

Bainbridge Island SMP Update Public Meetings, Study Sessions, Citizen Task Forces, and Community Outreach 2009 - 2013

compiled on 05/08/2013 by M Droge (former Planning Commissioner 2009-2012) based on COBI online meeting notices

2013		
City Council	May 8, 2013	Public hearing
	April 10, 2013	Outstanding issues
	March 13, 2013	Outstanding issues
	February 6, 2013	Point Monroe/nonconforming issues
2012		
City Council	September 5, 2012	Carry-over topics: Recreational Development/ Residential Designations/ Vegetation Buffers
	August 15, 2012	Recreation/Island-wide Restoration, Vegetation, and Residential Development
	August 1, 2012	Repair and Replacement; Stabilization; Overwater Structures
	July 18, 2012	View structure setbacks and environmental impacts
	July 2, 2012	Designations: Residential & Priority Aquatic B/Shoreline Buffers Part 2
	June 20, 2012	Nonconforming/SSB5451/Buffers Part 1
	June 13, 2012	Point Monroe Designation
	May 22, 2012	Introductory workshop
	May 16, 2012	Discuss review process and schedule
	April 18, 2012	Discussion about the Council's SMP update review process
	February 15, 2012	Review process
February 1, 2012	Review and adoption schedule	
Planning Commission	April 26, 2012	Restoration Plan
	April 12, 2012	Consideration of public comment and final recommendation
	March 29, 2012	"Open House", and Public Hearing on preliminary recommendations
	February 23, 2012	Single-family residential
	February 2, 2012	Vegetation, environmental impacts, and nonconforming
	January 26, 2012	Point Monroe designation
January 12, 2012	Point Monroe designation	
Environmental Technical Advisory Committee (ETAC)	September 12, 2012	Habitat Management Plans; Monitoring
	July 11, 2012	Council deliberations on no net loss, structure setbacks, repair and replacement, stabilization, and overwater structures
	June 13, 2012	ETAC's role in Council deliberations; comments on draft SMP
	March 14, 2012	Single-family residential mitigation
Reports issued to public	January 11, 2012	Point Monroe Designation; Mitigation; City Council Questions
	May 17, 2012	Planning Commission draft issued
	March 12, 2012	Planning Commission Public Hearing Draft published
Community Meeting	March 2, 2012	SEPA decision issued
	September 24, 2012	Point Monroe Community Meeting
	August 27, 2012	Point Monroe Community Meeting

City Council	October 19, 2011	Discuss next steps.
	September 28, 2011	Discussion of the adoption schedule
	August 31, 2011	Study Session #5: public access, recreation, statewide significance, restoration and enhancement, forest practices, mining
	August 16, 2011	Study Session #4: vegetation, residential
	August 3, 2011	Study Session #2: archaeology, agriculture, commercial, industry, transportation, parking, signs, utilities
	June 15, 2011	Timeline
	June 8, 2011	Timeline
	May 25, 2011	Update
	March 2, 2011	Progress report and briefing
Joint City Council/ Planning Commission Meetings	June 1, 2011	Update
	July 21, 2011	SMP kick-off and study session #1: WAC guidelines, use of science, characterization, public access, use restrictions
	August 4, 2011 June 21, 2011	Study Session #3: shoreline designations Joint Workshop, incl. Dept. of Ecology presentation, Consistency Analysis presentation, Topic status presentation, SSB 5451 presentation - Conforming, Non-Conforming and No Net Loss, Adoption schedule presentation
Planning Commission	November 17, 2011	Priority aquatic and residential designations; stabilization; overwater structures
	November 3, 2011	Commissioners' specific issues
	October 20, 2011	Commissioners' specific issues
	October 13, 2011	Study session #10: Nonconforming Development
	October 6, 2011	Study Session #9: General Modification, Shoreline Stabilization, Administration, and Definitions
	September 22, 2011	Revised Study Session #8: Overwater structures; Boating Facilities; Aquaculture
	September 15, 2011	Revised Study Session #7: Carry-over topics: Vegetation and Designations; Dredging and Disposal; Landfill
	September 8, 2011	Study Session #6: Critical areas, water quality, flood, vegetation and land modifications, and environmental impacts
	August 18, 2011	Study Session #5: public access, recreation, statewide significance, restoration and enhancement, forest practices, mining
Harbor Commission	August 11, 2011	Study Session #4: vegetation and residential development
	July 28, 2011	Study Session #2: archaeology, agriculture, commercial, industry, transportation, parking, signs, utilities
	October 18, 2011	SMP Update
	May 24, 2011	SMP Update
Environmental Technical Advisory Committee (ETAC)	February 15, 2011	Update on SMP
	January 18, 2011	Update on SMP
	December 7, 2011	Point Monroe Designation; Mitigation; City Council Questions
	November 9, 2011	Mitigation/habitat management; Council questions
	October 12, 2011	Reply to City Council questions about the SMP update
	August 31, 2011	Finalize revisions to technical framework for buffers and vegetation management
	August 10, 2011	Finalize Vegetation white paper
July 20, 2011	Finalize technical frameworks	
June 22, 2011	Continuation of Technical framework for aquaculture and vegetation and buffers	
June 8, 2011	Technical framework for aquaculture and vegetation and buffers	

