

**Erika Conkling**

---

**From:** 'vikki Littleman' <vlittleman@aol.com> [vlittleman@aol.com]  
**Sent:** Friday, April 30, 2010 4:00 PM  
**To:** Council  
**Cc:** vlittleman@aol.com  
**Subject:** Council Meetings

To: City Council Members  
City of Renton

From: Vikki Littleman  
3805 Lk Wa Blvd N  
Renton, Wa 98056

I'm writing to express my concerns with some of the content and pace of Renton's response for the Shoreline Management Plan (SMP). I have only recently been informed of the proposed changes and am very concerned about how this impacts my home as well as the lack of communication from the Planning Committee to get input and understanding of the waterfront property owners concerns.

I have lived in my waterfront house for the past 30 years and have remodeled extensively always obtaining appropriate City of Renton permitting.

The New SMP considers some aspects of my property in non conformance. If I have major repairs i will be unable to do so. Also my lot is quite small as are many in my neighborhood and it would be impossible to provide a buffer landscaping and be able to walk out and use my lake front. It appears some of the SMP plan recommendation exceed what is presented by the Washington Shorelines Guidelines.

I am requesting the council to give the network of lakefront property owners sufficient time to voice our concerns to what appears to be an over reaction for SMP changes on the part of the Planning Commission. I am hoping to meet with Erika Conklin the City Planner.

I need more time to review the data, and obtain professional input to fully understand the ramifications of the plan, its impact and other options. My goal is to achieve a win-win scenario for vested property owners, as well as comply with SMP goals and guidelines as required by the Washington Shoreline Guidelines. I am concerned this plan goes beyond the guidelines and negatively impacts all waterfront property owners.

Please consider giving this action a reasonable delay in order to hear our concerns. The result of this activity will affect us all for years to come.

Thank you for your consideration,

Sincerely,

Vikki Littleman

This email request originated from the following link:  
<http://rentonwa.gov/government/default.aspx?id=1862>

## Erika Conkling

---

**From:** Terri Briere  
**Sent:** Tuesday, May 04, 2010 10:34 AM  
**To:** idenkr@comcast.net  
**Cc:** Chip Vincent; Erika Conkling; Julia Medzegian; Council  
**Subject:** Shoreline Master Program

Mr. Iden,

Thank you for your comments regarding the Shoreline Master Program. The plan is currently being reviewed in the Planning & Development Committee of the City Council. We value your perspective as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

This item is scheduled for 3-4 pm May 12, 2010 at the Planning & Development Committee meeting. While this is a public meeting, and the public is welcome and encouraged to attend, we limit comment from the public because of time constraints and that there are no minutes taken. If you wish you could have a spokesperson at the committee meeting to summarize comments.

If you would like your comments to be on the record, we officially accept public comment during the audience comment section at city council meetings (Mondays at 7 pm) or you can send letters or emails.

I look forward to working with you and other residents on this program. Please let me know if I can be of any further assistance.

Terri Briere  
Renton City Council

---

**From:** Council [Council@Rentonwa.gov]  
**Sent:** Monday, May 03, 2010 5:21 PM  
**To:** Don Persson; Terri Briere; Rich Zwicker; King Parker; Randy Corman; Greg Taylor; Marcie Palmer  
**Subject:** FW: City Councilmembers

-----  
**From:** 'Kevin Iden'<idenkr@comcast.net>[SMTP:IDENKR@COMCAST.NET]  
**Sent:** Monday, May 03, 2010 5:21:44 PM  
**To:** Council  
**Cc:** idenkr@comcast.net  
**Subject:** City Councilmembers  
Auto forwarded by a Rule

As a lakefront property homeowner in Renton, I am asking that you please take the very important step of considering the overwhelming response of the fellow lakefront owners to slow this process down until we have something that is mutually acceptable to all parties involved. The proposed SMP as currently is written will decrease our property values as it is more restrictive in many ways than that of other municipalities as are being adopted. Why would someone want to buy in Renton instead of say Redmond or Mercer Island if the

restrictions on dock size, repairs, etc are less strict in those areas?? The 4' wide rule for instance is a safety issue if walking next and holding the hand of a small child like mine and especially if someone else is on the dock. Loading and unloading people safely requires 6 feet in width. I am one of many who has a shared dock with the neighbors and it is common to have people coming and going from both families on the dock at the same time...4 feet is not enough to safely do so. The length of dock is also a concern as our water is very shallow quite a ways out and we already can't get our boat off the lift in the winter. A shorter dock would mean no more boating in the summer as well. Repairs should be able to be made to current size as these docks were permitted when built and repairs and maintenance on them should not require them to conform to new size and material regulations. I do not blame the city for wanting to get things off of their plate, but, pushing this through as written will have many and severe unintended consequences to waterfront owners in Renton.

This email request originated from the following link:  
<http://rentonwa.gov/government/default.aspx?id=3212>

## Erika Conkling

---

**From:** Terri Briere  
**Sent:** Tuesday, May 04, 2010 12:11 PM  
**To:** annesimpson@comcast.net  
**Cc:** Jeanne DeMund; laurie baker; Monica Fix; Julia Medzegian; Erika Conkling; Alexander Pietsch; Chip Vincent  
**Subject:** RE: City Councilmembers

Ms. Simpson,

Thank you for your email in response to my comments. I would like to assure you that I take your concerns seriously about the draft SMP and I promise to work with you and your neighbors.

I apologize if my comments seemed abrupt I did not intend them to be. We have received comments recently from community members that believe the city just started the process. I would like to keep the review going and not delay it for many months or years as some have asked.

Our committee wants a comprehensive plan that is not overly onerous to our residents while protecting our shorelines. I want to work collaboratively to get the best possible program for the city and its residents.

I am pleased that you have formed a group that can work with the city on common issues of the residents. I would be happy to meet with you, your neighbors and/or your group to get to know your issues better. Let me know a time and location that we can meet. I am available Thursday or Friday during the day or in the evening next week. You can reach me at 425-228-7170. .

Terri Briere  
Renton City Council

---

**From:** annesimpson@comcast.net [annesimpson@comcast.net]  
**Sent:** Thursday, April 29, 2010 2:00 PM  
**To:** Terri Briere  
**Cc:** Jeanne DeMund; laurie baker; Monica Fix  
**Subject:** City Councilmembers

Councilwoman Briere,

Thank you for your reply and I certainly agree that it is unfortunate we lakeshore residents were not involved earlier in this process. It is not however, that we did not care two years ago but rather that the city and their chosen consultant's methods for informing the public were ineffective. Because Renton received a DoE grant the law required extensive public involvement. Parametrix's plan described numerous times how they were going to solicit our participation. I do not recall receiving a single notice for an open house, a focus group, or a public meeting until the October Planning Commission hearing. While I admit that I don't read bulletins at the library and only browse through the flyer in my water bill, I do read my mail.

I am also well aware that this is a state mandated update but I cannot understand your insistence that it must be accomplished quickly. To date only 28 of 260 SMPs have been approved. Renton's shoreline residents and their highly taxed land have tremendous amount

to lose especially when this program will make most of our properties non conforming - properties that were legally permitted and developed, some as recently as a few years ago.

Our group, Renton Shoreline Coalition, is in the process of developing reasonable requested changes to the proposed program. These suggested changes will comply with the DoE guidelines and backed by documentation. Please understand that this is exactly what we would have done two years ago if we had truly been included in the process.

I again urge the Planning and Development Committee and the Council as a whole to listen to and seriously consider our input. Please do not disregard us as punishment because you think we were slow off the start.

Sincerely,  
Anne Simpson

----- Original Message -----

From: "Terri Briere" <Tbriere@Rentonwa.gov>  
To: "Julia Medzegian" <Jmedzegian@Rentonwa.gov>, annesimpson@comcast.net  
Sent: Wednesday, April 28, 2010 1:44:08 PM GMT -08:00 US/Canada Pacific  
Subject: RE: City Councilmembers

Ms. Simpson;

Thank you for your email regarding the Shoreline Management Plan that is currently being reviewed in the Planning & Development Committee of the Council. We do value your perspectives as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

Terri Briere  
Renton City Council

---

From: Council [Council@Rentonwa.gov]  
Sent: Monday, April 12, 2010 12:07 PM  
To: Don Persson; Terri Briere; Rich Zwicker; King Parker; Randy Corman; Greg Taylor  
Subject: FW: City Councilmembers

-----  
From: 'Anne Simpson' <annesimpson@comcast.net> [SMTP:ANNESIMPSON@COMCAST.NET]  
Sent: Monday, April 12, 2010 12:07:22 PM  
To: Council  
Cc: annesimpson@comcast.net  
Subject: City Councilmembers  
Auto forwarded by a Rule

Dear Council Members,  
I am unfortunately unable to attend tonight's Committee of the Whole meeting on the Shoreline Master Program update. As you may be aware, there is tremendous concern among Renton's shoreline property owners about the overreaching restrictions staff's proposed draft puts on waterfront properties. In October when we became aware of the serious impact this program could have on our property rights we loosely organized and have been somewhat effective in

modifying what you will be considering tonight. Staff was open to our comments and suggestions but continued to work with a document that, from its inception, went far beyond WAC and SMA requirements.

It is my very strong opinion after many hours reading the WAC, SMA and other jurisdiction's approved and drafted SMPs that Renton needs a fresh start. One that includes educating property owners, staff and the council to the best available science from other than just government agencies and basing policy change accordingly. Could light penetrating decking on every Lake Washington dock offset the negative impact of the sea lions dinning on Salmon as enter the Lake? See today's Seattle Times.

As many of us told the Planning Commission, no one cares more about the health of Lake Washington than those of us who have worked hard to be able to enjoy the privilege of living on its shores.

I look forward to working with the Council as a Shoreline Master Program is crafted that meets the requirements of the State as well as the needs of property owners.

Sincerely,

Anne Simpson

3001 Mountain View Ave N

Renton

This email request originated from the following link:  
<http://rentonwa.gov/government/default.aspx?id=3212>

## Erika Conkling

---

**From:** Morgan, James C, CIV PSNS&IMF, Code 450.2 [james.c.morgan@navy.mil]  
**Sent:** Tuesday, May 04, 2010 1:47 PM  
**To:** Julia Medzegian; Terri Briere  
**Cc:** Chip Vincent; Council; Alexander Pietsch; Erika Conkling  
**Subject:** RE: Council- SMP

Appreciate the notification. Neither Laura nor I can take time off work to attend. Just ask that you please keep any new restrictions on my property to a minimum. USS SHOUP is getting ready to deploy and I've got to focus on that. Again, appreciate all the hard work that's been put in. I just don't have a lot of time to drill down on this and defend myself. I'm expecting you guys to keep my interests in mind also. Thanks again.

V/r  
Jim Morgan  
Port Engineer:  
USS SHOUP (DDG-86)  
W: 425-304-4580  
C: 425-417-2513  
email: [james.c.morgan@navy.mil](mailto:james.c.morgan@navy.mil)

-----Original Message-----

**From:** Julia Medzegian [mailto:[jmedzegian@rentonwa.gov](mailto:jmedzegian@rentonwa.gov)]  
**Sent:** Tuesday, May 04, 2010 11:04  
**To:** Terri Briere; Morgan, James C, CIV PSNS&IMF, Code 450.2  
**Cc:** Chip Vincent; Council; Alexander Pietsch; Erika Conkling  
**Subject:** RE: Council- SMP  
**Importance:** High

Dear Mr. and Mrs. Morgan,  
Please note on the following attachment that we have added time to next week's committee meeting and will be starting the meeting at 2 pm. Please feel free to call with questions.  
Sincerely,

Julia Medzegian  
City Council Liaison  
1055 S. Grady Way  
Renton, WA 98057  
425.430.6501  
[jmedzegian@rentonwa.gov](mailto:jmedzegian@rentonwa.gov)

-----Original Message-----

**From:** Terri Briere  
**Sent:** Tuesday, May 04, 2010 10:35 AM  
**To:** james.c.morgan@navy.mi  
**Cc:** Chip Vincent; Council; Alexander Pietsch; Erika Conkling; Julia Medzegian  
**Subject:** RE: Council- SMP

Mr. and Mrs Morgan;

Thank you for your comments regarding the Shoreline Master Program. The plan is currently being reviewed in the Planning & Development Committee of the City Council. We value your perspective as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on the plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

This item is scheduled for 3-4 pm May 12, 2010 at the Planning & Development Committee meeting. While this is a public meeting, and the public is welcome and encouraged to attend, we limit comment from the public because of time constraints and that there are no minutes taken. If you wish you could have a spokesperson at the committee meeting to summarize comments.

If you would like your comments to be on the record, we officially accept public comment during the audience comment section at city council meetings (Mondays at 7 pm) or you can send letters or emails.

I look forward to working with you and other residents on this program. Please let me know if I can be of any further assistance.

Terri Briere  
Renton City Council

---

From: Council [Council@Rentonwa.gov]  
Sent: Monday, May 03, 2010 1:25 PM  
To: Don Persson; Terri Briere; Rich Zwicker; King Parker; Randy Corman; Greg Taylor; Marcie Palmer  
Subject: FW: Council- SMP

---

From: 'Jim and Laura Morgan'<james.c.morgan@navy.mil>[SMTP:JAMES.C.MORGAN@NAVY.MIL]  
Sent: Monday, May 03, 2010 1:25:09 PM  
To: Council  
Cc: james.c.morgan@navy.mil  
Subject: Council- SMP  
Auto forwarded by a Rule

I live at 3103 Mountain View Ave N. My wife and I both work and we have two children. I'm concerned and disappointed on how the SMP is being handled. It has come to my attention that this may have a big impact on my property and property rights. I'm a very busy person and unable to wade through all the paperwork. I expect the City of Renton employees to be making decisions to ensure my property rights not adversely affect them. The SMP should meet the minimum requirements and nothing more. In the future, please keep the property owners best interests in mind not some agencies agenda. Appreciate all the hard work you have done. V/r  
-Jim

This email request originated from the following link:  
<http://www.rentonwa.gov/government/default.aspx?id=1776>

## Erika Conkling

---

**From:** Terri Briere  
**Sent:** Monday, May 10, 2010 3:45 PM  
**To:** MONICA.FIX@BOEING.COM  
**Cc:** Council; Julia Medzegian  
**Subject:** RE: Shoreline Master Plan Comments

Ms. Fix

Thank you for your comments regarding the Shoreline Master Program. The plan is currently being reviewed in the Planning & Development Committee of the City Council. We value your perspective as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

This item is scheduled for 2-3 pm May 12, 2010 at the Planning & Development Committee meeting. While this is a public meeting, and the public is welcome and encouraged to attend, we limit comment from the public because of time constraints and that there are no minutes taken. If you wish you could have a spokesperson at the committee meeting to summarize comments.

If you would like your comments to be on the record, we officially accept public comment during the audience comment section at city council meetings (Mondays at 7 pm) or you can send letters or emails. I will be submitting your email to the committee as part of our review.

I look forward to working with you and other residents on this program. Please let me know if I can be of any further assistance.

Terri Briere  
Renton City Council

---

**From:** Council [Council@Rentonwa.gov]  
**Sent:** Monday, May 10, 2010 2:10 PM  
**To:** Don Persson; Terri Briere; Rich Zwicker; King Parker; Randy Corman; Greg Taylor; Marcie Palmer  
**Subject:** FW:

-----  
**From:** Fix, Monica[SMTP:MONICA.FIX@BOEING.COM]  
**Sent:** Monday, May 10, 2010 2:10:27 PM  
**To:** Council  
**Cc:** Denis Law  
Auto forwarded by a Rule

Dear Renton Mayor Law and Council Members, I am concerned about the draft Shoreline Master Plan (SMP) currently under review.

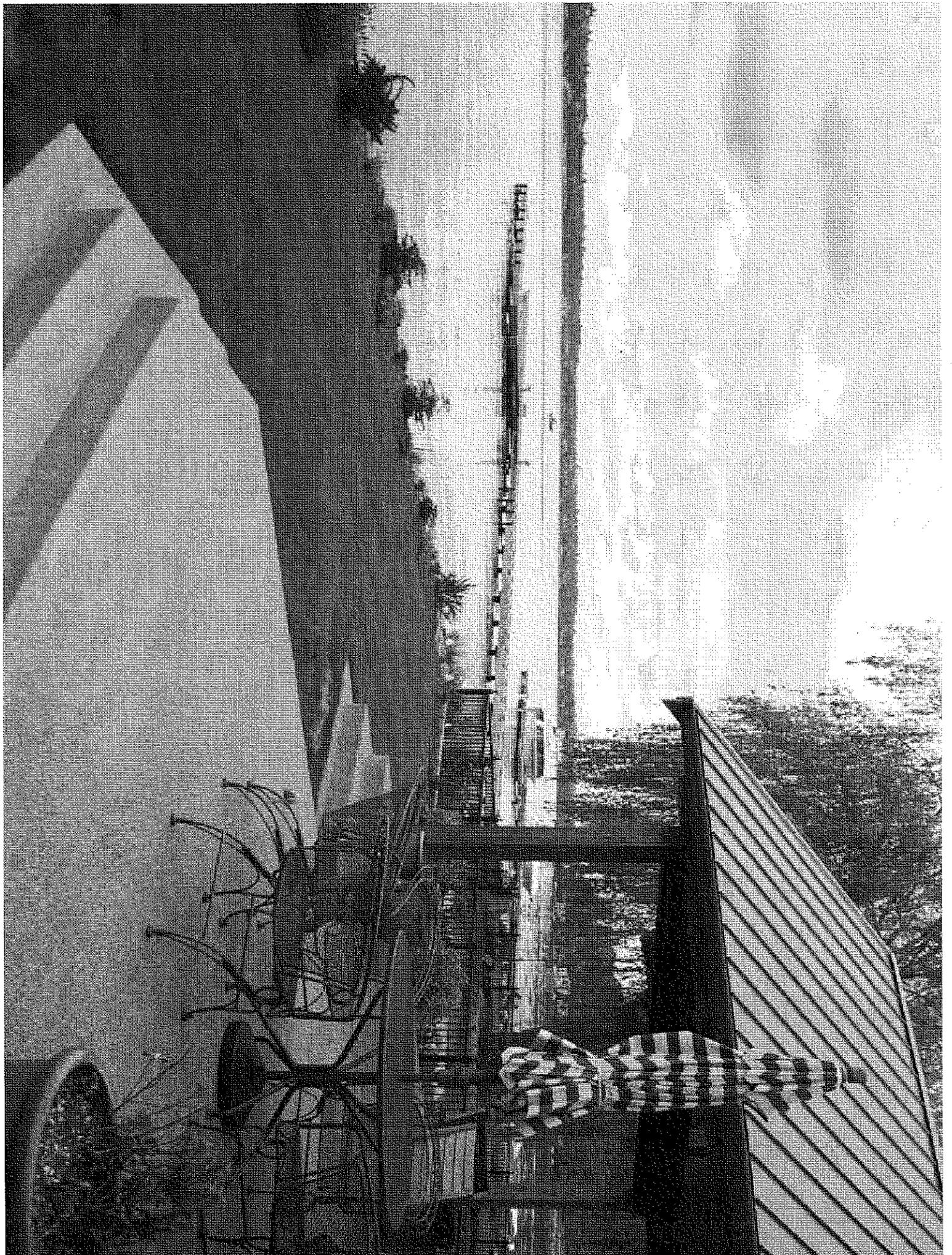
The recommendations are very extreme and appear to be at the expense of the shoreline home owners. If adopted as is, the majority of the homeowners will become non-compliant. Any changes to the land improvements will trigger some kind of conformance as outlined in the draft.

To give some perspective, let me share how this affects me personally. If the SMP is approved as drafted, my property immediately becomes non-compliant. My home sits 25' from the shoreline and is 60' by ~250' long. If I were to add a separate structure in the back portion of my property (street side away from the water), The SMP requires I add 10' of vegetative buffer including trees that will have a mature height of over 100'. This means removal of my landscaping and a portion of my lawn. I question the fact that any kind of buffer is required (It is meant in those areas on a steep embankment where some kind of containment is required). I question why lawn and landscaping cant suffice (if filtration is a concern). I question why any kind of buffer is required at all when the building structure has nothing to do with waterfront. I have attached 2 photos so you can see how extreme this requirement is.

Should I elect to do a lot line adjustment or short plat, the requirements will probably be even more extreme. I can only imagine the quid pro quo like having to reduce the length of my dock, and/ or add in light penetrating materials.

Thank you for your time and consideration.

Monica Fix  
cell 206-321-6154  
3007 Mountain View Ave N.  
Renton, Wa. 98056





## Erika Conkling

---

**From:** Julia Medzegian  
**Sent:** Wednesday, April 28, 2010 1:49 PM  
**To:** Alexander Pietsch; Chip Vincent; Erika Conkling  
**Cc:** Jay B Covington  
**Subject:** FW: City Councilmembers

fyi

-----Original Message-----

**From:** Terri Briere  
**Sent:** Wednesday, April 28, 2010 1:39 PM  
**To:** Don Persson; Rich Zwicker; King Parker; Randy Corman; Greg Taylor; Marcie Palmer; Julia Medzegian  
**Cc:** budmanis@comcast.net  
**Subject:** RE: City Councilmembers

Mr. Dennison;

Thank you for your email regarding the Shoreline Management Plan that is currently being reviewed in the Planning & Development Committee of the Council. We do value your perspective as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

Terri Briere  
Renton City Council

**From:** 'Bud Dennison'<budmanis@comcast.net>[SMTP:BUDMANIS@COMCAST.NET]  
**Sent:** Wednesday, April 28, 2010 11:06:29 AM  
**To:** Council  
**Cc:** budmanis@comcast.net  
**Subject:** City Councilmembers  
Auto forwarded by a Rule

Dear Council Members,

I'm writing to advise you of the concerns I have with the content and pace of Renton's response for the Shoreline Management Plan (SMP). Contrary to the Planning Commission, the proposed changes and impacts have only recently been brought to the attention of lakefront property owners... and mostly by our own, informal network.

I urge the council to give the network of lakefront property owners sufficient time to voice our concerns to what appears to be an over reaction for SMP changes on the part of the Planning Commission. We are reviewing much data, as well as engaging local experts to provide accurate information from all perspectives. Our goal is to achieve a win-win scenario for vested property owners, as well as comply with SMP goals and guidelines.

Please consider giving this action a reasonable delay in order to hear our concerns. The result of this activity will affect us all for years to come.

Thank you for your consideration,

This email request originated from the following link:  
<http://rentonwa.gov/government/default.aspx?id=3212>

## Erika Conkling

---

**From:** Julia Medzegian  
**Sent:** Wednesday, April 28, 2010 3:15 PM  
**To:** Alexander Pietsch; Chip Vincent; Erika Conkling  
**Cc:** Jay B Covington  
**Subject:** FW: Shoreline Management

-----Original Message-----

**From:** Terri Briere  
**Sent:** Wednesday, April 28, 2010 1:35 PM  
**To:** Council  
**Subject:** RE: Shoreline Management

Mr. Sivesind & Ms Riggs

Thank you for your email regarding the Shoreline Management Plan that is currently being reviewed in the Planning & Development Committee of the Council. We do value your perspectives as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

Terri Briere  
Renton City Council

---

**From:** Council [Council@Rentonwa.gov]  
**Sent:** Tuesday, April 27, 2010 6:59 PM  
**To:** Don Persson; Terri Briere; Rich Zwicker; King Parker; Randy Corman; Greg Taylor; Marcie Palmer  
**Subject:** FW: Shoreline Management

---

**From:** 'Stan Sivesind' <stansivesind@gmail.com> [SMTP:STANSIVESIND@GMAIL.COM]  
**Sent:** Tuesday, April 27, 2010 6:59:16 PM  
**To:** Council  
**Cc:** stansivesind@gmail.com  
**Subject:** Shoreline Management  
Auto forwarded by a Rule

Dear Council Member:

We recently became aware of the Shoreline Management Plan (SMP) that is being presented to the Renton City Council. We respectfully request that before any decisions are made, you give the Renton lake front owners an opportunity to share our perspectives. On the initial reading of the current proposal, it is disturbing to see language that appears to be more restrictive than Mercer Island or Bellevue. I would hope that you would not put Renton homeowners in a disadvantaged position compared to other Lake Washington communities regarding remodeling, dock replacement, bulkheads, etc. Our neighbors on the lake look

forward to working with the council to come to a mutually beneficial solution that can work for all parties going forward.

Sincerely,  
Stan Sivesind & Jayne Riggs  
3821 Lake Washington Blvd  
Renton, WA 98056

This email request originated from the following link:  
<https://rentonwa.gov/government/default.aspx?id=3212>

## Erika Conkling

---

**From:** Julia Medzegian  
**Sent:** Wednesday, April 28, 2010 1:50 PM  
**To:** Alexander Pietsch; Chip Vincent; Erika Conkling  
**Cc:** Jay B Covington; Terri Briere  
**Subject:** FW: City Councilmembers

-----Original Message-----

**From:** Terri Briere  
**Sent:** Wednesday, April 28, 2010 1:44 PM  
**To:** Julia Medzegian; annesimpson@comcast.net  
**Subject:** RE: City Councilmembers

Ms. Simpson;

Thank you for your email regarding the Shoreline Management Plan that is currently being reviewed in the Planning & Development Committee of the Council. We do value your perspectives as it applies to your shoreline property and invite you to voice your concerns and offer suggestions. As you maybe aware this is a state mandated plan that addresses all water bodies. Renton has been working on plan for two years and have had numerous public meetings and comment periods along the way. It is unfortunate that shoreline residents did not share concerns earlier in the process. However, we would like to hear your thoughts as expeditiously as possible and I encourage you and your neighbors to work together to that end.

Terri Briere  
Renton City Council

---

**From:** Council [Council@Rentonwa.gov]  
**Sent:** Monday, April 12, 2010 12:07 PM  
**To:** Don Persson; Terri Briere; Rich Zwicker; King Parker; Randy Corman; Greg Taylor  
**Subject:** FW: City Councilmembers

-----  
**From:** 'Anne Simpson' <annesimpson@comcast.net> [SMTP:ANNESIMPSON@COMCAST.NET]  
**Sent:** Monday, April 12, 2010 12:07:22 PM  
**To:** Council  
**Cc:** annesimpson@comcast.net  
**Subject:** City Councilmembers  
Auto forwarded by a Rule

Dear Council Members,  
I am unfortunately unable to attend tonight's Committee of the Whole meeting on the Shoreline Master Program update. As you may be aware, there is tremendous concern among Renton's shoreline property owners about the overreaching restrictions staff's proposed draft puts on waterfront properties. In October when we became aware of the serious impact this program could have on our property rights we loosely organized and have been somewhat effective in modifying what you will be considering tonight. Staff was open to our comments and suggestions but continued to work with a document that, from its inception, went far beyond WAC and SMA requirements.  
It is my very strong opinion after many hours reading the WAC, SMA and other jurisdiction's approved and drafted SMPs that Renton needs a fresh start. One that includes educating

property owners, staff and the council to the best available science from other than just government agencies and basing policy change accordingly. Could light penetrating decking on every Lake Washington dock offset the negative impact of the sea lions dinning on Salmon as enter the Lake? See today's Seattle Times.

As many of us told the Planning Commission, no one cares more about the health of Lake Washington than those of us who have worked hard to be able to enjoy the privilege of living on its shores.

I look forward to working with the Council as a Shoreline Master Program is crafted that meets the requirements of the State as well as the needs of property owners.

Sincerely,

Anne Simpson

3001 Mountain View Ave N

Renton

This email request originated from the following link:

<http://rentonwa.gov/government/default.aspx?id=3212>

## Erika Conkling

---

**From:** Chip Vincent  
**Sent:** Wednesday, April 14, 2010 10:11 AM  
**To:** Erika Conkling  
**Subject:** FW: Shoreline Master Plan Comments

FYI

Chip

-----Original Message-----

**From:** Terri Briere  
**Sent:** Wednesday, April 14, 2010 10:06 AM  
**To:** 'Jeanne DeMund' <jcdemund@gmail.com>  
**Cc:** Chip Vincent; King Parker; Rich Zwicker; Alexander Pietsch; Julia Medzegian  
**Subject:** RE: Shoreline Master Plan Comments

Ms. DeMund,

Thank you for your email regarding your concern about possible impacts to your property from the Shoreline Management Plan. Let me assure you that the Planning and Development Committee takes your concerns seriously as we evaluate the plan.

Terri Briere  
Renton City Council

---

**From:** 'Jeanne DeMund' <jcdemund@gmail.com> [jcdemund@gmail.com]  
**Sent:** Monday, April 12, 2010 12:59 PM  
**To:** Terri Briere  
**Cc:** jcdemund@gmail.com  
**Subject:** Shoreline Master Plan Comments

Dear Councilwoman Brier

As a new Renton resident as of June, 2009, I first became aware of the SMP process with the announcement of public hearing in October 2009. Since that time I have sent correspondence to the Planning Commission and staff, and participated in 2 public meetings.

At the April 7 meeting, where there was much discussion regarding the amount of work and the extended process that staff and the Commission had been through, the conclusion was drawn that there were no "new" issues and it was decided to forward the draft SMP to you, the City Council.

While it may be true that there were no "new" issues, it was patently clear from the audience comments and submissions to the Commission that in the minds of the attendees, many of whom will be directly effected by the SMP, that there were numerous issues that are still of grave concern.

The 2 issues of grave concern to me are dock maintenance/replacement requirements and restrictions on armoring.

One of the main reasons I purchased my home in Renton was the existing dock and boat lift. As a matter of safety and protecting my investment in my home, it is essential to be able to maintain, repair, and perhaps someday replace my dock. I would be eager to comply with any

regulations that will make the lake a healthier environment, which goes beyond the "no net loss" even if those regulations cause greater expense than the current style, materials, technology, etc. of my dock, but the requirement of shrinking the length and width of my dock is onerous and damages the value of my property.

I believe you could get wide agreement from waterfront property owners to use any advanced technology, materials, construction techniques required to construct a state-of-the-art (from an ecological perspective) if existing docks are permitted to be constructed in their current configurations, as shown by the inventory taken by city staff. New docks would have to conform to any new regulations.

Additionally, my home is protected by stone armoring at water's edge. Without this armoring, the lake would literally be just feet from my door, with the potential of inundating my home during storms. The ability to maintain the armoring is crucial to protecting not just the value but the very existence of my home, which was legally sited and built. Again, while I wish to construct any armoring in accordance with best practices at the time, there must be a provision to enable a property such as mine and others that are sited close to the lake as a result of the narrow lots on many sites.

Other concerns that do not effect my property directly, but which are still of concern to me for the impact they will have on my neighborhood are the buffering and setback requirements. These requirements are onerous compared with at least 1 other jurisdiction, Redmond. Furthermore, Bellevue, Mercer Island and Kirkland are still working on their draft SMP's, so we in Renton run the risk of being an outlier in terms of restrictiveness of our regulations, which will again, effect property values. There is no benefit in being first to submit our SMP, and substantial potential downside.

The draft SMP contains a statement that attempts to address the property value issue with an unsupported statement to the effect that contrary to popular opinion, stricter environmental regulations enhance property values. That can only be true when environmental regulations effect everyone in a comparable way across jurisdictions in regional situation like ours, where there are several lakeside choices for prospective homeowners. Our lakeside property values in Renton will decline if we are more restrictive than other lakeshore cities.

The stated goal of the SMP is "no net loss". Given the current SMP, one can only assume that additional environmental degradation will be permitted in some areas, and to some businesses, individuals or government entities, and that the goal of "no net loss" will be accomplished by accruing environmental improvements at the expense of a small group of homeowners.

As far as the process is concerned, city staff recognized that response to the first notification in 2008 was small. Responses to a survey (whose results to date have not been made part of the record) were also very small. In the normal course of events, according to staff, October 2009 information would have been the first round of information to the effected public. Therefore, although staff and Planning Commission have been working on the issue for what feels like a long time to them, it is vitally important not to accept process as a result. Real citizen input to the SMP began in October 2009, not 2008.

I strongly believe that because of the enormous negative effect the current SMP will have on some citizens of Renton, all of these issues deserve further consideration, with the opportunity to have real and substantive input from sources other than the consultant hired with funds from the state Department of Ecology, before the draft SMP is submitted to the state Department of Ecology.

It is my hope that an openness to alternative solutions, and to input from additional sources will result in an SMP that can be supported by the most effected constituency, and thus have an outcome that is enthusiastically implemented.

Furthermore I hope you will take the time to listen to some alternative viewpoints on the issues raised by the SMP, <http://bainbridgeshorelinehomeowners.wordpress.com/2010/03/11/smp-update-legal-issues-forum/> and <http://www.vimeo.com/10471566>

I urge you to return the SMP to the Planning Commission, with a directive to reopen hearings and allow effected citizens time to present alternative solutions.

Sincerely,

Jeanne C. DeMund  
2811 Mountain View Ave. N.  
Renton, WA 98056  
206-898-9818

This email request originated from the following link:  
<http://rentonwa.gov/government/default.aspx?id=1080>

## Erika Conkling

---

**From:** Chip Vincent  
**Sent:** Wednesday, April 14, 2010 10:13 AM  
**To:** Erika Conkling  
**Subject:** FW: Draft Shoreline Management Plan

FYI.

-----Original Message-----

**From:** Terri Briere  
**Sent:** Wednesday, April 14, 2010 10:05 AM  
**To:** dariusvicki@msn.com  
**Cc:** Julia Medzegian; Alexander Pietsch; Chip Vincent; Rich Zwicker; King Parker  
**Subject:** RE: Draft Shoreline Management Plan

Mr. Richards,

Thank you for your email regarding your concern about possible impacts to your property from the Shoreline Management Plan. Let me assure you that the Planning and Development Committee takes your concerns seriously as we evaluate the plan.

Terri Briere  
Renton City Council

---

**From:** dariusvicki@msn.com [dariusvicki@msn.com]  
**Sent:** Monday, April 12, 2010 8:22 PM  
**To:** Terri Briere  
**Subject:** Draft Shoreline Management Plan

Dear Terri:

I have been a Renton shoreline resident since 1972, and will be impacted by whatever Shoreline Management Plan is ultimately submitted by the City of Renton to the Washington Department of Ecology. My home was recently reconstructed and conforms to all current codes and to the 25 foot shoreline setback requirement. Thus, my particular concerns have to do with how the SMP will affect my ability to do future maintenance and piling replacement on my dock, and maintenance/replacement of the concrete bulkhead that keeps my front yard (and house) from washing away.

It has taken some time for all of Renton's shoreline residents to really start paying attention to what the draft SMP says, and to understand the ways in which it could impact their property values, how they utilize their properties, and their ability to properly maintain and repair their docks and bulkheads. I have previously sent several letters to the Renton Planning Commission and have attended several hearings to express my views, as have other concerned shoreline residents. Some of these residents have taken the very important additional step of finding out and sharing how other Lake Washington and Lake Sammamish jurisdictions (e.g., Redmond, Bellevue, Mercer Island and Kirkland) are drafting their SMPs.

As I review all that has been learned by my fellow lakeshore residents over the past year, it is very clear that, given the many outstanding issues and the onerous requirements that are proposed by the Dept. of Ecology's paid consultant, the Renton City Council would be wise to not accept the Draft SMP from the Planning Commission at this juncture; rather, the Council should direct the Commission to secure additional citizen input and study further the SMP approaches that are being taken by the aforementioned jurisdictions. As Jeanne DeMund wisely

stated in her email to you today, "there is no benefit in being first to submit our SMP, and substantial potential downside".

Sincerely,

Darius Richards  
3605 Lake Washington Blvd. North  
Renton

May 10, 2010

From: Renton Rowing  
To: Renton City Council  
Re: Renton Community Rowing program

Renton Rowing was first established in 1985, operating out of Coulon Park, to provide the opportunity for youth and adults in the City of Renton to learn and practice the sport of rowing. With the current health trends and concerns about fitness and obesity in all ages of our population, now more than ever, opportunities for physical exercise in our communities are needed to combat this situation.

Renton Rowing currently operates under an agreement with the City of Renton out of the Cedar River Trail Park near the river's entrance to Lake Washington. Present launching capability is limited to portable floating docks and small boat instruction (1 or 2 person rowing shells). We seek to expand the opportunity for rowing in the Renton community by placing a permanent or semi-permanent dock in either the Cedar River or in Lake Washington, which will provide for the launching of larger rowing shells (4 and 8 person). This is especially critical for establishing a youth/high school rowing program.

Renton is one of the few municipalities in Western Washington without such a program. Orcas Island, Everett, Redmond/ Sammamish, Seattle, Bainbridge Island, Vashon Island, Tacoma, Olympia, and Vancouver are all locations with public rowing access to fresh or salt water, and have had community rowing programs in place for a number of years. Below are examples of the type of dock system that is needed for the safe launching and operation of rowing shells. Seasonal or permanent facilities are highly recommended.



We appreciate your support in allowing us to continue the development of a first class rowing venue in the City of Renton. Your approval of this aspect of our growth is crucial to meeting the needs of a youth rowing program.

Sincerely,

***Kermit W. Anderson***

President Renton Rowing

Council President Don Persson

May 10, 2010

1055 South Grady Way  
Renton, WA 98057

Dear Don:

I am writing today to express my concern over the proposed Renton Shoreline Management Plan, (SMP), being considered by the council. I believe that the plan, as currently proposed, places restrictions and requirements on Renton property owners that exceed what is required by the Washington State Shoreline Management Plan. The proposed plan also is much more restrictive than those of other Lake Washington municipalities.

As the largest single owner of Renton waterfront property, the city of Renton would be committing itself to large expenditures to bring its Coulon Park facilities into compliance with these excessive rules. A recent example is the fishing pier that was damaged by fire and repaired last year. If that fire had damaged more than 30% of the pier, the entire pier would have had to be brought into compliance. This expense would have been several times the price the city paid to simply repair the fire damage.

By having a SMP that is much more restrictive than other Lake Washington municipalities, Renton will depress the property values on its shoreline. Thirty percent of the Renton budget is supported by property taxes which are based on these property values.

A good example of another city's SMP is provided by Mercer Island. Its draft plan as of April 29 2010: <http://www.mercergov.org/files/Exhibit%201.pdf> provides many examples how to meet the state shoreline management plan without the severe restrictions proposed by Renton. Comparisons of how each city would restrict docks and piers for single owner property are shown below:

**Maximum dock length:** Mercer Island SMP (page 17) 100 feet or 150 feet where water depth is less than 10 feet. Renton SMP (page 81) 80 feet

**Maximum dock width:** Mercer Island SMP (page 17) 8 feet. Renton SMP (page 82) 4 feet

**Maximum dock area:** Mercer Island SMP (page 17) 1000 square feet Renton would limit the lengths and widths of both dock and ells which results in a maximum area of 476 square feet.

I can't find any explicit restrictions on the repair or maintenance of docks and piers in Mercer Island but other structures require only that "No net loss of shoreline ecological functions" occur as a result of the work. This is a much more reasonable requirement than that proposed in the Renton SMP.

For example, the Renton SMP draft, page 84, requires that if ANY piling is replace, "the entire structure shall be replaced in compliance with these regulations". This is an extreme requirement and goes way beyond the reasonable "No net loss of shoreline ecological functions" in the Mercer Island SMP. The red line version of the Mercer Island draft SMP is 61 pages long. This includes many pages of blanked out revised text. The clear version of the proposed Renton draft SMP, which includes no blanked out

text, fills 153 pages. An indication of how excessive the proposed Renton plan is compared to another city's plan that meets the same state guidelines.

The Renton SMP is not based on solid peer reviewed science. It promotes tree shade, which it likes, as being good but restricts pier shade, which it dislikes, as being bad. From a fish point of view, it would seem that the source of the shade is immaterial. A major experiment regarding the effect of shade on Lake Washington fisheries was conducted in Lake Washington during the late 1800s and first half of the 1900s. During this period of many decades, large log rafts covered a significant portion of what is now the Renton waterfront. This coverage was many times that of the current docks and piers. And yet the lake fisheries survived and did quite well during that extended period. Why wasn't this experimental data included in the study of the effect of shade on fisheries? According to Doctor Gil Pauley, professor emeritus of the School of Aquatic Fishery Sciences at the University of Washington, an expert in salmon fisheries, the scientific basis for the proposed restriction is weak. It does not consider studies that do not support its hypotheses regarding the effect of shade on fisheries. It relies on non-peer reviewed articles that have not been published in recognized scientific journals. This is poor science.

In conclusion, the proposed Renton SMP would place excessive and unnecessary restrictions on property owners on Renton shorelines. These restrictions go way beyond what is required by the Washington State shoreline management guidelines. The proposed Renton SMP would greatly increase maintenance costs for owners of lake front property and severely restrict their ability to utilize their homes and property. This would reduce the value of the Renton lakefront property relative to that in other Lake Washington municipalities. Renton already has a larger percentage of its Lake Washington waterfront devoted to natural habitat than any other municipality on the lake. It does not need to have the most restrictive shoreline management plan on the lake.



Dr John Burroughs

2815 Mountain View Ave North  
Renton, WA 98056

JDB@CASCADEDESIGNS.COM



## *Renton Shoreline Coalition*

*P.O. Box 624  
Renton, Washington 98057-0624*

### VIA EMAIL

May 11, 2010

Planning and Development Committee  
of the Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's March 2010 Draft SMP

Dear Committee Members Briere, Parker and Zwicker:

We are writing to advise you of the incorporation of the Renton Shoreline Coalition, which consists of shoreline property owners concerned over Renton's March 2010 Draft SMP. In the coming weeks and months, we will be working together to better focus the concerns of our shoreline property owners and provide you and the other members of the City Council with additional technical information and recommendations of revisions to the Draft SMP for you to take into account in your review of this important matter.

Major issues of concern as we currently see them are set forth in the attached issues table.

We look forward to the opportunity to work with you. We request that we be permitted to make a presentation to the Committee at its May 26, 2010 scheduled meeting concerning the SMP. Please let us know if that will be acceptable to you.

Sincerely,

RENTON SHORELINE COALITION

  
Greg James, Co-Director and Steering Committee Member

Attachment: Table of Major Issues

Cc: Renton Shoreline Coalition Steering Committee Members Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter

Samuel A. Rodabough, Groen Stephens & Klinge, LLP

Renton Mayor Dennis Law

City Council Members Don Persson, Greg Taylor, Randy Corman, and Marcie Palmer

Chip Vincent, Renton Planning Director

Erika Conkling, Senior Planner, Renton Planning Division



## Renton Shoreline Coalition

P.O. Box 624

Renton, Washington 98057-0624

### RSC's Major Issues as of May 11, 2010

Issue #	Issue Summary	RSC's Comments on the Issue
1	<p>The Draft SMP unfairly classifies virtually all <b>existing shoreline edge improvements</b> (e.g., existing docks, piers, and bulkheads/other shoreline armoring) as “nonconforming” and wrongfully destines them for either elimination or replacement with “conforming” shoreline improvements.</p>	<p>(A) Existing shoreline edge improvements (<b>such as existing docks, piers, and bulkheads/other shoreline armoring</b>) are valuable parts of shoreline properties in their own right, not merely in support of existing primary uses of shoreline properties. Existing shoreline edge improvements are part of the status quo and should not be considered “continuing impacts” as the Draft SMP documents treat them. (Changes that are likely to result from <i>additional</i> development are what should be analyzed as “impacts”, not existing development.)</p> <p>(B) Existing shoreline edge improvements should be allowed to be repaired and/or replaced <b>indefinitely</b> in their <b>current locations, sizes and configurations</b> regardless of (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel. Such changes have no fair relation to the Draft SMP's demands for “partial compliance” or “full compliance” with the Draft SMP's standards for new shoreline edge improvements.</p> <p>(C) The SMP Guidelines' requirement of “no net loss of shoreline ecological functions” can generally be met in regard to (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel without any of the Draft SMP's new “compliance regulations” concerning shoreline edge improvements set forth in SMP Sections such as 4-10-095.F.1, 4-10-095.F.2, and 4-3-090.F.4.</p> <p>(D) The Draft SMP's new “compliance regulations” concerning shoreline edge improvements will inappropriately impose <b>massive, inappropriate costs</b> and <b>uncertainties as to approval</b> on shoreline property owners who wish to upgrade their shoreline properties by (1) changing the size of building footprints or impervious area on their properties, (2) remodeling or renovating existing buildings or improvements, and/or (3) changing the “principal use” of the shoreline properties. If the Draft SMP is ultimately enacted in its current form, a (presumably) unintended consequence of the massive costs and uncertainties of the Draft SMP's new “compliance regulations” will be that many such upgrades of existing shoreline properties</p>

		<p>will never even be attempted. That will be a shame for Renton.</p> <p>(E) Many of the important practical functions that existing shoreline edge improvements provide will not be provided with the City’s mandated substitutes [such as (1) sufficient dock width for safe use of docks in contrast with ultra-narrow dock widths in the Draft SMP requirements) and (2) substantial bulkheads/shoreline armoring that actually will prevent erosion of shoreline properties rather than expensive “soft” shoreline stabilization schemes that are subject to wash-out in big storms in Lake Washington or big flow events in the Cedar River, can result in massive property and environmental damage, and will have to be replaced over and over again at enormous expense].</p>
2	<p>The Draft SMP’s call for big shoreline <b>setbacks and vegetated buffers</b> in highly urbanized Renton is senseless.</p>	<p>(A) The <b>big shoreline setbacks and vegetated buffers</b> called-for in Renton’s Draft SMP presuppose vast virgin lands along the City’s shorelines to be protected by the Draft SMP’s requirements for “Vegetation <i>Conservation</i> Buffers” are way too restrictive. (Vegetation cannot be “conserved where it does not exist.) Such vast virgin lands don’t exist in Renton, where nearly all shoreline properties (even most City park shoreline properties) are already subject to intensive use and are not in a virgin state.</p> <p>(B) The big setback and buffer requirements unfairly require shoreline property owners to have to “make things better” if they are going to develop or redevelop their properties, not merely meet the SMP Guidelines’ requirement of “no net loss of shoreline ecological functions”. Shoreline property owners should not have to “make things better,” especially because there is serious doubt as to whether the SMP’s mandates even if implemented would actually make anything “better” at all.</p> <p>(C) The Draft SMP’s setback and buffer widths should be reduced in general. They should also be revised in regard to properties where vegetative buffers either do not currently exist at all or only exist in part to allow such existing site circumstances to be taken into account to (a) further reduce the width of required setbacks and (b) eliminate or reduce the width of required vegetative buffers. Where vegetated buffers consisting of non-native vegetation (lawns, shrubs, trees and other plants) already exists, the non-native vegetation should be allowed as an alternative to native vegetation in required vegetative buffers.</p> <p>(D) Along Lake Washington, the setback should be a uniform 35 feet with no buffer. Other agencies may add buffer requirements in regard to shoreline edge improvements when landowners go through the approval/permit processes of other agencies. Renton should not place additional regulations where they are not required. Neither the SMA nor the Shoreline Guidelines require</p>

		<p>minimum setbacks and buffers for developed residential shorelines like those along Lake Washington.</p> <p>(D) If enacted, the current Draft SMP’s big setback and buffer requirements will stymie desirable expansion of existing waterfront homes and redevelopment of other uses on shoreline properties.</p>
3	The Draft SMP’s <b>limitations on new docks and piers</b> are inappropriately restrictive.	<p>The Shoreline Master Program Guidelines call for new docks and piers to be the “Minimum necessary”. A minimum safe width is 6 to 8 feet. Greater lengths should be allowed in view of low water levels in Lake Washington.</p> <p>RPG3 square footage requirements are from the U.S. Army Corps of Engineers (which often grants permits not meeting those requirements). Those requirements ought not to be incorporated into the SMP.</p> <p>Other particular recommendations relating to new docks will be forthcoming.</p>
4	The Draft SMP inappropriately requires the <b>provision of public access to the shorelines for private development activity</b> .	<p>(A) The Shoreline Management Act does not authorize the City to require the provision of physical public access for private development activity. <i>See</i> RCW 90.58.020(5) (giving preference to shoreline uses that “[i]ncrease public access to <b>publicly</b> owned areas of the shorelines.”) (emphasis added).</p> <p>(B) Similar to the SMA, the Shoreline Guidelines in WAC 173-26-221(4) do not require that new private shoreline development provide physical and/or visual public access for the general public. <i>See</i> WAC 173-26-221(4) (stating that local SMPs “shall address public access on <b>public lands</b>” and encouraging other access to be consistent with private “property rights”).</p> <p>(C) Consistent with well-established jurisprudence interpreting federal and state constitutions, the City cannot lawfully require the provision of physical public access for private development activity. Doing so would contravene principles of essential nexus and rough proportionality in which a condition placed on development must relate to the impact of the proposed development. Development of a site that already does not provide public access does not adversely impact public access, but rather maintains the status quo.</p> <p>(D) The Draft SMP fails to take into account the very extensive access opportunities to Lake Washington, the Cedar River and Springbrook Creek that already exist. By doing so, it fails to account for the fact that no real need exists for private shoreline owners to provide even more access for the general public.</p>

		<p>(E) The Draft SMP’s burdensome access requirements for the general public on private property will have the effect of substantially discouraging new development and redevelopment.</p>
<p>5</p>	<p>The Draft SMP <b><u>inappropriately limits building heights.</u></b></p>	<p>(A) Along much of Renton’s residentially-zoned Lake Washington shorelines, 35-foot-tall homes could appropriately be built without causing serious view obstructions for uphill residences. This is the case because of the steeply sloping areas behind many of those shoreline properties.</p> <p>(B) While the City’s residential zones currently limit single-family homes to a 30-foot height Citywide, such a limit is not reasonable along many stretches of Lake Washington waterfront. The maximum height for single family homes in the Draft SMP should be 35 feet. That would give shoreline property owners an opportunity to later request that the City amend its maximum height to 35 feet under ordinary zoning regulations in areas like much of the Lake Washington waterfront where circumstances justify allowing a greater height. The City would benefit from having more substantial lakefront homes that a greater building height would allow.</p> <p>(C) Likewise, in the proposed High Intensity District along an extensive portion of Cedar River Reach C that has one hundred-foot-plus tall hills on opposite sides of the River), the draft SMP would needlessly, inappropriately and arbitrarily limit maximum building heights to a starting height of 35-feet along the River’s setback edge rather than the full height allowed under the COR zoning of such property. With the tall hills and the lack of nearby residences with views of the Cedar River, arbitrarily limiting the height and thereby discouraging site redevelopment is poor City policy.</p> <p>(D) The City’s proposed limitation of 35 feet appears to be based upon a misreading of the SMA, which exempts from the requirement to obtain a shoreline substantial development permit, “single family residence[s]...not exceed[ing] thirty-five feet above average grade level.” RCW 90.58.030(vi). Nothing in the SMA or the implementing guidelines limits building height to 35 feet for commercial and industrial development anywhere within the shoreline district. Similarly, single-family residences exceeding 35 feet are not prohibited under the SMA or the Shoreline Guidelines, but instead would require a shoreline substantial development permit where greater heights are allowed in an adopted SMP.</p>

		(E) Artificially limiting building heights within the High Intensity District along the portions of Cedar River Reach C will discourage needed redevelopment of aging structures. Redevelopment is necessarily more costly than new development, and artificially limiting development height increases the likelihood that site-specific redevelopment will not be financially feasible.
6	Overall, the current Draft SMP—a massive document for a City and one calling for micromanagement of private shoreline properties—is an inappropriate, unwarranted and unwanted “big government” intrusion into the private sphere and should be pared way back before adoption.	There are other agencies involved with shoreline development and permitting. Renton’s SMP should be the very minimum truly <i>required</i> by applicable law.



# Integrity Shoreline Permitting

Permit Manager/Shoreline Consultant

Professional • Affordable • Reliable

[integritypermitting@hotmail.com](mailto:integritypermitting@hotmail.com)



*Hire a Vet! Integrity Shoreline Permitting is managed by a Retired Combat Veteran with 21 Years of Distinguished Military Service to the United States of America.*

May 12, 2010

City of Renton  
Planning Department  
Attn: Erika Conkling- Senior Planner  
Chip Vincent- Planning Director  
City of Renton City Council Members  
1055 S Grady Way  
Renton, WA 98056

Ref: ADITONAL REVIEW AND COMMENTS ON THE RENTON DRAFT SHORELINE MASTER PROGRAM PC RECOMMENDATION REVIEW DRAFT (MARCH 2010)

Dear Ms. Conkling, Mr. Vincent, Planning Policy Commissioners, and City Council Members,

I have been an active participant and contributor the Renton SMP Update for well over a year as a permit coordinator with Waterfront Construction. I am continuing to participate as an independent permit manager and shoreline consultant through my new business; Integrity Shoreline Permitting.

Although much progress has been made based on the original draft, I am concerned that during the Planning Commission process, property owners and other comments from the public were not taken as seriously or given adequate attention and therefore the document you may send toe Ecology for approval is flawed in its service to property owners.

There are several issues the City Council must review and consider changing or sending back to the Planning Commission for additional research. Similar to the SMP Update Processes in nearly 10 other communities where I have participated, City Leaders have been bombarded by one-sided information presented by the Biological Consultant (Parametrix), WA Department of Ecology, and the Planning Department. Similarly, Renton has been given the erroneous impression that Lake Washington and its shoreline is in worse condition than it is and they must take overly aggressive and restrictive steps which directly impact waterfront property owners.

The Planning Commission does not have the time or expertise to research the many complex issues so they are compelled to rely on the information from those representing government interests and funded by the state. This has lead to a convoluted process where the property owner has been pushed into the background.

I am requesting that the City Council not simply pass the Renton Shoreline Master Program PC Recommendation Review Draft (March 2010) through but take a close look at the issues I have listed below and those property owners will present. Having met with many Renton waterfront property owners I can attest that this is a group of concerned citizens who are excellent stewards of Lake Washington's shoreline. They have valid concerns and have attended a presentation by Scientist Dr. Gilbert Pawley which exposes the inconclusive, flawed and non-peer reviewed science Biological Consultants, Ecology, and even local Planning Departments are using to promote these overreaching regulations.

Some of the information below is a reemphasis of previous comments to the Renton Planning Department and Planning Commission but it is important enough that it must be brought before the City Council in order to ensure the City is informed at all levels before making final decisions which could lead to a flawed SMP being adopted and approved.

My specific concerns are:

## GENERAL

1. There is no incentive for the replacing existing highly impacting overwater structures with more environmentally friendly designs which do not meet the proposed standards although they would clearly meet the “no net loss” goal the City and Ecology are proposing. Renton will be stuck with existing conditions in the nearshore area for decades if an alternative process besides a “variance” is not offered.
2. There is no clear definition for property owners to understand what their role is in achieving “no net loss of shoreline ecological functions” on their individual properties. Up to this point the City has only accomplished a plan that will declare nearly all overwater structures “nonconforming” and require them to come into conformity when any substantial amount of routine maintenance or repair is proposed.
3. Shoreline setbacks and vegetated buffers are more than necessary and those in other communities. Also, those with larger lots are being penalized simply based on lot depth. A vegetated buffer essentially represents a “no build or activity zone” and this may be illegal. Bainbridge Island is currently involved in a lawsuit for a similar reason.
4. Associating upland development with the modification or removal of nearshore or overwater structures represents a heavy burden and cost to property owners. The City of Kirkland was considering this same strategy and after review by its City Attorney decided against it. Upland development exempted from additional state and federal reviews (WDFW and Army Corps of Engineers) should remain separate from nearshore and overwater projects.
5. There does not appear to be any information listing boatlifts and personal watercraft lifts as permitted uses.

## 4-3-090.E.7 PIERS AND DOCKS

### b. Additional Criteria for New or Expanded Residential Docks

1. The WAC does not require single family property owners to demonstrate that adjacent owners have been contacted to develop a shared dock. Renton should not require this either.
2. The WAC does not require single family property owners to demonstrate that mooring buoys are impractical. A single family dock is a preferred water-dependent use.

### c. Design Criteria- General

1. Requires that docks (I trust this includes nonconforming structures) be constructed and **maintained** in a safe and sound condition but when property owners propose to perform what is considered to be routine repair and maintenance on existing structures they will be required to bring them into conformity.

### e. Maintenance and Repair of Docks

1. Because the proposed Design Standards may result in nearly all existing structures becoming nonconforming, requiring such structures to come into conformity with these standards if more than 50% of piles is overly restrictive and costly. Total pile and pier replacement is considered routine in the industry and is a common method of repair as outlined in the WAC, and is furthermore exempt from the Shoreline Substantial Development process.

This approach by the City may prove counterproductive and encourage property owners to use self help or seek out renegade contractors willing to replace or repair piles without permits. It may also lead to allowing structures to fall into disrepair and unsafe conditions.

The City should look for ways to work with property owners keeping in mind that it has been the inaction and failure of Ecology to direct incremental changes to SMP's over the past 35+ years and then suddenly require sweeping changes to overwater structures that as soon as they are built will become instantly nonconforming.

The WAC is essentially silent on nonconforming structures with the exception of damage of more than 75% value and moving the structure any distance. **There is absolutely no requirement for Renton to require nonconforming structures proposing routine repair and maintenance to be brought into conformity, especially when there are no structural or engineering issues involved and the standards are based on recommendation from a document**

**(Army Corps Regional General Permit 3) which is routinely exceeded based on site conditions and project-by-project evaluations.**

Even the WAC considers the replacement of piles and even an entire structure minor in nature and if it is the **common method of repair for such a development** it is exempt from the shoreline process. If the proposed changes were due to safety, seismic or structural concerns similar to the Building Code this would be understandable but these changes are based on inconclusive science and elements of the Army Corps Regional General Permit 3 which have not been enforced on the replacement of existing structures. **Under the extreme changes to the SMP which will render most piers and docks nonconforming can the City explain the rationale for such a requirement?**

**WHY THIS DOESN'T MAKE SENSE**

Not only is this out of line with the WAC and other local governments, but please consider the scenario below.

Essentially, a steel replacement pile costs approximately \$1,000 to \$2,000 depending on the pile diameter and length. A pile splice costs approximately \$800 to \$1,000 depending on location, time and materials. Regardless of how many piles are repaired or replaced a project is typically exempt from SDP and SEPA (although some locals require SEPA if more than 50% of piles are replaced) and receives a streamlined review by WDFW and the Army Corps due to the repetitive and standard nature of this type of work. Each project will require a Building Permit. The cost for all permits would be minimal and likely less than \$1,500 to \$2,000 including permit service charges from a private company.

Average cost for all permits and service charges (average)-	\$1,750.00
Average Construction Costs for Replacement (using 4 piles as an example)-	<u>\$6,000.00</u>
Average Total Cost-	<b>\$7,750.00</b>

Average cost for all permits and service charges (average)-	\$1,750.00
Average Construction Costs for Repair using Splicing (using 4 piles as an example)-	<u>\$3,600.00</u>
Average Total Cost-	<b>\$5,350.00</b>

**Based on the current proposal to require a total pier replacement in a different layout it will require the basic cost above and additional permits and costs:**

Average Permit Services-	\$ 8,250.00
Average Biological Evaluation and Lake/Stream Study:	\$ 5,000.00
Average City of Renton Planning Department (Substantial Development Permit and SEPA Review)	\$ 3,000.00
Average WA Department of Fish and Wildlife (Hydraulic Project Approval)	N/A
Average City of Renton Building Department (Building Permit for Pier Structure)	\$ 1,500.00
Average U. S. Army Corps of Engineers (Section 10/404 Permit)	N/A
Additional Mitigation with U. S. Army Corps of Engineers (Section 10/404 Permit), National Marine Fisheries Service (ESA Review), U. S. Fish and Wildlife Service (ESA Review), and Muckleshoot tribal Community (Native Riparian Planting Plan)	\$10,000.00
Additional Project Cost for Average 480sqft Pier @ \$110/sqft-	\$52,800.00
Additional costs for Structural Engineer (if required)-	<u>\$ 2,500.00</u>
Total Cost of a Nonconforming Structure Needing a Minor Pile Repair or Replacement-	<b>\$83,050.00</b>

**g. Variance to Dock and Pier Dimensions**

1. While the City is emphasizing its allowance for applicants to submit for a shoreline variance it does not list that approval for variances is the responsibility of Ecology and not the local government. Anyone who has experienced the variance process for overwater structures will testify that it is nearly impossible to receive approval unless there are extraordinary circumstances, which supports the very reason for a variance.

#### 4-10-095 Shoreline Master Program, Nonconforming Uses, Activities, Structures, and Sites

##### Section 4-10-095F.1 Partial Compliance for Non-Single-Family Development (Page 145 and 146 Minor, Moderate and Major Alteration Matrix)

1. Consultation with the Renton City Attorney Office should be conducted to verify if requiring property owners to upgrade piers and shoreline stabilization to bring them more into conformance is legal. Although non-single-family development is not exempt from the SDP process it is exempt from many other reviews that pier and shoreline stabilization work require. These could include:

City of Renton Planning Department (Substantial Development Permit and SEPA Review)  
WA Department of Fish and Wildlife (Hydraulic Project Approval)  
City of Renton Building Department (Building Permit for Pier Structure)  
City of Renton Grading and Drainage (Building/Grading Permit for Shoreline Stabilization)  
U. S. Army Corps of Engineers (Section 10/404 Permit)  
National Marine Fisheries Service (ESA Review)  
U. S. Fish and Wildlife Service (ESA Review)  
WA Department of Natural Resources (If pier extends beyond the Inner Harbor Line)

This could also require services from a Structural Engineer, Geotechnical Engineer, Biologist (Biological Evaluation and \*Lake/Stream Study)

\*Renton is the only local jurisdiction which requires a Lake/Stream Study for routine projects. All others simply use the SEPA Checklist and if a Biological Evaluation is completed for federal permitting we also provide a copy to the local Planning Department. Can Renton drop this requirement?

The total cost for permitting and construction will be tens of thousands of dollars and it would not be unusual in the most extreme cases where both a bulkhead and pier are involved it would be well over \$100,000.00.

I believe the City of Kirkland was going to tie shoreline work on bulkhead and piers to residential development and the City Attorney advised against this.

If the City is going to adopt stricter rules regarding nonconforming structures than required by the WAC and the SMP Update requirements it should only apply to the structure affected by the work. The City, for some reason, appears to be going far beyond what is required.

