



May 14, 2013

The Honorable Steve Bonkowski, Mayor  
The Honorable Kirsten Hytopolous  
The Honorable Anne Blair  
The Honorable Dave Ward  
The Honorable Sarah Blossom  
The Honorable Bob Scales  
The Honorable Debbie Lester

Bainbridge Island City Council  
280 Madison Ave. N.  
Bainbridge Island, Washington 98110

Sent via email to: [pcd@bainbridgewa.gov](mailto:pcd@bainbridgewa.gov); [council@bainbridgewa.gov](mailto:council@bainbridgewa.gov)

**Subject: Comments on the Bainbridge Island Shoreline Master Program – City Council Public Hearing Draft (5/8/2013)**

Dear Mayor Bonkowski and City Council Members:

Thank you for the opportunity to comment on the draft Shoreline Master Program (SMP) Update. Futurewise is working throughout Washington State to create livable communities, protect our working farmlands, forests, and waterways, and ensure a better quality of life for present and future generations. We work with communities to implement effective land use planning and policies that prevent waste and stop sprawl, provide efficient transportation choices, create affordable housing and strong local businesses, and ensure healthy natural systems. We are creating a better quality of life in Washington State together.

### **SMP Update Provisions We Strongly Support**

We appreciate that the city has done an extensive amount of public involvement, including public meetings and citizen committees. We also appreciate that the city has incorporated some of our previous comments over the course of the public review process. The resulting Bainbridge Island SMP is a strong document that matches many of the requirements in the Shoreline Master Program (SMP) Guidelines. At the same time, we encourage you to avoid weakening the protective elements currently in the draft SMP. We especially support:

- The mitigation manual, which provides guidance on ways to compensate for impacts of development;
- The prohibition on docks in sensitive areas to protect the forage fish habitat, intact aquatic habitats, and areas adjacent to intact upland areas. This helps protect the Puget Sound from the environmental harm caused by docks;
- The protective regulations in the Shoreline Residential Conservancy environment; and
- The improvements to the marine buffers and vegetation management provisions.

However there are still important issues that need to be addressed. Our technical recommendations below reflect some remaining areas where the SMP Update does not meet the SMP Guidelines, which despite their name, are binding rules that SMP updates must comply with. We urge you to make these changes and quickly adopt the update.

## **The City has missed the December 1, 2012 Update Deadline and should Adopt the SMP Update Now**

Peer reviewed scientific studies have documented that the existing shoreline master programs (SMPs) are not protecting Puget Sound. The same studies show that updated SMPs can better protect Puget Sound and our shoreline streams. The Shoreline Management Act set a deadline of December 1, 2012 for the City of Bainbridge to adopt its updated SMP. The City subsequently requested an extension. Given the problems with the existing SMPs, we urge you to adopt the update now.

## **Recommended Improvements to the Current Proposal**

To adequately protect Puget Sound, we recommend the following improvements to the SMP Update. Please see our previous letters for the detailed reasons that the changes are important.

- *Improve the Buffer Widths.* The Shoreline Management Act and the Shoreline Master Program Guidelines require the protection of native vegetation. This is because, as *Protecting Nearshore Habitat and Functions in Puget Sound* documents, marine riparian vegetation is important to maintaining the health of Puget Sound.

In several situations the buffers are not wide enough to protect intact vegetation and Puget Sound. The majority of the shoreline segments with large areas of intact vegetation are in the Shoreline Residential Conservancy environment. One of the environment's common development patterns is very low density rural development, more similar to rural county areas than a city. A common situation in the environment is a large, well-vegetated lot with a house - thus it is considered "developed" even though the bulk of the lot has intact vegetation. If the lot were "undeveloped" it would have a 150' buffer. But since it is "developed," the entire lot gets a 115' buffer. This potential loss in intact vegetation is not accounted for in the cumulative impacts analysis, and thus, it will not protect Puget Sound.

Another concern is that the Zone 1 minimum is 30', which was established in the Herrera memo largely to minimize the number of structures labeled as non-conforming. That reasoning is no longer valid since the city did away with the issue. A 30' minimum is unable to protect most shoreline ecological functions or processes of substance. A larger width is needed - a 50' width will be much more able to provide the necessary functions and processes. This also matches the historic use of 50' in the old SMP for many areas.

