

Supplemental Section WSSA Sensible Shorelines Plan Pertinent Citation Detail

May 2011



The Sensible Shorelines Plan (the Plan) draws upon the local discretion provisions of the Washington Administrative Code (WAC) found at chapter 173-26. The following materials provide the reviewer of the Plan pertinent sections of the State Guidelines, the Revised Code (RCW), and City Land Use Code that support the Plan.

These references are not intended to be a complete representation of the codes and regulations. Rather, the intent is to draw attention to provisions that support WSSA's development of more reasoned and balanced approach to management of Bellevue's urban shorelines.

Emphasis has been added through **boldface**, underlining, and/or **colored** text. For brevity, sections not immediately related to the Plan have been abbreviated (. . .)

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Discretion Provided by Guidelines

WAC 173-26-171(3)(a) Authority, Purpose and Effects of Guidelines

(1) **Authority.** RCW [90.58.090](#) authorizes and directs the department to adopt "guidelines consistent with RCW [90.58.020](#), containing the elements specified in RCW [90.58.100](#)" ...

(2) **Purpose.** The general purpose of the guidelines is to implement the "cooperative program of shoreline management between local government and the state." ...

... the guidelines have three specific purposes: To **assist** local governments in developing master programs; to serve **as standards** for the regulation of shoreline development **in the absence of a master program** along with the policy and provisions of the act and, to be used along with the policy of RCW [90.58.020](#), as **criteria for state review of local master programs** under RCW [90.58.090](#).

(3) Effect.

(a) The guidelines are guiding parameters, standards, and review criteria for local master programs. The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and nonregulatory programs related to the policy goals of shoreline management as provided in the policy statements of RCW [90.58.020](#), WAC [173-26-176](#) and [173-26-181](#). The policy of RCW [90.58.020](#) and these guidelines constitute standards and criteria to be used by the department in reviewing the adoption and amendment of local master programs under RCW [90.58.090](#) and by the growth management hearings board and shorelines hearings board adjudicating appeals of department decisions to approve, reject, or modify proposed master programs and amendments under RCW [90.58.190](#).

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Bulkheads (Bulkheads Are Authorized to Protect Property from Erosion)

RCW 90.58.030(3)(e)(ii) Shoreline Management Definitions and Concepts

...

(e) "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 dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. **The following shall not be considered substantial developments for the purpose of this chapter:**

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

WAC 173-26-231(3)(a)(iii)(C) Shoreline Modifications

...

(C) An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from **erosion caused by currents, tidal action, or waves**.

- The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
- Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.
- **Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.**
- **For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.**

RCW 90.58.100 (6) - Duties When Preparing Programs and Amendments

...

(6) 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**.

WAC 173-27-040(2)(c) Developments Exempt from Substantial Development Permits

...

(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars ...

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements...

(c) 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.

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Non-Conformity (Non-conforming Structures Are Protected)

WAC 173-27-040(2)(b) Developments Exempt from Substantial Development Permits

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(2) The following developments shall not require substantial development permits:

(a) Any development of which the total cost or fair market value, whichever is higher, does not exceed five thousand dollars...

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

WAC 173-27-080(2) & (3) - Non-Conforming Use and Development Standards

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means ...

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program . . .

(5) A structure for which a variance has been issued shall be considered a legal nonconforming structure . . .

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. . .

(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

(8) If a nonconforming development is damaged . . .

(9) If a nonconforming use is discontinued for twelve consecutive months . . .

(10) An **undeveloped** lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

WAC 197-11-800(3) - Categorical Exemptions

The proposed actions contained in Part Nine are categorically exempt from threshold determination and EIS requirements, subject to the rules and limitations on categorical exemptions contained in WAC [197-11-305](#).

- (1) Minor new construction -- Flexible thresholds. . .
- (2) Other minor new construction . . .
- (3) **Repair, remodeling and maintenance activities. The following activities shall be categorically exempt:** The repair, remodeling, maintenance, or minor alteration of existing private or public structures, facilities or equipment, including utilities, involving no material expansions or changes in use beyond that previously existing; except that, where undertaken wholly or in part on lands covered by water, only **minor repair or replacement of structures may be exempt (examples include repair or replacement of piling, ramps, floats, or mooring buoys, or minor repair, alteration, or maintenance of docks)**. The following maintenance activities shall not be considered exempt under this subsection. . .

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Setbacks

2005 Review of BAS (Best Available Science) – Shorelines (The Watershed Co.)

Section 7.2.1 Lake Washington

. . .

The shoreline of Lake Washington, including Bellevue’s shoreline area, is **extensively developed** (Weitkamp & Ruggerrone, 2000; Toft, 2001) . . .

