

# Bellevue Shoreline Management ... and You !

"Shoreline Management 101"

January, 2010



## Topics Covered In This Paper -

> Background - Where'd this come from?	> Current Status - Where are we now?
> Key Elements - How do I avoid this stuff?	> Ecological Function - Is this a moving target?
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## Background -

“*Shoreline Management*” is a term used to describe the federal, state, and local laws that pertain to properties along certain shores and waters of the State such as streams, rivers, larger lakes, and marine (salt water) shores. The initial laws date to Federal legislation in the 1970’s. In Washington, the requirement to regulate these shores has been passed from the state level to the local jurisdictions (cities and counties) who must meet certain basic requirements. It is important, however, to note that at each level, the governing body can and often does choose to be more stringent.

In Washington, the State mandates under its Shoreline Management Act (SMA) that local governments with shorelines considered “*significant*”, must update their SMP’s (Shoreline Management Programs) periodically.

The State SMA can be summarized by its three broad (and competing) goals -

- Encourage water dependent uses,
- Protect shoreline natural resources,
- Promote public access to shorelines.

We note as well, that the SMA directs that private property rights are to be protected and preferential accommodation will be made for single family uses.

Will we continue to enjoy this . . . OR . . . be forced to return to this?



### Current Status -

At first blush, nothing sounds too extraordinary here. Laws get passed and we live by them. Things have been complicated, however, by -

- Property owner experience with the current, Bellevue shoreline regulations.
- The fact that some jurisdictions, Bellevue being one, updated their shoreline regulations inappropriately several years ago.
- And, the potential for further restrictions to be placed on shoreline properties (e.g. - non-conforming use designations), including property deed restrictions.

Let's go back several years and explain the chain of events from the standpoint of your shoreline neighbors.

About two years ago, a shoreline resident alerted the West Lake Sammamish Association (the WLSA neighborhood covers the Parkway in Bellevue and Redmond) that Redmond was proposing Shoreline Management code that seemed onerous. Inspection of draft language showed -

- View requirements across private property encompassing 30% of a parcel's width,
- Policies that would create public access to the shoreline every ¼ mile, and
- A goal of establishing a pathway along the shorelines across established, private property.

Members of WLSA worked with local residents and the City of Redmond to have these and other restrictions removed. This past year Redmond's program was adopted following required Dept. of Ecology review.

The Redmond experience alerted WLSA members to Bellevue's forthcoming update process. To their surprise, it was learned that Bellevue had adopted shoreline regulations in 2006 as part of its Critical Areas codes. Further investigation revealed that significant changes were adopted at that time; the most restrictive being the imposition of "no touch" buffers plus a setback totaling 50 feet from the lake high water mark. Finally, they learned that adoption of shoreline regulations as part of Critical Areas has been ruled invalid by the WA Supreme Court since 2006.

In May 2009 more than 100 residents attended an Open House held by Bellevue Planning staff to discuss its process to update the Shoreline code (SMP). To their surprise, these residents were told that Bellevue was not planning on changing its shoreline code, that current code has been found acceptable by the public since the 1970's. Staff credibility slipped markedly when they were asked when “no touch” buffers were introduced! They had to admit that it occurred in 2006. Their credibility continued to erode as the meeting progressed with other “clarifications” slowly coerced from the City’s representatives.

Since the May meeting, Lake Sammamish, Lake Washington, and Phantom Lake shoreline residents have met to compare notes. This has been revealing. We have learned that -

- Meydenbauer Bay has been selected for a mega-urban park & marina complex (to include: expanded public piers, conference center, shops, restaurants, & hotel), a huge "signature" entrance sign, and closure of an essential access road). All this despite City contentions that shoreline habitat is fragile!
- Phantom Lake has been turned into a drainage pond, stagnating under runoff from Eastgate office buildings.
- Lakeside residents along all three lakes have had inconsistent, but costly, shoreline requirements exacted.
- Large privately owned parcels, such as Vasa Park, will have significant restrictions placed on them.

**Should Meydenbauer Bay stay residential?**



**OR Should it change to intense urban uses?**



Recognizing the need to organize to coordinate a path toward representation and development of effective alternatives, these residents formed an alliance which is now WSSA - the Washington Sensible Shorelines Association. (More on WSSA under “Citizen Input”, below)

So, what is the shoreline situation now?

The SMP update process involves the following steps. First, the Planning Commission considers what Planning Department staff recommend to them; then they pass a recommendation to the City Council. (The Planning Commission is composed of ordinary citizens who volunteer to serve, review planning issues such as this.)

