

BEFORE THE GROWTH MANAGEMENT HEARINGS BOARD
CENTRAL PUGET SOUND
STATE OF WASHINGTON

PRESERVE RESPONSIBLE SHORELINE
MANAGEMENT, Alice Tawresey, Robert Day,
Bainbridge Shoreline Homeowners, Dick Haugan,
Linda Young, Don Flora, John Rosling, Bainbridge
Defense Fund, Gary Tripp, and Point Monroe Lagoon
Home Owners Association, Inc.,

Petitioners,

vs.

CITY OF BAINBRIDGE ISLAND and
WASHINGTON STATE DEPARTMENT OF
ECOLOGY,

Respondents.

Case No. _____

PETITION FOR REVIEW

I. SUMMARY

1. This Petition for Review challenges the City of Bainbridge Island's new Shoreline Master Program (SMP) because it was adopted in a manner which directly violates state law and regulations. The resulting product of this flawed process clearly violates the Shoreline Management Act (SMA) and the regulations that implement it in many ways. The

City's new SMP also violates numerous constitutional provisions, which Petitioners acknowledge are outside the scope of this Board's jurisdiction and will be addressed in another forum.

2. Some of the serious violations of the law, alleged in detail below, include the SMP's hostility to single family residential use, such as declaring all existing homes nonconforming even though single family residential is a preferred use and supposed to be exempt from permitting under state law, the SMP's micromanagement of homeowners' yards and maintenance of homes even though that is part of an exempt single family use, and the prohibition of normal residential uses without City approval. The SMP as adopted is in direct violation of what state law requires.

II. INTRODUCTION AND BACKGROUND

3. The Shoreline Management Act (SMA) was enacted in 1971, now codified in Chapter 90.58 RCW, to require every city and county in the state to adopt Shoreline Master Programs (SMPs) as the first mandatory land use planning tool. The geographical scope of these SMPs is the area from the ordinary high water mark to 200 feet inland. Cities and counties are also required to update those SMPs regularly. In 2011, the Legislature established a schedule for local governments to update their SMPs to ensure compliance with the law at the time of the update and to ensure consistency with the government's comprehensive plan and development regulations. RCW 90.58.080(4)(a).

4. In the amendment process, cities are required to go through the most intensive process for involving the public in the amendment of the SMPs. Far more emphasis on public participation is placed on SMP development and amendment than for any other local governmental regulatory or planning function. To ensure consistency among the SMPs of

various jurisdictions, the Department of Ecology (DOE) exercises an oversight role in approving or disapproving the local SMP. The DOE approval process similarly involves significant encouragement of public participation.

5. The Legislature did not leave local government with a completely blank slate on which to draft policies and regulations for the development of shoreline areas. The public interests to be served by the SMA include protecting public access to shorelines, protecting views and property values, preserving natural resources, preventing water quality degradation, and fostering water-dependent uses. One of the central policies of the SMA is the preference given for certain water dependent uses, such as ports and piers and marinas. Significantly for the case at hand, the Legislature also declared that a preferred or priority use of the shoreline area is single family residential use, along with normal appurtenant structures associated with waterfront residential use, such as docks, bulkheads, boat house, patios, etc.

6. In 2010, the City of Bainbridge Island began its update of its SMP and at some point decided to undertake a complete overhaul of its SMP instead of just ensuring compliance with the law and ensuring consistency with its comprehensive plan and development regulations. Having undertaken such a monumental task, the City completely failed at the required twin purposes for the update in the first place. The new SMP fails to comply with the law and creates inconsistencies within the City's comprehensive plan and development regulations.

7. While these substantive failings are significant, they do not overshadow the City's serious violations of high value the SMA places on public participation in the process. Notices of meetings did not have complete information or gave false information about what was on the table for that meeting. City staff edited the SMP drafts after public meetings were

held, resulting in both the public and the City Council having never been given a complete final version to be approved. Public comments at hearings were restricted and the SMA's requirement for response to public comment was largely ignored by both the City and the DOE. No serious response was given to the most important comments, either verbal or written, by the public. In essence, the public participation requirements for the update of an SMP were treated as a mere formality rather than a substantive involvement of the public in the development of SMP provisions.