ETAC continued	May 11, 2011	Designations, Island-specific reports, aquaculture, stabilization, vegetation
	April 13, 2011	Island-specific recommendations on the Summary of Science
	March 16, 2011	Designation criteria for aquatic conservancy
	February 9, 2011	Environment designations, restoration policies, subcommittee reports
SMP Task Force	June 30, 2011	Final regulation review
	May 26, 2011	Finalize Environmental Designations and proposed changes to regulations for parking and signs
	May 23, 2011	Finalize Environmental Designations and proposed changes to regulations for parking and signs
	May 9, 2011	Review proposed changes to regulations
	April 18, 2011	Finalize shoreline environment designations
	March 21, 2011	Shoreline Environment Designations
	March 14, 2011	Shoreline Environment Designations
	February 7, 2011	Signs
	February 3, 2011	Parking, public access, signs
	January 26, 2011	Arcaeology, vegetation, water quality, utilities, parking
	January 23, 2011	Finalize policy recommendations
January 18, 2011	Finalize policy recommendations	
Development Workgroup	March 22, 2011	Bein working on regulations
	July 5, 2011	Final regulation review
	May 3, 2011	Review proposed changes to regulations
	March 8, 2011	Begin working on regulations
	February 15, 2011	Initial review of proposed regulatory changes
Vegetation Workgroup	August 25, 2011	Final recommendations on regulations
	July 6, 2011	Final regulation review
	May 16, 2011	Continue reviewing proposed changes to regulations
	May 2, 2011	Review proposed changes to regulations
	March 7, 2011	Begin working on regulations
February 16, 2011	Initial review of proposed regulatory changes	
Vegetation / Development Workgroup	June 27, 2011	Draft regulations review
Modifications Workgroup	June 23, 2011	Final regulations review
	May 19, 2011	Continue reviewing proposed changes to regulations
	May 5, 2011	Review proposed changes to regulations
	March 10, 2011	Begin working on regulations

2010			
Public Education Series (in Council Chambers)	June 3, 2010 June 17, 2010 June 22, 2010 July 8, 2010 July 27, 2010	Event 1: Special City Council Meeting: Ecology's Role, Q&A Event 2: Shoreline Processes [audio/video] [minutes] Event 3: Property Rights/Listening Session [audio/video] [minutes] Event 4: Coastal Bluffs and Beaches [audio/video] [minutes] [Q&A] Event 5: Nearshore Assessment [audio/video] [minutes]	
Visioning Workshop	September 30, 2010	Visioning workshop to gather input on community vision for the shorelines [survey]	
Public Participation Plan	May 12, 2010 May 5, 2010 April 29, 2010 April 22, 2010 April 15, 2010 March 18, 2010 March 2, 2010	Adoption by City Council City Council work session - introduction Open House Planning Commission review Draft plan released Draft outline released Public forum to gather input on public participation in SMP Update process	
Planning Commission	September 23, 2010 January 14, 2010	Kick-off for the Shoreline Master Program Update workgroups [minutes] [outline of presentation] Introduction to SMP Update process	
Environmental Technical Advisory Committee (ETAC)	November 9, 2010 October 13, 2010 September 8, 2010 August 11, 2010 July 14, 2010 June 9, 2010 May 5, 2010 March 17, 2010	Subcommittee reports Regular meeting [minutes] Subcommittee reports; council liason Reports from the No Net Loss, Vegetation, Overwater Structures, and Armoring sub-committees. Shoreline Science Meetings Feedback; Update on Shoreline Issues, Progress; Identifying Specific Issues for ETAC to Address [audio/video] [minutes] [Q&A] Process for Reviewing the Science Process for Reviewing the Science Science information sources; characterization update	
SMP Task Force	December 15, 2010 December 6, 2010 December 2, 2010 November 9, 2010	Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies Critical areas, water quality Agriculture	
Development Workgroup	November 16, 2010 November 2, 2010 October 21, 2010	Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies	
Modification Workgroup	December 20, 2010 December 9, 2010 November 4, 2010 October 21, 2010	Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies	
Vegetation Workgroup	November 17, 2010 December 8, 2010 November 3, 2010 October 20, 2010	vegetation conservation and management policies Workgroup meeting - review and discussion about existing goals and policies Workgroup meeting - review and discussion about existing goals and policies Existing goals and policies	

2009			
ETAC	December 23, 2009	Discussion of role in SMP Update process	<i>Page 4 of 4, SMP Update 2009-2013</i>

Public Notice: Source: <http://www.bainbridgewa.gov/default.aspx?ID=38&CalendarDate=06%2f22%2f2010>

Shoreline Education Event

Jun 22 2010

2011 Shoreline Master Plan Update Shoreline Education Series

- 6:30 *Property Rights and the SMP Update* - Dawn Findlay Reitan
- 7:30 *Listening Tour* - Conversation opportunity for the community to discuss the current Shoreline Master Plan with current and long-range planning staff.