Next the City Council will hold one or more public hearings and consider the Planning Commission's recommendations, then adopt preliminary regulations (and supporting policies). The State Department of Ecology then reviews and certifies (or rejects) the City program (often holding its own hearing). Once approved, City staff administers the adopted code's regulations.

We're still at step one (unless you consider step one as having taken place in 2006 under the CAO).

WSSA has stimulated resident involvement in the Bellevue process. While we believe the original intent was to merely have the Planning Commission rubberstamp the Critical Areas' shoreline regulations, passing them on to Council, the City has now altered the timeline.

Since May a series of "experts" have appeared before the Planning Commission advising them of the "science" that warrants shorelines to be considered "critical areas". (Residents, and even some Commission members, in attendance at these sessions have raised serious question as to the applicability and validity of this "science", noting that irrelevant studies and facts associated with streams have crept into lake shore policy decisions.)

The next step, to occur early in 2010, is for draft regulations to be presented to the Commission.

### **Key Elements -**

Are you affected? Most shoreline residents would prefer to think not. However, even if you don't plan on modifying your house, your dock, or anything within 200 feet of the shoreline, you're affected simply by the fact that an "overlay" designation has been placed on your property. Anyone considering selling their home will be confronted by the fact that buyers will not find this "defacto" re-zoning attractive.

What can cause you to face shoreline regulations? Just about any modification to -

- Your dock,
- Your bulkhead or rockery,
- Your beach,
- Your lawn,
- Your trees,
- Your beach house,
- Your patio,
- Your residence.

Making any significant modification, repair, or replacement on your property can activate shoreline requirements. (Also, if you're adding more than 2000 sq. ft. of impervious surface, you will also need to consider drainage requirements from other City code.) AND, you don't have to be on lakeshore properties. Any property within 200 feet of the shore is eligible.

Should our lake shores look like this . . .



OR . . . like this?



### No Net Loss of Ecological Function -

What's driving all this, you ask? Let's start with the basics.

Ecological function refers to the habitat along the shore, both in the water and on the land, where plants and animals exist. The State SMA Guidelines seek "No Net Loss of Ecological Function". This term populates the discussion of shoreline management. Understanding it, however, is far less easy.

The SMA states:

*"Permitted uses in the shoreline shall be designed and conducted in a manner that minimizes insofar as practical, any resultant damage to the ecology and environment of the shoreline area."*

Sounds straight forward - Homeowners should not worsen their shoreline if they make changes. However, the Guidelines go on to say the local program must also -

*"...achieve overall improvements in shoreline ecological functions over time when compared to the status upon adoption of the master program."*

Must we make changes to our shorelines for ill-defined, future conditions? This is neither just nor reasonable and will be subject to broad misinterpretation, if not abuse.

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## Best Available Science -

Shoreline science is not an exact science. To some, it need not be. The underlying legislation allows that, in creating shoreline regulations, cities and counties can accept findings from scientific studies even if they weren't conducted on the local lakes and water bodies. Bellevue took advantage of this in adopting its 2006 CAO shoreline regulations (though we have found detailed, factual presentations were lacking.)

Members of the Planning Commission have questioned the 2006 "science". As a result and since its membership has changed since 2006, the Commission has spent the last two months hearing presentations from a series of consultants and agency representatives (federal, state, and regional).

Who are the "experts" and what have they said?

Who Said...	...What	...And, What Was Not Said
Dennis Vidmar, City Utilities Chief and his staff	The City drainage system is a complex mix of public-private systems, but we have it well in hand. Our department is concentrating on education, watching private drainage impacts, and promoting storm water runoff (keeping it out of the city system) management.	There is little to no monitoring of drainage/water quality (taken over from King County several years ago). There is little to no treatment of storm drainage coming into our lakes. There is little to no money to do so. Homeowners are the answer, though the majority of pollution comes from other sources.
Tessa Francis, PhD	In a study of two landlocked lakes, trout were healthier (fatter) in the one that had no development along its shores.	When asked, Dr. Francis admitted the best bang for the buck would be spending it on stream/river improvements, not shorelines.
Roger Tabor, US Fish & Wildlife Dept	In Lake WA Chinook salmon will avoid swimming under docks, opting to swim around them (purportedly because dock shadows house predator fish such as bass.) Also, large woody debris is to be encouraged.	<i>FlowThrough</i> dock decking is today's answer (costly light prisms were yesterday's). Placing large woody debris along lakeshores will provide an alternate place for predators to hide and hunt salmonids AND will present very real safety issues.
D.StJohn and H.Berg, King Co. Dept of Nat.Resources	Kokanee, native to Lake Samm., have been dwindling in numbers and need protection. Stream (spawning) habitat has been lost.	Kokanee spawning does not take place along Bellevue shorelines. Vasa Creek once supported their spawning but upstream changes, including those imposed on Phantom Lake, have altered that. Most important - this fish has been so significantly manipulated via government programs over the years they may never recover.

