Open Letter on Bellevue Shoreline Master Program

TO: Bellevue Residents and Shoreline Property Owners

FROM: Washington Sensible Shorelines Association (WSSA)

RE: Response to Seattle Times article (Feb. 1, 2012) regarding Bellevue Shoreline Management Program and appointments to the City Planning Commission

Many of you may have read this Seattle Times article. The WSSA Board was disappointed in the article. Its focus seemed to be personalities and politics, not fact. We'd hoped for an article tied to the Shoreline Master Program Update; one focused on fairly addressing important issues, plus the Planning Commission's role, and that of City Staff. The Seattle Times reporter talked at length to WSSA Board Member Martin Nizlek about WSSA's mission, property owner desires for regulations founded on fact-based science, protection of Bellevue's lakes, and the Shoreline Master Program Update process. Unfortunately, almost nothing from that conversation was included in the article. We think it necessary to provide our perspective.

The Times' article expressed concern about Councilmember Wallace's appointments to the Commission as the Council liaison. First, it should be noted that Councilmember Wallace, following Council practice, has appointed seven people to vacancies on the Commission. The City Council unanimously approved the first six of those appointments, with the seventh appointee approved by a 5-2 vote. Second, Councilmember's Wallace's own words explain his intent and purpose: "I've made it very clear a number of times that the Shoreline Management Program has to balance the protection of the environment with people's property rights. Candidates that I selected, I think, were the most qualified candidates of the pool to achieve that goal."

Even more germane are statements included in the article relative to shorelines. It's important to address these.

Statement 1: Is the Planning Commission seeking to roll back regulations?

The newspaper article contends a "now tainted" Planning Commission is "backing away" from some shoreline regulations or "rolling back" the rules "that lakefront property owners find inconvenient."

Real Story 1: The Planning Commission is doing what the City Council directed —carefully reviewing and seeking to adopt shoreline regulations based on fact, pertinent science, and that are compliant with State code.

In 2006, the City adopted critical area rules for lake shorelines without amending the Shoreline Master Program (SMP), thus creating two sets of wildly contradictory rules. The SMP is the state mandated plan of regulations and non-regulatory programs for the City's lakes. The SMP is required by the Shoreline Management Act and must be approved by the State Department of Ecology. The City had never regulated lake shorelines as critical areas and did not effectively notify or engage lakefront property owners regarding the 2006 rule changes. In short, the dramatic changes had no support of or input from shoreline property owners (the regulated community) and, as established by a State Supreme Court ruling, the changes should have been approved by the Department of Ecology.

The 2006 shoreline critical area regulations expanded the historic shoreline setback to contain a 25 foot "no touch" vegetative buffer plus a 25 foot setback from the edge of the buffer. In short, these rules, which are still in effect, treat the urbanized lake shorelines in the same manner as the natural shoreline of the Mercer Slough or pristine wetland. This was a mistake and caused irrational regulation of existing homes. Learning of City staffs' intent to merely roll the CAO rules into a new set of shoreline restrictions resulted in residents forming WSSA, the Sensible Shorelines Association.

The 2006 CAO rules are both hugely excessive and contrary to helping the environment. For example, a property owner sought to construct a built-in BBQ on an existing patio within the 50 foot setback area. But City staff said, "Don't waste your time applying for a permit because it will be denied under the 2006 rules." Yet, adding a BBQ to an already constructed patio will not cause any harm to the environment. In another situation, a property owner removed patio pavers and replaced them with grass, which most would think was a benefit to the environment. Yet, the City brought a code enforcement case because, according to the 2006 rules, removing patio pavers "adversely impacted" the Lake. The property owner was forced to spend thousands of dollars in permitting and planting trees to "mitigate" his so-called environmental impact.

Importantly, the City Council heard these complaints about the 2006 shoreline critical area regulations and as a result the Council directed staff and the Planning Commission to revisit the 2006 rules in the SMP update process and to make appropriate changes. That takes time. We believe the Commission should not be asking whether the proposed rules are "inconvenient"; they should ask whether they are "logical and legal".