##### Section 4-10-095F.2 Partial Compliance for Single-Family Development Moderate and Major Alteration Matrix)

1. Consultation with the Renton City Attorney Office should be conducted to verify if requiring property owners to make piers and shoreline stabilization come into conformance when they are not a part of a project is legal. This essentially requires a single-family residential project which is typically exempt from SDP and only involves the local government to now apply for and secure permits from:

City of Renton Planning Department (Substantial Development Permit and SEPA Review)  
WA Department of Fish and Wildlife (Hydraulic Project Approval)  
City of Renton Building Department (Building Permit for Pier Structure)  
City of Renton Grading and Drainage (Building/Grading Permit for Shoreline Stabilization)  
U. S. Army Corps of Engineers (Section 10/404 Permit)  
National Marine Fisheries Service (ESA Review)  
U. S. Fish and Wildlife Service (ESA Review)

This could also require services from a Structural Engineer, Geotechnical Engineer, Biologist (Biological Evaluation and \*Lake/Stream Study)

**\*Renton is the only local jurisdiction which requires a Lake/Stream Study for routine projects. All others simply use the SEPA Checklist and if a Biological Evaluation is completed for federal permitting a copy is provided to the local Planning Department. Can Renton drop this requirement and operate like other governments who serve the same water body?**

The total cost for permitting and construction will be tens of thousands of dollars and it would not be unusual in cases where both a bulkhead and pier are involved it could be well over \$100,000.00.

I believe the City of Kirkland was going to tie shoreline work on bulkhead and piers to residential development and the City Attorney advised against this.

If the City is going to adopt stricter rules regarding nonconforming structures than required by the WAC and the SMP Update requirements it should only apply to the structure affected by the work. The City, for some reason, appears to be going far beyond what is required.

While these extreme recommendations would mean an increase in business for marine contractors and a more complex permitting process, it simply isn't right. Any rational person must question who devised such proposals and how it got this far in the process without being filtered out as totally unreasonable and obsessive. Has Ecology, the Biological Consultant or the Renton Staff clearly explained this to the Planning Commission or the City Council? This goes far beyond "no net loss" and basically mandates "restoration", and that is not required by the State from private property owners. There are documents from Ecology that say "No net loss" means that the existing shoreline ecological functions should remain the same or be improved over time. All repair, maintenance and replacement projects clearly meet this goal.

Based on my interaction and working relationship with the City of Renton Planning Staff and my impression from the members of the Planning Commission, I wrestle in believing these standards are really under consideration. I must consider that the Planning Commission did not understand what they were doing because the SMP update process can be confusing, complicated and skewed. If I understand these sections correctly please stop this from moving forward to approval and if I read them in error I joyfully welcome correction.

Please revisit these recommendations and consider the impacts and unreasonable requirements and costs it will place on your property owners. There is no other local government taking this overreaching approach toward nonconformities.

In the past I have provided the City of Renton Planning Department and Planning Commission with the following documents to raise awareness of what other communities are doing with nonconforming structures and uses. Please request a copy from the Planning Department if you would like to review them.

WAC Guidelines for Nonconforming Structures (Repair or Replaced Due to Damage)  
WAC Guidelines for SDP Exemptions  
WAC Guidelines for SEPA Exemptions  
City of Kirkland Draft SMP Update Nonconforming Structure Regulations  
City of Sammamish Draft SMP Update Nonconforming Structure Regulations  
City of Redmond Approved SMP Update Nonconforming Structure Regulations  
City of Mercer Island DSG Policy Memorandum Administrative Interpretation #05-05

Thank you for your time and effort on the SMP Update process and recommending a Draft SMP that strikes a reasonable balance between property owners, local governments and the State of Washington. If I can be of any assistance do not hesitate to contact me at (425) 343-2342 or [integritypermitting@hotmail.com](mailto:integritypermitting@hotmail.com).

Sincerely,

David Douglas  
Permit Manager/Shoreline Consultant

*I*ntegrity *S*horeline *P*ermitting • 818 Mill Ave • Snohomish WA 98290 • Phone: 425-343-2342 • Fax: 206-220-3737



**MUCKLESHOOT INDIAN TRIBE**  
**Fisheries Division**

39015 - 172<sup>nd</sup> Avenue SE • Auburn, Washington 98092-9763  
Phone: (253) 939-3311 • Fax: (253) 931-0752



May 20, 2010

Ms. Erika Conkling  
Senior Planner  
Renton Dept. of Community and Economic Development  
1055 S. Grady Way  
Renton, WA 98057

**RE: Renton's Shoreline Master Program Update, LUA10-028, ECF, Determination of Non-Significance**

Dear Ms. Conkling:

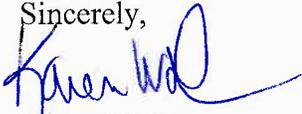
The Muckleshoot Indian Tribe Fisheries Division (MITFD) has reviewed the fifth update to the City of Renton's Draft Shoreline Master Program (SMP) and the threshold determination (DNS) for this project. We are attaching our comments in the interest of protecting and restoring the Tribe's treaty protected fisheries resources.

We appreciate the City's incorporation of some of our previously submitted comments to the previous draft of the Shoreline Master Program (MITFD letters 1/23/2009; 9/18/2009 and 12/30/2009). However, several of our previous comments remain outstanding. These outstanding issues are identified in the attached comments.

The MITFD appreciates the City's commitment and ongoing efforts to protect and restore salmonid habitat. Clearly, the Shoreline Master Program can be a powerful tool that City can use for this purpose. As we have noted previously, the Final SMP should be revised to acknowledge the importance of the Cedar River, Lake Washington, May Creek, and the Green River and associated shoreline tributaries for the Tribe's ceremonial, commercial and subsistence fisheries. Tribal members fish in Lake Washington and the Green-Duwamish River, including areas within the City of Renton. The City needs to ensure that the SMP and its implementation do not continue the degradation of treaty protected fisheries resources or impact Tribal members' ability to access these resources.

Thank you for the continued opportunity to review and comment on the SMP. Please call me at 253-876-3116 if you would like to meet and discuss these comments.

Sincerely,



Karen Walter

Watersheds and Land Use Team Leader

Cc: Barbara Nightingale, WDOE, NW Region

1. Policy SH-36, Recreation, page 31

This policy could result in dredging or filling of regulated shoreline areas and adjacent waters to support recreation. It should be deleted from the SMP because it will likely result in adverse impacts to fish habitat that cannot be sufficiently mitigated.

2. Table 4-3-090. D.7a Shoreline Bulk Standards, footnote 9, pages 63 and 64

This footnote would allow building coverage within 50% of the 100 foot vegetated setback area in some portions of the shoreline designated environments, including the Cedar River. As a result, it negates the purpose of the vegetated setback regulation to provide an area where shoreline riparian functions can occur and should be removed.

3. 4-3-090.E. 1 Shoreline Use Table, page 67

Aquaculture should be allowed in the Urban Conservancy and Natural environments. The Shoreline Management Act WAC 173-26-241(3)(b) identifies aquaculture as an activity of statewide interest. These regulations do not identify it as such. There may be a need to construct small scale finfish facilities such as egg boxes or other measures to propagate or assist in salmon propagation.

4. 4-3-090.E.1. Shoreline Use Table, page 69

Helipads should not be allowed within the regulated shoreline jurisdiction under any environmental designations, particularly aquatic, because they can result in permanent loss of shoreline functions and adversely affect salmon habitat. They are not water dependent or water oriented uses. Since the City has an existing airport on Lake Washington that is accessible to helicopters and within proximity to shoreline properties; there is no need for helipads on private lots within the regulated shoreline environment.

5. 4-3 4-3-090. E.6(d)(vii), Marinas, page 75

In order to protect against elevated predation mortality, any covers on overwater structures need to be made of light transmitting materials and/or have windows and skylights to allow sufficient light to reach the water surface.

6. 4-3-090.E.7(d) Piers and Docks design standards, pages 81-84

The maximum design standards for piers and docks in the table are too large and should be downsized. We recommend that the Table be modified to match the numeric criteria found in the US Army Corps' Regional General Permit 3 for Piers and Docks in Lake Washington (see [http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/RGP%203%20Final%20Text%206-13-05 .pdf](http://www.nws.usace.army.mil/publicmenu/DOCUMENTS/REG/RGP%203%20Final%20Text%206-13-05.pdf)).

The table needs additional language that requires new and redeveloped docks to fully mitigate for their impacts to salmonids and aquatic habitat. Reducing the area and effects of docks along the southern shoreline of Lake Washington, and restoring gently sloping shorelines with dense native shoreline vegetation is important to improve survival rates particularly for Cedar River Chinook.

7. 4-3-090.E.7(g) Piers and Docks variances, page 85

Variances should only be allowed if there is truly no other alternative and the project can fully mitigate for its impacts.

8. 4-3-090.E.10(d)(iii) Transportation, page 88

Overwater trails should not be allowed in any of the shoreline designations, particularly aquatic. An overwater trail will result in basically a very large pier or dock structure with its associated overwater coverage and piles. Since trails are usually required to be ADA accessible, the overwater trail pier or dock will likely be larger than most piers and docks used in residential settings. Piers and docks provide habitat for known salmonid predators. The jurisdictions in Lake Washington, including Renton, should be seeking to remove overwater structures, not facilitate additional structures.

9. 4-3-090.E.10f(iv), Transportation, page 91

Helicopter landing facilities are not an appropriate use on shoreline areas of single family lots. See previous comments regarding helipads.

10. 4-3-090. E.11(xv), Utilities, page 92

New utility pipeline and cables on shorelines, where no other feasible option exists, should be required to fully mitigate their impacts including the permanent loss of restoration areas and opportunities due to their vegetation standards.

11. 4-3-090. F.1(g), Vegetation Conservation, page 98

New development should be required to fully comply with the vegetation standards. Without further definition of buffer enhancement, this regulation opens the door for substantial impacts to riparian areas and potentially limited mitigation.

12. 4-3-090. F.1(i)(v), Vegetation Conservation, page 100

The maximum 30% view standard applied to trees is too high and will limit successful and necessary restoration of riparian functions along the shoreline. Trees should be allowed to be planted on redeveloped or altered lots within the vegetation buffer. Trees can be pruned so that views can provide through the tree cover, while still providing other riparian functions.

13. SECTION V. Renton Municipal Code Chapter 8 PERMITS- GENERAL AND APPEALS Section RMC 4-8-120D Definitions of Terms Use in Submittal Requirements for Building, Planning, and Public Works Permit Applications, Supplemental Stream Study, page 126

Unclassified stream studies should be assessing the water typing using the physical criteria in WAC 222-16-031(3).

Shoreline Restoration Plan

14. Section 1.3.3.2, page 1-5

As we stated in our previous comments twice, the known salmonid predators language regarding habitat needs in the Lake Washington shoreline should be modified using the citations and information we provided. It should not stay as written Walter (2009) and not a Muckleshoot Tribe representative. As a staff person in the Tribe's Fisheries Division, Ms. Walter provided the City with this information in previous comments. The actually literature citations should be used, not a personal communication from Ms. Walter.

Please see existing available scientific information that notes that deeper habitats with rocky substrates without vegetation appear to be preferred by small and large mouth bass that may also be keying in on overwater coverage and piling as ambush habitat (i.e. Pflug and Pauley 1984; Kahler et al. 2000; Fresh et al. 2003, etc). There is an abundance of these habitat types in the shoreline, which is likely increasing predation opportunities that wouldn't exist historically.

---

15. As we noted previously, the shoreline restoration plan is a good collation of existing information and proposed projects from salmon recovery plans that could occur within the City. However, the plan lacks specific details about when the potential projects will be implemented and the City's role (including financial) in getting these projects completed. As a result, there are no real commitments or guarantees that the restoration plan will be implemented.

# **ADVENTURE '95, LLC**

**851 S.W. 34<sup>th</sup> Street**

**Renton, Wa. 98057**

**425-291-3423**

May 20, 2010

Erika Conkling, AICP  
Department of Community and Economic Development  
City of Renton  
1055 South Grady Way  
Renton, Wa. 98057

Re: Comments on Renton SMP DNS

Dear Ms. Conkling:

Adventure '95 LLC ("Adventure '95") respectfully submits these comments on Renton's proposed "SMP" policies and regulations to manage shorelines within the City of Renton.

## Adventure '95's Interest

Adventure '95 owns the real estate at the above address on S.W. 34<sup>th</sup> Street, and its affiliated company "Econobox" operates a light manufacturing, warehousing and distribution facility at the location. A small portion of the facility is subleased by Apperson Printing. In this letter we will refer to this entire site as the "Springbrook Facility".

The Springbrook Facility is bordered on the East and partially on the South by Springbrook Creek, on the West by private property, and on the North by S.W. 34<sup>th</sup> Street. Just across S.W. 34<sup>th</sup> Street, to the North of us, is the "Oaksdale Commerce Center".

## Overview

Adventure '95 supports the City's initiative regarding shorelines, and fully hopes and expects to be a "good citizen" to assist the City in implementing its policies. At the same time, we feel it important to identify areas where Adventure '95's legitimate interests and activities may be implicated, so that the City can properly take into account such interests and activities when it adopts final rules and regulations—and hence these comments.

## History and Description of Springbrook Facility

The site was vacant land until 1995, when the City issued a building permit for the 160,000 SF warehouse which stands there now. The warehouse structure and surrounding improvements were completed in 1996. The exterior dimensions of the

building, along with the parking, driveways, loading areas, landscaping areas and other exterior features have remained substantially the same from 1996 to the present.

Consistent with the approved plans, the building was situated in the middle of the real estate parcel with large setbacks on the East and West sides, and rather smaller setbacks on the North and South sides. On the South side, a truck driveway borders wetlands area and, in the Southeast corner, partially borders Springbrook creek. On the full extent of the East side, a car parking area borders the creek. There is no allowed ingress to or egress from the property except on the North side, along S.W. 34<sup>th</sup> Street.

Continuously from 1996 to the present, the building has been used for light manufacturing (primarily production of corrugated boxes and foam products), warehousing and distribution, all consistent with the permitted uses under the Renton Municipal Code. Because of the nature of the packaging business, including its cyclical nature, the precise mix between manufacturing and warehousing has varied considerably over the years at the Springbrook Facility. For many years, as much as 50% of the interior space was devoted to manufacturing, whereas today less than 10% is so devoted. Tomorrow may bring yet a new mix.

In addition, although there are no current plans to change the building “envelope” or exterior improvements, on the inside of a facility of this size there are invariably, and from time to time, requests for tenant improvements, and/or changes in the electrical, plumbing, structural, or foundation features in order to accommodate changes in the manufacturing/distribution mix. In other words, it is by no means a “static” facility.

Because we see the likelihood, indeed inevitability that we or our tenants will be applying for permits in the future to allow certain new activities in the facility, we write to highlight issues we have spotted in your proposed policies and regulations as they might possibly pertain to such future permit applications.

Numerical references are to your proposed regulations unless otherwise noted.

#### Policies SH-25 and SH-28

These policies encourage public access to shoreline areas, and specifically encourage foot and bicycle paths. Given the layout of our facility, and the heavy active use by trucks, cars, and other equipment such as forklifts, it would be impractical and quite unsafe to mix any public access with those activities. For safety reasons, any such public access would need to be segregated from our ongoing business activities at the site.

#### 4-3-090.C.4.c

This would provide that, “uses adjacent to the water’s edge and within buffer areas are reserved for water-oriented development, public access, and ecological enhancement”. As mentioned, at the Springbrook Facility there are active uses related to manufacturing and distribution near Springbrook Creek, although we would argue not technically

“adjacent” to the water’s edge or within buffer areas. Certainly our ongoing uses are not water-oriented or water-dependent. We wish to be very clear with the City (as discussed further below) that those ongoing uses are fully permitted notwithstanding the quoted language.

#### 4-3-090.D.2.d.iv “Wetland Buffers”

We are wondering if the term “roads” in 4-3-090.D.2.d.(ix)(2) should include “parking areas” here. We have a permitted parking area near Springbrook Creek on the East side of our facility. (Similarly, the recently completed Oaksdale Commerce Center, on the North side of S.W. 34<sup>th</sup> Street, has a permitted parking area near Springbrook Creek.)

Similarly, we are wondering if the term “improved areas” as used in 4-3-090.D.2.d.(ix)(4) would or should include roadways, truck bays, and parking areas, all of which we have on the East side of our facility, with a roadway on the South side.

(Please see also our discussion of parking issues under -090.E.10.e below.)

#### 4-3-090.D.3.b Lighting and Screening

Subparts iv and vi of this section spell out lighting restrictions. As originally permitted, and for safety reasons, the Springbrook Facility has significant outdoor lighting, as is typical for warehouse uses. We would hope and expect these new regulations would not require any adjustment to, or additional restrictions on, that lighting.

Subparts vii and viii of this section pertain to screening of mechanical equipment and visual prominence of free-standing structures. For many years, the Springbrook Facility had a large “cyclone” affixed to its roof and clearly visible from surrounding areas. (Similar cyclones now exist at, e.g., the Allpak facility, 1100 S.W. 27<sup>th</sup> Street in Renton, and at the Alliance Packaging facility, 1000 S.W. 43d Street, also in Renton.) The Springbrook Facility cyclone was just recently removed and delivered to a Spokane facility, but there may well be a need to reinstall it, or install a different but similar cyclone, at the Springbrook Facility in the future. In light of this preexisting permitted use and the impracticality and expense associated with “screening” such equipment, we trust the screening language in vii and the visual prominence limitations of viii would not apply to a reinstallation of the cyclone as described above.

Separate and apart from the cyclone matter, from time to time and as a matter of business necessity our tenants must occasionally store equipment, including mechanical equipment, and materials outside the Springbrook Facility in the dock loading areas. Once again, we hope and trust that such activities will not implicate the provisions of vii and viii, described above.

More generally (and less technically), it stands to reason that the activities at, and appearance of, a manufacturing and distribution facility such as the Springbrook Facility will not necessarily be as aesthetically pleasing as may be contemplated by many of your

proposed regulations. We use good faith efforts to keep our facility well-maintained, clean and presentable; but it is, after all, a manufacturing and distribution facility.

#### 4-3-090.E.5.a Industrial Uses; Existing Uses; Change in Use

This provision, in subpart ii, contains reference to “existing non-water dependent uses” and includes the statement: “Changes in use are limited to existing structures.” We are unclear as to the meaning and thrust of these provisions. Thus, we are unclear whether “uses” refers to historically permitted uses, actual uses, or both or neither. As stated previously, the Springbrook Facility has been continuously permitted for light manufacturing and distribution since its construction in 1995, and that continues. As also stated previously, the exact *mix and type* of uses, within the broad categories of light manufacturing and distribution, have varied considerably in the past and likely will do so in the future. We hope and trust that a future adjustment in *mix and type* of uses within those broad categories (and inside the existing building structure) would not run afoul of any of the language in this proposed regulation.

Separately, what if we did decide to reinstall the cyclone on the roof of the Springbrook Facility? Would that be a “change” in use at all, and if so would it be regarded as “limited to existing structures”? The regulations do not seem to answer clearly this type of question.

Subpart iv of this section states in pertinent part:

**Non-water-Oriented-Uses:** Non-water-oriented industrial uses may be permitted where:

(1) Located on a site *physically separated* from the shoreline by another private property in separate ownership or a public right-of-way such that access for water-oriented use is precluded, provided that such conditions were lawfully established prior to the effective date of the Shoreline Master Program; . . .

(Emphasis added.)

At the Springbrook Facility, as we understand it, we pursue a “non-water-oriented industrial use”, but our facility is not physically separated from the shoreline. The only thing that separates the building from the creek is a *private* driveway and *private* parking area, not public right-of-way. As the activities at our facility seem to be clearly allowed under ii, discussed above, it seems strange that they might be disallowed under the language of iv, which we hope and trust is not the intent. Needless to say, clarification is needed.

Language in 4-3-090.E.5.d is also confusing and potentially troubling to us:

**Materials Storage:** New industrial development may not introduce exterior storage of materials outside of buildings within shoreline jurisdiction, except by

approval of a Shoreline Conditional Use subject to the additional criteria that exterior storage is essential to the use.

As stated, we presently store equipment and materials outside on an occasional basis, and we also typically store wooden pallets outside on a more or less continuous basis. Understanding that preexisting uses are not (or do not seem to be) swept up by the provision quoted immediately above, we are still unclear on the meaning and likely application of this provision.

For example, what if we reinstalled into the Springbrook Facility a machine that had been moved elsewhere for a period of time, and what if because of the level of production of that machine we had to store *more* wooden pallets outside than we had stored immediately before the machine was reinstalled? (But about the same number as when the machine had last been at Springbrook many years earlier.) Would that be a “new” development that might trigger this clause?

We also don’t know how one determines whether “exterior storage is essential to the use”. In our view, exterior storage of wooden pallets is essential in our line of work because interior storage raises significant safety (notably, fire) and expense issues. But we appreciate that someone who may not care much about our business needs could form a different view. Who decides, and how?

#### 4-3-090.E.10.e Transportation, Parking

Subpart iii suggests “private parking” be away from the shoreline unless “essential” to serve approved uses. At our Springbrook Facility, on the East side, we have parking for employees and visitors, and many of these parking spaces are quite close to the shoreline of Springbrook Creek.

Parking somewhere on the site is “essential” for our employees and visitors. These particular parking spaces are used as they are, because that is how the site was designed and permitted back in 1995. We cannot move the parking spaces now because by doing so we would necessarily intrude into our truck bays and truck maneuvering areas and driveways. *I.e.*, there is no other place for these parking spaces.

We would not want issuance of a future permit to be conditioned on our movement of these parking spaces. We think that would be unfair and improper.

#### 4-9-190C. Exemptions

Subsection .2 would establish a \$5,000 maximum for categorical exemptions. We think that is an awfully small number.

If, hypothetically, we wanted to reinstall our cyclone on top of the roof, would that be a “development” as you have defined that term? If so, in all likelihood the cost of the reinstallation and connection would exceed \$5,000 by a considerable amount. Were we

to need a permit for any or all of the above activities, we would certainly think it unfair that that would trigger a full review under the Shoreline Management regulations.

We respectfully suggest a threshold more in the \$50,000 to \$100,000 range would be more appropriate for this type of exemption.

\*\*\*\*\*

You may feel we are overly concerned about these proposed regulations, and perhaps we are. Nevertheless, it is important to us that we maintain our business operations at the Springbrook Facility well into the future much as we have successfully over the past 15 years, without suffering undue restrictions or regulations.

Thank you for your time and attention. Please accept these comments in the constructive vein in which they are offered. Should you have any questions of concerns about the contents of this letter, please do call me.

Sincerely,

John D. Alkire  
General Counsel

cc: Econobox; Apperson



GROEN  
STEPHENS & KLINGE LLP  
ATTORNEYS AT LAW

11100 N.E. 8TH STREET, SUITE 750  
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN  
RICHARD M. STEPHENS  
CHARLES A. KLINGE  
SAMUEL A. RODABOUGH  
BRIAN D. AMSBARY

TELEPHONE  
(425) 453-6206  
FACSIMILE  
(425) 453-6224

May 26, 2010

*Via E-Mail and U.S. Mail*

Renton City Council, Planning & Development Committee

Attn: Chair - Terri Briere

Vice-Chair - King Parker

Member - Rich Zwicker

1055 South Grady Way

Renton, WA 98057

**Re: March 2010 Draft Shoreline Master Program**

Dear Council Members Briere, Parker, and Zwicker:

This firm represents RaMac, Inc., the owner of real property situated at 2201 Maple Valley Highway. This property has waterfront on the Cedar River and currently contains the Riviera Apartments, consisting of 231 single-story residential apartment units. These apartments, and their associated modifications to the shoreline, were originally constructed in the 1950's and 1960's. This property is designated in the City's proposed Shoreline Master Program ("SMP") as being located in Cedar River Reach C and is currently zoned Commercial/Office/Residential. The site will be redeveloped and could be a destination "river walk" type of mixed use master planned development.

Prior to this firm's representation, RaMac, Inc. was already an active participant in the public process regarding the adoption of the proposed SMP, including providing both the Planning Commission and the Planning and Development Committee with letters expressing significant areas of concern, including the provision of public access, building height limitations, buffers, and non-conforming uses, among others.

RaMac, Inc. is interested in the promotion and adoption of an updated SMP that balances protection of the shoreline environment with protection of property rights—precisely as intended in the Shoreline Management Act ("SMA"), which states: "The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership;. . .and, therefore coordinated planning is necessary. . .while, at the same time, recognizing and protecting private property rights consistent with the public interest." RCW 90.58.020; *see also* WAC 173-26-176(3)(h) (Ecology Guidelines, "Recognizing and protecting private property rights").

Although several revised drafts of the SMP have been prepared at various stages in the legislative process, it does not appear that the revisions thus far have addressed the issues of

greatest concern to my client. As confirmed in greater detail herein, the concerns raised by my client are not mere concerns over policy, but also raise significant constitutional and statutory legal issues. The purpose of this letter is to address these concerns as they pertain to the most recent draft of the proposed SMP, dated March 2010.

This letter first addresses those portions of the proposed SMP that would require the provision of public access to the shorelines for most redevelopment of private property, and concludes that requiring such access violates constitutional and statutory requirements and is based upon a misreading of the SMA itself. Next, this letter addresses the 100-foot buffers under consideration in the proposed SMP and concludes that when such buffers are applied to my client's property (and other properties in Cedar River Reach C), they constitute "restoration" which goes far beyond the requirements of the SMA and the Shoreline Guidelines. Finally, the letter considers the 35-foot starting building height limitation in the proposed SMP and concludes that the building limitation is not appropriate for the COR zone and is likely also premised upon a misreading of the SMA.

**A. The City Cannot Condition Shoreline Permits for *Private* Development to Require the Provision of *Public* Access to Shorelines**

As currently drafted the City's proposed SMP contravenes basic constitutional and statutory principles by requiring the provision of public access as a condition of redeveloping properties within Cedar River Reach C and other areas throughout the City. In particular, the proposed development regulations regarding public access state as follows:

**Physical or Visual Access Required for New Development: Physical or visual access to shorelines shall be incorporated in all new development when the development would either generate a demand for one or more forms of such access, would impair existing legal access opportunities or rights, or [it] is required to meet the specific policies and regulations of the Shoreline Master Program.**

Draft 4-3-090.D.4.a. (emphasis added). This section is problematic for a variety of reasons. First, the language "shall" appears to be mandatory. Second, this provision could be construed as erroneously elevating the broad and sweeping *policies* of the Shoreline Master Program to the level of site-specific development regulations. Section II of the proposed SMP, which includes the lettered *policies*, indicates that the policies are expressly intended as amendments to the City's comprehensive plan: "Section II. The Renton Comprehensive Plan is hereby amended to provide a new Element: Shoreline Management...." Under well-established Washington law, broad policy statements set forth in comprehensive plans are not intended to regulate site-specific development activities. *See, e.g., Viking Properties, Inc. v. Holm*, 155 Wn.2d 112, 126 (2005) ("Neither the GMA nor the comprehensive plans adopted pursuant thereto directly regulate site-specific land use activities.... Instead, it is local development regulations, including zoning regulations enacted pursuant to a comprehensive plan, which act as a constraint on individual landowners."). In other words, as currently written, there is great concern that

incorporation of the policies (which are intended for inclusion in the City's comprehensive plan), could be misused and/or misapplied by the City to site-specific development.

Additionally, other development regulations in the proposed SMP state that:

**Public access shall be provided for the following development, subject to the criteria in subsection d.**

**i. Water-dependent uses and developments [as further specified]**

**ii. Non-water dependent development and uses.**

...

**iv. Development of any non-single family residential development or use.**

Draft 4-3-090.D.4.b (emphasis added). The type of developments in which the provision of public access is required are so broad, that it encompasses nearly all conceivable development. With respect to my client's specific property, it is difficult to envision a future development (*e.g.*, office space, multi-family housing, mixed-use, commercial, etc.) in which public access would not be required under the proposed SMP. As indicated below, such a requirement is patently unconstitutional and violates applicable statutory provisions.

Finally, the proposed SMP contains the following development regulation which is specifically applicable to my client's property on Cedar River Reach C:

**Public physical access from a trail parallel to the water should be provided as private lands on the north side of the [Cedar] river redevelop, integrated with vegetation conservation, and with controlled public access to the water's edge, balanced with goals of enhancement of ecological functions.** Public access shall be provided when residential lots are subdivided consistent with standards of this section.

Draft 4-3-090.D.4.f (emphasis added).

As previously observed, the City's push for the provision of public access, especially on Cedar River Reach C, appears to be based on an erroneous reading of the SMA. Specifically, RCW 90.58.020(5) states that one of the goals of the SMA is to "[i]ncrease public access to *publicly owned* areas of the shorelines" (emphasis added). Clearly, if the City's goal was to increase public access on its own property, doing so would not run afoul of constitutional and statutory limitations. However, requiring public access as a condition of development or redevelopment of *private* property is a completely different story.

The City's attempts to require public access as a condition of development and/or redevelopment on private property bears striking resemblance to the landmark U.S. Supreme Court decision in

*Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). In *Nollan*, the plaintiffs sought a coastal development permit from the California Coastal Commission (“Commission”) to demolish a house on their property and replace it with a “three bedroom house in keeping with the rest of the neighborhood.” *Id.* at 828. As a condition of granting the permit, the Commission required that the plaintiffs “allow the public an easement to pass across a portion of their property.” *Id.* The Commission asserted that the easement was appropriate because it would facilitate the public’s access to the beach and because “the new house would increase blockage of the view of the ocean, thus contributing to a wall of residential structures that would prevent the public psychologically from realizing a stretch of coastline exists nearby.” *Id.* Additionally, the Commission found that “the effects of construction of the house, along with other area development, would cumulatively burden the public’s ability to traverse to and along the shorefront.” *Id.* at 829.

In reviewing the constitutionality of the requirement for the provision of public access, the Supreme Court reversed the Commission and held that an unconstitutional taking had occurred:

Had [the commission] simply required the [plaintiff] to make an easement across their beachfront available to the public on a permanent basis in order to increase public access to the beach, rather than conditioning their permit to rebuild their house on their agreeing to do so, we have no doubt there would have been a taking.

*Id.* at 831. The Court concluded that “if the [Commission] wants an easement across the Nollan’s property, it must pay for it.” *Id.* at 842.

*Nollan* has often been cited for the principle that for a permit condition to be valid, government must identify a public problem caused by the proposed development that gives rise to a legitimate government interest to justify the condition.

With respect to my client’s property, the tenants of the Riviera Apartments may currently have access to the shoreline of the Cedar River, but the property itself does not provide access to the public at large. Just like the Nollan’s proposed demolition and reconstruction of their house, redevelopment of my client’s property will not exacerbate any perceived deficiency for public access, because the site does not currently provide such access. Accordingly, the City cannot lawfully require the provision of any public access. The City should immediately resolve this constitutional infirmity as soon as possible.

In addition to presenting constitutional issues, conditioning private development upon the provision of public access to the shorelines violates statutory law, including RCW 82.02.020. This statute incorporates the principles established in the *Nollan* case by requiring that the local government has the burden of demonstrating that conditions imposed on development must be, “reasonably necessary as a direct result of the proposed development.” RCW 82.02.020.

While cities and counties have authority to impose conditions on development, the Court in *Citizens Alliance for Property Rights v. Sims*, 145 Wn. App. 649, 664 (2008) made it clear that: “Washington courts have allowed such conditions only where the purpose is to mitigate problems caused by particular development.” *Id.* (citing *Isla Verde Intl. Holdings v. City of Camus*, 146 Wn.2d 740 (2002)). These cases make it clear that: “The burden to prove that a condition is reasonably necessary as a direct result of the proposed development is on the governmental entity imposing the requirement.” *Citizens Alliance*, at 657. With respect to the provision of public access to the shorelines, the City would be unable to justify that the condition is reasonably necessary as a result of the proposed development, when the site doesn’t already provide public access.

Finally, the City should recognize that there is little need for any additional public access to the Cedar River. In particular, the Shoreline Inventory states that “[t]he Cedar River [already] provides significant opportunities for shoreline access” and that “[t]here is at least one park in every reach, with the exception of only the Cedar River Trail in Reach A.” See Revised Draft Shoreline Inventory and Analysis, at 4-45. In other words, the public already has ample access to the Cedar River, including a trail immediately to the south of my client’s property along the south bank.

My client’s property will be redeveloped in the future. Unfortunately, the requirement of public access could eliminate potentially desirable development alternatives, such as creating a “river walk” type mixed use master planned development. Providing a public trail along the development’s riverfront that provides 24-hour access to the public at large would be inconsistent with a hotel, restaurants, offices, or multi-family residential buildings along the River.

**B. The SMA Embraces the Concept of “No Net Loss” of Ecological Functions of the Shoreline – A “One-Size-Fits-All” Approach to Buffers Is Inconsistent with the No Net Loss Standard**

The Shoreline Guidelines implement a standard of “no net loss of ecological functions,” based on *current conditions*. The Guidelines seek to implement this standard through protection and restoration of shoreline resources.

**The concept of “net” as used herein, recognizes that any development has potential or actual, short-term or long-term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist.** Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020 [including priority for single family

uses and recreational moorage], master program provisions shall, to the greatest extent feasible, **protect existing ecological functions** and avoid **new** impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

WAC 173.26-201(2)(c) (emphasis added). Thus, the “no net loss of ecological functions” applies to no net loss of *existing conditions* through sequencing applied to authorized new development to ensure that the end result maintains existing conditions—sequencing refers to avoid, minimize, mitigate in that order.

The Guidelines then apply this “no net loss” standard to new development or redevelopment as follows:

(i) Local master programs shall include regulations and mitigation standards ensuring **that each permitted development** will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Local master programs shall include regulations ensuring **that exempt development in the aggregate** will not cause a net loss of ecological functions of the shoreline.

WAC 173-26-186(8)(b) (emphasis added). Thus, the Guidelines specifically impose a “no net loss” standard on new development or redevelopment, but distinguish “permitted development” from “exempt development.”

The Guidelines also address “restoration” and distinguish “restoration” from the “no net loss” standard applied to development. The Guidelines explain that restoration of areas with impaired ecological functions is an important goal of the SMA as follows:

For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals.

WAC 173-26-186(8)(c). However, the Guidelines then make it clear in the same provision that **the SMP is to implement nonregulatory policies and programs to achieve restoration**, and

**not to use SMP development regulations** to directly impose restoration requirements as a condition of new development:

These master program elements regarding restoration **should make real and meaningful use of established or funded nonregulatory policies and programs** that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or nonregulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.

WAC 173-26-186(8)(c). Some restoration may indirectly flow from regulations and mitigation, but restoration cannot be mandated as a condition of new development. “No net loss” encompasses “protection of existing ecological conditions,” but does not mandate restoration or enhancement. The definition of “restoration” is “the reestablishment or upgrading of impaired ecological shoreline processes or functions” and the definition goes further to state that: **“Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.”** WAC 173-26-030(27). In short, “restoration” means “enhancement” in the practical sense and does not require environmental perfection or a “turning back the clock” attempting to recreate the same natural shoreline that existed 200 years ago. In this way, the SMA and Shoreline Guidelines follow the Growth Management Act in requiring new development to protect existing conditions, but not to mandate restoration or enhancement. *See Swinomish Indian Tribal Community v. Western Washington Growth Management Hearings Board*, 161 Wn.2d 415 (2007). In *Swinomish*, the Tribe argued that: “where an area is already in a degraded condition, it is not being protected **unless that condition is improved or enhanced.**” *Id.* at 427. The Supreme Court rejected the Tribe’s position that enhancement was mandatory and held that the county’s “do no harm” standard met the statutory requirement because it “protects critical areas by maintaining existing conditions.” *Id.* at 430.

The Shoreline Guidelines are even more explicit by defining the “no net loss” standard and requiring new development to protect existing conditions, but not to affirmatively restore or enhance the shoreline as a condition of construction. Importantly, the Guidelines also recognize and encourage regulatory incentives for new development and other voluntary methods to achieve restoration and protection. WAC 173-26-186(8)(e).

The intent of the Guidelines is clear. The SMP must regulate new development and redevelopment to ensure “no net loss of ecological conditions,” but “no net loss” does not mean “no development” or “no impact.” Rather, the SMP must balance competing objectives. New development and redevelopment in the shoreline area is expected to occur. At the same time, the SMP must endeavor to avoid, minimize, and mitigate shoreline environment impacts caused by that new development or redevelopment. The regulation should accomplish this on a project-by-project basis when shoreline permits are required, and on an overall, aggregate basis for projects exempt from shoreline permitting. In addition, the SMP should promote restoration efforts

through nonregulatory programs and through promotion of voluntary actions by property owners proposing new development.

As conceded by the City, many portions of the Cedar River, including Cedar River Reach C are already permanently altered by manmade development and do not provide most shoreline ecological functions. For example, the City's Shoreline Inventory states that the Cedar River's "lower watershed has been extensively altered," which includes "hard armoring (bulkheads), scouring, construction of docks and piers, and removal of native vegetation." See Revised Draft Shoreline Inventory and Analysis, at 4-35. In direct reference to my client's property, which was primarily developed in the 1950's and 1960's, the Shoreline Inventory states that "a large multi-family complex [has] substantially altered the shoreline environment through the elimination of most native vegetation." It further states that "[t]his alteration has removed most aquatic habitat value from these sections of the shoreline and contribute to cumulative impacts of alteration of the stream environment."

The SMA does not require a turning back of the clock on my client's property and restoring it to its natural condition. Unfortunately, the proposed SMP imposes Building Setbacks and Vegetation Conservation Buffers of 100 feet on parcels along Cedar River Reach C. Draft Table 4-3-090.D.7.a. The City's intent to use these buffers to require shoreline restoration is apparent, as evidenced by the following development regulation pertaining directly to Cedar River Reach C:

**Full standard buffers shall be provided upon redevelopment of the north shore [of Cedar River Reach C], subject to public access set back from the water's edge.**

Draft Table 4-3-090.F.1.I.

My client supports elimination of the current buffer and vegetation conservation requirements on the Cedar River Reach C in the proposed SMP and would be more amenable to establishing a building setback of 25 feet from OHWM, except that the building setback should be modified to exclude the footprint of existing legally established buildings and impervious surfaces. All existing buildings should be presumed to be legally established unless the City demonstrates otherwise.

The primary purpose of shoreline buffers is to preserve natural shoreline vegetation but, as indicated above, the City's Shoreline Inventory confirms that the shoreline along Cedar River Reach C was highly altered decades ago, which precludes the possibility of the shoreline functioning as a natural shoreline. The Shoreline Guidelines specifically recognize that vegetation conservation provisions cannot be fairly applied to existing development: "**Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures.**" WAC 173-26-221(5)(a). Furthermore, the shoreline has existing development based on smaller building setbacks, and so the intention is to

continue the existing development pattern and ensure that all existing buildings are considered conforming.

Again, my client's property will be redeveloped in the future. The requirement to provide a 100-foot "no touch" buffer with native vegetation would curtail many potentially desirable development alternatives, such as creating a "river walk" type mixed use master planned development. Having a hotel or restaurants on the river is wholly inconsistent with providing restaurants and other amenities that are particularly desirable when situated near the shoreline.

**C. There is No Justification for Limiting Building Heights within Cedar River Reach C to Starting Height of 35 Feet**

The proposed SMP arbitrarily creates height limitations in Cedar River Reach C, limitations that are inconsistent with their presumably underlying rationale of providing visual access to the shorelines. Specifically, pursuant to Draft Table 4-3-090.D.7.a, the building height maximum within 100 feet of Ordinary High Water Mark ("OHWM") for water-oriented uses is 35 feet. Draft 4-3-090.D.7. The SMP also adopts a 35-foot height limitation landward of the OHWM for Cedar River Reach C, while allowing for additional height increases only under limited circumstances. *Id.*

As has already been observed by other interested property owners, the area in the immediate vicinity of Cedar River Reach C contains hills on both sides of the River that exceed several hundred feet and contain unstable slopes that may never be appropriate for construction. In other words, there are currently no surrounding land uses, or any anticipated future surrounding land uses, that would benefit from visual access to the shoreline. Accordingly, the proposed SMP arbitrarily limits maximum building heights to a starting height of 35-feet along the River's setback edge rather than the full height allowed under the COR zoning of such property.

Instead, the City's use of 35 feet as a baseline for height limitations appears to have arisen by misapplication of the SMA, which exempts from the requirement to obtain a shoreline substantial development permit "single family residence[s]...not exceed[ing] thirty-five feet above average grade level." RCW 90.58.030(vi). Nothing in the SMA or the Shoreline Guidelines limits building heights to 35 feet for other types of development that are not single-family dwellings (*i.e.* commercial, industrial, etc.). In fact, the SMA doesn't even prohibit single-family residences that exceed 35 feet in height. Instead, such proposed single-family dwellings would require a shoreline substantial development permit. If the SMA doesn't prohibit single-family dwellings from exceeding 35 feet in height, it is absurd to restrict other developments, including commercial and industrial from exceeding 35 feet. The City should remedy this deficiency.

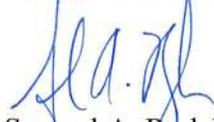
In summary, my clients respectfully requests that the City: (1) remove the requirements for providing public access to the shorelines upon redevelopment, (2) remove any requirement to restore shorelines to their natural condition, including the proposed imposition of 100-foot no-touch buffer and vegetation conservation requirements and instead consider a 25-foot building

setback from OHWM, and (3) remove the arbitrary 35-foot starting height limitation for buildings along Cedar River Reach C.

Thank you for considering these comments.

Sincerely,

GROEN STEPHENS & KLINGE LLP



Samuel A. Rodabough  
[sam@GSKlegal.pro](mailto:sam@GSKlegal.pro)



1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
PHONE: 206.359.8000  
FAX: 206.359.9000  
www.perkinscoie.com

Alexander W. Mackie  
PHONE (206) 359-8653  
FAX (206) 359-9653  
EMAIL AMackie@perkinscoie.com

June 10, 2010

Councilmember Terri Briere  
Chair, Renton Planning and Development Committee  
City of Renton  
1055 South Grady Way  
Renton, WA 98057

**Re: Renton Shoreline Coalition Comments on Shoreline Master Program Updates**

Dear Councilmember Briere:

Thank you very much for the invitation to speak to the Planning and Development Committee on issues concerning Renton's pending Draft Shoreline Master Program. As Anne Simpson may have mentioned to you, I am in Court in Wenatchee this afternoon and will not be able to attend the Committee's afternoon meeting.

During the course of my review I identified several matters of concern that I believe should be addressed before the Committee makes its recommendation to Council. The concerns focus primarily on the vegetative buffer requirements, which raise the following issues:

1. The City has designated all of the Reaches to which a vegetative buffer applies without following the mandate of RCW 36.70A.480(5) that not all shorelines are critical areas unless specifically so designated by the City. Since the inventory suggests a wide range of development on the City reaches, universal critical area designation would not seem to be appropriate.

2. The vegetative buffer program is designed to provide for restoration of functions and values following the guidance of RCW 36.70A.480(4) prior to the 2010 legislative session. The former section stated that shoreline critical areas were to be protected to the same extent as the GMA critical areas. Many communities, including Renton, relied on large buffers (e.g. 100 feet for Type II salmon bearing streams under the Renton CAO). But in the most recent legislative session, the Legislature altered the standard to "no net loss." (HB 1653) Thus the question is why is the City still promoting restoration through a large-scale vegetation

73790-0001/LEGAL18490906.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MADISON  
MENLO PARK · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

Councilmember Terri Briere  
June 10, 2010  
Page 2

management program in development areas (which does have severe legal limitations in applicability), when “no net loss” is the standard?

3. A problem symptomatic of big buffer programs in developed areas is the creation of wide swaths of nonconforming uses and structures. The Legislature recognized this problem in HB 1653 when it specifically provided that existing lawful development on shorelines may continue to be redeveloped or modified based on shoreline master program standards and the “no net loss” provisions of Section 4 referenced above, without regard to the buffer and other provisions of GMA CAO ordinances. The provision was approved by the Legislature, recognizing that creating major areas of nonconformity on the shorelines was not consistent with the “managed” approach to shoreline management. Renton needs to seriously consider both the policy and guideline base for a vegetation management program that reaches the opposite result and emphasizes nonconformity of existing shoreline uses and structures as the management tool.

4. Public access is always a touchy issue, and I believe some of the requirements in the Planning Commission draft should be carefully evaluated against both guidelines and case limitations before any final action is taken.

5. There are some additional minor technical points that we can address briefly at your next meeting.

I apologize in advance for not being able to attend this session and hope to be given the opportunity to address your committee at the next meeting, which I understand is on the 25th.

Sincerely yours,

A handwritten signature in blue ink, appearing to read 'AM', with a long horizontal flourish extending to the right.

Alexander W. Mackie



1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
PHONE: 206.359.8000  
FAX: 206.359.9000  
www.perkinscoie.com

Alexander W. Mackie  
PHONE (206) 359-8653  
FAX (206) 359-9653  
EMAIL AMackie@perkinscoie.com

June 17, 2010

Councilmember Terri Briere  
Chair, Renton Planning and Development Committee  
City of Renton  
1055 South Grady Way, Seventh Floor  
Renton, WA 98057

**Re: Renton Shoreline Coalition Comments on Shoreline Master Program Updates**

Dear Councilmember Briere:

Thank you very much for the invitation to speak to the Planning and Development Committee on issues concerning Renton's pending March 2010 Draft Shoreline Master Program (SMP) forwarded to the City Council by the Renton Planning Commission (the "PC Draft").

The Renton Shoreline Coalition ("Coalition") asked me to address a number of their concerns because I have been working with shoreline-related matters for more than 35 years. Most recently, as member (now chairman) of the Association of Washington Business Land Use Committee, I have worked directly with both legislators and the WDOE staff on matters of importance on shoreline-related issues, including (a) implementation of ESB 1933 (RCW 36.70A.380) integrating SMA and GMA programs and (b) the 2010 amendment to that section (HB 1653), legislation that made important changes to that law, a law that the Committee needs to consider before recommending a revised draft SMP to the full Council.

To assist you and your staff in preparing for next week's meeting, I have summarized concerns and questions below.

**1. Uniform Critical Area Designation Regardless of Condition**

The PC Draft's identification of all of Renton's shorelines as critical areas rather than designation of specific areas meeting the definition as required by the Legislature is a material defect warranting revision or risking challenge as inconsistent with state guidelines.

73790-0001/LEGAL18550579.1

- The PC Draft has designated *all* of Renton's shorelines as critical areas through the language of the vegetative management program. PC Draft 4-3-090.D.2.c.iii.
- The Legislature has specifically rejected that approach, stating that Shorelines are "not" critical areas unless a "specific area" of the shoreline both meets the definition of critical area and has been so designated by the City. Before the City can specify any shoreline area as a critical area, it needs to find support in the record for a finding that the area meets the following test:
  - *"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term.*

WAC 365-190-030, definitions as amended February 2010, emphasis supplied.

- There is no evidence in the City's March 2010 Revised Draft Shoreline Inventory and Analysis that supports declaration of the City's entire shoreline as a critical area under the above definition.
- To the contrary, the City's inventory shows that most of the City shoreline is already developed, much with shoreline protective structures, homes, docks, commercial buildings, businesses and related infrastructure (i.e., the built environment). In addition, the inventory shows that there is a wide variety of habitat conditions along the City's various shoreline reaches and that the reaches range from those that have higher environmental values in more natural (undeveloped) settings to highly degraded in developed areas with very little, if any, habitat value.
- The inventory also recognizes that much of the developed shoreline is not likely to change character any time soon.

**Question 1 for City Staff:** What is the basis in the record for designating the entirety of the Renton shoreline a Fish and Wildlife Habitat Conservation Area (the term that PC Draft 4-3-090.D.2.c.iii is using for "critical area") when the Legislature has specifically required that critical areas be limited to "specific areas" found by the City to be in conformance with the above-quoted WAC definition?

**Questions 2 and 3 for Staff:** Based on the inventory report:

Q #2 Which shoreline reaches, if any, satisfy the above-referenced definition of Critical Area? What criteria did you use to determine that “alteration” of existing developed areas, if allowed, “may reduce the likelihood that the species will persist over the long term,” which is the objective criteria for critical area designation?

Q #3 Which particular sections of the inventory report have been used to support the PC Draft’s identification of all of Renton’s shorelines as critical areas?

**2. Uniform Protective Measures Regardless of Need**

The PC Draft’s application of a “base” vegetative buffer to all shorelines and declaring all shorelines to be critical areas raises a number of legal issues. (The fact that the program makes allowances based on lot depth for a modification of the vegetative buffer on certain residential properties does not negate the legal problems with the PC Draft’s approach.)

- A uniform buffer approach (i.e., buffers required in all cases regardless of site conditions) without regard to need has been grounds for invalidation in both “as applied” cases [e.g., *Isla Verde v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002)] and “as written” cases [e.g., *Citizens Alliance v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008)].
- The PC Draft’s required vegetative buffer (a) would cross developed areas and structures, creating wide swaths of nonconforming structures and (b) looks, over time, to the removal of the “offending” structures and the restoration of shoreline conditions to conditions more favorable to fish and wildlife. In this regard, the PC Draft is using a “restoration” model (which is legally inappropriate for regulation of private property), rather than a “no net loss” model (which is the model called for by the State shoreline Guidelines and would be appropriate).
  - The legal test for protection in shorelines as established by the Legislature in the 2010 session is “no net loss” of critical area functions and values, not “comparable protection” of the local CAO, which is the model from the City CAO and PC Draft SMP.
  - The creation of nonconforming uses and structures on developed shorelines [and particularly making priority uses (including single-family residential uses) nonconforming uses] is contrary to the Shoreline Management Act goal of promoting all appropriate uses through a managed approach.

- In concert with the PC Draft's improper designation of every shoreline a critical area and the PC Draft's improper imposition of the vegetative buffer requirement regardless of circumstances, the PC draft also treats existing docks, bulkheads and other shoreline structures as nonconforming uses, to be removed and replaced with "conforming" docks, bulkheads and other shoreline structures upon "change of use" or certain expansion of existing development unless (in the case of bulkheads) deemed absolutely necessary to protect the proposed new use. But just as not all shorelines are critical areas, requirements for removal and replacement of presently existing shoreline works and structures is (a) not universally necessary to meet the "no net loss" standard now applicable to those actual (few) critical areas you may designate, and (b) totally inappropriate on residential and commercial shorelines that are not critical areas.
- There is no evidence that a vegetative buffer (to be implemented only upon redevelopment in the existing built environment) is applicable, appropriate or reasonably necessary to protect the *existing* functions and values of the developed shoreline. This issue is particularly pertinent in a case where a proposed change such as a remodel that may increase the size of a house or other structure within the planned vegetative buffer area, but with no net impact on current functions and values—thus meeting the "no net loss" test. The Courts have repeatedly held such requirements unlawful, even when set out in legislation. Under the PC Draft the home owner would be required to provide the vegetative "mitigation" without the necessary antecedent of "reasonably necessary" mitigation tied to a project's specific impact.

**Questions 4 through 9 for Staff:**

Q #4 What is the support in the WDOE guidelines for making single-family residential homes nonconforming structures when the City inventory acknowledges that the program is designed to allow the structures to remain in place and be redeveloped for the foreseeable future?

Q#5 What evidence in the record supports the PC Draft's creation of wide swaths of nonconforming structures (including priority uses such as single-family homes and water-dependent uses such as docks and existing shoreline protective structures—the things that form the "existing condition" in measuring no net loss) as reasonably necessary on the Renton shorelines in order to achieve the goal of "no net loss" of existing functions and values, especially when redevelopment or change of use landward of the shoreline has no demonstrable effect on local functions and values and thus meets the no net loss test?

**Q #6** What is the evidence in the record that supports the PC Draft's premise that any alteration of the existing upland on developed shorelines will cause material harm to existing functions and values of the shoreline in that location.

**Q #7** What is the "best available science" relied upon to support the proposition that a vegetative buffer is "applicable," "appropriate," and an "effective" approach to maintaining "no net loss" related to future alteration of existing developed residential and commercial areas and structures where the majority of the land within the proposed buffer area is already covered with impervious or nearly impervious surfaces (including such things as houses, other buildings, roads, parking areas and lawns)?

**Q #8** Removal of docks and bulkheads associated with "change of use" or expansion of residential building footprints or impervious areas has been addressed in the PC Draft as a "restoration" issue to make up for cumulative effect from off-site development impacts. What is the legal basis for imposing on waterfront property owners the burden of mitigating impacts from other sites, when the shoreline property owners do not front a critical area and whose existing dock or bulkhead has no relation to the impacts imposed through development by others?

**Q #9** What is the basis for Staff stating that WDOE requires such universal vegetative buffers and such critical area designation of all Renton shorelines in order to obtain approval when the SMPs of other cities, including the City of Redmond (with Lake Sammamish), have been approved without such requirements and designations?

### **3. The PC Draft SMP Lacks Consistency with the City's Comprehensive Plan**

The shoreline guidelines and GMA look for consistency between a city's Comprehensive Plan and Shoreline designations.

- Renton's Comprehensive Plan and zoning code support the Shoreline Residential and High-Intensity designations in the PC Draft Master Program.
- However, the critical area designation of those same shorelines is *not* supported by the City's Comprehensive Plan and is inconsistent with the shoreline guidelines. Under the state guidelines, shorelines with unique habitat or environmental characteristics should be the shorelines designated Natural or Urban Conservancy and the ones that might be appropriately classified as critical areas. But nothing in the record before the Committee supports converting the areas currently designated Shoreline Residential and High-Intensity in the PC Draft to the Natural or Urban Conservancy designations or classifying any of them as critical areas.

**Question 10 for Staff:**

Q #10 How do you respond to the Coalition's concern that, despite the fact that Shoreline Residential and High-Intensity shoreline areas in the PC Draft are consistent with the GMA guidelines and the City Comprehensive Plan and zoning, the critical area designation of those same areas under PC Draft section 4-3-090.D.2.c.iii with its associated vegetative buffer program is inconsistent with the City's adopted Comprehensive Plan, contrary to SMP guidelines?

**4. Public Access Requirements are Contrary to Shoreline Guidelines and State Law**

The PC Draft seeks to compel public access (limited or universal) without regard to SMA guidelines or legal authority to the contrary.

- The Shoreline Management Act focuses on public access to *publicly owned* shorelines. The PC Draft focuses on public access to *privately owned* shorelines.
- The Shoreline elements set forth in WAC 173-26-191(1)(b) speak in terms of encouraging public access consistent with private property rights, not in abrogation of such rights.
- Linear pathways (parallel to the shore) and other public right-of-way requirements unrelated to demand created by a particular project have been ruled unlawful in Washington since *Unlimited v. Kitsap County*, 50 Wn. App. 723, 750 P.2d 651 (1988). Similarly, requiring road improvements to suit some "future" right-of-way plan or connection was ruled unlawful in *Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998). *See also, Luxembourg v. Snohomish County*, 76 Wn. App. 502, 887 P.2d 446 (1995). In *Nollan v. California Coastal Comm.*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d. 677(1987) and *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994), the U.S. Supreme Court similarly limited requirements for such public access amenities on private lands to those based on project improvements consistent with both nexus and rough proportionality limitations on regulatory powers.
- The PC Draft improperly seeks to force commercial property owners to provide public access without regard to present need or use, and without regard to nexus. The PC Draft also wrongfully seeks to force small residential developments to provide shoreline access to all included properties (shoreline or not) and, for larger projects, wrongfully seeks to force provision of general public access—again without any requirement for finding nexus and rough proportionality.

- The City has no requirement for non-waterfront developers to pay an impact fee designed to provide waterfront access for the community at large so that the local developer can avoid directly providing such access on a project-by-project basis by providing funds for the City to do so as part of its park system. The issue is much like general park impact fees, which (in order to be lawful) require both nexus and proportionality and equal treatment across classes of development. The PC Draft would wrongfully single out shoreline property owners to provide public benefits not required of non-shoreline developers.

**Question 11 for Staff:**

Q # 11 On what legal basis are the public access requirements of the PC Draft justified as a mandate for all shoreline development? Under the shoreline guidelines public access to private lands is encouraged, but only that which is consistent with legal limitations. And, Courts have very clearly limited “public” acquisition of rights in a project when no nexus is present to demonstrate the mandate is warranted.

5. **The Shoreline Management Act only limits shoreline building heights to 35 feet above average grade “that will obstruct the view of a substantial number of residences on areas adjoining such shorelines.”**
  - I participated in a Shoreline Hearings Board case where the Board ruled as a matter of law that where a shoreline structure (allowed by right at 35 feet) would not block any existing views, the Hearing Examiner had the authority to allow the structure to exceed 35 feet up to the limit of the City zoning.
  - The State shoreline guidelines provide no rationale for altering the SMA’s provision on height.

**Question 12 for Staff:**

Q #12 The Shoreline Management Act provides specific guidance on shoreline heights in RCW 90.58.320. What is the shoreline guideline relied upon by Staff for suggesting the height provisions should be altered by the City and what is the legal basis for Staff’s reasoning that height restrictions in the shoreline should be more restrictive than what RCW 90.58.320 calls for?

Councilmember Terri Briere  
Chair, Renton Planning and Development Committee  
June 17, 2010  
Page 8

6. **Requirements for private docks should be uniform with WDF&W and USCOE.**
- Both WDF&W and USCOE approve docks that allow boats to moor in deep water, and with a width that allows safe travel.
  - The PC Draft imposes length/depth constraints that will effectively limit some docks to shallow draft vessels only, and the 4-foot width is found mainly in catwalks and ramps protected by 3-foot handrails (which would increase the visual impact on docks if carried out on the dock itself).
  - The 6-foot width allowed for all other private docks is a safer platform for docks and is routinely approved by permitting agencies charged with protecting fish (WDFW) and the environment generally (USCOE and, on leased lands, DNR).

**Question 13 for Staff:**

Q #13 Where is the policy direction or technical guidance that supports the Draft SMP's 4-foot width or the limit on dock length that may not allow docks to reach normal depths for boats commonly found on the lake?

Thank you for the opportunity to discuss these important questions with you.

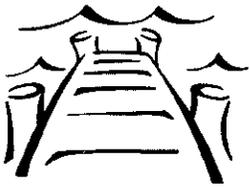
Sincerely yours,



Alexander W. Mackie

AWM/kr

cc: King Parker via email  
Rich Zwicker via email  
Mayor Denis Law via email  
Don Persson via email  
Randy Corman via email  
Marcie Palmer via email  
Greg Taylor via email  
Chip Vincent via email  
Erika Conkling via email  
Larry Warren via email  
Renton Shoreline Coalition via email



## *Renton Shoreline Coalition*

*P.O. Box 624*

*Renton, Washington 98057-0624*

**HAND-DELIVERED AND SUBMITTED INTO THE  
RECORD AT THE JUNE 24, 2010 PLANNING  
AND DEVELOPMENT COMMITTEE MEETING**

June 24, 2010

Planning and Development Committee  
of the Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's March 2010 Draft SMP

Dear Committee Members Briere, Parker and Zwicker:

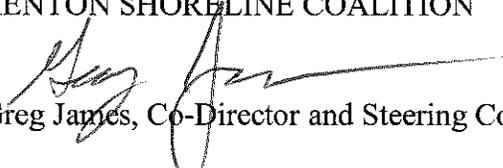
We are herewith submitting into record the Renton Shoreline Coalition's updated Table of Major Issues of concern as we now see them.

The Coalition requests both (a) your careful consideration of these issues and (b) corresponding revisions to the Draft SMP to appropriately resolve them.

Please be aware that the Coalition is working on a draft set of proposed revisions and plans to submit them to the Committee for review by the end of next week. In view of the massive size of the Draft SMP, your patience with us in this regard is requested.

