



TO: BELLEVUE CITY COUNCIL

**RE: SHORELINE MASTER PROGRAM UPDATE
COMMENTS FROM THE WASHINGTON SENSIBLE SHORELINES
ASSOCIATION ON NOVEMBER 2014 COUNCIL DRAFT**

The purpose of this Memorandum is to provide an update and preliminary comments from the Washington Sensible Shorelines Association (WSSA) in response to the Staff generated draft revisions to the Shoreline Master Program Update. Representatives of WSSA and I have had two meetings with staff and have been reviewing the extensive changes that are being proposed. We have provided input resulting in clarifications, and we have proposed numerous suggested revisions for discussion. While these meetings have been productive, given the scope of changes, we have not completed our review at this time, so these are our preliminary comments.

The key concerns are:

New Mitigation Formula Approach is Untested

- New Mitigation Formula Approach is Not Used in Any Other Jurisdiction
- New Mitigation Formula Approach Has Not Been Tested or Vetted
- Changes Are Needed To Make The Mitigation Formula Approach Acceptable to Shoreline Owners
- WSSA is Willing To Cooperate With the Council to Identify and Implement Reasonable Changes and Solutions

New Vegetation Conservation Area Regulates Landscaping Modifications to 50 Feet

- Goes Beyond Regulating Expansion of Homes and Impervious Surfaces in the 25-50 Foot Mitigation Activation Area
- New **Vegetation Conservation Area** Partially Expands The "No Touch" Critical Area Buffer From 25 Feet to 50 Feet from OHWM
- Regulates Landscaping Modifications in the 0-50 Foot Area, Even Where No Expansion of Homes or Impervious Surfaces Are Proposed
- Mitigation of Landscaping Modifications is Not Required By Ecology or State Rules
- Ecology has Approved Numerous SMPs Around Lake Washington and Lake Sammamish Without Requiring Mitigation of Landscaping Modifications
- WSSA Will Strongly Support A Voluntary Program for Urban Native Vegetation Gardens

Background. The Staff's revisions were expected to provide rules for home and impervious surface expansion in the area between 25-50 feet from Ordinary High Water Mark (OHWM)—recall the discussions about the Mitigation Activation Line at the 50-foot mark. The Greenscape Provisions were 2 pages long and the Council found that approach to be complex. The new Council Draft replaces those 2 pages with 11 pages of very dense and hugely complicated code language. In our second two hour plus meeting with Staff, we were still learning new and important information that is not clear in reading the Code. Of course, before adoption, the City Council must be in a position to understand what it is adopting to be able to respond to citizen questions. WSSA is very concerned that the Council has had the SMP **for almost two years**, and finally, when code changes are proposed, the public is expected to completely absorb massive changes and provide meaningful comments **within a matter of a couple of weeks**—that is totally impractical and entirely unfair.

Staff Admits New Mitigation Formula Approach is Not Used in Any Other Jurisdiction. Adding to the problem is the fact that Staff readily admits that the proposed mitigation formula approach **has not been used in any other jurisdiction** for shoreline or regular land use purposes. The City Council had directed Staff to propose a regulatory system that used Menu Options or another standard approach to simplify the Greenscape Provisions, to provide nexus and rough proportionality, and to require mitigation when home or impervious surface expansion occurred beyond the Mitigation Activation Line in the area between 25 to 50 feet from OHWM. Instead, Staff developed an entirely new and highly complicated approach **that has not been tested or vetted in any other jurisdiction**. The outcome of adopting this approach is clear—substantially more planning staff time will be needed for implementation, thus requiring more budget resources or diversion from other important planning initiatives. Plus, property owners will need to pay for extensive consultant costs followed by thousands of more dollars in hourly staff review fees for minor projects that clearly cause no harm. That is a waste of public and private resources that would be much more effectively used directly for shoreline restoration projects.

The New Vegetation Conservation Area Regulates Mere Landscaping Modifications to 50 Feet—This Overreach Violates Department of Ecology Rules and Is Not Required for Ecology Approval. The Department of Ecology (Ecology) regulations are set forth in the Washington Administrative Code, and those rules are binding on the City of Bellevue. Those regulations are very clear in stating: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures." WAC 173-26-221(5)(a). Yet, **that is precisely what the Council Draft has done**—created a 50-foot "Vegetation Conservation Area" that goes beyond home and impervious surface expansion **to regulate landscaping modifications** whether to bare ground, lawn, groundcover, shrubs, or trees. The proposed rule partially **expands the "No Touch" Critical Area Buffer from 25 feet to 50 feet**, even though **the shoreline is not a critical area**. This rule is directly in conflict with the Ecology regulation stating: "vegetation conservation

standards do not apply retroactively to existing uses and structures.” Importantly, Ecology has approved numerous SMPs around Lake Washington and Lake Sammamish **without requiring mitigation for landscaping modifications**. The Staff now indicates that it will revise the Council Draft to allow a 200 square foot exemption, but that is insufficient. Ecology does not require any mitigation for mere landscaping modifications.

It is Incorrect that These Changes are Required to Obtain Ecology Approval or Meet No Net Loss. Staff repeatedly states that, “Ecology Won’t Approve It” or that, “The Watershed Company can’t get to No Net Loss in the Cumulative Impact Analysis.”

First, we find it very concerning that Staff appears to use these statements to cut off rational debate. Such statements are **directly contrary** to Professor Settle’s clear advice that **the City Council has substantial discretion to adopt local regulations to fit the City’s circumstances**.

