Law Office of Kim McCormick, PLLC

January 31, 2013

Board of Directors
Bainbridge Shoreline Homeowners
P.O. Box 10034
Bainbridge Island, WA 98110

Re: Overview and Takings/Compensation Analysis of Proposed Bainbridge Island Shoreline Master Program (SMP) Update

Dear Board Members:

As we discussed previously, I have drafted the attached broad overview and analysis of federal and Washington takings and compensation law as it relates to some of the proposed provisions in the current Draft Update to the Bainbridge Island Shoreline Master Program (SMP Update). The purpose of the overview and analysis is to provide information to the City on ways in which it can revise various provisions in the SMP Update to conform with takings law in a manner that will reduce the likelihood that the City will have to pay compensation to private landowners as a result of some of the current proposed SMP Update provisions.

The attached analysis sets forth the applicable federal and Washington legal takings principles; the Shoreline Management Act policy and guidelines; examples of current provisions in the SMP Update that are so broad that they likely would require payment of compensation to private landowners; and proposed revised language for those provisions.

I have not included all possible provisions in the SMP Update that could/should be revised, but only those that are most obviously problematic. I also have attached a table summarizing the major problems with the SMP Update language and proposed solutions.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

Please let me know if you would like to add anything further to the analysis or the table, or if you would like to discuss any issues addressed in either document.

Sincerely,

Kimberly McCormick

Kimberly M. McCormick
Law Office of Kim McCormick, PLLC

Attachments (2)

3920 Southern Cross Road NE, Bainbridge, WA 98110
(206) 780 9064 (tel.); (206) 780 8316 (fax); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

Law Office of Kim McCormick, PLLC

MEMORANDUM

Date: January 31, 2013

To: Board of Directors, Bainbridge Shoreline Homeowners

From: Kim McCormick

Re: Analysis of City of Bainbridge Island Proposed Update To Shoreline Master Program

---

I. General Principles of Takings Law and Requirement For Compensation

Under federal and Washington law, local government may take private property for public use, but must pay just compensation for the private property taken. Under the Washington State Constitution, Art. 1, Sec. 16, "no private property shall be taken or damaged for public or private use without just compensation." *Guimont v. Clarke*, 121 Wn. 2d 586, 854 P.2d 1 (1993), *cert. denied*, 510 U.S. 1176 (1994).[1]

Where a taking is alleged as the result of regulation, a taking occurs if the regulation goes so far as to acquire a public benefit, rather than preventing some type of harm, in circumstances where justice and fairness require that the public as a whole bear the cost rather than an individual property owner. The regulation results in a taking if it forces the private landowner to provide an affirmative benefit for the public, when the burden of providing that benefit should be carried by society as a whole. Mere public benefit does not constitute public use for purposes of a taking under the Washington Constitution. *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.2d 183 (2000).

If government action has a significant impact on the value of private property, the property owner may file an inverse condemnation claim against the government based on either (1) physical occupation or damage to the property or (2) the impacts of regulation on the property. In zoning and land use cases involving governmental regulations and the payment of compensation for a taking, the courts examine (1) the nature and purpose of the governmental regulation, (2) the means used to achieve it, and (3) the

[1] For an excellent summary of federal and state takings analysis and case law, please *see Advisory Memorandum: Avoiding Unconstitutional Takings of Private Property*, Rob McKenna, Attorney General, December 2006.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

effect of the regulation on legitimate and established expectations for use of that private property. The balance that determines whether a taking has occurred may tip in favor of compensation if (1) the government purpose is unclear, (2) there is a less intrusive means available, or (3) there is a severe financial impact.

In cases where a regulation requires the payment of mitigation by a private property owner, the government must identify a real adverse public impact of the proposed development, and that the mitigation is reasonably related to the public impact. The amount and burden of the mitigation also must be proportionate to the public impact that is being mitigated. *Dolan v. City of Tigard*, 512 U.S. 374, 114 S.Ct. 2309 (1994); *Nollan v. California Coastal Commission*, 483 U.S. 825, 107 S. Ct. 3141 (1987); *Luxembourg Group, Inc. v. Snohomish County*, 76 Wn.pp. 502, 887 P.2 446, *review denied*, 127 Wn.2d 1005 (1995); *Sparks v. Douglas County*, 127 Wn.2d 901, 904 P.2d 738 (1995). It is therefore very important that the government correctly identify the public impact that is being mitigated, and then demonstrate that the required mitigation reduces that public impact in proportion to the size of the impact. *Burton v. Clark County*, 91 Wn.App. 505, 958 P.2d 343 (1998), *review denied*, 137 Wn.2d 1015 (1999).