8. The flawed process naturally resulted in an SMP which is inconsistent with multiple requirements of the SMA in multiple ways. For instance, the final SMP is *inconsistent* with the City's Comprehensive Plan and development regulations by prohibiting uses of property that are directly allowed or allowing uses that are directly disallowed. For the sake of the public, the City and the orderly administration of the law, state law requires that land use planning regulations and plans be consistent. This SMP is not.

9. In addition to inconsistencies among the various land use planning regulations and plans, the SMP violates the SMA in a large number of ways and particularly in regard to single family residences which the SMA places as a preferred or priority use of shoreline property. The SMP declares all existing homes to be non-conforming structures. The SMP seeks to regulate every human activity on the land, even though the SMA requires that development be regulated while at the same time the development of single family residences is exempt from shoreline permitting. The SMP severely limits water dependent uses contrary to the policies of the SMA. The SMP's nonconforming declaration is in direct conflict with the policy and numerous specific provisions of the SMA.

10. The City also failed to handle appropriately the science that was supposedly involved in the development of the SMP update. Scientific analysis involving the impact to water bodies caused by commercial agriculture, including cattle feedlots, was equated to the impacts of single family residences. Scientific information that did not fit the City's agenda was simply ignored. There was no reasoned analysis for relying on one scientific analysis over another.

11. Finally, the City's SMP raises a large number of constitutional issues, such as violations of privacy, due process, taking of property without compensation and even freedom of speech. However, the Board has no jurisdiction over constitutional issues and for that reason those issues are not being raised in this petition.

III. IDENTIFICATION OF PETITIONERS

12. **Petitioners.** Petitioners are homeowners in the City of Bainbridge Island and nonprofit organizations whose members reside and/or own property in the City of Bainbridge Island. The addresses for these Petitioners are as follows:

- a. Preserve Responsible Shoreline Management
Box 10957
Bainbridge Island, WA 98110
- b. Alice Tawresey
213 Gowen Place NW
Bainbridge Island, WA 98110
- c. Robert Day
15704 Pt. Monroe Dr.
Bainbridge Island, WA 98110
- d. Bainbridge Shoreline Homeowners
5492 Rockaway Beach Road NE
Bainbridge Island, WA 98110

- e. Dick Haugan
9010 NE Spargur Loop
Bainbridge Island, WA 98110
 - f. Linda Young
321 High School Rd., Ste. D-3, #296
Bainbridge Island, WA 98110
 - g. Don Flora
12877 Manzanita
Bainbridge Island, WA 98110
 - h. John Rosling
3911 Pleasant Beach Drive NE
Bainbridge Island, WA 98110
 - i. Bainbridge Defense Fund
P.O. Box 11560
Bainbridge Island, WA 98110
 - j. Gary Tripp
9605 Olympus Beach
Bainbridge Island, WA 98110
 - k. Point Monroe Lagoon Home Owners Association, Inc.
15670 Point Monroe Drive NE
Bainbridge Island, WA 98110
13. **Petitioners' Attorneys.** Petitioners are represented in these proceedings by:

Richard M. Stephens
Groen Stephens & Klinge LLP
10900 NE 8th Street, Suite 1325
Bellevue, Washington 98004
(425) 453-6206 telephone
stephens@GSKLegal.pro electronic mail

14. **Respondents.** City of Bainbridge Island is a municipality of the State of Washington. The City of Bainbridge Island, acting through its City Council, adopted the ordinance amending the City's SMP that is the subject of this Petition. The address for the City of Bainbridge Island is as follows:

City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, Washington 98110
(206) 780-8624

The Washington State Department of Ecology approved the City of Bainbridge Island's SMP which is the subject of this Petition. The address for the Department of Ecology is as follows:

Department of Ecology
300 Desmond Drive SE
Lacey, Washington 98503
(360) 407-6000

IV. ACTIONS SUBJECT TO REVIEW

15. **Ordinance No. 2014-04.** Petitioners challenge Ordinance No. 2014-04, which was adopted by the City Council of the City of Bainbridge Island on July 14, 2014. A copy of Ordinance No. 2014-04 is attached hereto as Exhibit A. Petitioners also challenge the Department of Ecology's approval of the Ordinance on July 16, 2014, a copy of which is attached hereto as Exhibit B.

