

WSSA PROPOSED PRINCIPLES AND RULES FOR BELLEVUE SHORELINE MASTER PROGRAM

FIRST INSTALLMENT (9/8/2010)

The Washington Sensible Shorelines Association provides the following as a first installment of proposed principles and rules for the Bellevue Shoreline Master Program. This portion of WSSA's proposed principles and rules provide the best opportunity for the City to approve a Shoreline Master Program that: (a) is responsive to the public's and the Association's concerns; and, (b) ensures reasonable regulation of shoreline properties while also protecting the shoreline environments of Lake Washington, Lake Sammamish, and Phantom Lake.

The following summarizes the proposed principles and rules acceptable to WSSA:

- **Exempt Activities Shall Be Subject to Objective Standards That Achieve No Net Loss in the Aggregate**
- **Existing Bulkheads and Other Shoreline Stabilization Features For Single Family Properties Can Be Repaired or Replaced Without Restrictions Based on Major or Minor Repairs**
- **New or Expanded Bulkheads and Other Shoreline Stabilization Features For Single Family Properties Can Also Be Constructed With Additional Standards**

The following provides additional detail describing and defining these proposed principles and rules. This summary builds on the detailed information previously provided to the City Staff and Planning Commission which will be supplemented as additional topics come before the Commission.

OVERVIEW

WSSA's positions below emphasize the distinction between **exempt** activities and those that clearly require one of several types of **permits**. Exempt activities should proceed without complex application requirements that only add to the cost and delay in constructing needed improvements that will have no adverse impact on the shoreline environment. For the activities that require shoreline permits under the law, the City should adopt clear standards that make approval predictable, and avoid ad hoc decision making that leads to uncertainty, increases cost, and causes delay.

Please note that important issues are not resolved at this time, and must be resolved before WSSA will support any proposed SMP. Among the important, unresolved issues are: (1) clear and predictable standards for measuring no net loss of shoreline ecological functions; and, (2) a fair ordinary high water mark for Lake Sammamish and Phantom Lake that discounts (i.e., accounts for) the unnatural, high water levels caused by lack of outfall maintenance.

EXEMPT VERSUS PERMITTED ACTIVITIES

- **Exempt Activities Shall Be Subject to Objective Standards That Achieve No Net Loss in the Aggregate**

- **Exempt** activities are subject to No Net Loss in the aggregate, and not on a project by project basis. WAC 173-26-186(8)(b)(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.

- **Permitted** activities are subject to No Net Loss on a project by project basis through regulations and mitigation standards. WAC 173-26-186(8)(b)(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.

- Permitted activities those that require a shoreline substantial development permit, shoreline conditional use permit, or a shoreline variance permit.
- Exempt activities shall not be required to obtain shoreline substantial development permits or be subjected to any other comparable permit process.
- Exempt activities include: maintenance and repair, construction and renovation of owner occupied single family homes and appurtenances, bulkheads for single family properties, and new or expanded docks costing no more than \$10,000.
- Standards applied to exempt activities must be objective standards that can be easily understood by property owners and applied “over-the-counter” by the staff without expensive permit application requirements and costly and time consuming staff review.
- Regulations and mitigation standards must be consistent with constitutional protection of property rights which requires the City to demonstrate that the requirements are reasonably necessary as a direct result of the proposed development.

SHORELINE STABILIZATION

Summary of Findings

The wave action on Lake Washington and Lake Sammamish caused by watercraft and storms is demonstrated to cause erosion to the shoreline that threatens structures and developments located on the upland/shorelands. Shoreline stabilization measures on these lakes are necessary for the preservation of the homes and appurtenances, which constitutes overriding safety and environmental concerns. Property owners can be encouraged to replace existing hard shoreline stabilization measures with non-vertical bulkheads or soft shoreline stabilization measures or avoidance measures. However, the persistent wave action on these lakes causes a demonstrated need to use hard shoreline stabilization measures to sufficiently protect structures and developments located on the uplands/shorelands, and therefore property owners must be allowed to protect their property with hard shoreline measures. The only scientific concern identified regarding bulkheads on Lakes Washington and Sammamish is potential wave damage caused by vertical bulkheads depending on the location in relation to the water level, thus restrictions on vertical bulkheads are the only justified restriction.

Additionally, extraordinarily high, artificially created water levels on both Lake Sammamish and Phantom Lake are damaging property which increasingly necessitates protection of these properties with shoreline stabilization features. The City should take proactive steps to eliminate the artificial lake levels, otherwise the rules must allow property owners on both lakes to protect their properties from water caused damage.