Sincerely,

RENTON SHORELINE COALITION

  
Greg James, Co-Director and Steering Committee Member

Attachment: Table of Major Issues

Cc: Renton Shoreline Coalition Steering Committee Members Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter

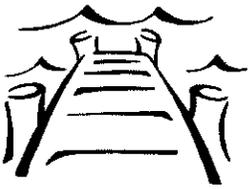
Samuel A. Rodabough, Groen Stephens & Klinge, LLP

Renton Mayor Dennis Law

City Council Members Don Persson, Greg Taylor, Randy Corman, and Marcie Palmer

Chip Vincent, Renton Planning Director

Erika Conkling, Senior Planner, Renton Planning Division



## Renton Shoreline Coalition

P.O. Box 624

Renton, Washington 98057-0624

RSC's Major Issues as of <del>June 24</del> <u>May 11</u> , 2010		
Issue #	Issue Summary	RSC's Comments on the Issue
1	The Draft SMP (a) <u>inaccurately and inappropriately classifies the <i>developed</i> shorelines within the City as "critical areas"</u> and (b) <u>must be corrected to eliminate that egregious error.</u>	<u>The developed shorelines are not "critical areas". For details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander ("Sandy") Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</u>
<del>24</del>	The Draft SMP unfairly classifies virtually all <b>existing shoreline edge improvements</b> (e.g., existing docks, piers, and bulkheads/other shoreline armoring) as "nonconforming" and wrongfully destines them for either elimination or replacement with "conforming" shoreline improvements.	<p>(A) Existing shoreline edge improvements (<b>such as existing docks, piers, and bulkheads/other shoreline armoring</b>) are valuable parts of shoreline properties in their own right, not merely in support of existing primary uses of shoreline properties. Existing shoreline edge improvements are part of the status quo and should not be considered "continuing impacts" as the Draft SMP documents treat them. (Changes that are likely to result from <u>additional</u> development are what should be analyzed as "impacts", not existing development.)</p> <p>(B) Existing shoreline edge improvements should be allowed to be repaired and/or replaced <u>indefinitely</u> in their <u>current locations, sizes and configurations</u> regardless of (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel. Such changes have no fair relation to the Draft SMP's demands for "partial compliance" or "full compliance" with the Draft SMP's standards for new shoreline edge improvements.</p> <p>(C) The SMP Guidelines' requirement of "no net loss of shoreline ecological functions" can generally be met in regard to (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel without any of the Draft SMP's new "compliance regulations" concerning shoreline edge improvements set forth in SMP Sections such as 4-10-095.F.1, 4-10-095.F.2, and 4-3-090.F.4.</p> <p>(D) The Draft SMP's new "compliance regulations" concerning shoreline edge improvements will <del>inappropriately</del> impose</p>

		<p><i>massive, inappropriate costs and uncertainties as to approval</i> on shoreline property owners who wish to upgrade their shoreline properties by (1) changing the size of building footprints or impervious area on their properties, (2) remodeling or renovating existing buildings or improvements, and/or (3) changing the “principal use” of the shoreline properties. If the Draft SMP is ultimately enacted in its current form, a (presumably) unintended consequence of the massive costs and uncertainties of the Draft SMP’s new “compliance regulations” will be that many such upgrades of existing shoreline properties will never even be attempted. That will be a shame for Renton.</p> <p>(E) Many of the important practical functions that existing shoreline edge improvements provide will not be provided with the City’s mandated substitutes [such as (1) sufficient dock width for safe use of docks in contrast with ultra-narrow dock widths in the Draft SMP requirements) and (2) substantial bulkheads/shoreline armoring that actually will prevent erosion of shoreline properties rather than expensive “soft” shoreline stabilization schemes that are subject to wash-out in big storms in Lake Washington or big flow events in the Cedar River, can result in massive property and environmental damage, and will have to be replaced over and over again at enormous expense].</p> <p>(F) <u>For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</u></p>
<p><u>32</u></p>	<p>The Draft SMP’s call for big shoreline <b>setbacks and vegetated buffers</b> in highly urbanized Renton is senseless and <u>must be revised.</u></p>	<p>(A) The <b>big shoreline setbacks and vegetated buffers</b> called-for in Renton’s Draft SMP presuppose vast virgin lands along the City’s shorelines to be protected by the Draft SMP’s requirements for “Vegetation <i>Conservation</i> Buffers” are way too restrictive. (Vegetation cannot be “conserved where it does not exist.) Such vast virgin lands don’t exist in Renton, where nearly all shoreline properties (even most City park shoreline properties) are already subject to intensive use and are not in a virgin state.</p> <p>(B) The big setback and buffer requirements unfairly require shoreline property owners to have to “make things better” if they are going to develop or redevelop their properties, not merely meet the SMP Guidelines’ requirement of “no net loss of shoreline ecological functions”. Shoreline property owners should not have to “make things better,” especially because there is serious doubt as to whether the SMP’s mandates even if implemented would actually make anything “better” at all.</p> <p>(C) The Draft SMP’s setback and buffer widths should be reduced</p>

		<p>in general. They should also be revised in regard to properties where vegetative buffers either do not currently exist at all or only exist in part to allow such existing site circumstances to be taken into account to (a) further reduce the width of required setbacks and (b) eliminate or reduce the width of required vegetative buffers. Where vegetated buffers consisting of non-native vegetation (lawns, shrubs, trees and other plants) already exists, the non-native vegetation should be allowed as an alternative to native vegetation in required vegetative buffers.</p> <p>(D) <u>Along-In non-critical area along Lake Washington's Single-Family Residential designation</u>, the setback should be a uniform <u>2535 feet with no buffer</u>. <u>In non-critical areas designated High Intensity along the Cedar River or Lake Washington, (i) for residential development the setback should be a uniform 25 feet and there should be no buffer and (ii) for commercial or industrial development the setback should be 50 feet and there should be no buffer.</u></p> <p>(E) <u>Other agencies might</u><del>may</del> add buffer requirements in regard to shoreline edge improvements when landowners go though the approval/permit processes of other agencies <u>depending upon the nature of the proposed development</u>. Renton should not place additional regulations where they are not required. Neither the SMA nor the Shoreline Guidelines require minimum setbacks and buffers for <u>already developed residential-shorelines like those along Lake Washington</u>.</p> <p>(F) If enacted, the current Draft SMP's big setback and buffer requirements will stymie desirable expansion of existing waterfront homes and redevelopment of other uses on shoreline properties.</p> <p>(G) <u>For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander ("Sandy") Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</u></p>
43	The Draft SMP's <b>limitations on new docks and piers</b> are inappropriately restrictive.	<p>The Shoreline Master Program Guidelines call for new docks and piers to be the "Minimum necessary". A minimum safe width is 6 to 8 feet. Greater lengths should be allowed in view of low water levels in Lake Washington.</p> <p>RPG3 square footage requirements are from the U.S. Army Corps of Engineers (which often grants permits not meeting those requirements). Those requirements ought not to be incorporated into the SMP.</p> <p>Other particular recommendations relating to new docks will be</p>

		forthcoming.
<u>54</u>	The Draft SMP inappropriately requires the <b>provision of public access to the shorelines for private development activity.</b>	<p>(A) The Shoreline Management Act does not authorize the City to require the provision of physical public access for private development activity. <i>See</i> RCW 90.58.020(5) (giving preference to shoreline uses that “[i]ncrease public access to <b>publicly</b> owned areas of the shorelines.”) (emphasis added).</p> <p>(B) Similar to the SMA, the Shoreline Guidelines in WAC 173-26-221(4) do not require that new private shoreline development provide physical and/or visual public access for the general public. <i>See</i> WAC 173-26-221(4) (stating that local SMPs “shall address public access on <b>public lands</b>” and encouraging other access to be consistent with private “property rights”).</p> <p>(C) Consistent with well-established jurisprudence interpreting federal and state constitutions, the City cannot lawfully require the provision of physical public access for private development activity. Doing so would contravene principles of essential nexus and rough proportionality in which a condition placed on development must relate to the impact of the proposed development. Development of a site that already does not provide public access does not adversely impact public access, but rather maintains the status quo.</p> <p>(D) The Draft SMP fails to take into account the very extensive access opportunities to Lake Washington, the Cedar River and Springbrook Creek that already exist. By doing so, it fails to account for the fact that <b>no real need exists</b> for private shoreline owners to provide even more access for the general public.</p> <p>(E) The Draft SMP’s burdensome access requirements for the general public on private property will have the effect of substantially discouraging new development <u>as well as and redevelopment of properties like the Old Stoneway Site and the RaMac property along Cedar River Reach C.</u></p> <p>(F) <u>For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</u></p>
<u>65</u>	The Draft SMP <b>inappropriately limits building heights.</b>	<p>(A) Along much of Renton’s residentially-zoned Lake Washington shorelines, 35-foot-tall homes could appropriately be built without causing serious view obstructions for uphill residences. This is the case because of the steeply sloping areas behind many of those shoreline properties.</p> <p>(B) While the City’s residential zones currently limit single-family</p>

		<p>homes to a 30-foot height Citywide, such a limit is not reasonable along many stretches of Lake Washington waterfront. The maximum height for single family homes in the Draft SMP should be 35 feet. That would give shoreline property owners an opportunity to later request that the City amend its maximum height to 35 feet under ordinary zoning regulations in areas like much of the Lake Washington waterfront where circumstances justify allowing a greater height. The City would benefit from having more substantial lakefront homes that a greater building height would allow.</p> <p>(C) Likewise, in the proposed High Intensity District along an extensive portion of Cedar River Reach C that has one hundred-foot-plus tall hills on opposite sides of the River), the draft SMP would needlessly, inappropriately and arbitrarily limit maximum building heights to a starting height of 35-feet along the River’s setback edge rather than the full height allowed under the COR zoning of such property. With the tall hills and the lack of nearby residences with views of the Cedar River, arbitrarily limiting the height and thereby discouraging site redevelopment is poor City policy.</p> <p>(D) The City’s proposed limitation of 35 feet appears to be based upon a misreading of the SMA, which exempts from the requirement to obtain a shoreline substantial development permit, “single family residence[s]...not exceed[ing] thirty-five feet above average grade level.” RCW 90.58.030(vi). Nothing in the SMA or the implementing guidelines limits building height to 35 feet for commercial and industrial development anywhere within the shoreline district. Similarly, single-family residences exceeding 35 feet are not prohibited under the SMA or the Shoreline Guidelines, but instead would require a shoreline substantial development permit where greater heights are allowed in an adopted SMP.</p> <p>(E) Artificially limiting building heights within the High Intensity District along the portions of Cedar River Reach C will discourage needed redevelopment of aging structures. Redevelopment is necessarily more costly than new development, and artificially limiting development height increases the likelihood that site-specific redevelopment will not be financially feasible.</p> <p>(F) <u>For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</u></p>
76	Overall, the current	There are other agencies involved with shoreline development and

	<p>Draft SMP—a massive document for a City and one calling for micromanagement of private shoreline properties—is an inappropriate, unwarranted and unwanted “big government” intrusion into the private sphere and <b>should be pared way back before adoption.</b></p>	<p>permitting. Renton’s SMP should be the very minimum truly <i>required</i> by applicable law.</p>
--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------

David Douglas  
818 Mill Ave  
Snohomish WA 98290

## NO NET LOSS IN THE CITY OF RENTON DRAFT SMP

- Shoreline uses and modifications shall be designed and managed to prevent degradation of water quality, minimize alteration of natural conditions and processes, and result in no net loss of ecological functions.
  - Provide that the policies, regulations, and administration of the Shoreline Master Program ensure that new uses, development, and redevelopment within the shoreline jurisdiction do not cause a net loss of shoreline ecological functions.
  - New uses and over-water structures are allowed only for water-dependent uses, single-family residences, public access, or ecological restoration and only when no net loss of ecological functions will result.
4. Recognize existing single-family residential uses and neighborhood character and ensure that existing uses, new uses, and alteration of facilities:
- (a) Do not result in a net loss of shoreline ecological functions.

**Policy SH-14.** Shoreline use and development should be carried out in a manner that prevents or mitigates adverse impacts so that the resulting ecological condition does not become worse than the current condition. This means ensuring no net loss of ecological functions and processes in all development and use.

**Policy SH-18.** All economic activities on the shoreline shall provide for no net loss of ecological functions during construction and operation.

### 4-3-090. D.2. Environmental Effects

- a. **Burden on Applicant:** Applicants for permits have the burden of proving that the proposed development is consistent with the criteria set forth in the Shoreline Master Program and the Act, including demonstrating all reasonable efforts have been taken to provide sufficient mitigation such that the activity does not result in net loss of ecological functions.



**Integrity Shoreline Permitting**  
*Professional - Affordable - Reliable*

**Dave Douglas**  
Permit Manager/Shoreline Consultant

818 Mill Avenue  
Snohomish, WA 98290

Cell: 425-343-2342  
E-mail: integritypermitting@hotmail.com

"Putting The Property Owner First"



# What Does No Net Loss Mean in the 2003 SMA Guidelines? *(June 2004)*

## And How is it Meant to be Implemented?

Within the guidelines the Shoreline Management Act's policy on protection of the environmental resources of the shoreline is stated as a requirement to achieve "no net loss of ecological functions necessary to sustain shoreline natural resources" as a result of use and development of the shoreline under the new local shoreline master programs that will be developed and adopted over the next few years. This relatively simple phrase poses a number of questions that crafters of SMPs must address and Ecology must be prepared to both assist in the local effort to address them as well as make a determination of compliance once a local government submits the updated program. The purpose of this document is to provide the basic level of explanation of the concept and its implementation.

### Legal and policy basis:

The guidelines establish that the foundation of the "no net loss" requirement is the policy of the SMA.

#### **WAC 173-26-176 General policy goals of the act and guidelines for shorelines of the state.**

(1) The guidelines are designed to assist local governments in developing, adopting, and amending master programs that are consistent with the policy and provisions of the act. Thus, the policy goals of the act are the policy goals of the guidelines. The policy goals of the act are derived from the policy statement of RCW 90.58.020 and the description of the elements to be included in master programs under RCW 90.58.100.

(2) The policy goals for the management of shorelines harbor potential for conflict. The act recognizes that the shorelines and the waters they encompass are "among the most valuable and fragile" of the state's natural resources. They are valuable for economically productive industrial and commercial uses, recreation, navigation, residential amenity, scientific research and education. They are fragile because they depend upon balanced physical, biological, and chemical systems that may be adversely altered by natural forces (earthquakes, volcanic eruptions, landslides, storms, droughts, floods) and human conduct (industrial, commercial, residential, recreation, navigational). Unbridled use of shorelines ultimately could destroy their utility and value. The prohibition of all use of shorelines also could eliminate their human utility and value. Thus, the policy goals of the act relate both to utilization and protection of the extremely valuable and vulnerable shoreline resources of the state. The act calls for the accommodation of "all reasonable and appropriate uses" consistent with "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" and consistent with "public rights of navigation." The act's policy of achieving both shoreline utilization and protection is reflected in the provision that

"permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, in so far as practical, any resultant damage to the ecology and environment of the shoreline area and the public's use of the water." RCW 90.58.020.

(3) The act's policy of protecting ecological functions, fostering reasonable utilization and maintaining the public right of navigation and corollary uses encompasses the following general policy goals for shorelines of the state. The statement of each policy goal is followed by the statutory language from which the policy goal is derived.

(c) Protection and restoration of the ecological functions of shoreline natural resources.

**RCW 90.58.020:**

*"The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization protection, restoration, and preservation."*

*"This policy contemplates 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."*

*"To this end uses shall be preferred which are consistent with the control of pollution and prevention of damage to the natural environment."*

*"Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area. . ."*

**RCW 90.58.100:**

*"(2) The master programs shall include, when appropriate, the following:*

*(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;*

*(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values; . . ."*

Taken as a whole these provisions say that the policy of the SMA is that, while certain uses and development are appropriate and necessary and must be provided for and even fostered, all uses and development must be carried out in a manner that does not degrade the environmental resources of the shoreline. In other words, no uses or development supercede the requirement for environmental protection. Or, as stated in the Guidelines:

**WAC 173-26-186 Governing principles of the guidelines.**

(8) Through numerous references to and emphasis on the maintenance, protection, restoration, and preservation of "fragile" shoreline "natural resources," "public health," "the land and its vegetation and wildlife," "the waters and their aquatic life," "ecology," and "environment," the act makes protection of the shoreline environment an essential statewide policy goal consistent with the other policy goals of the act. It is recognized

that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the act but also by past actions, unregulated activities, and development that is exempt from the act's permit requirements.

### **Scope and Intent of the phrase "no net loss" as used in the guidelines:**

Given the policy of the SMA, the question that the guidelines had to answer was how to translate this general policy into a meaningful and useful standard. The history of the SMA indicates that over time and cumulatively, use and development of the shoreline under the 1972 guidelines and master programs adopted pursuant to them, has resulted in progressive loss of shoreline resources and thereby these programs have not effectively implemented the policy of the SMA. However, this is not to say that nothing has been accomplished. Use and development is significantly different today than it was prior to the Act. The changes are not all attributable to the SMA by any means but it certainly influenced where and how development occurs in a positive manner from an environmental perspective.

The failure is not specific, it is general, the overall effect of many decisions. Traced back to the guidelines, it is essentially a failure to set a bright line. The general policies for protection of the shoreline in the 1972 guidelines were insufficient to guide the vast quantity of individual decisions about master program contents and individual developments. A more specific goal and standard was necessary.

Concomitantly, it is obviously necessary to also give weight to the policy of the SMA calling for accommodating and fostering certain uses of the shoreline. Further to be effective and sustainable, any approach must honor the requirements established in case law concerning nexus and proportionality of requirements imposed on development together with other Constitutional limitations on government authority to regulate private property

Thereby, to address all of these interests, the reasonable policy is that use and development that is appropriate and necessary is planned for and accommodated by assuring that the impacts of establishing uses or conducting development are identified and mitigated with a final result that is no worse than maintaining the current level of environmental resource productivity or "no net loss".

Then the question arises as to how this is measured. Shoreline ecosystems are complex and varied such that at the highest level any change may be considered as loss. However, shoreline ecosystems are also resilient and adaptive to change. By their fluid nature, shorelines change. If the components of the environment that create the environmental values are sustained, then the values will be sustained. These components are the ecological functions that work individual and together to create the shoreline environment. Thereby using the "ecological functions necessary to sustain shoreline resources" as the measure assures that the relevant components of any particular shoreline are identified and protected through implementation of the SMP.

Since we usually plan based on less than complete information, the concept of the guidelines is that identification of ecological functions, and of the proper means to address their preservation over time, will be addressed at a minimum of two levels, the plan level and the project level. This is also consistent with the basic system created in the SMA. This allows planning to move forward where information may be incomplete or uncertain while assuring that before actual projects are authorized, the higher level of

# Lake Washington/Sammamish SMP Guidance: Fall 2008

---

**To:** Lake Washington/Sammamish Local Government; staff, planning commissions, citizen advisory committee and elected officials working on updating Shoreline Master Programs

**From:** Washington State Department of Ecology – Shorelands & Environmental Assistance Program

**Subject:** On-going guidance on Shoreline Master Program updates

Ecology is aware of recent letters and emails raising questions related to updates of local Shoreline Master Programs (SMP) within Lake Washington and Lake Sammamish. In an effort to offset any miscommunication and ensure broad understanding of the SMP Guidelines (WAC 173-26), Ecology has attempted to synthesize many of the comments voiced and provide some guidance to these questions for your consideration.

## **SMP QUESTIONS SENT TO LOCAL GOVERNMENTS:**

### **What is the definition of “No Net Loss of Ecological Functions”? Is “no net loss” applied state-wide, by jurisdiction or on a project-by-project basis?**

**What is No Net Loss of Ecological Functions?** Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from planned for and permitted new development. This means that through implementation of the updated SMP, the existing condition of shoreline ecological functions should remain the same or be improved over time. The Shoreline Master Program Guidelines (Guidelines) set forth the obligation to assure that no net loss of ecological functions will be achieved within the SMP’s planning horizon by implementing updated SMP policies and regulations. No net loss of ecological function is a jurisdiction specific determination that is based on anticipated future uses and associated ecological risks from allowed uses within shoreline areas. SMA policy and the Guidelines recognize the need to balance both *use* and *protection* of shoreline resources. Thus, SMPs must provide for preferred shoreline uses set forth in the SMA (RCW 90.58.020). These include water-dependent uses like port development, public access facilities, and owner occupied single-family residences. Impacts resulting from these preferred shoreline uses, when they cannot be avoided, must be reduced by other SMP environment designations and regulations which follow the required mitigation sequence. Achieving no net loss of ecological function relies on consistent application of mitigation sequencing. Mitigation sequencing sets a priority to first avoid, then minimize, rectify, reduce or compensate for impacts

The no net loss analysis is intended to inform the SMP planning process by describing both the presence and potential risks to existing shoreline ecological functions. The analysis should evaluate the intensity of future uses that are appropriate for segments of shorelines to ensure no overall or net loss of ecological functions. A no net loss of ecological functions determination will need to be justified by local governments through a Cumulative Impact Analysis, which essentially anticipates build-out of shoreline areas pursuant to the intensity of development allowed through the updated SMP. This determination must conclude that build-out of the local shoreline will not further threaten existing shoreline ecological functions. In sum, the no net loss

- WAC 173-26-211(5)(c)(ii)(D) states: *"All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation ... and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration."*
- WAC 173-26-231(b) *"Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions..."*
- WAC 173-26-221 (2)(c)(iii) and (iv). *"Master programs should require that structures be made of materials that have been approved by applicable state agencies."*

## **Flexibility versus specific standards for Piers/Docks? Redevelopment standards versus new Piers/Docks standards?**

- In order to meet the no net loss requirement, jurisdictions updating their SMP's must consider the cumulative impacts of future allowed shoreline uses. Specific to Piers/Docks, jurisdictions will need to refer to specific development standards as a basis for evaluating the build-out potential allowed through future implementation of the updated SMP. This analysis of cumulative impacts must consider the potential risks to shoreline ecological functions if the shoreline were to be fully developed to the maximum intensity allowed through the updated SMP. Therefore, specific to new Piers/Docks, dimensional standards must be proposed as part of the updated SMP. Without specific standards, there would be no certainty in local projections of future (planned) shoreline uses and their impacts and hence no justification that the no net loss standard will be achieved.

The Army Corps of Engineers Regional General Permit (RGP) #3 consist of regionally specific, science based Pier/Dock development standards. These standards reflect completed consultation for Endangered Species Act (ESA) Section 7 and essential fish habitat (EFH) review from federal resource agencies. Pursuant to the SMP Guidelines, updated SMP's are required to be based on objective use of relevant scientific information, for which the RGP standards provide an opportunity for local jurisdictions to incorporate existing minimizing Pier/Dock standards. Local jurisdictions have the option to come up with different standards, but they will need to supply sufficient science based analysis illustrating potential risks to shoreline ecologic functions. Regardless, if jurisdictions decide to utilize the RGP standards or create their own Pier/Dock standards consideration of cumulative impacts as well as a determination of no net loss (risk) of shoreline ecological functions must be concluded.

Existing Pier/Dock redevelopment strategies will need to be jurisdiction specific. These standards should be based on the jurisdictions SMP Inventory/Characterization, with appropriate sideboards identified to ensure that expanded or reconstructed Piers/Docks will not result in net loss of ecological functions. For example, a shoreline with a high density of existing Piers/Docks, may be able to define redevelopment standards that allow some flexibility in the size or orientation of the redeveloped overwater footprint or structures, while also incorporating some degree of restoration. This management strategy must acknowledge existing shoreline resources and maintain or restore shoreline ecological functions through

redevelopment. Restoration of impaired ecological functions should be included in the evaluation of no net loss to help offset impacts introduced from new planned shoreline development allowed in the updated SMP. Alternatively, with less developed shorelines, Ecology suggests that local governments clearly distinguish between new and re-development standards to ensure adequate protection of existing ecological functions.

## **Streamlined permitting process at what cost to property rights?**

It is anticipated that any identified streamlined process would not be the only option available to shoreline property owners. For certain uses, local governments do have an opportunity through updating of their SMP to pre-analyze impacts of certain minimal impact activities and provide a streamlined review process for those limited uses. In general, the scope of projects fitting within a streamlined permitting process must be more specific and potentially restrictive to ensure certainty and broad consistency with SMP goals and policies. For example, Pier/Dock proposals consistent with federally established guidelines could be streamlined through a local shoreline permit process for some shoreline areas where shoreline ecological functions can be shown to not be negatively impacted.

### **\* Restrictive Pier/Dock standards are thwarting of shoreline property owner's property rights.**

Under Washington State law a private dock is not a shoreline property right associated with ownership of shorelines of the state. Construction of a dock or pier is a privilege that may be allowed under certain circumstances when consistent with Shoreline Management Act policy (RCW 90.58.020), the local government Shoreline Master Program and the Public Trust Doctrine.

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (See State Supreme Court case *Caminiti v. Boyle*, 107 Wn. 2d 662, 732 P.2d 1989). The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark. Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled, in major part, by the planning and permitting requirements of the Shoreline Management Act and locally approved SMPs.

In any case, local governments do have the authority to regulate the size and require mitigation for potential impacts associated with docks to protect the public interest.

**QUESTIONS DIRECTED TO ECOLOGY:**

**What baseline is used for each individual property based on the SMP Guideline no net loss of ecological function requirement?**

The baseline for SMP updates is derived from the individual shoreline Inventory and Characterization prepared for each jurisdiction during the initial stages of their shoreline program update. This analysis is intended to inform the SMP planning process through description of both the presence and potential risks to existing shoreline ecological functions as described within WAC 173-26-201(3)(c) and (d). The Inventory/Characterization is not necessarily intended to evaluate individual properties. Rather, the analysis should describe what intensity of future shoreline uses and activities should be planned and anticipated for each segment of shoreline to ensure that the end result is no overall or net loss of ecological functions. In other words, it is understood (and should be evaluated) that some projects will have minimal negative impacts and some projects will improve ecologic conditions, as long as a jurisdiction can illustrate overall maintenance or improvement to ecological conditions, then they are meeting the no net loss requirement. The no net loss determination will need to be justified through a Cumulative Impacts Analysis, which essentially anticipates build-out of shoreline areas pursuant to the intensity of development allowed through the updated SMP. With this information, the impacts to existing shoreline ecological functions resulting from future development can be anticipated and where appropriate avoided. It is important to understand that this analysis will vary by jurisdiction and is fundamentally based upon the characteristics of each individual jurisdiction's shoreline.

Specific to implementation of an updated SMP, individual project review should consider no net loss as a governing principal (WAC 173-26-186), So, in summary, the baseline for each individual property is the ecological conditions that existed at the time a local SMP is comprehensively updated per SMP Guidelines requirements.

**Will new piers or bulkheads replacing existing structures be evaluated against existing site conditions?**

Yes, existing site conditions are one consideration, but also the specific planning policies and regulations contained in the SMP that apply to new piers and bulkhead replacements and the particular shoreline site will need to be considered as well. SMP updates are two-dimensional, requiring jurisdiction-wide planning for future uses as well as implementation over time of the SMP on an individual project-by-project basis. From a jurisdiction-wide planning perspective, the shoreline Inventory and Characterization documents shoreline modifications that may or may not impair existing shoreline ecological functions. Regardless of the degree of existing modifications, the bottom line is that updated SMP's need to adequately protect existing shoreline ecological functions. For example, within heavily developed shorelines, redevelopment strategies that account for improvements to existing site conditions might be an appropriate approach. Whereas, within unaltered (natural) shorelines, emphasis should be placed on protection measures for which existing structures should be phased out overtime as existing non-conforming uses.

**Example Question: How is DOE suggesting local governments view a scenario where an applicant is pulling a full length bulkhead and replacing with transitional bulkheads at either end and a cove beach in the middle?**

Ecology would be in support of partial restoration of shorelines as described within the scenario above, because it represents an improvement in existing conditions when compared to the existing full length bulkhead. For jurisdictions with highly developed shorelines, Ecology would suggest that local governments clearly describe redevelopment perimeters to encourage partial shoreline restoration.

**What is DOE doing to encourage local governments to have a process acknowledging individual improvements associated with shoreline redevelopment?**

As previously stated, redevelopment strategies should be jurisdiction specific with appropriate sideboards to ensure no net loss. Also, as part of the comprehensive SMP update, jurisdictions are creating individually customized shoreline restoration plans, where non-regulatory shoreline improvements would be prioritized and encouraged for each stretch of shoreline. In implementing a local restoration plan, all jurisdictions should be encouraged to maintain a list of "individual improvements associated with shoreline redevelopment", so that in the future progress can be identified and evaluated.

**Does DOE have a responsibility to protect local governments from vulnerability to thwarting private property rights of shoreline property owners?**

Both local governments and the department have the responsibility to ensure private property rights in shoreline areas are not thwarted. There are multiple references both in the SMA itself (starting at RCW 90.58.020) and again in the SMP Guidelines (starting at WAC 173-26-176(3)(h)) ensuring private property rights are protected.

Local governments are directed to consider private property rights in the preparation of all local SMPs as is Ecology and the Attorney General's Office (AGO) when approving the SMPs. Specifically, the AGO is directed by state law to advise state agencies and local governments in an orderly, consistent process to evaluate proposed regulatory or administrative actions to assure that these actions do not result in unconstitutional takings of private property. The AGO does in fact review SMP submittals to ensure private property rights are protected before the SMPs are approved by Ecology. Following is a link to this guidance posted on our shorelines management web site:

[http://www.atg.wa.gov/uploadedFiles/Home/About\\_the\\_Office/Takings/2006%20AGO%20Takings%20Guidance\(1\).pdf](http://www.atg.wa.gov/uploadedFiles/Home/About_the_Office/Takings/2006%20AGO%20Takings%20Guidance(1).pdf)

**How is DOE addressing the apparent conflict with biological consulting firms assisting local governments in their SMP update in fairly evaluating and applying SMP standards in a reasonable and practical manner?**

Biological consulting firms when involved in SMP updates are only one source of available information. Local governments are required to use all available technical and scientific information in the development of their SMP. This includes contacting all *“relevant state agencies, universities, affected Indian tribes, port districts and private parties for available information.... The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process...”* (WAC 173-26-201(2)(a).

It is not clear how any conflict exists if there is no limitation on sources of available information. Ultimately, local government elected officials must consider all of the information put before them, including opposing views and opinions, judge their credibility and decide what standards best achieve SMP guidelines requirements, given local circumstances.

# Chapter 4

## No Net Loss of Shoreline Ecological Functions

### All phases Shoreline Master Program Planning Process

### Introduction

The Shoreline Management Act (SMA) provides a broad policy framework for protecting the natural resources and ecology of the shoreline environment. The SMP Guidelines establish the standard of “no net loss” of shoreline ecological functions as the means of implementing that framework through shoreline master programs. WAC 173-26-186(8) directs that master programs “include policies and regulations designed to achieve no net loss of those ecological functions.” (The specific sections of the Guidelines addressing the NNL requirement are included at the end of this chapter.)

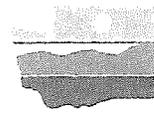
*RCW 90.58.020: The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation...This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...*

The SMP Guidelines, adopted in 2003, constitute the first actual rule (WAC) in Washington State to incorporate the no net loss requirement. The concept of no net loss in this State originated with earlier efforts to protect wetlands. In 1989, Governor Booth Gardner signed an Executive Order establishing a statewide goal regarding wetlands protection. "It is the interim goal...to achieve no overall net loss in acreage and function of Washington's remaining wetlands base. It is further the long-term goal to increase the quantity and quality of Washington's wetlands resource base." (E.O. 89-10).

### What does no net loss mean?

Over time, the existing condition of shoreline ecological functions should remain the same as the SMP is implemented. Simply stated, the no net loss standard is designed to halt the introduction of new impacts to shoreline ecological functions resulting from new development. Both protection and restoration are needed to achieve no net loss. Restoration activities also may result in improvements to shoreline ecological functions over time.

Local governments must achieve this standard through both the SMP planning process and by appropriately regulating individual developments as they are proposed in the future. No net loss



## Shoreline Master Programs

Until about 40 years ago, development along Washington's shorelines tended to be piecemeal and uncoordinated. To improve and protect shoreline values and benefits, the state Legislature passed the state Shoreline Management Act in 1971. The public adopted the Act in a 1972 referendum vote.

To manage shoreline development and uses, the state law established a cooperative relationship between local governments and the Washington Department of Ecology (Ecology). The Shoreline Management Act applies to most streams, lakes greater than 20 acres, and marine waters as well as associated shorelands, wetlands, and floodplains. The law has three main purposes:

- Encourage reasonable and orderly development of shorelines, with an emphasis on water-dependent and related uses that control pollution and prevent damage to the natural environment.
- Protect the natural character of Washington shorelines, the land, vegetation, wildlife, and shoreline environment.
- Promote public access and provide opportunities to enjoy views and recreational activities in shoreline areas.

"Shoreline master programs" are the cornerstone for carrying out the Shoreline Management Act. Under state law, more than 260 towns, cities, and counties with shorelines covered by the Act must develop locally-tailored programs to guide shoreline use, development and public access.



*Discharge Split in the Strait of Juan de Fuca.*

## Legal Issues

### **Q: Aren't requirements for shoreline vegetation buffers a "taking" of private property rights?**

**A:** No. The U.S. Constitution allows state and local governments to limit private property activities provided it's for a legitimate public benefit and they do not deprive the landowner of all reasonable use of the property. For example, state and local governments can adopt regulations that prevent sediment from running off private property and entering a salmon-spawning stream. These regulations protect salmon, a public resource.

Buffers do not deprive landowners of all reasonable use of their property and, in fact, all property tends to benefit from reasonable setbacks and buffers. In those limited instances where the buffer precludes or significantly interferes with a reasonable use, the property owner may obtain a variance.

### **Q: Hasn't Whatcom County's Shoreline Master Program been challenged and overturned in court?**

**A:** No. A local developer and the Building Industry Association of Whatcom County took Whatcom County and Ecology to court and lost on all issues except one. All other issues addressed by the Western Washington Growth Management Hearings Board, and in a separate Skagit County Superior Court case, were found in Whatcom County and Ecology's favor. The issue the Board found in the appellant's favor was "despite critical areas being originally approved through a county critical areas ordinance public process, they need to be revisited and justified if incorporated into an updated shoreline master program."

The Western Washington Growth Management Hearings Board ruled:

- Ecology's approval of the shoreline master program was valid as originally approved on August 8, 2009.
- The public process was proper and legally correct.
- The county's inventory and analysis supported the designation of all marine near shore areas, streams, and lakes as critical areas.
- The issue challenging the required 100 to 150 foot buffers was dismissed.

The Skagit County Superior Court found:

- The shoreline master program is not subject to certain statutory limitations on the regulation of development because shoreline master programs constitute state, not merely local, regulations.

**Q: Is it true if my house burns down I can't rebuild it in the same location?**

**A:** No. While each local jurisdiction can modify their approach, single-family homes are "grandfathered" under the state Shoreline Management Act. This means if your burns down, it can almost always be re-built in the same footprint. The only exception would be if the existing location was dangerous or unsafe for building such as in a floodway or on a failing bluff.

**Q: Whatcom County updated its shoreline master program in 2008. Have property owners applying for improvements such as new additions and garages run into any problems?**

**A:** Since Whatcom County adopted its updated shoreline program, the county has received more than 20 applications to make building improvements. These building permits received approval and were issued in a timely manner. No decisions have been appealed.

**Q: Could updating the local shoreline master program require me to tear down my existing shoreline structure?**

**A:** No. Shoreline programs are not retroactive. They only apply to development occurring after adoption.

**Q: Will waterfront property owners still be able to protect their property with a bulkhead under an updated shoreline master program?**

**A:** If property owners can clearly demonstrate a need exists, they can use an approach that has the least impact on the natural shoreline.

**Q: Will homeowners face more limits on building new docks?**

**A:** That depends on the local circumstances and the choices made locally about how a community wants its future shoreline to look. If new docks can be shown not to harm the natural shoreline they can be allowed.

**Q: Could there be limits on repairing houses, barns, fences, bulkheads, docks or other structures?**

**A:** Provisions in state law allow the repair and maintenance of existing, lawful constructed structures. State shoreline guidelines allow repair and maintenance of existing structures, subject to any building requirements imposed separately by local jurisdictions.

## Bulkheads, Sea Walls and Armoring

### Q: What is hard armoring? What are its impacts on the shoreline?

A: The natural character of shorelines and many organisms living there depend on a continuous and uninterrupted relationship between upland areas and the water. Beaches depend on erosion to supply sand and gravel. Hard armoring interrupts this natural relationship. Property owners use hard armoring to protect an owner's preference for how the waterfront edge should look or limit property loss by erosion. Armoring prevents the supply of new material for beach formation and disturbs other ecological functions.

### Q: What is soft armoring? What are its impacts on the shoreline?

A: There are many ways to slow the rate of erosion that are less disruptive than hard armoring. Soft armoring approaches often use a combination of less rigid structural materials and native vegetation to stabilize the shoreline. Placing large logs or native vegetation along the shoreline, for example, can serve as a natural break for waves while simultaneously providing some habitat value.

## No Net Loss and Restoration

### Q: What is "no net loss" of ecological or environmental functions?

A: The new environmental protection standard for updated shoreline master programs is "no-net-loss of shoreline ecological functions." While restoration of degraded areas is encouraged, this does not mean all shoreline areas are required to be made "pristine" or returned to pre-settlement conditions. Local governments are required to inventory current shoreline conditions - including identifying existing ecological processes and functions that influence physical and biological conditions. When a shoreline program is adopted, existing ecological conditions on the ground must be protected while development of shoreline areas is continued in accordance with adopted regulations. This is accomplished by avoiding or minimizing the introduction of impacts to ecological functions that result from new shoreline development.

### Q: Do the new guidelines require restoration?

A: Local governments must plan for restoration in their shoreline master programs. Restoration is not a direct requirement for private development. Local government must consider its restoration needs, identify resources available to conduct restoration, prioritize restoration actions, and make sure development activities don't interfere with planned restoration efforts in the community and vice versa. A shoreline master program may include incentives for developers to invest in shoreline restoration.

**Q: Do the rules surrounding “best available science” apply to shoreline master programs?**

**A:** No. Current science is the basis for shoreline master programs while “best available science” is a term from the state Growth Management Act, and does not apply to shoreline master programs. Shoreline management requires use of the “most current, accurate and complete scientific and technical information” as the basis for decision making.

**Q: What is Ecology’s role in developing and providing wetlands guidance to local governments?**

**A:** Local governments implement the GMA. Ecology, however, has expertise in managing and protecting wetlands. We knew most local governments didn’t have the resources to develop a science-based standard for protecting wetlands. To help local governments meet GMA requirements without reinventing the wheel, Ecology got a federal grant in 2002 and spent three years crafting wetlands guidance. We scanned over 15,000 scientific articles and summarized another 1,000 related to protecting and managing wetlands. Ecology continues to provide this guidance and technical assistance, as applicable wetland regulations are updated all across the state.

**Q: Where can I get more information?**

**A:** There is an array of valuable information available at Ecology’s Shoreline Master Program Web site at <http://www.ecy.wa.gov/programs/sea/shorelines/smp/index.html>. The site includes:

- A citizen’s guide for shoreline master programs.
- Shoreline planners’ toolbox.
- Laws, rules, and legal cases related to shoreline management.
- Shoreline master program publications.

Other Agency Requirements: (excerpts from page 80 -83)

ix. If a dock design or modification is approved by the Army Corps of Engineers it will be approved by the City of Renton. If deviation from the design standards is required or allowed by another agency with permitting authority, it shall be allowed.

*Melissa Fox*  
*Audience Comment*  
 6-28-2010

	Single-Family	Joint Use and Community Docks
<b>WHEN ALLOWED:</b>	Maximum of one pier or dock per developed waterfront lot or ownership.	A joint use dock may be constructed for two or more contiguous water front properties and may be located on a side property line, or straddling a side property line, common to both properties or be provided with an access easement for all lots served. <sup>1</sup>
		Joint use docks or piers are allowed 1 vessel moorage consisting of an ell, finger pier, or float for each owner. Joint use docks or piers serving more than four vessels shall be regulated as marinas.
<b>LENGTH-MAXIMUM</b>		
Docks and Piers	(no # of vessel restriction) Maximum: length required to attain 12 ft depth from OHWM.	(no # of vessel restriction) Maximum: length required to attain 12 ft depth from OHWM.
Ells and Fingers	26 ft.	26 ft.
Floats	20 ft.	20 ft.
<b>WIDTH</b>		
Docks and Piers	6 ft. <sup>4</sup>	6 ft. <sup>4</sup>
Ells and Floats	6 ft.	6 ft.
Fingers	2 ft.	2 ft.
Ramp connecting pier/dock <sup>a</sup>	3 ft. for walkway, 4 ft. total	3 ft. for walkway, 4 ft. total

to a float			
<b>PILINGS- MAXIMUMS</b>			
Mooring Piles	2 piles, up to 12 in. in diameter, installed within 24 ft. of a dock or pier and out of the nearshore area.	4 piles, up to 12 in. in diameter, installed within 24 ft. of a dock or pier and out of the nearshore area.	
<b>SETBACKS- MINIMUMS</b>			
Side Setback	No portion of a pier or dock may lie closer than 5 ft. to an adjacent property line and may not interfere with navigation.	No portion of a pier or dock may lie closer than 5 ft. to an adjacent property line and may not interfere with navigation.	

**Table Notes:**

1. A joint use ownership agreement or covenant shall be executed and recorded with the King County Assessor's Office prior to the issuance of permits. A copy of the recorded agreement shall be provided to the City. Such documents shall specify ownership rights and maintenance provisions, including: specifying the parcels to which the agreement shall apply; providing that the dock shall be owned jointly by the participating parcels and that the ownership shall run with the land; providing for easements to access the dock from each lot served and provide for access for maintenance; providing apportionment of construction and maintenance expenses; and providing a means for resolution of disputes, including arbitration and filing of liens and assessments.
2. Maximum length is 80' (80 ft.) unless a depth of 8' (8 ft.) cannot be obtained. In such circumstances the dock may be extended until the water depth reaches a point of 8' (8 ft.) in depth at ordinary low water, or to a maximum of 120' (120 ft.), whichever is reached first.
3. Additional width may be allowed to accommodate public access in addition to the water- dependent use.  
removed not #4



1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
PHONE: 206.359.8000  
FAX: 206.359.9000  
www.perkinscoie.com

Alexander W. Mackie  
PHONE (206) 359-8653  
FAX (206) 359-9653  
EMAIL AMackie@perkinscoie.com

July 1, 2010

Councilmember Terri Briere  
Chair, Renton Planning and Development Committee  
City of Renton  
1055 South Grady Way, Seventh Floor  
Renton, WA 98057

**Re: Renton Draft SMP—Suggested Changes in Follow-up to My June 24, 2010  
Presentation to the Committee**

Dear Councilmember Briere:

During last week's Planning and Development Committee meeting, I discussed a number of issues on behalf of my client Renton Shoreline Coalition (the "Coalition"). In follow-up, I have several changes to recommend on behalf of the Coalition that are listed and explained below. Each is identified with a specific concern and directed to specific language in the text of Renton's June 2010 draft Shoreline Master Program.

**1. Not All Shoreline Areas are Critical Areas.**

Staff member Erika Conkling asserted that we were reading the code incorrectly when she stated that it was not the intent of the City to designate all Class 1 Streams and Lakes (those regulated under the Shoreline Management Act) as critical areas. Unfortunately, that is precisely what the June draft of the SMP would do. Look closely at the language of 4-3-090.D.2.c.iii therein, which defines "critical area regulations" for Class 1 Fish and Wildlife Habitat Conservation Areas.

**c. Critical Areas within Shoreline Jurisdiction:**

- \*
- \*
- \*

73790-0001/LEGAL18657518.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MADISON  
MENLO PARK · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

**iii. Critical Area Regulations for Class 1 Fish Habitat Conservation Areas:** Regulations for fish habitat conservation areas Class 1 Streams and Lakes, pertaining to water bodies designated as shorelines, are contained within the development standards and use standards of the Shoreline Master Program, including but not limited to RMC 4-3-090. F.1 Vegetation Conservation, which establishes vegetated buffers adjacent to water bodies and specific provisions for use and for shoreline modification in sections 4-3-090E and 4-3-090F.

Section 4-3-090.D.2.c.iii.

Contrary to the legislative mandate in RCW 36.70A.480(5) that not all shoreline areas are critical areas unless specifically designated by the city in accordance with criteria of WAC 365-190-030,<sup>1</sup> your current draft SMP states that all City regulated shorelines are subject to the defined critical area regulations.

As currently drafted, section 4-3-090.D.2.c.iii defines the entirety of Class 1 Streams and Lakes in Renton's jurisdiction (which include the Cedar River and Lake Washington) as fish and wildlife habitat conservation areas. Thus, the plain meaning of that section is that both are being defined as critical areas even though most of the shorelines along the Cedar River and Lake Washington don't meet the regulatory criteria of WAC 365-190-030.

To achieve the legislative intent of RCW 36.70A.480(5), section 4-3-090.D.2.c.iii should be reworded to state as follows (changes illustrated by underlining and strike-through):

<sup>1</sup> As my June 17, 2010 letter to you explains:

The Legislature has specifically rejected the approach [that Renton has used in designating *all* of Renton's shorelines as critical areas through the language of Section 4-3-090D.2.c.iii and implemented through the vegetative management program, stating that Shorelines are "not" critical areas unless a "specific area" of the shoreline both meets the definition of critical area and has been so designated by the City. Before the City can specify any shoreline area as a critical area, it needs to find support in the record for a finding that the area meets the following test:

- o *"Fish and wildlife habitat conservation areas" are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term.*

WAC 365-190-030, definitions as amended February 2010, emphasis supplied.

**c. Critical Areas within Shoreline Jurisdiction:**

**iii. Critical Area Regulations for Class 1 Fish Habitat**

**Conservation Areas:** Regulations for fish habitat conservation areas Class 1 Streams and Lakes, pertaining to water bodies designated as shorelines critical areas, including natural, conservancy and urban conservancy shorelines on the Master Program map, are contained within the development standards and use standards of the Shoreline Master Program, including but not limited to RMC 4-3-090. F.1 Vegetation Conservation, which establishes vegetated buffers adjacent to water bodies and specific provisions for use and for shoreline modification in sections 4-3-090E and 4-3-090F.

Section 4-3-090. D.2.c.iii.

This proposed revised language is consistent with both your inventory and the shoreline designation criteria of Chapter 173-26 WAC, criteria that (1) differentiate between lands appropriate for intensive development (i.e., lands designated High-Intensity and Shoreline Residential) and (2) environmentally sensitive lands appropriate for less intensive uses (i.e., lands designated Natural, Conservancy, and Urban Conservancy) and (2) are to be used to protect those areas that have habitat conditions so critical to the survival of the species as to meet the critical areas definition of WAC 365-190-030.

*(6)(a) “Fish and wildlife habitat conservation areas” are areas that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term.*

WAC 365-190-030. (Emphasis supplied.) Note that that definition does not say that “fish and wildlife habitat conservation areas” are areas that could serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem: if those areas are restored.

2. **The 100-Foot Buffer of RMC 4-3-090.F.1 Vegetation Conservation (Even With its Associated Modifications) Is Excessive.**
- a. **The SMP's buffer requirements need to differentiate critical areas along shorelines from noncritical areas such as nearly all of the lands within the Shoreline Residential and High-Intensity zones.**

Nowhere in your inventory will you find reference to a scientific document that recommends a 100-foot-wide native vegetated shoreline buffer as essential to the preservation of the species, whether or not the shoreline is designated as a critical area. Because most of your shorelines are not critical areas, you need to also change the language of Section 4-3-090F to create an appropriate standard for non-critical riparian areas (i.e., the Shoreline Residential and High-Intensity shoreline areas). If you adopt our proposed revision to Section 4-3-090.D.2.c.iii set forth above, you would need to add a new Section in 4-3-090F.1 for non-critical riparian areas such as Shoreline Residential and Shoreline High-Intensity uses. Here is our recommendation:

**4-3-090. F Shoreline Modification**

**4-3-090. F.1 Vegetation Conservation**

**NEW**

F.1.1 Vegetation Conservation—Class 1 shorelines not designated as fish and wildlife habitat conservation areas:

New construction and modification of existing elements of the built environment in riparian areas abutting Class 1 shores and streams may be developed or redeveloped consistent with shoreline master program standards for the applicable reach, provided that the project also meets the test for “no net loss of shoreline ecological functions” set forth in RCW 36.70A.480(4) [as amended by HB 1653, Ch. 107, Laws of 2010, Section 2 (4)] as follows:

i. Option 1. The Renton Master Program presumes that revegetation of the lands between existing impervious surfaces (such as homes, driveways, other buildings, and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge) will meet the no net loss requirement.

ii. Option 2. The applicant may submit a special report to the City identifying the existing shoreline functions and values present on or

in the near shore of the property being developed and the proposed steps to assure that the no net lost objective will be met in conjunction with the proposed development.

**MODIFIED** (existing F.1 with changes)

F.1.2 For shorelines specifically designated as fish and wildlife habitat conservation areas:

a. Standard Vegetation Conservation Buffer Width: Except as otherwise specified in this section, water bodies defined as Shorelines shall have a minimum 100-foot vegetation management buffer measured from the ordinary high water mark of the regulated shoreline of the state. Where streams enter or exit pipes, the buffer shall be measured perpendicular to the ordinary high water mark from the end of the pipe along the open channel section of the stream.

The vegetation management buffer shall be measured from the line of ordinary high water through areas of naturally occurring vegetation or to the point of contact with the built environment, whichever is lesser.

Comment: The proposed language is necessary because there is no science in your inventory that supports a vegetative buffer of 100 feet in areas that are not critical areas. Also, as I have previously noted, Redmond's buffer area for residential zones on Lake Sammamish was 35 feet, not 100 feet, and that program was approved by WDOE.

b. **A native vegetation protection zone has little if any meaning once it has intersected the built environment.**

A second and more troublesome problem is that there is no science to support the enforcement of an extended native vegetation buffer where the proposed buffer intersects the existing built environment, whether houses, garages, roads, parking lots, drives or other structures. The answer is to limit the effective range of native vegetation buffer zones to vacant lands where the presence of *existing* native vegetation provides the functional integrity of a vegetative system and is supported by buffer science. Once the built (impervious) element of the environment is encountered, a vegetative buffer has no meaning and is not aimed at protecting existing functions and values—which is the standard for shoreline development and protection.

Councilmember Terri Briere  
Chair, Renton Planning and Development Committee  
July 1, 2010  
Page 6

Evidence that limiting the reach of natural buffers to the built (impervious) environment is approvable by WDOE may be found in the City of Vancouver critical areas ordinance incorporated by the City into its Shoreline Master Program recently and approved by WDOE. The applicable section provides:

50c REGULATION: Riparian Management Areas shall be established adjacent to shorelines and Riparian Buffers shall be established adjacent to Riparian Management Areas. Riparian Management Areas shall extend 100 feet landward from the OHWM and Riparian Buffers shall extend seventy-five (75) feet landward from Riparian Management Areas, EXCEPT:

(1) where impervious surfaces from previous development completely functionally isolate the Riparian Management Area or Riparian Buffer from the shoreline, the Riparian Management Area or Riparian Buffer shall extend from the OHWM to the impervious surfaces; or

(2) the Riparian Management Areas and Riparian Buffers do not apply to agricultural activities and forest practices; or

(3) where the Riparian Management Area alone or together with the Riparian Buffer is:

(a) smaller than the previously existing buffer or protected riparian area; and

(b) shown through independent analysis of existing peer-reviewed scientific data to be inadequate to protect riparian area functions, the Riparian Management Area and/or Riparian Buffer will be increased as the City finds necessary to protect riparian area functions.

[http://www.cityofvancouver.us/upload/images/Planning/CAO/Vancouver\\_WA\\_SMP\\_Effective\\_April\\_9\\_2007%20.pdf](http://www.cityofvancouver.us/upload/images/Planning/CAO/Vancouver_WA_SMP_Effective_April_9_2007%20.pdf) at page 30.

The above language used in Vancouver's ordinance reflects the fact that, for a buffer to function, there must exist "naturally functioning conditions." Where the naturally functioning conditions do not exist, the physical and chemical properties of the buffer either are not present (e.g., trees and rough understory have previously been removed) or are substantially degraded (e.g., the coefficient of runoff from grass is closer to asphalt than to a naturally vegetated multi-layered

Councilmember Terri Briere  
Chair, Renton Planning and Development Committee  
July 1, 2010  
Page 7

ground cover condition, losing much of the retention and nutrient uptake benefits of the naturally vegetated condition).

In the developed environment, and particularly the areas where houses and other structures are present, the imposition of a native vegetation buffer area where none presently exists effectively creates wide swaths of nonconforming structures and is not designed to achieve the “no net loss” test of the state shoreline guidelines for development or redevelopment adjacent to critical areas, let alone the non-critical riparian areas of the Shoreline Residential and High-Intensity designations of your program.

The changes suggested address what we perceive as the biggest problem with the present draft—universal declaration of shorelines as critical areas and reliance on vegetative buffers that create wide swaths of nonconforming uses without achieving the legislative test of “no net loss.” Such excessive regulation must be modified for a fully acceptable program.

Please note that the Renton Shoreline Coalition will be directly submitting to you other proposed revisions to and comments concerning the June 2010 Draft SMP.

I appreciate the attention of the Committee and ask your serious consideration of the recommended changes. Thank you for your consideration of these important matters.

Sincerely yours,



Alexander W. Mackie

AWM/kr

cc: Anne Simpson  
Jeanne DeMund  
Greg James  
Kevin Iden  
David Halinen, Esq.  
Samuel Rodabough, Esq.



**GROEN  
STEPHENS & KLINGE** LLP  
ATTORNEYS AT LAW

11100 N.E. 8TH STREET, SUITE 750  
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN  
RICHARD M. STEPHENS  
CHARLES A. KLINGE  
SAMUEL A. RODABOUGH  
BRIAN D. AMSBARY

TELEPHONE  
(425) 453-6206  
FACSIMILE  
(425) 453-6224

July 2, 2010

*Via E-Mail and Hand-Delivered*

Renton City Council, Planning & Development Committee

Attn:

Chair - Terri Briere  
Vice-Chair - King Parker  
Member - Rich Zwicker

1055 South Grady Way  
Renton, WA 98057

**Re: June 2010 Draft Shoreline Master Program  
Proposed Changes to Accommodate a "River Walk" Development**

Dear Council members Briere, Parker, and Zwicker:

This letter is a collaborative effort of the respective legal counsel for RaMac, Inc. and AnMarCo. As you are likely aware, RaMac, Inc. owns the Riviera Apartments and an adjoining office building, which are respectively located at 2201 and 2003 Maple Valley Highway along the north bank of the Cedar River. AnMarCo is the owner of property, commonly known as the "Old Stoneway Site", located 1915 Maple Valley Highway. The total size of the properties owned by RaMac, Inc. and AnMarCo exceed 25 acres. These properties represent a truly unique opportunity for redevelopment in an area that now, more than ever, is a major gateway to the heart of Renton.

#### **Draft SMP Implications for "River Walk" Development**

In recent meetings of the entire City Council as well as of the Planning and Development Committee, RaMac, Inc. has articulated the type of development that the RaMac site could provide in the future, specifically a "river walk" type development that would provide significant social and economic benefits to the community. RaMac, Inc. recognizes that such a proposal would necessarily need to incorporate Northwest values, which would require some deviation from the well-known San Antonio River Walk model. AnMarCo has long been interested in a "river walk" type of development.

Nonetheless, RaMac, Inc. and AnMarCo view the June 2010 draft of the Shoreline Master Program ("SMP") as all but foreclosing a "river walk" type development. Here's why.

- The proposed SMP imposes a 35-foot starting height limitation in the Shoreline High-Intensity Overlay District on Cedar River Reach C. See Table 4-3-090.D.7.a, Shoreline

Bulk Standards (Proposed SMP, June 2010 draft, at pg. 60). In a “river walk” development, greater height in close proximity to the water is necessary in order to allow more individuals to have visual access to the water itself. Also, greater height limits are customary in commercial developments, and are necessary to make these sites economically viable, especially for redevelopment (otherwise existing uses could endure for decades).

- The proposed SMP imposes a 100-foot-wide vegetation “conservation” buffer and building setback in the Shoreline High-Intensity Overlay District. *See* Table 4-3-090.D.7.a. Shoreline Bulk Standards (Proposed SMP, June 2010 draft, at pg. 60). If a “river walk” development was separated from the Cedar River by 100 feet of natural vegetation, the River itself would not be an attraction, as virtually no one in the development would even know it was there.
- Finally, the proposed SMP requires the provision of public access. *See* 4-3-090.D.4 (Proposed SMP, June 2010 draft, at pg. 50). Although a “river walk” development would undoubtedly allow a substantial portion of the public to enjoy the shoreline, some further degree of control over that access by the project applicant is necessary to ensure that use thereof is not inconsistent with the river walk (*e.g.*, patio restaurant dining, decks and patios of hotels, condominiums, or apartments adjacent to the water may be incompatible with smokers, loud music, fast bicycles, etc.).

RaMac, Inc. and AnMarCo wish to see the Draft SMP modified to remedy these obstacles to a “river walk” development.

### **Solutions**

The Draft SMP is a detail-oriented document that provides specific development regulations by use environment on a reach-by-reach basis for the City’s shorelines.

***Policies, standards, and regulations can be customized by the use environment, shoreline, and other uses depending on need.***

Proposed SMP (June 2010 draft), at pg. 11 (emphasis added).

**With that in mind, the purpose of this letter is to recommend the following three limited changes to the proposed SMP so as not to foreclose the potential of a “river walk” type development in the future.**

## Change No. 1 – Allow Building Heights Equivalent to Underlying COR Zoning if a View Impact Study Indicates No Substantial Blockage of Residential Views

Proposed Amendment to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnote 6, as follows (proposed additions underlined):

**Cedar River Reach C** – Additional height may be allowed for multiple use containing water-oriented use, provided a transition is provided equal to a slope of 1 vertical to 1 horizontal from a height of 35 feet from the building closest to the OHWM, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height. However, if the applicant provides a View Impact Study that demonstrates that the proposed development will not obstruct the view from a substantial number of residences in adjoining areas, additional height shall be allowed consistent with the underlying zoning in RMC 4-2.

### Rationales for the Proposed Amendment:

- The City Council's recent rezone of properties along Cedar River Reach C to Commercial/Office/Residential ("COR"), was a legislative determination that the underlying zoning and its accompanying 125-foot building height was appropriate for those properties, *including a determination that the height was compatible with surrounding parcels and uses.*
- The language of the proposed amendment tracks nearly verbatim with the only height restriction contained in the Shoreline Management Act, RCW 90.58.320:

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state **that will obstruct the view of a substantial number of residences on areas adjoining such shorelines...**

- By their very nature, commercial and office uses require higher height limitations than 35 feet.
- The sites zoned COR along Cedar River Reach C are surrounded by tall, steep slopes wholly unsuitable for building and do not contain residences whose views would be blocked.
- In all likelihood, commercial properties cannot provide underground parking along the Cedar River because of the water table. With a 35-foot height limitation and necessary above-ground parking, there is little room for the primary use itself (*i.e.* commercial, office, residential, etc.).

## Change No. 2 – Allow for Modified Vegetation Conservation Buffers and Building Setbacks with Appropriate Environmental Studies

Proposed Amendment to RMC 4-3-090.F.1. by adding a new “section (l)” as follows (proposed additions underlined):

- I. Modification of Vegetated Conservation Buffer and Building Setback for Properties Zoned COR that Meet the “No Net Loss” Standard**
  - i. Authority:** Based upon an applicant’s request, and the acceptance of a Stream or Lake Study, the Reviewing official has authority to approve a modification of vegetated conservation buffers and building setbacks, provided that the applicant’s request is part of an application for a shoreline substantial development permit accompanied with review under the State Environmental Policy Act.
  - ii. Criteria for Approval:** Modification of vegetated conservation buffers and building setbacks will be allowed if the applicant demonstrates the following:
    - (1) The project site is zoned COR;
    - (2) The project and all its elements will result in no net loss of existing shoreline (stream/lake/riparian) ecological functions;
    - (3) The project demonstrates sequencing (avoid, minimize, mitigate) for any existing natural vegetation within the standard vegetated conservation buffer;
    - (4) A portion of the project qualifies as a water-dependant or water-enjoyment commercial use, and shall be required to incorporate appropriate design and operational elements consistent with such use(s), and the following:
      - (a) The project must provide an opportunity for substantial numbers of people to enjoy the shoreline.
      - (b) Examples of projects that may provide an opportunity for substantial numbers of people to enjoy the shoreline include river walk-type developments, restaurants, resorts/hotels, convention centers, and multiple use commercial/offices.
    - (5) To qualify for building setback reduction, a View Impact Study must demonstrate that the proposed development will not obstruct the view of a substantial number of residences in adjoining areas; provided that, in no instance shall the building setback be reduced to less than 35 feet.

### Rationales for the Proposed Amendment:

- A “river walk” development necessarily relies upon the river itself as a primary attraction. In the Northwest, a 100-foot vegetation conservation buffer would virtually preclude individuals from even knowing that the river was there, especially where there is a drop from a higher bank down to the water itself.

- “River walk” developments rely upon construction in proximity to the water. Only after appropriate studies, the proposal would allow the building setback to be reduced to 35 feet, which would provide the buildings the necessary proximity to the water while still maintaining Northwest values.
- The sites zoned COR along Cedar River Reach C are already developed in close proximity to the shoreline. As such, their redevelopment is not likely to cause a net loss of existing shoreline ecological functions.

### Change No. 3 – Public Access Requirements Relaxed to Accommodate Unique Needs of a River Walk Development

Proposed amendment to 4-3-090.D.4. Public Access by adding additional language to subsection c as follows: (proposed additions underlined):

- c. **Criteria for Modification of Public Access Requirements:** The requirements for public access may be modified as a Shoreline Conditional Use for any application in which the following criteria are demonstrated to be met in addition to the general criteria for a shoreline conditional use permit. In cases where a Substantial Development Permit is not required, use of this waiver or modification may take place only through a shoreline variance. It is the responsibility of the applicant to demonstrate that the criteria are met. As a condition of modification of access requirements, contribution to an off-site public access site shall be required.
- i. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means.
  - ii. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
  - iii. The cost of providing the access, or mitigating the impacts of public access, is unreasonably disproportionate to the total long-term development and operational cost over the life-span of the proposed development.
  - iv. Significant environmental impacts will result from the public access that cannot be mitigated.
  - v. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
  - vi. Prior to determining that public access is not required, all reasonable alternatives must be pursued, including but not limited to:
    - (1) Regulating access by such means as maintaining a gate and/or limiting hours of use;
    - (2) Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
    - (3) Providing for specific facilities for public visual access, including viewing platforms that may be physically separated from the water’s edge, but only if access adjacent to the water is precluded.

The requirements for public access may also be modified as part of a Shoreline Substantial Development Permit for properties in the Shoreline High-Intensity Overlay District in Cedar River Reach C; provided an alternative private access plan is proposed that meets the following criteria:

- i. the site will contain a water-dependent or water-enjoyment use that will provide an opportunity for substantial numbers of the people to enjoy the shoreline; and
- ii. conditions are proposed that balance the opportunity for access by members of the public with the inherent security requirements of the proposed use. Such conditions may include maintaining a gate and/or limiting hours of access, among others.

**Rationales for Proposed Amendment:**

- Many uses on a “public trail” (including smoking, loud music, fast bicycles, etc.) would be inherently incompatible with patio restaurant dining, decks and patios of hotels, condominiums, or apartments adjacent to the water.
- Conditions on access can be handled more effectively by the City via a Shoreline Substantial Development Permit, rather than an unduly complicated and more costly process for obtaining a variance or shoreline conditional use permit with required approval by the Department of Ecology.
- Per our Washington State Supreme Court, “public access” requirements can be met with “private access” that still offers an opportunity for a substantial number of people to enjoy the shorelines. *See State Dept. of Ecology v. Ballard Elks Lodge No. 827, 84 Wn.2d 551 (1974)* (holding that the over-the-water construction of Elks Lodge, although restricted to the use of its members and guests, would nonetheless “provide an opportunity for substantial numbers of people to enjoy the shoreline” and otherwise meet requirements of Shoreline Management Act).
- The existing office building located at 2003 Maple Valley Highway (east of Old Stoneway site and west of Riviera Apartments), creates a bottleneck of only about 6 feet for a linear trail between it and the Cedar River, making any trail connectivity on the north side of the Cedar River infeasible.
- The proposed SMP already recognizes that the potential for public access is “low” in the single-family residential area on the east end of Cedar River Reach C. *See SH-31 Table of Public Access Objectives by Reach.* In other words, the north side of the River will likely never contain a fully connected linear trail. The south side of the River already provides such a trail.

RaMac, Inc. and AnMarCo appreciate that several council members have already expressed great interest in facilitating a "river walk" type development in the Maple Valley Highway corridor. The council has already taken the legislative steps to provide for quality commercial/office/residential development by rezoning these properties as COR and, just a few years ago, by enacting detailed design regulations that relate to these properties. As currently drafted, however, the proposed SMP represents an abrupt departure from this prior legislative action.