16. **Publication.** The Ordinance was approved by the Department of Ecology and published for purposes of RCW 36.70A.290(2)(c) on August 8, 2014. A copy of the publication is attached hereto as Exhibit C.

V. ISSUES PRESENTED FOR RESOLUTION

17. Petitioners allege the following issues at this time¹ regarding the City's adoption of Ord. No. 2014-14 and the DOE's approval of the City's action:

¹ Petitioners reserve the right to amend their Petition for Review and to challenge the City's or DOE's actions on any basis that is outside the jurisdiction of this Board in a separate action.

A. Challenge to the Entire SMP Based on Public Participation Failures

18. Whether the City² is not in compliance with RCW 90.58.130 in giving faulty notice of public hearings regarding the SMP update process, including inaccurately describing the scope of the hearing and changing the draft available to the public in preparation for the hearing after public notice was given.

19. Whether the City is not in compliance with RCW 90.58.130 and WAC 173-26-090 in limiting public comment at hearings on the SMP update.

20. Whether the City is not in compliance with RCW 90.58.130 in not providing information upon which the SMP is based and proposed provision until late in the update process.

21. Whether the City is not in compliance with RCW 90.58.130 in submitting to DOE a version of the SMP that differed from the version adopted by the City Council.

22. Whether the City is not in compliance with RCW 90.58.100 and WAC 173-26-191(2)(a)(ii) in failing to address each of the elements required therein.

23. Whether the City is not in compliance with RCW 90.58.130 and WAC 173-26-090 by failing to encourage public participation by not responding to public comments.

24. Whether the City is not in compliance with RCW 90.58.130 by failing to follow the City's own public participation plan which it established at the beginning of the SMP update process and manipulating the process to give a false appearance of public participation.

² For each subsequent challenge to the City's actions Petitioners also challenge DOE's approval of the SMP in light of the challenge to the City's actions.

B. Challenge to SMP Provisions Based on Violations of the SMA

25. Whether the City is not in compliance with RCW 90.58.100 and WAC 173-26-110(3) in adopting a map for designation of shoreline environments which is so imprecise that citizens cannot determine which designation is applicable to certain properties.

26. Whether the City is not in compliance with RCW 90.58.020 in applying the policies for shorelines of statewide significance to those portions of the City's shoreline areas which are not shorelines of statewide significance. *See, e.g.*, SMP 6.3.1.

27. Whether the City is not in compliance with RCW 90.58.090(4), RCW 36.70A.170, RCW 36.70A.050 and WAC 173-26-221(2) in prohibiting all development in critical areas (SMP 5.9.3.6) while describing the entire island as a critical area. SMP App B-7, at p. 276.

28. Whether the City is not in compliance with RCW 90.58.100(2)(a) in failing to utilize information and consider the economic impact of proposed provisions in the update process.

29. Whether the City is not in compliance with RCW 90.58.020 which gives priority to single family residences and their appurtenant structures by declaring all such structures to be nonconforming and restricting their use. *See, e.g.*, SMP at p. 237.

30. Whether the SMP is not in compliance with RCW 90.58.020 by considering nonconforming development to refer to uses and structures and thereby limiting single family residential use in cases of damage or nonuse of a single family residence. SMP at p. 248; *see, e.g.*, SMP 4.2.1.