We recommend that the widths in the Buffer Table for the Shoreline Residential Conservancy environment include a note that the 115' buffer only applies in the immediate vicinity of the residence (for example 50' to either side), and other areas of the lot have a 150' buffer, similar to undeveloped lot conditions. We also recommend that the 30' buffer

minimums be increased to 50.’ In Appendix A, we include the specific wording to implement these recommendations in the current version of the SMP Update.

- ***Protect Highly Functioning Aquatic Areas.*** The Priority Aquatic A and B environments go far to protect high function aquatic habitats found in lagoons, spits, and coves. However, highly functioning aquatic areas outside of lagoons, spits, and coves are not protected. While the SMP includes criteria to designate additional Priority Aquatic areas in the future, it does not designate these areas in this draft. Some of these areas are already well known and can be easily designated – particularly the Type 3 and Type 4 areas. These known areas should be designated now, then the criteria can be used to make additions later. The draft SMP goes about protecting aquatic uses by limiting uses based on the adjacent upland environment designation. However the uplands are dominated by lenient use regulations that cannot protect the highly functioning aquatic areas.

We recommend that the highly functioning aquatic areas in addition to lagoons, spits, and coves also be protected by designating them with Priority Aquatic A or B in this SMP update rather than waiting until later.

- ***Avoid Ornamental Plants as Mitigation.*** Allowing ornamental plants to serve as mitigation for impacts does not replace lost vegetation functions; because they do not replace the functions of native plants, such as providing habitat for insects that are food for fish. Ornamental plantings make a nice garden, but they do not mitigate for the losses.

We recommend that native species be required for compensatory mitigation plantings. Our recommended fix is in Appendix B of this letter.

- ***Do Not Allow Vegetation Damage for Views and Decks.*** The draft SMP allows 20% of the native vegetation to be eliminated to create marine views, even if the lot is undeveloped and the buffer intact. Doing so allows non-water-dependent uses to cause ecological damage, when the SMP Guidelines prohibit these types of development to damage Puget Sound. The better approach is in proposed 4.1.3.7 which allows pruning to accommodate views. In addition, the regulations allow clearing of Zone 1 for development, such as decks, gazebos, and boathouses, all of which could be placed outside the intact vegetation in Zone 1. These allowances allow the removal of native vegetation and will not protect Puget Sound.

We recommend that clearing for new views should be prohibited. For existing views, only pruning and trimming should be allowed for view maintenance. In addition only accesses to the water, water crossings, the on-land components of in-water structures, and water-dependent uses should be allowed in Zone 1. Storage sheds, patios, decks, and similar structures should be placed outside intact vegetation.

- ***Don't Allow Public Paved Areas to Cut Off Buffers.*** Areas upland from streets should continue to be protected by the buffer where the vegetation contributes to the health of Puget Sound, for example where there is significant intact vegetation. To illustrate the problem, the draft provision allowing roads to cut off the buffer leaves all the intact vegetation behind the Fort Ward Park street (Pleasant Beach Dr.), and the intact vegetation

behind Country Club Road unprotected. This vegetation still provides functions and habitat that help maintain water quality and the health of Puget Sound. The SMP does not account for the loss of these impacts in the cumulative impacts analysis.

We recommend that the regulation in 4.1.3.6 be limited only to situations where there is no intact vegetation, nor opportunity for its restoration. Appendix D of this letter includes our recommended changes.

- *Don't Create New Use Categories.* The draft SMP defines and applies two new use categories: Educational and Community, and Cultural and Entertainment. These new categories are not found in the SMP Guidelines, and thus do not have regulations based on the SMP Guidelines to protect Puget Sound. Neither do they implement any of the SMA use preferences. The SMP guidelines do not allow jurisdictions to create new use categories in order to avoid required provisions of the guidelines. An easy solution is available: each of the possible uses in the new categories has an equivalent in the Commercial (i.e. offices, event facilities, entertainment facilities, etc.), Industrial (i.e. government maintenance yards, etc.), or Recreational (i.e. amusement or entertainment facilities) categories in the SMP Guidelines.

We recommend incorporating the uses in these new categories into the existing categories, and eliminating the new categories. If new categories are still desired, the City will need to do additional work to create use limits and regulations that implement the SMA preferences similar to the normal categories in the SMP Guidelines.