In this letter, we have proposed three very modest SMP changes that hopefully enable a "river walk" type development to become a reality on the RaMac and Stoneway properties in the future. These changes are logical, appropriate and within the City Council's discretion. We look forward to your consideration of these changes.

Sincerely,

GROEN STEPHENS & KLINGE LLP



Samuel A. Rodabough  
[sam@GSKlegal.pro](mailto:sam@GSKlegal.pro)

HALINEN LAW OFFICES, P.S.



David L. Halinen  
[davidhalinen@halinenlaw.com](mailto:davidhalinen@halinenlaw.com)



## *Renton Shoreline Coalition*

*P.O. Box 624  
Renton, Washington 98057-0624*

**HAND-DELIVERED FOR SUBMITTAL INTO THE  
RECORD CONCERNING THE PROPOSED  
RENTON SHORELINE MASTER PROGRAM**

July 2, 2010

Planning and Development Committee  
of the Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's June 2010 Draft SMP

Dear Committee Members Briere, Parker and Zwicker:

We are herewith submitting for your review and into the record of the Shoreline Master Program four (4) sets of the following items:

- (1) An 11" by 17" colored set of the Renton Shoreline Coalition's table of Major Issues and Proposed Revisions to the June 2010 Draft Renton SMP as of July 2, 2010;
- (2) A copy of the July 1, 2010 letter from the Coalition's attorney, Alexander ("Sandy") Mackie, to you, Ms. Briere; and
- (3) Originals of a July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Planning and Development Committee (which sets forth additional proposed revisions to the June 2010 Draft Renton SMP, all of which the Coalition supports).

The Coalition requests (a) your careful consideration of all of these materials and (b) a recommendation of approval to the full City Council of the proposed SMP text amendments set forth therein.

In addition, we think that it would be in the best interest of the City and the Coalition for some of our Coalition's Steering Committee members to meet with City Staff to discuss these materials prior to the Committee's next meeting concerning the draft SMP. I understand that, yesterday, David Halinen, one of the Coalition's Steering Committee members, suggested this idea by

Planning and Development Committee  
of the Renton City Council  
July 2, 2010  
Page 2

phone to Planning Director Chip Vincent, who expressed that because of (a) the Staff's tight schedule next week and (b) the Committee's next meeting on the SMP being scheduled for next Thursday, July 8, the prospect of such a meeting was unlikely. That being the case, we respectfully ask you to postpone the next Committee meeting on the Draft SMP for a week or two to provide time for Staff to meet with us in advance.

Thank you for your consideration.

Sincerely,

RENTON SHORELINE COALITION



Anne Simpson, Co-Director and Steering Committee Member

Attachments

Cc: Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilynn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (with copies of attachments)

Renton Mayor Denis Law (with copies of attachments)

City Council Members Don Persson, Greg Taylor, Randy Corman, and Marcie Palmer (with copies of attachments) (each with copies of attachments)

Larry Warren, Renton City Attorney (with copies of attachments)

Chip Vincent, Renton Planning Director (with copies of attachments)

Erika Conkling, Senior Planner, Renton Planning Division (with copies of attachments)



**Renton Shoreline Coalition**

P.O. Box 624  
Renton, Washington 98057-0624

**RSC's Major Issues and Proposed Revisions to the June 2010 Draft Renton SMP as of ~~July 2~~ **June 24, 2010****

Issue #	Issue Summary	RSC's Comments on the Issue	<p align="center"><b><u>RSC's Corresponding Proposed Revisions to the June 2010 Draft SMP</u></b>            (Note: this is a new column. To avoid confusion with the proposed SMP text revisions, the text below in this column is not "redlined". Proposed revisions to the SMP text are illustrated below by highlighting, underlining and strike-through.)</p>
1	The <u>June 2010</u> Draft SMP (a) inaccurately and inappropriately classifies the <i>developed</i> shorelines within the City as "critical areas" and (b) must be corrected to eliminate that egregious error.	The developed shorelines are not "critical areas". For details, please see the attached <u>copies</u> of the June 17, 2010 <u>and July 1, 2010</u> letters from our attorney, Alexander ("Sandy") Mackie, to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.	<p>As explained in detail in attorney Alexander ("Sandy") Mackie's July 1, 2010 letter to Councilmember Briere, in order to achieve the legislative intent of RCW 36.70A.480(5), section 4-3-090.D.2.c.iii should be revised to state as follows:</p> <p><b>c. Critical Areas within Shoreline Jurisdiction:</b></p> <p>iii. <b>Critical Area Regulations for Class 1 Fish Habitat Conservation Areas:</b> Regulations for fish habitat conservation areas Class 1 Streams and Lakes, pertaining to water bodies designated as shorelines <u>critical areas, including natural, conservancy and urban conservancy shorelines on the Master Program map</u>, are contained within the development standards and use standards of the Shoreline Master Program, including but not limited to RMC 4-3-090. F.1 Vegetation Conservation, which establishes vegetated buffers adjacent to water bodies and specific provisions for use and for shoreline modification in sections 4-3-090E and 4-3-090F.</p> <p>Also, for the reasons explained in Mr. Mackie's July 1, 2010 letter, RSC proposes the following corresponding revisions to section 4-3-090F.1 to properly distinguish between (a) Class 1 shorelines not designated as fish and wildlife habitat conservation areas (shorelines designated Shoreline Residential and Shoreline High-Intensity) and (b) shorelines specifically designated as fish and wildlife habitat conservation areas:</p> <p><b>4-3-090. F Shoreline Modification</b></p> <p><b>4-3-090. F.1 Vegetation Conservation</b></p> <p><u>F.1.1 Vegetation Conservation—Class 1 shorelines not designated as fish and wildlife habitat conservation areas:</u></p> <p><u>New construction and modification of existing elements of the built environment in riparian areas abutting Class 1 shores and streams may be developed or redeveloped consistent with shoreline master program standards for the applicable reach, provided that the project also meets the test for "no net loss of shoreline ecological functions" set forth in RCW 36.70A.480(4) [as amended by HB 1653, Ch. 107, Laws of 2010, Section 2 (4)] as follows:</u></p> <p><u>i. Option 1. The Renton Master Program presumes that revegetation of the lands between existing impervious surfaces (such as homes, driveways, other buildings, and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge) will meet the no net loss requirement.</u></p> <p><u>ii. Option 2. The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</u></p>

			<p>F.1.2 For shorelines specifically designated as fish and wildlife habitat conservation areas:</p> <p>a. Standard Vegetation Conservation Buffer Width: Except as otherwise specified in this section <b>4-3-090. F.1</b>, water bodies defined as Shorelines shall have a minimum 100-foot vegetation management buffer measured from the ordinary high water mark of the regulated shoreline of the state. Where streams enter or exit pipes, the buffer shall be measured perpendicular to the ordinary high water mark from the end of the pipe along the open channel section of the stream.</p> <p><b>The vegetation management buffer shall be measured from the line of ordinary high water through areas of naturally occurring vegetation or to the point of contact with the built environment, whichever is lesser.</b></p> <p>RSC recommends these simple changes, which will enable the SMP to satisfy the legislative intent of RCW 36.70A.480(5).</p>
2	<p>The Draft SMP unfairly classifies virtually all <b>existing shoreline edge improvements</b> (e.g., existing docks, piers, and bulkheads/other shoreline armoring) as “nonconforming” and wrongfully destines them for either elimination or replacement with “conforming” shoreline improvements.</p>	<p>(A) Existing shoreline edge improvements (<b>such as existing docks, piers, and bulkheads/other shoreline armoring</b>) are valuable parts of shoreline properties in their own right, not merely in support of existing primary uses of shoreline properties. Existing shoreline edge improvements are part of the status quo and should not be considered “continuing impacts” as the Draft SMP documents treat them. (Changes that are likely to result from <i>additional</i> development are what should be analyzed as “impacts,” not existing development.)</p> <p>(B) Existing shoreline edge improvements should be allowed to be repaired and/or replaced <b>indefinitely</b> in their <b>current locations, sizes and configurations</b> regardless of (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel. Such changes have no fair relation to the Draft SMP’s demands for “partial compliance” or “full compliance” with the Draft SMP’s standards for new shoreline edge improvements. <b>Thus, there should be a decoupling of the Draft SMP’s current requirements for “partial compliance” or “full compliance” with the Draft SMP’s standards for new shoreline edge improvements when any of those three above-listed things occur.</b></p> <p>(C) The SMP Guidelines’ requirement of “no net loss of shoreline ecological functions” can generally be met in regard to (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel without any of the Draft SMP’s new “compliance regulations” concerning shoreline edge improvements set forth in SMP Sections such as 4-10-095.F.1, 4-10-095.F.2, and 4-3-090.F.4.</p> <p>(D) The Draft SMP’s new “compliance regulations” concerning shoreline edge improvements will impose <b>massive, inappropriate costs and uncertainties as to approval</b> on shoreline property owners</p>	<p><b>The following revisions are proposed to appropriately accomplish the “decoupling” that RSC explains the need for under section (B) of RSC’s comments in the second column concerning RSC’s Issue 1:</b></p> <p>First, predicated upon the above-proposed modifications to Draft SMP section 4-3-090. F.1, RSC proposes the following revisions to Draft SMP 4-10-095:</p> <p><b>4-10-095 Shoreline Master Program, Nonconforming Uses, Activities, Structures, and Sites</b> A shoreline use or development which was lawfully constructed or established prior to the effective date of the applicable Shoreline Master Program, or amendments thereto, but which does not conform to present regulations or standards of the program, may be continued provided that:</p> <p><b>4-10-095A. Nonconforming Structures:</b> <b>Other than shoreline stabilization structures, docks and piers (which are addressed elsewhere in this Shoreline Master Program), Nonconforming structures shall be governed by RMC 4-10-050.</b></p> <p><b>4-10-095B. Nonconforming Uses.</b> Nonconforming uses shall be governed by RMC 4-10-060.</p> <p><b>4-10-095C. Nonconforming Site:</b> A lot which does not conform to development regulations on a site not related to the characteristics of a structure including, but not limited to, the vegetation conservation, <b>shoreline stabilization, landscaping, parking, fence, driveway, street opening, pedestrian amenity, screening and other regulations of the district in which it is located due to changes in Code requirements, condemnation or annexation; provided, however, that shoreline stabilization and piers and docks are specifically excluded from this definition.</b></p> <p style="text-align: center;">* * *</p> <p><b>4-10-095F. Partial and Full Compliance, Alteration of Nonconforming Structure or Site:</b> The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of the Shoreline Master Program. Alteration or expansion of existing structures may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function. In no case shall a structure with a non-conforming setback from the shoreline be allowed to extend further waterward than the existing structure.</p>

who wish to upgrade their shoreline properties by (1) changing the size of building footprints or impervious area on their properties, (2) remodeling or renovating existing buildings or improvements, and/or (3) changing the “principal use” of the shoreline properties. If the Draft SMP is ultimately enacted in its current form, a (presumably) unintended consequence of the massive costs and uncertainties of the Draft SMP’s new “compliance regulations” will be that many such upgrades of existing shoreline properties will never even be attempted. That will be a shame for Renton.

(E) Many of the important practical functions that existing shoreline edge improvements provide will not be provided with the City’s mandated substitutes [such as (1) sufficient dock width for safe use of docks (in contrast with ultra-narrow dock widths in the Draft SMP requirements) and (2) substantial bulkheads/shoreline armoring that actually will prevent erosion of shoreline properties rather than expensive “soft” shoreline stabilization schemes that are subject to wash-out in big storms in Lake Washington or big flow events in the Cedar River, can result in massive property and environmental damage, and will have to be replaced over and over again at enormous expense].

(F) For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.

**4-10-095F.1. Partial Compliance for Non-Single-Family Development:**

The following provisions shall apply to all development except single family:

Alteration of a Non-conforming Structure		Compliance Standard
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq. ft. or up to 10% (whichever is less); or Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less); or Remodeling or renovation that equals less than 30% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	<ul style="list-style-type: none"> <li>Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water’s edge, provided that the area to be revegetated does not exceed 10 feet, unless a greater area is desired by the applicant; <u>or</u></li> <li><u>The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</u></li> <li><u>Remove over water structures that do not provide public access, or do not serve a water dependent use.</u></li> </ul>
	Moderate Alteration	<ul style="list-style-type: none"> <li>Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or</li> <li>Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less); or</li> </ul>

			<table border="1"> <tr> <td data-bbox="1616 191 1740 675"></td> <td data-bbox="1740 191 2253 675">Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</td> <td data-bbox="2253 191 2828 675"> <p><b>proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</b></p> <ul style="list-style-type: none"> <li>Remove over-water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul> </td> </tr> <tr> <td data-bbox="1616 675 1740 1441" rowspan="3">Major Alteration</td> <td data-bbox="1740 675 2253 735">Expansion of building footprint by more than 25%; or</td> <td data-bbox="2253 675 2828 1441" rowspan="3"> <ul style="list-style-type: none"> <li>Revegetation of the lands between existing impervious surfaces (such as buildings, driveways, parking lots, industrial yards and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.</p> </td> </tr> <tr> <td data-bbox="1740 735 2253 796">Expansion of impervious surface by more than 25%; or</td> </tr> <tr> <td data-bbox="1740 796 2253 1441">Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</td> </tr> </table> <p><b>4-10-095F.2. Partial Compliance for Single-Family Development:</b> The following provisions shall apply to single-family development:</p> <table border="1"> <thead> <tr> <th data-bbox="1616 1542 1740 1582">Alteration of a Non-conforming Structure</th> <th data-bbox="1740 1542 2097 1582">Compliance Standard</th> </tr> </thead> <tbody> <tr> <td data-bbox="1616 1582 1740 1723">Alteration Without Expansion</td> <td data-bbox="1740 1582 2097 1723">Expansion or remodel that does not change the building footprint or increase impervious surface.</td> <td data-bbox="2097 1582 2828 1723">No site changes required.</td> </tr> <tr> <td data-bbox="1616 1723 1740 1784">Minor Alteration</td> <td data-bbox="1740 1723 2097 1784">Expansion of building footprint by up to 500 sq. ft. or up to</td> <td data-bbox="2097 1723 2828 1784"> <ul style="list-style-type: none"> <li>Partial compliance with Vegetation Conservation provisions of</li> </ul> </td> </tr> </tbody> </table>		Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	<p><b>proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</b></p> <ul style="list-style-type: none"> <li>Remove over-water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul>	Major Alteration	Expansion of building footprint by more than 25%; or	<ul style="list-style-type: none"> <li>Revegetation of the lands between existing impervious surfaces (such as buildings, driveways, parking lots, industrial yards and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.</p>	Expansion of impervious surface by more than 25%; or	Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	Alteration of a Non-conforming Structure	Compliance Standard	Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.	Minor Alteration	Expansion of building footprint by up to 500 sq. ft. or up to	<ul style="list-style-type: none"> <li>Partial compliance with Vegetation Conservation provisions of</li> </ul>
	Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	<p><b>proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</b></p> <ul style="list-style-type: none"> <li>Remove over-water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul>																	
Major Alteration	Expansion of building footprint by more than 25%; or	<ul style="list-style-type: none"> <li>Revegetation of the lands between existing impervious surfaces (such as buildings, driveways, parking lots, industrial yards and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.</p>																	
	Expansion of impervious surface by more than 25%; or																		
	Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.																		
Alteration of a Non-conforming Structure	Compliance Standard																		
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.																	
Minor Alteration	Expansion of building footprint by up to 500 sq. ft. or up to	<ul style="list-style-type: none"> <li>Partial compliance with Vegetation Conservation provisions of</li> </ul>																	

					<p>10% (whichever is less); or Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less)</p>	<p>RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge provided that the area to be revegetated shall not be more than 10 feet, unless a greater area is desired by the applicant; or</p> <ul style="list-style-type: none"> <li>• The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</li> <li>• Remove over water structures that do not provide public access, or do not serve a water dependent use.</li> </ul>
			Moderate Alteration	<p>Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or</p> <p>Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less)</p>	<ul style="list-style-type: none"> <li>• Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge, or at least 10 feet, provided that the area to be revegetated shall not be more than 25% of the lot depth feet; or</li> <li>• The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</li> <li>• Remove over water structures that do not provide public access, or do not serve a water dependent use.</li> <li>• Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>• Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul>	
			Major Alteration	<p>Expansion of building footprint by more than 25%; or</p> <p>Expansion of impervious surface by more than 25%</p>	<ul style="list-style-type: none"> <li>• Revegetation of the lands between existing impervious surfaces (such as homes, driveways, other buildings, and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>• The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory</p>	

structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.

Second, also in regard to “decoupling” in the context of existing shoreline edge improvements, RSC proposes the following revisions to (1) subsection e of Draft SMP 4-3-090.E.7 (Piers and Docks) and (2) subsection c of Draft SMP 4-3-090.F.4 (Shoreline Stabilization):

- e. **Maintenance and Repair of Docks:** Existing docks or piers that do not comply with these regulations may be repaired in accordance with the criteria below.
  - i. When the repair and/or replacement exceeds thirty percent (30%) of the surface area of the dock/pier, light penetrating materials must be used for all replacement parts and components. For floating docks, light penetrating materials shall be used where feasible, and as long as the structural integrity of the dock is maintained.
  - ii. When the repair involves replacement of the surfacing materials only, there is no requirement to bring the dock/pier into conformance with dimensional standards of this section.
  - iii. When the repair/replacement involves the replacement of ~~60%~~50% of the pilings, or more, the entire structure shall be replaced in compliance with these regulations. For floating docks, when the repair/replacement involves replacement of ~~60%~~50% of the total supporting structure (including floats, pilings, or cross-bars), the entire structure shall be replaced in compliance with these regulations.
  - iv. When the existing dock/pier is moved or expanded or the shape reconfigured, the entire structure shall be replaced in compliance with these regulations.
  - v. When an existing dock or pier is damaged by accident, fire, earthquake, flood, or other sudden casualty, it may be repaired or rebuilt in its current location, size, and configuration, subject to subsection i above.
  
- c. **Existing Shoreline Stabilization Structures:** Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced if they meet the applicable criteria below:
  - i. **Repair of Existing Structures:** An existing shoreline stabilization structure may be repaired as long as it serves to perform a shoreline stabilization function for a legally established land use, but shall be subject to the provisions in subsection iii, below, if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.
  - ii. **Additions to Existing Structures:** Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
  - iii. **Changes in Land Use:** An existing shoreline stabilization structure established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use may be retained or replaced with a similar structure in its current location if the size of the structure’s face is not expanded.:
    - ~~(1) There is a demonstrated need documented by a geotechnical analysis to protect principal uses or structures from erosion caused by currents or waves; and~~
    - ~~(2) An evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.~~

<p>3</p>	<p>The Draft SMP’s call for big shoreline setbacks and vegetated buffers in highly urbanized Renton is senseless and must be revised.</p>	<p>(A) The <b>big shoreline setbacks and vegetated buffers</b> called-for in Renton’s Draft SMP presuppose vast virgin lands along the City’s shorelines to be protected by the Draft SMP’s requirements for “Vegetation <i>Conservation</i> Buffers” are way too restrictive. (Vegetation cannot be “conserved where it does not exist.) Such vast virgin lands don’t exist in Renton, where nearly all shoreline properties (even most City park shoreline properties) are already subject to intensive use and are not in a virgin state.</p> <p>(B) The big setback and buffer requirements unfairly require shoreline property owners to have to “make things better” if they are going to develop or redevelop their properties, not merely meet the SMP Guidelines’ requirement of “no net loss of shoreline ecological functions”. Shoreline property owners should not have to “make things better,” especially because there is serious doubt as to whether the SMP’s mandates even if implemented would actually make anything “better” at all.</p> <p>(C) The Draft SMP’s setback and buffer widths should be reduced in general. They should also be revised in regard to properties where vegetative buffers either do not currently exist at all or only exist in part to allow such existing site circumstances to be taken into account to (a) further reduce the width of required setbacks and (b) eliminate or reduce the width of required vegetative buffers. Where vegetated buffers consisting of non-native vegetation (lawns, shrubs, trees and other plants) already exists, the non-native vegetation should be allowed as an alternative to native vegetation in required vegetative buffers.</p> <p>(D) In non-critical area along Lake Washington’s Single-Family Residential designation, the setback should be a uniform 25 feet with no buffer. In non-critical areas designated High Intensity along the Cedar River or Lake Washington, (i) for residential development the setback should be a uniform 25 feet and there should be no buffer and (ii) for commercial or industrial development the setback should generally be 50 feet and there should be no buffer.</p> <p>(E) Other agencies might add buffer requirements in regard to shoreline edge improvements when landowners go through the approval/permit processes of other agencies depending upon the nature of the proposed development. Renton should not place additional regulations where they are not required. Neither the SMA nor the Shoreline Guidelines require minimum setbacks and buffers for already developed shorelines.</p> <p>(F) If enacted, the current Draft SMP’s big setback and buffer requirements will stymie desirable expansion of existing waterfront homes and redevelopment of other uses on shoreline properties.</p> <p>(G) For further details, please see the attached <a href="#">copies</a> of the June 17,</p>	<p>In regard to single-family lots, RSC proposes the following revisions to subsection c of Draft SMP 4-3-090.F.1 (Vegetation Conservation) as a compromise of what RSC contends should actually be the building setback and buffer along Lake Washington’s Single-Family Residential designation (i.e., a 25-foot-wide setback with no buffer):</p> <p><b>c. Alternative Vegetated Buffer Widths and Setbacks for Existing Single-Family Lots</b></p> <p>i. <b>Reduced Requirements Based on Lot Depth:</b> The reviewing official may apply the following vegetation buffers and building setbacks shall apply to both (1) new and existing single-family residences and single-family lots along shorelines designated Shoreline Residential and Shoreline High-Intensity and (2) for existing single-family residences and existing single-family lots along all other shoreline designations consisting of property under contiguous ownership without a variance. Lot depth shall be measured from the ordinary high water mark in a perpendicular direction to the edge of the contiguously owned parcel or to an easement containing existing physical improvements for road access for two or more lots.</p> <table border="1" data-bbox="1693 604 2735 1219"> <thead> <tr> <th>Lot Depth</th> <th>Building Setback</th> <th>Vegetated Buffer</th> </tr> </thead> <tbody> <tr> <td>Greater than 180 feet</td> <td>60 feet</td> <td>25 feet</td> </tr> <tr> <td>Greater than 130 feet, up to 180 feet</td> <td>45 feet</td> <td>20 feet</td> </tr> <tr> <td>100 feet or greater, up to 130 feet</td> <td>35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)</td> <td>0 feet (if residence is set back at least 35 feet) or 50 percent of the area within the lot’s first 20 feet abutting OHWM (if residence is set back less than 35 feet) 15 feet</td> </tr> <tr> <td>Less than 100 feet</td> <td>35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)</td> <td>0 feet (if residence is set back at least 35 feet) or 40 percent of the area within the lot’s first 20 feet abutting OHWM (if residence is set back less than 35 feet) 10 feet</td> </tr> </tbody> </table> <p>ii. <b>Reductions for Narrow Lots:</b> For such lots with a lot width of less than 60 feet, setbacks and buffers may be reduced by ten (10) percent, but no less than:  (1) Building setback: 25 feet  (2) Vegetated buffer: 15 feet</p> <p>In regard to properties zoned COR in Cedar River Reach C, RSC supports the proposal set forth in the July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Renton City Council’s Planning and Development Committee.</p>	Lot Depth	Building Setback	Vegetated Buffer	Greater than 180 feet	60 feet	25 feet	Greater than 130 feet, up to 180 feet	45 feet	20 feet	100 feet or greater, up to 130 feet	35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)	0 feet (if residence is set back at least 35 feet) or 50 percent of the area within the lot’s first 20 feet abutting OHWM (if residence is set back less than 35 feet) 15 feet	Less than 100 feet	35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)	0 feet (if residence is set back at least 35 feet) or 40 percent of the area within the lot’s first 20 feet abutting OHWM (if residence is set back less than 35 feet) 10 feet
Lot Depth	Building Setback	Vegetated Buffer																
Greater than 180 feet	60 feet	25 feet																
Greater than 130 feet, up to 180 feet	45 feet	20 feet																
100 feet or greater, up to 130 feet	35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)	0 feet (if residence is set back at least 35 feet) or 50 percent of the area within the lot’s first 20 feet abutting OHWM (if residence is set back less than 35 feet) 15 feet																
Less than 100 feet	35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)	0 feet (if residence is set back at least 35 feet) or 40 percent of the area within the lot’s first 20 feet abutting OHWM (if residence is set back less than 35 feet) 10 feet																

		<p>2010 <a href="#">and July 1, 2010</a> letters from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</p>																
4	<p>The Draft SMP’s <b>limitations on new docks and piers</b> are inappropriately restrictive.</p>	<p>The Shoreline Master Program Guidelines call for new docks and piers to be the “Minimum necessary”. A minimum safe width is 6 to 8 feet. Greater lengths should be allowed in view of low water levels in Lake Washington.</p> <p>RPG3 square footage requirements are from the U.S. Army Corps of Engineers (which often grants permits not meeting those requirements). Those requirements ought not to be incorporated into the SMP.</p> <p><a href="#">Other particular recommendations relating to new docks will be forthcoming.</a></p>	<p>RSC proposes the following revisions to portions of subsection c (Design Criteria – General) and subsection d (Design Standards) of Draft SMP 4-3-090.E.7 (Piers and Docks):</p> <p><b>4-3-090.E.7 Piers and Docks</b></p> <p style="text-align: center;">* * *</p> <p><b>c. Design Criteria – General</b></p> <p style="text-align: center;">* * *</p> <p>ix. <b>Other Agency Requirements:</b> <b>if a design of a proposed new dock or dock modification is approved by the U.S. Army Corps of Engineers, it will be acceptable under this SMP notwithstanding any differences between the design and the design standards of this SMP.</b> If deviation from the design standards is required <b>or allowed</b> by another agency with permitting authority, <b>such deviation # shall be allowed under this SMP.</b></p> <p><b>d. Design Standards</b></p> <table border="1" data-bbox="1547 891 2933 1784"> <thead> <tr> <th></th> <th>Single-Family</th> <th>Joint Use and Community Docks</th> <th>Commercial and Industrial Docks- Water-dependent Uses</th> <th>Non-water-dependent uses</th> </tr> </thead> <tbody> <tr> <td colspan="5"><b>LENGTH-MAXIMUM</b></td> </tr> <tr> <td>Docks and Piers</td> <td><del>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis). Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></del> <b>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b></td> <td><del>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></del> <b>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b></td> <td>Minimum needed to serve specific vessels or other water-dependent uses specified in the application. Maximum: <b>the greater of (a) 120 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b> Facilities adjacent to a designated harbor area: The dock or pier may extend to the lesser of: a) The General standard, above; or b) The inner harbor line or such point beyond the inner harbor line as is allowed by formal authorization by the Washington State Department of</td> <td>Docks are not allowed unless they provide public access or public water recreation use. Such docks and piers are subject to the performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.</td> </tr> </tbody> </table>		Single-Family	Joint Use and Community Docks	Commercial and Industrial Docks- Water-dependent Uses	Non-water-dependent uses	<b>LENGTH-MAXIMUM</b>					Docks and Piers	<del>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis). Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></del> <b>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b>	<del>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></del> <b>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b>	Minimum needed to serve specific vessels or other water-dependent uses specified in the application. Maximum: <b>the greater of (a) 120 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b> Facilities adjacent to a designated harbor area: The dock or pier may extend to the lesser of: a) The General standard, above; or b) The inner harbor line or such point beyond the inner harbor line as is allowed by formal authorization by the Washington State Department of	Docks are not allowed unless they provide public access or public water recreation use. Such docks and piers are subject to the performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.
	Single-Family	Joint Use and Community Docks	Commercial and Industrial Docks- Water-dependent Uses	Non-water-dependent uses														
<b>LENGTH-MAXIMUM</b>																		
Docks and Piers	<del>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis). Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></del> <b>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b>	<del>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></del> <b>Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b>	Minimum needed to serve specific vessels or other water-dependent uses specified in the application. Maximum: <b>the greater of (a) 120 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.<sup>2</sup></b> Facilities adjacent to a designated harbor area: The dock or pier may extend to the lesser of: a) The General standard, above; or b) The inner harbor line or such point beyond the inner harbor line as is allowed by formal authorization by the Washington State Department of	Docks are not allowed unless they provide public access or public water recreation use. Such docks and piers are subject to the performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.														

					Natural Resources (DNR) or other agency with jurisdiction.	
<b>WIDTH</b>						
Docks and Piers	64 ft.†	6 ft.†		Maximum walkway: 8 ft., but 12 ft. if vehicular access is required for the approved use. <sup>3</sup>	Docks are not allowed unless they provide public access or public water recreation use. Such docks and piers are subject to the performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.	
Ells and Floats	6 ft.†	6 ft.†		Minimum needed to serve specific vessels or other water-dependent uses specified in the application.		
<p><b>Table Notes:</b></p> <p>1. A joint use ownership agreement or covenant shall be executed and recorded with the King County Assessor's Office prior to the issuance of permits. A copy of the recorded agreement shall be provided to the City. Such documents shall specify ownership rights and maintenance provisions, including: specifying the parcels to which the agreement shall apply; providing that the dock shall be owned jointly by the participating parcels and that the ownership shall run with the land; providing for easements to access the dock from each lot served and provide for access for maintenance; providing apportionment of construction and maintenance expenses; and providing a means for resolution of disputes, including arbitration and filing of liens and assessments.</p> <p>2. Maximum length is 80' (80 ft.) unless a depth of 8' (8 ft.) cannot be obtained. In such circumstances the dock may be extended until the water depth reaches a point of 8' (8 ft.) in depth at ordinary low water, or to a maximum of 120' (120 ft.), whichever is reached first.</p> <p>3. Additional width may be allowed to accommodate public access in addition to the water-dependent use.</p> <p>4. For piers or docks with no ell and fingers, the most waterward 26' (26 ft.) section of the walkway may be up to 6' (6 ft.) wide.</p>						
5	The Draft SMP inappropriately requires the <b>provision of public access to the shorelines for private development activity.</b>	<p>(A) The Shoreline Management Act does not authorize the City to require the provision of physical public access for private development activity. See RCW 90.58.020(5) (giving preference to shoreline uses that "[i]ncrease public access to <b>publicly</b> owned areas of the shorelines.") (emphasis added).</p> <p>(B) Similar to the SMA, the Shoreline Guidelines in WAC 173-26-221(4) do not require that new private shoreline development provide physical and/or visual public access for the general public. See WAC 173-26-221(4) (stating that local SMPs "shall address public access on <b>public lands</b>" and encouraging other access to be consistent with private "property rights").</p>	RSC supports the compromise proposal relating to public access in the COR-zoned property within Cedar River Reach C set forth in the July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Renton City Council's Planning and Development Committee.			

		<p>(C) Consistent with well-established jurisprudence interpreting federal and state constitutions, the City cannot lawfully require the provision of physical public access for private development activity. Doing so would contravene principles of essential nexus and rough proportionality in which a condition placed on development must relate to the impact of the proposed development. Development of a site that already does not provide public access does not adversely impact public access, but rather maintains the status quo.</p> <p>(D) The Draft SMP fails to take into account the very extensive access opportunities to Lake Washington, the Cedar River and Springbrook Creek that already exist. By doing so, it fails to account for the fact that <b>no real need exists</b> for private shoreline owners to provide even more access for the general public.</p> <p>(E) The Draft SMP's burdensome access requirements for the general public on private property will have the effect of substantially discouraging new development as well as redevelopment of properties like the Old Stoneway Site and the RaMac property along Cedar River Reach C .</p> <p>(F) For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander ("Sandy") Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</p>																																											
6	<p>The Draft SMP <b>inappropriately limits building heights.</b></p>	<p>(A) Along much of Renton's residentially-zoned Lake Washington shorelines, 35-foot-tall homes could appropriately be built without causing serious view obstructions for uphill residences. This is the case because of the steeply sloping areas behind many of those shoreline properties.</p> <p>(B) While the City's residential zones currently limit single-family homes to a 30-foot height Citywide, such a limit is not reasonable along many stretches of Lake Washington waterfront. The maximum height for single family homes in the Draft SMP should be 35 feet. That would give shoreline property owners an opportunity to later request that the City amend its maximum height to 35 feet under ordinary zoning regulations in areas like much of the Lake Washington waterfront where circumstances justify allowing a greater height. The City would benefit from having more substantial lakefront homes that a greater building height would allow.</p> <p>(C) Likewise, in the proposed High Intensity District along an extensive portion of Cedar River Reach C that has one hundred-foot-plus tall hills on opposite sides of the River), the draft SMP would needlessly, inappropriately and arbitrarily limit maximum building heights to a starting height of 35 feet along the River's setback edge rather than the full height allowed under the COR zoning of such property. With the tall hills and the lack of nearby residences with views of the Cedar</p>	<p>In regard to single-family residential building heights in the Shoreline Single-Family Residential Overlay District, RSC proposes the following revisions to the building height provisions of Table 4-3-090. D.7a (Shoreline Bulk Standards):</p> <table border="1" data-bbox="1541 1128 2927 1790"> <thead> <tr> <th></th> <th>Natural</th> <th>Urban Conservancy</th> <th>Shoreline Single Family</th> <th>High Intensity</th> <th>High Intensity Isolated</th> <th>Aquatic</th> </tr> </thead> <tbody> <tr> <td><b>Building Height- Maximum</b></td> <td></td> <td></td> <td></td> <td></td> <td></td> <td></td> </tr> <tr> <td><b>In water</b></td> <td>Not allowed</td> <td>Not allowed</td> <td>30 ft.<sup>5</sup></td> <td>35 ft.<sup>5</sup></td> <td></td> <td>35 ft.<sup>5</sup></td> </tr> <tr> <td><b>Within 100 feet of OHWM</b></td> <td>Not allowed</td> <td>Not allowed</td> <td>35 ft.<sup>xx</sup></td> <td>35 ft.<sup>5</sup></td> <td>Governed by underlying zoning in RMC 4-2<sup>7</sup></td> <td></td> </tr> <tr> <td><b>More than 100 feet from OHWM</b></td> <td>15 ft.</td> <td>35 ft.</td> <td>35 ft.<sup>xx</sup></td> <td>35 ft.<sup>6</sup></td> <td>Governed by underlying zoning in RMC 4-2<sup>7</sup></td> <td></td> </tr> <tr> <td><b>Accessory Building</b></td> <td>15 feet</td> <td>15 feet</td> <td>15 feet</td> <td>Same as above</td> <td>Governed by underlying</td> <td></td> </tr> </tbody> </table>		Natural	Urban Conservancy	Shoreline Single Family	High Intensity	High Intensity Isolated	Aquatic	<b>Building Height- Maximum</b>							<b>In water</b>	Not allowed	Not allowed	30 ft. <sup>5</sup>	35 ft. <sup>5</sup>		35 ft. <sup>5</sup>	<b>Within 100 feet of OHWM</b>	Not allowed	Not allowed	35 ft. <sup>xx</sup>	35 ft. <sup>5</sup>	Governed by underlying zoning in RMC 4-2 <sup>7</sup>		<b>More than 100 feet from OHWM</b>	15 ft.	35 ft.	35 ft. <sup>xx</sup>	35 ft. <sup>6</sup>	Governed by underlying zoning in RMC 4-2 <sup>7</sup>		<b>Accessory Building</b>	15 feet	15 feet	15 feet	Same as above	Governed by underlying	
	Natural	Urban Conservancy	Shoreline Single Family	High Intensity	High Intensity Isolated	Aquatic																																							
<b>Building Height- Maximum</b>																																													
<b>In water</b>	Not allowed	Not allowed	30 ft. <sup>5</sup>	35 ft. <sup>5</sup>		35 ft. <sup>5</sup>																																							
<b>Within 100 feet of OHWM</b>	Not allowed	Not allowed	35 ft. <sup>xx</sup>	35 ft. <sup>5</sup>	Governed by underlying zoning in RMC 4-2 <sup>7</sup>																																								
<b>More than 100 feet from OHWM</b>	15 ft.	35 ft.	35 ft. <sup>xx</sup>	35 ft. <sup>6</sup>	Governed by underlying zoning in RMC 4-2 <sup>7</sup>																																								
<b>Accessory Building</b>	15 feet	15 feet	15 feet	Same as above	Governed by underlying																																								

		<p>River, arbitrarily limiting the height and thereby discouraging site redevelopment is poor City policy.</p> <p>(D) The City’s proposed limitation of 35 feet appears to be based upon a misreading of the SMA, which exempts from the requirement to obtain a shoreline substantial development permit, “single family residence[s]...not exceed[ing] thirty-five feet above average grade level.” RCW 90.58.030(vi). Nothing in the SMA or the implementing guidelines limits building height to 35 feet for commercial and industrial development anywhere within the shoreline district. Similarly, single-family residences exceeding 35 feet are not prohibited under the SMA or the Shoreline Guidelines, but instead would require a shoreline substantial development permit where greater heights are allowed in an adopted SMP.</p> <p>(E) Artificially limiting building heights within the High Intensity District along the portions of Cedar River Reach C will discourage needed redevelopment of aging structures. Redevelopment is necessarily more costly than new development, and artificially limiting development height increases the likelihood that site-specific redevelopment will not be financially feasible.</p> <p>(F) For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</p>	<table border="1" data-bbox="1529 179 2952 272"> <tr> <td data-bbox="1529 179 2004 272"></td> <td data-bbox="2004 179 2160 272"></td> <td data-bbox="2160 179 2315 272"></td> <td data-bbox="2315 179 2470 272"></td> <td data-bbox="2470 179 2626 272"></td> <td data-bbox="2626 179 2952 272">zoning in RMC 4-2<sup>7</sup></td> </tr> </table> <p>Text of corresponding proposed new footnote:</p> <p><b>(xx) Except heights of up to 45 feet may be permitted with a substantial development permit where an applicant provides a view impact study that shows that a substantial number of residences will not have their views blocked by the height in excess of 35 feet. (Note: The existing maximum height established in RMC 4-2 as of July 1, 2010 is 30 feet. An amendment to RMC 4-2 would have to be enacted allowing a maximum height of more than 30 feet before a height of over 30 feet will comply with RMC 4-2.)</b></p> <p>RSC supports the compromise proposal relating to building height on the COR-zoned property within Cedar River Reach C set forth in the July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Renton City Council’s Planning and Development Committee.</p>						zoning in RMC 4-2 <sup>7</sup>
					zoning in RMC 4-2 <sup>7</sup>				

## 7-23-10 Updated Revised Version of the RaMac, Inc.-AnMarCo Proposed SMP Changes 1, 2 and 3 Originally Submitted on 7-2-10

### Change No. 1 – Allow Additional Building Height on Properties Zoned COR on Cedar River Reach C

Proposed Amendment to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnote 6, as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

**Cedar River Reach C** – For multiple use development that includes a water-oriented use in the portion of the Shoreline High Intensity Overlay District that has underlying COR zoning, Additional height is~~may be~~ allowed as follows landward of a line that is parallel to and 50 feet from OHWM: a maximum allowable building height envelope shall (i) begin at a height of 35 feet along the line lying parallel to and 50 feet from OHWM, (ii) have an upward~~provided a transition is provided equal to~~ at a slope of 1 vertical to 1 horizontal landward from that line until the maximum building height allowed in RMC 4-2 for the COR zone (i.e., 10 stories and/or 125 feet) is reached, and (iii) then continue landward at the maximum building height allowed in RMC 4-2 for the COR zone until the landward-most edge of the Shoreline District is reached~~from a height of 35 feet from the building closest to the OHWM, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height.~~

### Change No. 2 – Allow for Modified Vegetation Conservation Buffers and Building Setbacks with Appropriate Environmental Studies

Proposed Amendments to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnotes 3 and 4, as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

(3) Water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 ~~and shall be no closer than 50 feet, except as~~ or in cases consistent with a Master Site Plan approved prior to the adoption of this Section.

(4) Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 ~~and shall be no closer than 75 feet, except as~~ or in cases consistent with a Master Site Plan approved prior to the adoption of this Section.

Proposed Amendment to RMC 4-3-090.F.1 by adding a new “section (l)” as follows (proposed additions underlined):

**I. Modification of Vegetation Conservation Buffer and Minimum Structure Setback for Proposed Development that Meets the “No Net Loss” Standard on Properties Zoned COR Along Cedar River Reach C**

- i. **Authority:** Based upon an applicant’s request, and the acceptance of a Stream or Lake Study, the Reviewing official has authority to approve a modification of Vegetation Conservation Buffers and minimum structure setbacks, provided that the applicant’s request is part of an application for a shoreline substantial development permit accompanied with review under the State Environmental Policy Act.
- ii. **Criteria for Approval:** Modification of Vegetation Conservation Buffers and minimum structure setbacks will be allowed if the applicant demonstrates the following:
- (1) The project site is zoned COR and lies within the Shoreline High Intensity Overlay District along Cedar River Reach C;
  - (2) For a structure setback reduction up to a line that lies parallel to and is 50 feet from OHWM, the development project as a whole must meet the following:
    - (a) Result in no-net loss of existing shoreline ecological functions; and
    - (b) Not cause significant adverse impacts to other shoreline uses and resources;
  - (3) The project demonstrates sequencing (avoid, minimize, mitigate) in regard to any existing native vegetation within the standard Vegetation Conservation Buffer;
  - (4) A portion of the project (a) qualifies as a water-dependent, water-related, or water-enjoyment use and (b) incorporates appropriate design and operational elements consistent with that use;
  - (5) The project must provide an opportunity for substantial numbers of people to enjoy the shoreline. Examples of projects that provide an opportunity for substantial numbers of people to enjoy the shoreline include river walk-type developments, restaurants, resorts/hotels and commercial/office/multi-family residential developments; and
  - (6) Development within the area of the reduced setback shall neither (a) necessitate construction of shoreline armoring where none currently exists nor (b) necessitate an expansion of the face of existing shoreline armoring.
- ii. **Special Provisions Applicable Within the Setback:** Notwithstanding other provisions of the Shoreline Master Program to the contrary, the following special provisions shall be applicable within the minimum structure setback for development projects on properties zoned COR along Cedar River Reach C that meet the “no net loss” standard:
- (a) Elevated patios, terraces, eaves, and architectural features connected with the subject building(s) shall be permitted within the landward-most 10 feet of the setback; and
  - (b) At ground level, the following structures and uses shall be permitted landward of 10 feet from OHWM: decks, patios, terraces, trails, walkways and other similar amenities (including outdoor dining areas for restaurants) typically associated with a water-dependent, water-related, or water-enjoyment use; provided that such amenities shall not be permitted under this subsection (b) along more than 50 percent of the development’s total lineal shoreline frontage; and

## Change No. 3 – Public Access Requirements Relaxed to Accommodate Unique Needs of a River Walk Development

Proposed amendment to 4-3-090.D.4.b Public Access Required by amending the first sentence as follows: (proposed additions underlined):

- a. **Public Access Required:** Public access shall be provided for the following development, (unless modified pursuant to criteria in subsection c), subject to the criteria in subsection d.

Proposed amendment to 4-3-090.D.4. Public Access by adding additional language to subsection c as follows: (proposed additions underlined):

- c. **Criteria for Modification of Public Access Requirements:** The requirements for public access may be modified as a Shoreline Conditional Use for any application in which the following criteria are demonstrated to be met in addition to the general criteria for a shoreline conditional use permit. In cases where a Substantial Development Permit is not required, use of this waiver or modification may take place only through a shoreline variance. It is the responsibility of the applicant to demonstrate that the criteria are met. As a condition of modification of access requirements, contribution to an off-site public access site shall be required.
  - i. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means.
  - ii. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
  - iii. The cost of providing the access, or mitigating the impacts of public access, is unreasonably disproportionate to the total long-term development and operational cost over the life-span of the proposed development.
  - iv. Significant environmental impacts will result from the public access that cannot be mitigated.
  - v. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
  - vi. Prior to determining that public access is not required, all reasonable alternatives must be pursued, including but not limited to:
    - (1) Regulating access by such means as maintaining a gate and/or limiting hours of use;
    - (2) Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
    - (3) Providing for specific facilities for public visual access, including viewing platforms that may be physically separated from the water's edge, but only if access adjacent to the water is precluded.

The requirements for public access may also be modified as part of a Shoreline Substantial Development Permit for properties in the Shoreline High-Intensity Overlay District in Cedar River Reach C, provided that a substitute private access plan is proposed that meets the following criteria:

- i. the site will contain a water-dependent, water-related, or water-enjoyment use that will provide an opportunity for substantial numbers of people to enjoy the shoreline; and
- ii. conditions are proposed that balance the opportunity for access by members of the public with the security needs of the proposed use (such conditions may include such things as maintaining a gate and/or limiting hours of access).

Mayor Denis Law  
Renton City Hall  
1055 S. Grady Way  
Renton, WA 98057

July 28, 2010

Dear Mayor Law:

The Puget Sound Salmon Recovery Council is the policy body responsible for implementing the Puget Sound Salmon Recovery Plan. We are concerned and interested in supporting you in updating your Shoreline Master Program.

The Salmon Recovery Plan, which was locally developed and federally adopted, directs us to account for the restoration and protection of shoreline habitat forming processes. Comprehensive shoreline management at the regional and local scale is critical to the restoration and protection of habitat; the Shoreline Master Program is a key component of this work. Salmon depend on this area where the water meets the land to provide them with food, refuge, habitat, and clean water. The Shoreline Master Program update offers an opportunity to incorporate the needs of salmon, along with the needs of our communities, into how we manage our shorelines.

The salmon recovery effort offers several existing tools to help in your update, including: 1) the salmon recovery plan and its associated shoreline assessments; 2) local shoreline datasets and analysis tools; 3) annual implementation plans, called the “three-year work plan” with a list of projects and programs identified; 4) agency and tribal technical staff; and 5) a technical and citizen group experienced in prioritizing actions and tracking progress. Jean White and Doug Osterman, the Lead Entity Coordinators for the Lake Washington/Cedar/Sammamish and Green/Duwamish watersheds, respectively, along with Bellevue Mayor Don Davidson and Burien Mayor Joan McGilton as the Recovery Council members, and Jason Mulvihill-Kuntz as the Ecosystem Recovery Coordinator through the Partnership, are resources to help explain how the salmon recovery information can most appropriately and effectively be incorporated into your Shoreline Master Program update. This could include identifying projects for the restoration plan, help tracking progress related to the no net loss element, or support in the inventory and characterization.

In addition to identifying salmon recovery information and resources, please let me know other ways the Recovery Council might assist you in your Shoreline Master Program update process. We look forward to partnering with you to help develop and implement a Shoreline Master Program that manages your city’s shorelines to support the needs of salmon and your community.

Sincerely,



Steve Tharinger, Chair

Attachment: List of Puget Sound Salmon Recovery Council Members  
List of Puget Sound Lead Entity Coordinators

Cc: Chip Vincent, City of Renton Planning Division Director  
Kirk Lakey, WDFW Watershed Steward  
Barbara Nightingale, Ecology Shoreline Planner  
Jean White, Lake Washington/Cedar/Sammamish Watershed Lead Entity Coordinator  
Doug Osterman, Green/Duwamish and Central Puget Sound Watershed Lead Entity  
Coordinator

## **Puget Sound Salmon Recovery Council Members & Alternates:**

Chair: Steve Tharinger (alt: Doug Morrill and Scott Chitwood) / Dungeness-Elwha Watersheds

Allison Butcher / ESA Business Coalition

Josh Weiss / Washington Forest Protection Association

Mike Shelby / Western Washington Agricultural Association

Jacques White / Long Live the Kings

Hilary Franz / Washington Environmental Council

Rob Masonis / Trout Unlimited

Darcy Nonemacher / American Rivers

Ken Berg / USFWS

Vacant, (alt: Elizabeth Babcock)/NOAA Fisheries

Tom Eaton / EPA

Michael McCormick (alt: Bernie Hargrave) / US Army Corps of Engineers

Terry Williams / Tulalip Tribe

Terry Wright / NWIFC

Vacant, (alt: Josh Baldi) / Ecology

Sara Laborde / WDFW

Randy Acker / DNR

Bob Kelly / Nooksack Tribe

Frank Abart / Whatcom County

Randy Kinley (alt: Alan Chapman) / Lummi Nation

Bob Myhr (alt: Barbara Rosenkotter) / San Juan County

Ken Dahlstedt (alt: Shirley Solomon) / Skagit County

Angie Homola (alt: Chris Luerkens) / Island County

Bill Blake (alt: Pat Stevenson) / Stillaguamish Watershed

Scott Powell (alt: Dave Somers) / Snohomish Watershed

Don Davidson (alt: Larry Phillips) / Lake Washington, Cedar-Sammamish Watershed

Joan McGilton (alt: Doug Osterman) / Green, Duwamish Watershed

Debby Hyde (alt: Tom Kantz) / Puyallup-White, Clover-Chambers Watershed

David Troutt (alt: Jeanette Dorner) / Nisqually Tribe

Jeanette Dorner / Nisqually Watershed

Sandra Romero (alt: Rich Dungeness) / South Sound Watersheds

Scott Brewer (alt: Richard Brocksmith) / Hood Canal Coordinating Council

Linda Berry-Maraist / West Sound Watersheds

## **Puget Sound Salmon Recovery Lead Entity Coordinators:**

### San Juan County (WRIA 2) Lead Entity

Barbara Rosenkotter / 360-370-7593 / barbarar@co.san-juan.wa.us

### Nooksack (WRIA 1) Watershed Lead Entity

Becky Peterson / 360-392-1301 / genevaconsulting@comcast.net

### Skagit (WRIA 3, 4) Watershed Lead Entity

Shirley Solomon / 360-419-9326 / solomon@skagitwatershed.org

### Stillaguamish (WRIA 5) Watershed Lead Entity

Pat Stevenson (Stillaguamish tribe co-lead) / 360-630-0946 / pstevenson@stillaguamish.nsn.us

Denise DiSanto (Snohomish County co-lead) / 425-388-3464 / denise.disanto@co.snohomish.wa.us

### Snohomish (WRIA 7) Watershed Lead Entity

Tim Walls / 425-388-3781 / timothy.walls@co.snohomish.wa.us

### Island (WRIA 6) Watershed Lead Entity

Chris Luerkens / 360-678-7810 / chrisl@co.island.wa.us

### Lake Washington/Cedar/Sammamish (WRIA 8) Watershed Lead Entity

Jean White / 206-206-263-6458 / jean.white@kingcounty.gov

### Green/Duwamish (WRIA 9) Watershed Lead Entity

Doug Osterman / 206-296-8069 / doug.osterman@kingcounty.gov

### Puyallup/White/Clover/Chambers (WRIA 10, 12) Watershed Lead Entity

Tom Kantz / 253-798-4625 / tkantz@co.pierce.wa.us

### Nisqually (WRIA 11) Watershed Lead Entity

Jeanette Dorner / 360-438-8687, x2135 / Dorner.jeanette@nisqually-nsn.gov

### South Sound (WRIA 13, 14) Watershed Lead Entity

Amy Hatch-Winecka / 360-427-9436 / wria13-14leadentity@thurstoncd.com

### West Sound (WRIA 15) Watershed Lead Entity

Kathy Peters / 360-337-4679 / kpeters@co.kitsap.wa.us

### Hood Canal (WRIA 14, 15, 16, 17) Watershed Lead Entity

Richard Brocksmith / 360-394-7999 / rbrocksmith@hccc.wa.gov

### North Olympic Peninsula (WRIA 17, 18, 19) Lead Entity

Cheryl Baumann / 360-417-2326 / cbaumann@co.clallam.wa.us

## 7-30-10 Updated Revised Version of the RaMac, Inc.-AnMarCo Proposed SMP Changes 1, 2 and 3 Originally Submitted to the City on 7-2-10

### Change No. 1 – Allow Additional Building Height on Properties Zoned COR on Cedar River Reach C

Proposed Amendment to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnote 6, as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

**Cedar River Reach C** – On sites that have underlying COR zoning, landward of the standard minimum structure setback ~~Additional height is~~ may be allowed as follows for multiple use development containing water-oriented use; a maximum allowable building height envelope shall:

- (i) Begin at a height of 35 feet along the standard minimum structure setback;
- (ii) Have an upward ~~provided a~~ transition landward therefrom ~~is provided~~ equal to a slope of 1 vertical to 1 horizontal until the maximum building height allowed in RMC 4-2 for the COR zone (i.e., 10 stories and/or 125 feet) is reached; and
- (iii) Then continue landward to the landward-most edge of shoreline jurisdiction at the maximum building height allowed in RMC 4-2 for the COR zone. ~~from a height of 35 feet from the building closest to the OHWM, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height.~~

### Change No. 2 – Allow for Modified Vegetation Conservation Buffers and Building Setbacks with Appropriate Environmental Studies

Proposed Amendments to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnotes 3, 4, 8 and 9 as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

- (3) Water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 and shall be no closer than 50 feet, except (a) as modified pursuant to RMC 4-3-090.F.1.m or (b) in cases consistent with a Master Site Plan approved prior to the adoption of this Section.

- (4) Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 and shall be no closer than 75 feet, except (a) as modified pursuant to RMC 4-3-090.F.1.m or (b) in cases consistent with a Master Site Plan approved prior to the adoption of this Section.
- (8) Up to 5% impervious surface is allowed in Vegetation Conservation Area buffers for access to the shoreline, or a pathway up to 6 feet wide, whichever is greater, provided that in cases where the depth of the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 that portion of the first 100 feet from OHWM upon which development is located may be permitted a maximum of 50% impervious surface, unless a different standard is stated below:
- Lake Washington Reaches H and I** – Up to 75% impervious surface, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
  - Lake Washington Reach J** – No limit is provided for the Renton Municipal Airport.
  - Cedar River Reach A** – No limit is provided for the Renton Municipal Airport.
  - Cedar River Reach B** – No limit to impervious surface.
  - Cedar River Reach C** – No limit to impervious surface. **[CHIP VINCENT: THIS REVISION IS PROPOSED BECAUSE THERE SHOULD BE CONSISTENCY BETWEEN CEDAR RIVER REACH C AND CEDAR RIVER REACH B.]**
  - Cedar River Reach D** – No more than 5% impervious surface.
  - Springbrook Creek Reaches B through D** – No more than 65% impervious surface.
- (9) No building coverage is allowed in Vegetation Conservation Area buffers. If the buffer depth is varied in accordance with RMC 4-3-090.F.1 that portion of the first 100 feet from OHWM upon which development is located may be permitted the following coverage:
- Lake Washington High Intensity Overlay District**– Up to 50% building coverage, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
  - Cedar River Reach A** – Up to 20% for the Renton Municipal Airport.
  - Cedar River Reach B** – No limit on building coverage
  - Cedar River Reach C** – Up to ~~50~~65% building coverage (up to 75% building coverage if parking is provided within the building or within a parking garage) **[CHIP VINCENT: THE PROPOSED CHANGE CREATES CONSISTENCY WITH THE MAXIMUM BUILDING COVERAGE ALLOWED IN THE UNDERLYING COR ZONE.]**
  - Cedar River Reach D** – No more than 5% building coverage
  - Green River A** – Up to 50% building coverage
  - Springbrook Creek Reach A** – No more than 5% building coverage
  - Springbrook Creek Reaches B through D** - Up to 50% building coverage

Proposed Amendments to the row of Table 4-3-090.F.1.1 (Vegetation Conservation Buffer Standards by Reach) that addresses Cedar River Reach, as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

<p><b>Cedar River C</b></p>	<p>Enhancement of native riparian vegetation shall be implemented as part of management of public parks. Full standard native vegetation buffers should be maintained on the public open space on the south side of the river, subject to existing trail corridors and other provisions for public access. <u>Subject to modification under 4-3-090.F.1 and 4-3-090.D.4.c,</u> <del>F</del>full standard buffers shall be provided upon redevelopment of the north shore, subject to public access set back from the water's edge and may provide for water-oriented use adjacent to the water's edge. The vegetation conservation buffer may be designed to incorporate floodplain management features including floodplain compensatory storage.</p>
-----------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Proposed Amendment to RMC 4-3-090.F.1 by adding a new subsection “m” as follows (proposed additions underlined):

**m. Modification of Vegetation Conservation Buffer and Minimum Structure Setback for Proposed Development that Meets the “No Net Loss”**

- i. **Authority:** Based upon an applicant’s request, and the acceptance of a Stream or Lake Study, the Reviewing official has authority to approve a modification of Vegetation Conservation Buffers and minimum structure setbacks, provided that the applicant’s request is part of an application for a shoreline substantial development permit accompanied with review under the State Environmental Policy Act.**[CHIP VINCENT: PLEASE NOTE THAT THE BASIC STRUCTURE OF THIS SECTION PARALLELS THAT OF RMC 4-3-090.F.1.f (Averaging of Buffer Width).]**
- ii. **Criteria for Approval:** Modification of Vegetation Conservation Buffers and minimum structure setbacks will be allowed if the applicant demonstrates the following:
  - (1) The project site lies within the Shoreline High Intensity Overlay District;
  - (2) For a structure setback reduction up to a line that lies parallel to and 50 feet from OHWM, the development project as a whole must meet the following:
    - (a) Result in no-net loss of existing shoreline ecological functions; and
    - (b) Not cause significant adverse impacts to other shoreline uses and resources;
  - (3) The project demonstrates sequencing (avoid, minimize, mitigate) in regard to any existing native vegetation within the standard Vegetation Conservation Buffer;
  - (4) A portion of the project will be a water-oriented development or use;
  - (5) The project must provide an opportunity for substantial numbers of people to enjoy the shoreline; and

(6) Development within the area of the reduced setback shall necessitate neither construction of shoreline armoring where none currently exists nor an increase in the height or length of existing shoreline armoring.

iii. **Special Provisions Applicable Within the Setback:** Within the modified minimum structure setback, the following special provisions shall be applicable notwithstanding any other provisions of the Shoreline Master Program to the contrary:

- (1) Decks and architectural features connected with the subject building(s) shall be permitted within the landward-most 5 feet of the setback; and
- (2) Within the modified setback, up to 25 percent of the land area within the reduced setback may be covered with impervious surfaces for access paths, walkways and water enjoyment uses (provided that, except for linear trails paralleling the water and access ways to the water's edge, new impervious surfaces for those uses may not be closer than 10 feet to OHWM)—however, the impervious surface area of linear trails paralleling the water and of access ways to the water's edge shall not count against the 25 percent limitation of this provision).

iv. **Special Maximum Building Height Provisions:** In relation to a reduced minimum structure setback, building height is allowed as follows landward of a line that is parallel to and 50 feet from OHWM: a maximum allowable building height envelope shall:

- (1) Begin at a height of 35 feet along the line lying parallel to and 50 feet from OHWM;
- (2) Have an upward transition at a slope of 1 vertical to 1 horizontal landward from that line until a height equal to the lesser of (a) 62.5 feet or (b) the maximum building height allowed in RMC 4-2 for the underlying zone is reached;
- (3) Then continue landward to the landward edge of the standard minimum structure setback at the height equal to the lesser of (a) 62.5 feet or (b) the maximum building height allowed in RMC 4-2;
- (4) If the maximum building height allowed in RMC 4-2 has not already been reached by virtue of the upward transition provided for in subsection (2), above, then the maximum allowable building height envelope shall have an additional upward transition at a slope of 1 vertical to 1 horizontal landward from the landward edge of the standard minimum structure setback until a height equal to the maximum building height allowed in RMC 4-2 for the underlying zone is reached; and
- (5) Once the maximum building height allowed in RMC 4-2 has been reached by virtue of subsections (2) and/or (4), above, the maximum allowable building height envelope landward therefrom to the outer edge of shoreline jurisdiction shall be the maximum building height allowed in RMC 4-2 for the underlying zone. **[CHIP VINCENT: THESE SPECIAL MAXIMUM HEIGHT PROVISIONS ARE CONSISTENT WITH THE CROSSSECTION DIAGRAM THAT WE AGREED UPON DURING OUR WEDNESDAY, JULY 28, 2010 MEETING.]**

Proposed Amendments to the Water-Enjoyment Use definition that is part of 4-11-230 (proposed additions underlined and proposed deletions illustrated by strike-through):

WATER-ENJOYMENT USE: Referring to a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for

a substantial number of people as a general characteristic of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers and other improvements facilitating public access to the shorelines of the state; and general water-enjoyment uses may include, but are not limited to, restaurants, museums, aquariums, scientific/ecological reserves, resorts/hotels, riverwalk developments, and multiple use commercial/office/multi-family residential development; provided that such uses conform to the above water-enjoyment specifications and the provisions of the Shoreline Master Program.

### Change No. 3 – Public Access Requirements Relaxed to Accommodate Unique Needs of a River Walk Development

Proposed amendment to 4-3-090.D.4.b Public Access Required by amending the first sentence as follows: (proposed additions underlined):

- a. **Public Access Required:** Public access shall be provided for the following development, (unless modified pursuant to criteria in subsection c), subject to the criteria in subsection d.

Proposed amendment to 4-3-090.D.4. Public Access by adding additional language to subsection c as follows: (proposed additions underlined):

- c. **Criteria for Modification of Public Access Requirements:** The requirements for public access may be modified as a Shoreline Conditional Use for any application in which the following criteria are demonstrated to be met in addition to the general criteria for a shoreline conditional use permit. In cases where a Substantial Development Permit is not required, use of this waiver or modification may take place only through a shoreline variance. It is the responsibility of the applicant to demonstrate that the criteria are met. As a condition of modification of access requirements, contribution to an off-site public access site shall be required.
  - i. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means.
  - ii. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
  - iii. The cost of providing the access, or mitigating the impacts of public access, is unreasonably disproportionate to the total long-term development and operational cost over the life-span of the proposed development.
  - iv. Significant environmental impacts will result from the public access that cannot be

- mitigated.
- v. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
  - vi. Prior to determining that public access is not required, all reasonable alternatives must be pursued, including but not limited to:
    - (1) Regulating access by such means as maintaining a gate and/or limiting hours of use;
    - (2) Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
    - (3) Providing for specific facilities for public visual access, including viewing platforms that may be physically separated from the water's edge, but only if access adjacent to the water is precluded.

The requirements for public access may also be modified as part of a Shoreline Substantial Development Permit for properties in the Shoreline High-Intensity Overlay District in Cedar River Reach C, provided that a substitute private access plan is proposed that meets the following criteria:

- i. the site will contain a water-oriented use that will provide an opportunity for substantial numbers of people to enjoy the shoreline; and
- ii. conditions are proposed that balance the opportunity for access by members of the public with the security needs of the proposed use (such conditions may include such things as maintaining a gate and/or limiting hours of access).



