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TO: BELLEVUE CITY COUNCIL

RE: SHORELINE MASTER PROGRAM UPDATE (MEETING JUNE 9, 2014)
Comments from Washington Sensible Shorelines Association

On behalf of the Washington Sensible Shorelines Association (WSSA), I offer the following comments in preparation for the meeting on June 9, 2014.

Point 1: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures." WAC 173-26-221(5)(a).

Existing residential uses and development on the lakes must be recognized and the Shoreline Master Program regulations must reflect those existing uses. The quoted provision is from the Shoreline Guidelines adopted by the Department of Ecology. This provision means that "no touch" buffers that prohibit changes to existing landscaped yards adjacent to the lakes are not required because the lake shorelines are not critical areas. The "no touch" buffer in the City's critical area regulations are appropriate for streams and wetlands, but not the lake shorelines.

Point 2: The Greenscape Rules impose significant restrictions on expansion of homes and hardscape within 50 feet of the shoreline, thus creating a major disincentive to do so.

The Greenscape rules require that any expansion of the home or hardscape closer than 50' must comply with three major elements. First, compliance means that 85% of the area within 10' of the water must be greenscape (excepting a 15% access area)—hardscape must be removed regardless of cost. Second, the area within 25' of the water must be at least 50% greenscape—again, hardscape must be removed if necessary regardless of cost. Third, the property owner must meet the 1:1 planting requirement for developed area added within 50' of the water. These significant restrictions on expansion of homes and hardscape within 50' of the shoreline create major disincentives to any expansion closer than 50' and ensure mitigation of impacts.

Point 3: "Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data." WAC 173-26-201(2)(a).

The City Council asked the question at the last meeting, "who decides when the data conflicts?" The answer is in Ecology's Shoreline Guidelines and the quoted portion makes it clear that the City Council must evaluate conflicting information and make a reasoned decision. The entire provision at WAC 173-26-201(2)(a) relating to use of scientific and technical information is attached as Appendix 1. The Planning Commission clearly followed the requirements of that provision by investigating "the most current, accurate, and complete scientific and technical information available," which regarding fish impacts, is summarized in the Fish Compendium of materials by Dr. Gil Pauley at Tab 4 of the WSSA Binder.

Point 4: There is no justification based on shoreline ecological functions to support a setback greater than 25 feet.

There has been no identification of any adverse impacts to shoreline ecological functions caused by home expansion in the 25' to 50' area for existing homes. As just noted, the City Council is obligated to understand the scientific and technical information. There has been a lot of rhetoric, but an absence of information indicating any adverse impacts. The Planning Commission relied upon factually accurate information that is summarized in the Background and Explanation Document at Tab 2 of the WSSA Binder (pp. 7-13, ¶ 19-27 [shoreline ecological functions], pp. 13-18, ¶ 28-42 [vegetation/buffer/setback]). In summary, home expansion in the 25' to 50' area will not affect young salmon swimming past the shoreline on their way to the ocean.

Point 5: Homes on Lake Sammamish must also comply with the flood hazard regulations which severely restrict placement of homes closer than 36.1' elevation.

The flood hazard regulations severely restrict construction of homes closer than the flood elevation which is 36.1' NAVD 88. That elevation line creates a setback ***that is greater than the 25' setback line*** for a substantial number of homes with shallow beaches, including the homes in the presentation by Save Lake Sammamish at the last meeting.

Point 6: Habitat creation is not an appropriate shoreline ecological function to promote within single family yards on the existing developed shoreline.

The State recognizes the basic incompatibility of inappropriately mixing of man and wildlife noting: "'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." WAC 365-190-130(1). Bellevue's lake shorelines have been designated for residential development since before the City's original 1974 Shoreline Master Program and later under the Growth Management Act as areas appropriate for dense urban development. Dense urban development is by definition inconsistent with wildlife—larger animals create safety problems and additional native vegetation promotes vermin such rats.

Point 7: The proposed setback and vegetation provisions are strongly supported.

