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May 23, 2014

Bellevue City Council
450 110th Ave. NE
P.O. Box 90012
Bellevue, WA 98009

Re: Bellevue Shoreline Master Program Update: Setbacks, buffers and Ordinary High Water Mark

Dear Councilmembers:

This office represents Save Lake Sammamish (SLS), a citizen based conservation organization organized and existing to protect the water quality and recreational values of Lake Sammamish.

On Tuesday, May 27, 2014, the Council will be conducting its second study session on the Planning Commission recommendation concerning the Shoreline Master Program Update. The evening's discussion will focus on setback and buffers, important topics related to the health of the lake and its fisheries. SLS will be present evidence showing that the best interests of the lake are not served by the setback and buffers recommended by the planning commission.

Another important issue related to buffers, setback and location of the Ordinary High Water Mark has to do with view blockage, shading and loss of privacy to adjacent residences from new shoreline construction. This issue has apparently received less scrutiny during the course of consideration of revisions to the master program.

Visual access to the water is a key element of the Shorelines Act. View blockage issues frequently arise in areas where many residences were originally constructed many feet back from the water. However, other owners often wish to move much closer to the water, often with much larger homes. Such construction often blocks views from older, existing homes and frequently sets off pushing and shoving by which each owner

tries to move in front of their neighbor. Recognizing the potential impacts of view blockage, several jurisdictions have adopted rules specifically address questions of view blockage. For example, the Shoreline Master Program of Seattle provides in Seattle Municipal Code section 23.60.198.B.1 that:

Residences on waterfront lots shall not be located further waterward than adjacent residences. If a required setback exceeds seventy-five (75) feet from the line of ordinary high water, the Director may reduce the setback to no less than seventy-five (75) feet if it does not adversely impact the shoreline environment and if views of the shoreline from adjacent existing residences are not blocked

(Emphasis supplied.)

This issue becomes most pronounced when there are many existing residences that are substantially set back from the shoreline. The Department of Ecology's Shoreline Handbook Publication Number 11-06-010, available at [http://www.ecy.wa.gov/programs/sea/shorelines/shoreline master program/handbook/chapter11.pdf](http://www.ecy.wa.gov/programs/sea/shorelines/shoreline%20master%20program/handbook/chapter11.pdf), addresses these issues. Indeed Chapter 11, dealing with "Vegetation conservation, Buffers and Setbacks" even has an aerial photograph of a portion of Lake Sammamish shoreline at page 6. Discussion at page 7 indicates why very small buffers are insufficient.

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Are existing setbacks good enough?

Many SMPs adopted in the 1970s have 25-foot to 35-foot setbacks. Residents of some cities want to know why these existing setbacks aren't good enough now. For example, in some urban areas, homes are set back an average of 80 feet or more from the ordinary high water mark, although the official setback is much less. Why not leave the setback at 25 feet, as homes are built further back from the water? Here's why the narrow setback isn't adequate:

- An SMP setback of 25 feet means that structures can be built 25 feet from the ordinary high water mark. That will not protect the existing shoreline functions where the homes are now 80 feet or more from the water. Since the 1970s when these setbacks were established, our understanding of how vegetative buffers function to protect shoreline resources such as water quality and fish and wildlife habitat has increased. For example, the pervious surface that now exists helps to filter water, improving water quality.

- When SMPs were first adopted in the 1970s, setbacks were established largely to protect structures from erosion and effects of wind and water and to prevent new houses from blocking views. Some consideration was given to habitat, as in Conservancy environments with bigger setbacks than in Urban environments. We now know more about the value of buffers in regard to ecological functions. Recent scientific studies show that 25-foot setbacks do not protect most

ecological functions and will not meet the no net loss standard of the SMP Guidelines.

- If the average setback in a residential area is 80 feet, and a new house is built only 25 feet from the water, that house will impact the buffer functions provided by the existing pervious soil and vegetation, as well as the views from houses further back. The new house may not be far enough back to be protected from erosion and storms.

