

June 23, 2014

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Shoreline Master Program Update Study Session 7 – In-depth review of Draft SMP Update provisions relating to critical areas, moorage and shoreline stabilization.

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FISCAL IMPACT

There is no new fiscal impact anticipated from completion of this process. This work is necessary for completion of the Shoreline Master Program Update that is a component of the Council-endorsed code amendment work program.

POLICY ISSUES

Does the Draft SMP Update achieve the Bellevue Appropriate approach desired by the City Council to:

1. Regulate critical areas (streams, wetlands, geologic hazard areas, habitat associated with species of local importance, and areas of special flood hazard) in the shoreline jurisdiction in accordance with the provisions of the Bellevue Critical Areas Overlay;
2. Regulate moorage that is designed and intended as a facility for access to watercraft and is restricted to the minimum size necessary to meet the needs of the proposed shoreline use; and
3. Regulate shoreline development to avoid the need for future stabilization, when possible, and require nonstructural methods such as setbacks to be exhausted before shoreline hardening is permitted?

Did staff properly capture the direction received from the Council during the May 27 and June 9 Study Sessions?

DIRECTION NEEDED FROM COUNCIL

<input type="checkbox"/>	Action
<input checked="" type="checkbox"/>	Discussion
<input checked="" type="checkbox"/>	Information

The June 23 Study Session is the fourth Council engagement scheduled for in-depth review of the issues identified by the Planning Commission as most important to the development of its recommendation, and additional issues identified for discussion by the City Council. Topics scheduled for discussion on June 23 include:

- Critical Areas (including floodplains)

- Moorage, and
- Shoreline Stabilization.

In addition to the in-depth review of the above-referenced topics, staff requests Council confirmation that staff properly captured direction provided by Council during the May 27 and June 9 Study Sessions.

The materials necessary for review of the SMP Update Package have been provided to Council in a separate three-ring binder. The provided binder is organized to hold the SMP Update Package materials that will be used over the course of the next several months, and which must be reviewed and finalized for submittal to the Department of Ecology. The full content of this binder is available for public review at the following link:
<http://www.bellevuewa.gov/10600.htm>.

BACKGROUND/ANALYSIS

During its first meeting on the SMP topic, the City Council endorsed an SMP Update Completion Process for use in finalizing the Planning Commission work for submittal to the Department of Ecology for review and approval. Refer to Attachment A for the completion process schedule endorsed by the City Council. The study session scheduled for June 23 is an extra meeting needed to accommodate in-depth review of topics that were scheduled but not able to be completed on May 27 and June 9. Depending on the progress of review on in-depth topics, an additional meeting may also be necessary for the Council to identify revisions to the Planning Commission Recommendation to be considered during the Public Hearing and evaluated as part of the review required under the State Environmental Policy Act.

The June 23 Study Session is the fourth in-depth policy discussion regarding the issues that were identified as important to the Planning Commission and the City Council. The June 23 discussion will focus on topics that were not completed on June 9 due to time constraints. A new schedule for in-depth topic review is presented below for Council reference:

✓ May 12	Public Access and Park Development Determination of Ordinary High Water Mark Nonconforming Residential Development
✓ May 27	Setbacks/Buffers Vegetation Conservation (review not completed) Critical Areas (review not completed)
✓ June 9	Vegetation Conservation Critical Areas including floodplains (review not completed)
June 23	Critical Areas including floodplains Docks Shoreline Stabilization

In-Depth Topic Review Scheduled for the June 23 Study Session

The Planning Commission recommendation on each topical issue scheduled for review on June 23 is provided in this packet for Council review. Current regulations are summarized for comparison purposes, and major policy issues raised during the Planning Commission review are listed for Council reference. Supporting information for each topical area is provided in a series of attachments. These attachments include references to the state law and guidelines, the range of options considered by the Planning Commission, stakeholder concerns raised during the Planning Commission review, and current and recommended policies and regulations. Following its review of each topic, the City Council will be asked whether the Draft SMP achieves the desired Bellevue Appropriate approach or whether revisions are desired. If changes are requested to the Draft SMP, amended language will be provided for Council discussion at a future meeting.

1. Critical Areas

Under the terms of the Shoreline Management Act, in order to approve an SMP, Ecology must find that the critical areas provisions of the SMP provide “a level of protection of critical areas at least equal to that provided by the local government’s critical areas ordinance.” Once an SMP is adopted by Ecology, the Growth Management Act requires critical areas located within shoreline jurisdiction to be regulated under the SMP. It is a common practice of jurisdictions to incorporate their critical areas requirements into their SMP by reference or by inclusion of similar or identical requirements in their SMP. Refer to Attachment B for applicable laws and guidelines regarding the regulation of critical areas within shoreline jurisdiction.