(Note: This is the expected to be the first in a series of such conversational opportunities.)

Minutes from June 22, 2010:

Source:

<http://www.ci.bainbridge-isl.wa.us/default.aspx?ID=38&CalendarDate=06%2f22%2f2010>

DISCUSSION ITEMS

1. WELCOME, INTRODUCTIONS, AND OVERVIEW
2. PRESENTATION AND FACILITATED QUESTION SESSION
 - **PROPERTY RIGHTS**
 - PUBLIC TRUST DOCTRINE
 - **TAKINGS**
3. WRAP-UP/NEXT STEPS
4. LISTENING SESSION
5. ADJOURNMENT

1. WELCOME, INTRODUCTIONS, AND OVERVIEW

Long-range Planning Manager Libby Hudson welcomed attendees and explained that this meeting was scheduled because the topic was not covered on June 3, 2010, and would be immediately followed by a listening session during which interested parties would be able to talk to staff about the current Shoreline Master Plan (SMP).

2. PRESENTATION AND FACILITATED QUESTION SESSION

Libby introduced Dawn Findlay Reitan, Interim City Attorney from the firm of Inslee Best.

Dawn said she was at the meeting to provide a general legal framework for the update, adding that her comments would be very general because this is the very beginning of a long process. She will also She began her presentation with the Public Trust Doctrine.

Dawn explained that the Public Trust Doctrine arises from the state constitution (Section 17, Article 1), which gives jurisdiction over the navigable waters to the state. The state has two property interests – fee interest subject to the public rights of navigation, commerce and recreation. In regard to the Public Trust Doctrine, the courts have stated, “We note that the requirements of the Public Trust Doctrine are fully met by the legislatively-drawn controls imposed by the Shoreline Management Act (SMA).” The state has delegated its authority to local governments. The City would not have the right to do this management if it were not for that delegation.

The SMA talks about private **property rights**. When the City starts to look at regulating, there is a requirement to look at **property rights** and constitutional limitations. There is a memorandum drafted by the Attorney General’s office that provides general guidance in implementing land use regulations and provides analysis on how to avoid red flags. That memorandum gives jurisdictions a framework to start with and that will be built into this initial analysis and continue with the process.

Dawn then opened the floor for concerns and questions.

[Citizens’ questions shown in blue italics, City staff responses shown in black. – m droge 05/08/2013]

*Is there a point where a series of cumulative **takings** exceeds the legal test of no remaining reasonable use by the owner?*

Dawn replied there is no general test for regulatory **takings**. The court will look at the regulation and look at the property and determine case-by-case whether or not all reasonable use has been taken away.

*I’ve read all the courts decisions and suggest that the City Council do the same, starting with Trimen vs. King County, Isla Verde vs. Camas, and Carpa vs. Simms. In every one of those they have the following test: Was there a showing of deficiency for open space, wildlife habitat, or something like that? Was the imposed restriction on the use of land – these mandatory **buffers** – in direct mitigation for the specific impact for this project? Was the mitigation in proportion to the impact? How can the City of Bainbridge Island, with 80% of its shoreline already developed with residential development, come along and impose a 75% **taking** on all shoreline property as a direct mitigation of their impact when the property has long since existed?*

Dawn answered that the question presumes regulations that have not been proposed or drafted. It presumes a regulatory requirement that, at this point in the process, we don’t have to discuss or to look at the impact.

Looking at the current 50-foot as opposed to the 150-foot that is proposed.

Dawn iterated that the meeting is public participation to address the upcoming update for the SMP. She added that the cases cited identify flaws for very specific cases. There is a recent case in Whatcom County that will help guide us in the future framework of these regulations.

*How can you justify the city imposing a 150-foot standardized **buffer** on property that is already developed?*

Dawn replied that she would not answer that question because the topic under discussion was the legal framework for the plan, not analyzing specific regulations. She urged the questioner to provide specific policy suggestions as the public participation process continues.

*On city council, I'm constantly trying to think of ways to minimize our risk while we perform state law requirements. I recently read a paper by attorney Dennis Reynolds saying that at this stage of our process it would be advisable for the municipality to do what he called a "regulatory **takings property rights** analysis" as a precursor to adopting an SMP amendment or CAO amendment. I sense that what he was saying was that under the WAC doing such an analysis might help us design our SMP update in a way that minimizes our risks in the sense of trying to find strategies that are perhaps less burdensome to property owners. To your knowledge, is there such a requirement that we must do such an analysis and would that be helpful in your opinion to helping us fashion an SMA amendment?*

Dawn: also read Mr. Reynolds' paper and said that he discussed the regulatory **takings** analysis. That is the guidance provided by the Attorney General that was briefly touched upon and contains a process that cities and counties can use that contain red flags. Some of the questions in that are:

