

# BAINBRIDGE ALLIANCE FOR PUGET SOUND

To the Bainbridge Island Planning Commission and City Council:

August 11, 2011

We were pleased that some of the members of the Bainbridge Alliance for Puget Sound were included in the recent citizen group that reviewed proposed changes to the vegetation management section of the city's Shoreline Master Program. We support the City's citizen committee approach to this process because we think it has succeeded in attaining its main goal: using a collaborative process to develop policies with the right mix of protections for the shoreline environment, public access, and private property rights.

We would like to address three overarching issues.

## 1) Nonconforming Buildings

We support continuance of the term "nonconforming".

Like a red cape before a bull, the term nonconforming stirs fear among many shoreline property owners who've been told it robs them of value. If deleting the term would restore calm, we'd be all for it, especially because we believe the fear is groundless (evidenced by how frequently shoreline properties are bought and sold, historically increasing in value over time). But eliminating "nonconforming" would just add to confusion and expose the city to more lawsuits. If buildings that do not meet current regulations aren't "nonconforming," what are they? And what would happen if they burned to the ground? Unless the shoreline plan gives these properties a label and says what that means, wouldn't they be treated just like all others, subject to current setbacks? That's the irony: The concept of "nonconforming" actually protects property owners by exempting them from some of the newer, tougher requirements; it does not rob them of value.

## 2) Vegetation Buffers

We have concerns about how the Plan addresses the buffer issue.

Reviewing the literature on buffers we see a recommendation of using a range of types to address several different ecological functions. This suggests that in order to protect and maintain **all** shoreline functions i.e., the ecological health of marine shorelines in Puget Sound, not just the water quality function, buffers need to be wider than 30 feet.

We will soon be providing more details regarding our position about how buffers should be regulated.

## 3) Native Vegetation

We support the emphasis on the use of native vegetation.

We see clear benefits in maintaining and, where feasible, increasing the use of native vegetation. Native vegetation is not only adapted to our natural rainfall and soil conditions but also has flowering and fruiting cycles timed to the lifecycles of native fauna. We think the use of native vegetation should be required. Maintaining and planting native vegetation in the buffer is consistent with the approach in the Department of Ecology's SMP Guidelines as well as with other SMPs for jurisdictions all around Puget Sound. Although the approach of allowing alternatives to planting native species was in our previous SMP, we believe that continuing to provide alternatives to using native plants adds an additional and unnecessary burden on both the applicant and the city staff. Lastly, we would strongly discourage this approach as it could set an unlikely precedent that may have undesirable consequences for other jurisdictions. We are not aware of any other SMPs

that contain such an approach and do not believe it is consistent with the Washington Department of Ecology's SMP guidelines.

Beyond these overarching points, we would like to address some specifics related to the draft Vegetation Management Zones section.

Draft Vegetation Conservation Policies, goal 3: Although some of our members originally supported allowing alternatives to native vegetation where owners can demonstrate that non-native plants will provide the same ecological functions, including this policy was a compromise reached in the workgroup and not a unanimous one at that. It was supported by some with the hope that giving property owners more flexibility would encourage them to re-landscape in ways that provide richer habitat near the shoreline. Others believed in sticking with a strict requirement for native vegetation.

If the decision is made that property owners are given the flexibility to use some non-native plants along the shoreline, the city must provide a solid monitoring program to ensure that the selected non-native plants do, in fact, provide equivalent habitat values.

Draft policy 5: Should read, "Encourage the restoration or enhancement of native vegetation through incentive programs." Non-native vegetation is a compromise, not something to encourage via incentives.

Draft policy 7: It's fine to say the proposed setbacks "must protect ecological functions of the shoreline and should consider (existing) land use patterns." But why have a policy saying setbacks should minimize how many properties are non-conforming? That's like saying we can just go on doing more of what we've been doing. That is not the same as using the "no net loss" standard, which means we need to stop continually whittling away at what is left of the shoreline habitat.

### Regulations — General

Overall - A common, re-appearing error is the use of the wording "native trees and shrubs" without also including native ground cover. We believe this was an inadvertent error and suggest that what was intended was to include **all** native vegetation, not just trees and shrubs. We support including native ground cover where necessary.

Section 1: We support the use of terms that everyone can understand. As one of the council members suggested at the first joint meeting about the draft plan, we keep stumbling over the labels and acronyms for the various parts of the shoreline buffer. This is especially true of MSZ, SSB and RPZ. Perhaps "waterline" and "landward" and other simple and clear terminology could be used. "Outer marine shoreline zone" is particularly confusing, since it refers to the more inland section.