31. Whether the City is not in compliance with RCW 90.58.030(3)(e)(vi) in restricting single family residences and the use thereof by limiting expansion, prohibiting

second stories and limiting the height to 30 feet when the SMA allows single family residences to be exempt from the substantial development permit process if they are below 35 feet. SMP at p. 49.

32. Whether the City is not in compliance with RCW 90.58.020 and RCW 90.58.030(3) by restricting the development or reconstruction of single family residences and appurtenant structures at Point Monroe. *See, e.g.*, SMP 4.2.1.7

33. Whether the City's definition of "development," and therefore, scope of the City's SMA regulation, is not in compliance with the definition provided by the SMA in RCW 90.58.030(3)(a). SMP at p. 233.

34. Whether the City is not in compliance with RCW 90.58.020 in prohibiting structures appurtenant to single family residences in Zone 1 if the property is adjacent to a Priority Aquatic designation. *See, e.g.*, SMP 4.1.3.8.3.

35. Whether the City is not in compliance with RCW 90.58.020, WAC 173-27-040(2)(h), WAC 173-26-231(3)(b), and WAC 173-26-201(2)(d)(iv) in restricting and prohibiting docks for single family residences. *See, e.g.*, SMP 5.9.9.2, 6.3.4.1, 6.3.4.4, 6.3.3.8 and p. 41, 48.

36. Whether the City is not in compliance with RCW 90.58.030(3)(e)(vii) in requiring a permit process related to piers and docks for single family residences. *See, e.g.*, SMP 6.3.1.

37. Whether the City is not in compliance with RCW 90.58.030(3)(e)(vii) in limiting piers, docks and floats as a water-dependent use only if the facility is designed and intended as a facility to tie up watercraft. *See, e.g.*, 6.3.1.

38. Whether the City is not in compliance with RCW 90.58.030(3)(a)(ii), WAC 173-26-191(2)(a)(iii)(A) or WAC 173-27-040(2)(c) in requiring a permit process related to bulkheads serving single family residences. SMP 6.0.

39. Whether the City is not in compliance with RCW 90.58.030(3)(e)(ii) and WAC 173-26-231(3)(a)(iii)(C) in requiring a geotech report for repair or replacement of a bulkhead. SMP 6.2.8.

40. Whether the City is not in compliance with RCW 90.58.030(3)(e)(ii) and WAC 173-27-040(2) in prohibiting bulkheads in the Natural and Island Conservancy designations. SMP at p. 42.

41. Whether the City is not in compliance with RCW 90.58.030(3)(e)(ii) and WAC 173-27-040(2) in prohibiting bulkheads to protect against erosion not related to water and on feeder bluffs. *See, e.g.*, SMP 6.1.4.

42. Whether the City is not in compliance with RCW 90.58.030(3)(e)(ii) and WAC 173-27-040(2) in limiting repair of bulkheads and docks. *See, e.g.*, SMP 6.2.2 and at p. 42.

43. Whether the City is not in compliance with RCW 90.58.270 which requires that floating homes legally established prior to January 1, 2011, be classified as a conforming preferred use, when it prohibited floating homes in the Shoreline Residential Conservancy, Island Conservancy, Natural and Priority Aquatic environments.

44. Whether the City is not in compliance with RCW 90.58.020, 90.58.030, 90.58.140 and WAC 173-26-221(5)(a) by making vegetation standards applicable retroactively to existing uses and structures. SMP 4.1.2.1, 4.1.2.5, 4.1.3.7, and 4.1.2.5.1.

45. Whether the City is not in compliance with RCW 90.58.020, RCW 90.58.030, and RCW 90.58.140 by subjecting minor changes, including maintenance on property used for single family residential use to a permitting process. *See, e.g.*, SMP 4.1.2.5, 4.1.4.3, 4.1.3.5.8, and 7.2.3.1.

46. Whether the City is not in compliance with RCW 90.58.020, RCW 90.58.030, RCW 90.58.140 and WAC 173-26-221(5)(a) by imposing conservation easements in SMP 4.1.2.7 in regard to uses which are part of single family residential use. SMP 4.1.2.7.

