to low-density development. Whatcom County's Shoreline Inventory recognized that another area was within the urban growth area (subject to annexation by the City of Bellingham), and that the area included single and multi-family residential development and industrial/commercial development (cement plant and fish processing). Yet, the CAO incorporated into the SMP imposed a 150 foot buffer for all these areas. In the City of Bellevue, the City's own reports demonstrate that the shorelines of Lakes Washington and Sammamish have been subject to extensive development, legally accomplished, that has fundamentally and permanently changed the "ecological functions" occurring on the shorelines. For example, the City report states as follows:

> The riparian shoreline of Lake Washington is highly altered from its historic state. Current and likely future land-use practices preclude the possibility of the shoreline functioning as a natural shoreline to benefit salmonids.[54]

Yet, the City of Bellevue seeks to incorporate its CAO with a 25 foot buffer and an additional 25 foot building setback for all these shorelines.

As discussed above, the Shoreline Guidelines require regulation of new development that achieves "no net loss" of existing conditions, but without requiring new development to go beyond "protection" in order to achieve affirmative "restoration" of shorelines. The *Swinomish Indian* case demonstrates that mandatory buffers may also not be required to protect shoreline critical areas given the highly degraded existing conditions. Put another way, mandatory buffers would constitute an improper mandate for restoration or enhancement of upland areas that long ago were legally converted to, for example, residential uses with homes, docks, and landscaped yards.

The Shoreline Guidelines make it clear that SMPs "shall contain requirements for buffer areas zones around wetlands" within shoreline jurisdiction, but the Guidelines contain no such mandatory requirement applied to "critical freshwater habitats," including lakes that so qualify.[55] Another general requirement for SMPs is "Vegetation Conservation," but the Guidelines specifically recognize that such provisions cannot be fairly applied to existing development: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures."[56]

Another concern is that mandatory buffers and vegetation requirements would interfere with property rights protected by state law and constitutional principles. The Shoreline Guidelines expressly require that local governments recognize and protect property rights by first citing the principle in the SMA:

> (h) **Recognizing and protecting private property rights.**
>
> **RCW 90.58.020:**
>
> "*The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership;. . .and, therefore coordinated planning is necessary. . .while, at the same time, recognizing and protecting private rights consistent with the public interest.*"[57]

The Guidelines go further to specifically reference protection of property rights through the limitations set forth in RCW Chapter 82.02, namely RCW 82.02.020, and through the need to avoid unconstitutional takings.[58]

The key rule in state law holds that local government has the burden of demonstrating that conditions imposed on development must be, "reasonably necessary as a direct result of the proposed development." RCW 82.02.020. While cities and counties have authority to impose conditions on development, the Court in *Citizens Alliance for Property Rights v. Sims*, made it clear that: "Washington courts have allowed such conditions only where the purpose is to mitigate problems caused by particular development."[59] The cases make it clear that: "The burden to prove that a condition is reasonably necessary as a direct result of the proposed development is on the governmental entity imposing the requirement."[60] Finally, these rules constitute statutory implementation of the nexus and rough proportionality requirements imposed under the Takings Clause of the state and federal constitutions.[61]

The "one-size-fits-all" approach in buffer requirements and conditions on development may run afoul of these requirements. Specifically, the *Citizens Alliance* court said:

> Our supreme court has repeatedly held that this statute [RCW 82.02.020] requires 'that development conditions must be tied to a specific, identified impact of a development on a community.' The plain language of the statute does not permit conditions that are reasonably necessary for *all* development, or *any potential* development. Rather, the statute specifically requires that a condition be 'reasonably necessary as a direct result of *the proposed* development.'[62]

The regulation reviewed in the *Citizens' Alliance* case was, "a uniform requirement for cleared area on each lot, unrelated to any evaluation of the demonstrated impact of the proposed development," and thus, the condition was not "impact specific" and violated the "necessary proportionality that is required to fulfill the statutory exception."[63] The cities and counties must ensure that any regulations in the updated SMPs comply with this standard.