As noted, Ecology guidance addresses view and setback in relation to adjacent owners. In Bellevue, the mean setback of residences from the OHWM is 53 feet, as measured from the established 32 foot NAVD 88 OHWM line.

The actual permitted location of residences and their distance from the water is established both by setbacks and by the location of the OHWM. The planning commission has recommended that the OHWM be moved further into the water, from its present elevation of 31.8 NAVD 88 to 30.6 NAVD 88. As SLS has previously explained, the established location of Elevation 31.8 is based on scientific analysis, while the reference to 30.6 is only supported by anecdotal observations from interested parties.

Though not a significant difference in vertical elevation, when the vertical rise is measured across a low, flat beach, the difference in the location of the OHWM becomes substantial. To illustrate the difference, we have charted the lineal difference between the two OHWMs on an actual stretch of Bellevue shoreline in Attachment A to this letter. The aerial photograph shows the Elevation 32 line now used by the City of Bellevue to measure setbacks taken from Bellevue mapping. This is compared to the 30.6 elevation shown on King County GIS mapping. (The Bellevue mapping does not include elevations below 32 feet because they are usually in the water). As noted on this attachment, the difference between the current OHWM and the proposed is about 20 feet. As also shown on the photograph, if the proposed 25 foot set back is measured from the new, and much lower, OHWM, residential building could extend onto the beach, an unanticipated and unintended consequence of planning commission review.

As described above, protection of views from adjacent properties becomes a major issue in jurisdictions like Bellevue where the average distance from the shoreline to existing structures is substantial. Adjacent property owners are frequently concerned that, though their own homes are well set back from the Lake, their neighbors may attempt to move up much closer, which results in the loss of views up and down the lake. In addition, because the height permitted under the recommended planning commission recommendations is 35 feet, a new or remodeled house pushed in front on their neighbors would also place homes to the north in shade and eliminate privacy on shoreline decks and lawns. This is described in Attachment B, letters from property owners concerned about these potential impacts. See letters of Fred and Janice Bailey (1604 West Lake Sammamish Parkway NE), Mac Page (1614 W Lk Samm Pkwy NE)

and Jeff Page (1618 W Lk Samm Pkwy NE), enclosed as Attachment B. These are the owners of property shown on Attachment A. These Bellevue waterfront owners express their concerns regarding an area where existing residences are relatively close to the shoreline.

Other homes on the south part of the lake have more substantial setbacks from the lake, as shown on Attachment C. If the planning commission recommendation is adopted with its much lower OHWM (30.6 feet elevation) and narrow setback (25 feet), and owners in this area move forward to the new permitted setback, such new or remodeled homes could completely block views of neighbors and cast shadows on homes to the north for much of the year. In addition, the increase in buildable area on these single-family lots will be an invitation to subdivide large lots. In each case there will be substantial loss of privacy for the decks and yards of adjacent properties.

As is seen, the planning commission draft will result in serious conflicts and incompatible development impacting existing homes along the shoreline. In addition to the biological and fishes impacts to be described by other SLS contributors, the Council needs to address view blockage, shadowing and loss of privacy issues presented by the planning commission draft. SLS urges the Council to make the following modifications to the draft presented:

1. **ORDINARY HIGH WATER MARK.** The Council should establish the default OHWM at the existing 31.8 foot elevation (measured from the 32 foot contour). This elevation is supported by the scientific study of elevations previously prepared and used by other Lake Sammamish jurisdictions, while the planning commission recommendation is based primarily on anecdotal observations. In addition, by adopting an OHWM so far into the lake, the beginning point for setbacks is extended by as much as 20 feet. This would also increase the need for additional bulkheads in the lake.
2. **MINIMUM SETBACK.** The Council should establish the minimum setback from the OHWM as 35 feet plus a 15 foot Buffer Setback Building Line (BSBL), for a total minimum setback of 50 feet from the OHWM. As described in other materials, this should be combined with minimum requirements for native vegetation to prevent adverse impacts to biological and fisheries resources of the lake.
3. **VEGETATED BUFFER.** If remodeling or other impervious surfaces encroach into the 50 ft setback, mitigation should be required, including native plant vegetated buffer and restoration on up to 75% of the shoreline of that property.
4. **LIMIT WATERWARD EXTENSIONS BASED ON EXISTING RESIDENCES.** As noted in the materials above, new developments should respect the rights of their neighbors. The Council should adopt a rule that provides that new waterward construction may not block views, create shadows or remove the privacy of adjacent homes. A setback line needs to be established for the maximum waterward extent of