- *Does the regulation or action result in a permanent or temporary physical taking?*
- *Does the regulation or action deprive the owner of all economically viable uses of the property?*
- *Does the regulation or action deny or substantially diminish a fundamental attribute of property ownership?*
- *Does the regulation or action require a property owner to dedicate a portion of property or grant an easement?*
- *Does the regulatory action have a severe impact on the landowner's economic interest?*

Dawn explained that what the SMA and Growth Management Act (GMA) require is that municipal governments consider, while they're adopting this update, constitutional limitations – that is a **takings**. The fifth amendment states that you shall not take private property without just compensation (Article 1, Section 16 in Washington) Those are the constitutional limitations that must be considered when looking at the update. It will be Dawn's recommendation to review the red flags from the state attorney general while the City moves through this process. There is no requirement to use this attorney general assessment, but it is a good framework to do so, especially with a comprehensive update.

My wife and I bought a property ten years ago or so – two properties that are side-by-side that are waterfront. There was no garage, so we went to the City to put a garage on the second property and the City said "You can't do that." We asked why we couldn't do that and they said you have to have a home to have a garage. We went through a bunch of hoops and worked with the city and ended up building a

garage attached to our home. We decided that when the kids were all gone, we'd sell the big house and build a little house on the other lot. That other lot is our retirement – it's all we have – and my lay interpretation of what is being proposed is that I won't be able to build anything because of all the limitations.

Dawn commented that those are exactly the concerns that need to be noted by staff for consideration during this process. She added that she did not want to convey that we are doing the **takings** analysis because we are going to take your property.

The property owners appreciate that the government is trying to do good and we're probably as supportive of the preservation side of things as anyone, but the approach that is frequently taken is that government has to tell us what we can and cannot do. I prefer to work with the city and the people in the Planning Department to come to compromises. I would simply say that, in these regulations, make sure that there is a clause for reasonable use and for special consideration as well because this is all we have – this is all most people have.

Kathy responded that there is a current restriction on having an accessory use (garage) on a separate piece of property from the primary use (home). One of the recommendations in the code update is to allow an accessory use on a contiguous lot.

*John Tawresy said that he would like to support Barry in the effort to do the pre-analysis of **takings**. One of the problems that he sees in the process is that the regulations become very specific, but the challenge of the property owner is very grey. Be very careful about recognizing what's already on the ground. The philosophy that we heard at the last meeting is that we're not trying to make it better – we're just trying to make it not worse. One way to do it is to regulate everything that exists today with a regulation that complies with what it is today. That analysis would be very important, particularly on Bainbridge Island where this regulation is going to be almost a lot-by-lot program.*

Dawn replied that, unlike zoning or general zoning requirements, the requirements placed on the city prior to initiating a regulatory framework is somewhat onerous. The city is required to do a factual inventory, then take that inventory and create a cumulative impact analysis. They're also required to create a restoration plan, a public access plan – there are a lot of elements that will happen prior to or before the regulatory framework. Dawn also told the audience that this process is a give-and-take, adding that she has seen some flexibility come from public comment.

*Is it correct that existing homes without a 50' native vegetation zone are **nonconforming**? Josh Machen replied that the required native vegetation zone can vary from 25' to 50'. Many of the existing shoreline homes are existing **nonconforming** structures. And there are specific regulations regarding what you can or cannot do with a **nonconforming** shoreline structure.*

*The rumor is that a greater native vegetation zone – perhaps up to 150' – is being proposed. So houses that may be marginally conforming now would become completely **nonconforming**. If that were the case, how would the homeowner be able to modify, expand, or replace the structure?*

Dawn remarked that she had also seen that allegation, but that at this point there is no proposal. She iterated that there are several pieces – such as the inventory and cumulative impact analysis that must be completed prior to proposing any such restrictions. If, further

down the road, the city decided on something that creates nonconformities, the WACs (Washington State Administrative Codes) provide guidance on what the city can and cannot do. The city has **nonconforming** regulations now that allow development within certain restrictions, such as you can't increase the nonconformity. Recommendations on how to handle **nonconforming** uses and structures also have to be developed – that is future discussion that needs to take place and will take place.

You have referred a couple of times to inventory, cumulative analysis, and a couple of other things. Can you give me some specifics on an inventory of what and a cumulative analysis of what and then the other ones following it?

Dawn said that the WACs contain very specific elements that are required of the regulatory framework, but before that the WACs say you must have an inventory and it must include... Then that's followed by several pages. It says you must have a cumulative impact analysis and it must include... and it's followed by several pages. Libby noted that the WACs are on the project web site and added that Ryan can also help explain more.