Section 7.2.2 Lake Sammamish

. . .

With this degree of shoreline armoring, a **significant amount of aquatic and riparian has been physically eliminated** and many shoreline processes and functions are currently precluded.

. . .

these alterations limit Lake Sammamish’s functions and values within the Bellevue shorelines and the Lake Sammamish watershed.

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Wetlands

WAC 173-201A Water Quality Standards for Surface Waters... -020 Definitions

...

Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, [detention facilities](#),

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Vegetation Conservation and Tree Retention

WAC 173-26-221 - General master program provisions.

...

(5) Shoreline vegetation conservation

(a) Applicability . . .

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, [vegetation conservation standards do not apply retroactively to existing uses and structures](#), such as existing agricultural practices.

(b) Principles . . .

The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. [Vegetation conservation should also be undertaken to protect human safety and property](#), to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs [shall include](#): Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and [to reduce the hazard of slope failures or accelerated erosion](#).

...

Woody vegetation normally classed as [trees may not be a natural component of plant communities in some environments](#), such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height.

Local governments **should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology** and conserve sufficient vegetation to maintain them. **Such vegetation conservation areas are not necessarily intended to be closed to use** and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

LUC 20.20.900 - Tree Retention and Replacement.

A. Purpose.

Retention of significant trees as required by this section is necessary to maintain and protect property values, to enhance the visual appearance of the City, to preserve the natural wooded character of the Pacific Northwest, to promote utilization of natural systems, to reduce the impacts of development on the storm drainage system and water resources, and to provide a better transition between the various land uses permitted in the City.

B. Applicability.

The requirements of this section shall be imposed any time a permit, approval, or review including land alteration or land development including subdivisions, short subdivisions or planned unit developments, a change in lot coverage, or a change in the area devoted to parking and circulation is required by the Bellevue City Code or Land Use Code. Subsection F of this section shall apply to permits for new single-family structures and for **additions to impervious surface areas that exceed 20 percent** when located on a single-family lot developed with a residential use. Subsection E of this section applies to the removal of any significant trees in the R-1 Land Use District located in the Bridle Trails Subarea.

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F. **Retention of Significant Trees for New or Expanding Single-Family Structures** Excluding Single-Family Structures Located in the R-1 Land Use District in the Bridle Trails Subarea.

1. Site Area. For new single-family structures or additions to impervious surface areas that exceed 20 percent when located on a single-family lot developed with a residential use, the applicant shall retain a minimum of 30 percent of the diameter inches of significant trees existing in the site area; provided, that alder and cottonwood trees' diameter inches shall be discounted by a factor of 0.5. In applying the requirement for retention of significant trees, the **Director shall consider the preservation of the following types of significant trees a priority:**

- a. Healthy significant trees over 60 feet in height;
 - b. Significant trees which form a continuous canopy;
 - c. Significant trees which contribute to the character of the environment, and **do not constitute a safety hazard;**
 - d. Significant trees which provide winter wind protection or summer shade;
 - e. Groups of significant trees which create a distinctive skyline feature;
 - f. Significant trees in areas of steep slopes or adjacent to watercourses or wetlands;
- and
- g. Significant trees located within the first 20 feet adjacent to a property line.

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Guidance on Wildlife

WAC 365-190-130 - Fish and Wildlife Conservation Areas

(1) "Fish and wildlife habitat conservation" means land management for maintaining populations of species **in suitable habitats within their natural geographic distribution so that the habitat available is sufficient to support viable populations over the long term and isolated subpopulations are not created.** This does not mean maintaining all individuals of all species at all times, but it does mean not degrading or reducing populations or habitats so that they are no longer viable over the long term. Counties and cities should engage in cooperative planning and coordination to help assure long term population viability.

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Guidance on Property Rights

State Attorney General - Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property¹

- A government regulation that is so severe in its impact that it is the functional equivalent of **condemnation requires the payment of just compensation.**
- The Washington Constitution provides that “[n]o private property shall be taken or damaged for public or private use without just compensation.”
- In Washington, property generally **may be condemned only for a public use.**
- In general, zoning laws and related regulation of land use activities are lawful exercises of police powers that serve the general public good. However, the state and federal constitutions have been interpreted by courts to recognize that **regulations purporting to be a valid exercise of police power must still be examined to determine whether they unlawfully take private property** for public use without providing just compensation.
- • •
- **A regulation must be analyzed for its economic impact on the property** as a whole, not just the portion being regulated.

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¹ Link - [Attorney General's Guidance - http://www.atg.wa.gov/uploadedFiles/Home/About the Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About%20the%20Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)