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construction based on lines between existing adjacent residences.

Thank you for this opportunity to present our views to the Council.

Sincerely yours,

ARAMBURU & EUSTIS, LLP



J. Richard Aramburu

JRA:cc

cc: Clients
Carol Helland

May 22, 2014

Mayor and Councilmembers
City of Bellevue
450 110th Avenue NE
Bellevue, WA 98009

Re: Bellevue Shoreline Master Program Update

Dear Councilmembers:

We are brothers and owners of two homes located at 1614 and 1618 W. Lake Sammamish Parkway N.E. in Bellevue. Our homes are just north of that owned by our neighbors Fred and Jan Bailey. Fred's house and our homes are shown on the attached aerial photograph.

We are aware of substantial controversy concerning the location of the ordinary high water mark (OHWM) on Lake Sammamish and the amount of setback and buffer that should be required back from that mark. To date, much of this discussion has focused on the biological and fisheries impacts of the OHWM and setbacks.

Another very important issue to many shoreline property owners relates to view blockage, shade on adjoining houses and loss of privacy. As you can see from the aerial photograph, our houses, Fred's house and that to the south of Fred, have observed a common setback line from the water. This setback protects views, as well preventing unnecessary shadows on adjacent properties.

It appears from the proposal of the Bellevue Planning Commission that moving the OHWM further down the beach and reducing setbacks to as little as 25 feet, it will now be possible for new or remodeled homes on the Lake Sammamish shoreline to move much closer to the water. We are aware that Fred has expressed concerns about the potential for adjacent owners to push houses closer to the water and thereby block views and create shadows on houses to the north. Though Fred and his wife are good neighbors and would be unlikely to try to "move up" toward the water, even if shoreline regulations allowed it, it is possible that the Baileys' home might be sold in the future. New owners might think of their home as either a "tear down" or push it out toward the shoreline by a substantial remodel. (Fred's house dates back to the 1940s). Our views to the south would be blocked if that occurred, and because a house on the shoreline could be 30 feet tall (with a narrow side setback), our home and deck area would likely be in shade during much of the year. Privacy in our homes would also be substantially compromised if a tall house was constructed next to us. Given the price of Lake Sammamish shoreline, there is considerable incentive to build as much as the law might allow.

Mayor and Councilmembers
City of Bellevue

May 22, 2014

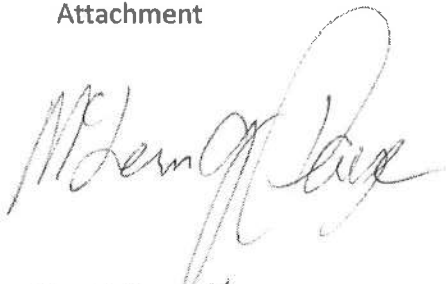
Determination of OHWM and setback have biological consequences, but equally important to property owners such as us are issues of view blockage, shadows and loss of privacy. We urge the Council to reject regulations that would allow homes to be significantly closer to the shoreline.

Thank you for your attention to our concerns.