II. PREFERENTIAL USES AND EXEMPTIONS

As explained above, the SMA seeks to balance development of shorelines with protection of shorelines. The SMA recognizes that development of shorelines will occur and gives priority to single family residential uses with appurtenant structures and docks. The SMA also limits intrusive requirements on these uses by providing important permitting exemptions for single family homes, docks, and bulkheads. The SMA also protects existing uses by exempting all maintenance activities from permitting requirements.

A. Single Family Residential Uses Are A Priority Use in the SMA

The SMA does not prohibit development in the shoreline areas and the SMA is not neutral about the preferred development that should occur in those areas. Rather, the SMA contemplates development and sets forth certain priorities. The SMA identifies "single family residences and their appurtenant structures" as priority uses in the shoreline areas.[64] The Shoreline Guidelines describe this concept as, "Preferential accommodation of single-family uses."[65]

B. Bulkheads To Protect Single Family Residences Are Also a Priority Use

The SMA includes within the priority for single family residences protection of those homes from shoreline erosion with bulkheads or other structural and nonstructural shoreline protection methods.[66] Specifically, the SMA says:

> Each master program shall contain standards governing the protection of single-family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single-family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.[67]

The Shoreline Guidelines reflect this priority as well.[68] Clearly, if the SMA priority for single family residences is going to have meaning, then property owners must be able to protect those residences from erosion. The SMA recognizes this necessary accommodation by mandating standards allowing protection from erosion with bulkheads or other shoreline protection methods.

C. Residential Docks Are Also A Priority Use of Shorelines

The SMA recognizes that recreational uses including piers or docks are a priority use of the shorelines.[69] Special consideration is given to private noncommercial docks used for pleasure craft.[70] Docks are an integral part of shoreline living for single family residences and the SMA recognizes recreational docks as a priority to ensure the continued enjoyment of lakes by the citizens through recreational boating.

D. SMA Exemptions Must Be Respected in New SMPs

The SMA governs "development" within shoreline jurisdiction, namely along marine shorelines plus major lakes and rivers and on the uplands, called shorelands, defined as the land within 200 feet of shorelines. Development is defined broadly but with a limit:

> "Development" means a use consisting of the construction or exterior alteration of structures; . . . filling . . . bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level.[71]

The SMA regulates development and requires a shoreline substantial development permit for certain activities considered "substantial development," but with numerous exemptions. The SMA defines substantial development and the relevant exemptions as follows with a bracketed shorthand reference to the exemptions:

> "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. . . .The following shall not be considered substantial developments for the purpose of this chapter:
>
> (i) **[Maintenance or repair]** Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;
>
> (ii) **[Bulkheads]** Construction of the normal protective bulkhead common to single family residences;
>
> . . .
>
> (vi) **[Single family residences]** Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

> (vii) **[Docks]** Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars;[72]

Development, including development defined as exemptions, must comply with the rules in the SMP, but cannot be subjected to discretionary permitting review encompassed within the substantial development permit process.[73]

This distinction is an important one. The SMP must identify standards, or safe harbors, governing "development" including the exemptions, and cannot impose discretionary permitting requirements on those uses. This system ensures protection of the shoreline, but without imposing unnecessary burdens on preferred minor uses. The exemptions are next reviewed further.

E. Non-Development and Exemption for Minor Development

The wording of the SMA definition of "development" encompasses most, but not necessarily all, typical activities in the shorelines, namely construction or exterior alteration of structures, filling, bulkheading, driving piles for docks, and especially any project interfering with use of the waters. Ecology long ago adopted regulations related to permitting and included additional definitions governing these issues.[74] Those Permitting Regulations include definitions for structure, fair market value and a number of definitions related the height limit of 35 feet (height, average grade level, natural or existing topography).[75] In particular, the definition of "structure" states:

> "Structure" means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels;[76]

Thus, the SMA governs all activities in the shorelines including shorelands, and those activities which rise to the level of "development" must comply with the SMA and the local SMP.[77] For example, house painting is an improvement that would not constitute "development" (it is not an exterior alteration) and may proceed without worrying about compliance with the SMP. Other similar activities would fall below the definition of development.