- *Limit Trails in Aquatic Areas.* Trails are allowed in many locations (roads, public access, parks, etc.), and often in the aquatic environments. We are concerned that trails will be allowed in aquatic environments (i.e. in the water) as boardwalks. These have the same impacts as docks and piers, but multiplied by their much larger scale. They should be prohibited in any aquatic environment, especially the Priority Aquatic environments. As a comparison, most boating structures are not allowed in the Priority Aquatic environments.

We recommend that trails not be allowed in the Aquatic and Priority Aquatic environments. If they are to remain, there should be clarification in the table and regulations that boardwalks are not allowed. Our recommended amendment is in Appendix E of this letter.

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### **Do not Further Weaken the SMP Update**

The SMP includes many compromises already, such as allowing the clearing of 20% of Zone 1 to maintain an existing marine view, as well as others. We urge you to maintain the important protections in the SMP Update to protect the health of the Puget Sound.

Thank you again for the opportunity to provide comments. Please contact Dean Patterson at [dean@futurewise.org](mailto:dean@futurewise.org) or 509-823-5481 if you require additional information.

Sincerely,

A handwritten signature in black ink that reads "Dean G. Patterson". The signature is fluid and cursive, with a long horizontal stroke at the end.

Dean Patterson, Shoreline Planner  
Futurewise

cc: Bainbridge Island Planning and Community Development

## Appendix A: Recommended Improvements to the Buffer Standards

Amend Table 4-3 16.xx.xxx, Shoreline Buffer Standards, on page 64 to read as follows with our additions underlined and our deletions struck through.

Table 4-3 16.xx.xxx Shoreline Buffer Standards Table					
Additional Use restrictions for BIMC Titles 17 and 18 may apply					
SHORELINE USE	UPLAND DESIGNATION				
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban
<p>The shoreline buffer consists of two management areas Zone 1 and Zone 2. Zone 1 is located closest to the water; it is a minimum of <u>50</u> <del>30</del> feet in all designations, <del>except in Natural and Island Conservancy the minimum is 50'</del> and expands to include existing native vegetation. Zone 2 is the remaining area of the shoreline buffer. See figure XXX</p>					
<p>Category A: Low bank lots with 65% Canopy Area in Zone 1, OR spit/barrier/backshore, marsh lagoon, or rocky shores.</p> <p>Category B: Low bank with less than 65% Canopy Area in Zone 1, or lots with a depth &lt; 200' or High Bluff.</p> <p><i>Geomorphic Class (i.e. low bank, High Bluff) shall be determined by Battelle 2004 Nearshore Characterization and Inventory.</i></p>					
<b>Developed lots</b>					
Category A	200'	150''	115' <sup>3</sup>	75'	30'
Category B	200'	100'[1]	75'[1]	50'[1]	30 [1]
<b>Undeveloped lots</b>					
	N/A	150'	150'	75/150'[2]	30'

1. For High bluff properties the greater distance of 50' from the top of the bluff or the standard shoreline buffer.
2. If adjacent to the Priority Aquatic designation then 150' is required.
3. For lots larger than a third of an acre in the Shoreline Residential Conservancy environment the 115" buffer only applies within 50 of either side of a residence, the other areas of the lot have a 150 foot wide buffer.

Amend proposed 4.1.3.6(3)(a) on page 80 to read as follows with our additions underlined and our deletions struck through:

3. The Shoreline Buffer consists of two zones. The depth of each of the two zones within the Shoreline Buffer is determined as follows:
  - a. Zone 1 shall extend from the ordinary high water mark (OHWM) a minimum of 50 ~~30~~ feet, or to the limit of existing native vegetation whichever is greater. The native vegetation limit is determined through a site-specific analysis of existing conditions, and in no case shall Zone 1 be greater than the depth of the Shoreline Buffer.

## Appendix B: Recommended Requirement to Use Native Vegetation in Buffers and Site Specific Vegetation Areas

Amend proposed 4.1.3.5(5) on page 78 to read as follows with our additions underlined and our deletions struck through.