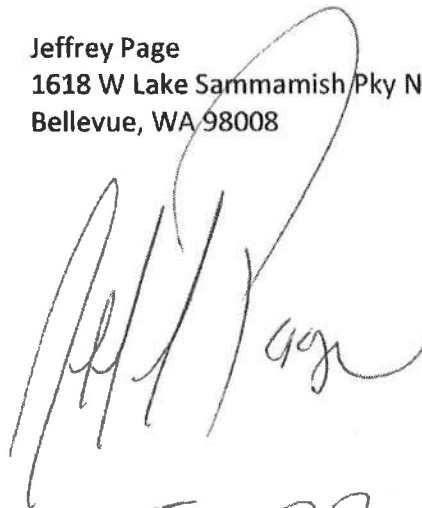
Mac Page
1614 West Lake Sammamish Pky NE
Bellevue, WA 98008

Jeffrey Page
1618 W Lake Sammamish Pky N.E.
Bellevue, WA 98008

Attachment

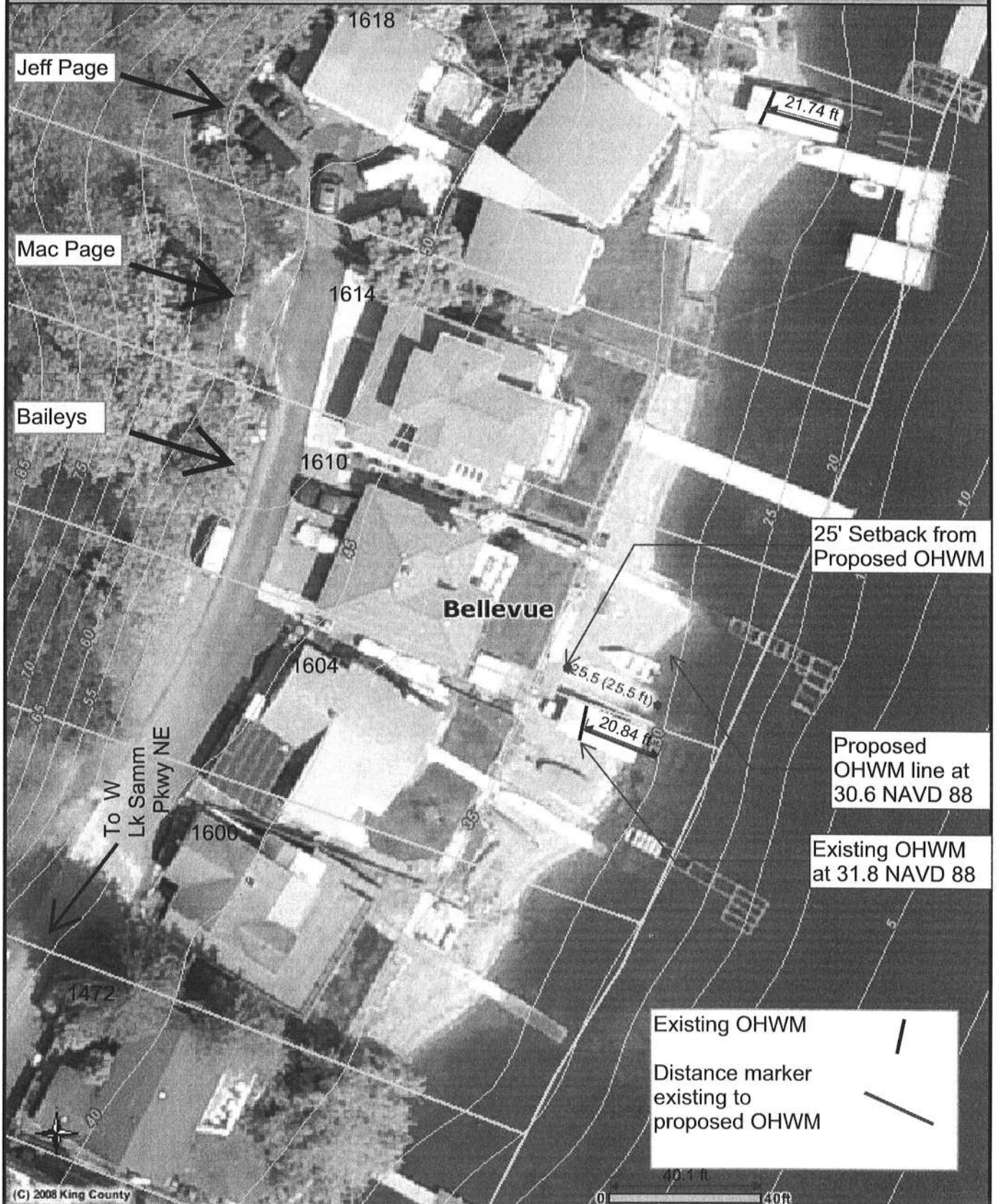


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Lineal Distance Between OHWM Locations



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Date: 5/22/2014 Source: King County iMAP - Property Information (<http://www.metrokc.gov/GIS/IMAP>)


King County

May 21, 2014

City Council
City of Bellevue

re: Bellevue Shoreline Master Program Update

Dear Councilmembers:

My wife, Janice, and I reside at 1610 West Lake Sammamish Pkwy NE (North Rosemont) in Bellevue on Lake Sammamish. I am writing today to provide our comments on the proposed Bellevue Shoreline Master Program Update which is now being considered by the Council

Our current home was originally constructed by my parents in 1947 when I was just nine years old. These were the days that commuting to our Seattle home was by the Madison Park Ferry to Kirkland or a long drive along the north end of Lake Washington. When my parents passed on, I became the owner of this property and have lived there ever since. The original house on the property has now been improved and has been our permanent home since 1966.

Over my many years on Lake Sammamish, I have gained a great appreciation for what a treasure the lake is, both to its shoreline residents, but to other members of the public who are not as fortunate as I to live on its shores. I joined Save Lake Sammamish several years ago to help in the effort to preserve and protect the lake.

Over the past several months, I have become concerned about certain aspects of the shoreline regulations proposed by the planning commission. One of our greatest concerns is the substantial reduction of the setback lines and buffers between potential new construction and the waters' edge. We are concerned that decreasing these setbacks, and allowing construction very near the water, has serious biological consequences for the lake and its unique fisheries.