1201 Third Avenue, Suite 4800  
Seattle, WA 98101-3099  
PHONE: 206.359.8000  
FAX: 206.359.9000  
www.perkinscoie.com

Alexander W. Mackie  
PHONE (206) 359-8653  
FAX (206) 359-9653  
EMAIL AMackie@perkinscoie.com

August 2, 2010

**VIA EMAIL AND HAND-DELIVERED**

Chip Vincent  
Planning Director  
City of Renton  
1055 S. Grady Way, Sixth Floor  
Renton, WA 98057

**Re: Renton SMP**

Dear Chip:

I believe we are making good progress in coming to an accommodation of interests in the Shoreline Master Program. On behalf of my client the Renton Shoreline Coalition, I have continued work on an update of the Coalition's proposed SMP language changes (which are set forth in an 11" by 17" colored table entitled "RSC's Major Issues and Proposed Revisions to the June 2010 Draft Renton SMP as of August 2, 2010"). The draft SMP has a number of interconnected sections so, once basic terms are agreed upon, we will need to go through it in final detail to identify and eliminate any inconsistencies. (Because we felt it more important to get the text changes updated on key points, we did not have the time to update the "standards and guidelines" matrix piece we had given you a draft of at our last meeting. Also, we do not see how the "standards and guidelines" approach fits into the overall regulatory picture and we think we can just work with the text amendments table from here on out.)

Topics addressed and the gist of our recent discussions is set forth below:

**Critical Areas**—The SMP text is to be changed to make it clear that the SR and HI shorelines are not fish and wildlife habitat conservation critical areas. In contrast, the Natural and Urban Conservancy shorelines are to be designated critical areas and under the SMP critical area protection requirements. (The Coalition's 11" by 17" August 2, 2010 updated colored table now reflects such proposed changes and clarifications.) The other critical area classifications (steep

73790-0001/LEGAL18869978.1

ANCHORAGE · BEIJING · BELLEVUE · BOISE · CHICAGO · DENVER · LOS ANGELES · MADISON  
MENLO PARK · PHOENIX · PORTLAND · SAN FRANCISCO · SEATTLE · SHANGHAI · WASHINGTON, D.C.

Perkins Coie LLP and Affiliates

slope, flood plain, aquifer protection, and wetland) will apply where factual circumstances warrant in the shoreline.

- The SMP text is also to be changed to provide that where native vegetation is cut off by developed impervious surfaces (i.e., the built environment—including but not limited to homes, driveways, other buildings, parking lots, and industrial yards), the buffer requirements terminate at the edge of the built environment [following the approach taken in the Vancouver, Washington SMP]. (The Coalition’s 11” by 17” August 2, 2010 updated colored table now reflects such proposed changes.)
- **“Nonconforming” Structures**—During our last meeting (on Tuesday, July 27, 2010), you acknowledged that the City is not seeking to require abatement and removal of existing homes or other buildings and structures within the SMP’s proposed setbacks. That being the case, our objective should be to assure that in the SMP existing structures located within the setback lines are either not defined as nonconforming uses or are legally protected in ways that eliminate the stigma and burdens associated with being characterized as nonconforming. During our meetings, we have discussed two potential approaches to resolving this issue:
  - The first approach (which we think is by far the most sensible and which we have now incorporated into the Coalition’s 11” by 17” August 2, 2010 updated colored table—see page 9 thereof) is to have the SMP provide that (a) the shoreline setback ends at the edge of the existing structure and (b) if the existing structure is closer to the water than the setback then expansion of the structure may not intrude horizontally into the structure’s waterward side or lateral sides within the setback area. Expansion upward and rearward would still be allowed. (Again, see page 9 of the Coalition’s 11” by 17” August 2, 2010 updated colored table.) Existing structures in the setback would not be nonconforming structures and thus would not carry the stigma of the nonconforming structures label.
  - A second approach would be to have the SMP recognize that an existing structure located within a specified setback line does not conform to the current regulations but nevertheless provide that such structures shall for all purposes be *considered* “as if” conforming and that abatement, removal, or relocation is not required or anticipated. As with the first approach, the SMP would need to provide that if the existing structure is closer to the water than the setback, then expansion of the structure may not intrude horizontally into the structure’s waterward side or lateral sides within the setback area but expansion upward and rearward would still be allowed. However, in contrast to the first approach, we think this approach is more confusing and would not eliminate the “nonconforming structure” stigma.

- **Definitions**—In addition, we urge that the “shoreline buffers” definition, which is too narrow and rigid, either be eliminated (which we recommend) or have a name change to “critical area vegetative buffer.” The current “shoreline buffers” definition is too preclusive to serve as a general definition for vegetation conservation buffers. Here is the definition that we recommend and have proposed at the bottom of page 2 and top of page 3 of the Coalition’s 11” by 17” August 2, 2010 updated colored table:

**New definition:**

**VEGETATION CONSERVATION BUFFER:** An existing or planted vegetated strip of land intended to replicate the naturally vegetated condition of an undeveloped shoreline. In determining the width of the existing vegetation conservation buffer at any location for consideration of existing site conditions in relation to an application for a shoreline substantial development permit or other shoreline approval, the width shall be measured perpendicularly from the line of ordinary high water through the abutting area of existing naturally occurring vegetation to the point of contact with the built environment. Where streams enter or exit pipes, the buffer shall be measured perpendicular to the ordinary high water mark from the end of the pipe along the open channel section of the stream.

**Docks:** From our last meeting with you we understand that the City will allow each new dock (and each modification of an existing dock) to be constructed in accordance with its USCOE approval (and its approval from any other government agency with jurisdiction such as the WDFW) even if the design contemplated by those approvals differs from the SMP’s design regulations for new docks and for modifications of existing docks.

We also understand that the Coalition’s maximum 6-foot width proposal for new docks serving single-family residences is now acceptable to City Staff (and that the Staff agrees that a full clear six feet will be allowed between handrails on the walkway to the dock).

**Setbacks—Single-Family Residential:** We have discussed the need for a uniform setback (35 feet generally and down to 25 feet where certain specific objectives can be provided). The larger setback for larger lots unfairly and needlessly discriminates against the owners of larger lots (lots that typically have less impervious surface as a percentage of overall lot area, and thus development of the larger lot typically has less of an overall impact than lots with higher impervious surface percentages). The larger setbacks for larger lots are also inappropriate because there is no evidence that the distance back from the water’s edge on existing lots is correlated to any increase or decrease in water quality

due to the lot's development. Stormwater control is what is important and makes a larger setback for larger lots irrelevant.

Please remember that the shoreline setback in the SR zone is typically the family yard fronting the water. Such yards accommodate and are typically used for family gatherings and recreation related to the water, and access to the water for swimming and other recreation. Such uses are appropriate uses under the Shoreline Management Act and shoreline guidelines and are encouraged in bringing people to enjoy the water.

**Development or redevelopment of an existing lot—Single-Family Residential:**

Where an expansion of an existing single-family residence's footprint or other increase in impervious surface would exceed 1,000 square feet, two requirements would be imposed:

- As to the first requirement, the owner would have the following choices:
  - Option 1: Plant a vegetated buffer consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge (not to exceed a width of 10 feet) to provide water quality and quantity treatment of runoff from the expanded structure; or
  - Option 2: Submit a mitigation report demonstrating how an alternate method (e.g., infiltration or some other stormwater control approach/device, which on some lots might include sloping the developed yard on the waterward side of the residence landward to drain into an infiltration system or stormwater control device) will be used to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the otherwise required vegetative buffer.
- On lots where shoreline protective structures (i.e., bulkheads) already exist, the owner would only be required to reexamine the need for the bulkhead if the building expansion or increased impervious surface project would involve increasing the bulkhead's height or length. This would be the second requirement.
- Existing bulkheads can remain and be repaired or replaced in kind so long as the replacement bulkhead is placed in the same location as the existing structure and as long as the bulkhead's height or length is not increased. As we discussed during our last meeting, along Renton's Lake Washington waterfront, wave conditions caused by bad storms and, during the summer, by boat wakes are sufficient to cause significant erosion on the residential properties. Here, the bulkheads protect not only the structures on the site, but the waterfront uses,

including access to the water and recreation. The City has identified no specific benefit or need to generally replace existing bulkheads with a different form and, as we discussed at the last meeting, the costs of the required studies will be great and the need for the studies non-existent because we already know that the existing bulkheads are needed. The *Isla Verde v. Camas* case<sup>1</sup> limits City authority to make generalized requirements for “general public benefit” without a demonstration by the City of “reasonable necessity under the circumstances.” The burden should be on the City not the homeowner to identify the unusual circumstance where change should be required due to specific conditions.

**Development or Redevelopment—“Commercial”:** Development or redevelopment (including change of use) of commercially zoned property (including property with underlying COR zoning) may occur subject to the following general provisions:

- The developer shall have the following options:
  - Option 1: Plant the vegetated buffer from the waterward edge of the existing impervious surface to the shoreline as provided in the SMP’s vegetation conservation section; or
  - Option 2: Submit a stormwater report demonstrating how an alternate method (e.g., infiltration or some other stormwater control approach/device, which on some lots might include sloping the developed yard on the waterward side of the buildings landward to drain into an infiltration system or stormwater control system) will be used to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the otherwise required vegetative buffer.
- Where the proposed development or redevelopment (including change of use) involves an increase in the length or height of existing shoreline protective structures, the developer will have to submit a geotechnical evaluation addressing the priorities for shoreline protective structures; however, if no increase in the length or height of existing shoreline protective structures is proposed, no such geotechnical evaluation would be required. Like (and even worse than) the intense wave conditions that bulkheads along Renton’s Lake Washington waterfront protect against are the tremendously powerful river currents in the Cedar River during high flow events. Those currents are so great as to eliminate any reasonable basis for the City requiring a geotechnical report on a case by case

---

<sup>1</sup> *Isla Verde Int’l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002).

basis in conjunction with proposed development or redevelopment to justify retention of existing bulkheads or replacement of existing bulkheads in kind in their existing location, especially when no bulkhead lengthening or increase of height is even being proposed.

- See the “7-30-10 Updated Revised Version of the RaMac, Inc.-AnMarCo Proposed SMP Changes 1, 2 and 3 Originally Submitted to the City on 7-2-10” for other details related to commercial development and redevelopment.

**Public Access:** Public access remains under discussion.

- We all agree that public access to publicly owned shorelines is a requirement.
- Public access for commercial facilities may include private facilities that allow access to the water for residents, members, customers, and guests (the *Ballard Elks* case).<sup>2</sup> While general public access may be encouraged, it is unlawful as a universal mandate.
- There are no lawful grounds for requiring the development of a linear trail along the water’s edge. While such trails may be encouraged, and may even be of substantial public benefit, the costs of providing a public trail may not be shifted solely to the property owners over whose property the trail traverses, but whose development does not give rise to the need for the public trail. (*Burton v. Clark County, Nollan, Dolan*.<sup>3</sup>)
- Requiring public access for private residential development (whether a local resident requirement for subdivisions larger than short plats, or general public access for subdivisions of a certain size) is unlawful. The state shoreline guidelines specifically point to legal requirements concerning private property to be protected. Requirements for dedication while imposing maintenance and liability on the homeowner(s) and a number of other requirements in the “public access” section are simply unlawful, unenforceable, and, in all fairness to Renton’s property owners, should be stricken from the draft SMP.

---

<sup>2</sup> *State Dept. of Ecology v. Ballard Elks Lodge No. 827*, 84 Wn.2d 551, 527 P.2d 1121 (1974).

<sup>3</sup> *Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998), review denied, 137 Wn.2d 1015, 978 P.2d 1097 (1999); *Nollan v. California Coastal Comm.*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d. 677(1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).

- Our recommendation is to convert what are not legally valid “requirements” into elements that may be “encouraged” but are not mandatory. (See pages 14 and 15 of the Coalition’s 11” by 17” August 2, 2010 updated colored table.) The property owners of Renton should not be burdened with having to legally challenge obviously illegal requirements on a case by case basis in the future.
- Only if the City adopts an LOS for waterfront parks, and then creates a “fee in lieu of parks” program for all new subdivision lots (both waterfront and upland lots throughout the City) that meets the test of fairness and nexus can newly developed subdivisions lawfully be required to have to choose between providing a required waterfront park space on their lots (if suitable) or paying the fee in lieu to permit the City to improve waterfront parks to meet the demand.

**General Policy Goals of the SMA and Comments in Light of Them:** The Shoreline Management Act calls for the accommodation of “all reasonable and appropriate uses” consistent with “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” and consistent with “public rights of navigation.” The Act’s policy of achieving both shoreline utilization and protection is reflected in the provision that “permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, in so far as practical, any resultant damage to the ecology and environment of the shoreline area and the public’s use of the water.” WAC 173-26-176(2). In view thereof:

- The current Draft Renton SMP is too heavily weighted to protection/restoration as the primary objective. In the draft SMP almost every development is required to “buy its way” onto the shoreline by agreeing to environmental servitudes as a condition of development. That’s not right.
- The test set forth by the Washington Legislature (most recently in HB 1653) is that the *critical area protection* standard in the shoreline area is:

[N]o net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

RCW 36.70A.480(4) as amended by HB 1653.

In contrast, the City’s draft SMP is heavily weighted to “restoration” not only in provisions pertaining to critical areas but in relation to all shoreline activities in all of the City’s shorelines. However, restoration cannot lawfully be required unless the need for it is created by the

Chip Vincent  
August 2, 2010  
Page 8

development that is being proposed. Imposing a restoration requirement on a private owner without the required nexus simply because restoration is a City goal is unlawful. [See *Isla Verde v. City of Camas*<sup>4</sup> (where open space requirements to benefit wildlife held unlawful as a general requirement and where “reasonable necessity” under the specific circumstances held to be the pertinent test). While *Isla Verde* was decided under RCW 82.02.020, which Division I of the Washington Court of Appeals recently held inapplicable to Shoreline updates (*Citizens for Rational Shoreline Planning v. Whatcom County*,<sup>5</sup> RCW 82.02.020 is merely the statutory codification of nexus and proportionality requirements that are still directly applicable to the City under the constitution (*Unlimited v. Kitsap County*, 50 Wn. App. 723; 750 P.2d 651; 1988 Wn. App.; *Nollan v. California Coastal Comm.*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d 677(1987); *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).]

The Coalition and I look forward to our next meeting with you at 9:00 a.m. tomorrow on the Sixth Floor of Renton City Hall.

Sincerely yours,



Alexander W. Mackie

AWM:kr

Attachment: 16-page 11” by 17” colored table entitled “RSC’s Major Issues and Proposed Revisions to the June 2010 Draft Renton SMP as of August 2, 2010”

cc: Renton Shoreline Coalition Steering Committee Members (via email with copy of attachment)  
David L. Halinen, Halinen Law Offices, P.S. (via email with copy of attachment)  
Samuel A. Rodabough, Groen Stephens & Klinge LLP (via email with copy of attachment)  
Erika Conkling, Senior Planner, City of Renton Planning Division (via email and hand-delivered with copy of attachment)  
Lawrence Warren, Renton City Attorney (via email and hand-delivered with copy of attachment)

---

<sup>4</sup> *Isla Verde Int’l Holdings, Inc. v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002).

<sup>5</sup> *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn. App. 937; 230 P.3d 1074; 2010 Wn. App. LEXIS 985 (2010).



**Renton Shoreline Coalition**

P.O. Box 624  
Renton, Washington 98057-0624

**RSC's Major Issues and Proposed Revisions to the June 2010 Draft Renton SMP as of ~~August~~ July 2, 2010**

Issue #	Issue Summary	RSC's Comments on the Issue	<p align="center"><b>RSC's Corresponding Proposed Revisions to the June 2010 Draft SMP</b></p> <p>(Note: this is a new column. To avoid confusion with the proposed SMP text revisions, the <b>SMP</b> text below in this column is not "redlined"; however, <b>August 2, 2010 revisions to RSC's introductory comments are redlined to illustrate changes to the July 2, 2010 version.</b> Proposed revisions to the SMP text are illustrated below by <b>green highlighting and yellow highlighting</b>, underlining and strike-through. <b>Green highlighting indicates August 2, 2010 revisions to the original Draft SMP text and yellow highlighting indicates the remainder of the revisions originally proposed on July 2, 2010.</b>)</p>
1	The June 2010 Draft SMP (a) inaccurately and inappropriately classifies the <b>developed</b> shorelines within the City as "critical areas" and (b) must be corrected to eliminate that egregious error.	The developed shorelines are not "critical areas". For details, please see the attached copies of the June 17, 2010 and July 1, 2010 letters from our attorney, Alexander ("Sandy") Mackie, to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.	<p>As explained in detail in attorney Alexander ("Sandy") Mackie's July 1, 2010 letter to Councilmember Briere <del>and August 2, 2010 letter to Planning Director Chip Vincent</del>, in order to achieve the legislative intent of RCW 36.70A.480(5), section 4-3-090.D.2.c.iii should be revised to state as follows:</p> <p><b>c. Critical Areas within Shoreline Jurisdiction:</b></p> <p>iii. <b>Critical Area Regulations for Class 1 Fish Habitat Conservation Areas:</b> <b>Natural and Urban Conservancy shorelines on the Master Program map are the designated Class 1 Fish Habitat Conservation Areas along Renton's shorelines.</b> Regulations for fish habitat conservation areas Class 1 Streams and Lakes, <del>pertaining to water bodies designated as shorelines</del> are contained within the <del>portions of the</del> development standards and use standards of the Shoreline Master Program <b>applicable to Natural and Urban Conservancy shorelines</b>, including but not limited to <b>both (1) RMC 4-3-090. F.1.2</b> <del>(Vegetation Conservation— Class 1 shorelines designated as fish and wildlife habitat conservation areas)</del>, which establishes <del>vegetated</del> <b>vegetation conservation</b> buffers adjacent to water bodies and <b>(2)</b> specific provisions for use and for shoreline modification in sections 4-3-090E and 4-3-090F.</p> <p>Also, for the reasons explained in Mr. Mackie's July 1, 2010 letter, RSC proposes the following corresponding revisions to section 4-3-090F.1 to properly distinguish between (a) Class 1 shorelines <b>not</b> designated as fish and wildlife habitat conservation areas (shorelines designated Shoreline Residential and Shoreline High-Intensity) and (b) shorelines specifically designated as fish and wildlife habitat conservation areas:</p> <p><b>4-3-090. F Shoreline Modification</b></p> <p><b>4-3-090. F.1 Vegetation Conservation</b></p> <p><b>F.1.1 Vegetation Conservation— on Class 1 shorelines not designated as fish and wildlife habitat conservation areas</b></p> <p><b>a. Criteria for Development Within the Single Family Residential and High Intensity Overlay Districts.</b> <b>Shorelines within the Shoreline Single Family Residential Overlay District and the Shoreline High Intensity Overlay District are not designated as fish and wildlife habitat conservation areas. Within those two Overlay Districts, lands may be developed or redeveloped consistent with shoreline master program standards for the applicable reach, provided that the project also meets the test for "no net loss of existing shoreline ecological functions" under either of the following two options:</b></p> <p><b>i. Option 1. Revegetation of the pervious surfaces lands between existing impervious surfaces (such as homes, driveways, other buildings, parking lots, industrial yards, and other</b></p>

elements of the built environment) and the shore (except for pathways for access to water dependent uses, trails or walkways along shorelines and to the water's edge, and other improvements allowed therein under the SMP) because the Renton Shoreline Master Program presumes that such revegetation will meet the no net loss requirement.

ii. Option 2. Where the development, modification or redevelopment proponent does not choose to provide the vegetated buffer noted above, a mitigation report is required. The focus of the report will be on means of:

(a) Reducing or eliminating nonpoint runoff from developed surfaces (including lawns and gardens);

(b) Infiltration of runoff from structures where reasonably feasible; and

(c) Treatment of runoff from traveled surfaces (roads and driveways) through storm drains and catch basins to avoid direct discharge of untreated stormwater from traveled ways into the abutting water body.

Where the mitigation report shows that such alternate treatment facilities or measures to control water quality and water quantity are anticipated to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required under Option 1, the no net loss test shall have been met.

**b. Alternative Vegetative Buffer For Single-Family Lots: See RMC 4-3-090.E.9.**

**c. Modification of Vegetation Conservation Buffer and Minimum Structure Setback for Proposed Development in the High Intensity Overlay that Meets the "No Net Loss" Test.** [THE MODIFICATION TEXT FROM PROPOSED "CHANGE 2" IN THE 7-30-10 RAMAC-ANMARCO PROPOSED REVISIONS SUBMITTED TO CHIP VINCENT MAY BE INSERTED HERE.]

**F.1.2 Vegetation Conservation—Class 1 shorelines designated as fish and wildlife habitat conservation areas:**

a. **Standard Vegetation Conservation Buffer Width:** Except as otherwise specified in or modified pursuant to this section 4-3-090. F.1, water bodies defined as Shorelines Natural and Urban Conservancy shorelines on the Master Program map shall have a minimum 100-foot vegetation conservation management buffer consistent with Table 4-3-090.D.7.a (Shoreline Bulk Standards) measured from the ordinary high water mark of the regulated shoreline of the state. Where streams enter or exit pipes, the buffer shall be measured perpendicular to the ordinary high water mark from the end of the pipe along the open channel section of the stream.

RSC also recommends that the term "Buffer, Shorelines" currently defined as part of Draft SMP 4-11-020 (DEFINITIONS B) be deleted in its entirety and replaced in 4-11-220 (DEFINITIONS V) by the term "Vegetation Conservation Buffer" defined as follows:

**VEGETATION CONSERVATION BUFFER:** An existing or planted vegetated strip of land intended to replicate the naturally vegetated condition of an undeveloped shoreline. In determining the width of the existing

			<p>vegetation conservation buffer at any location for consideration of existing site conditions in relation to an application for a shoreline substantial development permit or other shoreline approval, the width shall be measured perpendicularly from the line of ordinary high water through the abutting area of existing naturally occurring vegetation to the point of contact with the built environment. Where streams enter or exit pipes, the buffer shall be measured perpendicular to the ordinary high water mark from the end of the pipe along the open channel section of the stream.</p> <p>RSC recommends these simple changes, which will enable the SMP to satisfy the legislative intent of RCW 36.70A.480(5).</p>
2	<p>The Draft SMP unfairly classifies virtually all <b>existing shoreline edge improvements</b> (e.g., existing docks, piers, and bulkheads/other shoreline armoring) as “nonconforming” and wrongfully destines them for either elimination or replacement with “conforming” shoreline improvements.</p>	<p>(A) Existing shoreline edge improvements (<b>such as existing docks, piers, and bulkheads/other shoreline armoring</b>) are valuable parts of shoreline properties in their own right, not merely in support of existing primary uses of shoreline properties. Existing shoreline edge improvements are part of the status quo and should not be considered “continuing impacts” as the Draft SMP documents treat them. (Changes that are likely to result from <i>additional</i> development are what should be analyzed as “impacts,” not existing development.)</p> <p>(B) Existing shoreline edge improvements should be allowed to be repaired and/or replaced <i>indefinitely</i> in their <i>current locations, sizes and configurations</i> regardless of (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel. Such changes have no fair relation to the Draft SMP’s demands for “partial compliance” or “full compliance” with the Draft SMP’s standards for new shoreline edge improvements. Thus, there should be a <i>decoupling</i> of the Draft SMP’s current requirements for “partial compliance” or “full compliance” with the Draft SMP’s standards for new shoreline edge improvements when any of those three above-listed things occur.</p> <p>(C) The SMP Guidelines’ requirement of “no net loss of shoreline ecological functions” can generally be met in regard to (1) changes in size of building footprint or impervious area on the shoreline parcel they are on or connected with, (2) remodeling or renovation of existing structures or improvements, and/or (3) changes in the principal use of the shoreline parcel without any of the Draft SMP’s new “compliance regulations” concerning shoreline edge improvements set forth in SMP Sections such as 4-10-095.F.1, 4-10-095.F.2, and 4-3-090.F.4.</p> <p>(D) The Draft SMP’s new “compliance regulations” concerning shoreline edge improvements will impose <i>massive, inappropriate costs and uncertainties as to approval</i> on shoreline property owners who wish to upgrade their shoreline properties by (1) changing the size of building footprints or impervious area on their properties, (2) remodeling or renovating existing buildings or improvements, and/or</p>	<p><b>The following revisions are proposed to appropriately accomplish the “decoupling” that RSC explains the need for under section (B) of RSC’s comments in the second column concerning RSC’s Issue 1:</b></p> <p>First, predicated upon the above-proposed modifications to Draft SMP section 4-3-090. F.1, RSC proposes the following revisions to Draft SMP 4-10-095:</p> <p><b>4-10-095 Shoreline Master Program, Nonconforming Uses, Activities, Structures, and Sites</b> A shoreline use or development which was lawfully constructed or established prior to the effective date of the applicable Shoreline Master Program, or amendments thereto, but which does not conform to present regulations or standards of the program, may be continued provided that:</p> <p><b>4-10-095A. Nonconforming Structures:</b> <i>Other than shoreline stabilization structures, docks and piers (which are addressed elsewhere in this Shoreline Master Program),</i> Nonconforming structures shall be governed by RMC 4-10-050.</p> <p><b>4-10-095B. Nonconforming Uses.</b> Nonconforming uses shall be governed by RMC 4-10-060.</p> <p><b>4-10-095C. Nonconforming Site:</b> A lot which does not conform to <i>site</i> development <i>regulations (i.e., regulations other than those on a site not related to the characteristics of a principal structure on the site)</i> including, but not limited to, the vegetation conservation <i>buffer, shoreline stabilization,</i> landscaping, parking, fence, driveway, street opening, pedestrian amenity, screening and other regulations of the district in which it is located, due to changes in Code requirements, condemnation or annexation; <i>provided, however, that regulations concerning shoreline stabilization and piers and docks are specifically excluded from this definition.</i></p> <p style="text-align: center;">* * *</p> <p><b>4-10-095F. Partial and Full Compliance, Alteration of Nonconforming Structure or Site:</b> The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of the Shoreline Master Program. Alteration or expansion of existing structures may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of <i>existing</i> shoreline ecological function. In no case shall a structure with a non-conforming setback from the shoreline be allowed to extend further waterward than the existing structure.</p> <p><b>4-10-095F.1. Partial Compliance for Non-Single-Family Development:</b></p>

(3) changing the “principal use” of the shoreline properties. If the Draft SMP is ultimately enacted in its current form, a (presumably) unintended consequence of the massive costs and uncertainties of the Draft SMP’s new “compliance regulations” will be that many such upgrades of existing shoreline properties will never even be attempted. That will be a shame for Renton.

(E) Many of the important practical functions that existing shoreline edge improvements provide will not be provided with the City’s mandated substitutes [such as (1) sufficient dock width for safe use of docks (in contrast with ultra-narrow dock widths in the Draft SMP requirements) and (2) substantial bulkheads/shoreline armoring that actually will prevent erosion of shoreline properties rather than expensive “soft” shoreline stabilization schemes that are subject to wash-out in big storms in Lake Washington or big flow events in the Cedar River, can result in massive property and environmental damage, and will have to be replaced over and over again at enormous expense].

(F) For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.

The following provisions shall apply to all development except single family:

Alteration of a Non-conforming Structure		Compliance Standard
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq. ft. or up to 10% (whichever is less); or Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less); or Remodeling or renovation that equals less than 30% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	<ul style="list-style-type: none"> <li>Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water’s edge, provided that the area to be revegetated does not exceed -10 feet, unless a greater area is desired by the applicant; or</li> <li>The applicant may submit to the City a mitigation report consistent with Option 2 under 4-3-090.F.1.1.a. Where the report shows that treatment facilities or measures to control water quality and water quantity are anticipated to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the net loss test shall have been met.</li> <li>Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> </ul>
	Moderate Alteration	<ul style="list-style-type: none"> <li>Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or</li> <li>Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less); or</li> </ul>

			<table border="1"> <tr> <td data-bbox="1619 197 1743 731"></td> <td data-bbox="1743 197 2253 731"> <p>Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p> </td> <td data-bbox="2253 197 2831 731"> <p><b>stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</b></p> <ul style="list-style-type: none"> <li>Remove over water structures that do not provide public access, or do not serve a water dependent use.</li> <li>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul> </td> </tr> <tr> <td data-bbox="1619 731 1743 1574" style="writing-mode: vertical-rl; transform: rotate(180deg);">Major Alteration</td> <td data-bbox="1743 731 2253 1574"> <p>Expansion of building footprint by more than 25%; or Expansion of impervious surface by more than 25%; or Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p> </td> <td data-bbox="2253 731 2831 1574"> <ul style="list-style-type: none"> <li>Revegetation of the lands between existing impervious surfaces (such as buildings, driveways, parking lots, industrial yards and other elements of the built environment) and the shore (except for pathways for access to water dependent uses, walkways along shorelines and to the water's edge and other improvements allowed therein under the SMP) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>The applicant may submit to the City a mitigation report consistent with Option 2 under 4-3-090.F.1.1.a. Where the report shows that treatment facilities or measures to control water quality and water quantity are anticipated to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.</p> </td> </tr> </table> <p><u>In view of revisions that RSC proposes on pages ___ through ___, below in regard to Issue 3, RSC hereby proposes that 4-10-095F.2. (Partial Compliance for Single-Family Development) be deleted in its entirety.</u></p>		<p>Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p>	<p><b>stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</b></p> <ul style="list-style-type: none"> <li>Remove over water structures that do not provide public access, or do not serve a water dependent use.</li> <li>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul>	Major Alteration	<p>Expansion of building footprint by more than 25%; or Expansion of impervious surface by more than 25%; or Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p>	<ul style="list-style-type: none"> <li>Revegetation of the lands between existing impervious surfaces (such as buildings, driveways, parking lots, industrial yards and other elements of the built environment) and the shore (except for pathways for access to water dependent uses, walkways along shorelines and to the water's edge and other improvements allowed therein under the SMP) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>The applicant may submit to the City a mitigation report consistent with Option 2 under 4-3-090.F.1.1.a. Where the report shows that treatment facilities or measures to control water quality and water quantity are anticipated to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.</p>
	<p>Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p>	<p><b>stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</b></p> <ul style="list-style-type: none"> <li>Remove over water structures that do not provide public access, or do not serve a water dependent use.</li> <li>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</li> <li>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</li> </ul>							
Major Alteration	<p>Expansion of building footprint by more than 25%; or Expansion of impervious surface by more than 25%; or Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p>	<ul style="list-style-type: none"> <li>Revegetation of the lands between existing impervious surfaces (such as buildings, driveways, parking lots, industrial yards and other elements of the built environment) and the shore (except for pathways for access to water dependent uses, walkways along shorelines and to the water's edge and other improvements allowed therein under the SMP) because the Renton Master Program presumes that that will meet the no net loss requirement; or</li> <li>The applicant may submit to the City a mitigation report consistent with Option 2 under 4-3-090.F.1.1.a. Where the report shows that treatment facilities or measures to control water quality and water quantity are anticipated to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</li> </ul> <p>Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.</p>							

**4-10-095F.2. Partial Compliance for Single Family Development:** The following provisions shall apply to single family development:

<b>Alteration of a Non-conforming Structure</b>		<b>Compliance Standard</b>
<b>Alteration Without Expansion</b>	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
<b>Minor Alteration</b>	Expansion of building footprint by up to 500 sq. ft. or up to 10% (whichever is less); or Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less)	<ul style="list-style-type: none"> <li>• Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge provided that the area to be revegetated shall not be more than 10 feet, unless a greater area is desired by the applicant; or</li> <li>• <u>The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</u></li> <li>• <u>Remove over water structures that do not provide public access, or do not serve a water dependent use.</u></li> </ul>
<b>Moderate Alteration</b>	Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less)	<ul style="list-style-type: none"> <li>• Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge, or at least 10 feet, provided that the area to be revegetated shall not be more than 25% of the lot depth feet; or</li> <li>• <u>The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.</u></li> <li>• <u>Remove over water structures that do not provide public access, or do not serve a water dependent use.</u></li> <li>• <u>Piers and Docks shall be required to replace any solid surfaces with light penetrating surfacing materials.</u></li> <li>• <u>Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be replaced with conforming shoreline stabilization structures in accordance with the standards for new shoreline stabilization structures in RMC 4-3-090F.4 Shoreline Stabilization.</u></li> </ul>
<b>Major Alteration</b>	Expansion of building footprint by more than 25%; or Expansion of impervious surface by more than 25%	<ul style="list-style-type: none"> <li>• <u>Revegetation of the lands between existing impervious surfaces (such as homes, driveways, other buildings, and other elements of the built environment) and the shore (less pathways for access to water dependent uses and less walkways along shorelines and to the water's edge)</u></li> </ul>

because the Renton Master Program presumes that that will meet the no net loss requirement; or

- The applicant may submit a special report to the City identifying the existing shoreline ecological functions present on or in the near shore of the property being developed and the proposed steps to assure that the no net loss objective will be met in conjunction with the proposed development.

Full compliance required with all development standards for new structures, including, but not limited to: primary and accessory structures, docks, and shoreline stabilization structures if such structures are not otherwise permitted by the provisions of RMC 4-3-090 Shoreline Master Program.

Second, also in regard to “decoupling” in the context of existing shoreline edge improvements, RSC proposes the following revisions to (1) subsection e of Draft SMP 4-3-090.E.7 (Piers and Docks) and (2) subsection c of Draft SMP 4-3-090.F.4 (Shoreline Stabilization):

- e. Maintenance and Repair of Docks:** Existing docks or piers that do not comply with these regulations may be repaired in accordance with the criteria below.
- When the **surface area of the** repair and/or replacement exceeds thirty percent (30%) of the surface area of the dock/pier, light penetrating materials must be used for all replacement parts and components. For floating docks, light penetrating materials shall be used where feasible, and as long as the structural integrity of the dock is maintained.
  - When the repair involves replacement of the surfacing materials only, there is no requirement to bring the dock/pier into conformance with dimensional standards of this section.
  - When the repair/replacement involves the replacement of **more than 60%50%** of the pilings, or more, the entire structure shall be replaced in compliance with these regulations. For floating docks, when the repair/replacement involves replacement of **more than 60%50%** of the total supporting structure (including floats, pilings, or cross-bars), the entire structure shall be replaced in compliance with these regulations.
  - When the existing dock/pier is moved or expanded or the shape reconfigured, the entire structure shall be replaced in compliance with these regulations.
  - When an existing dock or pier is damaged by accident, fire, earthquake, flood, or other sudden casualty, it may be repaired or rebuilt in its current location, size, and configuration, subject to subsection i above.**
- c. Existing Shoreline Stabilization Structures:** Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced if they meet the applicable criteria below:
- Repair of Existing Structures:** An existing shoreline stabilization structure may be repaired as long as it serves to perform a shoreline stabilization function for a legally established land use, but shall be subject to the provisions **in subsection iii**, below, if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.
  - Additions to Existing Structures:** Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
  - Changes in Land Use:** An existing shoreline stabilization structure established to serve a **land** use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use may be

retained or replaced with a similar structure in its current location for a new use if and to the extent that the structure is not lengthened or increased in height in connection with the new use.

- (1) There is a demonstrated need documented by a geotechnical analysis to protect principal uses or structures from erosion caused by currents or waves; and
- (2) An evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.

3 The Draft SMP's call for big shoreline setbacks and vegetated buffers in highly urbanized Renton is senseless and must be revised.

- (A) The big shoreline setbacks and vegetated buffers called-for in Renton's Draft SMP presuppose vast virgin lands along the City's shorelines to be protected by the Draft SMP's requirements for "Vegetation Conservation Buffers" are way too restrictive. (Vegetation cannot be "conserved where it does not exist.") Such vast virgin lands don't exist in Renton, where nearly all shoreline properties (even most City park shoreline properties) are already subject to intensive use and are not in a virgin state.
- (B) The big setback and buffer requirements unfairly require shoreline property owners to have to "make things better" if they are going to develop or redevelop their properties, not merely meet the SMP Guidelines' requirement of "no net loss of shoreline ecological functions". Shoreline property owners should not have to "make things better," especially because there is serious doubt as to whether the SMP's mandates even if implemented would actually make anything "better" at all.
- (C) The Draft SMP's setback and buffer widths should be reduced in general. They should also be revised in regard to properties where vegetative buffers either do not currently exist at all or only exist in part to allow such existing site circumstances to be taken into account to (a) further reduce the width of required setbacks and (b) eliminate or reduce the width of required vegetative buffers. Where vegetated buffers consisting of non-native vegetation (lawns, shrubs, trees and other plants) already exists, the non-native vegetation should be allowed as an alternative to native vegetation in required vegetative buffers.
- (D) In non-critical area along Lake Washington's Single-Family Residential designation, the setback should be a uniform 25 feet with no buffer. In non-critical areas designated High Intensity along the Cedar River or Lake Washington, (i) for residential development the setback should be a uniform 25 feet and there should be no buffer and (ii) for commercial or industrial development the setback should generally be 50 feet and there should be no buffer.

In regard to single-family lots, RSC proposes striking existing the following revisions to subsection c of Draft SMP 4-3-090.F.1 (Vegetation Conservation) and shifting it into the residential portion of the Draft SMP as 4-3-090.E.9. i with the revisions set forth as follows as a compromise of what RSC contends should actually be the building setback and buffer along Lake Washington's Single Family Residential designation (i.e., a 25-foot wide setback with no buffer):

**ie. Alternative Vegetated Buffer Widths and Setbacks and Vegetation Conservation Buffers for Existing Single-Family Lots, Expansion of Existing Single Family Residences**

**i. Reduced Requirements Based on Lot Depth:** The reviewing official may apply the following vegetation buffers and building setback alternatives and corresponding vegetation conservation buffers shall apply to both (1) new and existing single-family residences and single-family lots along shorelines designated Shoreline Residential and Shoreline High-Intensity and (2) for existing single-family residences and existing single-family lots along all other shoreline designations consisting of property under contiguous ownership without a variance. Lot depth shall be measured from the ordinary high water mark in a perpendicular direction to the edge of the contiguously owned parcel or to an easement containing existing physical improvements for road access for two or more lots.

Lot Depth	Building Setback	Vegetation Conservation Buffer
Greater than 180 feet	60 feet	25 feet
Greater than 130 feet, up to 180 feet	45 feet	20 feet
100 feet or greater, up to 130 feet	35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)	0 feet (if residence is set back at least 35 feet) or 50 percent of the area within the lot's first 20 feet abutting OHWM (if residence is set back less than 35 feet) 45 feet
Less than 100 feet	35 feet (if no vegetated buffer is provided) or 25 feet (if a vegetated buffer is provided)	0 feet (if residence is set back at least 35 feet) or 40 percent of the area within the lot's first 20 feet abutting OHWM (if residence is set back less

(E) Other agencies might add buffer requirements in regard to shoreline edge improvements when landowners go through the approval/permit processes of other agencies depending upon the nature of the proposed development. Renton should not place additional regulations where they are not required. Neither the SMA nor the Shoreline Guidelines require minimum setbacks and buffers for already developed shorelines.

(F) If enacted, the current Draft SMP's big setback and buffer requirements will stymie desirable expansion of existing waterfront homes and redevelopment of other uses on shoreline properties.

(G) For further details, please see the attached copies of the June 17, 2010 and July 1, 2010 letters from our attorney Alexander ("Sandy") Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.

than 35 feet) 10 feet

Notwithstanding the above, where an existing residence structure lies within the building setback, the structure shall be considered a conforming structure for all purposes. Subject to the provisions of the following table, (1) modification to increase the size of the structure is permitted so long as the footprint of the modification does not intrude either waterward or along the sides of the existing primary structure into the undeveloped portion of the setback area and (2) vertical expansion of the existing structure is permitted as well as landward expansion of the existing primary structure's footprint:

Expansion of existing single-family residence structure and/or other impervious surfaces within the shoreline		Compliance Standard
Minor Alteration	Expansion or remodel that does not increase the building footprint or increase other portions of impervious surface within the shoreline by a total of more than 1000 sq ft.	No site changes required.
Major Alteration	Expansion or remodel that increases the building footprint or increase other portions of impervious surface within the shoreline by a total of more than 1000 sq ft.	<ul style="list-style-type: none"> <li>Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge provided that the area to be revegetated shall not be more than 10 feet; or</li> <li>The applicant may submit to the City a mitigation report consistent with Option 2 under 4-3-090. F.1.1.a. Where the report shows that treatment facilities or measures to control water quality and water quantity are anticipated to control stormwater runoff quality and quantity to an extent at least equal to that which would be expected from the vegetation conservation buffer over pervious surfaces otherwise required by 4-3-090.F.1, the no net loss test shall have been met.</li> </ul>

**Reductions for Narrow Lots:** For such lots with a lot width of less than 60 feet, setbacks and buffers may be reduced by ten (10) percent, but no less than:  
 (1) Building setback: 25 feet  
 (2) Vegetated buffer: 15 feet

Correspondingly, RSC proposes the following revisions to RMC 4-3-090.E.9.f:

f. **Vegetation Conservation:** Except as otherwise provided in RMC 4-3-090.E.9.i, all new residential lots shall meet applicable vegetation conservation provisions in RMC 4-3-090.F.1 Vegetation Conservation, including the full required buffer area together with replanting and control of invasive species within buffers to ensure establishment and continuation of a vegetation community characteristic of a native climax community. Each lot must be able to support intended development without encroachment on vegetation conservation areas, except

for public trains and other uses allowed within such areas. Areas within vegetation conservation areas shall be placed in common or public ownership when feasible.

Also correspondingly, RSC proposes the following revisions to the following excerpt from Draft SMP Table 4-3-090.D.7a (Shoreline Bulk Standards) as the table relates to the Shoreline Single Family Overlay District:

	Natural	Urban Conservancy	Shoreline Single Family	High Intensity	High Intensity Isolated	Aquatic
<b>Setbacks and Buffers</b>						
<b>Structure Setback from Ordinary High Water Mark (OHWM)- Minimum</b>						
<b>Water-dependent Use</b>	100 ft.	100 ft.	None <sup>1</sup>	None <sup>1</sup>	None	
<b>Water-related or Water Enjoyment Use (including single family homes and accessory uses)</b>	100 ft.	100 ft.	100 <del>100</del> 35 ft. <sup>2</sup>	100 ft. <sup>3</sup>	None	
<b>Non-Water-oriented Use</b>	100 ft.	100 ft.	100 <del>100</del> 35 ft. <sup>2</sup>	100 ft. <sup>4</sup>	None	
<b>Front Yard, Side Yard, and Rear Yard Setbacks</b>	Governed by underlying zoning in RMC 4-2 except in cases where specific shoreline performance standards provide otherwise. Variance from the front and side yard standards may be granted administratively if needed to meet the established setback from OHWM, as specified in this section and if standard variance criteria are met.					
<b>Vegetation Conservation Buffer</b>	100 ft.	100 ft.	100 ft. Governed by 4-3-090.F.1.1 <sup>2</sup>	100 ft. <sup>3,4</sup>	None	
<b>Coverage Standards</b>						
<b>Impervious Area within 100 feet of OHWM- Maximum</b>	Not allowed	5%/10% <sup>8</sup>	5%/50 <del>75</del> 75% <sup>8</sup> [NOTE: THIS IS THE MAXIMUM IN THE R-8 ZONE. (IN THE R-4 ZONE THE MAXIMUM	5%/50% <sup>8</sup>	Governed by underlying zoning in RMC 4-2	

			<b>IS 55%.)]</b>			
<b>Lot Coverage for Buildings within 100 feet of OHWM-Maximum</b>	5% <sup>9</sup>	5%. <sup>9</sup>	<b>50% for single-family buildings and accessory structures, otherwise 25%<sup>9</sup></b>	None <sup>9</sup>	Governed by underlying zoning in RMC 4-2	
<b>Lot Coverage for Buildings more than 100 feet from OHWM-Maximum</b>	5%	15%	<b>3550% [NOTE: THIS IS THE MAXIMUM IN THE R-4 AND R-8 ZONES.]</b>	Governed by underlying zoning in RMC 4-2	Governed by underlying zoning in RMC 4-2	

In addition, RSC proposes the following revisions to notes (2) through (4), (8) and (9) following Draft SMP Table 4-3-090.D.7a (Shoreline Bulk Standards):

- (2) **For single family residential and accessory buildings, B** building setback and buffer **shall** be **based on lot depth** as provided in RMC **4-3-090.E.9.i4-3-090.F.1.e.**
- (3) Water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 and shall be no closer than 50 feet, except **(a)** as **modified pursuant to RMC 4-3-090.F.1.m or (b) in cases** consistent with a Master Site Plan approved prior to the adoption of this Section.
- (4) Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 and shall be no closer than 75 feet, except **(a)** as **modified pursuant to RMC 4-3-090.F.1.m or (b) in cases** consistent with a Master Site Plan approved prior to the adoption of this Section.
- (8) Up to 5% impervious surface is allowed in Vegetation Conservation Area buffers for access to the shoreline, or a pathway up to 6 feet wide, whichever is greater, provided that in cases where the depth of the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 that portion of the first 100 feet from OHWM upon which development **may be** located may be permitted a maximum of 50% impervious surface, unless **either (a) higher standard (which shall control) is set forth after a slash mark ("/") in the above table or (b) a different standard is stated below:**
  - Lake Washington Reaches H and A through I and K** – Up to 75% impervious surface, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
  - Lake Washington Reach J** – No limit is provided for the Renton Municipal Airport.
  - Cedar River Reach A** – No limit is provided for the Renton Municipal Airport.

			<p><b>Cedar River Reach B</b> – No limit to impervious surface.  <b>Cedar River Reach C</b> – No limit to impervious surface.  <b>Cedar River Reach D</b> – No more than 5% impervious surface.  <b>Springbrook Creek Reaches B through D</b> – No more than 65% impervious surface.</p> <p>(9) No building coverage is allowed in Vegetation Conservation Area buffers. If the buffer depth is varied in accordance with RMC 4-3-090.F.1 <b>or 4-3-090.E.9</b>, that portion of the first 100 feet from OHWM upon which development <b>may be</b> located may be permitted the following coverage:  <b>Lake Washington Reaches A through I and K</b> – Up to 50% building coverage  <b>Lake Washington High Intensity Overlay District</b>– Up to 50% building coverage, except as consistent with a Master Site Plan approved prior to the adoption of this Section.  <b>Cedar River Reach A</b> – Up to 20% for the Renton Municipal Airport.  <b>Cedar River Reach B</b> – No limit on building coverage  <b>Cedar River Reach C</b> – Up to <b>5065%</b> building coverage <b>(up to 75% building coverage if parking is provided within the building or within a parking garage)</b>  <b>Cedar River Reach D</b> – No more than 5% building coverage  <b>Green River A</b> – Up to 50% building coverage  <b>Springbrook Creek Reach A</b> – No more than 5% building coverage  <b>Springbrook Creek Reaches B through D</b> - Up to 50% building coverage</p> <p>In regard to properties zoned COR in Cedar River Reach C, RSC supports the proposal set forth in the July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Renton City Council’s Planning and Development Committee <b>as revised in their submittal to Renton Planning Director Chip Vincent dated July 30, 2010.</b></p>						
4	<p>The Draft SMP’s <b>limitations on new docks and piers</b> are inappropriately restrictive.</p>	<p>The Shoreline Master Program Guidelines call for new docks and piers to be the “Minimum necessary”. A minimum safe width is 6 to 8 feet. Greater lengths should be allowed in view of low water levels in Lake Washington.</p> <p>RPG3 square footage requirements are from the U.S. Army Corps of Engineers (which often grants permits not meeting those requirements). Those requirements ought not to be incorporated into the SMP.</p>	<p>RSC proposes the following revisions to portions of subsection c (Design Criteria – General) and subsection d (Design Standards) of Draft SMP 4-3-090.E.7 (Piers and Docks):</p> <p><b>4-3-090.E.7 Piers and Docks</b></p> <p style="text-align: center;">* * *</p> <p><b>c. Design Criteria – General</b></p> <p style="text-align: center;">* * *</p> <p>ix. <b>Other Agency Requirements:</b> <b>if a design of a proposed new dock or dock modification is approved by the U.S. Army Corps of Engineers, it will be acceptable under this SMP notwithstanding any differences between the design and the design standards of this SMP.</b> If deviation from the design standards is required <b>or allowed</b> by another agency with permitting authority, <b>such deviation</b> shall be allowed <b>under this SMP.</b></p> <p><b>d. Design Standards</b></p> <table border="1" data-bbox="1547 1693 2927 1764"> <tr> <td></td> <td>Single-Family</td> <td>Joint Use and Community Docks</td> <td>Commercial and Industrial</td> <td>Docks-</td> <td>Non-water-dependent uses</td> </tr> </table>		Single-Family	Joint Use and Community Docks	Commercial and Industrial	Docks-	Non-water-dependent uses
	Single-Family	Joint Use and Community Docks	Commercial and Industrial	Docks-	Non-water-dependent uses				

			Water-dependent Uses	
<b>LENGTH-MAXIMUM</b>				
Docks and Piers	Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis). Maximum: <u>the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.</u> <sup>2</sup>	Minimum needed to provide moorage for a single vessel and up to two personal watercraft (e.g. jet skis) for each waterfront lot served. Maximum: <u>the greater of (a) 80 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.</u> <sup>2</sup>	Minimum needed to serve specific vessels or other water-dependent uses specified in the application. Maximum: <u>the greater of (a) 120 ft. from OHWM or (b) the length required to attain 12-ft water depth at ordinary low water.</u> <sup>2</sup> Facilities adjacent to a designated harbor area: The dock or pier may extend to the lesser of: a) The General standard, above; or b) The inner harbor line or such point beyond the inner harbor line as is allowed by formal authorization by the Washington State Department of Natural Resources (DNR) or other agency with jurisdiction.	Docks are not allowed unless they provide public access or public water recreation use. Such docks and piers are subject to the performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.
<b>WIDTH-MAXIMUM</b>				
Docks and Piers	<u>6</u> ft. (and, along walkways to the dock that have handrails/guardrails, a full 6-foot width is allowed between the handrails/guardrails) <sup>4</sup>	6 ft. (and, along walkways to the dock that have handrails/guardrails, a full 6-foot width is allowed between the handrails/guardrails) <sup>4</sup>	Maximum walkway: 8 ft., but 12 ft. if vehicular access is required for the approved use. <sup>3</sup>	Docks are not allowed unless they provide public access or public water recreation use. Such docks and piers are subject to the

			<table border="1"> <tr> <td data-bbox="1547 197 1641 405"></td> <td data-bbox="1641 197 1998 405"></td> <td data-bbox="1998 197 2365 405"></td> <td data-bbox="2365 197 2675 405"></td> <td data-bbox="2675 197 2930 405">performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.</td> </tr> <tr> <td data-bbox="1547 405 1641 576">Ells and Floats</td> <td data-bbox="1641 405 1998 576">6 ft.†</td> <td data-bbox="1998 405 2365 576">6 ft.†</td> <td data-bbox="2365 405 2675 576">Minimum needed to serve specific vessels or other water-dependent uses specified in the application.</td> <td data-bbox="2675 405 2930 576"></td> </tr> </table> <p><b>Table Notes:</b></p> <ol style="list-style-type: none"> <li>1. A joint use ownership agreement or covenant shall be executed and recorded with the King County Assessor's Office prior to the issuance of permits. A copy of the recorded agreement shall be provided to the City. Such documents shall specify ownership rights and maintenance provisions, including: specifying the parcels to which the agreement shall apply; providing that the dock shall be owned jointly by the participating parcels and that the ownership shall run with the land; providing for easements to access the dock from each lot served and provide for access for maintenance; providing apportionment of construction and maintenance expenses; and providing a means for resolution of disputes, including arbitration and filing of liens and assessments.</li> <li>2. <del>Maximum length is 80' (80 ft.) unless a depth of 8' (8 ft.) cannot be obtained. In such circumstances the dock may be extended until the water depth reaches a point of 8' (8 ft.) in depth at ordinary low water, or to a maximum of 120' (120 ft.), whichever is reached first.</del></li> <li>3. Additional width may be allowed to accommodate public access in addition to the water-dependent use.</li> <li>4. <del>For piers or docks with no ell and fingers, the most waterward 26' (26 ft.) section of the walkway may be up to 6' (6 ft.) wide.</del></li> </ol>					performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.	Ells and Floats	6 ft.†	6 ft.†	Minimum needed to serve specific vessels or other water-dependent uses specified in the application.	
				performance standards for over-water structures for recreation in section RMC 4-3-090E.8 Recreation.									
Ells and Floats	6 ft.†	6 ft.†	Minimum needed to serve specific vessels or other water-dependent uses specified in the application.										
5	The Draft SMP inappropriately requires the <b>provision of public access to the shorelines for private development activity.</b>	<p>(A) The Shoreline Management Act does not authorize the City to require the provision of physical public access for private development activity. <i>See</i> RCW 90.58.020(5) (giving preference to shoreline uses that "[i]ncrease public access to <b>publicly</b> owned areas of the shorelines.") (emphasis added).</p> <p>(B) Similar to the SMA, the Shoreline Guidelines in WAC 173-26-221(4) do not require that new private shoreline development provide physical and/or visual public access for the general public. <i>See</i> WAC 173-26-221(4) (stating that local SMPs "shall address public access on <b>public lands</b>" and encouraging other access to be consistent with private "property rights").</p> <p>(C) Consistent with well-established jurisprudence interpreting federal and state constitutions, the City cannot lawfully require the provision of physical public access for private development activity. Doing so would contravene principles of essential nexus and rough proportionality in which a condition placed on development must relate to the impact of the proposed development. Development of a site that already does not provide public access does not adversely impact public access, but rather maintains the status quo.</p>	<p><u>Public access to publicly owned shorelines is required in any new development by public agencies on publicly owned shorelines.</u></p> <p><u>RSC proposes that Draft SMP 4-3-090 E.9.c be deleted in its entirety replaced with the following text substitute text:</u></p> <p>c. <b>Public Access Encouraged but Not Required:</b> New residential developments, including subdivision of land for more than four (4) parcels, <u>are encouraged but not required to provide public access due to constitutional constraints</u> shall provide public access in accordance with Section RMC 4-3-090.D.4 Public Access. <del>Unless deemed inappropriate due to health, safety or environmental concerns, new multi-family, condominium, planned unit developments, and subdivisions except short plats of four or fewer units, shall provide public access along the water's edge; in the case of subdivisions adjacent to public waterways shall provide access to a point that abuts the water and provide physical access to public waterways.</del></p> <p><u>RSC further proposes that the following revisions be made to subsection b of Draft SMP 4.3.090 D.4 (Public Access):</u></p> <p>b. <b>Public Access Required:</b> Public access shall be provided for the following development, subject to the criteria in</p>										

		<p>(D) The Draft SMP fails to take into account the very extensive access opportunities to Lake Washington, the Cedar River and Springbrook Creek that already exist. By doing so, it fails to account for the fact that <i>no real need exists</i> for private shoreline owners to provide even more access for the general public.</p> <p>(E) The Draft SMP's burdensome access requirements for the general public on private property will have the effect of substantially discouraging new development as well as redevelopment of properties like the Old Stoneway Site and the RaMac property along Cedar River Reach C .</p> <p>(F) For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander ("Sandy") Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.</p>	<p>subsection d.</p> <ul style="list-style-type: none"> <li>i. Water-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing legal access opportunities, or that utilize public harbor lands or aquatic lands, or that are developed with public funding or other public resources.</li> <li>ii. Non-water-dependent development and uses.</li> <li><del>iii. Developments of more than ten (10) single family residential lots or single family dwelling units, including subdivision, within a proposal or a contiguously owned parcel are required to provide public access. Developments of more than four (4), but less than ten (10) single family residential lots or single family dwelling units, including subdivision, within a proposal or a contiguously owned parcel are required to provide community access.</del></li> <li>iv. Development of any non-single family residential development or use.</li> <li>v. Any use of public aquatic lands, except as related to single-family residential use of the shoreline, including docks accessory to single-family residential use.</li> <li>vi. Publicly financed or subsidized flood control or shoreline stabilization shall not restrict public access to the shoreline and shall include provisions for new public access to the maximum extent feasible.</li> <li>vii. Public access provided by shoreline street ends, public utilities, and rights of way shall not be diminished by any public or private development or use (RCW 35.79.035 and RCW 36.87.130).</li> <li><del>viii. For all developments on the shoreline, other than single-family residential developments (existing or new), shoreline access or use facilities available to residents customers, clients, guests or members, shall be considered "public access" and are encouraged; general public access is not required due to constitutional constraints.</del></li> </ul> <p><u>RSC requests that subsection d (Design Criteria for Public Access Sites) and subsection e (Public Access Development Standards) of Draft SMP 4.3.090 D.4 (Public Access) be revisited as they presume excessive requirements, general public access and owner maintenance, all of which are unlawful requirements.</u></p> <p><u>Likewise, Draft SMP 4-3-090. D.4.f (the "Public Access Requirements by Reach" table) needs to be revised to eliminate linear trail and general public access requirements.</u></p> <p><u>Further, in view of the Washington Supreme Court's decision in <i>State Dept. of Ecology v. Ballard Elks Lodge No. 827</i>, 84 Wn.2d 551, 527 P.2d 1121 (1974), RSC requests that the definition of "Public Access" that is part of Draft SMP 4-11-160 be revised to read as follows:</u></p> <p>PUBLIC ACCESS: (This definition for RMC 4-3-090, Shoreline Master Program Regulations, use only.) A means of physical approach to and/or along the shorelines of the state available to members of the general public or to segments thereof including residents, customers, clients, guests, or members, whether or not available to the general public. This may also include visual approach.</p> <p><del>RSC supports the compromise proposal relating to public access in the COR-zoned property within Cedar River Reach C set forth in the July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Renton City Council's Planning and Development Committee.</del></p>
6	The Draft SMP <b>inappropriately limits building heights.</b>	(A) Along much of Renton's residentially-zoned Lake Washington shorelines, 35-foot-tall homes could appropriately be built without causing serious view obstructions for uphill residences. This is the case because of the steeply sloping areas behind many of those	In regard to single-family residential building heights in the Shoreline Single-Family Residential Overlay District, RSC proposes the following revisions to the building height provisions of Table 4-3-090. D.7a (Shoreline Bulk Standards):

shoreline properties.

- (B) While the City’s residential zones currently limit single-family homes to a 30-foot height Citywide, such a limit is not reasonable along many stretches of Lake Washington waterfront. The maximum height for single family homes in the Draft SMP should be 35 feet. That would give shoreline property owners an opportunity to later request that the City amend its maximum height to 35 feet under ordinary zoning regulations in areas like much of the Lake Washington waterfront where circumstances justify allowing a greater height. The City would benefit from having more substantial lakefront homes that a greater building height would allow.
- (C) Likewise, in the proposed High Intensity District along an extensive portion of Cedar River Reach C that has one hundred-foot-plus tall hills on opposite sides of the River), the draft SMP would needlessly, inappropriately and arbitrarily limit maximum building heights to a starting height of 35 feet along the River’s setback edge rather than the full height allowed under the COR zoning of such property. With the tall hills and the lack of nearby residences with views of the Cedar River, arbitrarily limiting the height and thereby discouraging site redevelopment is poor City policy.
- (D) The City’s proposed limitation of 35 feet appears to be based upon a misreading of the SMA, which exempts from the requirement to obtain a shoreline substantial development permit, “single family residence[s]...not exceed[ing] thirty-five feet above average grade level.” RCW 90.58.030(vi). Nothing in the SMA or the implementing guidelines limits building height to 35 feet for commercial and industrial development anywhere within the shoreline district. Similarly, single-family residences exceeding 35 feet are not prohibited under the SMA or the Shoreline Guidelines, but instead would require a shoreline substantial development permit where greater heights are allowed in an adopted SMP.
- (E) Artificially limiting building heights within the High Intensity District along the portions of Cedar River Reach C will discourage needed redevelopment of aging structures. Redevelopment is necessarily more costly than new development, and artificially limiting development height increases the likelihood that site-specific redevelopment will not be financially feasible.
- (F) For further details, please see the attached copy of the June 17, 2010 letter from our attorney Alexander (“Sandy”) Mackie to Renton City Councilmember Terri Briere, Chair of the Planning and Development Committee.

	Natural	Urban Conservancy	Shoreline Single Family	High Intensity	High Intensity Isolated	Aquatic
<b>Building Height- Maximum</b>						
<b>In water</b>	Not allowed	Not allowed	30 ft. <sup>5</sup>	35 ft. <sup>5</sup>		35 ft. <sup>5</sup>
<b>Within 100 feet of OHWM</b>	Not allowed	Not allowed	35 <del>30</del> ft. <sup>xx</sup>	35 ft. <sup>5</sup>	Governed by underlying zoning in RMC 4-2 <sup>7</sup>	
<b>More than 100 feet from OHWM</b>	15 ft.	35 ft.	35 <del>30</del> ft. <sup>xx</sup>	35 ft. <sup>6</sup>	Governed by underlying zoning in RMC 4-2 <sup>7</sup>	
<b>Accessory Building</b>	15 feet	15 feet	15 feet	Same as above	Governed by underlying zoning in RMC 4-2 <sup>7</sup>	

Text of corresponding proposed new footnote:

**(xx) Except heights of up to 45 feet may be permitted with a substantial development permit where an applicant provides a view impact study that shows that a substantial number of residences will not have their views blocked by the height in excess of 35 feet. (Note: The existing maximum height established in RMC 4-2 as of July 1, 2010 is 30 feet. An amendment to RMC 4-2 would have to be enacted allowing a maximum height of more than 30 feet before a height of over 30 feet will comply with RMC 4-2.)**

RSC supports the compromise proposal relating to building height on the COR-zoned property within Cedar River Reach C and on other properties lying within the Shoreline High Intensity Overlay Districts as set forth in the July 2, 2010 joint letter from attorneys Samuel Rodabough and David Halinen to the Renton City Council’s Planning and Development Committee as revised in their submittal to Renton Planning Director Chip Vincent dated July 30, 2010.