47. Whether the City is not in compliance with RCW 90.58.020, RCW 90.58.030, and RCW 90.58.140 in declaring all existing single family residential structures nonconforming. *See, e.g.*, SMP at p. 237.

48. Whether the City is not in compliance with RCW 90.58.020, 90.58.030, and 90.58.140 in limiting the expansion of single family residences and appurtenant structures to a one-time 25% expansion and prohibiting the addition of second stories. *See, e.g.*, SMP 4.2.1.6.3.2.a.

49. Whether the City is not in compliance with RCW 90.58.020, 90.58.030, and 90.58.140 in prohibiting structures appurtenant to single family residential use on land adjacent to land designated Priority Aquatic. SMP 4.1.3.8.3.

50. Whether the City is not in compliance with RCW 90.58.030 (3)(e)(v) by prohibiting buoys in certain areas. *See, e.g.*, SMP at p .41.

51. Whether the City is not in compliance with RCW 90.58.030 (3)(e)(v) by limiting the number of buoys to one every 100 feet and prohibiting buoys within 100 feet of any other overwater structure. *See, e.g.*, SMP at p. 58; SMP 6.3.7.7.3.

52. Whether the City is not in compliance with RCW 90.58.080's requirement that a master program be amended consistent with the guidelines by allowing the changing of designations without a legislative process for public involvement. *See, e.g.,* SMP 3.4.5.

53. Whether the City is not in compliance with RCW 90.58.030(3)(b), WAC 173-26-110 and WAC 173-26-191 in:

a. Establishing shoreline designations which are not shown to be based on existing development patterns, biophysical capabilities and aspirations of the local citizenry.

b. Designating land in the Shoreline Residential Conservancy Designation which is supposed to be land that is the most sensitive for ecological functions, but which has the lowest ecological function scores.

c. Designating areas as Priority Aquatic even though the biophysical capabilities have been limited by storm water runoff and other degradation from City facilities.

54. Whether the City is not in compliance with RCW 90.58.080's requirement that a master program be amended consistent with the guidelines and WAC 173-26-191(2)(a)(ii)(A) by adopting a SMP that is not "sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies" in the following particulars:

a. The SMP requires development to be compatible with adjacent uses and activities in upland and aquatic designations. SMP 3.2.2.6 and 3.2.3.1. However, the SMP defines "adjacent" as being near or close. Because the SMP is unclear as to how near or close development has to be with other uses for this regulation to apply to

any particular development, it is insufficient in scope and detail to ensure the implementation of the SMA, its policies and the local SMP policies.

b. The SMP designation map is too imprecise for property owners or members of the public to know which designation each property is within and therefore is insufficient in scope and detail to ensure the implementation of the SMA, its policies and the local SMP policies.

c. The SMP gives the shoreline administrator unlimited discretion regarding docks and piers and requiring that they be “suitably located and designed.” *See, e.g.*, SMP 6.3.1.2.

d. The SMP gives the shoreline administrator unlimited discretion to decide the location of new homes.

e. The SMP requires City approval for any “activity” which is defined as “human activity associated with the use of land or resources.” SMP 4.1.1.2; SMP at p. 224. This is insufficient in scope and detail to ensure implementation of the SMA policies prioritizing and exempting from permitting requirements single family residential and accessory uses.

f. The SMP provides that when nonconforming uses are allowed to be re-established, the re-established use must be “restricted” which is insufficient in scope and detail to ensure the implementation of the SMA, its policies and the local SMP policies. SMP 4.2.1.5.2.

g. The actual shoreline buffer for any property is established by the Shoreline Administrator which leaves the SMP insufficient in scope and detail to

ensure the implementation of the SMA, its policies and the local SMP policies. SMP 4.1.3.6.3.