Planning Commission Recommendation regarding Critical Areas in Shoreline Jurisdiction:

The Comprehensive Plan policies in the Environmental Element provide “the direction for preserving fish and wildlife habitat in the City. Designated fish and wildlife habitat conservation areas in Bellevue include riparian corridors, wetlands, naturally occurring ponds, lakes and shorelines, and steep slopes over 40 percent. Other lands such as shorelines and upland habitat may be given special consideration for fish and wildlife habitat if there is a primary association with an endangered, threatened, or sensitive species or species of local interest. Since such fish and wildlife habitat exists on Bellevue’s shorelines, these policies support the emphasis of the Recommended SMP Update on shoreline ecological functions. The recommended amendments include standards for protecting native vegetation and habitat in certain environment designations, and additional performance standards for new shoreline stabilization and docks intended to protect aquatic habitat associated with supporting threatened and endangered salmonids and other aquatic species. On those sites where higher quality habitat exists, the recommended amendments expand the residential setback from 25 to 50 feet and apply strict vegetation conservation requirements. Similarly, dock standards limit overwater coverage to 480 square feet and limit walkway width to 4 feet in the first 30 feet measured from OHWM. The application of city-wide tree regulations requires retention of 30 percent of the diameter inches on the site with new single-family development or redevelopment involving an impervious surface increase exceeding 20 percent of structure area. The inclusion of a robust restoration plan supports the objectives of EN-70 and EN-74 by including a range of potential projects designed to improve functions and values on shorelines.” *Planning Commission Transmittal page 22.*

The Planning Commission recommendation includes critical areas regulations consistent with the city-wide critical areas regulations to continue to protect sensitive areas, such as wetlands, streams, and steep slopes within the Shoreline Overlay District while removing the blanket critical area designation to all shorelines. *Planning Commission Transmittal page 26.*

Planning Commission Recommendation regarding Floodplains in Shoreline Jurisdiction: While floodplain management is not a direct component of the SMP Update, City staff and WSSA board members met with FEMA to address the issue and its relationship to the City's National Flood Insurance Program. Recognizing that review of the flood hazard regulation was not part of the SMP project, the Commission, in its transmittal of the SMP Update, recommended that additional review of the Critical Area Flood Hazard Regulations occur in order to respond to WSSA's concerns. *Planning Commission Transmittal page 11.*

The Planning Commission undertook review of the Critical Area Flood Hazard Regulations as a component of the SMP Conformance Amendments that were transmitted to Council on March 10, 2014. The Planning Commission recommendation removed the reasonable use threshold required to allow new development to occur in the floodplain when located in shoreline jurisdiction. This change allows for development in shoreline jurisdiction to be permitted outright if construction adheres to required performance standards. Floodplain regulations applicable to development outside shoreline jurisdiction were not changed, and were recommended for evaluation as part of a future update to the Critical Areas Overlay. *Planning Commission Minutes, December 11, 2013.*

Current Regulations regarding Critical Areas in Shoreline Jurisdiction:

Shoreline lake and stream water bodies are currently designated as critical areas with buffers and structure setbacks, and are regulated pursuant to the Critical Areas Overlay (CAO). Regulated critical areas found within the shoreline jurisdiction currently include streams, wetlands, shorelines, geologic hazard areas, habitat associated with species of local importance, and areas of special flood hazard. The application of city-wide tree regulations also requires retention of 30 percent of the diameter inches on the site with new single-family development or redevelopment involving an impervious surface increase exceeding 20 percent of structure area.

Major Policy Issues raised regarding Critical Areas in Shoreline Jurisdiction:

- Layering of regulations between critical areas and shoreline overlays
- Equitable application of critical areas regulations city-wide
- Equal protection of critical areas in SMP
- Protection of fish and wildlife habitat for species of local importance
- Best available science and no net loss
- Appropriate timing for floodplain revisions and
- Inclusion of substantive changes to floodplain provisions within SMP Conformance Amendments.

Refer to Attachment B for supporting documentation provided to inform the City Council conversation regarding the approach to the regulation of critical areas located in the shoreline jurisdiction.

2. Residential Moorage

Pier and dock construction is allowed under state law in association with single family residences. Allowed piers and docks are required to be designed to provide access to watercraft, but are restricted to the minimum size necessary to meet the needs of the associated residential use. Refer to Attachment C for applicable laws and guidelines regarding the regulation of residential moorage within shoreline jurisdiction.