J.Carrasquero, Herrera Consulting	Bulkheads reflect waves that scour the near shore, leaving it uninhabitable for salmonids.	The majority of Lake Sammamish and Phantom Lake have no bulkheads, rather upland retaining walls. Lake WA is almost completely developed, its bulkhead system critical to protecting existing houses.
	Significant stretches of shore need to be reforested to make a difference, not just an occasional “redeveloped” parcel.	
J.Parsons, Herrera Consulting	Bulkheads also separate upland habitat from shoreline habitat (affecting animal access to the shore.)	Care must be taken in promoting reforestation for animal habitat. Raccoon, Nutria, Mountain Beaver, rats and other rodents, all a problem now, would flourish. Larger animals should not be encouraged in an urban setting.

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Do shoreline homes . . .



. . . impact fish . . .



. . . more than untreated City drainage?



WSSA's concerns center on the difference between lake shores versus streams and rivers. The bulk of what is presented as science, when reviewed in detail, acknowledges that the findings apply to very different environments, and tributaries (streams and rivers), not to developed lakes. For example, the regional agency in charge of the Lake Washington and Sammamish basins, notes in one of its reports -

*While the physical changes to nearshore habitats resulting from shoreline development are clear, we lack information linking these alterations to changes in the growth and survival of juvenile salmon[1].*

Yet City staff have repeatedly asked Planning Commission members to accept hazy science on the premise that the risks to shoreline habitat (animals landward and fish water-ward) are too severe not to do so. The following is a staff quote extracted from the City's shorelines website -

*"...science is never conclusive; instead scientific knowledge grows in fits and starts based on incomplete findings, tentative or conflicting theories and repeated refutations until consensus sufficient to support policy exists. We are at that point now with respect to shoreline issues; yes we have imperfect information, but it is sufficient to support some action, including regulatory action. That is not to say that there might not be changes or adjustments to our focus on bulkheads, piers and shoreline vegetation as more information becomes known, but there is enough evidence of their deleterious effects to continue to regulate them as we do now."*

WSSA believes the science presented is sufficiently ambiguous and irrelevant to Bellevue's shorelines that it is imprudent to continue the level of restriction instituted under the 2006 CAO process. The questions raised by residents and answers by the above professionals attest to this.

(Note - Bellevue planning staff have indicated questions posed by the public to the experts will be responded to on the City shoreline webpage. However, at this time such information is not posted there. [Link to City Shorelines Web Page.](#) )

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## Broader Issues -

WSSA is not alone in its concern over existing and pending shoreline legislation. Here are several organizations around the state and the nation that share those concerns. Click to link to these sites.

[Bainbridge Island Homeowners](#)

[Kitsap County Alliance of Property Owners](#)

[San Juan Islands](#) (<---- Listen to legal presentation) [Sammamish Homeowners Association](#)

[Pacific Legal Foundation](#)

At the federal level, the Supreme Court is considering a case in Florida testing the extent to which government can modify shoreline properties without compensation. To read more on this case, [Click Here](#).

Closer to home, law suits have been filed challenging local government shoreline actions. Over the last two years two decisions have been rendered by the State courts indicating that adoption of shoreline regulations was done illegally if conducted under the Critical Areas process instead of within Shoreline Master Programs. Despite these rulings, Dept of Ecology continues to advise municipalities to disregard these decisions.

## The Other Side -

Our government has many branches dealing with shoreline and related issues. At the termination of Bellevue's review of Best Available Science, eight representatives addressed the Planning Commission describing their mission and what they would recommend be implemented by the City. Here is a list, showing the agency contact and their web links.

Agency	Representative	Web Link
WA Dept of Natural Resources	DERRICK TOBA	<a href="http://www.dnr.wa.gov">www.dnr.wa.gov</a>
WA Dept of Ecology	DAVID RADABAUGH	<a href="http://www.ecy.wa.gov/programs/sea/sma/">www.ecy.wa.gov/programs/sea/sma/</a>
WA Department of Fish and Wildlife	KIRK LAKEY	<a href="http://wdfw.wa.gov/fish/management/">wdfw.wa.gov/fish/management/</a>
Puget Sound Partnership	JASON MULVIHILL-KUNTZ	<a href="http://www.psp.wa.gov">www.psp.wa.gov</a>
King County	STEVEN BURKE and JEAN WHITE	<a href="http://www.KingCounty.gov">www.KingCounty.gov</a> <a href="http://www.govlink.org/watersheds/8/">www.govlink.org/watersheds/8/</a>
US Army Corps of Engineers	JACALEN PRINTZ	<a href="http://www.nws.usace.army.mil/">www.nws.usace.army.mil/</a>
Muckleshoot Indian Tribe	KAREN WALTER	<a href="http://www.muckleshoot.nsn.us/default.aspx">www.muckleshoot.nsn.us/default.aspx</a>