*Maybe you can shed a little light on the **nonconforming** thing. My understanding is that under the SMP guidelines from Ecology that there is a default situation for **nonconforming** use declaration that if the **buffers** increase and there is no addressing of **nonconforming** use restrictions in the local jurisdiction's proposed SMP, then the state takes over with certain **nonconforming** rules. However, my understanding is that our city council has great latitude in what constitutes "**nonconforming**" under this process and they can call it pretty much whatever they want and deal with it pretty much as they want. Our concerns need to be addressed more to our planners and to our city council, rather than to the state level.*

Dawn replied that local governments do have wide latitude in dealing with **nonconforming** uses. There is a wide spectrum from "We are going to get rid of them and here is the timeline to do so" to "They're fine and they can expand under these criteria." The city council has flexibility. The guidelines also say that these **nonconforming** provisions still have to comply with the underlying policies in the SMA, balanced with the constitutional provisions. To some extent you have that now. You have **nonconforming** uses allowed to expand under certain provisions, as long as it does not expand the nonconformity. You have some leeway now. The question is your voice bringing it forward to say look at what we have now and keep it or change this or that, but have that conversation and then have that conversation with Ecology also,. Libby added that there are **nonconforming** standards for both use and structures in the city's existing Shoreline Management Plan.

*As follow-up to my earlier question about the city potentially doing a study – call it a **property rights** or **risk analysis** study. It is my assumption that a good legal analysis might shed light on more risky or less risky regulatory approaches the city council can take. For example, in just a casual reading one issue that seems to be very disliked is a one-size fits all **buffer** and an alternative regulatory approach might rely more on a site-specific analysis. Other regulatory approaches might be based on allowing mitigation strategies versus an approach that doesn't allow mitigation strategies in meeting the no net loss standards. Can you think of various regulatory strategies that might fall somewhere in the spectrum between risky and provocative and moderate and still accomplishing the objective of the Act?*

Dawn responded that it's easier to provide it in terms of cases that have already decided it's just a **takings**. The one that's always a **takings** is if you go on someone's property, you take a

bulldozer, you go over it, and you take out someone's fence – that's clearly a **takings**. Everything else in regulatory is very site-specific. It's very impact-oriented, but also what is the governmental interest in achieving what the regulation was there for – science, etc. So, you've got someone comes onto your property and we're going to use it for our own purposes (that's clearly a **takings**) to almost a site-specific analysis per parcel. We have someone go out with a consultant and we walk the land and we say, "Here are the impacts, per your own experts. This is what we're going to do about it." So, you have a pretty broad spectrum. I'm providing that because while we go through this, that analysis is going to be happening all the time.

Dawn said that she can't really say that she recommends that the city do this or do that, but that she can identify alternatives that other municipalities have used, for instance – incentives. If there is an approach where you want to provide more mitigation, which might not necessarily be tied to that development's impacts, there is an ability incentive-wise perhaps of more ecological mitigation for something else. That is being looked at in other jurisdictions. Those are things she might provide when the city starts the actual regulatory framework. It's really not necessarily a study – regulations change all the time. It's just rolling up your sleeves and looking at the impacts.

It seems to me that there are several choices that can be made with respect to the question of overregulation and under-regulation. If every piece of property is treated as a very special case with aspects and characteristics that require a very intensive argument that applies only to a typical single home situation, we are faced with an enormous amount of potential negotiation. If you look at the environment though, you see general characteristics. We have these drift cells, for instance, along our boundary which you might characterize as being representative of a whole sack of home sites, but with relative homogenous environmental conditions. Sometimes we have very high banks and very low banks. It's seems to me that one way to consider devoting ourselves of a tremendous amount of litigation and discretion would be to take into account the characteristics – an average in some sense – along the boundary where the differences are small if you take a very small scale. Actually, ecologically, there is continuity and taking advantage of that might be helpful to all of us.

Dawn said that while the local jurisdictions have been delegated the ability to manage, we still have been given an edict from the state that there will be no net loss. Part of our factual investigation (with the inventory, etc.) will be, in fact, what that means. So, we will also be applying that in more of a consistent fashion. It wouldn't be her recommendation to look at every specific parcel separately with different regulations. That probably would not comply with the no-net-loss mandate by the state.

3. WRAP-UP/NEXT STEPS

Libby said the city will be moving forward on its shoreline update and there will be a lot of hot issues that will be discussed and policy issues that will be addressed. Definitely one of the considerations that need to be addressed is how a change in regulation will impact private **property rights** to be sure that there are no "**takings**." Policy issues – such as **nonconforming** – will need to be addressed. Are we creating **nonconforming** structures as we move forward? When we get to more specifics in policy changes and in regulation changes, the city will be revisiting in a more detailed manner some of these private property issues. The Attorney General's office will come into some of the discussions as we move forward in our regulations.

Libby thanked Dawn for presenting and noted that Dawn will continue to advise the city on the update as it moves forward. Dawn thanked the attendees for their participation.

Ryan informed attendees that there were copies of the portion of Ecology's Handbook for Planners on the inventory and impact analysis on the back table. The **nonconforming** section of that handbook was also available and Ryan noted that it was important because it provides a definition of what is a **nonconforming** use versus a **nonconforming** structure.