h. The SMP provides that the City's Shoreline Administrator may require retention of "significant trees" without providing any criteria in the SMP which leaves the SMP insufficient in scope and detail to ensure that the SMA, its policies and local policies are implemented. SMP 4.1.3.1.6.

i. The SMP is also insufficient in scope and detail by referring either to other sections of the SMP or city codes which do not exist. For instance, SMP 4.1.2.4.3 refers to the site specific analysis required in accordance with Section 4.1.2.9, but section 4.1.2.9 does not exist. Similarly, the definition of conditional use in SMP 2.3.1 references BIMC Sec. 2.16.165H, a code provision which does not exist.

j. The SMP authorizes the Shoreline Administrator to allow exceptions to planting of native vegetation, but only if the Administrator is convinced it will serve the same ecological function as native plants, without ensuring that the SMA, its policies or local policies will be implemented. SMP 4.1.3.1.5.

k. The SMP provides the shoreline administrator with discretion to increase the buffers within critical areas 50 % for wildlife habitat without ensuring that the SMA, its policies or local policies will be implemented. SMP at p. 286.

55. Whether the City is not in compliance with RCW 90.58.220 in providing for a criminal penalty in circumstances not authorized by the SMA. SMP 7.2.8.

56. Whether the City is not in compliance with RCW 90.58.140 in requiring an unlimited surety or bond for mitigation when the Legislature specifically amended the statute to remove that option. SMP 4.1.2.7.

57. Whether the City is not in compliance with RCW 90.58.270 in adopting a SMP which is internally inconsistent in numerous places. See, e.g., SMP 5.9.9.3 and SMP 5.9.4.3.

58. Whether the City is not in compliance with RCW 90.58.080 and WAC 173-26-221(5)(a) and WAC 173-26-186(8) in adopting a SMP which plans for and effectively imposes restoration requirements on private landowners. See, e.g., SMP 4.1.2.7

59. Whether the City is not in compliance with RCW 90.58.100(1) and WAC 173-26-201 in failing to identify and assemble the most current, accurate, and complete scientific and technical information available, failing to consider the context, scope, magnitude, significance, and potential limitations of the scientific information, and make use of and incorporate all available scientific information. In particular, the City's failures in regard to technical and scientific information are evident in regard to:

a. The need and effectiveness of buffers to Puget Sound for single family residential use;

b. The contribution of pollution to the Puget Sound from Bainbridge Island from City streets and leaks from the City's sewer systems;

c. The fact that the buffers selected were not driven by science-based information but City policy unrelated to science;

d. Conflicting conclusions are drawn from the same scientific information to support policy-driven choices;

e. The master program provisions are not based on a reasoned, objective evaluation of the relative merits of the conflicting scientific data.

C. Challenge to SMP Based on Conflict with Comprehensive Plan and/or Development Regulations

60. Whether the City is not in compliance with RCW 90.58.080(4)(a) and RCW 36.70A.480 in adopting its update to its SMP which is inconsistent with its comprehensive plan and development regulations adopted under chapter 36.70A RCW, including:

- a. The SMP was adopted without considering the costs and benefits to property owners as required by the Economic Element of the comprehensive plan or the overriding principle therein of preserving marine views.
- b. The SMP prohibits “agriculture” which includes “growing vegetables for family use” while Crop Agriculture is permitted within all residential zones and Animal Agriculture is permitted in zones R 0.4 through R-2 and subject to a conditional permit for zones R 2.9 through R-5. Many agricultural uses are permitted as accessory uses for zones R 0.4 through R-5 in the City’s development regulations, but prohibited in the SMP 5.1.3.
- c. The SMP prohibits governmental facilities in the Island Conservancy designations, which the zoning code classifies as residential zones. SMP at 40. Government facilities are allowed as conditional uses in the R 0.4, R-1, and R-2 zones.
- d. The SMP allows commercial amusement and entertainment facilities in the shoreline residential conservancy and shoreline residential upland designations while the zoning code prohibits these uses. SMP at p. 40.
- e. “Mining and quarrying” are allowed as conditional uses within the Zoning Code for R-0.4 through R-2. However, the SMP prohibits “Mining” within all zones. “Mining” includes stockpiles of minerals including gravel. SMP at p. 40.