Section 3: We like the wording in the introduction and strongly urge you to retain the concept of "a native plant community approach of multi-storied, diverse species native to the Central Puget Sound region."

Section 3(a): This section should be deleted. However, if it is retained, we caution that a significant percentage of ornamental plants wind up being invasive, even though they originally did not appear to be so. We also note that it has not been demonstrated that non-native plants do or do not provide all of the functions equivalent to those of native plants. The Administrator must use a high bar, perhaps with the assistance of WSU, to determine which plants are equivalent.

Section 1(b)ii: If this sentence is still in the draft, delete it (as we discussed in a committee meeting): “Areas which may require the use of fertilizers and/or pesticides, as allowed in Water Quality Section XX, shall be located as far landward of the RPZ as feasible.” Even one of the most vocal property-rights representatives on our committee stated that shoreline owners shouldn’t be allowed to use pesticides on their properties. If pesticides and fertilizers are needed so non-native plants can thrive, they aren’t the right plants for a shoreline buffer. Therefore, we have concerns about allowing the use of pesticides and fertilizers in the RPZ.

### Vegetation Alteration in the Standard Shoreline Buffer — Public Park Development

We question imposing so many specific requirements on parks. Because shoreline parks are limited and offer non-shoreline owners a rare chance to access the water, we believe some requirements on parks should be more relaxed than those on individual property owners. We question why the view from a single house should trump the public’s right to enjoy views from a building in a park?

We support the idea that shoreline parks must be developed in accord with a publicly accessible design process and that the plans must meet the no-net-loss standard with mitigation sequencing.

### Regulations — Location and Design Standard Shoreline Buffer

Section 2, 2<sup>nd</sup> bullet point: In the second sentence, change the purpose of the GIS database from “determine the extent” to “track” existing native vegetation.

Section 3(iv), final sentence: When a property owner wants to set aside buffer widths and come up with an independent plan, we think it is essential for the city to obtain an expert evaluation of the validity of the plan. The final sentence should read “shall,” not “may, at his/her discretion.”

Section 4: In general, we strongly support the concept of keeping or restoring native trees and shrubs. Since there were once natural grasslands and areas with other low-lying vegetation along the Bainbridge Island shoreline, the plan should require the use of appropriate native plants for all layers of vegetation including native ground covers.

Section 4, 2<sup>nd</sup> bullet point: While the city may conclude that gaining 65 percent coverage of the shoreline with native trees, shrubs and ground covers is good enough, this certainly should not be the limit, or even the goal. We suggest adding “at least” before each reference to 65 percent coverage.

Section 4, 3<sup>rd</sup> bullet point: We think that replacing square footage with new plantings on a 1-to-1 ratio does not meet the “no net loss” standard. It will take decades for new trees to achieve the same habitat functions as any mature ones being removed. At a minimum, the wording of this section should state that a building may go into an expanded RPZ only if there is no other feasible option. The replacement ratio should depend on the quality of the habitat being disturbed. We support the requirement of planting the replacements next to the RPZ.

Section 5(i): Should read “at least 65 percent native tree and native shrub canopy.” We like the priority list, but it begs the question: After 65 percent of the RPZ is covered with native trees or shrubs, shouldn’t there be the option of planting the remaining 35 percent OR moving on to the more landward zone?

Section 5(iii) — For clarity and to make sure the mitigation helps the shoreline, we suggest changing “On the applicants property outside of the SSB” to read: “Elsewhere on the applicant’s property, but within the 200-foot shoreline jurisdiction.”

Section 6.4 Shoreline Structure Setback Line, 1<sup>st</sup> bullet point: For clarity, we suggest changing this to read: “Where there are no primary residential buildings on abutting properties, the standard setbacks apply.” We think it is confusing to say, “the shoreline structure setback does not apply” when in fact it’s just the exception that does not apply.

#### Clearing and Grading (Land Modification)

| Section B, 1<sup>st</sup> bullet point: We especially support the prohibition on speculative clearing and grading. Please retain wording that allows these activities only in conjunction with an approved development plan.

| We hope you find these comments helpful and we thank you in advance for your consideration of our concerns.  
| Sincerely,

| Lisa Macchio

| Frank Stowell

| Mark Dawson

| Bruce Taft

On behalf of the Bainbridge Alliance for Puget Sound