Certain activities that otherwise qualify as "development," i.e. construction or exterior alteration of structures, are considered "minor development" that is defined to be too insubstantial to require permitting, namely any development that does not exceed $5,000 in fair market value indexed for inflation (currently $5,718). These "minor development" projects on upland can be regulated, but cannot be required to go through shoreline permitting—in other

> and occupied by one family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. On a statewide basis, normal appurtenances include a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark. Local circumstances may dictate additional interpretations of normal appurtenances which shall be set forth and regulated within the applicable master program. Construction authorized under this exemption shall be located landward of the ordinary high water mark.[82]

Thus, the house and all structures normally included as part of the home are exempt from permitting. This exemption clearly implements the priority and preference in the SMA for single family uses in the shorelines areas.

H. Exemption for Bulkheads To Protect Single Family Residences

The SMA contains an exemption for "construction of normal protective bulkhead to protect single family residences."[83] The Ecology Permitting Regulations go further in defining the exemption:

> Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one cubic yard of fill per one foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an ordinary high water mark has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead must be located at or near the actual ordinary high water mark. Beach nourishment and bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and

> when the project has been approved by the department of fish and wildlife.[84]

Thus, bulkheads designed to prevent erosion of single family residences and appurtenant structures are exempt. The Ecology Permitting Regulations contain qualifications to the general rule in the SMA: cannot have purpose to create dryland, limit on backfill, repaired existing vertical walls to be no further waterward than necessary, and certain deteriorated bulkheads must be moved back. This exemption clearly implements the preference in the SMA for single family uses in the shorelines areas by ensuring that these uses can be protected from typical erosion problems. Nevertheless, even if these situations are consider beyond normal and thus beyond the exemption, the SMA still requires standards in the SMP to ensure protection from erosion for single family residences and appurtenant structures.[85]

The Shoreline Guidelines impliedly accept the exemption for pure repair of bulkheads, but then provide special standards for replacement situations that might be considered repair.[86] Plus, the Guidelines define replacement as not including any addition or increase to a bulkhead, and thus, forces any such project into the tougher standards for new bulkheads.[87] The Guidelines treatment of replacement as requiring a showing of demonstrated need (and excluding additions) may be interpreted in a manner that is in conflict with the Permitting Regulations which can allow replacement with comparable structures as an exempt repair.

It should be noted that any work on bulkheads involving work in the water, or even some work that affects the water, is regulated by the strict requirements of the Washington State Department of Fish and Wildlife (WDFW) under Hydraulic Project Approvals (HPA). The HPA permitting process includes comprehensive review by WDFW to ensure that fish are not impacted by any work in waters. Some work on bulkheads is also regulated by the federal government through the Army Corps of Engineers (Army Corps) implementation of the Clean Water Act.

I. Exemption for New or Expanded Docks

The SMA contains an exemption for certain docks for pleasure craft.[88] The Ecology Permitting Regulations mimic state law:

> Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:
>
> (i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or
>
> (ii) In fresh waters the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior

> construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.[89]

Maintenance and repair of existing docks falls under the exemption for maintenance and repair. However, any expansion of existing docks would fall under this exemption. Use of this exemption has become limited in recent years due to the increased costs of construction, but still needs to be considered especially for minor expansion projects.

However, any dock construction faces additional regulations and permitting requirements by WDFW, the Army Corps, and Ecology. Specifically, the HPA permitting process includes comprehensive review by WDFW to ensure that fish are not impacted by any work in waters. The Army Corps regulates all dock construction and maintenance under the Rivers and Harbors Act and Clean Water Act, with additional Ecology certification (approval) of all Clean Water Act permits.

CONCLUSION

This paper ends at this point although many other important topics merit further discussion. This paper is intended as a general background paper and not a comprehensive review of the entire subject of Shoreline Master Programs. In particular, this paper does not address Engrossed House Bill 1653 adopted during the 2010 legislative Session, which affects the rules and process applicable during the interim period prior to adoption of new SMPs.

We hope this paper assists property owners and others to be effective advocates in the Shoreline Master Program Update process by providing them with important background principles and other information.