**7-30-10 Updated Revised Version of the RaMac, Inc.-AnMarCo Proposed SMP Changes 1, 2 and 3 Originally Submitted to the City on 7-2-10**  
**CORRECTED 8-9-10**

**Change No. 1 – Allow Additional Building Height on Properties Zoned COR on Cedar River Reach C**

Proposed Amendment to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnote 6, as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

**Cedar River Reach C** – On sites that have underlying COR zoning, landward of the standard minimum structure setback ~~Additional height is may be~~ allowed as follows for multiple use development containing water-oriented use; a maximum allowable building height envelope shall:

- (i) Begin at a height of ~~62.535~~ feet along the standard minimum structure setback;
- (ii) Have an upward ~~provided~~ a transition landward therefrom ~~is provided~~ equal to a slope of 1 vertical to 1 horizontal until the maximum building height allowed in RMC 4-2 for the COR zone (i.e., 10 stories and/or 125 feet) is reached; and
- (iii) Then continue landward to the landward-most edge of shoreline jurisdiction at the maximum building height allowed in RMC 4-2 for the COR zone. ~~from a height of 35 feet from the building closest to the OHWM, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height.~~

**Change No. 2 – Allow for Modified Vegetation Conservation Buffers and Building Setbacks with Appropriate Environmental Studies**

Proposed Amendments to Table 4-3-090.D.7a Shoreline Bulk Standards, Footnotes 3, 4, 8 and 9 as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

- (3) Water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 and shall be no closer than 50 feet, except (a) as modified pursuant to RMC 4-3-

090.F.1.m or (b) in cases consistent with a Master Site Plan approved prior to the adoption of this Section.

- (4) Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 and shall be no closer than 75 feet, except (a) as modified pursuant to RMC 4-3-090.F.1.m or (b) in cases consistent with a Master Site Plan approved prior to the adoption of this Section.
- (8) Up to 5% impervious surface is allowed in Vegetation Conservation Area buffers for access to the shoreline, or a pathway up to 6 feet wide, whichever is greater, provided that in cases where the depth of the Vegetation Management Buffer is varied in accordance with RMC 4-3-090.F.1 that portion of the first 100 feet from OHWM upon which development is located may be permitted a maximum of 50% impervious surface, unless a different standard is stated below:
- Lake Washington Reaches H and I** – Up to 75% impervious surface, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
  - Lake Washington Reach J** – No limit is provided for the Renton Municipal Airport.
  - Cedar River Reach A** – No limit is provided for the Renton Municipal Airport.
  - Cedar River Reach B** – No limit to impervious surface.
  - Cedar River Reach C** – No limit to impervious surface. **[CHIP VINCENT: THIS REVISION IS PROPOSED BECAUSE THERE SHOULD BE CONSISTENCY BETWEEN CEDAR RIVER REACH C AND CEDAR RIVER REACH B.]**
  - Cedar River Reach D** – No more than 5% impervious surface.
  - Springbrook Creek Reaches B through D** – No more than 65% impervious surface.
- (9) No building coverage is allowed in Vegetation Conservation Area buffers. If the buffer depth is varied in accordance with RMC 4-3-090.F.1 that portion of the first 100 feet from OHWM upon which development is located may be permitted the following coverage:
- Lake Washington High Intensity Overlay District**– Up to 50% building coverage, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
  - Cedar River Reach A** – Up to 20% for the Renton Municipal Airport.
  - Cedar River Reach B** – No limit on building coverage
  - Cedar River Reach C** – Up to ~~50~~65% building coverage (up to 75% building coverage if parking is provided within the building or within a parking garage) **[CHIP VINCENT: THE PROPOSED CHANGE CREATES CONSISTENCY WITH THE MAXIMUM BUILDING COVERAGE ALLOWED IN THE UNDERLYING COR ZONE.]**
  - Cedar River Reach D** – No more than 5% building coverage
  - Green River A** – Up to 50% building coverage
  - Springbrook Creek Reach A** – No more than 5% building coverage

**Springbrook Creek Reaches B through D - Up to 50% building coverage**

Proposed Amendments to the row of Table 4-3-090.F.1.1 (Vegetation Conservation Buffer Standards by Reach) that addresses Cedar River Reach, as follows (proposed additions underlined and proposed deletions illustrated by strike-through):

<p><b>Cedar River C</b></p>	<p>Enhancement of native riparian vegetation shall be implemented as part of management of public parks. Full standard native vegetation buffers should be maintained on the public open space on the south side of the river, subject to existing trail corridors and other provisions for public access. <u>Subject to modification under 4-3-090.F.1 and 4-3-090.D.4.c,</u> <del>F</del>full standard buffers shall be provided upon redevelopment of the north shore, subject to public access set back from the water's edge and may provide for water-oriented use adjacent to the water's edge. The vegetation conservation buffer may be designed to incorporate floodplain management features including floodplain compensatory storage.</p>
-----------------------------	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

Proposed Amendment to RMC 4-3-090.F.1 by adding a new subsection “m” as follows (proposed additions underlined):

**m. Modification of Vegetation Conservation Buffer and Minimum Structure Setback for Proposed Development that Meets the “No Net Loss”**

- i. **Authority:** Based upon an applicant’s request, and the acceptance of a Stream or Lake Study, the Reviewing official has authority to approve a modification of Vegetation Conservation Buffers and minimum structure setbacks, provided that the applicant’s request is part of an application for a shoreline substantial development permit accompanied with review under the State Environmental Policy Act.**[CHIP VINCENT: PLEASE NOTE THAT THE BASIC STRUCTURE OF THIS SECTION PARALLELS THAT OF RMC 4-3-090.F.1.f (Averaging of Buffer Width).]**
- ii. **Criteria for Approval:** Modification of Vegetation Conservation Buffers and minimum structure setbacks will be allowed if the applicant demonstrates the following:
  - (1) The project site lies within the Shoreline High Intensity Overlay District;
  - (2) For a structure setback reduction up to a line that lies parallel to and 50 feet from OHWM, the development project as a whole must meet the following:
    - (a) Result in no-net loss of existing shoreline ecological functions; and
    - (b) Not cause significant adverse impacts to other shoreline uses and resources;
  - (3) The project demonstrates sequencing (avoid, minimize, mitigate) in regard to any existing native vegetation within the standard Vegetation Conservation Buffer;
  - (4) A portion of the project will be a water-oriented development or use;
  - (5) The project must provide an opportunity for substantial numbers of people to enjoy the shoreline; and

- (6) Development within the area of the reduced setback shall necessitate neither construction of shoreline armoring where none currently exists nor an increase in the height or length of existing shoreline armoring.

**iii. Special Provisions Applicable Within the Setback:** Within the modified minimum structure setback, the following special provisions shall be applicable notwithstanding any other provisions of the Shoreline Master Program to the contrary:

- (1) Decks and architectural features connected with the subject building(s) shall be permitted within the landward-most 5 feet of the setback; and
- (2) Within the modified setback, up to 25 percent of the land area within the reduced setback may be covered with impervious surfaces for access paths, walkways and water enjoyment uses (provided that, except for linear trails paralleling the water and access ways to the water's edge, new impervious surfaces for those uses may not be closer than 10 feet to OHWM)—however, the impervious surface area of linear trails paralleling the water and of access ways to the water's edge shall not count against the 25 percent limitation of this provision).

**iv. Special Maximum Building Height Provisions:** In relation to a reduced minimum structure setback, building height is allowed as follows landward of a line that is parallel to and 50 feet from OHWM: a maximum allowable building height envelope shall:

- (1) Begin at a height of 35 feet along the line lying parallel to and 50 feet from OHWM;
- (2) Have an upward transition at a slope of 1 vertical to 1 horizontal landward from that line until a height equal to the lesser of (a) 62.5 feet or (b) the maximum building height allowed in RMC 4-2 for the underlying zone is reached;
- (3) Then continue landward to the landward edge of the standard minimum structure setback at the height equal to the lesser of (a) 62.5 feet or (b) the maximum building height allowed in RMC 4-2;
- (4) If the maximum building height allowed in RMC 4-2 has not already been reached by virtue of the upward transition provided for in subsection (2), above, then the maximum allowable building height envelope shall have an additional upward transition at a slope of 1 vertical to 1 horizontal landward from the landward edge of the standard minimum structure setback until a height equal to the maximum building height allowed in RMC 4-2 for the underlying zone is reached; and
- (5) Once the maximum building height allowed in RMC 4-2 has been reached by virtue of subsections (2) and/or (4), above, the maximum allowable building height envelope landward therefrom to the outer edge of shoreline jurisdiction shall be the maximum building height allowed in RMC 4-2 for the underlying zone. **[CHIP VINCENT: THESE SPECIAL MAXIMUM HEIGHT PROVISIONS ARE CONSISTENT WITH THE CROSSSECTION DIAGRAM THAT WE AGREED UPON DURING OUR WEDNESDAY, JULY 28, 2010 MEETING.]**

Proposed Amendments to the Water-Enjoyment Use definition that is part of 4-11-230 (proposed additions underlined and proposed deletions illustrated by strike-through):

WATER-ENJOYMENT USE: Referring to a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for

a substantial number of people as a general characteristic of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers and other improvements facilitating public access to the shorelines of the state; and general water-enjoyment uses may include, but are not limited to, restaurants, museums, aquariums, scientific/ecological reserves, resorts/hotels, riverwalk developments, and multiple use commercial/office/multi-family residential development; provided that such uses conform to the above water-enjoyment specifications and the provisions of the Shoreline Master Program.

### Change No. 3 – Public Access Requirements Relaxed to Accommodate Unique Needs of a River Walk Development

Proposed amendment to 4-3-090.D.4.b Public Access Required by amending the first sentence as follows: (proposed additions underlined):

- a. **Public Access Required:** Public access shall be provided for the following development, (unless modified pursuant to criteria in subsection c), subject to the criteria in subsection d.

Proposed amendment to 4-3-090.D.4. Public Access by adding additional language to subsection c as follows: (proposed additions underlined):

- c. **Criteria for Modification of Public Access Requirements:** The requirements for public access may be modified as a Shoreline Conditional Use for any application in which the following criteria are demonstrated to be met in addition to the general criteria for a shoreline conditional use permit. In cases where a Substantial Development Permit is not required, use of this waiver or modification may take place only through a shoreline variance. It is the responsibility of the applicant to demonstrate that the criteria are met. As a condition of modification of access requirements, contribution to an off-site public access site shall be required.
  - i. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means.
  - ii. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions.
  - iii. The cost of providing the access, or mitigating the impacts of public access, is unreasonably disproportionate to the total long-term development and operational cost over the life-span of the proposed development.
  - iv. Significant environmental impacts will result from the public access that cannot be

- mitigated.
- v. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
  - vi. Prior to determining that public access is not required, all reasonable alternatives must be pursued, including but not limited to:
    - (1) Regulating access by such means as maintaining a gate and/or limiting hours of use;
    - (2) Designing separation of uses and activities (e.g., fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
    - (3) Providing for specific facilities for public visual access, including viewing platforms that may be physically separated from the water's edge, but only if access adjacent to the water is precluded.

The requirements for public access may also be modified as part of a Shoreline Substantial Development Permit for properties in the Shoreline High-Intensity Overlay District in Cedar River Reach C, provided that a substitute private access plan is proposed that meets the following criteria:

- i. the site will contain a water-oriented use that will provide an opportunity for substantial numbers of people to enjoy the shoreline; and
- ii. conditions are proposed that balance the opportunity for access by members of the public with the security needs of the proposed use (such conditions may include such things as maintaining a gate and/or limiting hours of access).



## *Renton Shoreline Coalition*

*P.O. Box 624  
Renton, Washington 98057-0624*

### VIA EMAIL

August 12, 2010

Chip Vincent, Planning Director  
City of Renton Planning Division  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Our Comments on the Handout You Provided to Us at This Tuesday's Meeting and That Erika Conkling Updated Yesterday

Dear Chip:

Thank you Chip (and Erika Conkling) for all the hard work and thought the two of you put into preparing for our meeting yesterday and for the handout you provided us at this Tuesday's meeting (the handout entitled "Renton Renton Shoreline Coalition Options- August 10, 2010). (We received an emailed updated version of that handout yesterday afternoon from Erika via David Halinen. All of our comments below relating to the handout relate to that updated version rather than to the version we received in yesterday's meeting.)

We all agree that, although we aren't done yet, we have made progress on certain issues and are eager to continue to move the discussion forward seeking to resolve all remaining issues.

Here are our comments so far after reflecting on yesterday's updated handout and our discussion at City Hall this Tuesday:

1. **Class 1 Fish Habitat Conservation Areas—page 1 your Handout:** The Coalition agrees with your proposed changes to Section 4-3-090D.2.c.iii set forth at the top of page 1 of the handout. Those changes are generally consistent with the changes the Coalition requested in its August 2, 2010 updated proposed text amendments table, copies of which were submitted to you and Erika.

However, for purposes of appropriately distinguishing between regulations for critical and non-critical areas, we urge you to give further consideration to the language we proposed on pages 1 and 2 of our August 2 document concerning section 4-3-090.F.1, as well as to our recommendation at the bottom of page 2 and top of page 3 of the Coalition's August 2 table to replace the defined term "Buffer, Shorelines" with the definition that we propose for a new defined term "Vegetation Conservation Buffer". Note that our proposed language incorporates the concept that the City of Vancouver's SMP uses (and that Ecology has approved) to limit the extent of required buffers in the already built environment. Our proposed language is reasonable and should be incorporated into the SMP. Without our proposed language (or some other formulation

that would accomplish the same thing), owners of shoreline properties that have already developed into the City's proposed "standard" setback are being asked to *restore* buffers rather than *conserve* them.

2. **Dock Length and Width—pages 1 and 2 of your Handout:** We agree with the changes you are proposing in 4-3-090.E.7.d and 4-3-090.F.1.c.i.
3. **Reduced Setbacks and Buffers (Single-Family)—page 2 of your Handout:** We appreciate Erika's clarification to me by phone following Tuesday's meeting that the introductory phrase in italics (i.e., "*Reduced Setbacks and Buffers for Existing Single-Family Homes*") was intended to cover both existing single family homes and lots. In order to fairly cover all situations, we reiterate our request (a request that is reflected in the text amendment language on page 8 of both our July 2 and August 2 tables) that the preamble to the alternative building setback and buffer table apply to "***new and*** existing single-family residences and single family lots...." New homes on vacant lots should not be excluded from coverage under the alternative building setback and buffer table.

While we still contend that Redmond's Ecology-approved SMP with 35-foot single-family residential setbacks (reducible to 20 feet) is a more appropriate option than the tiered-setbacks-based-on-lot-depth approach proposed in your handout, we are prepared to support the tiered setback/buffer combinations you proposed in the handout if the following additional provisions are incorporated:

- a. As an alternative to providing the Vegetation Conservation Buffer, add an option for construction of a stormwater control system that will achieve equivalent or greater stormwater runoff pollution treatment as the Vegetation Conservation Buffer otherwise required for each lot depth category would achieve; and
- b. In the case of major alterations to existing homes, construction of replacement homes, or construction of new homes on vacant lots, add a "string line" option for determination of the setback that would allow a house that is between two existing shoreline homes to have a setback line determined by the line between the waterward nearest corner of the existing home on either side of the proposed altered footprint, replacement home or new home on a vacant lot. We propose that when using this option, the vegetative buffer required would be the average depth of buffer that would now be required by the table for the two existing homes on either side of the subject home. For example, if the subject house is between one existing house that is setback 45' (which, under the table, would correlate with a 20-foot buffer) and another house that is setback 25' (which would correlate with a 10-foot buffer), the required buffer would be 15' (i.e., the average of a 20-foot buffer and a 10-foot buffer) and, if the stormwater control system alternative to that required buffer is also chosen, the system would be required to achieve equivalent or greater stormwater runoff pollution treatment as would be provided by the 15' buffer.

4. **Alteration of Existing Single-Family Homes (4-10-095.F.2)—pages 6 and 7 of your Handout:** In regard to the “Partial Compliance for Single-Family Development” table on pages 6 and 7 of your handout, we agree with (1) the two revised introductory sentences and (2) the revised “Alteration” column heading, and (3) the revisions made to the table’s “Minor Alteration” section.

In regard to the handout table’s “Moderate Alteration” section, we request that it be retitled “Major Alteration” and be revised to read as follows (our new proposed text is underlined and our proposed deletions of your proposed text are shown by strikethrough):

<u>Major</u> <del>Moderate</del> Alteration	<p>Expansion of building footprint within the required setback, or total expansion of <u>more than 500 sq. ft.</u> <del>to 1,000 sq. ft.</del>; or</p> <p>Expansion of impervious surface within the required setback, or total expansion of <u>more than 1,000 sq. ft.</u> <del>to 1,500 sq. ft.</del></p>	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:           <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water’s edge provided that the area <u>required</u> to be revegetated shall not be more than 25% of the lot depth feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions <del>and processes as the full required</del> <u>a setback and buffer consistent with 4-3-030F.1.c (Alternative Setbacks and Buffers for Single Family Homes and Lots).</u></li> </ul> </li> <li>• Docks shall be required to replace decking with light penetrating surfacing materials.</li> </ul>
---------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

We oppose the handout table’s “Major Alteration” section and propose its elimination because it is overbearing and inappropriate, especially as it relates to existing docks and shoreline stabilization structures and also as it relates to other existing accessory structures that are not proposed to be expanded. While, as a concession, the Coalition is willing to accept having the Moderate Alteration section (as renamed “Major Alteration” and as otherwise revised above) specify that *“Docks shall be required to replace decking with light penetrating surfacing materials”*,<sup>1</sup> the proposed “full compliance” mandate of the handout table’s “Major Alteration” section in regard to existing docks, shoreline stabilization structures, and other accessory structures would be onerous and an abuse of governmental power. **Expanding a building footprint or expanding impervious surface on the lot ordinarily will have absolutely no bearing on the lot’s existing**

<sup>1</sup> The Coalition is willing to make that concession only because such decking replacement will involve only a relatively modest expense (at least in contrast to the tremendous capital facility losses and replacement costs that would be associated with removal and/or or replacement of docks, shoreline stabilization structures and other accessory structures), and because wood decking has to be replaced from time to time anyway due to weathering.

**dock, shoreline stabilization structure or other accessory structures.**<sup>2</sup> In regard to existing docks, shoreline stabilization structures, and other accessory structures, the handout's proposed "full compliance" mandate is not even intended to address a problem *caused by* the expansion of the primary structure footprint or of the impervious surface. In essence, the handout's proposed "full compliance" mandate would amount to a stick-up of a property owner that would want to make a major alteration. That is unacceptable.

Note that a requirement to rip out a previously permitted usable dock, shoreline stabilization structure, or other accessory structure upon expansion or replacement of a primary structure would

- a. make Renton shoreline properties less attractive than other less restrictive jurisdictions to buyers seeking to purchase existing waterfront homes to redevelop, thus decreasing property values throughout the shoreline area;
- b. discourage redevelopment of older properties, redevelopment that would otherwise result in improvements that could be attained as a result of revegetation or alternate mitigation; and
- c. impose an unreasonable financial burden on homeowners seeking to remodel or redevelop.

Further, any supposed "continuing impact" of an existing dock, bulkhead, or other accessory structure would not be increased by having them remain in place. However, the sharp spike in impact of disturbing the lake bed, ripping out a functioning dock or bulkhead and disposing of the materials in a landfill somewhere is not only economically wasteful but potentially polluting as well. Also, additional impact will be felt on the lake bed by the installation of a replacement dock or shoreline stabilization structure. There would also be wider ecological impacts of producing new materials and components for the replacement docks, shoreline stabilization structures and other accessory structures.

Our above-proposed retitling (to "Major Alteration") and revision of the handout's Moderate Alteration section of the table will appropriately resolve this matter.

---

<sup>2</sup> From our meeting discussion on August 3, we had understood from you and Erika that existing shoreline stabilization structures would not be required to have a geotechnical study performed to assess their "need" provided that the expansion or replacement of the existing principal structure on the lot does not involve an increase in the existing shoreline stabilization structure's length or height. Chip, as part of that discussion you acknowledged that the City's Lake Washington residential shoreline is subject to damaging waves during large storms and told us that requiring a geotechnical study of those properties that have existing shoreline stabilization structures would be an inappropriate and wasteful financial burden to place upon property owners wishing to improve their properties.

Chip Vincent, Planning Director  
City of Renton Planning Division  
August 12, 2010  
Page 5 of 6

5. **Height (for single-family residences)—page 7 of your Handout:** We agree with the changes you are proposing to increase maximum building height in the Shoreline Single Family Overlay District to 35 feet provided that note (10) set forth on page 8 of the handout is revised to read as follows:

(10) If the maximum allowed height in the underlying zoning is less than the maximum allowed height in the shoreline environment, a variance must be obtained from the appropriate Reviewing Official to allow any height over the amount allowed in the underlying zone. (That variance is not a shoreline variance and is subject to the applicable process set forth in other City of Renton regulations rather than in the SMP.)

6. **Coverage Standards for the Single-Family Residential Overlay District:** Based on my conversation with Erika on August 10, we understand that you have not yet arrived at a recommendation for single family coverage standards. We request the maximum impervious surface areas and lot coverage percentages for buildings as set forth in our August 2 proposed text amendments table. (The percentages we proposed in the table are generally the same as those in the underlying zoning.) We look forward to reviewing this item with you in the near future.

Note that the above comments only address some sections of your handout. Several other sections of the handout (most of which deal with commercial property matters) were not discussed during our meeting yesterday due to lack of time and are not addressed in this letter. We understand that the representatives of the commercial property owners that are part of the Coalition (RaMac and AnMarCo) will be meeting with you this Friday and will have additional comments for you concerning the commercial property issues.

Finally, we understand that your handout does not in all cases set forth the full SMP language you propose on the items addressed. We look forward to receiving the full revised text of the relevant SMP sections as soon as you have them ready to provide to us for our review.

Please let us know if you have any questions or responses in advance of next week's meeting. We are committed to responding quickly.

We look forward to our next general meeting with you on Tuesday, August 17, at 9:00 a.m. at City Hall.

Sincerely,



Anne Simpson, Co-Director and Steering Committee Member

Chip Vincent, Planning Director  
City of Renton Planning Division  
August 12, 2010  
Page 6 of 6

cc: Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter (all via email)

Alexander W. (“Sandy”) Mackie, Perkins Coie (via email)

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (via email)

Erika Conkling, Senior Planner, Renton Planning Division (via email)

Larry Warren, Renton City Attorney (via email)

Alexander W. Mackie  
PHONE: (206) 359-8653  
FAX: (206) 359-9653  
EMAIL: AMackie@perkinscoie.com

August 13, 2010

**VIA E-MAIL LWARREN@RENTONWA.GOV**

Mr. Lawrence Warren  
Renton City Attorney  
100 S. 2nd Street  
P. O. Box 626  
Renton, WA 98057

**Re: SMP Update—The Public Access Issue**

Dear Larry:

I have been trying to find a simple point to express my concerns about the public access provisions of the draft Renton Shoreline Master Program. I think the best way to express the concern is that the master program acknowledges the requirement to protect property rights, but then takes no steps to assure that the rights are in fact protected. I believe the language of the Shoreline Management Act and the adopted guidelines require the City to take affirmative steps to assure that property rights are protected during the permitting process.

Thus, when I see that the City Master Program mirrors the WDOE guidelines in making reference to the recognition and protection of property rights, but provides no specific mechanism by which those rights can be protected (and in fact does the opposite in that public access is "required" in a number of specific forms and under a number of specified conditions, regardless of nexus and proportionality), I believe the City program is flawed and subject to challenge. As discussed below, the State guidelines do require that cities adopt a process in the "development" of the Master Program to protect property rights. In the absence of such process, or even consideration of such process, I believe the City's program is subject to challenge as written, and the provisions will warrant meritorious challenges if and when the City attempts to apply the provisions as written.

Mr. Lawrence Warren  
August 13, 2010  
Page 2

The Shoreline Management Act addresses the delicate balance to be achieved in the effort to manage shorelines by noting:

... 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, emphasis supplied.

The governing principles for the development of local master programs are set forth in the guidelines that are the foundation for the development of and review of local master programs.

The governing principles listed below are intended to articulate a set of foundational concepts that underpin the guidelines, guide the development of the planning policies and regulatory provisions of master programs, and provide direction to the department in reviewing and approving master programs. ...

WAC 173-26-186.

The WDOE guidelines make it clear that local governments need to do more than acknowledge the fact that property rights are to be protected. The guidelines set an affirmative duty to create a local process that assures that protection is a fact. The key guideline on this point states:

(5) The policy goals of the act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. *Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.*

WAC 173-26-186, emphasis supplied.

The specific guidelines also make it clear that the manner in which the City protects property rights is one of the factors by which the master program will be evaluated.

(b)(i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state *while protecting private property rights* and public safety.

WAC 173-26-221(4).

The problem I see with the Renton plan as written is that the plan says rights are to be protected, but creates no provision, mechanism, or process to assure that such protections are in fact achieved. To the contrary, the import of the City plan is to require dedication and improvement of private lands for public access in a variety of circumstances without any mechanism for modification or avoidance based on issues of the nature of the use and the standard considerations of nexus and proportionality.

If you look at the Renton Draft SMP, you will find that Policy SH 30 and Chapter 4-3-090. D.8 acknowledge the need to protect property rights.

Regulation of private property to implement any Program goals such as *public access and protection of ecological functions must be consistent with all relevant constitutional and other legal limitations.*

4-3-090. D.8

The point that the City plan acknowledges the need to protect private property rights is also found in 4-3-090.D.4, which recognizes the basic elements of nexus and proportionality:

**a. Physical or Visual Access Required for New Development:** Physical or visual access to shorelines shall be incorporated in all new development when the development would *either generate a demand* for one or more forms of such access, would *impair existing legal access opportunities or rights*, or is required to meet the specific policies and regulations of the Shoreline Master Program.

But once section "A" hints at the fundamental tenets of nexus and proportionality, the plan eschews any mechanism or effort by which to evaluate, measure, and assure protection of those rights. Instead the program then proceeds to completely ignore the qualification that the public access requirements are bounded by constitutional and statutory limitations, and instead set forth a variety of public access requirements in terms of mandates:

**b. Public Access Required:** Public access *shall be provided* for the following development, subject to the criteria in subsection d.

ii. Non-water-dependent development and uses.

- iii. Developments of more than ten (10) single-family residential lots or single-family dwelling units, including subdivision, within a proposal or a contiguously owned parcel are required to provide public access.
- iv. Development of any non-single family residential development or use.

Subsection “c” speaks of potential for modification of the requirements, but none relate to constitutional limitations and the design guidelines create a “one-size-fits-all” program with no provision for assessing differences in uses and demands. Subsection “d” sets the development standards for all public access and provides no framework for modification based on demand, impedance, or proportionality. The requirements are very specific regardless of circumstances:

Where vegetation is required:

- a public pedestrian walkway parallel to the ordinary high water mark of the property
- constructed of permeable materials

And, where vegetation is not required:

- “not less than ten (10) percent of the developed area within shoreline jurisdiction or three thousand (3,000) square feet, whichever is greater, on developments including non-water-dependent uses.”
- “shall extend along the entire water frontage, unless such facilities interfere with the functions of water-dependent uses”
- 10 feet wide and “developed in accordance with the standards of [Renton Bicycle & Trails Master Plan]”

Subsection d (i) and (ii, (4-3-090.D.4(d)(i),(ii)).

The City’s definition makes it clear that “public access” as required in the plan is physical access open to all.

“PUBLIC ACCESS: ...A means of physical approach to and along the shoreline available to the general public. This may also include visual approach.”<sup>1</sup>

---

<sup>1</sup> Subsequent provision makes it clear that visual access is available only in those cases where physical access is impossible to achieve.

Mr. Lawrence Warren  
August 13, 2010  
Page 5

Thus at the outset, the ordinance must be viewed as one that eliminates a fundamental attribute of private property—the ability to exclude the public. The City plan dictates that under all circumstances where public access is required, the City is expecting a public park available to the general public.

The fact that the City mandates not only “access” (which could be a trailhead or overlook), but specifies “linear pathways” across the entirety of the frontage and typically dedicated to the municipality raises a host of red flags concerning the ability of the City to command such result, without regard to the use proposed or the burdens created on the shoreline. And since the City requires the administrators to “require” the specified full public access and provides no mechanism for assessing the issues of nexus and proportionality in a specific context, the scope of the requirements puts the City in the cross hairs of a number of challenges, both as written and as applied.

#### *As Written*

You should consider the Attorney General’s opinion in AGO 1992 No. 23 in which the Attorney General examined the issue of local government’s failure to consider and protect private property issues as a basis for finding a local plan “clearly erroneous. As noted by the AG, the fact that the City is commanding full public access (effectively public parks) is material, and failure to consider the appropriate limitations is grounds for holding that the City program is “clearly erroneous” for failure to consider the unlawful effect of the plan. While the plan in question was a GMA comprehensive plan, given the WDOE guidelines on the need for a process in local plans to protect property rights, a similar result would be expected when a plan omits any effort to include any process for protecting rights administratively.

#### *As Applied*

Even if the City is not challenged on the program as drafted, and WDOE approval is received, that does not shield the City from challenges based on the excessive demands for public access without regard to nexus and proportionality. It is not the point of this letter to go into all of the legal issues acquisition of public rights in private lands raises, but very clearly the fact that the City is mandating linear trails in many locations, without regard to nexus and proportionality, certainly raises issues under the *Nollan*<sup>2</sup> and *Dolan*<sup>3</sup> cases with which we are both familiar. Our own Court of Appeals has provided that the City may not command a public benefit not tied to a specific burden, merely because a project owner happens to own the desired site for the public amenity. *Unlimited v. Kitsap County*, 50 Wn. App. 723, 750 P.2d 651, review denied, 111

<sup>2</sup> *Nollan v. California Coastal Comm.*, 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 2d. 677(1987).

<sup>3</sup> *Dolan v. City of Tigard*, 512 U.S. 374, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994).

Wn.2d 1008 (1988). And where the requirement is imposed by a boilerplate ordinance, it is the City that has the burden of proving that the requirement (whether by dedication, easement or simply open space) is reasonably necessary under the circumstances. *Isla Verde v. City of Camas*, 146 Wn.2d 740, 49 P.3d 867 (2002) (the statutory basis for decision merely being the codification of *Nollan, Dolan and Unlimited* principles). The fact that the City is requiring property owners to provide a "link" in some planned trail, where there is no present ability to connect with other elements of the trail also raises the "road to nowhere" issue prohibited in *Burton v. Clark County*, 91 Wn. App. 505, 958 P.2d 343 (1998).

Finally, the residential subdivision requirements raise an equal protection issue as well as the nexus and proportionality issues noted above. What is the justification for requiring waterfront developers creating new lots to provide public access to the water, when upland owners, creating an equal number of new lots and thus presumably similar demand for water access, are not required to provide or pay for similar public access to the water? Such discrimination puts a burden on waterfront owners not shared by those creating a similar demand, is without justification, and again provides ground for challenging the City plan both as written and as applied.

As noted at the outset, the solution is for the City to provide a mechanism (the process required by the guidelines quoted above) where the issues of nexus and proportionality can be addressed in the context of the nature and amount of public access required as a function of the burden and extent of demand created by the new development. Such a program would provide administrative guidelines designed to protect the private property owner from arbitrary or disproportionate requirements. As noted in the aesthetic context, the ability to command a particular result based solely on personal judgment, without regard to adequately described guidelines, is a formula for invalidation under due process grounds. *See e.g. Anderson v. Issaquah*, 70 Wn. App. 64, 851 P.2d 744 (1993). A uniform requirement imposed regardless of circumstances cannot survive challenge, both as written (*Citizens v. Sims*, 145 Wn. App. 649, 187 P.3d 786 (2008) (cert. denied, 165 Wn.2d 1030, 203 P.3d 378)), uniform stormwater mitigation regardless of context) and as applied (*Isla Verde*, uniform open space requirements regardless of context). In Renton the problem is compounded for the City by the fact that the requirements interfere with a fundamental property right—the right to exclude others.

As presently written the City plan imposes a one-size-fits-all public access program that is applicable in the many locations where the City states that it shall or "should be" required.<sup>4</sup>

---

<sup>4</sup> While the regulation uses the term "should," the definitions in the guidelines, WAC 173-26-020, make it clear that in this context "should" is a mandate, excused only for good cause shown.

(32) "Should" means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

Mr. Lawrence Warren

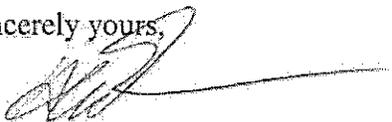
August 13, 2010

Page 7

Under the City plan, any pretense of protecting private property rights is utterly ignored. The City's plan commands a particular result when development occurs, and the burden of protecting property rights is left to the property owner with the resources and time to file challenges and litigate to protect that which the City is required to protect. This shifting of the burden of protecting property rights from the City plan and process to the applicant property owner through the statutory appellate processes is the defect and illegality that will result in challenges and render the bulk of the City public access program unenforceable.

I would be happy to address these points with you in detail.

Sincerely yours,



Alexander W. Mackie

AWM/kr

cc: Chip Vincent, City Planning Director via email  
David L. Halinen, Halinen Law Offices, P.S. via email  
Samuel A. Rodabough, Groen Stephens & Klinge LLP via email  
Anne Simpson via email

## Erika Conkling

---

**From:** Anne Simpson [annesimpson@comcast.net]  
**Sent:** Sunday, August 15, 2010 10:41 AM  
**To:** Don Persson; Randy Corman; Marcie Palmer; Greg Taylor; Terri Briere; King Parker; Rich Zwicker; Denis Law  
**Cc:** lowella@mvseac.com; mandranderson3@comcast.net; laurieb@mvseac.com; jerrybarber@mac.com; pmbigley@comcast.net; r.bisiack@comcast.net; bonethedawgs@yahoo.com; jerry\_brennan@yahoo.com; patdbrown@yahoo.com; cfc@connerhomes.com; gconversano@dc-engineers.com; melvin25@cfl.rr.com; kathydahlby@yahoo.com; hdahlby@hdahlby.com; patandbuzz@q.com; sharond48@comcast.net; LeahJDavis@gmail.com; jcdemund@gmail.com; budmanis@comcast.net; dyerdye@comcast.net; beechamp@qwestoffice.net; maryerikson2@comcast.net; jpf@cnw.com; monica.fix@boeing.com; matt.flynn@wellsfargo.com; wegbill@mindspring.com; davidhalinen@halinenlaw.com; emboss@evergreenengravers.com; john.hope@comcast.net; howzer1@hotmail.com; cindyhuse@comcast.net; idenkr@comcast.net; jioppolo@msn.com; gregorybjames@comcast.net; n67683@gmail.com; kingconcrete@comcast.net; rrjones1955@comcast.net; justyourtype@mac.com; bill\_debra@msn.com; kreickc@comcast.net; joykreick@comcast.net; lorilarsen@email.msn.com; jeffleng180@gmail.com; kevinlindahl@comcast.net; vlittleman@aol.com; rcmattson@att.net; order1@mccray.ws; moorerk1@yahoo.com; waltm22@comcast.net; james.c.morgan@navy.mil; lauram@microsoft.com; kpstu@aol.com; paulpasquier@aol.com; greg@gprealty.com; poolbros@hotmail.com; shannonpool@hotmail.com; nporter3205@hotmail.com; kaaren.pritchard@nordstrom.com; marcalanpritchard@comcast.net; alcyndie@gmail.com; denise.rasmussen@cdcmanagement.com; dariusvicki@msn.com; tim@autowashsys.com; ginnyriley@yahoo.com; drofs@gmail.com; madamsavoy@hotmail.com; annesimpson@comcast.net; stansivesind@gmail.com; stansivesind@gmail.com; edtorkelson@comcast.net; richard.vaughn@microsoft.com; ziggywell@gmail.com; marlene@marlenewinter.com; donnawolter@comcast.net; beccafreedom@mac.com; letyoung@aol.com; kim\_peterson@sheraton.com; Robert Cugini; dayna7931@hotmail.com; Chip Vincent; Erika Conkling; Larry Warren  
**Subject:** Renton Shoreline Coalition--(1) Update on our work with City Staff concerning the Draft SMP and (2) request for additional time  
**Attachments:** Mackie's 8-2-10 letter to Chip Vincent.pdf; RSC's Summary of Major Issues v4 and Proposed Text Amendments v2 (8-2-10).pdf; City's RSC-options Handout dated 8-10-10 with her redlines to excerpts from the June 2010 SMP (updated by Erika Conkling 8-11-10).pdf; RSC Letter 1 to Chip Vincent (8-12-10).pdf; Mackie's 8-13-10 letter to City Attorney Larry Warren (SMP Public Access issues).pdf

Dear Renton City Council Members,

In order to more fully update you on the ongoing interaction between the Renton Shoreline Coalition and City Staff concerning the draft SMP, I have attached the following five documents for your information:

- (1) An August 2, 2010 letter from the Coalition's attorney, Sandy Mackie, to Planning Director Chip Vincent;
- (2) An updated, August 2, 2010 version of the Coalition's proposed SMP text amendments table;
- (3) A handout prepared by City Staff entitled "Renton Shoreline Coalition Options- August 10, 2010" that Staff provided us in response to some of the points in our documents referenced in items (1) and (2), above;

- (4) The Coalition's August 12, 2010 response letter to Chip Vincent (signed by me) largely addressing the portions of the City Staff's handout dealing with the single-family property issues; and
- (5) An August 13, 2010 letter from Mr. Mackie to City Attorney Larry Warren.

(The Coalition's commercial property members have been doing additional work with Staff and have provided Staff with additional materials not included with this email.)

Coalition representatives have been meeting at least once a week with Staff.

Our meetings have produced several positive results for both the owners of single-family properties and the owners of commercial properties but there are still important unresolved issues that need more work. (Please see the attached copy of the Coalition's 8/12/10 letter to Mr. Vincent and Mr. Mackie's 8/13/10 letter to Mr. Warren.) Because we are making progress towards a mutually agreeable Shoreline Management Program, we request more time.

While we have been providing the full Council with short updates during the public comment period on Monday nights, we felt that at this point it was important to submit this somewhat more detailed briefing—hence, this email letter. Your willingness to give Staff and concerned Renton property owners more time to refine this extremely complex document would be appreciated by all of the City's shoreline property owners.

At the August 16<sup>th</sup> City Council meeting, you will again hear from Renton Shoreline Coalition members requesting additional time. It is our hope that, after reviewing the attached materials (especially the attached letter to Mr. Vincent), you will agree that the Coalition's extensive efforts and the progress being made at our weekly meetings with City Staff warrant granting a further time extension. Like Staff, our members have put in countless hours in hopes of reaching agreement on an SMP that fairly represents and protects the interests of the environment, the public and the property owners.

Please seriously consider our request. Renton and its residents will be living with this document for decades. It's worth getting it right.

Best regards,

**RENTON SHORELINE COALITION**

Anne Simpson, Co-Director and Steering Committee Member

## Erika Conkling

---

**From:** Samuel A. Rodabough [sam@GSKLegal.pro]  
**Sent:** Monday, August 23, 2010 11:12 AM  
**To:** Erika Conkling  
**Cc:** 'David Halinen'  
**Subject:** FW: Proposed public access revisions  
**Attachments:** Public Access Revisions.doc

Erika,

In follow up to our discussion, we made a few minor edits. Please discuss with Chip and provide any feedback. Thanks again for taking the time to discuss this matter with us.

Regards,

Samuel A. Rodabough  
Groen Stephens & Klinge, LLP  
11100 N.E. 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206 (phone)  
(425) 453-6224 (fax)  
[sam@gsklegal.pro](mailto:sam@gsklegal.pro)

\*\*\*\*\*  
**CONFIDENTIALITY NOTICE & RESERVATION OF RIGHTS AND DEFENSES:** This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall neither compromise nor have any legal or binding effect as a waiver of any applicable privilege as to this communication or otherwise. If you have received this communication in error, please contact the sender at its Internet address above, or by telephone at (425) 453-6206. Thank you.

---

**From:** Samuel A. Rodabough [mailto:sam@GSKLegal.pro]  
**Sent:** Monday, August 23, 2010 10:29 AM  
**To:** 'Erika Conkling'  
**Cc:** 'David Halinen'  
**Subject:** Proposed public access revisions

Erika,

For purposes of our upcoming phone conversation, please see proposed revisions attached in Word format.

Regards,

Samuel A. Rodabough  
Groen Stephens & Klinge, LLP  
11100 N.E. 8th Street, Suite 750  
Bellevue, WA 98004  
(425) 453-6206 (phone)  
(425) 453-6224 (fax)  
[sam@gsklegal.pro](mailto:sam@gsklegal.pro)

\*\*\*\*\*  
**CONFIDENTIALITY NOTICE & RESERVATION OF RIGHTS AND DEFENSES:** This communication and any accompanying document(s) are confidential and privileged. They are intended for the sole use of the addressee. If you receive this transmission in error, you are advised that any disclosure, copying, distribution, or the taking of any action in reliance upon the communication is strictly prohibited. Moreover, any such inadvertent disclosure shall neither compromise nor have any legal or binding effect as a waiver of any applicable privilege as to this communication or otherwise. If you have received this communication in error, please contact the sender at its Internet address above, or by telephone at (425) 453-6206. Thank you.

#### 4-3-090 E.9 Residential development

...

**c. Public Access Required:** New single-family residential developments, including subdivision of land for ten (10) or more parcels, shall provide public access in accordance with Section RMC 4-3-090.D.4 Public Access. Community access shall be required for short subdivisions of more than four, but less than ten units.

Unless deemed inappropriate due to health, safety or environmental concerns, new multi-family, ~~condominium, planned unit developments (e.g., apartments, condominiums, and planned unit developments), and related subdivisions except short plats of nine or fewer units, shall provide a significant public benefit such as providing public access along the water's edge and/or ecological restoration. For such proposed development, community access shall be considered for all regulatory purposes the equivalent of public access, public access along the water's edge; in the case of subdivisions adjacent to public waterways, such development shall provide access to a point that abuts the water and provide physical access to public waterways. Community access shall be required for short subdivisions of more than four, but less than ten units.~~

## Erika Conkling

---

**From:** David Halinen [DavidHalinen@halinenlaw.com]  
**Sent:** Tuesday, August 31, 2010 8:25 AM  
**To:** Erika Conkling  
**Cc:** sam@GSKLegal.pro  
**Subject:** Renton SMP--Proposed clean up of your August 24, 2010 version of the "Maximum Building Height--Note (6) to the Bulk Standards Table"  
**Attachments:** Building Height Note (6) D4 (Conkling D3 8-24-10 with DLH 8-30-10 redlines).pdf;  
Building Height Note (6) D4 (Conkling D3 8-24-10 with DLH 8-30-10 redlines).doc

Erika: Sorry, I inadvertently omitted the attachments. Dave Halinen

---

**From:** David Halinen  
**Sent:** Monday, August 30, 2010 11:37 AM  
**To:** Erika Conkling (EConkling@rentonwa.gov)  
**Cc:** Sam Rodabough (sam@GSKLegal.pro)  
**Subject:** Renton SMP--Proposed clean up of your August 24, 2010 version of the "Maximum Building Height--Note (6) to the Bulk Standards Table"

Erika:

After first converting your redlined August 24, 2010 version of the "Maximum Building Height--Note (6) to the Bulk Standards Table" (i.e., the version in your August 24<sup>th</sup> memorandum to the Planning and Development Committee) into a "clean" version, I have prepared the attached further redlined version in MS Word and PDF files for your review. This redlined version illustrates our proposed clarifications and corrections. Please let me and Sam Rodabough know if it is now acceptable to you.

Sam explained to me this morning that he phoned you to schedule a further phone discussion concerning public access issues. He and I would both like me to be part of that phone discussion and propose that we have a three-way phone call. Please let us know a time for that phone call that will work for you.

Thanks,

Dave Halinen  
Halinen Law Offices, P.S.  
1019 Regents Blvd, Suite 202  
Fircrest, Washington 98466-6037  
(206) 443-4684 Seattle  
(253) 627-6680 Tacoma  
(253) 272-9876 FAX  
[davidhalinen@halinenlaw.com](mailto:davidhalinen@halinenlaw.com)

**CONFIDENTIALITY NOTICE:**

*The information contained in this email, along with any attachments hereto, may contain privileged and confidential material and is intended only for the use of the individual(s) or entity to which it is addressed. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, copying or forwarding of the communication is strictly prohibited. If you have received the communication in error, please immediately notify the sender by return email, or by calling (206) 443-4686 (Seattle) or (253) 627-6680 (Tacoma), and delete the original message and any attachments to it from any computer. Thank you.*

(6) Additional height may be allowed if essential to the function of a water-dependent use. Height up to that established in RMC 4-2 is allowed as described below for non water-dependent uses in the following reaches: **Lake Washington Reaches C, H, I, and J; Cedar River Reaches A, B, and C; Black River Reach A; and Springbrook Creek Reaches B, C, and D.**

(1) For buildings landward of 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:

- a. Begin along a line lying parallel to and 100' (100 ft.) from OHWM at a height of either 35' (35 ft.) or one half the maximum height allowed in the underlying zone, whichever is greater; and
- b. Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from the beginning height either (i) until the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning), or (ii) to the end of shoreline jurisdiction, whichever comes first.

(2) For buildings allowed waterward of 100' (100 ft.) from OHWM through a modified setback, the maximum building height shall be as follows:

- a. Between the modified setback line and the line lying parallel to and 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:
  - i. Begin at a height of 35' (35 ft.) along the line of the modified setback; and
  - ii. Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from the beginning height either until the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning) or to the line lying parallel to and 100' (100 ft.) from OHWM, whichever comes first; and
- b. Landward of 100' (100 ft.) from OHWM, the applicant shall have the option of choosing the maximum building height defined by either:
  - i. Using the maximum allowable building height envelope described in (1), above; or
  - ii. Having the maximum allowable building height envelope described in (2)a, above, continue an upward, landward transition at a slope of 1 vertical to 1 horizontal from the envelope's height along a line lying parallel to and 100' (100 ft.) from OHWM either until the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning), or to the end of shoreline jurisdiction, whichever comes first.

**Excerpts from Renton Staff's "Renton Shoreline Coalition Options- August 10, 2010" Handout as updated by Staff on August 11, 2010 and with further additional revisions in "track changes" format (yellow shaded) proposed by RaMac and AnMarCo on August 16, 2010**

[Note: Text below marked using "track changes" that is not yellow-shaded is as set forth in the City Staff's August 11, 2010 updated handout.]

*\*Setback and Vegetation Conservation Reductions for High Intensity\**

\*4-3-090D.7.a Shoreline Bulk Standards

Setbacks and Buffers	
<b>Structure Setback from Ordinary High Water Mark (OHWM)- Minimum<sup>11</sup></b>	

(3) Water-oriented uses may be established closer to OHWM only (a) in cases where the Vegetation Management Buffer/Setback is modified/ varied in accordance with RMC 4-3-090.F.1 Vegetation Conservation and shall be no closer than 50 feet, except as or (b) consistent with a Master Site Plan approved prior to the adoption of this Section.

(4) Subject to note (11), below, concerning projections of architectural features of buildings, Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Management Buffer is modified/ varied in accordance with RMC 4-3-090.F.1 Vegetation Conservation and shall be no closer than 50/75 feet, except as consistent with a Master Site Plan approved prior to the adoption of this Section. **[RAMAC AND ANMARCO ADDED NOTE (4) TO THE HANDOUT]**

(11) Architectural features of the buildings, such as eaves or balconies, may project a maximum of 5' (5 ft.) into the Vegetation Management Buffer/setback including modifications thereof in accordance with RMC 4-3-090.F.1 Vegetation Conservation.

Coverage Standards						
	Natural	Urban Cons.	Single-Family	High Intensity	High Intensity-Isolated	Aquatic
<b>Impervious Area within 100 feet of OHWM- Maximum</b>	Not allowed	5%/10% <sup>8</sup>	5%/50% <sup>8</sup>	5%/50% <sup>8</sup>	Governed by underlying zoning in RMC 4-2	
<b>Lot Coverage for Buildings within 100 feet of OHWM- Maximum</b>	5% <sup>9</sup>	5%. <sup>9</sup>	25% <sup>9</sup>	None <sup>9</sup>	Governed by underlying zoning in RMC 4-2	
<b>Lot Coverage for Buildings more than 100 feet from OHWM- Maximum</b>	5%	15%	35%	Governed by underlying zoning in RMC 4-2	Governed by underlying zoning in RMC 4-2	

- (8) Up to 5% impervious surface is allowed in Vegetation Conservation Area buffers/~~setbacks~~ for access to the shoreline, or a pathway up to 6 feet wide, whichever is greater. For projects that provide public access with the opportunity for substantial numbers of people to enjoy the shoreline, up to 25% impervious surface is allowed to facilitate public access, provided that no more than 5% impervious surfaces is allowed closer than 25' (25 ft.) from OHWM, provided that in cases where the depth of the Vegetation Management Buffer/~~Setback~~ is ~~varied~~ modified in accordance with RMC 4-3-090.F.1 Vegetation Conservation, that portion of the first 100 feet from OHWM upon which a proposed development is to be located ~~is may be~~ permitted a maximum of 50% impervious surface, unless a different standard is stated below:

**Lake Washington Reaches H and I** – Up to 75% impervious surface, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

**Lake Washington Reach J** – No limit is provided for the Renton Municipal Airport.

**Cedar River Reach A** – No limit is provided for the Renton Municipal Airport.

**Cedar River Reach B and C** – No limit to impervious surface.

**Cedar River Reach D** – No more than 5% impervious surface.

**Springbrook Creek Reaches B through D** – No more than 65% impervious surface.

- (9) No building coverage is allowed in Vegetation Conservation Area buffers. If the buffer depth is ~~varied~~ modified in accordance with RMC 4-3-090.F.1 Vegetation Conservation, that portion of the first 100 feet from OHWM upon which a proposed development is to be located ~~is may be~~ permitted the following coverage:

**Lake Washington High Intensity Overlay District**– Up to 50% building coverage, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

**Cedar River Reach A** – Up to 20% for the Renton Municipal Airport-

**Cedar River Reach B** – No limit on building coverage

**Cedar River Reach C** – Up to ~~50~~65% building coverage (up to 75% building coverage if parking is provided within the building or within a parking garage; however, actual parking of vehicles may not occur within 100 feet of OHWM)

**Cedar River Reach D** – No more than 5% building coverage

**Green River A** – Up to 50% building coverage

**Springbrook Creek Reach A** – No more than 5% building coverage

**Springbrook Creek Reaches B through D** - Up to 50% building coverage

\*4-3-090F.1.d.iv

- iv. **Buffer and Setback Reduction Standards:** Based upon an applicant's request, and the acceptance of a ~~Supplemental Standard~~ Stream or Lake Study, the reviewing official may approve a reduction in the standard buffer widths/setbacks by up to ~~20~~ 25 percent (up to 50 percent if the project site is located within the High-Intensity Overlay District), except when the buffer widths/setbacks are established by subsection 4-3-090.F.1.c Alternative Vegetated Buffer Widths and Setbacks for Existing Single-Family Lots, above, where the applicant can demonstrate compliance with applicable criteria in the subsections below ~~and any mitigation requirements applied as conditions of approval.~~

(1) The proposal complies with either of the following two criteria:

(1)(a) The ~~abutting land~~ area of the proposed reduced-width buffer already is extensively vegetated with native species, including trees and shrubs, and has less than 5 percent non-native invasive species cover ~~and has less than fifteen percent (15%) slopes~~; or

(2)(b) The area of the proposed reduced-width buffer can be enhanced with native vegetation and removal of non-native species ~~and has less than fifteen percent~~

~~(15%) slopes~~; and

(2) The portion of the site within shoreline jurisdiction has an average slope of less than fifteen percent (15%); and

(3) The width reduction will not reduce existing stream or lake ecological functions, including those of anadromous fish or non-fish habitat; and

(4) The width reduction will not degrade existing riparian habitat; and

(5) No significant direct or indirect, short-term or long-term, adverse impacts to regulated water bodies will result from a regulated activity due to the width reduction. The Reviewing Official's determination shall be based on specific site studies by recognized experts, pursuant to RMC 4-9-190 E.4 Secondary Review by-By Independent Qualified Professionals. **[NOTE TO CITY STAFF: WE WISH TO DISCUSS WITH YOU MODIFYING AND CONSOLIDATING CRITERIA (3), (4) AND (5) IN TERMS OF THE "NO NET LOSS OF SHORELINE ECOLOGICAL FUNCTIONS" TEST.]**

(6) The area of the reduced buffer/setback shall not create the need to be supported by new or additional rigid shoreline stabilization as described in subsections (4) and (5) of RMC 4-3-090F.4.iii Shoreline Stabilization Alternatives Hierarchy.

(5)(7) For buffer reductions in the Natural or Urban Conservancy Environment, a shoreline variance is required, pursuant to RMC 4-9-190I Variances and Conditional Uses.

\*Table 4-8-120C Legend

8. A standard stream or lake study is required for any application proposal. A supplemental stream or lake study may also be required if (a) an unclassified stream is involved, or if (b) the proposal would result in unmitigated impacts to or alterations of the water body or existing buffer, as identified in the standard stream or lake study, or (c) RMC 4-3-090 Shoreline Master Program otherwise requires one. A stream or lake mitigation plan will be required prior to final approval for any plans or permits that result in unmitigated impacts to or alterations of the water body or existing buffer.

Section RMC 4-8-120D Definitions of Terms Used in Submittal Requirements for Building, Planning, and Public Works Permit Applications

Stream or Lake Study, Standard

- \*
- \*
- \*

c. Stream or Lake Assessment narrative: A narrative report on 8.5" x 11" paper shall be prepared to accompany the site plan and describes:

- \*
- \*
- \*

(6) For shorelines regulated under RMC 4-3-090 Shoreline Master Program, the study shall demonstrate if the proposal meets the criteria of no net loss of ecological functions as described in RMC 4-3-090D2. ~~If the proposal requires mitigation in order to demonstrate no net loss of ecological functions, a supplemental stream or lake study is required.~~

**HEIGHT**

Allow 35' height for single-family residences. Allow higher buildings in the High-Intensity environment.\*  
4-3-090

Building Height- Maximum	Shoreline Single Family	High Intensity
In water	<del>30-35</del> ft. <sup>5</sup>	35 ft. <sup>5</sup>
Within 100 feet of OHWM	<del>30-35</del> ft. <sup>10</sup>	35 ft. <sup>5,6</sup>
More than 100 feet from OHWM	<del>30-35</del> ft. <sup>10</sup>	35 ft. <sup>6</sup>
Accessory Building	15 feet	Same as above

\* (5) Additional height ~~is may be~~ allowed if essential to the function of a water-dependent use, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

\* (6) Additional height ~~is may be~~ allowed if essential to the function of a water-dependent use. ~~Also,~~ ~~H~~ height up to that established in RMC 4-2 ~~is may be~~ allowed for ~~non-non~~ water-dependent ~~uses~~ in the following reaches:

**Lake Washington Reach C** – Additional height ~~is may be~~ allowed subject to a transition for height. ~~Maximum height shall be half of the allowed height in the underlying zoning, and may be increased at a slope greater than 35 feet equal to a slope of 1 horizontal to 2 vertical from the point 100 feet from OHWM to the point at which maximum height in the underlying zoning is reached, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height.~~

**Lake Washington Reaches H and I** – Additional height ~~is may be~~ allowed for a multiple use structure containing a water-oriented use, provided a transition is provided equal to a slope of 1 vertical to 1 horizontal from a height of ~~35 feet half of the allowed height in the underlying zoning from the point 100 feet from OHWM to the point at which the maximum height in the underlying zoning is reached.~~ ~~from the building closest to the OHWM, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height,~~ except as consistent with a Master Site Plan approved prior to the adoption of this Section.

**Lake Washington Reach J and Cedar River Reach A** – Additional height ~~is may be~~ allowed in the Renton Municipal Airport for any structure for which additional height is essential for airport operation and there is no feasible location outside the shoreline.

~~Cedar River Reach A~~ – Additional height may be allowed in the Renton Municipal Airport for any structure for which additional height is essential for airport operation and there is no feasible location outside the shoreline.

**Cedar River Reach B** – Additional height ~~is may be~~ allowed for multiple use ~~developments~~ containing (a) water-oriented use ~~or (b) water-oriented use and non-water-oriented use~~. For such ~~developments, building height landward of a line that is parallel to and 100 feet from OHWM is allowed within a maximum allowable building height envelope that shall:~~

- ~~(1) Begin at a height of 35 feet (or one-half the maximum height allowed in the underlying zone, whichever is greater) along the line lying parallel to and 100 feet from OHWM;~~
- ~~(2) Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from that height at that line until the maximum height allowed in RMC 4-2 for the underlying zone is reached; and~~
- ~~(3) Extend landward therefrom to the outer edge of shoreline jurisdiction, the maximum allowable building height envelope shall be the maximum building height allowed in RMC 4-2 for the underlying zone.~~

~~, provided a transition is provided equal to a slope of 1 vertical to 1 horizontal from a height of 35 feet, or half the maximum height allowed in the underlying zone, whichever is greater, from the point 100 feet from OHWM to the point at which the maximum height in the underlying zoning is reached. the elevation of the OHWM.~~

**Cedar River Reach C** – Additional height ~~is may be~~ allowed for multiple use ~~developments~~ containing (a) water-oriented use ~~or (b) water-oriented use and non-water-oriented use~~. For such ~~developments, building height landward of a line that is parallel to and 100 feet from OHWM is allowed within a maximum allowable building height envelope that shall:~~

- ~~(1) Begin at a height of 35 feet (or one-half the maximum height allowed in the underlying zone, whichever is greater) along the line lying parallel to and 100 feet from OHWM;~~
- ~~(2) Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from that height at that line until the maximum height allowed in RMC 4-2 for the underlying zone is reached; and~~
- ~~(3) Extend landward therefrom to the outer edge of shoreline jurisdiction, the maximum allowable building height envelope shall be the maximum building height allowed in RMC 4-2 for the underlying zone.~~

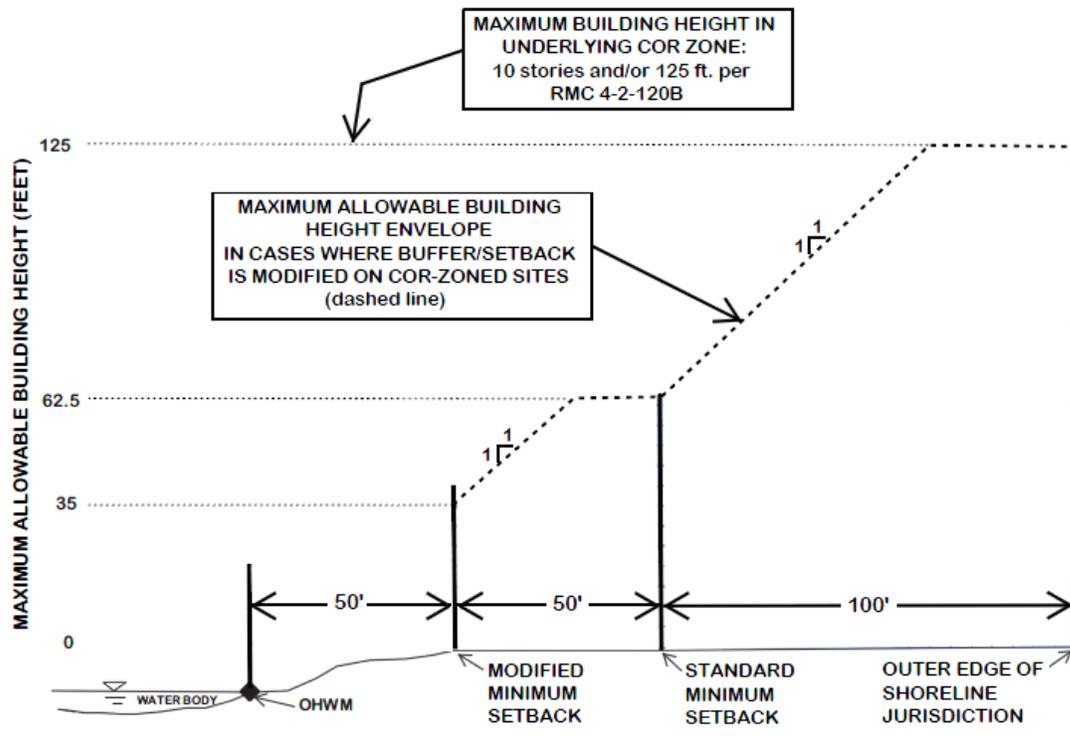
~~, provided a transition is provided equal to a slope of 1 vertical to 1 horizontal from a height of 35 feet, or half the maximum height allowed in the underlying zone, whichever is greater, from the building closest to the OHWM the point 100 feet from OHWM to the point at which the maximum height in the underlying zoning is reached.~~ provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height.

~~Alternatively, in cases where the depth of the Vegetation Management Buffer/Setback is modified in accordance with RMC 4-3-090.F.1 Vegetation Conservation on sites that have underlying COR zoning, building height landward of a line that is parallel to and 50 feet from OHWM is allowed within a maximum allowable building height envelope that shall:~~

- ~~(1) Begin at a height of 35 feet along the line lying parallel to and 50 feet from OHWM;~~
- ~~(2) Have an upward transition at a slope of 1 vertical to 1 horizontal landward from that line until a height equal to 62.5 feet is reached;~~

- (3) Then continue landward to the landward edge of the standard minimum structure setback at a height equal to 62.5 feet;
- (4) Then the maximum allowable building height envelope shall have an additional upward transition at a slope of 1 vertical to 1 horizontal landward from the landward edge of the standard minimum structure setback until a height equal to the maximum building height allowed in RMC 4-2 for the underlying COR zone is reached; and
- (5) Extend landward therefrom to the outer edge of shoreline jurisdiction, the maximum allowable building height envelope shall be the maximum building height allowed in RMC 4-2 for the underlying COR zone.

An illustrative cross-section through the maximum building height envelope for such alternative cases is set forth as follows:



**Black River A** - Additional height ~~is may be~~ allowed for multiple use developments containing (a) water-oriented use or (b) water-oriented use and non-water-oriented use. For such developments, building height landward of a line that is parallel to and 100 feet from OHWM is allowed within a maximum allowable building height envelope that shall:

- (1) Begin at a height of 35 feet (or one-half the maximum height allowed in the underlying zone, whichever is greater) along the line lying parallel to and 100 feet from OHWM;
- (2) Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from that height at that line until the maximum height allowed in RMC 4-2 for the underlying zone is reached; and
- (3) Extend landward therefrom to the outer edge of shoreline jurisdiction, the maximum allowable building height envelope shall be the maximum building height allowed in RMC 4-2 for the underlying zone.