The Planning Commission's proposal was strongly supported by dozens of hours of testimony and thousands of pages of documents relating to setback questions, including information about setback and buffer options, reduction options, Bellevue's CAO buffer/setback, case studies, and detailed scientific and other information about existing shoreline ecological functions on Bellevue's lakes. The information upon which the Planning Commission based its decision is summarized in the Background and Explanation Document at Tab 2 of the WSSA Binder. An excerpt is attached as Appendix 2 (pp. 15-18, ¶ 37-42).

Sincerely, Charles A. Klinge

Charles A. Klinge

APPENDIX 1

WAC 173-26-201(2)(a)

...

(2) Basic concepts.

(a) **Use of scientific and technical information.** To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process.

First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government, chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research procedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

(i) Scientific information and management recommendations on which the master program provisions are based;

(ii) Assumptions made concerning, and data gaps in, the scientific information; and

(iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201 (3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201 (3)(b). Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

...

(Emphasis added.)

APPENDIX 2

Excerpt from Bellevue Shoreline Master Program Update: Background and Explanation Supporting Bellevue's Updated Shoreline Master Program

The following excerpt addresses the broad justification for the buffer/setback proposal without delving into a detailed discussion of the greenscape proposal or comparisons to other jurisdictions. Pages 15 to 18.

SHORELINE BUFFER/SETBACK – PROPOSED RULES

37. The staff agreed that the Lake Washington and Lake Sammamish were not automatically critical areas—the shoreline is far too urbanized. The Planning Commission concurred and determined that other critical areas (wetlands, streams, steep slope, and flood hazard) occurring in the shorelands area would be regulated by incorporation of the Critical Area Overlay regulations. Implementing changes will be needed to the CAO, and the flood hazard rules need to be further reviewed because those rules are more restrictive than FEMA requires and would unnecessarily hinder the implementation of the SMP. The Planning Commission considered a number of options for regulating a buffer/setback area along the lake shorelines in particular for residential development. For the options not selected, the general conclusion was that those options: (A) were not based on sound scientific principles; and, (B) would require major effort to navigate complicated regulations without benefits to the shoreline and with substantial expense to property owners and inconsistent application by staff. No option was presented that would respect existing development and was reasonably tied to protection of existing shoreline ecological functions. Specifically, the question was asked: what additional ecological benefit is gained by a 50 foot setback versus a 25 foot setback? Neither the City's planning staff nor its consultants were able to identify ***any*** particular ecological benefit.

38. The recommended rules require a 25 foot buffer/setback with 50% of the area as required greenscape and a 50% limit on impervious surface/hardscape. The proposed rules go beyond the existing Shoreline Master Program 25 foot setback because the existing rule had no greenscape requirement and no limit on impervious surface/hardscape that was less than 30 inches. The proposal ensures that overall impervious surface in the 25 foot buffer/setback will not increase since the current level of impervious surface is greater than 50%. No valid scientific reasons were identified to justify a wider buffer/setback or

additional restrictions. Despite the lack of scientific justification, the proposal includes a 50% greenscape requirement and a 50% cap on impervious surface/hardscape. Also, the City's tree preservation requirements (retain 30% of significant trees) will result in more trees preserved in the shorelands compared to other parts of the City (except Bridle Trails) because the shoreline property owners have preserved more trees than other neighborhoods. The rationale for this proposed buffer/setback follows.

39. The Shoreline Guidelines expressly recognize that imposing vegetation requirements retroactively on existing development is not required: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures." WAC 173-26-221(5)(a). The existing residential shoreline is already developed and native vegetation is essentially nonexistent in those areas having been replaced with homes, landscaping, moorage, and other typical residential appurtenances. Additional vegetation requirements, beyond that proposed, are not scientifically justified or prudent on the developed urban shorelines. The asserted reasons for vegetation are: shade to reduce temperature, promote LWD, overhanging vegetation will promote insects to be eaten by salmon, capture excess nutrient and toxic compounds, attenuate wave energy, and provide habitat for upland wildlife. The need for vegetation on lake shorelines is asserted to be more important where salmon are present—but in Bellevue, on Lake Washington and Lake Sammamish, the salmon are just passing by on the trip to and from the ocean.