ENDNOTES

[1] *Biggers v. City of Bainbridge Island,* 162 Wn.2d 683, 697 (2007)
[2] *Id.*; *see also* RCW 90.58.020
[3] RCW 90.58.080, Chapter 173-26 WAC
[4] RCW 90.58.030(3)(b)
[5] RCW 90.58.080(4)
[6] *Biggers v. City of Bainbridge Island,* 162 Wn.2d 683, 687 (2007)
[7] *See* RCW 90.58.090
[8] WAC 173-26-201(2)(a), WAC 173-26-201(3)(c)
[9] RCW 90.58.020, WAC 173-26-251(3)(c), RCW 90.58.100
[10] RCW 90.58.090(7); WAC 173-26-030(2)
[11] RCW 36.70A.010
[12] RCW 36.70A.020; *see also Swinomish Indian Tribal Cmty. v. W. Wash. Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 424-25 (2007)
[13] RCW 36.70A.130
[14] RCW 36.70A.172(1) 320, RCW 36.70A.3201; *Swinomish*, 161 Wn.2d at 426
[15] *See Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 125-26 (2005) "the GMA acts exclusively through local governments and is to be construed with the requisite flexibility to allow local governments to accommodate local needs." S*ee also* WAC 365-195-010(3) (The GMA "process should be a 'bottom up' effort…with the central locus of decision-making at the local level.").
[16] *Futurewise v. Western Washington Growth Management Hearings Board*, 164 Wn.2d 242, at 244 (2008) *reconsideration denied* (2009) (emphasis added)
[17] *Overlake Fund and City of Bellevue v. Shoreline Hearings Bd.*, 90 Wn. App. 746, 761 (1998) (citing RCW 90.58.020)
[18] *See Biggers*, 162 Wn.2d at 686, 706 (affirming a right to certain shoreline development as recognized in RCW 90.58.020 and RCW 90.58.100)
[19] RCW 90.58.100(1), WAC 173-26-201(2)
[20] WAC 173-26-201(2)(a)
[21] *Compare* WAC 173-26-201(2)(a) *with* RCW 36.70A.172
[22] WAC 173-26-201(2)(a) (emphasis added)
[23] WAC 173-26-201(2)(a)
[24] WAC 173-26-186(4) (emphasis added)
[25] WAC 173-26-186(5) (emphases added)
[26] WAC 173-26-186(8)(b)
[27] WAC 173.26-201(2)(c) (emphasis added)
[28] WAC 173-26-186(8)(b) (emphasis added)
[29] WAC 173-26-186(8)(c)
[30] WAC 173-26-186(8)(c) (emphasis added)
[31] WAC 173-26-030(27)
[32] 161 Wn.2d 415 (2007) (interpreting RCW 36.70A.172(1))
[33] *Id.* at 427 (emphasis added)
[34] *Id.* at 430
[35] WAC 173-26-186(8)(e)
[36] Laws of 1995, ch. 347, § 108, amending RCW 36.70A.280
[37] RCW 36.70A.060(2).
[38] *Futurewise*, 164 Wn.2d at 249 (Chambers, J., dissenting) (citing *Everett Shorelines Coalition v. City of Everett*, CPSGMHB Case No. 02-3-009c, at 17 [Corrected Final Decision and Order, Jan. 9, 2003])
[39] *Futurewise*, 164 Wn.2d at 244 (citing Engrossed Substitute House Bill 1933 or "ESHB 1933")
[40] RCW 90.58.030 (Findings–Intent No. 3), Laws 2003, ch. 321, § 1(3)
[41] WAC Chapter 173-26
[42] The only issue is whether the legislature meant the GMA to apply to critical areas in shorelines covered by shoreline master plans until Ecology has approved a new or updated shoreline master plan. *Futurewise*, 164 Wn.2d at 245.
[43] Engrossed House Bill 1653, adopted during 2010 legislative session.