4. LISTENING SESSION

Libby explained that the purpose of the listening session was to discuss the existing Shoreline Master Program that was adopted in 1996 and the one that the city is required to update under the state guidelines by December, 2011. She went on to explain that the existing program is one that the city has been using since 1996. There have been a few minor amendments, but it is primarily the same program that was adopted. If you've developed along the shoreline, you've used this program.

The Shoreline Master Program is laid out with goals, policies, definitions, and shoreline designations. As the city updates the program, it will need to look at all those sections of the master program. One way to identify possible improvements is to listen to shoreline property owners and others who may have had experience with the program.

Libby introduced Josh Machen, Senior Planner in Current Planning Division, and Ryan Ericson, the city's shoreline planner who will be moving the update forward.

*What are the consequences of having a **nonconforming** structure?*

Josh replied that the owner can use it and maintain a **nonconforming** structure. Based on the footprint of that structure, you could repair or completely replace the structure within the same footprint even though it may be **nonconforming** to the native vegetation zone. If it's a single-story structure, there's a possibility that you could not only replace it, but put two stories in as long as you did not increase the nonconformity and you stayed within the limitations provided for by the SMP.

Is there a way to mitigate nonconformity besides removing it?

Josh said there probably is. If, in the future, as part of the new master program there was a provision that said you can maintain a nonconformity but if you want to replace it, it has to be brought into conformance or mitigate for that impact, there may be things such as enhancing the native vegetation zone. Those are options that may be available as part of the new master program and that's where the public would want to be involved in saying what options may be appropriate.

*What is the difference between a **nonconforming** structure and a **nonconforming** use?*

Josh replied that **nonconforming** structures mean nonconformities related to the actual building and not necessarily the use. Ray's Automotive at the head of the bay, in addition to being a **nonconforming** structure, may be a **nonconforming** use because an automotive repair shop

within the shoreline jurisdiction is not currently an allowed use under the Shoreline Master Program. If Ray wanted to expand his use of the property – for example, adding another building for additional repairs – that would probably not be allowed. That would be considered an expansion of a **nonconforming** use.

*If a legally-established **nonconforming** use continues to exist, it may exist. What happens if it ceases to exist?*

Under the current regulations, it depends on how long the use ceases. If a **nonconforming** use is discontinued for twelve consecutive months, any subsequent use would have to conform.

*If you have a **nonconforming** structure, is there a residency requirement? I have heard of some jurisdictions where, if Grandma moves into a nursing home for six months and two days and there is a six-month residency requirement, she can't move back into her house if they let her out of the home. Is there anything like that in our regulatory structure or do you anticipate anything like that?*

We don't have a residency requirement as part of our current regulatory structure. As long as the structure is maintained, the nonconformity exists. If a house was destroyed and the property owner fails to apply for the permits to rebuild it within two years, then the replacement house would have to be brought into compliance. So there is a two-year period for structures and as long as the structure is maintained, then if there is destruction as long you repair it or reconstruct it within a two-year period, you're fine.

*So if you have a house that's **nonconforming** because a portion of it is within the native vegetation zone, and that house sits unoccupied for three years, you can still establish a residence within that house because it's an allowed use and it's the structure that's **nonconforming**?*

Yes.

*Sometimes we have situations where a native vegetation zone and a critical areas **buffer** will overlap and you may or may not have a **nonconforming** structure within that. When that happens what are the consequences for **nonconforming** because now we have nonconformance not only for shorelines but also under critical areas?*

Josh replied that there was recently a court case that dealt with this conflict between critical areas ordinances and shoreline regulations because there is some overlap. Nonconformance within the shoreline jurisdiction has always superseded other regulations, whether that's **nonconforming** pertaining to zoning regulations or **nonconforming** pertaining to critical areas ordinances. So the shoreline regulations have ruled and Josh believes that the court case was decided along that same vein of the shoreline regulations being the controlling force within the shoreline jurisdiction.

Libby noted that if there are no shoreline regulations that address, for example, a shoreline geologic hazard area, then the critical area regulations would apply. As we update our Shoreline Master Program, we may change how those two interact. As an example, Josh said that a house that is **nonconforming** to the front yard setback (which is a zoning regulation) and **nonconforming** to the shoreline native vegetation zone. Because it is within shoreline

jurisdiction, the shoreline **nonconforming** rules apply and you could rebuild the house. If you took that same house and it was conforming to shoreline regulations but it was **nonconforming** to a zoning regulation, then the zoning nonconformity rules apply. Our zoning regulations say that if you destroy more than 50% of a house, it has to be rebuilt in a conforming manner. Even though the house is in shoreline jurisdiction, if it's not **nonconforming** to shoreline rules, then you don't get the benefits of the shoreline **nonconforming** rules.

Hypothetical question – if the native vegetation zones are expanded and an existing house is now entirely in the native vegetation zone and it wanted to expand, does that mean that no expansion would be permitted?

Josh responded that, depending on how the new regulations were crafted, if the **buffers** were simply increased without any other provisions, you're correct. You would basically be stuck with what you have within that footprint. You may be able to go up, you may be able to rebuild but if things were to remain the same – keeping all other constants the same – and just changing the native vegetation zone, you're correct – you wouldn't be able to expand in any fashion. You'd just be able to maintain what you have.