Property Fairness Concerns

Fundamental to WSSA's position is that the City, or the County before it, allowed the residential use of these shoreline properties, and did so with the recognition that shoreline stabilization would be required to protect and maintain the properties. It is completely unfair and unnecessary for the City to take a position that these properties cannot install, replace, or maintain traditional shoreline stabilization measures, and instead require property owners to install so-called "soft shoreline stabilization." Soft shoreline stabilization seeks to reverse the reasonable expectations that property owners had in the creation of these lots by requiring 10 to 30 feet of land to be arbitrarily donated to promote public shoreline benefits that are not quantifiable and contrary to accepted science.

- **Existing Bulkheads and Other Shoreline Stabilization Features For Single Family Properties Can Be Repaired or Replaced Without Requiring Categorization as Major Versus Minor Repair**
 - Walls or other features that are **not** at or near, and parallel to, ordinary high water shall not be regulated as shoreline stabilization measures or bulkheads.
 - Repair or replacement of existing shoreline stabilization features will **not** result in net loss of shoreline ecological functions because a comparable bulkhead will not change existing conditions.

- Replacement means the construction of a new structure to perform a shoreline stabilization function of an existing bulkhead which can no longer adequately serve its purpose.
- The replacement structure should be comparable to the existing and not constitute an addition or increase, however, a replacement structure need not be exactly the same as the existing structure and can be constructed of different materials or methods, including design features, location, and/or sizing modifications that will not result in a net loss of shoreline ecological functions.
- Property owners may be encouraged, but not required, to replace vertical bulkheads with sloping rock revetments, which shall be considered acceptable replacement structures.
- Property owners may be encouraged, but not required, to replace bulkheads with soft shoreline stabilization measures, which shall be considered acceptable replacement structures.
- Repaired bulkhead or replacement structures should be in the same location and not expanded, subject to the follow qualifications:
 - An exception is replacement of a vertical wall with a sloping rock revetment, which shall be considered an allowed replacement structure.
 - Where the existing bulkhead is waterward of ordinary high water, replacement structures located landward of ordinary high water shall be considered an allowed replacement structure.
 - An exception or clarification is that if a vertical or near vertical wall that is being repaired by construction of a vertical wall fronting the existing wall, then the new wall shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. WAC 173-27-040(2)(c). As an alternative, a rock revetment may be constructed fronting the existing vertical wall. Note: On some properties, removal of a vertical wall bulkhead will cause substantial damage to the property and shoreline creating an overriding safety and environmental concern, so repair by a fronting wall is the necessary and appropriate method of repair (e.g. Meydenbauer Bay).
 - If the existing structure and thus the replacement structure are below ordinary high water, then the City should provide notice to the property owner that state and federal requirements and/or permits apply (WDFW—Washington Department of Fish and Wildlife, ACOE—Army Corps of Engineers).
- Repair or replacement of existing shoreline stabilization consistent with the above rules shall not require a shoreline substantial development permit or any other comparable permit or review process.
- Citations: RCW 90.58.030, WAC 173-26-231(3)(a)(iii)(C), WAC 173-27-040(2)(c).

- **New or Expanded Bulkheads and Other Shoreline Stabilization Features For Single Family Properties Can Also Be Constructed With Additional Standards**
 - Walls or other features that are **not** at or near, and parallel to, ordinary high water shall not be regulated as shoreline stabilization measures.
 - State law declares as an **exempt** activity: “Construction of the normal protective bulkhead common to single family residences.” RCW 90.58.030(3)(e)(ii).
 - New or expanded shoreline stabilization measures shall be allowed as an exempt activity if construction utilizes sloping rock revetments, soft shoreline stabilization, or other measures identified as providing similar benefits.
 - New or expanded shoreline stabilization measures must be constructed landward of ordinary high water. [See Overview re: resolution of OHWM issue required.]
 - New or expanded shoreline stabilization measures consistent with the above standards will not result in net loss of shoreline ecological functions.
 - The unique local circumstances demonstrated by the Summary of Findings and supplementing information support authorizing new and expanded bulkheads meeting the above criteria as exempt activities consistent with the “substantial discretion” afforded the City under the Shoreline Guidelines. WAC 173-26-171(3)(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 . . .”). *Compare* WAC 173-26-231(3)(a)(iii) (requiring additional review standards for all new or expanded bulkheads).
 - Other new or expanded bulkheads not complying with the above standards are not normal protective bulkheads common to single family residences and must obtain a shoreline substantial development permit based on:
 - Geotechnical analysis demonstrating that the home, property, or appurtenances are threatened by erosion due to wave or water action, and demonstrating the need for the type of shoreline stabilization proposed. The geotechnical analysis shall be accepted by the City as conclusive on these issues.
 - The applicant shall demonstrate through the geotechnical analysis or otherwise that the proposed shoreline stabilization measure and any mitigation measures will not result in a net loss of shoreline ecological functions. [See Overview re: resolution of No Net Loss Standards required.]
 - Citations: RCW 90.58.030, WAC 173-26-231(3)(a), WAC 173-27-040(2)(c).