- f. The SMP prohibits “solid waste disposal” within all upland zones. SMP at p. 40. However, R-0.4 allows the placement of a waste transfer facility and the placement of a recycling center as a conditional use. R-2 also allows for the placement of recycling centers as a conditional use as well.
- g. Golf courses are prohibited within the shoreline residential conservancy designation of the SMP while the Zoning Code allows them as conditional uses under “recreation activity, outdoor.” SMP at p. 41.
- h. The SMP prohibits “nonwater-oriented” recreational development within the natural, island conservancy, and shoreline residential conservancy zones. SMP at p. 41. This prohibition conflicts with the permitted and conditional use for active and passive park recreation (both indoor and outdoor) within the Zoning code.
- i. The SMP also has an internal inconsistency concerning recreational development. Specifically, “trails” are listed as a permitted use within all the upland designations, however nonwater-oriented recreational development and active recreation within certain designations are either prohibited or subject to conditional use. SMP at p. 44. There is even further conflict because the SMP differentiates between trails and “public pathways to the shoreline” which are only allowed as an accessory use. SMP at p. 46.
- j. Multi-family units are prohibited in all but the shoreline residential and urban areas by the SMP. SMP at p. 41. Conversely, multi-family dwellings are a conditional use within all residential zones and even permitted in R-5, R-8 and R-14 zones. Group living such as foster homes and small group living facilities are permitted within all R zones, while group care facilities are subject to conditional uses.

k. The SMP requires a conditional use permit for single family homes within the island conservancy zones. SMP at p. 41. Single family dwellings are permitted outright within all R zones.

l. “Parking (primary)” is prohibited by the SMP within all upland designations. SMP at p. 44. Conversely, all of the R zones allow “Park and Ride Lot, Shared Use” as a conditional use. Additionally, R-0.4 through R-2 allow for “Park and Ride Facility/Lot” as conditional uses as well.

m. The Comprehensive Plan allows the rebuilding of a commercial pier at Lynwood Center. The SMP prohibits the rebuilding of a commercial pier. SMP at p. 39.

n. The City’s Comprehensive Plan incorporates the Park District’s comprehensive plan. Several provisions of the SMP conflict with the comprehensive plan of the Park District.

i. The Park District’s comprehensive plan provisions for Blakey Harbor Park, namely proposed jetties, site bridging, boardwalks, permanent restrooms and re-adaption of the generator building are prohibited by the SMP at p. 39-48.

ii. The Park District’s comprehensive plan provisions for Fay Bainbridge Park, namely a proposed restroom remodel, storage shed and yurts are prohibited by the SMP at p. 39-48.

iii. The Park District’s comprehensive plan provisions for Fort Ward Park, namely proposed barracks improvements, tent camping improvements, yurts and picnic shelters are prohibited by the SMP at p. 39-48.

iv. The Park District's comprehensive plan provisions for Hawley Cove Park, namely additional boardwalks and viewpoint improvements are prohibited by the SMP as an upland appurtenant structure that support a non-water oriented use. SMP at p. 39-48.

v. The Park District's comprehensive plan provisions for Hidden Cove Park, namely the construction of a picnic shelter and compost toilet, is prohibited by the SMP at p. 39-48.

o. The SMP requirement that hazard trees be retained on site for wildlife habitat conflicts with the City Comprehensive Plan and development regulations regarding nuisances and incompatible use of land. SMP 4.1.3.4.3(c).

VI. STANDING

61. Individual petitioners and the members of the associational petitioners participated orally and in writing before the City and/or the Department of Ecology regarding the Ordinance No. 2014-04. Accordingly, the Petitioners have standing to bring this Petition for Review. *See* RCW 36.70A.280(2)(b).

