

August 20, 2013

Barbara Nightingale
Washington State Department of Ecology
Northwest Regional Office
3190 – 160th Avenue SE
Bellevue, WA 98008

Re: City of Bainbridge Island Draft SMP

Dear Ms. Nightingale:

As you review the City of Bainbridge Island's proposed SMP, please consider the Washington State Legislature's SMA policy statement¹ and the rules in Part III of the Guidelines.²

From the beginning, the SMA was intended to strike a balance between preservation and growth. It was a compromise that didn't please everyone, but did provide a workable middle ground that served the public interest. As the University of Puget Sound Law Review noted, "...its birth in popular referendum (made) it doubly certain to reflect a balancing of conflicting interests."

More than forty years later, the struggle between these competing interests continues, perhaps nowhere more so than on Bainbridge Island. So far, advocates for stricter environmental regulations have prevailed and the resulting Draft shows an almost willful disregard for property rights. During public hearings this SMP has been described many ways, both positive and negative, but never as balanced.

When buffer regulations are written so that owners of existing single family residences will be prohibited in the future from using a significant portion of the property for any purpose whatsoever, and when even normal yard maintenance will be illegal without the prior approval of the City, we are a long way from the middle ground that the legislature envisioned.

The SMA gives neither local jurisdictions, nor the DOE, the option of selecting which policies to implement. Under the Guidelines, the DOE has an obligation to review local master programs for compliance with all of the policies. This includes not only those policies designed to ensure protection of the shoreline, but also those that allow for its reasonable utilization. If the pendulum of competing interest swings too far in one direction or the other, the department has the responsibility, under its approval authority, to ensure that the imbalance be corrected.

This is the now case with Bainbridge Island's draft SMP. Although many of the sections are reasonable as currently written, others are so far reaching and restrictive as to effectively preclude reasonable utilization of shoreline property. This program simply fails to provide the "recognition and protection" of property required by the policy.

During the public hearing and comment process, many residents offered thoughtful suggestions for improvements that would better address specific local conditions and provide a more balanced framework for managing the island's shorelines. Although largely ignored in the final draft, this input remains available and would provide an excellent starting point for the reexamination of the

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more contentious sections in this program (conservancy zone mapping, non-conforming structures, buffer regulations, native vegetation requirements, bulkhead repair, etc.).

I urge you to send this program back to the City of Bainbridge Island for further work. This SMP should reflect the middle ground that a majority of Bainbridge residents would consider basically fair and worthy of support. Without broader support, it is hard to see how this program will be successful over the long term. Indeed, rather than providing a roadmap for responsible stewardship of the island's shorelines, this program is more likely to steer us toward a future of endless litigation. The island should focus its energy and resources on dealing with proven threats to Puget Sound, like polluted runoff from the city's roads and parking lots, instead of hiring lawyers to try to defend the indefensible in court.

Thank you for considering these comments.

Sincerely,



Michael Whalen
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Bainbridge Island, WA 98110

¹ "The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order 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."

- RCW 90.58.020

Legislative Findings – State Policy Enunciated
(Emphasis added)

² "The act's policy of protecting ecological functions (and) fostering reasonable utilization...encompasses the following general policy goals:

(h) Recognizing and protecting private property rights (RCW90.58.20)

(i) Preferential accommodation of single family uses (RCW 90.58.20)"

-Title 173 WAC, pages 123 & 124