5. New vegetation planted in the Shoreline Buffer or Site-specific Vegetation Management Area, unless otherwise provided for in zone-specific requirements Section 4.1.3.6 (6), shall be ÷
  - a. ~~Native~~ native species using a native plant-community approach of multi-storied, diverse plant species that are native to the Central Puget Lowland marine riparian zone.
  - b. ~~Other plant species may be approved that are similar to the associated native species in diversity, type, density, wildlife habitat value, water quality characteristics, and slope stabilizing qualities, excluding noxious/invasive species provided that, as submitted by a qualified professional, it is demonstrated to the satisfaction of the Administrator that the selected ornamental plants can serve the same ecological function as native plant species.~~

## Appendix C: Recommendations on Pruning for Views

Amend 4.1.3.3(9) on page 75 to read as follows with our additions underlined and our deletions struck through.

9. Selective vegetation ~~clearing~~ pruning and trimming for views should be allowed ~~for new development and~~ to maintain views from existing residences when slope stability and ecological functions and ecosystem-wide processes are not compromised. Trimming and pruning are generally preferred over removal of native shoreline vegetation and are allowed for views from both new and existing development.

Amend 4.1.3.8 on pages 84 – 86 to read as follows with our additions underlined and our deletions struck through.

Minor clearing, grading or construction may be allowed within the Shoreline Buffer or Site-specific Vegetation Management Plan for a residential development with approval of the Administrator pursuant to Section 4.1.3.7(1)(a), and only for the following activities as prescribed below and pursuant to Section 4.1.4, Land Modification:

1. Maintenance of existing residential landscaping is allowed subject to Sections 4.1.3.5(8) and 4.1.3.7. Existing landscape areas may be retained within the Shoreline Buffer or Site-specific Vegetation Management Area. However, any changes from the existing landscape to a different landscaping use or activity will require that the modified area comply with the provisions of 4.1.3, Vegetation Management, and the intent of providing native vegetation to maintain ecological functions and processes.

2. One (1) hand installed pervious trail to the shoreline not more than four (4) feet in width, which may include hand installed steps, and shall be designed to minimize environmental impacts. No significant trees shall be removed. The trail may be wider when required for handicapped or public access. For single-family residential development vegetation trimming is limited to two (2) feet on either side of the trail.
3. Non-habitable structures appurtenant to a single-family use, such as a boat house, deck/patio and/or stairway may be allowed consistent with the following standards, except that all structures are prohibited in Zone 1 ~~when upland of a Priority Aquatic – Category A designation.~~
  - a. For Site-specific Vegetation Management Areas, the total square footage of all buildings or structures must not exceed 300 square feet in area.
  - b. For Shoreline Buffer areas, the total square footage of all buildings or structures must not exceed 400 square feet or 10% of the Shoreline Buffer area, whichever is less.
  - c. ~~For Shoreline Buffer areas, only 10% of the total allowed square footage or 300 square feet, whichever is less, can be located in Zone 1, except when upland of Priority Aquatic B, the total allowable square footage is 5% of Zone 1 or 150 square feet, whichever is less.~~
  - d. ~~All structures must be designed to not significantly impact views from adjoining property primary buildings.~~
  - de. All structures must meet the following standards:
    - i. Only water-related structures are allowed within ~~50~~30 feet of the OHWM or in Zone 1, including a boathouse, permeable deck, boat storage, or staircase.
    - ii. Shall not exceed 12 feet in height above existing grade.
    - iiiv. Decks and/or patios shall be permeable and shall not exceed 30 inches in height above existing grade.
  - 4iii. Stairways may be allowed in Zones 1 and 2. Stairways shall not exceed 250 square feet and are not included in the total square footage allocations prescribed in subsections a through c above. Stairways shall conform to the standards of the International Residential Building Code as adopted in BIMC Chapter 15.04. Larger stairways serving a single-family residence may only be allowed through approval of a Shoreline Variance.
    - a.A. As an alternative to a staircase larger than 250 square feet and to reduce environmental impacts, a tram may be allowed without a variance.
4. View Maintenance – Single-family Residential Only. Shoreline residential use and development shall use all feasible techniques to maximize retention of existing native

shoreline vegetation within the Shoreline Buffer and the Site-specific Vegetation Management Area.