62. In addition, Petitioners have standing pursuant to RCW 34.05.530 because they, or their members, are aggrieved or adversely affected by the City's adoption of Ordinance 13-2007. A party is aggrieved or adversely affected within the meaning of RCW 34.05.530 if: (1) the agency action has prejudiced or is likely to prejudice that person; (2) that person's asserted interests are among those that the agency was required to consider when it engaged in the agency action challenged, and (3) a judgment in favor of that person would substantially eliminate or redress the prejudice to that person caused or likely to be caused by the agency action. RCW 34.05.530.

63. First, the adoption of Ordinance 2014-04 is likely to prejudice Petitioners because Petitioners or Petitioners' members own and/or make use of real property that is subject to this Ordinance. The adverse land use consequences of the Ordinance, including the loss of property rights, and interference with use will directly affect Petitioners and their members.

64. Second, Petitioners' interests are among those that the City was required to consider in adopting Ordinance 2014-04. Petitioners or Petitioner's members own and/or make use of property affected by the Ordinance. The City is required by the SMA and its implementing regulations to consider the property rights of Petitioners' members, as well as the general public of which the Petitioners are a part, in taking this action.

65. Third, a judgment in the Petitioners' favor would eliminate or redress the prejudice to the Petitioners. If this Board reverses the City's adoption of Ordinance No. 2014-04, then the adverse consequences of the Ordinance to Petitioners would not occur.

VII. ESTIMATED LENGTH OF HEARING

66. Petitioners estimate that the hearing in this matter will last approximately 4 days.

VIII. RELIEF SOUGHT

67. Petitioners request that the Board find Ordinance 2014-04 to be non-compliant under the GMA and the SMA and to strike the Ordinance. In addition, Petitioners request that the Board enter a determination of invalidity pursuant to RCW 36.70A.302(2) because the Ordinance substantially interferes with and frustrates the goals of the GMA.

IX. STATEMENT OF PETITIONERS' ATTORNEYS

68. The undersigned representative of the Petitioners has read the foregoing Petition for Review and believes its contents to be true.

RESPECTFULLY submitted this 7th day of October, 2014.

GROEN STEPHENS & KLINGE LLP

By:



Richard M. Stephens, WSBA #21776
Attorneys for Petitioners

DECLARATION OF SERVICE

I, Linda Hall, declare as follows pursuant to GR 13 and RCW 9A.72.085:

I am an employee of Groen Stephens & Klinge LLP, and I am competent to be a witness herein.

On October 7, 2014, I caused a true copy of the foregoing Petition for Review and this

Declaration of Service to be served on the following persons via the following means:

Doug Schulze, City Manager
Rosalind Lassoff, City Clerk
City Clerk's Office
City of Bainbridge Island
280 Madison Avenue North
Bainbridge Island, WA 98110

- ☒ Process Service via Legal Messenger
- ☐ First Class U.S. Mail
- ☐ Federal Express Overnight
- ☐ Electronic Mail:
- ☐ Other:

Bob Ferguson, Attorney General
Office of the Attorney General
1125 Washington Street SE
Olympia, WA 98504-0100

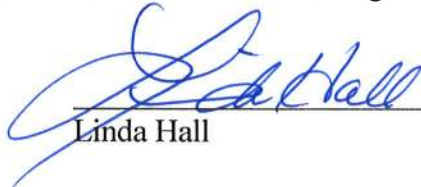
- ☒ Process Service via Legal Messenger
- ☐ First Class U.S. Mail
- ☐ Federal Express Overnight
- ☐ Electronic Mail:
- ☐ Other:

Department of Ecology
Ecology Headquarters Building
Attn: Appeals Processing Desk
300 Desmond Drive SE
Lacey, WA 98503

- ☒ Process Service via Legal Messenger
- ☐ First Class U.S. Mail
- ☐ Federal Express Overnight
- ☐ Electronic Mail:
- ☐ Other:

I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.

Executed this 7th day of October, 2014, at Bellevue, Washington.



Linda Hall