It should also be noted that private landowners who successfully bring an inverse condemnation case against a governmental entity are entitled to the payment of just compensation (the fair market value of the property taken) plus their costs and attorneys' fees. *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640, 935 P.2d 555 (1997). As a result it can be very costly for a local government to lose inverse condemnation cases.

II. Shoreline Management Act Principles and Regulatory Scope

The Shoreline Management Act of 1971 (SMA) applies to "shorelines of the state," RCW 90.58.040, which are defined as all "shorelines" and "shorelines of statewide significance" within the state. RCW 98.58.030(g). "Shorelines" are defined to include "shorelands," which are in turn defined as "those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter . . . ." 98.58.030(d),(e). The SMA also explicitly allows any city or county to include in its SMP "land necessary for buffers for critical areas . . . within shorelines of the state . . . ." 98.58.030(d)(ii). Critical areas located outside the jurisdiction of the SMA are governed by the Growth Management Act. RCW 90.58.610.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

The intent and purpose of the SMA, as reflected in the legislative findings set forth in RCW 90.58.020, is to protect the ecological processes of the shorelines of the state through coordinated planning "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. . . . This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights thereto."

The Guidelines promulgated to assist with SMA implementation reflect the statutory policies and confirm that the purpose of the act is to protect shoreline ecology processes. WAC 173-26-186 states in pertinent part (emphasis added):

(8) Through numerous references to and emphasis on the maintenance, protection, restoration, and preservation of "fragile" shoreline "natural resources," "public health," "the land and its vegetation and wildlife," "the waters and their aquatic life," "ecology," and "environment," the act makes protection of the shoreline environment an essential statewide policy goal consistent with the other policy goals of the act. It is recognized that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the act but also by past actions, unregulated activities, and development that is exempt from the act's permit requirements. The principle regarding protecting shoreline ecological systems is accomplished by these guidelines in several ways, and in the context of related principles. These include:

(a) Local government is guided in its review and amendment of local master programs so that it uses a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.

(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.

(i) Local master programs shall include regulations and mitigation standards ensuring that each permitted development

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Local master programs shall include regulations ensuring that exempt development in the aggregate will not cause a net loss of ecological functions of the shoreline.

(d) Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities. Evaluation of such cumulative impacts should consider:

(i) Current circumstances affecting the shorelines and relevant natural processes;

(ii) Reasonably foreseeable future development and use of the shoreline; and

(iii) Beneficial effects of any established regulatory programs under other local, state, and federal laws.

It is recognized that methods of determining reasonably foreseeable future development may vary according to local circumstances, including demographic and economic characteristics and the nature and extent of local shorelines.

Thus, mitigation may be required only to the extent it is necessary to meet the requirement of no net loss of shoreline ecological function. The loss of ecological function caused by the proposed use or action must first be demonstrated, followed by an explanation of how the proposed mitigation will achieve no net loss of that function.

The Guidelines recognize the distinction between mitigation, which ensures no net loss of ecological function as a result of a proposed activity or use, and restoration, which remedies damage that already has occurred. This is an important distinction in a takings analysis because restoration provides a public benefit, which is an illegal taking, while mitigation prevents a public harm, which may be a legal taking

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

that is still subject to the payment of compensation based on the extent of the mitigation required. As the Guidelines note at WAC 173-26-186 (emphasis added), restoration may be provided as a voluntary measure, or may be funded by counties and cities through public programs.

(c) For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded nonregulatory policies and programs that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.

(e) The guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.

III. Problematic SMP Update Draft Provisions

The SMP Update as currently drafted raises a number of issues involving potential taking of private property without compensation. A summary of these issues and possible solutions is included in the attached Table entitled "SMP Update: Conflicts and Potential Legal Issues."

