

Theresa Rice

From: Eric Rehm [erehm@earthlink.net]
Sent: Wednesday, February 01, 2012 6:01 PM
To: PCD
Cc: Council; Theresa Rice; Ryan Ericson; Libby Hudson; CityClerk; 'Bruce Taft'; 'Marcia Lagerloef'; Mark Dawson; 'Elise Wright'; David McCaughey; Jeanne Huber; Eric Rehm; ceschmid@worldnet.att.net; 'Lisa Macchio'; 'Frank Stowell'
Subject: BAPS Comments on SMP Vegetative Buffers and Environmental Impacts
Attachments: BAPS PC buffer comments -final.pdf

Bainbridge Island Planning Commission,

Please find attached comments regarding Vegetative Buffers and Environmental Impacts from Bainbridge Alliance for Puget Sound (BAPS).

Bainbridge Alliance for Puget Sound is a local affiliate of People for Puget Sound. Among our members are marine scientists, oceanographers, environmental biologists, and members of the Task Force and each of the Citizen Workgroups to the SMP.

We respectfully submit these comments on the subject topics for your consideration, and ask that they be made a part of the public record.

Regards,

Eric Rehm (SMP Workgroup on Shoreline Modifications)
206.354.3459

Cc:
Bainbridge Island City Council, Ryan Ericson, Libby Hudson, Theresa Rice, CoBI City Clerk

BAPS Members:
Jeanne Huber (SMP Workgroup on Vegetation)
Elise Wright (SMP Workgroup on Vegetation)
Lisa Macchio (SMP Workgroup on Vegetation)
Mark Dawson (SMP Workgroup on New and Existing Development)
Marcia Lagerloef (SMP Workgroup on Shoreline Modifications)
David McCaughey (SMP Workgroup on Shoreline Modifications)
Charles Schmid (SMP Workgroup on New and Existing Development)
Frank Stowell
Bruce Taft (SMP Workgroup on Shoreline Modifications)

To the Planning Commission:

Bainbridge Alliance for Puget Sound is a local affiliate of People for Puget Sound. Among our members are marine scientists, oceanographers, environmental biologists, and members of the Task Force and each of the Citizen Workgroups to the Shoreline Master Program (SMP) Update.

In addition to our combined experience, in preparing our comments regarding Vegetative Buffers and Environmental Impacts, we have reviewed DOE's SMP Handbook Chapter 11, ETAC's report on Buffer Recommendations, the Herrera Memo "Documentation of Marine Shoreline Buffer Recommendation" and comments from Futurewise and People for Puget Sound (January 2012).

We respectfully submit these comments on the subject topics for your consideration, and ask that they be made a part of the public record.

I. General Comments

We are struck by the high overall quality of the efforts brought to revising our SMP, from the underlying document dating from 1996 to the guidance and attention brought to the revisions by Planning Department staff (Ryan Erickson and Libby Hudson), the Citizen Advisory Committees and the Planning Commission. Our proposed SMP is cited by the DOE in their guidance handbook, and our proposed revisions are comparable to those of other jurisdictions cited there.

We especially appreciate the painstaking work of the Planning Commission in reviewing the proposed revisions to the SMP on what has been an accelerated timeline, and trust that your recommendation(s) will be adopted by the full City Council.

II. Vegetative Buffer Widths

A. Recommendations:

1. Retain the dual zone buffers recommended in the current SMP update.
2. Increase the minimum depth of Zone 1 from 30' to 50' (the depth specified in our existing SMP) to protect important ecologic functions.¹
3. Affirm the necessity of protecting upland native vegetation throughout the 200' Shoreline Jurisdiction.

B. Comments

Science-based buffers and setbacks are essential for protecting shoreline ecological functions and are needed to achieve the Shoreline Management Act's policy of "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."ⁱⁱ

We strongly support using dual buffer widths as a mechanism for protecting intact native vegetation throughout the entire shoreline zone.

When the SMP Update Workgroup for the vegetation management plan was formed, everyone at the table including the homeowner representatives agreed that protecting native vegetation was very important. But some members said it wasn't reasonable to have wide native vegetation buffers on lots where the land was cleared long ago, especially if the standard is "no net loss" from today's conditions. They said it was very important not to have a "one size fits all" solution. This thinking is also supported by the WA Department of Ecology.ⁱⁱⁱ The dual buffer approach, while more complicated to administer than a single buffer width, goes a long way toward protecting natural functions and ecological features without imposing undue burdens on others.