~~provided a transition is provided equal to a slope of 1 vertical to 1 horizontal from a height of 35 feet from the building closest to the OHWM, provided that if the Vegetation Management Buffer is varied to be less than 100 feet, the transition may occur at the edge of the vegetated buffer and the transition slope provided within 100 feet of OHWM shall be at a maximum slope of 1 vertical to 2 horizontal, and provided no additional floor area is allowed by additional height in the area within 100 feet from OHWM compared to that allowed by a 35-foot height. point 100 feet from OHWM to the point at which the maximum height in the underlying zoning is reached.~~

**Springbrook Creek Reaches B through D** - Additional height ~~is~~ may be allowed for multiple use developments containing (a) water-oriented use or (b) water-oriented use and non-water-oriented use. For such developments, building height landward of a line that is parallel to and 100 feet from OHWM is allowed within a maximum allowable building height envelope that shall:

- (1) Begin at a height of 35 feet (or one-half the maximum height allowed in the underlying zone, whichever is greater) along the line lying parallel to and 100 feet from OHWM;
- (2) Have an upward, landward transition at a slope of 1 vertical to 2 horizontal from that height at that line until the maximum height allowed in RMC 4-2 for the underlying zone is reached; and
- (3) Extend landward therefrom to the outer edge of shoreline jurisdiction, the maximum allowable building height envelope shall be the maximum building height allowed in RMC 4-2 for the underlying zone.

~~provided a transition is provided equal to a slope of 1 vertical to 2 horizontal from a height of 35 feet from the point 100 feet from OHWM to the point at which the maximum height in the underlying zoning is reached. elevation of the OHWM and provided no additional floor area is allowed by additional height in the area within 100 feet from the OHWM compared to that allowed by a 35-foot height.~~

## **MISCELLANEOUS**

*\*Expand definition of water-enjoyment use*

### **RMC 4-11-230**

WATER-ENJOYMENT USE: Referring to a recreational use, or other use facilitating public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through the location, design and operation assures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment. Primary water-enjoyment uses may include, but are not limited to, parks, piers and other improvements facilitating public access to the shorelines of the state; and general water-enjoyment uses may include, but are not limited to, restaurants, museums, aquariums, scientific/ecological reserves, resorts/hotels, riverwalk developments, and multiple use commercial/office/residential development; provided that such uses conform to the above water-enjoyment specifications and the provisions of the Shoreline Master Program.

MAXIMUM ALLOWABLE BUILDING HEIGHT

MAXIMUM BUILDING HEIGHT IN UNDERLYING ZONE

MAXIMUM ALLOWABLE BUILDING HEIGHT ENVELOPE  
IN CASES WHERE BUFFER/SETBACK IS MODIFIED  
WITHIN HIGH INTENSITY OVERLAY DISTRICT SITES  
(dashed line)

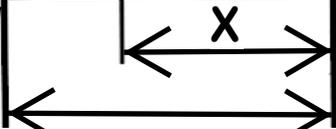
THE GREATER OF (1) 35 FEET OR (2) HALF OF  
THE UNDERLYING ZONE'S MAXIMUM  
BUILDING HEIGHT

35'

0'



MAXIMUM WATERWARD  
EXTENT OF MODIFIED  
MINIMUM SETBACK



50' RANGE OF  
ALLOWABLE  
BUFFER/SETBACK  
MODIFICATION

X = APPROVED BUFFER/SETBACK  
MODIFICATION FOR A PARTICULAR  
PROJECT PROPOSAL

OUTER EDGE OF  
SHORELINE  
JURISDICTION

 = AREA WHERE BUILDINGS CAN BE LOCATED UP TO THE MAXIMUM BUILDING HEIGHT ENVELOPE IN REGARD TO AN APPROVED BUFFER/SETBACK MODIFICATION FOR A PARTICULAR PROJECT PROPOSAL

MAXIMUM ALLOWABLE BUILDING HEIGHT

MAXIMUM BUILDING HEIGHT IN UNDERLYING ZONE

MAXIMUM ALLOWABLE BUILDING HEIGHT ENVELOPE IN CASES WHERE BUFFER/SETBACK IS MODIFIED WITHIN HIGH INTENSITY OVERLAY DISTRICT SITES (dashed line)

THE GREATER OF (1) 35 FEET OR (2) HALF OF THE UNDERLYING ZONE'S MAXIMUM BUILDING HEIGHT

35'

MAXIMUM WATERWARD EXTENT OF MODIFIED MINIMUM SETBACK

0'

OHWM  
WATER BODY

50'

50' RANGE OF ALLOWABLE BUFFER/SETBACK MODIFICATION

X

STANDARD MINIMUM SETBACK

OUTER EDGE OF SHORELINE JURISDICTION

X = APPROVED BUFFER/SETBACK MODIFICATION FOR A PARTICULAR PROJECT PROPOSAL

 = AREA WHERE BUILDINGS CAN BE LOCATED UP TO THE MAXIMUM BUILDING HEIGHT ENVELOPE IN REGARD TO AN APPROVED BUFFER/SETBACK MODIFICATION FOR A PARTICULAR PROJECT PROPOSAL

**Lake Washington Reaches C, H, I, and J; Cedar River Reaches A, B, and C; Black River Reach A; and Springbrook Creek Reaches B, C, and D.** ~~In these reaches the maximum height for buildings with a setback~~ Landward of 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:

~~(1) Begin at a height of 35 feet (or one-half the maximum height allowed in the underlying zone, whichever is greater) along a line lying parallel to and 100 feet from OHWM; and~~  
~~(2) Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from that height at that line until the maximum height allowed in RMC 4-2 for the underlying zone is reached, which height shall extend landward therefrom to the outer edge of shoreline jurisdiction.~~  
~~line that begins at either half the height allowed in the underlying zoning, or 35' (35 ft.), whichever is greater and is increased at a slope of 1 horizontal to 1 vertical until either the maximum height allowed in the underlying zoning is reached, or the end of shoreline jurisdiction, whichever comes first.~~ For buildings allowed waterward of 100' (100 ft.) from OHWM (e.g., by an approved modified setback/buffer) is approved, the maximum building height shall be as follows:

- (1) Between the approved smaller/reduced setback and the line lying parallel to and 100 feet from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:
  - (a) Begin at a height of 35 feet along the line lying parallel to and the distance of the applicable smaller/reduced setback distance from OHWM; and
  - (b) Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from that height at that line until the first to be reached of either:
    - (i) the maximum height allowed in RMC 4-2 for the underlying zone (and in such case, that height shall extend to the line lying parallel to and 100 feet from OHWM); or
    - (ii) the line lying parallel to and 100 feet from OHWM; and
- (2) Landward of 100' (100 ft.) from OHWM, the applicant shall have the option of having the maximum building height defined by either:
  - (a) The maximum allowable building height envelope described in the first paragraph for areas landward of 100' (100 ft.) from OHWM; or
  - (b) A maximum allowable building height envelope that shall continue an upward, landward transition at a slope of 1 vertical to 1 horizontal from the landward extent of the maximum allowable building height envelope defined by subsection (1), above, until the maximum height allowed in RMC 4-2 for the underlying zone is reached, which allowable height shall therefrom extend landward to the outer edge of shoreline jurisdiction.

~~the maximum height for buildings within 100' (100 ft.) of the OHWM shall be defined by a line that begins at 35' (35 ft.) at the modified setback/buffer line, and is increased at a slope of 1 horizontal to 1 vertical until the point 100' (100 ft.) from OHWM is reached.~~ Additional height may be allowed for projects consistent with a Master Site Plan approved prior to the adoption of this Section

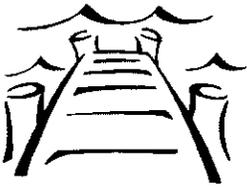
(6) Additional height may be allowed if essential to the function of a water-dependent use. Height up to that established in RMC 4-2 ~~is may be~~ allowed as described below for non water-dependent uses in the following reaches: **Lake Washington Reaches C, H, I, and J; Cedar River Reaches A, B, and C; Black River Reach A; and Springbrook Creek Reaches B, C, and D.**

(1) ~~For B~~ buildings landward of 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:

- a. Begin along a line lying parallel to and 100' (100 ft.) from OHWM at a height of either 35' (35 ft.) or one half the maximum height allowed in the underlying zone, whichever is greater; and
- b. Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from the beginning height either (i) until ~~either~~ the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning), or (ii) to the end of shoreline jurisdiction, whichever comes first. ~~At that point the height shall extend landward at the maximum height allowed in the underlying zoning.~~

(2) For buildings allowed waterward of 100' (100 ft.) from OHWM through a modified setback, the maximum building height shall be as follows:

- a. ~~Beginning at~~ Between the modified setback line and the line lying parallel to and 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:
  - i. Begin at a height of 35' (35 ft.) along the line of the modified setback; and
  - ii. Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from the beginning height either until ~~either~~ the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning); or to the line lying parallel to and 100' (100 ft.) from OHWM, whichever comes first; and
- b. Landward of 100' (100 ft.) from OHWM, the applicant shall have the option of choosing the maximum building height defined by either:
  - i. Using ~~F~~ the maximum allowable building height envelope described in (1), above; or
  - ii. Having ~~F~~ the maximum allowable building height envelope described in (2)a.i, above, ~~shall~~ continue an upward, landward transition at a slope of 1 vertical to 1 horizontal from the envelope's beginning height along a line lying parallel to and 100' (100 ft.) from OHWM either until ~~either~~ the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning), or to the end of shoreline jurisdiction, whichever comes first. ~~At that point the height shall extend landward at the maximum height allowed in the underlying zoning.~~



## *Renton Shoreline Coalition*

*P.O. Box 624*

*Renton, Washington 98057-0624*

**HAND-DELIVERED FOR SUBMITTAL**  
**INTO THE RECORD CONCERNING THE PROPOSED**  
**RENTON SHORELINE MASTER PROGRAM**

August 26, 2010

Planning and Development Committee  
of the Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's June 2010 Draft SMP  
(1) Update on the Status of Our Negotiations with City Staff, (2) Our General Comments on Erika Conkling's August 24, 2010 23-Page Memo to You, and (3) Our Explanation of Unresolved Major Issues in Regard to Which We Request Further Text Amendments

Dear Committee Members Briere, Parker and Zwicker:

We are pleased to provide you with the following information.

**Update on the Status of Our Negotiations with City Staff**

Following the Committee's July 8, 2010 decision to provide time for negotiation with City Staff to try to resolve the many issues of concern that the Renton Shoreline Coalition has had with the June 2000 draft of the proposed SMP, Coalition representatives have had at least one meeting per week as well as numerous phone discussions with City Staff pursuing solutions to try to resolve our differences. Our last such meeting with Staff was last Friday morning. (Mr. Vincent was out on vacation this week, which made any further meeting before today impossible.) We are happy to report to you that most of those differences appear to have been (or are in the process of being) resolved (at least to the extent that the Coalition will not be taking further issue with them) and that our remaining differences on some (but not all) of our various other issues have been narrowed.

We want to express our appreciation for the hard work and creativity with which Mr. Vincent and Ms. Conkling participated in our discussions.

**Our General Comments on Erika Conkling's**  
**August 24, 2010 23-Page Memo to You**

By means of an email from Erika Conkling late this Tuesday afternoon, we received a copy of her August 24, 2010 23-page memorandum to you regarding "Proposed Changes to the Planning Commission Draft SMP." Until receiving the copy of that memo, the Coalition had not yet seen much of the actual text of several possible revisions that were discussed during our last meeting

with City Staff. Thus, while we are happy to report that the Coalition is willing to live with most (but not all) of the concepts and much of the revised text set forth in that memo, the memo's assertion in the second sentence on page (an assertion that states "[t]he excerpts below show proposed changes for the Planning and Development Committee's consideration that have been mutually agreed upon by the City and the stakeholder(s)" isn't accurate.

Yesterday, one of the Coalition's Steering Committee members, attorney David Halinen, had a helpful phone discussion with Erika Conkling and pointed out to her numerous clarifications and further revisions that ought to be made to the revised SMP text set forth in her August 24, 2010 memo to you. She agreed to make many of those clarification and revisions and to consider others that Mr. Halinen proposed. She said that she plans to send out an update of the text revision by early next week, which we will review promptly and respond to. We are hopeful that the update that she sends out will resolve many of the "word-smithing" issues that we are still concerned about.

In view of the update that Erika Conkling has indicated that she will prepare and provide to us, we are not including with this letter the particulars of our "word-smithing" concerns with the text set forth in her August 24, 2010 memo to you.

**Our Explanation of Unresolved Major Issues in Regard  
to Which We Request Further Text Amendments**

Aside from final "word-smithing" concerns, we see three major unresolved issues.

**Issue 1—Existing Shoreline Stabilization Structures**

During our negotiations, the City Staff has continued to insist upon linkage between (a) changes of land use and/or "major alterations" of existing structures and (b) existing shoreline stabilization structures. That linkage is not fair to property owners and is not required by the State Shoreline Guidelines set forth in Chapter 173-26 WAC.

The Coalition's provided analysis and proposed SMP text amendments on this issue in both its July 2, 2010 and updated August 2, 2010 table submitted to the City addressed this issue in detail. After further study of the State Shoreline Guidelines, the Coalition proposes a two-part resolution to the issue. The first part, which is set forth in Attachment A to this letter, involves revisions to subsections i, ii, and iii of subsection c of Draft SMP 4-3-090.F.4 (Shoreline Stabilization) of Renton's June 2010 draft SMP. (Please carefully review that attachment.)

The corresponding second part involves elimination of all of the provisions relating to existing shoreline stabilization in the tables for "Partial Compliance for Non-Single-Family Development" and "Partial Compliance for Single-Family Development" set forth in draft SMP 4-10-095F.1 and F.2.

Planning and Development Committee  
of the Renton City Council  
August 26, 2010  
Page 3

We would like to have further interaction with Staff on this issue.

**Issue 2—Extent of Setback and Corresponding Buffer Reduction for Non-Water-Oriented Uses in the High Intensity Overlay District**

As revised in Erika Conkling's August 24, 2010 memo (on page 3 or 4 depending on the printed output of the memo), note 4 following the Shoreline Bulk Standards Table would limit setback and corresponding buffer reductions for non-water-oriented uses in the High Intensity Overlay District so that new buildings can generally be no closer than 75 feet to OHWM. In the High Intensity Overlay District (the district where the most intensive development within the shoreline is to be allowed), that limitation is unnecessarily strict. Further, the 75-foot dimension is not required by the State Shoreline Guidelines. The Coalition requests that it be changed so that new buildings can generally be no closer than 65 feet to OHWM.

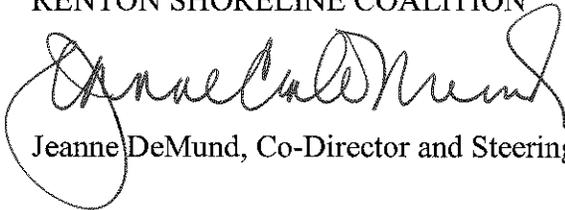
**Issue 3—"Community Access" Possibilities as an Alternative to "Public Access" in Various Portions of the SMP Text.**

The Coalition remains concerned that various portions of the SMP text inappropriately insist upon "public access". Changing certain of those provisions to allow "public/community access" would make them less objectionable. Mr. Halinen communicated details of this concern to Erika Conkling. We understand that she agreed to review this issue further and that there may be some further revisions concerning this issue in the update from her expected next week.

Thank you for your continued consideration of this matter.

Sincerely,

RENTON SHORELINE COALITION



Jeanne DeMund, Co-Director and Steering Committee Member

Attachment

Cc: Sandy Mackie, Perkins Coie

Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (with copy of attachment)

Renton Mayor Denis Law (with copy of attachment)

City Council Members Don Persson, Greg Taylor, Randy Corman, and Marcie Palmer (with copies of attachments) (each with copy of attachment)

Larry Warren, Renton City Attorney (with copy of attachment)

Chip Vincent, Renton Planning Director (with copy of attachment)

Erika Conkling, Senior Planner, Renton Planning Division (with copy of attachment)

## ATTACHMENT A

### **Renton Shoreline Coalition's August 26, 2010 further proposed revisions to subsections i, ii, and iii of subsection c of Draft SMP 4-3-090.F.4 (Shoreline Stabilization) of Renton's June 2010 draft SMP**

The Coalition's proposed revisions to the June 2010 SMP text are illustrated below by underlining and strike-through.

- c. **Existing Shoreline Stabilization Structures:** Existing shoreline stabilization structures not in compliance with this code ~~shall~~ may be governed by ~~retained, repaired, or replaced if they meet the applicable criteria below:~~
- i. **Retention and Repair of Existing Structures:** An existing shoreline stabilization structure may be retained and repaired as long as it serves to perform a shoreline stabilization function for a legally established principal land use(s) and/or structure(s) and any approved changes thereto, ~~but shall be subject to the provisions below if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.~~
  - ii. **Additions to Existing Structures:** Additions to or increases in size of existing shoreline stabilization ~~structures~~ measures shall be considered new structures.
  - iii. **Replacement with Similar Structures** ~~Changes in Land Use:~~ An existing shoreline stabilization structure established to serve ~~to serve~~ performing to perform a shoreline stabilization function for legally established principal land use(s) and/or structure(s) and any approved changes thereto ~~that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use~~ may be ~~retained or replaced~~ with a similar structure in the existing structure's current length, height and location if and to the extent that:
    - (1) There is a demonstrated need ~~documented by a geotechnical analysis~~ [COMMENT TO THE CITY: WAC 173-26-231(3)(a)(iii)(C),<sup>1</sup> which addresses existing shoreline

---

<sup>1</sup> As a comment not intended to be part of the SMP text, note that WAC 173-26-231(3)(a)(iii)(C) states:

(C) An **existing** shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves.

- The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.

- Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.

- Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.

- Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.

- For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

(Emphasis added)

stabilization structures, does not require a geotechnical analysis in regard to “demonstrated need”. That WAC subsection contrasts with WAC 173-26-231(3)(a)(iii)(B), which addresses new shoreline stabilization structures and three times specifically requires a geotechnical analysis.<sup>2</sup> Thus, the phrase “documented by a geotechnical analysis” should be stricken here.] to protect principal uses or structures from erosion caused by currents or waves; and

- (2) An evaluation of the existing shoreline stabilization structure in relation to the

---

<sup>2</sup> As a comment not intended to be part of the SMP text, note that WAC 173-26-231(3)(a)(iii)(B) states:

(B) **New** structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

(I) To protect existing primary structures:

- New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a **geotechnical analysis**, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(II) In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:

- The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

- Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The need to protect primary structures from damage due to erosion is demonstrated through a **geotechnical report**. The damage must be caused by natural processes, such as tidal action, currents, and waves.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(III) In support of water-dependent development when all of the conditions below apply:

- The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

- Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The need to protect primary structures from damage due to erosion is demonstrated through a **geotechnical report**.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(IV) To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW when all of the conditions below apply:

- Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(Emphasis added)

hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii, above, would be infeasible then the existing shoreline stabilization structures could be ~~retained or~~ replaced with a similar structure.

### Supporting Analysis

The above-stated proposed revisions to subsections i, ii, and iii of subsection c of Draft SMP 4-3-090.F.4 (Shoreline Stabilization) of Renton's June 2010 draft SMP fully conform with the applicable provisions of WAC 173-26-231 (Shoreline Modifications) and are a compromise of the Coalition's August 2, 2010 requested version of those three subsections. Unlike the Coalition's August 2, 2010 proposal, which, without a demonstration of need, would have allowed each existing shoreline stabilization structure to be replaced in perpetuity with a similar structure in its current location for a new use (or a new principal structure) if the existing shoreline stabilization structure was not to be lengthened or increased in height, the attached proposal would require a demonstration of need as a prerequisite to each such replacement.

In regard to the above concept, Erika Conkling expressed a question to David Halinen as to whether the concept that is now fleshed out in the Coalition's above-stated proposed revisions to subsections i, ii, and iii of subsection c of Draft SMP 4-3-090.F.4 would run afoul of subsection (2)(a) of WAC 173-26-231 (Shoreline Modifications). It would not for two reasons. First, note subsection 1 of WAC 173-26-231. It states:

(1) *Applicability.* Local governments are encouraged to prepare master program provisions that distinguish between shoreline modifications and shoreline uses. **Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal.** Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).

The provisions in this section apply to all shoreline modifications within shoreline jurisdiction.

(Italics in the original; boldfacing, underlining and yellow-shading added for emphasis.) The point here is that the WAC considers "shoreline modifications" (including shoreline stabilization structures) to involve "construction" or "other actions", actions that inherently are *contemplated future activities*. In contrast, merely leaving an *existing* shoreline stabilization structure, dike, breakwater, etc. in place without expansion (regardless of whether a land use change or a new or expanded principal structure on a subject site is involved) does not involve a future activity and is thus not a "shoreline modification" under WAC 173-26-231.

Second, subsection (2)(a) of WAC 173-26-231 states:

(2) *General principles applicable to all shoreline modifications.* Master programs shall implement the following principles:

(a) Allow **structural shoreline modifications** only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.

(Italics in the original; boldfacing, underlining and yellow-shading added for emphasis.) Subsection (2)(a) is the subsection that Erika Conkling expressed her question about. Because a land use change or a new or expanded principal structure on a subject site with an existing shoreline protective structure that is not proposed to be added to or increased in size is not a *structural shoreline modification*, WAC 173-26-231(2)(a) simply would not be applicable.



## Renton Shoreline Coalition

P.O. Box 624  
Renton, Washington 98057-0624

**HAND-DELIVERED FOR SUBMITTAL**  
**INTO THE RECORD CONCERNING THE PROPOSED**  
**RENTON SHORELINE MASTER PROGRAM**

September 9, 2010

Planning and Development Committee  
of the Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's June 2010 Draft SMP  
**Our simplified proposed revisions concerning the outstanding *existing shoreline stabilization structures* issue**

Dear Committee Members Briere, Parker and Zwicker:

Attached hereto as Attachment A please find the Renton Shoreline Coalition's simplified proposed revisions concerning the outstanding issue relating to existing shoreline stabilization structures along with a statement of supporting rationale for the revisions.

Attachment A to this letter is intended to serve as the Coalition's substitute for Attachment A to the Coalition's letter to you of August 26, 2010. In view of the proposed revisions set forth on Attachment A to this letter, the Coalition hereby withdraws both (1) Attachment A to the Coalition's letter to you of August 26, 2010 and (2) the corresponding portion of the Coalition's request made in that earlier letter that sought elimination of the provisions relating to existing shoreline stabilization in the tables for "Partial Compliance for Non-Single-Family Development" and "Partial Compliance for Single-Family Development" set forth in draft SMP 4-10-095F.1 and F.2.

We respectfully request your favorable action concerning the attached proposed revisions. Please let us know if you have any questions or comments concerning them.

Sincerely,

RENTON SHORELINE COALITION

  
Jeanne DeMund, Co-Director and Steering Committee Member

Attachment

Planning and Development Committee  
of the Renton City Council  
September 9, 2010  
Page 2

cc: Sandy Mackie, Perkins Coie (via email, with copy of attachment)

Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter (via email, with copy of attachment)

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (via email, with copy of attachment)

Renton Mayor Denis Law (hand-delivered, with copy of attachment)

City Council Members Don Persson, Greg Taylor, Randy Corman, and Marcie Palmer (hand-delivered, with a copy of the attachment)

Larry Warren, Renton City Attorney (hand-delivered, with copy of attachment)

Chip Vincent, Renton Planning Director (hand-delivered, with copy of attachment)

Erika Conkling, Senior Planner, Renton Planning Division (hand-delivered, with copy of attachment)

## ATTACHMENT A

### **Renton Shoreline Coalition's September 9, 2010 proposed revisions to two portions of RMC 4-3-090.F.4 (Shoreline Stabilization) of Renton's September 2010 draft SMP**

The Coalition's proposed revisions to the September 2010 draft SMP text are set forth below. Proposed new text is illustrated below by underlining and yellow-highlighting. Proposed deletions are illustrated by ~~strike-through~~.

#### **Draft RMC 4-3-090.F.4.c.**

- c. **Existing Shoreline Stabilization Structures:** Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced if they meet the applicable criteria below:
- i. **Repair of Existing Structures:** An existing shoreline stabilization structure may be repaired as long as it serves to perform a shoreline stabilization function for a legally established land use, but shall be subject to the provisions below if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.
  - ii. **Additions to Existing Structures:** Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
  - iii. **Replacement of Existing Structures/Changes in Land Use:** An existing shoreline stabilization structure ~~established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use~~ may be retained or replaced with a similar structure to protect existing or changed principal uses or structures if:
    - (1) ~~T~~there is a demonstrated need ~~documented by a geotechnical analysis~~ to protect principal uses or structures from erosion caused by currents or waves; and
    - (2) ~~An evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.~~

#### **Draft RMC 4-3-090.F.4.a.v**

v. **Content of Geotechnical Report:** Geotechnical analysis pursuant to ~~this section~~ 4-3-090.F.4.a that addresses the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. The geotechnical analysis shall evaluate the need and effectiveness of both hard and soft armoring solutions in preventing potential damage to a primary structure. Consideration should be given to permit requirements of other agencies with jurisdiction.

## Rationale for the Above-Proposed Revisions

- (1) Draft RMC 4-3-090.F.4.c.iii (the Draft SMP section addressing *replacement of existing shoreline stabilization structures*) has requirements that go far beyond the mandated SMP requirements of WAC 173-26-231(3)(a)(iii)(C)<sup>1</sup>, which is the only subsection of the State SMP Guidelines that addresses *replacement of existing shoreline stabilization structures*.
- (2) Unlike Draft RMC 4-3-090.F.4.c.iii, WAC 173-26-231(3)(a)(iii)(C):
  - (a) *Does not* call for “demonstrated need” to be *documented by a geotechnical analysis*; and
  - (b) *Does not* call for an evaluation of the existing shoreline stabilization structure in relation to a hierarchy of shoreline stabilization alternatives.
- (3) Note that the State SMP Guidelines do require geotechnical reports and an evaluation of shoreline stabilization alternatives in relation to proposed *new or expanded shoreline stabilization*. [See WAC 173-26-231(3)(a)(iii)(B),<sup>2</sup> which is quoted in endnote 2, below, which relates to *new* structural shoreline stabilization measures, and which three times references scenarios in which geotechnical reports and an evaluation of nonstructural shoreline stabilization alternatives are to be required.]

However, the State SMP Guidelines do not require geotechnical reports or an evaluation of shoreline stabilization alternatives in regard to *existing shoreline stabilization structures*, which is the subject of draft RMC 4-3-090.F.4.c.iii. [See WAC 173-26-231(3)(a)(iii)(C), which is quoted in endnote 1, below, which relates to *existing* shoreline stabilization structures, and which never mentions requiring geotechnical reports or an evaluation of shoreline stabilization alternatives.]

The absence of any call for such a requirement under WAC 173-26-231(3)(a)(iii)(C) in contrast to the repeated calls for such a requirement under WAC 173-26-231(3)(a)(iii)(B) make it abundantly clear that the intent of the Shoreline Guidelines is not to mandate that SMPs require geotechnical reports or an evaluation of shoreline stabilization alternatives in regard to *existing shoreline stabilization structures*.

- (4) The Coalition’s above-proposed revisions to draft RMC 4-3-090.F.4.c.iii would appropriately eliminate the provisions requiring a geotechnical report and an evaluation of shoreline stabilization alternatives as well as increase draft RMC 4-3-090.F.4.c.iii’s consistency with WAC 173-26-231(3)(a)(iii)(C).
- (5) When WAC 173-26-231(3)(a)(iii)(C) refers to protection of *principal uses or structures*, both *existing* principal uses or structures and *changed* principal uses or structures are encompassed. This is made clear by comparison with WAC 173-26-231(3)(a)(iii)(B), which, when it wants to limit protection to *existing* primary structures [as in subsection (I) thereof], it does so explicitly. (See endnote 2.) Thus, the application of the limited criteria of WAC 173-26-231(3)(a)(iii)(C) to draft RMC 4-3-090.F.4.c.iii as set forth in the Coalition’s above-stated revisions in the context of protecting “existing or changed principal uses or structures” is consistent with the WAC.

(6) Without the requested elimination of draft RMC 4-3-090.F.4.c.iii's current provision requiring that demonstration of need be "documented by a geotechnical analysis", the geotechnical analysis might be subject to the "Content of Geotechnical Report" requirements of draft RMC 4-3-090.F.4.a.v, which would be inappropriate. That draft subsection currently states:

v. **Content of Geotechnical Report:** Geotechnical analysis pursuant to this section that addresses the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. The geotechnical analysis shall evaluate the need and effectiveness of both hard and soft armoring solutions in preventing potential damage to a primary structure. Consideration should be given to permit requirements of other agencies with jurisdiction.

- (a) Those draft content requirements don't make good sense in relation existing shoreline stabilization structures and, thus, it is inappropriate to link those requirements to the demonstration of need required by draft RMC 4-3-090.F.4 c.iii.
- (b) Note that those geotechnical report content requirements narrowly focus on the need to protect *a primary structure* [which is what WAC 173-26-231(3)(a)(iii)(B) focuses on when it mandates that geotechnical reports be required by SMPs in relation to new shoreline stabilization structures] but WAC 173-26-231(3)(a)(iii)(C)'s broader focus in relation to existing shoreline stabilization structures is to protect *principal uses or structures*, not just *a primary structure*.
- (c) Note that those draft content requirements arbitrarily mandate that the geotechnical professional "address the necessity for shoreline stabilization by *estimating time frames and rates of erosion* as if Renton's shorelines slowly erode at some readily ascertainable, uniform rate when, in reality, Renton has non-marine shorelines, shorelines where, for example, a single, high-river-flow event along the Cedar River or a single intense windstorm on Lake Washington could cause catastrophic erosion and related property damage along (and, in the case of the Cedar River, downstream of) developed shorelines that don't have adequate shoreline stabilization.

Such inappropriate requirements should not be included in Renton's SMP in relation to existing shoreline stabilization structures because the WAC does not mandate that they be included. Thus, geotechnical reports should not be required in Draft RMC 4-3-090.F.4.c.iii as a means by which to "demonstrate need". Correspondingly, for clarification, the appropriate section number (4-3-090.F.4.a) is proposed to be added to Draft RMC 4-3-090.F.4.a.v.

The two endnotes are set forth on the following two pages.

---

## Endnotes

<sup>1</sup> WAC 173-26-231(3)(a)(iii)(C) states:

(C) An **existing** shoreline stabilization structure may be **replaced** with a similar structure if there is a demonstrated need to protect **principal uses or structures** from erosion caused by currents, tidal action, or waves.

- The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
- Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.
- Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.
- For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

(Emphasis added.)

<sup>2</sup> WAC 173-26-231(3)(a)(iii)(B) states:

(B) **New** structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

(I) To protect **existing primary structures**:

- New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed **unless there is conclusive evidence, documented by a geotechnical analysis**, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(II) In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:

- The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
- **Nonstructural measures**, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

---

- The need to protect ***primary structures from damage due to erosion*** is demonstrated through a **geotechnical report**. The damage must be caused by natural processes, such as tidal action, currents, and waves.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(III) In support of ***water-dependent development*** when all of the conditions below apply:

- The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

- **Nonstructural measures**, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The need to protect ***primary structures from damage due to erosion*** is demonstrated through a **geotechnical report**.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(IV) To ***protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW*** when all of the conditions below apply:

- **Nonstructural measures**, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(Emphasis added.)

September 10, 2010

David Halinen  
Halinen Law Offices, P.S.  
1019 Regents Boulevard, Suite 202  
Fircrest, WA 98466

Re: DRAFT RESPONSE  
Renton's Draft Shoreline Management Plan (SMP)—The City's Currently Proposed Provisions Concerning Existing Shoreline Stabilization Structures and September 9, 2010 Changes Proposed by the Renton Shoreline Coalition

Dear Mr. Halinen:

Thank you for providing me with an opportunity to provide written comments relating to the current portions of Renton's Draft SMP concerning new and existing shoreline stabilization structures, the September 9, 2010 changes proposed by the Renton Shoreline Coalition in relation to existing shoreline stabilization structures, and portions of the State SMP Guidelines concerning new and existing shoreline stabilization structures. I have reviewed these materials as well as the draft SMP's proposed section entitled "Content of Geotechnical Report." I have extensive experience with the City of Renton and the Cedar River. Here are my initial comments:

1. The City of Renton has a responsibility to see that the Cedar River gets through the City without causing damage to City property or facilities, private property and the property and improvements of other jurisdictions.
2. For about ½ mile upstream of the Old Stoneway property, the entire left bank of the Cedar River ("left" when facing downstream) is undeveloped until the river crosses under I-405. (Actually, the left bank is "developed" in terms of being the location of the pedestrian/bicycle trail along the former railroad alignment.) In my opinion, if the City wants to encourage a more "native" condition to occur along the river, it should be directed to "unimprove" the left bank instead of the right bank where Stoneway, the City, and other private uses dictate that the City should do everything in its power to protect existing uses and development from damage by the river.
3. The consequences of removal of the existing 1,200 lineal feet of bulkhead along the Old Stoneway property, or of replacing that bulkhead with something of less certainty of protection – like so-called "soft bank protection" - include: risk to the upstream apartment complex, SR-169, the City's water and sewer pipelines, the City's Cedar River Park buildings, theatre, new swim park, and so on, in addition to the Stoneway property.

4. The SMP text talks repeatedly about “preventing damage” to a “primary structure”. That limited premise is dead wrong and irresponsible. It is just as important to consider risk to the infrastructure that is key to the function of the primary structure, e.g., the sewer, water, power, drainage and other utilities on the shoreline properties.
5. The premise that the Stoneway property should be subject to a geotechnical evaluation of the rate of erosion as part of a future “demonstration of need” for shoreline stabilization is absurd because, without a bulkhead, a single extraordinary flood event could be sufficient to completely change the course of the entire river – at least upstream of I-405 to well above the Stoneway land. A “demonstration of need” analysis might have an application somewhere else, although with my nearly 50 years of experience as a geotechnical specialist I cannot think of one place where it would truly have scientific validity.
6. The probable extent of channel migration at the subject location in areas without bulkheading is clearly defined by the existing walls of the Cedar River valley; at least that applies in this reach of the river (I-405 to Maplewood).
7. I think the “adverse consequences” that should be a factor in the City’s consideration of bulkhead removal should include consideration of whether such removal will result in an increase of required insurance coverage or an increased premium for flood protection insurance.
8. If the City wants to restore pristine bank conditions by bulkhead removal, then it should remove the left bank levee and revetment and let the river migrate across the bike trail and dog park instead of adding risk to already developed sites already in use along the right bank.
9. Re the City’s proposed “Content of Geotechnical Report”: There might be a time and place for estimating the time frame and rate of erosion, but that should be a possible consideration depending on site circumstances and not a requirement - especially where it is so obvious that the impact of a single river flow event is so much more important than river channel avulsion over time. Where the banks are already defined and constrained, and where existing development (no matter if residential, industrial or commercial) already exists along the river banks, it is a LOT more important to maintain the integrity of the existing protections and channel position than it is to estimate the rate of erosion. As noted in point 1, above, I believe that the City has more responsibility to maintain function and service than it does to impose some arbitrary standard of “returning to pristine conditions.”
10. The WAC standards are just as flawed as the draft SMP in regard to existing shoreline stabilization. They conflict with the reality of obvious situations where we as a society already recognize that a given shoreline is now developed, will stay developed, and should be preserved as developed and redeveloped over time, and should be accorded all reasonable assurance of protection from natural disaster—in contrast to being restored to some imaginary ecologic standard.
11. I see that protection of “primary structures” appears again and again in both the draft SMP and the State SMP Guidelines as well as protection of “principal uses and

David Halinen, Halinen Law Offices, P.S.

September 10, 2010

Page 3

structures”, so I emphasize that it is NOT just “primary structures” or “principal uses structures” that should be considered and protected – in this case by preserving or replacing the existing bulkhead as is where is - but also the support infrastructure.

12. In my judgment, it is important that several revisions be made to the draft SMP’s provisions relating to shoreline stabilization structures, especially existing structures, before the City Council can responsibly approve the SMP and send it off to Ecology.

I would be happy to appear before the City Council to discuss these issues in person. Unfortunately, I will be on vacation next week and unable to attend Monday night’s Council meeting.

I have attached a copy of my professional resume for you to forward to the Council with a copy of this letter in case the Council wishes information on my background.

Please let me know if I can be of further assistance.

Sincerely,

GeoEngineers, Inc.

Jon W. Koloski, LG, LEG  
Sr. Principal

Attachment: JWK resume

## Erika Conkling

---

**From:** Chip Vincent  
**Sent:** Monday, September 20, 2010 10:19 AM  
**To:** Erika Conkling  
**Subject:** FW: SMP Comments and Requests  
**Attachments:** image001.jpg

FYI.

-----Original Message-----

**From:** Terri Briere  
**Sent:** Monday, September 20, 2010 10:16 AM  
**To:** Chip Vincent  
**Subject:** FW: SMP Comments and Requests

FYI  
Terri Briere  
Renton City Council

---

**From:** Rich Zwicker  
**Sent:** Wednesday, September 15, 2010 8:46 AM  
**To:** laurieb@mvseac.com  
**Cc:** Terri Briere; Don Persson; Julia Medzegian  
**Subject:** RE: SMP Comments and Requests

Ms. Baker, this matter has been referred to the committee of the whole and is no longer in the Planning and Development Committee. Council President Don Persson chairs the Committee of the Whole, so I would suggest you direct your comments and requests to him for implementation, as Councilmember Briere, and myself, are simply members of COW and will work under Council President Persson's direction on this matter.

Thank you.

Rich Zwicker, Renton City Council

---

**From:** Laurie Baker [laurieb@mvseac.com]  
**Sent:** Tuesday, September 14, 2010 11:07 PM  
**To:** Terri Briere  
**Cc:** King Parker; Rich Zwicker; Marcie Palmer; Randy Corman; Don Persson; Greg Taylor; Anne Simpson ; budmanis@comcast.net; cfc@connerhomes.com; David Halinen; gregorybjames@comcast.net; jcdemund@gmail.com; Kevin Iden; lowella@mvseac.com; marlene@marlenewinter.com; monica.fix@boeing.com; patandbuzz@q.com  
**Subject:** SMP Comments and Requests

Council Member Briere,

I applaud your request at last night's Council meeting that all Council members read the SMP before the next discussion of it by the Committee of the Whole. I hope they will all read it. You also asked that they direct their questions to Staff.

I make the additional request that when Council Members direct questions to Staff, they also ask for documentation of their answers in the form of quotations of or citations to specific language and paragraph location in the various relevant documents.

As you know, the SMP is a complicated document that has been through at least one major renumbering, resulting in many notes and references being incorrect or missing. The recent rush to get the latest revisions in to the document and approved has no doubt caused similar errors. It is likely that Staff will find portions that do not say what Staff thinks they say.

An example of this occurred at a recent meeting that members of the Shoreline Coalition had with City Staff. I asked Staff why the draft SMP permitted building heights to rise at a rate of one horizontal to two vertical in Lake Washington reaches but were only allowed to rise at a rate of one horizontal to one vertical along the Cedar River reaches. This subject was in a section of the SMP that I had not read in detail before. The answer from Staff was that the one to two ratio was a typo and would be changed to one to one in both reaches. However, if I were the Port Quendall developer and was relying on the one to two language, it would be unpleasant to discover that it had been changed to one to one to fix a "typo".

Last night you further asked that the Council members read all the supporting SMP documents. Again, I support this request. Errors in some of these documents have been a source of concern to me. One example is illustrated below.

Barbara Nightingale indicated that the whole SMP was based on the Inventory that was done at the beginning of the project. This Inventory includes a series of maps that are coded to indicate existing shoreline modifications. One of the most glaring errors is how properties on Map 11-A are coded. The northern two properties are coded as having no dock and no structure. They clearly have both. The Seahawks facility is coded as being within 20 feet of the shoreline. Two properties on the southern portion of the Seahawks facility are coded as having no structure. There is a structure clearly visible on one of them and I doubt that the Seahawks facility is within 20 feet of the shoreline. There are other errors but these are illustrative.

Barbara did stress looking at the final version of the documents. I took this screen shot from the website today so I believe this is from the final version. Sorry if it is an eye test but I encourage you to look at it on the official website.

[cid:image001.jpg@01CB5461.4C9C3E60]

I raise these accuracy issues because the impact of this document will be felt for a long time. Having Council members read the document and having Staff support their answers, will hopefully prevent the kind of errors that have gone uncorrected in the previous drafts.

I'm pleased that the City has taken the time to consider the property owners' views and make changes. Last night it seemed that some Council members thought that the bulkhead issue is only important to the Stoneway site. The provisions related to bulkheads are important to single-family homeowners as well.

Staff has said repeatedly that it is unlikely that any single family bulkheads will have to be removed but they nevertheless insist on retaining the language that requires a study. This is a waste of money and therefore makes redevelopment of single-family parcels more expensive in Renton than it might be on other parts of the Lake. Does Renton want to discourage redevelopment of the residential part of its Lake Washington Shoreline?

Existing bulkheads should only require review when there are proposed changes to the bulkhead. Staff explained to us that the reason for coupling review of the bulkhead to other changes on the site was so that over time the bulkheads would become "less impactful". The clear goal is to have some or all existing bulkheads, residential and commercial, either replaced with what is now considered "less impactful" shoreline stabilization or to eliminate existing shoreline stabilization structures altogether. This restoration requirement clearly exceeds the "no net loss" principle.

Again I ask, when and in what forum did Renton establish a goal to exceed the State's "no net loss" requirement by imposing regulations that will, over time, produce perceptible improvements to ecological functions at the expense of private property owners?

Thank you for your consideration of these comments.

Laurie Baker  
8225 S 128th  
Seattle, WA 98178



**Shoreline Master Program Update  
City of Renton**

**Shoreline Modifications  
Map 11-A**

- 1. Green: Wetlands
- 2. Yellow: Stream Buffer
- 3. Orange: Wetland Buffer
- 4. Red: Wetland Buffer
- 5. Purple: Wetland Buffer
- 6. Pink: Wetland Buffer
- 7. Brown: Wetland Buffer
- 8. Light Green: Wetland Buffer
- 9. Light Yellow: Wetland Buffer
- 10. Light Orange: Wetland Buffer
- 11. Light Red: Wetland Buffer
- 12. Light Purple: Wetland Buffer



City of Renton  
 Planning Department  
 10000 1st Avenue, NE  
 Renton, WA 98059  
 Phone: (206) 875-3000  
 Fax: (206) 875-3001  
 www.cityofrenton.com





## *Renton Shoreline Coalition*

*P.O. Box 624  
Renton, Washington 98057-0624*

### **HAND-DELIVERED**

September 21, 2010

City of Renton Department of Community and Economic Development  
Attn: Alex Pietsch, Administrator  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

City of Renton Department of Public Works  
Attn: Gregg Zimmerman, P.E., Administrator  
1055 S. Grady Way, Fifth Floor  
Renton, Washington 98057

City of Renton Department of Community Services  
Attn: Terry Higashiyama, Administrator  
1055 S. Grady Way, Sixth Floor  
Renton, Washington 98057

Re: Renton's Draft SMP

**(1) Materials for Your Consideration, (2) a Further Proposed Text Compromise in regard to Draft RMC 4-3-090.F.4.c.iii, and (3) a Minor Proposed Text Amendment Corresponding to the first of our September 13, 2010 Proposed Text Amendment Concerning the two tables set forth in Draft RMC 4-10-095.F.1 and F.2**

Dear Mr. Pietsch, Mr. Zimmerman and Ms. Higashiyama:

I am writing on behalf of the Renton Shoreline Coalition to provide you with the following materials to aid you in your work on a memorandum to the City Council that Jay Covington announced last night that the three of you are preparing in regard to outstanding SMP issues (including SMP issues that we raised in our submittal to the Council on September 13, 2010):

- (1) The three-page, ledger-sized attached table that sets forth the Coalition's 9-21-10 Comparison of the WAC Regulations Concerning Existing Shoreline Stabilization Structures with draft RMC 4-3-090.F.4.c in Renton's 9-8-10 Draft SMP, the Coalition's 9-9-10 Proposed Revisions to draft RMC 4-3-090.F.4.c.iii, and the Coalition's Further Proposed 9-21-10 Compromise Revisions to draft RMC 4-3-090.F.4.c.iii;
- (2) A copy of a transcript of the portion of last night's City Council meeting second Audience Comment segment during which engineering geologist Jon Koloski of GeoEngineers, Inc. addressed the Council; and

City of Renton Department of Community and Economic Development, Attn: Alex Pietsch,  
Administrator

City of Renton Department of Public Works, Attn: Gregg Zimmerman, P.E., Administrator

City of Renton Department of Community Services, Attn: Terry Higashiyama, Administrator

September 21, 2010

Page 2

- (3) In case you don't already have it, a copy of the Coalition's September 13, 2010 letter to the City Council along with the following three attachments thereto:
  - (a) A copy of the Coalition's September 9, 2010 letter to the Planning Commission with Attachment A thereto;
  - (b) An excerpt of 11 pages from the draft SMP regulations, in which a few short, additional revisions are proposed relating to existing shoreline stabilization structures, the extent of allowed setback and buffer modifications, and the extent of impervious surfaces allowed in the setback/buffer in connection with projects that provide community access; and
  - (c) A letter from engineering geologist Jon Koloski to David Halinen (Mr. Halinen is one of the Coalition's Steering Committee members), providing Mr. Koloski's written comments relating to the current portions of Renton's Draft SMP concerning new and existing shoreline stabilization structures.

In addition, I am writing on behalf of the Coalition to propose the additional compromise language in relation to Draft RMC 4-3-090.F.4.c.iii that is set forth on page 3 of the attached table. Please review that page carefully.

Finally, note that on the eighth, ninth and eleventh pages of the 11-page excerpt from the draft SMP regulations that were attached to the Coalition's September 13, 2010 letter to the City Council (a set of that letter and its attachments being attached to this letter as noted above), minor revisions were requested to the two tables set forth in Draft RMC 4-10-095.F.1 and F.2. For consistency with the first of those requested revisions as well as with other portions of the table that go beyond changes to structures (for example, increases to impervious surfaces that don't involve structures) and for internal consistency within the introductory paragraph and section heading of Draft RMC 4-10-095.F, the Coalition requests that the introductory paragraph of Draft RMC 4-10-095.F be slightly revised to read as follows:

**F. Partial and Full Compliance, Alteration of an Existing Structure or Site:**

The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of the Shoreline Master Program. Alteration or expansion of existing uses, buildings and/or structures may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function.

City of Renton Department of Community and Economic Development, Attn: Alex Pietsch,  
Administrator

City of Renton Department of Public Works, Attn: Gregg Zimmerman, P.E., Administrator

City of Renton Department of Community Services, Attn: Terry Higashiyama, Administrator

September 21, 2010

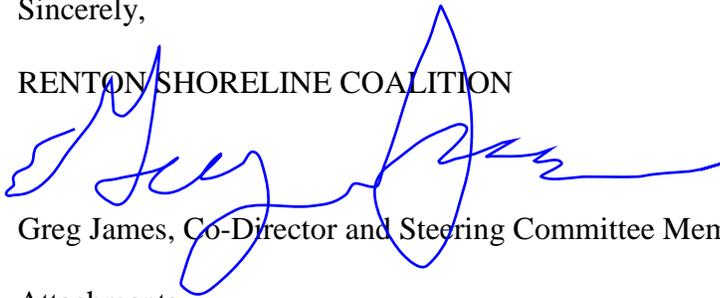
Page 3

In no case shall a structure with a non-conforming setback from the shoreline be allowed to extend further waterward than the existing structure.

Thank you for your consideration of the above. Please phone David Halinen at (206) 443-4684 if you have any questions or comments concerning the above.

Sincerely,

RENTON SHORELINE COALITION



Greg James, Co-Director and Steering Committee Member

Attachments

cc: Sandy Mackie, Perkins Coie (via email, with copy of attachments)

Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter (via email, with copy of attachments)

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (via email, with copy of attachments)

Bonnie Walton, Renton City Clerk (**HAND-DELIVERED, WITH COPY OF ATTACHMENTS, FOR SUBMITTAL INTO THE RECORD CONCERNING THE PROPOSED RENTON SHORELINE MASTER PROGRAM**)

Renton Mayor Denis Law (hand-delivered, with copy of attachments)

Renton City Council members (hand-delivered, with copy of attachments 1 and 2 only)

Larry Warren, Renton City Attorney (hand-delivered, with copy of attachments)

Chip Vincent, Renton Planning Director (hand-delivered, with copy of attachments)

Erika Conkling, Senior Planner, Renton Planning Division (hand-delivered, with copy of attachments)

**Renton Shoreline Coalition’s 9-21-10 Comparison of the WAC Regulations Concerning Existing Shoreline Stabilization Structures with draft RMC 4-3-090.F.4.c in Renton’s 9-8-10 Draft SMP, the Coalition’s 9-9-10 Proposed Revisions to draft RMC 4-3-090.F.4.c.iii, and the Coalition’s Further Proposed 9-21-10 Compromise Revisions to draft RMC 4-3-090.F.4.c.iii**

Reference	Text	Coalition Comments Relating to the Corresponding Text
<p><b>WAC 173-26-231(3)(a)(iii)(C)</b></p> <p>(The part of the State SMP Guidelines addressing existing shoreline stabilization structures)</p>	<p>(C) An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect <u>principal uses or structures</u> from erosion caused by currents, tidal action, or waves.</p> <ul style="list-style-type: none"> <li>• The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.</li> <li>• Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.</li> <li>• Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.</li> <li>• Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.</li> <li>• For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.</li> </ul> <p>(Emphasis added.)</p>	<ol style="list-style-type: none"> <li>(1) The text places no limits on <u>how</u> a need for protection of principal uses or structures may be demonstrated.</li> <li>(2) The object of protection: “<u>principal uses or structures</u>” (not merely “primary structures”).</li> <li>(3) The object of protection is not limited to <u>existing</u> principal uses or structures, and the text says nothing suggesting that a mere change of principal uses or structures triggers a requirement for a demonstration of need. The lack of such a limitation implies that (a) existing shoreline stabilization structures may be used to protect both <u>existing</u> and <u>changed</u> principal uses or structures and (b) no “demonstration of need” is required to be made unless the existing shoreline stabilization structure is proposed to be replaced.</li> <li>(4) No mention at all is made of a “geotechnical report” or of a “geotechnical analysis.”</li> <li>(5) No mention at all is made of requiring an evaluation of the existing shoreline stabilization structure in relation to a hierarchy of shoreline stabilization alternatives.</li> </ol>
<p><b>Draft RMC 4-3-090.F.4.c.</b></p> <p>(The primary part of Renton’s 9-8-10 Draft SMP addressing existing shoreline stabilization structures—existing shoreline stabilization structures are also addressed under the “Major Alteration” row of each of the two tables set forth in Draft RMC 4-10-095.F.1 and F.2)</p>	<p><b>c. Existing Shoreline Stabilization Structures:</b> Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced if they meet the applicable criteria below:</p> <ol style="list-style-type: none"> <li>i. <b>Repair of Existing Structures:</b> An existing shoreline stabilization structure may be repaired as long as it serves to perform a shoreline stabilization function for a legally established land use, but shall be subject to the provisions below if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.</li> <li>ii. <b>Additions to Existing Structures:</b> Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.</li> <li>iii. <b>Changes in Land Use:</b> An existing shoreline stabilization structure <u>established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use</u> may be retained or replaced with a similar structure if: <ol style="list-style-type: none"> <li>(a) There is <u>a demonstrated need documented by a geotechnical analysis</u> to protect principal uses or structures from erosion caused by currents or waves; and</li> <li>(b) An <u>evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above</u>, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.</li> </ol> </li> <li>iv. <b>Waterward Replacement Prohibited for Structures Protecting Residences:</b> Replacement walls or bulkheads, if allowed, shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.</li> <li>v. <b>Restoration and Maintenance of Soft Shorelines Allowed:</b> Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark. Replenishment of substrate materials to maintain the specifications of the permitted design may be allowed as maintenance.</li> <li>vi. <b>No Net Loss:</b> Where a net loss of ecological functions associated with critical habitats would occur by leaving an existing structure that is being replaced, the</li> </ol>	<p>The following requirements of Draft RMC 4-3-090.F.4.c.iii <u>go beyond the requirements of above-quoted WAC 173-26-231(3)(a)(iii)(C)</u>:</p> <ol style="list-style-type: none"> <li>(1) On its face, Draft RMC 4-3-090.F.4.c.iii would limit replacement of existing shoreline stabilization structures to situations where the existing shoreline stabilization structures were “established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use.” As a consequence, F.4.c.iii would not allow replacement of an existing shoreline stabilization structure that continues to serve a site’s <u>ongoing existing</u> use. Such a limitation makes no sense. The Coalition assumes that the City does not intend that consequence and that this limitation is an oversight. (Note that the Coalition’s September 9, 2010 proposed revisions to Draft RMC 4-3-090.F.4.c.iii would correct that anomaly.)</li> <li>(2) Regardless of whether an existing shoreline stabilization structure would be proposed to be replaced or merely retained, Draft RMC 4-3-090.F.4.c.iii mandates that, on sites that have an existing shoreline stabilization structure, every change of use involve both (a) a demonstration of need for the structure documented by a geotechnical analysis to protect principal uses or structures and (b) an evaluation of the existing shoreline stabilization structure in relation to the draft SMP’s hierarchy of shoreline stabilization alternatives.<sup>1</sup> The linkage of (i) that required demonstration and that required evaluation (and the burdens of the cost and potential results thereof) to (ii) a mere change of use when no replacement of the existing shoreline stabilization structure is proposed is unfair to owners of property protected by existing shoreline stabilization structures.</li> </ol>

<sup>1</sup> Note that as Attachment A to the Coalition’s September 9, 2010 letter to the Renton Planning and Development Committee makes clear, WAC 173-26-231 calls for SMPs to require a demonstration of need documented by a geotechnical analysis and an evaluation of shoreline stabilization alternatives in the context of new and expanded shoreline stabilization structures rather than existing shoreline stabilization structures.

	<p>structure shall be removed as part of the replacement measure.</p> <p>(Emphasis added.)</p>	<p>Further, on its face, that linkage amounts to an unconstitutional regulatory taking and a violation of RCW 82.02.020 because of the lack of a nexus between (A) an ostensible problem caused by the proposed change of use of the shoreline property and (B) the retention of the existing shoreline stabilization structure. (Note that when an existing shoreline stabilization structure is not being expanded in conjunction with a change of use, the change of use is causing no problem in relation to the existing shoreline stabilization structure and thus the change of use cannot serve as a lawful basis for the linkage.)</p>
<p><b>Draft RMC 4-3-090.F.4.c. with the Renton Shoreline Coalition's 9-9-10 Proposed Revisions to subsection iii thereof.</b></p>	<p><b>c. Existing Shoreline Stabilization Structures:</b> Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced if they meet the applicable criteria below:</p> <ol style="list-style-type: none"> <li>i. <b>Repair of Existing Structures:</b> An existing shoreline stabilization structure may be repaired as long as it serves to perform a shoreline stabilization function for a legally established land use, but shall be subject to the provisions below if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.</li> <li>ii. <b>Additions to Existing Structures:</b> Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.</li> <li>iii. <b>Replacement of Existing Structures/Changes in Land Use:</b> An existing shoreline stabilization structure <del>established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use</del> may be retained or replaced with a similar structure <b>to protect existing or changed principal uses or structures</b> if: <ol style="list-style-type: none"> <li>(1) <del>There is a demonstrated need documented by a geotechnical analysis to protect principal uses or structures from erosion caused by currents or waves; and</del></li> <li>(2) <del>An evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.</del></li> </ol> </li> <li>iv. <b>Waterward Replacement Prohibited for Structures Protecting Residences:</b> Replacement walls or bulkheads, if allowed, shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.</li> <li>v. <b>Restoration and Maintenance of Soft Shorelines Allowed:</b> Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark. Replenishment of substrate materials to maintain the specifications of the permitted design may be allowed as maintenance.</li> <li>vi. <b>No Net Loss:</b> Where a net loss of ecological functions associated with critical habitats would occur by leaving an existing structure that is being replaced, the structure shall be removed as part of the replacement measure.</li> </ol> <p>(Proposed new text is illustrated above by <b>underlining and yellow-highlighting</b>. Proposed deletions are illustrated by <del>strike-through</del>.)</p>	<p>The Renton Shoreline Coalition's 9-9-10 Proposed Revisions to Draft RMC 4-3-090.F.4.c.iii would:</p> <ol style="list-style-type: none"> <li>(1) Make Draft RMC 4-3-090.F.4.c.iii perfectly consistent with above-quoted WAC 173-26-231(3)(a)(iii)(C); and</li> <li>(2) Eliminate most of the above-explained mandates of Draft RMC 4-3-090.F.4.c.iii that go beyond the requirements of above-quoted WAC 173-26-231(3)(a)(iii)(C).</li> </ol>

<p><b>Draft RMC 4-3-090.F.4.c.iii with the Renton Shoreline Coalition's 9-9-10 Proposed Revisions and 9-21-10 Proposed Further Compromise Revisions</b></p>	<p>iii. <b>Replacement of Existing Structures/Changes in Land Use:</b> An existing shoreline stabilization structure established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use may be retained or replaced with a similar structure to protect existing or changed principal uses or structures if:</p> <p>(1) There is a demonstrated need (documented by a licensed geologist, engineering geologist, hydrogeologist, or civil engineer) geotechnical analysis to protect principal uses or structures from erosion caused by currents or waves; and</p> <p>(2) An evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.</p> <p>(The Coalition's 9-9-10 proposed new text is illustrated above by <u>underlining and yellow-highlighting</u>. The Coalition's 9-21-10 proposed new text is illustrated above by <u>underlining and gray-highlighting</u> Proposed deletions are illustrated by <del>strike through</del>.)</p> <p>With the above-proposed revisions (and with the underlining, highlighting, and illustrated deletions omitted), Draft RMC 4-3-090.F.4.c.iii would appear as follows:</p> <p>iii. <b>Replacement of Existing Structures/Changes in Land Use:</b> An existing shoreline stabilization structure may be retained or replaced with a similar structure to protect existing or changed principal uses or structures if there is a demonstrated need (documented by a licensed geologist, engineering geologist, hydrogeologist, or civil engineer) to protect principal uses or structures from erosion caused by currents or waves.</p>	<p>As a further compromise suggestion, the Coalition proposes the insertion of the gray-shaded text into RMC 4-3-090.F.4.c.iii. If, as the Coalition here suggests, "geotechnical analysis" is replaced by the phrase "licensed geologist, engineering geologist, hydrogeologist, or civil engineer," then:</p> <p>(a) The City will know that a licensed professional will document the demonstration of need (thereby addressing the concern that Planning Director Chip Vincent raised during the September 13, 2010 City Council meeting); and</p> <p>(b) The Coalition and shoreline property owners (both private property owners and public property owners, including the City) will have the assurance that the geotechnical report content requirements specified in Draft RMC 4-3-090.F.4.a.v (requirements that relate to <i>new or expanded</i> shoreline stabilization structures but that don't make good sense in regard to <i>existing</i> shoreline stabilization structures <sup>2</sup>) do not apply to demonstration of need in regard to <i>existing</i> shoreline stabilization structures.</p>
-------------------------------------------------------------------------------------------------------------------------------------------------------------	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

<sup>2</sup> For clarification, the Coalition hereby reiterates its request of September 9, 2010 that Draft RMC 4-3-090.F.4.a.v be revised to state:

v. **Content of Geotechnical Report:** Geotechnical analysis pursuant to this section 4-3-090.F.4.a that addresses the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. The geotechnical analysis shall evaluate the need and effectiveness of both hard and soft armoring solutions in preventing potential damage to a primary structure. Consideration should be given to permit requirements of other agencies with jurisdiction.

(Proposed new text is illustrated above by underlining and yellow-highlighting. The proposed deletion is illustrated by ~~strike through~~.)



1 First of all, relative to the specific issue of an existing bulkhead along the river near the  
2 AnMarCo Property: that river has been trained, if you will, to be in that location by that  
3 bulkhead for half a century, and it is my opinion that to remove the bulkhead and replace it with  
4 anything other than a comparable structural bulkhead would invite change. Change in this  
5 particular case should not be measured in terms of inches of erosion per year but what kind of  
6 change might occur in a catastrophic context. One storm. One flood. One day.

7

8 And that's the kind of protection that must be offered in an area where development, in my  
9 opinion, where development already exists. And it certainly does exist in that area. And that  
10 risk, if that river should relocate catastrophically is not just the private ownership of AnMarCo  
11 but a vast array of property owned by the City of Renton, by the State highway department, and  
12 so on. So the consequences of a channel change are not measured in inches of erosion per year,  
13 by any stretch of the imagination. It is the catastrophic change that the guidelines need to  
14 address.

15

16 A geotechnical engineer, in my view, is not required to make the assessment of need. I think any  
17 lay person can view the consequences of need at this particular location. And especially for a  
18 river through a major developed metropolitan center, the consequences are certainly disastrous if  
19 the river should escape from its existing channel. So it's not a matter of a geotechnical  
20 practitioner indicating the need. As far as a geotechnical specialist providing design  
21 recommendations for whatever mechanism is selected, I totally agree. That's what I do for a  
22 living. And so I certainly, you know, adhere to the practice of employing the skills that are  
23 necessary to make that design.

24

25 And the last thing that I wanted to comment on is just that soft bank stabilization, which means  
26 using vegetation and/or driftwood or placed logs and that sort of thing, certainly has its place.  
27 And, quite honestly, its intention is to restore a pristine condition. It is not to train a river. It is  
28 not to constrain floods. And in this location, the consequences of using an untried,  
29 undocumented (because we don't have any history) soft bank stabilization would be a profound

1 mistake on the part of the City of Renton. What you need in a situation like this is whatever  
2 means it takes to avoid catastrophic damage.  
3  
4 Now if I could answer any question that any of you may have about that science or that location,  
5 I'd be happy to do so.