A. Nonconforming provisions

1. Legal determination that existing properties and uses are nonconforming burdens private landowner disproportionately to any benefit resulting from using the designation. No avoidance of harm results from a nonconforming designation.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

2. The Department of Ecology (DOE) has confirmed that neither the SMA nor the Guidelines require the City to classify properties as nonconforming. In a letter dated August 10, 2011, from DOE to the City, the DOE states: "As SSB-5451 reflects, the City has the freedom to define such lots as compliant and to set criteria for their expansion or redevelopment. It is not required that lots or buildings, become labeled as non-conforming, due to new standards. Through the combination of definitions and criteria-setting, the new SMP can avoid the label of non-conforming and set development standards for those properties to become compliant. This compliance can be achieved with their expansion or improvements." *See* letter dated August 10, 2011, from Barbara Nightingale, Shoreline Planner, Washington Department of Ecology, to Kathy Cook, Director, City of Bainbridge Island, Planning and Community Development.

3. Example from Current Draft SMP Update:

Section 4.2.1 Nonconforming Development is inconsistent, duplicative and confusing. The section is also unnecessary because as it plainly states, "Existing structures and uses that do not conform to this program are not required to meet its requirements, unless the owner proposes changes to a structure or use that would require review under this Program." Burdening properties and uses with a nonconforming status which does not provide any public use or avoid a public harm could result in a taking requiring compensation to the private landowner.

B. <u>Impacts to shorelines determined using improper standards</u>

1. SMP Update language uses "adverse impact" instead of "no net loss of ecological function" in various sections to calculate impacts that require mitigation. "Adverse impact" is a broad term and does not necessarily result in a loss of ecological function.

2. The City must calculate loss of ecological function as a result of proposed action or use to determine whether a loss of ecological function will occur that must be mitigated, using best available science.

3. SMP jurisdiction only extends over shorelines. Areas beyond the shorelines may not be regulated in the absence of a nexus clearly demonstrating that the action or use taking place beyond the shoreline jurisdiction will result in a loss of ecological function in the shoreline area.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

4. Examples from Current Draft SMP Update:

a. Section 7.0 Definitions – defines "adverse impact" as "an impact that can be measured or is tangible and has a reasonable likelihood of causing moderate or greater harm to ecological functions or processes or other elements of the shoreline environment." This is not the same as a "loss of ecological function" and encompasses impacts that would not cause a loss of ecological function.

b. Section 7.0 Definitions – defines "ecological functions or shoreline functions" and states: "Functions include, but are not limited to, habitat diversity and food chain support for fish and wildlife, ground water recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and water quality enhancement through biofiltration and retention of sediments, nutrients and toxicants." It is the loss of these functions that must be demonstrated before mitigation can be required.

c. Section 4.1.2.4 Regulations – Impact Analysis and No Net Loss Standard – the first bullet point states that "all shoreline use and development, including preferred uses, and uses that are exempt from permit requirements, shall be located, designed, constructed, and maintained in a manner that protects ecological functions and ecosystem wide processes and avoids, minimizes and/or mitigates adverse impacts to the environment as determined through a site-specific impact analysis . . . ." This is overbroad because the correct standard is to avoid no net loss of ecological function, not to avoid any adverse impact. There must be a correlation between the adverse impact to be avoided and the loss of ecological function before measures can be required to avoid/minimize/mitigate the impact.

C. <u>Mitigation disproportionate to impact</u>

1. Buffers and other restrictions, including vegetation management, are applied to entire shoreline designation areas, without scientific analysis or explanation of either the loss of ecological function that will result from a proposed activity or use in that area, or why the buffers will produce no net loss of ecological function.

2. Examples from Current Draft SMP Update:

a. Section 4.1.2.5 Regulations – Revegetation Standards. "Vegetation replanting is required for all development, uses or activities within the 200-foot shoreline jurisdiction, which alters existing native vegetation whether a permit is required or not." This is an example of a broad requirement for implementation of a mitigation measure -- vegetation planting – that is not linked to a demonstrated loss of ecological function.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

b. Appendix C, Herrera Environmental Consultants, Inc. Memorandum dated August 11, 2011, regarding Documentation of Marine Shoreline Buffer Recommendation Discussions. This Memorandum is useful as a tool for determining whether and to what extent buffers should be required on a given piece of property to ensure no net loss of ecological function. Its recommendations, however, should not be incorporated as buffer requirements for every piece of property located in a particular shoreline designation, which could result in lack of nexus between the mitigation required (the buffer) and loss of ecological function.

D. Restoration and conservation improperly required

1. As discussed in Section I above, requiring restoration of an existing condition is an illegal taking. Mitigation may only be required for loss of ecological function that may/will occur as a result of a proposed use or activity.

2. The Shoreline Residential Conservancy designation appears to be an attempt to convert private residential property to public conservation lands over time. This would be a taking that requires payment of compensation by the City. Island Conservancy and Natural designations have similar problems.