Planning Commission Recommendation regarding Moorage

Shoreline Modification – New and Reconfigured Residential Moorage: Moorage standards were amended as a component of the 2006 Critical Areas Update. These standards were based on U.S. Army Corps of Engineers (USACE) performance standards for new docks that, if followed, were anticipated to result in reduced scrutiny under the Endangered Species Act (ESA) and reduced review time. Applicant experience with the standards since 2006 suggested that regulatory redundancy remained between local, state and federal permit reviews.

The recommendation simplifies the regulatory framework applicable to residential moorage by deferring to state and federal agencies with permit authority and focusing local permit review on issues of local importance. The simplified regulations pare down the USACE standards to four key performance measures essential to preserving neighborhood character and ensuring no net loss of ecological functions. Overwater coverage in the nearshore is limited by specifying a maximum walkway width of 4 feet, limiting the total overwater coverage to 480 square feet, and restricting the moorage ell to a minimum of 30 feet from OHWM or to a length necessary to reach a depth of 9 feet. In addition, grating is required throughout. To add further flexibility, the Commission recommendation authorizes modification of the standards outlined above provided that the U.S. Army Corps of Engineers and the Washington Department of Fish and Wildlife, acting under their respective federal and state authorities, approve such modifications. On balance, these amended performance standards address key components of existing standards while reducing their complexity and providing more flexibility for residential property owners.

Residential Moorage – Repair and Replacement: Given the urbanized, developed and recreational character of Bellevue's residential lake frontage, the ability to maintain, repair or replace one's existing dock is an important concern for property owners. Replacement of an existing structure would be allowed in its existing configuration provided installation is undertaken in compliance with industry material standards. This approach is intended to meet the requirements of "no net loss" of ecological function while preserving neighborhood character and not overburdening property owners with unnecessary regulation, consistent with the Act's priority for single-family residences and appurtenant structures and related recreational uses. *Planning Commission Transmittal page 6.*

Up to four boat and/or watercraft lifts are permitted per dock and one translucent canopy may be installed. New boathouses are prohibited. Docks and associated lifts are required to be located greater than 10 feet from any adjacent property line unless approval is provided by the adjoining property owner to locate the structure within the setback.

Current Regulations regarding Moorage

Moorage regulations applicable to residential piers and docks were most recently updated as part of the Critical Areas Update in 2006. Maximum dock dimensions are limited to 150 feet in length and 480 sf of area. Overwater structures (such as walkway ramps) within 30 feet of OHWM, are limited to 4 feet in width and must be fully grated. Limitations on ell dimensions and water depth are included in the standards. New docks and repairs that require the replacement of greater than 50% of a dock structure are required to comply with above-described standards and provide 10 feet of mitigation planting adjacent to OHWM. Up to 50% of an existing dock structure can be totally replaced as “maintenance” that does not trigger compliance with dimensional limitations. Up to 100% of the decking can be replaced without triggering compliance with dimensional limitations, or the need to provide partial compliance (such as grating or ramp width reduction). A single boat lift is permitted per dock and one translucent canopy may be installed. New boathouses are prohibited. Docks are required to be located greater than 12 feet from any adjacent property line unless approval is provided by the adjoining property owner to locate the structure within the setback.

Major Policy Issues raised regarding Moorage

- Adequacy of dock size to support recreational boating and water-use activities;
- Adequacy of dock dimensions to provide safe and stable watercraft access;
- Layering of dock construction regulations between the City, State Department of Fish and Wildlife, and the United States Army Corps of Engineers;
- Unique mitigation requirements imposed by the City are inappropriate and unnecessary given state and federal oversight;
- Allowance of both increased overwater coverage and in-kind replacement anticipated to result in a net loss of shoreline ecologic function.

Refer to Attachment C for supporting documentation provided to inform the City Council conversation regarding the approach to the residential moorage regulations in the SMP.

3. Shoreline Stabilization

Shoreline hardening results in adverse impacts to shoreline ecological functions that may on one property be minimal but cumulatively significant. As a result, most SMPs require new development to be located and designed so as to avoid the need for future stabilization, when possible, and require nonstructural methods such as setbacks to be exhausted before shoreline hardening is permitted. When structural shoreline stabilization measures are demonstrated to be necessary, the size of the structure is required to be limited. Refer to Attachment D for applicable laws and guidelines regarding the regulation of shoreline stabilization measures.

Planning Commission Recommendation regarding Shoreline Stabilization

Shoreline Modifications—New Stabilization: In addressing the regulation of new stabilization measures, the recommended amendments closely follow the standards provided in the Shoreline Guidelines. Consequently, the recommended amendments limit new stabilization, such as bulkheads, to those situations where need is clearly demonstrated to protect existing primary structures, public facilities, or public use structures. Avoiding the need for new

stabilization is a primary policy objective of the state Guidelines, so development that purposefully avoids erosion hazards by locating the primary structure at a safe distance from OHWM to avoid those risks is preferred. Where an applicant perceives the need for stabilization on a site without it, the amendments require an applicant to show necessity by hiring a qualified professional to conduct a feasibility analysis. The analysis assesses a number of site-specific factors, information about wind direction, speed, fetch and likely wave height, as well as risk to the existing primary structure and other factors.