For example, a serious legal problem relates to the starting point for the buffer and setback standard. These are measured from the Ordinary High Water Mark (OHWM). While this line is relatively stable on Lake WA, on Lake Sammamish and Phantom Lake it is unstable due to government mismanagement of lake outflow channels. WSSA has found it necessary, in light of staffs' failure to do so, to bring this matter to the Planning Commission and City Council's attention. The complexity of dealing with this issue has added to the SMP review time.

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Statement 2: Is the Planning Commission less interested in keeping the lakes healthy?

The newspaper article voiced a concern that the new Commissioners are less interested in keeping the lakes healthy. Also, the article claims that the new Commissioners want less restrictive vegetation requirements similar to those adopted by Mercer Island but not yet approved by the State Department of Ecology. The article editorializes by stating: "Lakefront residents uniformly blasted a proposed shoreline plan at a hearing last year" even though it was less restrictive than current rules.

Real Story 2: WSSA's position is that the current staff proposal does not focus enough on how to make the lakes healthier, and instead proposes restrictive regulations that will provide no meaningful environmental improvement.

The currently proposed shoreline regulations are known as the Draft Shoreline Master Program or Draft SMP. The Draft SMP was created by City staff and released in March 2011. The Commission provided preliminary input then directed that a public hearing be held to obtain public input prior to making any firm decisions about the staff created regulations. That hearing occurred May 2011.

For all who attended the Commission public hearing, you're aware participants overflowed Council Chambers, presenting (over nearly 4 hours) more than 30 well thought out and carefully reasoned concerns about the staff proposed Draft SMP. The plan was not "blasted" as the Times' article editorializes; rather, the Draft SMP was subjected to fair debate. Yet only minimal consideration has been given this input by City staff.

Since the public hearing, staff has been challenged repeatedly to identify the ecological benefits gained by the more restrictive elements of staffs' proposed rules, including the vegetation requirements. Each time, ***staff has been unable*** to defend the rules with scientific information that disputes the clearly presented science and other information submitted to the Planning Commission by residents. That explains the quote in the article by Commission Chair Kevin Turner in saying that staff needs to show these regulations will actually improve fish habitat and achieve other measurable goals.

With respect to vegetation protection, WSSA is advocating for precisely what the Department of Ecology says in its guidelines, namely that "vegetation conservation standards do not apply retroactively to existing uses and structures." It was precisely those improper, retroactive vegetation standards that the Planning Commission majority agreed were excessive. In addition, WSSA has explained that shoreline property owners have done more to protect trees than most other sections of the City. Current tree retention requirements in the City Code will result in more tree retention in shoreline areas. Neither extreme, new regulations, nor excessive requirements imposed by the CAO in 2006, are needed.

Based on the input of the community, WSSA has been steadfastly focused on advocating for "non-regulatory" programs that will greatly improve the environmental health of the lakes. Specifically, lakefront property owners are uniformly aware that stormwater runoff causes a substantial amount of the pollution in City lakes. Cleaning up stormwater pollution, which arrives only in small part from private properties, will have a much greater beneficial impact on water quality than overly restrictive land use regulations. And, the City should be focused on expediting projects that directly benefit salmon by restoring spawning areas on creeks feeding our lakes.

Statement 3: Is the Planning Commission "in favor of individual property rights over the benefit of the greater good"?

The newspaper article relates the property rights background of the appointees and quotes a Planning Commissioner saying that two of the appointments favor property rights over the greater good.

Real Story 3: Property rights are protected by the Constitution in order to further the greater good, and property rights are expressly protected in the State Shoreline Management Act.

This statement voices a complete misunderstanding of the fundamental principles of our society and its government. Most people inherently understand these principles, but it is worth repeating – both our national and state constitutions protect private property rights. If property rights are not respected and protected, then the greater good will suffer. Protecting these rights furthers the greater good by ensuring all individuals are equally respected.

But, the Shoreline Master Program Update is ***not about*** property rights versus the environment, or property rights versus the greater good—***it is about balance***. The State Shoreline Management Act was approved by voters in 1971 and it expressly states a policy to balance shoreline development with shoreline protection, while "at the same time, recognizing and protecting private property rights." The Sensible Shorelines Board is committed to continuing its efforts to advocate for this balance.

Please contact any WSSA Board Member if you have questions or concerns – www.sensibleshorelines.org. We urge your recognition and support of our efforts.