Presumably we're being asked to update the SMP because something is wrong with the current one? Have you studied what is wrong with it? What harm has it caused as it is and have any of these harms actually been measured and quantified?

Libby replied that we're required to look at our existing program under state requirements. It's not necessarily that there's something wrong with our program. There has been new science, new information, a new understanding of shoreline processes. What the city needs to do is look at its program, look at whether it appropriately regulates and has the appropriate goals and policies in place to protect the shoreline resources and protect shoreline private **property rights** and do those requirements that the state has put on local government for shoreline regulations. Our city is the lucky one to have the whole edge of our city in the shoreline, so we are impacted perhaps more than most other shoreline cities in the state because of the amount of shoreline we have here on Bainbridge Island. A lot of our shoreline is residential, so that's a little less complicated than a lot of other cities in that respect because they have a lot of commercial or marine-oriented. We have a varied coastline (we have similar kind of uses on much of that) but very varied coastlines so we'll have to take a close look at the characterization of our shoreline and whether we have appropriate regulations and protections in place.

I've heard a number of times about new science and new understanding – can you give us some examples of which areas?

Ryan said that he didn't know if he could give specific literature analysis, but that there have been new documents for the marine riparian zone. Jim Brennan was contracted through Fish and Wildlife to complete that study and they did a literature review that's up on our web site. Another report that just came out was a macro-invertebrate study on the use of the shoreline. That's a new report. We've also had some studies done.

In general, if you came to our meeting last week, there's still a lot of science that needs to be done. The Nearshore Assessment has been done since 1996 and it's being updated. Battelle is

doing an alternative futures analysis with Kitsap County and through that process they're going to update our current assessment. We have the feeder bluff report coming out from Jim Johannessen and he'll be talking about that on July 8th. Those are the ones that are specific to Bainbridge Island.

When I read these new studies it didn't seem like there was anything new. It was just a new study and it appeared that many of them tended to be more conservative than previous studies on the same science. Is that an accurate impression or is there really something new that we know now that we didn't know in 1995?

Libby responded that the Island was on the cutting edge in identifying feeder bluffs in its 1996 program, but a lot of jurisdictions around Puget Sound had not acknowledged that feeder bluffs were important to contribute to sediment transport and sediment drift. What is new is that we have new, more specific information that's identified to Bainbridge Island in the case of feeder bluffs.

Ryan said that the guidelines that were established in 2003 (that we are currently working under) involved some pretty big workshops. Through that, they had a bunch of experts in the field to discuss, for instance, bulkheads. Bulkheads in the 2003 guidelines are pretty substantially regulated and they tell us exactly how to approach developing regulations for new bulkheads.

Libby added that the guidelines were adopted in 2003. The state is talking about the entire Puget Sound and the shorelines of the state. Many jurisdictions had originally adopted their programs in the 1970's. The City's was pretty up-to-date, having adopted it in 1996. That was because we incorporated quite late. For a lot of Puget Sound areas, there's a lot of new science. In the City's case, it is blessed with the Nearshore Assessment that gave a lot of really good information about the island that a lot of jurisdictions with shoreline don't have that characterization. The County now has the next version of the characterization so they have a pretty good science inventory and characterization of the county shorelines

Josh added that he has worked with the city's master program since 1996 and the city is very lucky in that its Shoreline Master Program, while it was adopted in 1996, it was very progressive. The citizens of Bainbridge Island took five years to adopt its last master program and it was very cutting-edge at the time. It has carried us well over the past fourteen years, whereas most other jurisdictions were kind of in the dark ages with the master programs and ours contained a lot of the science. Compared to Kitsap County where the change to their new Shoreline Master Program was very dramatic, I image that the changes to the city's master program won't be as dramatic.

Josh went on to say that there are issues with the city's master program. Having worked in current planning for the past 14 years with the program and with individual property owners, there are a lot of inconsistencies within the code and there are a lot of challenges with those inconsistencies and clarifications. That's one of the reasons that the city needs to update – to help make sure that, as the city goes forward and adopts a new code, that it has very consistent regulations and that it is very clear on what is allowed or isn't allowed – so that there is a clear expectation to the shoreline property owners across the island.

What inconsistencies and areas of concern have your department identified as things that you think must be addressed?

Josh replied that some of those have been discussed during these meetings – **nonconforming** regulations are certainly one, how the native vegetation zone is implemented, how that [the native vegetation zone] relates to the **nonconforming** regulations, bulkheads – whether or not you can repair them, replace them, build new ones, where you can build new ones, whether or not you have to build soft shore protections. There’s a lot more science now about what works as far as alternative protections, other than just a seawall or a bulkhead. We also have a lot of new science on the impacts of seawalls and bulkheads on the nearshore environment. Ryan added that the city’s current SMP doesn’t allow for emerging technologies – for instance, the translucent boatshed cover. With the new SMP, staff would like to be able to put in some provisions where emergent technologies can be looked at, especially if they’ve been approved by Ecology. Josh added piers and docks, saying that there’s a lot of information about piers and docks and floats and stuff like that. What things are allowed within the native vegetation zone is another issue.