3. Loss of ecological function is calculated based on conditions that exist at the time the proposed use or activity is being considered for permitting, not on past conditions that may have occurred but are no longer present, or on future conditions that could be established.

4. Examples from Current Draft SMP Update:

a. Section 3.2.3 Shoreline Residential Conservancy. Section 3.2.3.1 Purpose states: "The purpose of Shoreline Residential Conservancy is to accommodate compatible residential uses while protecting, conserving, and restoring shoreline ecological functions of open space, floodplains, and other sensitive lands. It is the further purpose to conserve and manage valuable historic and cultural resources where they exist. " None of these purposes is related to ensuring a no net loss of ecological function resulting from use of private residential property.

b. Section 3.2.4 Island Conservancy . This section has the same problems as Shoreline Residential Conservancy, to the extent that it applies to private lands.

c. Section 3.2.5 Natural. This section also has the same problems as described above, to the extent that is applies to private lands. "Any use that would substantially

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

degrade the ecological functions or natural character of the shoreline area should not be allowed." This broad prohibition on use would require the payment of compensation by the City, in the absence of a showing that the use could not achieve no net loss of ecological function.

IV. Proposed Solutions

A. Adopt the provisions of SB 5451 to replace Section 2.1 Nonconforming Development.

B. Revise Draft SMP Update language to remove references to "adverse impact" as the standard for determining whether mitigation is required, and replace with "loss of ecological function."

C. Remove broad-based mitigation requirements, such as vegetation management and buffers applied across entire shoreline designation areas, and replace with language that ensures both extent of loss of ecological function and required mitigation are determined on a site-specific basis. Apply vegetation management and buffer recommendations on a site-by-site basis, based on analysis of loss of ecological function resulting from proposed activity or use.

D. Remove references requiring restoration and/or conservation by a private landowner and clarify that restoration and conservation only may be voluntarily provided in certain circumstances, or with public monies. Clarify that loss of ecological function is calculated from existing conditions at the time of the proposed action or use. Remove shoreline designations that convert private lands to conservation lands, or prohibit use of the lands without a showing that a proposed use would result in a net loss of ecological function that cannot be mitigated.

Attachment 1 – Table – SMP Update: Conflicts and Potential Legal Issues

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

SMP Update: Conflicts and Potential Legal Issues

ISSUE	SMP UPDATE SECTION	SMA/DOE REQUIREMENT	POTENTIAL LEGAL ISSUE	SOLUTION
Nonconforming legal status for existing uses and structures	4.2.1 Nonconforming Development	DOE letter dated August 10, 2011 to City of Bainbridge Island: Neither the SMA nor WAC Guidelines require City to classify properties as nonconforming. By using definitions and setting criteria, new SMP can avoid label of nonconforming and set development standards for properties to become compliant.	Burdens existing uses and structures with nonconforming legal status and implies retroactive application of SMP requirements, while at the same time stating existing structures and uses are not required to meet SMP requirements.	Replace 4.2.1 with provisions of SSB 5451, declaring existing structures and appurtenant structures conforming under the SMP and allowing redevelopment, expansion, change or replacement if consistent with the SMP. Use same language for existing uses.
Use of "adverse impact" instead of "no net loss of shoreline ecological function" as standard for determining whether mitigation required	4.1.2.4 – Regulations – Impact Analysis and No Net Loss Standard -- "all shoreline use and development, including preferred uses, and uses	SMA requires measures must be taken to avoid/minimize/mitigate impacts to avoid net loss of shoreline ecological function. SMA does not	There is no correlation in the 4.1.2.4 impact analysis language between adverse impact to be avoided/minimized/mitigated and the loss of	Revise SMP Update throughout to clarify that mitigation is required only to avoid net loss of shoreline ecological function, and not for all