- a. Limited ~~removal~~ trimming and pruning of existing trees or vegetation located on the same property as a single-family residence may be allowed for maintenance of a pre-existing view from the primary structure, ~~or to establish a view for a new primary structure~~ provided the following are met:
  - i. The applicant demonstrates to the satisfaction of the Administrator that the vegetation ~~removal~~ trimming and pruning is the minimum necessary to re-establish or ~~establish~~ maintain a view of the water similar to that enjoyed by other residences in the area ~~and that pruning methods are not sufficient to provide an adequate view of the water similar to that enjoyed by other residences in the area;~~ and
  - ii. Existing significant native trees are not removed within the Shoreline Jurisdiction, unless exempt; ~~and~~
  - iii. ~~In no instance, including accounting for other approved alterations as provided in Section 4.1.3, shall vegetation removal exceed twenty (20) percent of the required Shoreline Buffer area or Site-specific Vegetation Management Area or reduce the vegetation canopy coverage to less than 65% in the Shoreline Buffer or Vegetation Management Area.~~
    - A. ~~Vegetation removal occurring adjacent to the shoreline shall also be limited to fifteen (15) linear feet of the water frontage; and~~

#### **Appendix D: Recommendations on where Streets should cut off Buffers**

Amend proposed 4.1.3.6(1)(c) on page 80 to read as follows with our additions underlined and our deletions struck through.

- c. As determined by the Administrator, buffers do not extend beyond an existing public paved street or an area which is determined by the Administrator to be functionally isolated from the shoreline or critical area because the area does not have significant vegetation and it is not possible to restore vegetation on that site. In these limited instances the no net loss of shoreline ecological function and processes still apply to properties within the shoreline jurisdiction.

## Appendix E: Recommended Improvements to Limit Trails in Aquatic Areas

Amend Table 4-1, Shoreline Use and Modification Activity Matrix, on pages 39 and 40 to read as follows with our additions underlined and our deletions double struck through. They city may want to consider only listing trails once to reduce the length of the table.

Table 4-1 Shoreline Use and Modification Activity Matrix									
"P" = Permitted Use			"X" = Prohibited Use			"A" = Accessory Use			
"C" = Conditional Use			"#" = Same as Upland Property			"CA" – Conditional Accessory Use			
SHORELINE USE	UPLAND DESIGNATION						AQUATIC DESIGNATION		Use Specific Standards
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban	Aquatic	Priority Aquatic		
							A	B	
<b>Transportation</b>									
<b>Roads</b>									
Existing Road repair	X	P	P	P	P	X	X	X	
New Arterials	X	X	X	X	X	X	X	X	
New Highways	X	X	X	X	X	X	X	X	
New Secondary Roads	X	X	X	X	X	X	X	X	
Trails	P	P	P	P	P	<del>#</del> <u>X</u>	<del>#</del> <u>X</u>	<del>#</del> <u>X</u>	
Float Plane Facilities and Services	X	X	X	X	C	#	X	X	

Heliports	X	X	X	X	X	X	X	X	
Additional Bridge to Bainbridge Island	X	X	X	X	X	X	X	X	
Parking (primary)	X	X	X	X	X	X	X	X	

Table 4-1 Shoreline Use and Modification Activity Matrix									
"P" = Permitted Use			"X" = Prohibited Use			"A" = Accessory Use			
"C" = Conditional Use			"#" = Same as Upland Property			"CA" = Conditional Accessory Use			
SHORELINE USE	UPLAND DESIGNATION						AQUATIC DESIGNATION		Use Specific Standards
	Natural	Island Conservancy	Shoreline Residential Conservancy	Shoreline Residential	Urban	Aquatic	Priority Aquatic		
							A	B	
<b>Public Access Facilities</b>									
Public Ferry Terminal Facilities and Services	X	X	X	X	C [10]	#	X	X	
Railroads	X	X	X	X	X	X	X	X	
Trails	P	P	P	P	P	# <u>X</u>	# <u>X</u>	# <u>X</u>	
<b>Utilities &amp; Telecommunication</b>									
Utilities (primary)	X	X	C [11]	C [11]	C [11]	#	X	X	
<b>Signs</b>									

Primary	X	X	X	X	X	P	X	X	
<b>Accessory Structures</b>									
<b>All Uses</b>									
Potable Water Wells	X	A	A	A	A	X	X	X	
Signs	X[20]	X[20]	P	P	P	P	X[20]	X[20]	