Second, these statements are incorrect. Ecology has already approved Mercer Island’s SMP and the rules for home and impervious surface expansion **are only a half-page**.¹ In the Mercer Island SMP, there are no restrictions on landscaping modifications in the 50 foot area. With respect to home and impervious surface expansion, every property on Mercer Island can expand the home or impervious surface by 500 square foot (SF) in the 25 to 50 foot area **without providing any vegetation mitigation**.² That expansion can take out grass, trees, and other vegetation, etc. Thus, Mercer Island’s SMP met No Net Loss and was approved by Ecology **with no restriction on landscaping modifications and a 500 SF exemption for home and impervious surface expansion**. Clearly, if that approach meets No Net Loss and is approvable by Ecology, then the substantially more restrictive approach proposed in the Council Draft is not necessary.

WSSA Will Only Support An Approach That Completely Exempts Existing Landscaping. Staff has provided no meaningful rationale for strict regulation of landscaping modifications. No meaningful shoreline specific ecological reasons are provided, which means the faulty rationale would justify similar restrictions City-wide—every backyard provides “habitat” for songbirds and nuisance animals. This approach continues the major problems associated with the existing 25-foot Shoreline Critical Area Buffer **and expands those problems to the 50-foot mark**. After spending over five years advocating on the SMP Update, WSSA cannot support an approach that essentially extends the “No Touch” Buffer to 50 Feet, has no basis in science, and is not even required by the Department of Ecology.

¹ Except for 5 foot dock walkway width rule which is still being debated.

² Compliance with an overall impervious surface limitation is required.

WSSA Will Strongly Support A Voluntary Program for Urban Native Vegetation Gardens. WSSA believes that shoreline property owners, if educated and encouraged ***but not coerced and overregulated***, would readily plant a higher percentage of native vegetation during landscaping modifications. The landscaping in many yards is mature to the point of needing renovation. WSSA agrees that native vegetation is a good option in many circumstances. Almost all property owners prefer a mix of plants with some lawn, which is to say that few, if any, property owners insist on 100% lawn coverage. A strong ***voluntary program*** of education and encouragement would certainly result in more native vegetation in the shoreline area including in the 0-50 foot area.

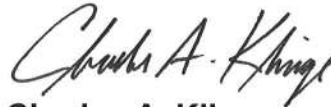
Importantly, ***the Council Draft creates major disincentives to converting existing landscaping to native vegetation*** because ***more than minor*** landscaping modifications must submit to permitting requirements and must follow the complicated mitigation formula approach and composition requirements. The “composition” requirements deem certain native vegetation as not qualifying as “acceptable” native vegetation. For example, native groundcover alone, with no trees/shrubs, would be considered the same “value” as lawn, so there is no benefit or incentive in the formula to convert lawn to native groundcover. A property owner desiring to convert a 15’ by 15’ lawn area to native groundcover would need to go through permitting to obtain approval. A property owner desiring to convert a 15’ by 15’ area of ***non-native*** shrubs (60%) and groundcover (40%) to ***native groundcover*** would need to go through permitting and ***would have the permit denied***—because non-native vegetation meeting composition coverage requirements is valued higher than native vegetation not meeting those requirements. Not only is this approach nonsensical, but it clearly creates major disincentives to planting native vegetation that might otherwise be voluntarily planted.

The Council Must Decide if it Wants to Use the Highly Complex Mitigation Formula Approach for Expansion of Home and Impervious Surfaces in the 25 to 50 Foot Area. The first step is for the Council to decide whether it is in favor of implementing this new and untested regulatory approach to expansion of homes and impervious surface beyond the 50-foot Mitigation Activation Line. The formula approach is very complicated, is not intuitive or obvious, and is essentially impossible to explain in a reasonable manner. WSSA recognizes that, when applied to home or impervious surface expansion, the outcomes provide options and discretion for property owners. But, those benefits are only realized after complicated assessment of land cover types, trying out various mitigation options in the formula, and compliance with very exacting vegetation “composition” requirements—a precise mix of trees/shrubs and groundcover in a minimum size area that results in a sufficient coverage over time. No other jurisdiction is using this approach. Thus, it is very difficult for WSSA to support this approach when there is no track record of successful implementation. ***WSSA is willing to have a discussion about this approach***, but more time is needed to fully consider the implications and to adequately inform the shoreline property owners in order to seek their input.

WSSA is Willing to Work with the City Council on Reasonable Solutions. WSSA wants this process over with as badly as the City Council. However, the solution is not to quickly adopt the Council Draft just to be done. We urge the Council to know what is in the Council Draft. Plus, the City Council has always provided the regulated public sufficient time to review and provide input to new land use regulations. These regulations affect literally hundreds of millions of dollars of real estate in this City. And, it is worth restating that the State Shoreline Management Act specifically provides that single-family residences and their appurtenant structures “shall be given priority” in the use of the State’s shorelines. Thus, there is no conflict in allowing continued use of the shorelines by the residents of this City based on decade’s old platted lots. WSSA has started reviewing the Council Draft and has identified possible revisions that might result in reasonable solutions. WSSA would like to work expeditiously with the Council to create reasonable solutions.

WSSA has been participating in this process for over five years. From the beginning, WSSA has been promoting the paramount need for **clarity** in the regulations to ensure the **consistency** of implementation and the **certainty** as to what property owners can expect. Please take the time to complete the task at hand to ensure **clarity** and do not rush to finish just to be finished.

Sincerely,



Charles A. Klinge
On behalf of WSSA