Accordingly, we support the two zone buffer system, consisting of a Riparian Protection Zone (a.k.a. RPZ, Zone 1, or native vegetation zone) that maintains shoreline ecological functions and a Marine Shoreline Zone (a.k.a. MSZ, Zone 2, or marine shoreline buffer) that provides further important protection for shoreline functions and protects Zone 1. As currently designed, Zone 1 can be expanded to include any existing native vegetation on site, up to 150', depending on shoreline designation. We recommend that this regulation be retained, citing recommendations from the DOE guidelines.^{iv}

We agree with ETAC that "there is substantive evidence that human activities can impact ecological functions of riparian zones and the marine nearshore"^v and that our SMP Update should apply the precautionary principle by "going beyond absolute minimum buffers to protect ecological functions."

Because the law requires the City to accomplish no net loss, we should be extremely cautious about choosing to establish buffers that are the absolute minimum that the state will approve. Minimums leave no margin for error. It is a mistake to assume minimum buffers will support no net loss. As ETAC's white paper put it, "It can be argued that from the goal of protecting marine nearshore and riparian functions, a larger burden of proof should be placed on justifying lower buffer ranges."

ETAC went on to note that the Herrera buffer recommendations^{vi} for the RPZ (Zone 1) "are within the low to mid range of those values identified for different buffers in the scientific literature, and are similar in size (if not smaller) than buffers defined for other jurisdictions."^{vii} ETAC also stated "It can be argued that, from the goal of protecting marine nearshore and riparian functions, a larger burden of proof should be placed on justifying lower buffer ranges."

Accordingly, we recommend increasing the minimum depth of the RPZ (Zone 1) from 30' to 50' (the depth specified in our existing SMP) to protect important ecologic functions from any retreat.

Finally, we believe that native vegetation, regardless of its location within the 200' Shoreline Jurisdiction, supports ecological functions and should be protected from development and enhanced if possible. We support the advice provided by Futurewise that "development shall compensate for impacts to all existing native vegetation areas to meet the vegetation management standards of No Net Loss of ecological function"^{viii}.

III. Environmental Impacts

A. Recommendations

1. Ensure there is clarity throughout this section regarding use of the term "mitigation" when referring to the entire mitigation sequence (avoidance, minimization, compensation).^{ix}
2. Specify use of the term "compensatory mitigation" rather than the more general "mitigation" when replacement of ecological function due to development impact is necessary.^x
3. We support the current SMP requirement that an environmental monitoring plan shall be a part of any mitigation proposal. We further suggest that outside opinion shall confirm adequate completion and maintenance of required compensatory mitigation.
4. Specify the basis or criteria under which the Administrator can waive any of the requirements under section 4.1.2.9 of the Environmental Impacts section.

B. Comments

1. Use of the term "Mitigation":

The no-net-loss requirement is accomplished using the concept of mitigation sequencing,^{xi} whereby the first task of mitigation is **avoidance** of impacts, the second task is **minimization** of impacts, and the third is **compensation** for remaining impacts.

The Bainbridge SMP frequently includes the word "mitigation", especially in the Environmental Impacts section, but in other places as well. Unfortunately, the word "mitigation" is often used in instances that describe compensation. The use of the word "mitigation" in the current draft of the SMP Update should be carefully reviewed throughout the document and replaced with the appropriate term (avoidance, minimization, compensatory mitigation) where necessary. See footnote xv below as a starting point.

2. Monitoring:

A critical aspect of the mitigation process is the determination that the mitigation was undertaken and that it has the anticipated value. This requires commitment to the concept of the project and its full implementation. Section 4.1.2.8 of the Environment Impact section of the SMP addresses this issue. The text wisely stipulates that success of the mitigation project should require periodic monitoring to ensure that the desired benefits are realized. It is very important that outside critical opinions are sought to verify that the results are clear and robust. The SMP suggests that periodic monitoring be carried out over five years. The environmental monitoring scheme should be a part of the mitigation proposal - not specified beforehand in general terms. With the inclusion of these precautions, the quality of the mitigations will be improved.

3. Waiving of requirements:

Section 4.1.2.9 of the Environmental Impacts regulations includes a statement that the Administrator can waive any of the requirements under this section, without detail of the basis or criteria that will be used for such a decision. In reviewing sample plans from other jurisdictions, we note that Whatcom County, among others, has specified circumstances in which buffer requirements may be reduced or averaged by the technical administrator.^{xiii} We believe our SMP will be strengthened, and clarity added for both the community and the planning department if details regarding under what circumstances requirements can be waived are added to Section 4.1.2.9.