*That’s good information. I think you’re heading in the right direction but – this is a challenging question - I’m very sensitive about the use of the word “science.” I’m a structural engineer and I don’t consider increasing the factor of safety as “science.” I see a lot of things that are going on that are basically increasing **buffers**, increasing the factor of safety and it being labeled as “science.” I think that you need to be very careful about the use of the term. The last items you talked about – I think you’re going in the right direction.*

Libby responded that that was a good comment and that staff will look at the language that they use.

*Presumably as you’re updating the plan, you’ll be evaluating the dimensions of the vegetation zones – whether they’re adequate at 50 feet or whether they need to be increased. Can you tell us what kind of science or what sources you’re going to go to to evaluate how the current vegetation **buffers** are functioning?*

Ryan replied that the city’s Environmental Technical Advisory Committee (ETAC) is actually addressing that exact question. At the last ETAC they were asked to look into “Are the city’s current **buffers** adequate to protect the marine ecosystem and meet the no-net-loss standard? If not, come up with some suggestions on what would be the appropriate size.” Does that answer your question?

What sources are they going to look to to find out the answer to the question?

Ryan responded that ETAC will be providing a bibliography that will be shared on the web site.

Libby asked Ryan to talk about what is available on the city’s website. He said that the reference list is broken down into peer-reviewed articles, gray (agency) literature, and other sources. Under peer-reviewed there are some bulkhead studies done from The Coastal Science Journal and then we also have all the PSNER (Puget Sound Nearshore Ecological Restoration project) documents. They’ve done a lot of work recently, trying to do almost a data gap analysis of

what's missing out there for research purposes and answers to questions that people are asking here. Those are linked to our website. Under "other sources" we have the work from Don Flora and a really good article on how science and policy work together from American Fisheries. We'll be adding to that as ETAC answers these questions we've asked them to look into, we'll keep putting those up on the web site. Ecology has a pretty good reference list also, of materials that they think are relevant to the SMP update, which you can link to off our web site.

*I would like to know what proportion of the shoreline is **nonconforming** in terms of total parcel – both in use and structure. In terms of use as defined by activity commercial versus residential. I understand that the commercial side is very small as a proportion. The real issue is, for me, what proportion of the Island shoreline is currently in a **nonconforming** status. What is your best estimate about that proportion as we move forward with an amended master plan?*

Josh said that most shoreline residences or some portion of the structure is **nonconforming** in some way. It may be a side yard; it may be the native vegetation zone; it may be a height limitation. Very rarely do you find a completely conforming structure. There definitely is a pretty good majority of structures out there that actually are **nonconforming** to the city's current regulations. **Nonconforming** uses, on the other hand, are probably less than 1% because most of the city's shoreline is developed with single-family residential and single-family residential is permitted in almost all of the city's shoreline jurisdictions. The few places where there is commercial development is usually already zoned for commercial. When the city incorporated back in 1991 most of those lots that were commercial along the shoreline got zoned as commercial – the use was recognized and the zoning followed suit. Again, when the city adopted the Shoreline Master Program, most of those uses were carried forward and were recognized.

*What is the significance of becoming increasingly **nonconforming** as shoreline owners? If there is really no significance, why are we making these adjustments to the regulatory framework? If essentially there's no regulatory imposition, it's as if we're waiting for something to fail or waiting for something to occur that the law will come into play. I'm not sure what that law is.*

Libby stated that the concern is that, as the city moves forward with its Shoreline Master Program update, if the number of **nonconforming** structures are increased through changes in regulation, how does that affect property owners? What kind of uses or expansion or development standards will be impacted for property owners? If it's negligible, why are the changes being made?

We hear often about stakeholders and I've heard everybody from Fish and Wildlife, Ecology, the tribes, and at one of the discussions people were bringing in Island Moms as stakeholders. What does COBI and the Planning Dept. – who are your identified stakeholders and what role do the stakeholders have in this whole process?

Libby said that the city did a public participation plan and, unlike other jurisdictions, the way we went about doing ours was getting input early before we even started developing the plan. Part of our discussion was identifying stakeholders. Within that community meeting, someone threw out Island Moms as stakeholders. The City has an accepted plan that identifies the stakeholders that were provided at that meeting. What came out of that – we have a lot of stakeholders on the Island. The shoreline is a natural resource of our city and a lot of people live on Bainbridge

Island because it's an island, so the shore is very important and how we protect it and what goes on there is of interest to a lot of citizens. Shoreline property owners, for instance, have a different interest than say Island Moms so the level of involvement will be different. The public participation was drafted to engage everybody who is interested and devised different ways depending on the level of interest for them to be engaged.

Libby thanked the attendees for participating.

5. ADJOURNMENT

The meeting adjourned at 8:13 p.m.