Another serious consideration for establishing setbacks has to do with light, air and view from existing shoreline residences. As seen from the attached aerial photograph, showing our house and those on either side of us, the homes in this area have been built with uniform setback from the lake. This setback respects the mutual rights of us and our neighbors to continue to enjoy views up and down the lake. However, these informal rights are under serious attack by the planning commission's draft recommendation in two regards. First, the planning commission wants to establish a new ordinary high water line about one foot below that which is currently applied. Second, the planning commission wants to reduce the setback to the water substantially so it is now only 25 feet. Though the difference in the ordinary high water mark does not seem like much, when combined with the new setback line, new construction could now be much closer

to the water than the existing informal setback line shown on the aerial photograph. I believe that new homes or remodels could be built very near the current retaining wall (some 10-15 feet shoreward from the existing houses) if these new regulations are adopted. That would mean loss of views for me and my neighbors and the loss of privacy for the outdoor activities that are treasured by shoreline residents. Given that homes along the shoreline can be up to 30 feet in height, and be very close to the adjacent property, there is also likely to be a loss on sunlight and air on properties to the north, in addition to the loss of views for homes on both sides. People of more modest means, and fixed income, such as my wife and I, will not be able to join the "race" to the water's edge that these regulations invite, even if we were so inclined.

I feel that persons that support such regulations are very short sighted and act from short term monetary gain rather than what is best for the community and their immediate neighbors. We urge the Council not to adopt a lower ordinary high water mark and not to reduce setbacks that the planning commission has recommended.

Yours truly,


Fred H. Bailey


Janice E. Bailey

Setback Comparison, 414 to 434 W.Lake.Samm.Pkwy SE

Approx. Lineal Distance, OHWM to Structures: 26.86 ft
Proposed OHWM to potential structures: 25 ft



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Date: 5/22/2014

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