[44] *Futurewise*, 164 Wn.2d at 244-45
[45] *Id.* at 251 (dissent)
[46] *Citizens for Rational Shoreline Planning v. Whatcom County and Wa. State Dept. Ecology*, WWGMHB Case No. 08-2-0031 (2009) (citing WAC 173-26-191(2)(b))
[47] RCW 36.70A.030(5) and .170
[48] *Everett Shorelines Coal. v. City of Everett*, CPSGMHB Case No. 02-3-009c, at 11 (Corrected Final Decision and Order, Jan. 9, 2003)
[49] RCW 36.70A.480(5) (emphasis added)
[50] *Citizens for Rational Shoreline Planning v. Whatcom County and Wa. State Dept. Ecology*, WWGMHB Case No. 08-2-0031 (2009)
[51] RCW 90.58.030(1)(f)
[52] City of Bellevue Land Use Code Section 20.25H.030.B.2
[53] *Swinomish Indian Tribal Community v. Western Wa. Growth Mgmt. Hrgs. Bd*, 161 Wn.2d 415, 430-431 (2007)
[54] 2005 Best Available Science (BAS) Review, § 7.2.1, pp. 7-5 to 7-7, § 7.2.2, pp. 7-7 to 7-9 (similar statement for Lake Sammamish) § 7.2.3; *see also* Draft Shoreline Analysis Report § 5.1.3, page 79 (same statement for Lakes Washington and Sammamish).
[55] *Compare* WAC 173-26-221(2)(c)(i)(B) *with* -221(2)(c)(iv)
[56] WAC 173-26-221(5)(a).
[57] WAC 173-26-176
[58] WAC 173-26-186(5)
[59] *Citizens' Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 664 (2008) *review denied* (2009) (citing *Isla Verde Intl. Holdings v. City of Camus*, 146 Wn.2d 740 (2002))
[60] *Citizens' Alliance,* 145 Wn. App. at 657
[61] *Id.* at 657, 664 (citing *Trimen Dev. Co. v. King County*, 124 Wn.2d 261, 274 (1994) [citing *Dolan v. City of Tigard,* 512 U.S. 374 (1994)])
[62] *Citizens' Alliance,* 145 Wn. App. at 665 (citations to *Isla Verde* omitted)
[63] *Id.* at 668
[64] RCW 90.58.020
[65] WAC 173-26-176(3)(i)
[66] RCW 90.58.100
[67] RCW 90.58.100(6)
[68] WAC 173-26-176(3)(i)
[69] RCW 90.58.020
[70] RCW 90.58.030(3)(e)(vii)
[71] RCW 90.58.030(3)(d) (relevant part)
[72] RCW 90.58.030(3)(d)
[73] RCW 90.58.140(1), (2)
[74] WAC Chapter 173-27
[75] WAC 173-27-030
[76] WAC 173-27-030(15)
[77] WAC 173-27-040(1)(b)
[78] RCW 90.58.030(3)(d)(i)
[79] WAC 173-27-040(2)(b)
[80] WAC 173-27-040(2)(b)
[81] RCW 90.58.030(3)(d)(vi)
[82] WAC 173-27-040(2)(g)
[83] RCW 90.58.030(3)(d)(ii)
[84] WAC 173-27-040(2)(c)
[85] RCW 90.58.100(6).
[86] WAC 173-26-231(3)(a)
[87] WAC 173-26-231(3)(a)(iii)(C)
[88] RCW 90.58.030(3)(d)(vii)
[89] WAC 173-27-040(2)(h)

From: Donna Kostka [mailto:donna4510@comcast.net]
Sent: Thursday, March 03, 2011 11:29 AM
To: Glowacki, Margaret
Subject: Donna's comments on Shoreline MP

Hi, Maggie – I am writing separately to comment as an individual (not a member of HHH) on the new draft Shoreline Management Plan. I make this comment after reading only the GOALS section from your website. I have not reviewed the entire document.

NOTE the Goals section did not include any mention that I could see about increased protection from tsunamis. I think this should be an important aspect of the revised plan, if it is not already included.

Thank you for this opportunity to comment. Cheers, Donna

Donna Kostka, PhD
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(206) 283-7805
donna4510@comcast.net

From: ccoxley@comcast.net [mailto:ccoxley@comcast.net]
Sent: Monday, May 30, 2011 7:46 AM
To: Glowacki, Margaret
Subject: Comments on the proposed Shoreline Management Regultions

Hello Margaret

I hope you enjoyed the holiday weekend.

I'm sending in my comments on the Shoreline Masterplan Update...apologies that this is so close to deadline.