40. Planting trees in the buffer will not reduce lake temperature because Lake Washington and Lake Sammamish are too large for the trees to have any positive effect. Expecting those trees to fall over in 30-60 years creating large woody debris (LWD) in the lakes assumes that the trees will fall waterward and not landward—the latter causing a safety hazard and property damage. Creating new LWD in Lake Washington or Lake Sammamish whether indirectly by future falls or directly through mitigation will promote predation of salmon fry by bass. Salmon fry do not eat terrestrial insects in the lakes so overhanging vegetation for that purpose provides no benefit. The problem of excess nutrients and toxic compounds is caused by untreated stormwater—road runoff, and from increased erosion in urban creeks that become charged with runoff from neighborhoods upslope in the watershed. The existing shorelands are densely developed with homes and landscaping and do not appreciably contribute to the problem. It is recognized that improper use of fertilizer, herbicides, and pesticides poses a

concern to urban lakes, but that activity is already illegal under current regulations and there is no evidence or Bellevue specific assessment identifying shoreline properties as the source versus other sources including the City. The incidence of improper use of those legal compounds is small compared to the massive problem created by stormwater which is a citywide problem that cannot be solved in the shorelands area alone. Vegetation alone will not provide sufficient wave attenuation on Lake Washington and Lake Sammamish which are subject of large waves due to long fetch, and high boat traffic. Promoting wildlife in the shoreland area is inconsistent with residential living and improperly creates isolated wildlife pockets. Large animals create safety hazards in residential areas and belong in large park and open space areas. Dense native plantings on the shorelines promotes vermin such as mice, rats, opossums, and raccoons—vermin are recognized by existing regulations as a human health hazard, so promotion is improper and imprudent. The reasons for vegetated buffers generally assume that the entire shoreline or large portions of shoreline will be vegetated. But, that is not the case in Bellevue which is already fully developed. Forcing conversion of shorelines to vegetated native growth buffers will result in the odd property here or there that happens to redevelop having a detached vegetated native growth buffer. Decades would be required to see any appreciable expanse of such buffer, so those benefits are far outweighed by the burdens on property owners.

41. Restricting total impervious surface (hardscape and structures) in the shorelands is intended to slow stormwater flow into the lakes. However, such a requirement will not provide the same erosion reduction that occurs in urban streams. Rather, Department of Ecology recognizes that retention is not required near Lake Washington and Lake Sammamish because these lakes are receiving waters in which direct discharge is encouraged to "get ahead" of flood flows from upslope in the watershed. Water quality concerns from impervious surface relate to driveways and uncovered parking areas, and not to homes and other hardscape which do not generate the same road runoff pollutants. Road runoff from new sources in the shorelands is adequately addressed in stormwater regulations incorporated into the proposed SMP.

42. Imposition of new no touch buffers intended for native vegetation is directly in conflict with existing established development and this conflict is recognized by the Shoreline Guidelines: "Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and

structures." WAC 173-26-221(5)(a). The Shoreline Management Act establishes that single-family residential development is a preferred use of the shorelines, there "shall be given priority for single-family residences and their appurtenant structures [and for] shoreline recreational uses." The Act calls for "coordination in the management and development of the shorelines of the state," and that "coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest." Bellevue's lake shorelines have been planned for development, almost entirely single-family residential development since the City's original 1974 Shoreline Master Program. A large portion of the lots on these lakes were created in the first half of the last century. That development pattern causes severe limitations on attempts to impose new regulations more suited for an undeveloped shoreline. Many lots are 50 feet or less in width and many others are less than 100 feet in depth from OHWM or have a developable depth of 100 feet or less due to steep slopes or the location of public or private access roads. Access roads and utilities have been located based on the existing lot development. There are only a dozen or two dozen odd undeveloped lots and a few larger undeveloped or underdeveloped parcels, and there is no justification for imposing different rules on these similarly situated properties. In short, the shoreline property owners have substantial expectations, created over many decades, that these shoreline properties will be able to be developed and redeveloped as waterfront residential homes and appurtenances in an urban setting. These property rights need to be respected and can be respected consistent with the public interest. For example, the totality of all residential development provides for recreational use by large numbers of people, the public, on Lake Washington and Lake Sammamish since the shoreline property owners share their waterfront and watercraft with substantial numbers of family and friends.