Where these amendments permit new stabilization, the recommendation expresses a preference for soft stabilization; hard stabilization is an option only when soft options are not technically feasible or the structure to be protected is so near (less than 10 feet) to OHWM that hardened stabilization is the default option. The recommended amendments prohibit new vertical stabilization.

In an improvement over existing 2006 critical areas code, the recommendation clarifies where stabilization may be located when a documented flood hazard area exists. The amendment permits only soft stabilization within the area of special flood hazard with the exception of low-angle planted revetments that have limited impact on flood storage. In general, new stabilization measures are prohibited waterward of the OHWM, except when those measures incorporate approved habitat improvements.

Shoreline Modifications—Repair and Replacement of Existing Stabilization: Similar to docks, the ability to maintain, repair or replace one's existing shoreline stabilization is also an important concern for property owners. The recommended amendments set a clear standard regarding what constitutes "repair" by allowing maintenance and repair of legally established stabilization to occur in all cases, including those situations where conditions necessitate construction of a completely new structure. The amendments also encourage replacement of vertical walls with angled riprap walls or revetments by allowing the replacement structure to be constructed as far waterward as necessary to ensure the OHWM is no further landward than previously existed on the wall or bulkhead that is being replaced.

Current Regulations regarding Shoreline Stabilization

New or enlarged shoreline stabilization measures are allowed to protect existing primary structures. Soft shoreline stabilization measures (such as beach enhancement, anchor trees, large rocks or plantings) are required to be used, unless soft shoreline stabilization measures are not technically feasible. Hard shoreline stabilization measures are required to be located at or behind the OHWM; but soft shoreline stabilization measures may be located waterward of the OHWM. The height of any new or expanded hard shoreline stabilization is limited to 30 inches above average grade, but increased height can be approved if it does not negatively impact abutting properties, and the increased height is necessary to protect the existing primary structure or land area because of steep slope conditions or extraordinary wave action. A mitigation and restoration plan is required as a component of the permitting process.

Major Policy Issues raised regarding Stabilization

- Need for shoreline stabilization measures to protect property;
- Demonstration of need shown by persistent wave action on Lake Sammamish and Lake Washington;

- Wave reflection damage created by vertical bulkheads;
- Requirement for geotechnical analysis to demonstrate need;
- Use of mitigation sequencing in approval of shoreline stabilization measures (avoid the first, and minimize size if avoidance is not possible).

Refer to Attachment D for supporting documentation provided to inform the City Council conversation regarding the approach to the regulation of shoreline stabilization measures, such as bulkheads, in the SMP.

Follow-up to May 27 and June 9 Study Sessions

On May 27 and June 9, staff was requested to prepare additional information that was viewed as necessary for Council to complete its review and provide final direction on the topics considered that night. Staff would like to confirm the requests to ensure Council expectations are appropriately met.

Setbacks and Buffers. Council requested that staff summarize two new hybrid options for its consideration that would include:

1. The string test added to the 50 foot flexible setback in the shoreline residential environment;
2. The string test added to the 35 foot fixed setback in the shoreline residential environment.

Council also requested staff to provide comparison information on setbacks and buffers from neighboring jurisdictions with adopted SMPs.

Vegetation Conservation. Council requested staff to summarize a new hybrid option for its consideration that would be fashioned after the Planning Commission Tailored Shoreline Greenscape and include additional components to:

1. Mitigate for potential net loss of vegetation;
2. Enhance user clarity by creating an identifiable activation line (or setback) at 50 feet from OHWM; and
3. Address unintended consequences associated with application of the Tailored Shoreline Greenscape option to properties located on the Newport Canals.

ALTERNATIVES

With respect to the In-Depth Topics reviewed during the June 9 Study Session:

1. Accept Planning Commission recommended Draft SMP Update provisions relating to vegetation conservation and critical areas (including flood plains).
2. Direct staff to bring back revisions for Council consideration at a future meeting.

With respect to the Follow-up from the May 27 and June 9 Study Sessions:

1. Affirm the Council direction provided to staff as summarized above.
2. Provide alternative direction to staff.

ATTACHMENTS

- A. Process for Completion of the SMP
- B. Critical Areas Supporting Documentation
- C. Moorage Supporting Documentation
- D. Shoreline Stabilization Supporting Documentation