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

	that are exempt from permit requirements, shall be located, designed, constructed, and maintained in a manner that protects ecological functions and ecosystem wide processes and avoids, minimizes and/or mitigates adverse impacts to the environment as determined through a site-specific impact analysis . . ." 7.0 Definitions – "ecological functions or shoreline functions" - "Functions include, but are not limited to, habitat diversity and food chain support for fish and wildlife, ground water recharge and discharge, high primary productivity, low flow stream water contribution, sediment stabilization and erosion control, storm and water quality enhancement	require mitigation for all adverse impacts to the environment. WAC 173-26-186(8)(b)(i) - "Local master programs shall include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property."	shoreline ecological function that must be demonstrated before such measures can be required. The term "adverse impact" is broader than "net loss of shoreline ecological function." Requiring mitigation for "adverse impacts" results in overly broad mitigation not required by SMA that may result in a taking requiring the payment of compensation to the private landowner. There must be a correlation between the "adverse impact" and a resulting loss of shoreline ecological function to determine the appropriate amount of mitigation required.	adverse impacts to the environment. For example, 4.2.1.1, first line, currently reads "All shoreline development and activity shall be located, designed, constructed, and managed in a manner that avoids, minimizes and/or mitigates adverse impacts to the environment." The last portion of this sentence should be revised to read "and/or mitigates adverse impacts to the environment that may result in a net loss of shoreline ecological function." Mitigation is required to avoid net loss of shoreline ecological function, not for all adverse impacts to the environment.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

	through biofiltration and retention of sediments, nutrients and toxicants." 7.0 Definitions – "adverse impact" – "An impact that can be measured or is tangible and has a reasonable likelihood of causing moderate or greater harm to ecological functions or processes or other elements of the shoreline environment."			
Mitigation disproportionate to impact	4.1.2.5 – "Vegetation replanting is required for all development, uses or activities within the 200-foot shoreline jurisdiction, which alters existing native vegetation whether a permit is required or not." 4.1.3.5 (3)(B) – Shoreline buffer – "A Shoreline Buffer, located within the 200-foot shoreline	SMA requires mitigation to avoid net loss of shoreline ecological function.	There must be a demonstration of loss, based on best available science, of shoreline ecological function on a site specific basis before mitigation, including vegetation replanting and implementation of buffers, may be required.	Require site specific analysis demonstrating loss of ecological function before requiring vegetation replanting or buffers.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

	jurisdiction, shall be maintained immediately landward of the OHWM and managed according to provisions of this section."			
Restoration, conservation and prohibition of all use may not be required from private property owners without payment of compensation	Shoreline designations have effect of requiring conservation and restoration of private property, or prohibiting all use of that property. 3.2.3.1 Shoreline Residential Conservancy - "The purpose of Shoreline Residential Conservancy is to accommodate compatible residential uses while protecting, conserving, and restoring shoreline ecological functions of open space, floodplains, and other sensitive lands. It is the further purpose to conserve and manage valuable historic and cultural resources where they exist."	SMA requires mitigation to avoid net loss of shoreline ecological function. SMA does not require private landowners to provide restoration or conservation of lands, or prohibit all use of private lands. WAC Guidelines do not include either Residential Conservancy or Island Conservancy as shoreline designations. WAC 173-26-211. WAC Guidelines include the following designations: Natural, Rural Conservancy, Aquatic, High-Intensity, Urban Conservancy and Shoreline Residential. WAC Guidelines for	Requiring restoration or conservation of private land, or prohibiting any use (as in Natural areas), results in a taking that will require payment of compensation to the landowner.	Expand the Shoreline Residential designation to include Residential Conservancy and Island Conservancy areas, and eliminate Residential Conservancy and Island Conservancy designations and retain the existing language in the Shoreline Residential designation. Protections currently in the Shoreline Residential designation are adequate to protect the areas currently designated as Residential Conservancy and Island Conservancy, because all Shoreline Residential uses will still have to demonstrate no net loss of shoreline ecological function.

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net

	3.2.4 Island Conservancy – "The purpose of Island Conservancy is to accommodate a variety of private or public recreational uses that might have a higher level of impact than would be allowed in the Natural designation. Uses should incorporate elements compatible with protecting, conserving and restoring ecological functions of open space, floodplains and other sensitive lands and manage valuable historic and cultural resources where they exist." 3.2.5 Natural – "Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed." Residential uses specifically prohibited in Natural area.	Natural area designation specifically allow single-family residential development as a conditional use. WAC 173-26-211(5)(a)(ii)(C).		Remove the prohibition in the Natural area designation on residential uses, to remain consistent with the WAC Guidelines. Remove language in the SMP Update suggesting that private landowners will be required to restore and/or conserve land, or will be prohibited from any use of that land (ie private property located in shoreline areas designated as Natural).

3920 Southern Cross Road NE, Bainbridge Island, WA 98110
(206) 780 9064 (tel.); (206) 910 4772 (cel)
Kimberly.mccormick@comcast.net