IV. Nonconforming Properties:

A. Recommendation:

1. Retain appropriate use of the term "nonconforming" in the SMP update.

B. Comments:

The recommendations previously made by the SMP Task Force and the Citizen Advisory Groups, along with the changes made by Planning Commission, are fair and appropriate. Properties that are nonconforming should remain categorized as such. Because there are nonconforming properties all over the Island for a variety of reasons, it would be unfair to allow a special category for shoreline property owners who may have properties that are nonconforming in other respects than buffers and setback widths. The addition of a "special" conforming/nonconforming category will unnecessarily complicate both the SMP and the recent BI Code update, both of which have been undertaken to provide consistent guidance on these complex issues.

Thank you for your attention to our comments, and your ongoing work on the SMP Update.

Sincerely,

Bainbridge Alliance for Puget Sound

Jeanne Huber (SMP Workgroup on Vegetation)
Elise Wright (SMP Workgroup on Vegetation)
Lisa Macchio (SMP Workgroup on Vegetation)
Mark Dawson (SMP Workgroup on New and Existing Development)
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References

ⁱ WA State Department of Ecology (DOE), SMP Handbook, Chapter 11, Vegetation Buffers and Setbacks, page 7: “Recent scientific studies show that 25-foot setbacks do not protect most ecological functions and will not meet the no net loss standard of the SMP Guidelines.” November 28, 2011

ⁱⁱ RCW 98.58.020

ⁱⁱⁱ DOE SMP Handbook, Chapter 11, p. 30: “In most cases, a ‘one-size’ buffer applied throughout shoreline jurisdiction will not reflect shoreline ecological functions and local shoreline conditions. Shoreline conditions and ecological functions likely vary enough for most shorelines within local government boundaries that more than one buffer or setback with vegetation conservation will be needed to protect ecological functions.”

^{iv} DOE SMP Handbook, Chapter 11, pp. 9-10.

^v ETAC 2011. Memorandum to Planning Commission and City Council on “Riparian Protection Zones and Buffers, August 4, 2011

^{vi} Futurewise 2012a, document regarding “Bainbridge Island Shoreline Master Program Update” from Dean Patterson (Futurewise) and Heather Trim (People for Puget Sound) to Michael Lewars, Chair, BI Planning Commission, January 10, 2012.

^{vii} ETAC 2011. Memorandum to Planning Commission and City Council on “Riparian Protection Zones and Buffers”, August 4, 2011.

^{viii} Futurewise 2012a, op. cit.

^{ix} Futurewise 2012a, op. cit., When the full concept of mitigation and the sequence is discussed, the word mitigation should be used. When describing the instance of replacing lost functions, the word “compensation” or “compensatory mitigation” should be used to clearly communicate the need to replace lost functions from impacts.

^x Futurewise 2012a, op. cit., specifically:

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- The most important examples from the Environmental Impacts section are the following, with recommended edits:
 - In the applicability paragraph; "All shoreline development and activity shall be located, designed, constructed, and managed in a manner that avoids, minimizes and/or compensates for adverse impacts to the environment."
 - In Impact Analysis and No Net Loss Standard #1. In this section, the same issue as above is present: "... in a manner that protects ecological functions, and ecosystem wide processes and avoids, minimizes and/or compensates for adverse impacts..."
 - Also in standard #1. This includes a good list of common ways to avoid and minimize impacts, but it doesn't include any statements to compensate for the impacts. We recommend adding: "(f). Provide compensatory mitigation for any remaining impacts."
 - Impact Analysis and No Net Loss Standard #3. In this section, the standard refers to the use of mitigation options found in a table for residential projects. These are compensatory mitigation options, but the standard doesn't mention this. We recommend: "To compensate for anticipated impacts and meet the no net loss standards ... supplemented as follows..." "To mitigate compensate for anticipated impacts and meet the no net loss standards in 1 and 2 above, an applicant for a residential development in the Urban and Shoreline Residential environments..." (to) "compensate for impacts to the more intact shorelines that are common on Bainbridge Island."

^{xi} WAC 173-26-201(2)(c) under Basic Concepts and Protection of Ecological Functions; and implemented in WAC 173-26-201(2)(e) under Basic Concepts, Environmental Impact Mitigation.

^{xii} DOE SMP Handbook, Chapter 11, page 38.