## Property Owner Input -

Under the regulations Bellevue enacted in 2006, shoreline property owners who wish to make changes on their sites may be required to “restore” their shoreline to a native state. Under the City's interpretation of "No Net Loss of Ecological Function" (explained elsewhere in this paper), these shoreline residents would make changes to mitigate for conditions beyond their property, for issues outside of their control, with little assurance these alterations will have measurable results.

And, if required reforestation and plantings do not take hold, they will be required to replace them.

Yet, the process establishing these regulations provided minimal input opportunity to these residents. A review of the CAO adoption and current SMP update processes reflect efforts to leverage opinions of non-lakeside residents to create “an overwhelming demand” for such regulations.

Lake shore residents, who have taken a closer look and become involved with Bellevue's current planning process (one in which the 2006 regulations would be embedded more permanently) have organized to formally respond to it.

WSSA, Washington Sensible Shorelines Association, is composed of representative property owners along Bellevue's lake shores. Formed in 2009 to coordinate a structured response to the SMP process, WSSA's mission statement best portrays its activities -

*To assure the development of balanced, fact-based, measurable shoreline regulations that respect and preserve property rights of residential, park, and marina uses.*

WSSA has hired [Planning](#) and [Wetland](#) consultants to assist in delivering a clear, professional message to Bellevue's decision makers. A block of time, prior to the Planning Commission's final recommendation, has been requested to accomplish this. At this time it is unknown whether the City will honor that request.

Thank you for reading this document. We hope you will stay involved and informed.

### **Terminology -**

The following section is supplied for your edification. It explains various terms surrounding shoreline management used in this paper, others relating to shorelines in general, as well as who some of the "actors" are.

Anacortes Case (also known as FutureWise) - A 2008 State Supreme Court case determined local jurisdictions overstepped their authority in passing shoreline regulations under the Critical Areas process.

BAS (Best Available Science) - The basis upon which a critical area is evaluated. BAS is not mentioned as part of Shoreline Management. BAS applies to Critical Areas only.

CAO (Critical Areas Ordinance) - Code adopted in 2006 by Bellevue (as required under the State Growth Management Act), in which the City inappropriately declared lake shorelines are critical areas (...much to the surprise of those most affected.)

Commission, Planning - An appointed, citizen body of seven members which reviews and recommends to the City Council various land use related issues brought before it.

Council, City - A body of seven elected members, each serving 4 years; with one individual selected to serve as mayor.

Ecology - DoE or Department of Ecology. Has review and approval authority of local Shoreline Master Programs (SMP). Ecology directs local efforts to develop SMP's through: (1) a set of Guidelines developed from the State Shoreline Management Act (SMA), (2) funding grants, and (3) final approval of local programs.

Non-Conforming Use - A structure which was lawfully constructed or established prior to the effective date of the Shoreline Master Program, but which does not conform to present regulations. Once a use receives this designation, the owner's ability to modify, repair, or replace the non-conforming use is greatly restricted. Property values can, therefore, be significantly impacted.

Permitting - A process wherein residents request permission to alter their property in some manner. Applications are reviewed by staff who interpret local regulations through administrative procedures to determine what is permissible and what mitigation will be imposed on the applicant.

Restrictions, Deed - Legally recorded stipulations that "run" with any subsequent sale of the parcel, and are thus imposed upon the new owner. Requirements to maintain buffers and landscaped strips would be examples.

Restoration - Under shoreline regulations this consists of replanting (actually reforestation) of the shorelines of Lake Washington, Lake Sammamish, and Phantom Lake with native vegetation and tall trees. (Templates have been developed by the City which applicants can choose for their landscape plan or they can hire professionals at their own expense.)

SMP - The local level Shoreline Master Program (SMP). The State's Shoreline Management Act (SMA) requires periodic update of SMP's. The Dept. of Ecology administers this process through a set of Guidelines, direct liaison, and approval authority.

Staff - Civil servants from one of 15 departments who are managed by directors who report to the City Manager. The City Manager reports to the Mayor and Council. The Planning and Community Development Department is charged with developing the Shoreline Master Program.

[1] Water Resources Inventory Area 8 Report - "Salmon & Steelhead Limiting Factors Report", J.Kerwin, 2001, pg. 287