My general comments revolve around how the proposed updates work with the current and anticipated future zoning and use of the shoreline-adjacent and upland properties. My observation from reading some of the documents and attending the March 8, 2011 public meeting is that there are going to be some direct conflicts between the proposed policies the and land use. I'll use as specific examples the 2 that I'm most familiar with. These are numbers 19 and 20 in the section of the Proposal Summary A.2 titled Specific Proposals.

Both of these proposals lay within the Rainier Beach Neighborhood Plan boundaries and Beer Sheva Park is within the RB Urban Village boundaries. Both of these parks are designed for active use by the community. You may be aware that the old City of Seattle Parks Dept. nursery has just been approved to become the Atlantic City Urban Farm. And, at Beer Sheva Park, Mapes Creek is scheduled to be daylighted through the park to the lake as part of the Seattle Public Utilities CSO upgrade project in the South Henderson basin.

I say all this because they speak directly to active and recreational uses by the community. In fact there will be more pressure brought to bear as Rainier Beach is in the middle of the process of reviewing and updating it's Neighborhood Plan. There will be more focus on density and growth within the Urban Village and therefore more need for open space that is truly useable by the residents of Rainier Beach.

My concern with re-designating these 2 areas with stricter regulations is that it will put onerous restrictions on how these parks can be used. There have been many great ideas that have come from the first large community input meeting that was co-sponsored by the Rainier Beach Neighborhood Plan Advisory Committee, the City of Seattle's Depts. of Planning and Neighborhoods and the Rainier Beach Community Empowerment Coalition that involve further developing these parks to better meet the community's needs for recreational spaces. With the opportunities of the Neighborhood Plan Update just starting to reveal themselves, it would be a dis-service to the Rainier Beach residents for them to be limited by trying to 'fix' something that doesn't appear to be broken

To put a finer point on this, I'm concerned that with a stricter Conservancy designation there might not be the possibility to add a swimming beach at Beer Shiva should the community desire that. Or, that there would not be the opportunity to eventually have a great connection from Beer Shiva Park through to Pritchard Beach. That would be a possibility with the new Atlantic City Farm concept. It would be a great asset to be able to easily walk or bike that whole length and really activate that whole string of parks/green space.

I also realize the unique environmental benefits that wetlands provide and my observation of our current situation is that our wetlands are thriving. We have beavers, river otters, muskrats, all kinds or waterfowl, ospreys and eagles, etc. I believe we can keep this kind of thing going with our current designation. Our newish Chinook Beach Park [directly to the south of Water's Edge Condos] was specifically designed to be a resting place for juvenile salmon to hang out and get bigger and stronger before making the big push up the lake and through the locks to salt water. The beach at Martha Washington Park has also been restored to allow for a greater diversity of wildlife and Dead Horse Canyon has been really well restored. [I know,

outside of our N'Plan boundaries, but since I run through both of these on a regular basis I consider them ours too]. So I guess I feel that we are doing a good job balancing recreation with preservation.

So to summarize, in general, I would ask that the team review one more time how the specific proposed updates work with the current and anticipated future zoning and use of the shoreline adjacent and upland properties, and address those conflicts with those communities. And, in particular I've listed above the ones that impact my community most directly.

Thank you for all your hard work on behalf of the residents of Seattle in ensuring that we have the best mix of preservation and active use of our shorelines.

Regards,
Christie Coxley
Resident of Rainier Beach

From: m smith [mailto:msmith102@hotmail.com]
Sent: Monday, May 30, 2011 9:24 PM
To: Glowacki, Margaret
Subject: Comment about Shoreline Master Program Update

Dear Ms Glowacki

Frankly I think Seattle has way enough shoreline access points and viewpoints. Surely tourists from other parts of the country must think so.

That said, I truly believe the tone and intent of the Draft Shoreline Master Program Documents is going way overboard trying to "put a shoreline access or viewpoint" in every home, kind of like a "chicken in every pot." Right now, today, if you're anywhere near the shoreline, you don't have to go many blocks/miles to have direct access to the water.

This reminds me strongly of the "have not uplanders" in Leschi several years ago forcing street end parks without regards for the neighbors that happened to abutt those street ends. Also much like the guy in Calif several years ago who made it his personal vendetta to walk across every privately owned shoreline there was.

It seems to me that there is a better use of public resources that going overboard with the shoreline thing.

Sincerely

M Smith