*Renton Shoreline Coalition*

*P.O. Box 624  
Renton, Washington 98057-0624*

CITY OF RENTON

SEP 13 2010

RECEIVED  
CITY CLERK'S OFFICE

**HAND-DELIVERED FOR SUBMITTAL  
INTO THE RECORD CONCERNING THE PROPOSED  
RENTON SHORELINE MASTER PROGRAM**

September 13, 2010

Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

CITY OF RENTON  
RECEIVED

AUG 13 2010

BUILDING DIVISION

RECEIVED

SEP 13 2010  
Renton City Council

Re: Renton's Draft SMP  
**Request that the City Council refer the SMP to the Committee of the Whole**

Dear Councilmembers:

I am writing on behalf of the Coalition to request that you refer to the Committee of the Whole the version of the Draft SMP that the Planning and Development Committee forwarded to you last Thursday. We appreciate the extensive work that has been done by City Staff and by the Committee. However, a few important issues remain to be resolved to the Coalition's satisfaction, issues that the entire Council should review in Committee. The entire Council and the public should also be given a reasonable period of time to read the 237 pages of the SMP policies and regulations that are attached to as Attachments A and D to the approval resolution that you now have before you before you take a vote on it.

In support of our request, please find attached to this letter the following materials that should be reviewed in Committee as a prelude to a few further SMP text revisions:

- (1) A copy of the Coalition's September 9, 2010 letter to the Planning Commission with Attachment A thereto [note that that attachment continues to set forth the Coalition's requested revisions to two portions of RMC 4-3-090.F.4 (Shoreline Stabilization)];
- (2) An excerpt of several pages from the draft SMP regulations, in which a few short, additional revisions are proposed relating to existing shoreline stabilization structures, the extent of allowed setback and buffer modifications, and the extent of impervious surfaces allowed in the setback/buffer in connection with projects that provide community access; and
- (3) A letter from engineering geologist Jon Koloski of GeoEngineers, Inc. to David Halinen (Mr. Halinen is one of the Coalition's Steering Committee members), providing Mr. Koloski's written comments relating to the current portions of Renton's Draft SMP concerning new and existing

shoreline stabilization structures and providing technical reasons why it is imperative that the Council does further work on those topics.

I also wish to point out to you that we discovered just this afternoon that there is a problem with the end note numbering of at least some of the end notes that follow the SMP's bulk standards. For example, end note 9, which deals with impervious surface limitations with the buffer/setback is only cited in the body of the table in reference to maximum building heights. The table needs to be reviewed carefully and appropriate corrections made.

Thank you for your consideration.

Sincerely,

RENTON SHORELINE COALITION



Anne Simpson, Co-Director and Steering Committee Member

Attachments

cc: Sandy Mackie, Perkins Coie (via email, with copy of attachments)

Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter (via email, with copy of attachments)

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (via email, with copy of attachments)

Renton Mayor Denis Law (hand-delivered, with copy of attachments)

Larry Warren, Renton City Attorney (hand-delivered, with copy of attachments)

Chip Vincent, Renton Planning Director (hand-delivered, with copy of attachments)

Erika Conkling, Senior Planner, Renton Planning Division (hand-delivered, with copy of attachments)



## Renton Shoreline Coalition

P.O. Box 624  
Renton, Washington 98057-0624

**HAND-DELIVERED FOR SUBMITTAL**  
**INTO THE RECORD CONCERNING THE PROPOSED**  
**RENTON SHORELINE MASTER PROGRAM**

September 9, 2010

Planning and Development Committee  
of the Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's June 2010 Draft SMP  
**Our simplified proposed revisions concerning the outstanding *existing shoreline stabilization structures* issue**

Dear Committee Members Briere, Parker and Zwicker:

Attached hereto as Attachment A please find the Renton Shoreline Coalition's simplified proposed revisions concerning the outstanding issue relating to existing shoreline stabilization structures along with a statement of supporting rationale for the revisions.

Attachment A to this letter is intended to serve as the Coalition's substitute for Attachment A to the Coalition's letter to you of August 26, 2010. In view of the proposed revisions set forth on Attachment A to this letter, the Coalition hereby withdraws both (1) Attachment A to the Coalition's letter to you of August 26, 2010 and (2) the corresponding portion of the Coalition's request made in that earlier letter that sought elimination of the provisions relating to existing shoreline stabilization in the tables for "Partial Compliance for Non-Single-Family Development" and "Partial Compliance for Single-Family Development" set forth in draft SMP 4-10-095F.1 and F.2.

We respectfully request your favorable action concerning the attached proposed revisions. Please let us know if you have any questions or comments concerning them.

Sincerely,

RENTON SHORELINE COALITION

  
Jeanne DeMund, Co-Director and Steering Committee Member

Attachment

Planning and Development Committee  
of the Renton City Council  
September 9, 2010  
Page 2

cc: Sandy Mackie, Perkins Coie (via email, with copy of attachment)

Renton Shoreline Coalition Steering Committee Members Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Jeanne DeMund, Bud & Marilyn Dennison, Monica Fix, David Halinen, Kevin Iden, and Marlene Winter (via email, with copy of attachment)

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (via email, with copy of attachment)

Renton Mayor Denis Law (hand-delivered, with copy of attachment)

City Council Members Don Persson, Greg Taylor, Randy Corman, and Marcie Palmer (hand-delivered, with a copy of the attachment)

Larry Warren, Renton City Attorney (hand-delivered, with copy of attachment)

Chip Vincent, Renton Planning Director (hand-delivered, with copy of attachment)

Erika Conkling, Senior Planner, Renton Planning Division (hand-delivered, with copy of attachment)

## ATTACHMENT A

### **Renton Shoreline Coalition's September 9, 2010 proposed revisions to two portions of RMC 4-3-090.F.4 (Shoreline Stabilization) of Renton's September 2010 draft SMP**

The Coalition's proposed revisions to the September 2010 draft SMP text are set forth below. Proposed new text is illustrated below by underlining and yellow-highlighting. Proposed deletions are illustrated by ~~strike-through~~.

#### **Draft RMC 4-3-090.F.4.c.**

- c. **Existing Shoreline Stabilization Structures:** Existing shoreline stabilization structures not in compliance with this code may be retained, repaired, or replaced if they meet the applicable criteria below:
- i. **Repair of Existing Structures:** An existing shoreline stabilization structure may be repaired as long as it serves to perform a shoreline stabilization function for a legally established land use, but shall be subject to the provisions below if the land use for which the shoreline stabilization structure was constructed is abandoned per RMC 4-10-060 Non-conforming Uses, or changed to a new use.
  - ii. **Additions to Existing Structures:** Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.
  - iii. **Replacement of Existing Structures/Changes in Land Use:** An existing shoreline stabilization structure ~~established to serve a use that has been abandoned per RMC 4-10-060 Non-conforming Uses, discontinued, or changed to a new use~~ may be retained or replaced with a similar structure to protect existing or changed principal uses or structures if:
    - (1) ~~T~~there is a demonstrated need ~~documented by a geotechnical analysis~~ to protect principal uses or structures from erosion caused by currents or waves; ~~and~~
    - (2) ~~An evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in subsection a.iii, above, shows that a more preferred level of shoreline stabilization is infeasible. In the case of an existing shoreline stabilization structure composed of rigid materials, if alternatives 1-3 of the hierarchy in subsection a.iii would be infeasible then the existing shoreline stabilization structures could be retained or replaced with a similar structure.~~

#### **Draft RMC 4-3-090.F.4.a.v**

v. **Content of Geotechnical Report:** Geotechnical analysis pursuant to ~~this section~~ 4-3-090.F.4.a that addresses the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. The geotechnical analysis shall evaluate the need and effectiveness of both hard and soft armoring solutions in preventing potential damage to a primary structure. Consideration should be given to permit requirements of other agencies with jurisdiction.

## Rationale for the Above-Proposed Revisions

- (1) Draft RMC 4-3-090.F.4.c.iii (the Draft SMP section addressing *replacement of existing shoreline stabilization structures*) has requirements that go far beyond the mandated SMP requirements of WAC 173-26-231(3)(a)(iii)(C)<sup>1</sup>, which is the only subsection of the State SMP Guidelines that addresses *replacement of existing shoreline stabilization structures*.
- (2) Unlike Draft RMC 4-3-090.F.4.c.iii, WAC 173-26-231(3)(a)(iii)(C):
  - (a) *Does not* call for “demonstrated need” to be *documented by a geotechnical analysis*; and
  - (b) *Does not* call for an evaluation of the existing shoreline stabilization structure in relation to a hierarchy of shoreline stabilization alternatives.
- (3) Note that the State SMP Guidelines do require geotechnical reports and an evaluation of shoreline stabilization alternatives in relation to proposed *new or expanded shoreline stabilization*. [See WAC 173-26-231(3)(a)(iii)(B),<sup>2</sup> which is quoted in endnote 2, below, which relates to *new* structural shoreline stabilization measures, and which three times references scenarios in which geotechnical reports and an evaluation of nonstructural shoreline stabilization alternatives are to be required.]

However, the State SMP Guidelines do not require geotechnical reports or an evaluation of shoreline stabilization alternatives in regard to *existing shoreline stabilization structures*, which is the subject of draft RMC 4-3-090.F.4.c.iii. [See WAC 173-26-231(3)(a)(iii)(C), which is quoted in endnote 1, below, which relates to *existing* shoreline stabilization structures, and which never mentions requiring geotechnical reports or an evaluation of shoreline stabilization alternatives.]

The absence of any call for such a requirement under WAC 173-26-231(3)(a)(iii)(C) in contrast to the repeated calls for such a requirement under WAC 173-26-231(3)(a)(iii)(B) make it abundantly clear that the intent of the Shoreline Guidelines is not to mandate that SMPs require geotechnical reports or an evaluation of shoreline stabilization alternatives in regard to *existing shoreline stabilization structures*.

- (4) The Coalition’s above-proposed revisions to draft RMC 4-3-090.F.4.c.iii would appropriately eliminate the provisions requiring a geotechnical report and an evaluation of shoreline stabilization alternatives as well as increase draft RMC 4-3-090.F.4.c.iii’s consistency with WAC 173-26-231(3)(a)(iii)(C).
- (5) When WAC 173-26-231(3)(a)(iii)(C) refers to protection of *principal uses or structures*, both *existing* principal uses or structures and *changed* principal uses or structures are encompassed. This is made clear by comparison with WAC 173-26-231(3)(a)(iii)(B), which, when it wants to limit protection to *existing* primary structures [as in subsection (I) thereof], it does so explicitly. (See endnote 2.) Thus, the application of the limited criteria of WAC 173-26-231(3)(a)(iii)(C) to draft RMC 4-3-090.F.4.c.iii as set forth in the Coalition’s above-stated revisions in the context of protecting “existing or changed principal uses or structures” is consistent with the WAC.

(6) Without the requested elimination of draft RMC 4-3-090.F.4.c.iii's current provision requiring that demonstration of need be "documented by a geotechnical analysis", the geotechnical analysis might be subject to the "Content of Geotechnical Report" requirements of draft RMC 4-3-090.F.4.a.v, which would be inappropriate. That draft subsection currently states:

v. **Content of Geotechnical Report:** Geotechnical analysis pursuant to this section that addresses the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. The geotechnical analysis shall evaluate the need and effectiveness of both hard and soft armoring solutions in preventing potential damage to a primary structure. Consideration should be given to permit requirements of other agencies with jurisdiction.

- (a) Those draft content requirements don't make good sense in relation existing shoreline stabilization structures and, thus, it is inappropriate to link those requirements to the demonstration of need required by draft RMC 4-3-090.F.4 c.iii.
- (b) Note that those geotechnical report content requirements narrowly focus on the need to protect *a primary structure* [which is what WAC 173-26-231(3)(a)(iii)(B) focuses on when it mandates that geotechnical reports be required by SMPs in relation to new shoreline stabilization structures] but WAC 173-26-231(3)(a)(iii)(C)'s broader focus in relation to existing shoreline stabilization structures is to protect *principal uses or structures*, not just *a primary structure*.
- (c) Note that those draft content requirements arbitrarily mandate that the geotechnical professional "address the necessity for shoreline stabilization by *estimating time frames and rates of erosion* as if Renton's shorelines slowly erode at some readily ascertainable, uniform rate when, in reality, Renton has non-marine shorelines, shorelines where, for example, a single, high-river-flow event along the Cedar River or a single intense windstorm on Lake Washington could cause catastrophic erosion and related property damage along (and, in the case of the Cedar River, downstream of) developed shorelines that don't have adequate shoreline stabilization.

Such inappropriate requirements should not be included in Renton's SMP in relation to existing shoreline stabilization structures because the WAC does not mandate that they be included. Thus, geotechnical reports should not be required in Draft RMC 4-3-090.F.4.c.iii as a means by which to "demonstrate need". Correspondingly, for clarification, the appropriate section number (4-3-090.F.4.a) is proposed to be added to Draft RMC 4-3-090.F.4.a.v.

The two endnotes are set forth on the following two pages.

---

## Endnotes

<sup>1</sup> WAC 173-26-231(3)(a)(iii)(C) states:

(C) An **existing** shoreline stabilization structure may be **replaced** with a similar structure if there is a demonstrated need to protect **principal uses or structures** from erosion caused by currents, tidal action, or waves.

- The replacement structure should be designed, located, sized, and constructed to assure no net loss of ecological functions.
- Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure.
- Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure.
- Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark.
- For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

(Emphasis added.)

<sup>2</sup> WAC 173-26-231(3)(a)(iii)(B) states:

(B) **New** structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

(I) **To protect *existing primary structures*:**

- New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed **unless there is conclusive evidence, documented by a geotechnical analysis**, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(II) **In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:**

- The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.
- **Nonstructural measures**, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

---

- The need to protect ***primary structures from damage due to erosion*** is demonstrated through a **geotechnical report**. The damage must be caused by natural processes, such as tidal action, currents, and waves.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(III) In support of ***water-dependent development*** when all of the conditions below apply:

- The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

- **Nonstructural measures**, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The need to protect ***primary structures from damage due to erosion*** is demonstrated through a **geotechnical report**.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(IV) To ***protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW*** when all of the conditions below apply:

- **Nonstructural measures**, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

- The erosion control structure will not result in a net loss of shoreline ecological functions.

(Emphasis added.)

Table 4-3-090. D.7a Shoreline Bulk Standards

	Natural	Urban Conservancy	Shoreline Single Family	High Intensity	High Intensity Isolated	Aquatic
<b>Setbacks and Buffers</b>						
<b>Structure Setback from Ordinary High Water Mark (OHWM)- Minimum<sup>1</sup></b>						
<b>Water-dependent Use</b>	100 ft.	100 ft.	None <sup>2</sup>	None <sup>2</sup>	None	
<b>Water-related or Water Enjoyment Use</b>	100 ft.	100 ft.	100 ft. <sup>3</sup>	100 ft. <sup>4</sup>	None	
<b>Non-Water-oriented Use</b>	100 ft.	100 ft.	100 ft. <sup>3</sup>	100 ft. <sup>5</sup>	None	
<b>Front Yard, Side Yard, and Rear Yard Setbacks</b>	Governed by underlying zoning in RMC 4-2 except in cases where specific shoreline performance standards provide otherwise. Variance from the front and side yard standards may be granted administratively if needed to meet the established setback from OHWM, as specified in this section and if standard variance criteria are met.					
<b>Vegetation Conservation Buffer</b>	100 ft.	100 ft.	100 ft. <sup>3</sup>	100 ft. <sup>4,5</sup>	None	
<b>Building Height- Maximum</b>						
<b>In water</b>	Not allowed	Not allowed	35 ft. <sup>6</sup>	35 ft. <sup>6</sup>		35 ft. <sup>6</sup>
<b>Within 100 feet of OHWM</b>	Not allowed	Not allowed	35 ft. <sup>7</sup>	35 ft. <sup>8</sup>	Governed by underlying zoning in RMC 4-2 <sup>9</sup>	
<b>More than 100 feet from OHWM</b>	15 ft.	35 ft.	35 ft. <sup>7</sup>	35 ft. <sup>8</sup>	Governed by underlying zoning in RMC	

	Natural	Urban Conservancy	Shoreline Single Family	High Intensity	High Intensity Isolated	Aquatic
					4-2 <sup>9</sup>	
<b>Accessory Building</b>	15 feet	15 feet	15 feet	Same as above	Governed by underlying zoning in RMC 4-2 <sup>9</sup>	
<b>Coverage Standards</b>						
<b>Impervious Area within the Buffer/Setback</b>	Not allowed	5% <sup>10</sup>	5% <sup>10</sup>	5% <sup>10</sup>	Governed by underlying zoning in RMC 4-2	
<b>Impervious Area within 100 feet of OHWM- Maximum</b>	Not allowed	10% <sup>11</sup>	50% <sup>11</sup>	50% <sup>11</sup>	Governed by underlying zoning in RMC 4-2	
<b>Lot Coverage for Buildings within 100 feet of OHWM- Maximum</b>	5% <sup>12</sup>	5% <sup>12</sup>	25% <sup>12</sup>	None <sup>12</sup>	Governed by underlying zoning in RMC 4-2	
<b>Lot Coverage for Buildings more than 100 feet from OHWM- Maximum</b>	5%	15%	35%	Governed by underlying zoning in RMC 4-2	Governed by underlying zoning in RMC 4-2	

1. Architectural features of buildings, such as eaves or balconies, and other building elements above the first floor may project a maximum of five feet (5') into the buffer/setback area as established in this table, or as modified by RMC 4-3-090F.1 Vegetation Conservation.
2. Setback shall be the maximum determined by the specific needs of the Water-dependent Use and shall not apply to a structure housing any other use.
3. Building setback and buffer may be based on lot depth as provided in RMC 4-3-090.F.1.c.
4. Water-oriented uses may be established closer to OHWM only in cases where the Vegetation Conservation Buffer is varied in accordance with RMC 4-3-090.F.1 Vegetation Conservation. Buildings shall be no closer than 50 feet, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
5. Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Conservation Buffer is varied in accordance with RMC 4-3-090.F.1 Vegetation Conservation. Buildings shall be no closer than ~~65~~<sup>75</sup> feet, except as consistent with a Master Site Plan approved prior to the adoption of this Section.
6. Additional height may be allowed if essential to the function of a water-dependent use, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

7. If the maximum allowed height in the underlying zoning is less than the maximum allowed height in the Shoreline Overlay, a non-shoreline variance from the standard in RMC 4-2, Zoning Districts- Uses and Standards, must be obtained from the Reviewing Official to allow any height over the amount allowed in the underlying zone.

8. Additional height may be allowed if essential to the function of a water-dependent use. Height up to that established in RMC 4-2, Zoning Districts- Uses and Standards, may be allowed for non water-dependent uses in the following reaches:

**Lake Washington Reaches C, H, I, and J; Cedar River Reaches A, B, and C; Black River Reach A; and Springbrook Creek Reaches B, C, and D:**

(1) For buildings landward of 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:

- a. Begin along a line lying parallel to and 100' (100 ft.) from OHWM at a height of either 35' (35 ft.) or one half the maximum height allowed in the underlying zone, whichever is greater; and
- b. Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from the beginning height either (i) until the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning), or (ii) to the end of shoreline jurisdiction, whichever comes first.

(2) For buildings allowed waterward of 100' (100 ft.) from OHWM through a modified setback, the maximum building height shall be as follows:

- a. Between the modified setback line and the line lying parallel to and 100' (100 ft.) from OHWM, the maximum building height shall be defined by a maximum allowable building height envelope that shall:
  - i. Begin at a height of 35' (35 ft.) along the line of the modified setback; and
  - ii. Have an upward, landward transition at a slope of 1 vertical to 1 horizontal from the beginning height either until the line at which the maximum height allowed in the underlying zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning) or to the line lying parallel to and 100' (100 ft.) from OHWM, whichever comes first; and
- b. Landward of 100' (100 ft.) from OHWM, the applicant shall have the option of choosing the maximum building height defined by either:
  - i. Using the maximum allowable building height envelope described in (1), above; or
  - ii. Having the maximum allowable building height envelope described in (2)a, above, continue an upward, landward transition at a slope of 1 vertical to 1 horizontal from the envelope's height along a line lying parallel to and 100' (100 ft.) from OHWM either until the line at which the maximum height allowed in the underlying

zoning in RMC 4-2 is reached (from which line the height envelope shall extend landward at the maximum height allowed in the underlying zoning), or to the end of shoreline jurisdiction, whichever comes first.

9. Up to 5% impervious surface is allowed in Vegetation Conservation buffers/setbacks for access to the shoreline, or a pathway up to 6 feet (6') wide, whichever is greater. In addition, for projects that provide public or community access and the opportunity for substantial numbers of people to enjoy the shoreline, up to 25% impervious surface is allowed, provided that no more than 5% impervious surface is allowed closer than 25' (25 ft.) from OHWM.

10. In cases where the depth of the Vegetation Conservation buffer/setback is modified in accordance with RMC 4-3-090F.1 Vegetation Conservation, that portion of the first 100 feet from OHWM upon which development is to be located is permitted a maximum of 50% impervious surface, unless a different standard is stated below:

**Lake Washington Reaches H and I** – Up to 75% impervious surface, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

**Lake Washington Reach J** – No limit is provided for the Renton Municipal Airport.

**Cedar River Reach A** – No limit is provided for the Renton Municipal Airport.

**Cedar River Reach B and C** – No limit to impervious surface.

**Cedar River Reach D** – No more than 5% impervious surface.

structures, infrastructure improvements, utilities, public or private roads, or drainage systems, that do not require construction permits, if the activity does not modify the character, scope, or size of the original structure or facility or increase the impact to, or encroach further within, the sensitive area or buffer and there is no increased risk to life or property as a result of the proposed operation, maintenance, or repair. Operation and maintenance includes vegetation management performed in accordance with best management practices that is part of ongoing maintenance of structures, infrastructure, or utilities, provided that such management actions are part of regular and ongoing maintenance, do not expand further into the sensitive area, are not the result of an expansion of the structure or utility, and do not directly impact an endangered or threatened species.

**F. Partial and Full Compliance, Alteration of an Existing Structure or Site:**

The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of the Shoreline Master Program. Alteration or expansion of existing structures may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function. In no case shall a structure with a non-conforming setback from the shoreline be allowed to extend further waterward than the existing structure.

**1. Partial Compliance for Non-Single-Family Development:** The following provisions shall apply to all **development** except single family:

Alteration of an Existing <b>Development/Use</b> Structure		Compliance Standard
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq.ft. or up to 10% (whichever is less); or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge, provided that the area to be revegetated does not exceed 10 feet, unless a greater area is desired by the applicant, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> </ul>
	Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less); or	
	Remodeling or renovation that equals less than 30% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	
Moderate Alteration	Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge, or at least 10 feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>• Piers and Docks shall be required to replace any solid decking with light penetrating surfacing materials.</li> </ul>
	Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less); or	
	Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	
Major Alteration	Expansion of building footprint by more than 25%; or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:</li> </ul>
	Expansion of impervious surface by more	

	<p>than 25%; or</p> <p>Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.</p>	<ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water's edge if the full buffer cannot be planted, or at least 10 feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> <ul style="list-style-type: none"> <li>● Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>● Piers and Docks shall be required to replace any solid decking with light penetrating surfacing materials.</li> <li>● Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways: <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would identify near shore mitigation to improve shoreline function or values on-site, or</li> <li>○ <b>If the two alternatives above are infeasible, then t</b>he project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul> </li> </ul>
--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.

**2. Partial Compliance for Single-Family Development:** Lawfully constructed single-family homes built before the adoption of the Shoreline Master Program (**{Insert Ordinance Adoption Date Here}**) shall be considered conforming if expansion or replacement is consistent with the standards below:

Alteration of an Existing Structure	Compliance Standard
-------------------------------------	---------------------

Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq.ft. outside of the required* setback; or Expansion of impervious surface by up to 1,000 sq. ft. outside of the required* setback.	No site changes required.
Moderate Alteration	Expansion of building footprint within the required* setback in any amount, or total expansion of 500 sq. ft. to 1,000 sq. ft.; or Expansion of impervious surface within the required* setback in any amount, or total expansion of 1,000 sq. ft. to 1,500 sq.ft.	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either: <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water’s edge provided that the area to be revegetated need not be more than 25% of the lot depth in feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> </ul>
Major Alteration	Expansion of building footprint by more than 1,000 sq.ft., or Expansion of impervious surface by more than 1,500 sq.ft.	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either: <ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water’s edge if the full buffer cannot be planted, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> <li>• Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways: <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that</li> </ul> </li> </ul>

		<p>would identify near shore mitigation to improve shoreline function or values on-site, or</p> <ul style="list-style-type: none"> <li>○ <del>If the two alternatives above are infeasible, then t</del>The project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul>
--	--	---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.

SHORELINE DEFINITIONS IN RENTON MUNICIPAL CODE CHAPTER 4-11

---

**4-11-010 DEFINITIONS A:**

ACT, SHORELINE MANAGEMENT: (This definition for RMC 4-3-090, Shoreline Master Program Regulations, use only.) The Shoreline Management Act of 1971, chapter 90.58 RCW as amended.

ACTIVITY: A happening associated with a use; the use of energy toward a specific action or pursuit. Examples of shoreline activities include but are not limited to fishing, swimming, boating, dredging, fish spawning, wildlife nesting, or discharging of materials. Not all activities necessarily require a shoreline location.

AQUACULTURE: The culture of farming of aquatic animals and plants.

**4-11-020 DEFINITIONS B:**

BOAT LAUNCHING RAMP: A facility with an inclined surface extending into the water which allows launching of boats directly into the water from trailers.

BREAKWATER: A protective structure, usually built off-shore for the purpose of protecting the shoreline or harbor area from wave action.

BUFFER, SHORELINES: A ~~parcel or~~ strip of land that is ~~designed and~~ designated to permanently remain vegetated in an undisturbed and natural condition to protect an adjacent

September 13, 2010

David Halinen  
Halinen Law Offices, P.S.  
1019 Regents Boulevard, Suite 202  
Fircrest, Washington 98466

Subject: Renton's Draft Shoreline Management Plan (SMP)  
The City's Currently Proposed Provisions Concerning  
Existing Shoreline Stabilization Structures and  
September 9, 2010 Changes Proposed by the Renton Shoreline Coalition  
File No. M00609-000-20

Thank you for providing me with an opportunity to provide written comments relating to the current portions of Renton's Draft SMP concerning new and existing shoreline stabilization structures, the September 9, 2010 changes proposed by the Renton Shoreline Coalition in relation to existing shoreline stabilization structures, and portions of the State SMP Guidelines concerning new and existing shoreline stabilization structures. I have reviewed these materials as well as the draft SMP's proposed section entitled "Content of Geotechnical Report." I have extensive experience with the City of Renton and the Cedar River. Here are my initial comments:

1. The City of Renton has a responsibility to see that the Cedar River gets through the City without causing damage to City property or facilities, private property and the property and improvements of other jurisdictions.
2. For about ½ mile upstream of the Old Stoneway property, the entire left bank of the Cedar River ("left" when facing downstream) is undeveloped until the river crosses under Interstate (I-405) 405. (Actually, the left bank is "developed" in terms of being the location of the pedestrian/bicycle trail along the former railroad alignment.) In my opinion, if the City wants to encourage a more "native" condition to occur along the river, it should be directed to "unimprove" the left bank instead of the right bank where Stoneway, the City, and other private uses dictate that the City should do everything in its power to protect existing uses and development from damage by the river.
3. The consequences of removal of the existing 1,200 lineal feet of bulkhead along the Old Stoneway property, or of replacing that bulkhead with something of less certainty of protection - like so-called "soft bank protection" - include: risk to the upstream apartment complex, State Route (SR 169) 169, the City's water and sewer pipelines, the City's Cedar River Park buildings, theatre, new swim park, and so on, in addition to the Stoneway property.
4. The SMP text talks repeatedly about "preventing damage" to a "primary structure". That limited premise is dead wrong and irresponsible. It is just as important to consider risk to the infrastructure

that is key to the function of the primary structure, e.g., the sewer, water, power, drainage and other utilities on the shoreline properties.

5. The premise that the Stoneway property should be subject to a geotechnical evaluation of the rate of erosion as part of a future “demonstration of need” for shoreline stabilization is absurd because, without a bulkhead, a single extraordinary flood event could be sufficient to completely change the course of the entire river – at least upstream of I-405 to well above the Stoneway land. A “demonstration of need” analysis might have an application somewhere else, although with my nearly 50 years of experience as a geotechnical specialist I cannot think of one place where it would truly have scientific validity.
6. The probable extent of channel migration at the subject location in areas without bulkheading is clearly defined by the existing walls of the Cedar River valley; at least that applies in this reach of the river (I-405 to Maplewood).
7. I think the “adverse consequences” that should be a factor in the City’s consideration of bulkhead removal should include consideration of whether such removal will result in an increase of required insurance coverage or an increased premium for flood protection insurance.
8. If the City wants to restore pristine bank conditions by bulkhead removal, then it should remove the left bank levee and revetment and let the river migrate across the bike trail and dog park instead of adding risk to already developed sites already in use along the right bank.
9. Re the City’s proposed “Content of Geotechnical Report”: There might be a time and place for estimating the timeframe and rate of erosion, but that should be a possible consideration depending on site circumstances and not a requirement – especially where it is so obvious that the impact of a single river flow event is so much more important than river channel avulsion over time. Where the banks are already defined and constrained, and where existing development (no matter if residential, industrial or commercial) already exists along the river banks, it is a LOT more important to maintain the integrity of the existing protections and channel position than it is to estimate the rate of erosion. As noted in point 1, above, I believe that the City has more responsibility to maintain function and service than it does to impose some arbitrary standard of “returning to pristine conditions.”
10. The Washington Administrative Code (WAC) standards are just as flawed as the draft SMP in regard to existing shoreline stabilization. They conflict with the reality of obvious situations where we as a society already recognize that a given shoreline is now developed, will stay developed, and should be preserved as developed and redeveloped over time, and should be accorded all reasonable assurance of protection from natural disaster—in contrast to being restored to some imaginary ecologic standard.
11. I see that protection of “primary structures” appears again and again in both the draft SMP and the State SMP Guidelines as well as protection of “principal uses and structures”, so I emphasize that it is NOT just “primary structures” or “principal uses structures” that should be considered and protected – in this case by preserving or replacing the existing bulkhead as is where is - but also the support infrastructure.
12. In my judgment, it is important that several revisions be made to the draft SMP’s provisions relating to shoreline stabilization structures, especially existing structures, before the City Council can responsibly approve the SMP and send it off to Ecology.



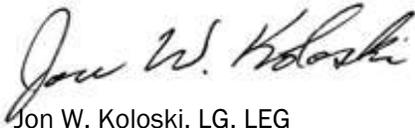
I would be happy to appear before the City Council to discuss these issues in person. Unfortunately, I will be on vacation next week and unable to attend Monday night's Council meeting.

I have attached a copy of my professional resume for you to forward to the Council with a copy of this letter in case the Council wishes information on my background.

Please let me know if I can be of further assistance.

Sincerely,

GeoEngineers, Inc.



Jon W. Koloski, LG, LEG  
Senior Principal

JWK:tt  
M:\Letters\2010\Dave Halinen Letter\_City of Renton\_Cedar River.docx

Attachment:

Jon W. Koloski Resume



## **JON W. KOLOSKI, LG, LEG, SENIOR PRINCIPAL ENGINEERING GEOLOGIST**

### **Education**

B.S., Geology, University of Washington, 1963

Graduate courses in engineering, geology, erosion control, stream rehabilitation, blasting, business and environmental law

### **Affiliation**

Association of Engineering Geologists

### **Registration**

Washington, Professional Geologist, Licensed Engineering Geologist #1008, 2002

Oregon, Registered Professional Geologist, Certified Engineering Geologist, #633, 1978

California, Registered Geologist #1701, Certified Engineering Geologist #542, 1970

### **Experience**

Jon Koloski has specialized in applied engineering geology since 1962. He has been the principal geologist on several thousand investigations involving the evaluation and mitigation of geologic processes and geologic hazards for geotechnical engineering assessments and designs. Jon's experience includes work on highways, bridges, buildings, power lines, utilities, river and marine shoreline stabilization, rock and gravel quarry development and reclamation, ground water resources, pipelines, industrial and residential land development, and landslide and abandoned mine hazard mitigation. His consultations frequently involve presentations to technical or non-technical audiences, public meetings, the legislature or local government regulators, and as an expert witness in litigations and permit hearings. In addition, Jon was an assistant professor of Geology for the University of Washington Tacoma in 2002. Jon was invited by the Washington State Geologist Licensing Board to help develop the publication "*Guidelines for Preparing Engineering Geology Report in Washington*" and he was also an invited member of a two-State committee to revise and update the Geologist Registration Examination. The following are just a few examples of Jon's extensive experience:

#### **DBM Contractors, Inc., Geotechnical Consultation, SR 705**

Tacoma, Washington

Provided consultation and geotechnical design criteria for temporary and permanent retaining walls, falsework supports and use of on-site soils as fill during construction of southbound lanes of SR 705. Numerous boulders were encountered during construction of soldier pile walls along the 1-mile section of freeway through downtown Tacoma. The frequency and size of boulders was a "changed condition" from that represented in the contract documents. We reviewed the original design geotechnical studies, the contract documents, the contractor's daily reports and we observed and recorded conditions in many of the soldier pile and pier borings. We prepared trial exhibits and provided practical consultation, expert testimony and review of other experts' testimony in the course of the litigation. The result was a judgment supporting the contractor's claim.

**Panama Ports Commission, Quarry Resource Evaluations, Port of Balboa**

Panama City Panama

Provided a detailed qualitative and quantitative evaluation of 13 existing and prospective quarry sites for production of construction materials for improvements to the Port of Balboa container terminal. The container terminal improvements are a part of the Panama Canal Widening project supervised by the Panama Ports Commission. The evaluations were based on review of past production together with reconnaissance-base projections of the remaining available rock resources. Each quarry site was classified based on the rock type and physical characteristics, development issues, transportation to the port facility, and environmental impact issues.

**Panama Ports Commission, Excavation and Dredging Evaluation, Diablo Island, Port of Balboa**

Panama City, Panama

Provided a detailed evaluation of the means to excavate a rock and soil island that projected into the shipping channel and turning basin for the proposed improvements to the Port of Balboa. The review included examination of exploration borings and seismic exploration profiles of an island left unexcavated during the original Panama Canal construction project. The evaluation resulted in classification of materials that comprise the island as to potential for dredge excavation and/or requiring drill and blast excavation methods. The resulting classification was used by contractors for construction bid development.

**City of Edmonds, Geotechnical Evaluation of the Large Meadowdale Landslide**

Edmonds, Washington

The landslide took place in an area which includes more than 300 residences. Included development of a scheme for classification of likely slide movement type and probability and frequency of occurrence. The work also included detailed recommendations for improved stabilization and evaluation of the effectiveness of slide stabilization measures and testimony at public hearings.

**Manke Lumber Company, Geologic Evaluation**

Pierce County, Washington

Geologic evaluation of a 400-acre site of which 100 acres is to be developed as a sand and gravel surface mining facility. Study involved detailed review of local well records and other ground water data. Results were included in a Draft Environmental Impact Statement and were presented in public hearing testimony.

**Miles Sand and Gravel Company, Surface Mining Facilities**

Pierce, Skagit, Thurston and Mason Counties, Washington

Principle-in-charge of geologic and hydrological investigations for several large surface mining facilities. Services addressed resource quality and quantity, along with surface and ground water in the surrounding areas. Our recommendations were used in a draft environmental impact statements as well as mine operation and reclamation plans. Three of these projects involve excavating gravel below the regional water table to create a permanent lake. Extensive public hearing testimony was required.

**Northern Tier Pipeline, Geotechnical Evaluation and Preliminary Design**

Washington State

Provided geotechnical and preliminary design recommendations for the overland route and more than 60 river and marine crossings. Responsibilities included field work, development of a classification scheme for geologic hazards and for each river/stream crossing, recommendations for bank erosion and channel scour protection, evaluation of sedimentation resulting from construction, report preparation, and extensive expert testimony at meetings and public hearings.

**Port Blakely Communities, Proposed Grand Ridge Residential Subdivision**

King County, Washington

Principal-in-charge of geotechnical studies of a 480-acre site in Issaquah. Services included an evaluation of erosion potential, surface water runoff, ground water recharge, coal mine hazards, and seismic considerations in addition to detailed geotechnical recommendations for roads and utilities. The results were used in the development of the plat design and for preparation of the Environmental Impact Statement. Testimony at numerous public hearings also was provided.

**Seattle Water Department, Fish Ladder & Deflection System, Landsburg Diversion Structure**

Landsburg, Washington

Principal-in-charge of providing geotechnical design recommendations for a combined fish deflection and fish ladder system. Identified probable fish ladder routes, evaluated soil and shallow ground water conditions and developed recommendations for excavation, construction dewatering, temporary shoring, foundation support, drainage, earthwork criteria and temporary and permanent erosion control. Evaluated sediment generation and transport issues, scour protection measures and made remedial recommendations. Provided input for an Environmental Impact Statement, attended technical meetings and provided testimony at public hearings.

**City of Tacoma Water Division, No. 5 Pipeline, Geologic Hazards Evaluation**

Pierce County and King County, Washington

Principal-in-charge for reconnaissance and evaluation of geotechnical hazards along the route of a 33-mile water pipeline. The pipeline crosses 12 streams and rivers and two documented wetlands. Hazards that were identified included landslides, wetlands, abandoned coal mines, river and stream crossings, seismically sensitive areas, erosion, adverse soil conditions, and areas which required unusual foundation support. Work on this project also included mapping the hazards and working with the design team to develop remedial measures and alternatives. Extensive public hearing testimony was also provided.

**City of Issaquah, Tibbets-East Cougar Subdivision**

Issaquah, Washington

Principal-in-charge of a geologic evaluation of the 3,000-acre Tibbets-East Cougar area. Work included interpreting geologic and hydrogeologic conditions based on literature research and geologic reconnaissance of areas that included steep slopes, abandoned coal mines, landslides and severe erosion hazards. The product included a detailed report and testimony at numerous public hearings.

**City of Kelso, Investigation and Evaluation of the Aldercrest- Banyon Road Landslide**

Kelso, Washington

Principal-in-charge and lead investigator regarding the cause of a landslide that destroyed nearly 70 of 160 residences in the Aldercrest subdivision. The investigation also evaluated possible mitigation measures. One area was stabilized by construction of a buttress and drain and residences in that area were saved. Other areas could not be stabilized and more than 60 damaged residences were abandoned. The work included numerous public presentations as well as presentations to the Kelso City Council. The consultation also included assistance with litigation that followed the landslide event; all claims against the City were dismissed.

**Publications and Presentations**

2008, Invited member of a two-State committee to revise and update the Geologist Registration Examination.

2006, Washington State Geology Licensing Board, Engineering Geology Guidelines Committee, "Guidelines for Preparing Engineering Geology Reports in Washington."

2005 & 2006, "The Aldercrest-Banyon Drive Landslide, 1998, Kelso, WA & the Rest of the Story", presented to: Washington State Claims Adjusters Association; University of Washington Graduate Engineering Research Seminar; Portland State University Graduate Engineering Geology Case History Seminar; American Society of Civil Engineers, Tacoma, WA

2004, "Case History of the Failure of Swift Reservoir, Cowlitz County, Washington", Portland State University

2003-2004, Invited participant to development and revision of ordinances concerning geologic/geotechnical hazards, Pierce County Land Use Services Division, Pierce County, Washington.

(with Tubbs, D.W. and Tuttle, J.K.), 2003, Mitigation of Landslide Hazards Along Puget Sound Shorelines", Geological Society of America.

2001, "Living on the Edge- the Causes and Mitigation of Puget Sound Shoreline Landslides", Washington State University Annual Land Use Planning Seminar, Port Townsend, Washington.

1998-1999, Seattle Landslide Public Involvement Committee. Requested by the City of Seattle to be a panel member and speaker in a series of seminars for the general public about landslide risks in Seattle and their mitigation.

1998, "Humans as a Geologic Agent", at Landslides in the Puget Sound Region, sponsored by the American Society of Civil Engineers, the University of Washington and the U.S. Geological Survey.

1972, 1979, 1990, 1996, Invited participant to development of ordinances and regulations concerning geologic/geotechnical hazards, King County Department of Development and Environmental Services.

1995, "The Implications of Building On or Near Steep Slopes or Landslide Hazard Areas", at Continuing Law Education Seminar re: Sensitive Areas.

1994, "Locating, Delineating, and Utilization of Sensitive/Critical Areas", at Continuing Law Education Seminar re: Sensitive Areas.

1993, "Coal Mine Hazards in Washington State Under the Washington Growth Management Act of 1990", at Continuing Law Education Seminar re: Sensitive Areas.

(with Beaman, B.R.), 1992, "An Engineered Approach for Prediction and Mitigation of Ground Subsidence Over Steeply Inclined Mined Out Coal Seams", at Society of Mining Engineers Mining and Metals Conference.

1990-1992, Appointed representative of the American Society of Civil Engineers, Geotechnical Division, and of the Association of Engineering Geologists to the City of Seattle Critical Areas Task Force.

1991, "Engineering Properties of Geologic Materials" at Geology of Puget Sound and Landslide Hazards, sponsored by the American Society of Civil Engineers, the Association of Engineering Geologists, and the University of Washington.

(with Beaman, B.R.), 1990, "Coal Mine Hazards in Western Washington - Identification and Ground Response Evaluation", at Association of Engineering Geologists National Conference.

(with Tubbs, D.W., and Schwartz, S. D.), 1989, "Engineering Properties of Geologic Materials" in Engineering Geology in Washington, Vol. II, Bulletin 78, Washington Division of Geology and Earth Resources, Richard W. Galster, Editor.

1988, "Geology and Engineering Curricula for Engineering Geologists as Consultants", at Association of Engineering Geologists National Conference.

1987, Invited representative of the Association of Engineering Geologists to the City of Seattle Engineering Department committee to develop guidelines for preparation of technical reports concerning geologic/geotechnical issues.

1977, Appointed representative of American Society of Civil Engineers and Association of Engineering Geologists to City of Seattle Department of Construction and Land Use regarding Seattle's original "Sensitive Areas" ordinance.



**GROEN  
STEPHENS & KLINGE** LLP  
ATTORNEYS AT LAW

11100 N.E. 8TH STREET, SUITE 750  
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN  
RICHARD M. STEPHENS  
CHARLES A. KLINGE  
SAMUEL A. RODABOUGH  
BRIAN D. AMSBARY

TELEPHONE  
(425) 453-6206  
FACSIMILE  
(425) 453-6224

September 22, 2010

*Via E-Mail and U.S. Mail*

Renton City Council  
1055 South Grady Way  
Renton, WA 98057

**Re: Draft Shoreline Master Program  
Proposed Changes re Public Access and Impervious Surface in Setback/Buffer**

Dear Council Members:

This firm represents RaMac, Inc., the owner of the Riviera Apartments and an adjoining office building. This letter is a follow-up to my remarks to the Council on September 13, 2010. In those remarks, I indicated that my client supports two changes to the draft SMP that were requested by the Renton Shoreline Coalition in a letter dated September 13, 2010. This letter provides a brief rationale for those requested changes.

**Change No. 1 – Allow Impervious Surface in the Setback/Buffer in the High Intensity Overlay District for Providing Either Public or Community Access**

Proposed Amendment to Shoreline Bulk Standards, Table 4-3-090.D.7a, Footnote 9:

Up to 5% impervious surface is allowed in Vegetation Conservation buffers/setbacks for access to the shoreline, or a pathway up to 6 feet (6') wide, whichever is greater. In addition, for projects that provide public or community access and the opportunity for substantial numbers of people to enjoy the shoreline, up to 25% impervious surface is allowed, provided that no more than 5% impervious surface is allowed closer than 25' (25 ft.) from OHWM.

**Rationale for Proposed Amendment:**

- City Staff has consistently represented that redevelopment in the High Intensity Overlay District would require the provision of a public benefit in the form of either ecological restoration or public access, but not both. At least one section of the Draft SMP is inconsistent with these representations. Specifically, eligibility for a modification of the standard 100-foot buffer/setback already requires ecological restoration. *See* RMC 4-3-090.F.1.d.iv.a.2 (requiring that “[t]he area of the proposed reduced-width buffer can be enhanced with native vegetation...”). Thus, upon redevelopment, most sites will likely choose to provide ecological restoration and not public access. Footnote 9, however, independently requires public access in

order to utilize a percentage of the setback/buffer for impervious surface. As many projects would likely benefit from both a buffer modification and use of a portion of the buffer/setback for impervious surface, the alleged choice between ecological restoration or public access is currently an empty promise. My client is willing to choose between ecological restoration and public access, but should not be forced to provide both. Community access is a more viable option in lieu of public access.

- The Shoreline Management Act (“SMA”) encourages “development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines.” RCW 90.58.020. Amenities that encourage such enjoyment include playgrounds, plazas, seating areas, picnic areas, etc., many of which may require impervious surface. As currently drafted, Footnote 9 provides a disincentive to provide these amenities as follows: If a development proposal does not provide for public access, the developer must choose between 1) moving the building footprint landward from the allowed setback to accommodate these amenities, or 2) leaving the building footprint at the setback and foregoing such amenities. Given the significant loss of development potential under Option 1 (especially in zones with significant building heights, such as the COR zone), with the Draft SMP’s current language, a developer will likely choose to forego such amenities. This appears contrary to the SMA.
- Although the SMA encourages the provision of public access (as well as numerous other sections of the Draft SMP), nothing in the Washington Administrative Code (“WAC”) requires the provision of “public access” in order to utilize impervious surface in the buffer/setback.
- The provision of “community access” would still provide a significant public benefit by allowing for substantial numbers of the people to enjoy the shoreline, including residents, tenants, customers, patrons, guests, and/or other authorized users of the development.

## **Change No. 2 – Allow Buffer Reduction for Non-Water-Oriented Use to Within 65 Feet of OHWM, Instead of 75 feet.**

Proposed Amendment to Shoreline Bulk Standards, Table 4-3-090. D.7a, Footnote 5:

Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Conservation Buffer is varied in accordance with RMC 4-3-090.F.1 Vegetation Conservation. Buildings shall be no closer than ~~6575~~ 65 feet, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

### **Rationale for Proposed Amendment:**

- Per the Zoning Use Table in RMC 4-2-060, many of the permitted uses in the COR Zone are non-water-oriented uses. Footnote 5 currently limits the extent of the buffer/setback modification from the standard 100-foot buffer/setback from OHWM to within 75 feet of OHWM. Allowing a reduction to within 65 feet of OHWM would provide additional incentive

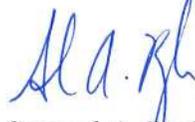
for properties to redevelop, allow greater proximity to the shoreline, and increase the City's tax base.

- To be eligible for a buffer/setback modification a development proposal must "result in no net loss of ecological functions." See RMC 4-3-090.F.1.d.iv.b. In other words, the Draft SMP assures that there is no environmental impact to allowing a greater modification of the buffer/setback — a true win-win situation for economic development and the environment.
- The WAC Guidelines express a preference between water-oriented and non-water-oriented development. By allowing buffer modifications to within 50 feet of OHWM for water-oriented development and within 65 of OHWM for non-water-oriented development, the City is still expressing a preference for, and encouraging the development of, water-oriented uses.
- The City has great flexibility in establishing the size of the buffers/setbacks. Allowing a buffer modification to within 65 feet of OHWM is well within the City's discretion.

My client respectfully requests that the Council carefully consider these proposed changes.

Sincerely,

GROEN STEPHENS & KLINGE LLP



Samuel A. Rodabough  
[sam@GSKlegal.pro](mailto:sam@GSKlegal.pro)

cc: Alex Pietsch, Administrator, Community and Economic Development  
Gregg Zimmerman, Administrator, Department of Public Works  
Terry Higashiyama, Administrator, Department of Community Services  
Chip Vincent, Planning Director  
Erika Conkling, Senior Planner  
Denis Law, Mayor  
Larry Warren, City Attorney  
Renton Shoreline Coalition  
David Halinen, Esq.  
Sandy Mackie, Esq.

## Judith Subia

---

**From:** jcdemund@gmail.com on behalf of Jeanne DeMund [jeannedemund@vegahelmet.com]  
**Sent:** Monday, September 27, 2010 3:52 PM  
**To:** Don Persson; Randy Corman; Marcie Palmer; Greg Taylor; Terri Briere; King Parker; zwicker@rentonwa.gov  
**Cc:** Denis Law; Anne Simpson; budmanis@comcast.net; patandbuzz@q.com; cfc@connerhomes.com; gregorybjames@comcast.net; idenkr@comcast.net; laurieb@mvseac.com; lowella@mvsea.com; marlene@marlenewinter.com; monica.fix@boeing.com; David Hallinen  
**Subject:** jcdemund@gmail.com

Jeanne DeMund and Luo Xu  
2811 Mountain View Ave. N.  
Renton, WA 98056  
425-970-3172 (h)  
206-898-9818 (c)

September 26, 2010

Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, WA 98057

RE: Economic Impact of Proposed SMP Shoreline Stabilization Regulations

Dear Councilmembers;

I am writing to comment on the potential economic development impact of the current draft of proposed Renton Shoreline Master Program regulations on existing shoreline stabilization structures. My qualifications for doing so include 10 years experience in economic development with the Washington State Department of Trade and Economic Development and Department of Community, Trade and Economic Development, followed by 17 years as a small business owner.

Over the last several months, during which I have been a Steering Committee member of the Renton Shoreline Coalition, I have repeatedly asked why there has been no apparent input, or comment on, the Renton draft SMP by the City's economic development staff. . I have been told repeatedly in answer to my questions, that the economic development staff and the planning staff work for the same City Administrator, Alex Pietsch, but this neither answers my question nor alleviates my concern.

We have yet to see any analysis or consideration by the City of the economic development impacts of the draft SMP, despite the fact that the SMA envisions both business and residential activity continuing along development shorelines, and specifies protection of business and residential activity at the same level as environmental protection and enjoyment.

One of the most basic conditions that businesses seek in their investment decisions is predictability of laws and regulations and protection of private property. This consideration greatly influences investment on every level, from international to local.

Renton's proposed draft SMP significantly raises the level of uncertainty for shoreline property owners, both residential and commercial, with its current proposed regulations for existing shoreline stabilization structures. The specter of huge financial burdens being added to the regulatory uncertainty only increases uncertainty even more.

Existing shoreline stabilization structures are enormously valuable to shoreline properties and removal or replacement of such a structure is certain to be costly and involve a time consuming maze of regulatory requirements, even without the City adding to the burden.

The SMA only requires geotechnical analysis in the case of a new or expanded shoreline stabilization structure. The requirement of a geotechnical analysis in the SMA language relating to existing shoreline stabilizations structures is conspicuously absent. It is NOT required.

Rather than allowing shoreline residential and commercial property owners to use their existing, serviceable shoreline stabilization structures as long as they are structurally adequate to protect the property, the current draft of Renton's SMP regulations seek to force property owners to go to the expense and effort of a full geotechnical analysis to determine if the structure is necessary in the event of major construction, or so-called change of use, even when there is no need for a new or expanded shoreline stabilization structure. The property owner must pay for the analysis, and then for the City's third party review, and then the decision about eliminating, replacing or keeping the existing structure is left to a staff person whose biases will then hold sway.

These excessive, burdensome and arbitrary regulations provide a strong disincentive to investment, and risk putting Renton at a competitive disadvantage with other jurisdictions in the worst economic recession since the Great Depression. These regulations have the effect of significantly de-valuing one of Renton's great assets, its waterfront properties, and risk inhibiting clean re-development of industrial sites, as well as imposing unnecessary burdens on residential redevelopment.

If the City of Renton wants to see sites like the old Stoneway site redevelop, as was certainly the intent when the City encouraged and assisted the cement plant's move away from the riverside, and wants to encourage residential re-development, I urge you to adopt either the Renton Shoreline Coalitions suggested draft language, or work with the Coalition to arrive at an acceptable alternative that does not inhibit economic development.

As I am out of the country on business and am unable to forward a hard copy of this letter, I will ask one of the Renton Shoreline Coalition members to provide a hard copy for your reference.

Sincerely,

Jeanne C. DeMund

## Judith Subia

---

**From:** Laurie Baker [laurieb@mvseac.com]  
**Sent:** Monday, September 27, 2010 4:23 PM  
**To:** Randy Corman  
**Subject:** SMP

Sorry this is so late getting to you. This is my initial reaction to the exchanges on your blog re SMP. The comments are rough but it is all I have time for. One main point is that this is NOT just a Stoneway issue though it seems that staff would like to paint it that way.

Laurie Baker

---

Thank you Randy for sharing this communication from Erika. Below are some comments to consider when reading this document

I've italicized the entire communication from Erika so that you will have the context. The highlighting and underlining and other emphasis is added by me to bring your attention to the parts of the memo on which I find it necessary to comment.

*Alex and Chip-*

*I finished reading and analyzing Mr. Halinen's latest submittal. With the exception of the cover letter and the attached three page table, the other documents have already been received and reviewed by the City. The cover letter introduces the documents. The three page table presents, in a different style, the same issues that have already been presented, and revives the RCW 82.02.020 argument (which has been dismissed recently in case law, where it was decided that 82.02.020 does not apply within areas under the jurisdiction of the SMA because the SMA is a state issue, not a local issue).*

*The "compromise" that Mr. Halinen speaks of on the third page of the table document, is not really a compromise, it is a demand for what they have been asking for all along for shoreline stabilization, **which is unrestricted replacement** of an existing bulkhead even if a use changes or has been discontinued, based on a needs assessment that does not require a geotechnical report, and without having to follow the hierarchy of shoreline stabilization alternatives.*

There must be some misunderstanding here. The request is for the "unrestricted **repair and maintenance** of existing bulkheads" not the **replacement** of an existing bulkhead.

The following discussing continues to address the whole issue of bulkheads as only an issue to Mr. Halinen. This looks like an attempt to lead the Council to believe that there is only one property owner concerned with the bulkhead language.

The email for Alex Pietsch also refers to "this bulkhead" as though it is the only one that will have to be justified by the provisions of the SMP.

I'd also like to see the language in the SMP that supports the "even replaced" part of the statement by Mr. Pietsch, in his response to you, that

"The proposed SMP allows existing bulkheads to be maintained and even replaced for existing uses"

Outlined below is our reasoning why Mr. Halinen’s request is infeasible:

1. The proposed revision changes the language to apply to all “replacements of existing structures.” This means any replacement that would qualify as a repair for an existing use (including single-family homes) under Subsection c.i, would have to follow the rules in Subsection c.iii, which would call for a needs assessment (albeit one that doesn’t require a geotech report). Nevertheless, this would increase the restriction and complication of replacing bulkheads universally. **It was our specific intention not to make things more complicated than necessary for those entitled to repair/replace their bulkheads, especially for single-family homeowners. Frankly, it is surprising that the single-family property owners represented by the Renton Shoreline Coalition would agree to such an additional requirement.**

The sentence above is especially interesting to me as a single-family homeowner. I consider it to be misleading when the latest draft of the SMP still includes a requirement for single-family homeowners seeking to do a Major Alteration—not a change of use—to mitigate for their existing shoreline stabilization.

I call you attention to the following which is on page 194-5 of the online version of the Draft Regulation. Note the third bullet point regarding **existing** shoreline stabilization

Major Alteration	Expansion of building footprint by more than 1,000 sq.ft., or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:                             <ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water’s edge if the full buffer cannot be planted, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> <li>• Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways:                             <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that</li> </ul> </li> </ul>
	Expansion of impervious surface by more than 1,500 sq.ft.	
		<ul style="list-style-type: none"> <li>○ would identify near shore mitigation to improve shoreline function or values on-site, or</li> <li>○ If the two alternatives above are infeasible, then the project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul>

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.

2. The proposed change that protects existing and changed uses and structures is a violation of SMP guidelines **according to DOE.**

Is there a reference in the DOE guidelines or the WAC to support this claim? If so what is it? I have been unable to find anything that supports this claim.

*3. Our formal memorandum outlines the need for a geotechnical report, but simply stated: a geotechnical report is the standard for needs assessment for new development and it is the standard analysis we use in the RMC to study such issues.*

The key word here is “new”. When there is to be a new bulkhead such a review is appropriate but for existing bulkheads that are not being replaced no review should be necessary.

*4. Eliminating the shoreline stabilization hierarchy undermines the whole SMPs approach to shoreline stabilization and to achieving no net loss, given our existing conditions. The WAC and our Inventory both conclude that hard armoring doesn’t create one-time impacts to the environment, rather on-going impacts with cumulative negative effects. The environmental effect of “doing nothing” is continued degradation, making it impossible to achieve no net loss without provisions that result in cumulative improvements over time.*

The underlined portion above sounds a bit like double speak to me.

*Given our existing conditions and built environment, we know that removing bulkheads will be difficult, and not possible in many cases. DOE has gone on record that it doesn’t expect communities to be returned to pristine conditions, but merely to do the best they can. The hierarchy is the way Renton’s SMP does this. DOE recognizes this as Barbara Nightingale has made the comment several times that getting rid of the hierarchy undermines our whole SMP.*

The hierarchy is appropriate for proposed new bulkheads not existing bulkheads. No one is asking that the hierarchy be removed for new bulkheads

*Mr. Halinen also brings attention to some “minor” changes on pages 8, 9, and 11 of a document submitted for Council review which marks up portions of the code. These changes would have major impacts:*

*1. The first proposed change is to re-title the table regarding “Alteration of an Existing Structure” (for non-single family residential) to “Alteration of an Existing Development/Use.” This appears to be a backdoor attempt to achieving the Mr. Halinen’s desired outcome regarding shoreline stabilization on the Stoneway site.*

*There is reason to support the continuation of non-conforming structures. Likewise, there is no reason to support non-conforming uses. Except in sensitive natural or conservancy areas where uses are quite limited, the underlying zoning determines use in other overlay areas. Which means in most cases, if this change were made, non-conforming uses would be perpetuated in areas that the City doesn’t want them, and would be subject to more relaxed restrictions in the shoreline than in the rest of the City.*

I think using the term backdoor is curious? The request is plainly stated and not at all disguised. This is in contrast to the last sentence in the above statement. The statement “” is far from definitive and probably misleading. This brings to mind the statement made some time ago that “non conforming structures could not be

“In the proposed SMP, there are even provisions that allow non-conforming shoreline properties to be expanded if improvements are made to the shore area- such as planting vegetation or installing light penetrating materials

on an existing dock. In this way the burden on non-conformity is less for shoreline property owners than any other property owner in Renton- they would have options for expansion where non-shoreline owners do not.”

The above statement was more definitive but was inconsistent with information provided by the Planning Department who explained that non conforming structures can not expand the extent of the nonconformity, however they can expand in ways that do not increase non conformity. The “*Which means in most cases*” may be intended to avoid a specific overstatement. However the second statement seems to reveal the City’s real mission to get rid of something they don’t want.

*2. The second set of changes make a change to the third option for mitigating shoreline stabilization impacts when changes are made to a non-conforming structure. If the proposed change is accepted, site improvement to mitigate the impacts of shoreline stabilization would never have to be considered. Instead they could simply contribute financially to a fund. The Planning Commission had excellent discussions on off-site mitigation provisions and it was very clear that these were to be limited to a last-resort option. This change would go against the Planning Commission direction.*

The Planning Commission’s concern was that the mitigation might be outside Renton. This concern is easily addressed by stating that the mitigation must be controlled by the City and be in the City of Renton.

*Erika Conkling, AICP  
Senior Planner  
City of Renton Department of Community and Economic Development  
1055 S. Grady Way  
Renton, WA 98057  
(425)430-6578 voice (425)430-7300 fax  
econkling@rentonwa.gov*



**GROEN  
STEPHENS & KLINGE LLP**  
ATTORNEYS AT LAW

11100 N.E. 8TH STREET, SUITE 750  
BELLEVUE, WASHINGTON 98004

JOHN M. GROEN  
RICHARD M. STEPHENS  
CHARLES A. KLINGE  
SAMUEL A. RODABOUGH  
BRIAN D. AMSBARY

TELEPHONE  
(425) 453-6206  
FACSIMILE  
(425) 453-6224

September 27, 2010

*Via E-Mail and U.S. Mail*

Renton City Council  
1055 South Grady Way  
Renton, WA 98057

**Re: Draft Shoreline Master Program  
Response to Administration Memo Regarding Requested Changes to the SMP**

Dear Council Members:

As you know, this firm represents RaMac, Inc., the owner of the Riviera Apartments and an adjoining office building. This letter briefly responds to the "Administration Memo" dated September 23, 2010, and received by the undersigned on Friday, September 24.

From internal City emails, it is clear that the Administration Memo was principally drafted by staff in the Planning Department. For this reason, it does not appear that the Memo makes any serious attempt to respond to the specific changes requested by the Renton Shoreline Coalition ("RSC"). Instead, the Memo presents staff's justification for the current language in the existing Draft SMP. *Any* policy choice can be retroactively justified, but it doesn't mean that such policy choice it is the *best* policy for Renton. At a minimum, the Memo should have at least been forthright in acknowledging that (1) the RSC's requested changes are within the City's discretion, and (2) the City Council, which was elected by the citizens of Renton to make such policy choices (unlike staff), would be justified in adopting the RSCs changes.

Unfortunately, it appears that the wrong questions are being asked by the individuals allegedly responsible for drafting the Memo:

- Alex Pietsch, Community and Economic Development Director, is responsible for "citywide community and economic development, and neighborhood revitalization."

So why doesn't the Memo address whether allowing the RSC's proposed additional 10 feet of buffer/setback reduction (a reduction from the standard 100 foot buffer to within 65 feet of OHWM, instead of the current reduction to within 75 feet of OHWM) would better encourage economic development and neighborhood revitalization than the current draft SMP? Does Mr. Pietsch really think that redevelopment of the Riviera Apartments, for example, will happen without the proper regulatory incentives in place? Does he want the Riviera Apartments, an income-producing property with

considerable useful structural life remaining, to be a fixture in Renton for the decades to come? Why doesn't the Memo address whether the requirement to provide both ecological restoration *and* public access for the typical commercial development would encourage or discourage economic development?

Why doesn't the Memo address whether the considerable requirements for providing public access, including the provision of public parking spaces, dedicating an easement to the City, etc. encourage or discourage economic development, and whether the provision of community access would provide better incentive to redevelop? Does Mr. Pietsch believe these issues are irrelevant? These issues do not seem irrelevant to my client.

Why doesn't the Memo address why two adjacent developments on the Cedar River, for example, can have such disparate setbacks and buffers? A single-family dwelling on the Cedar River can reduce its setback to as little as 25 feet (45 in a worst-case scenario) and its buffer to just 10 feet (20 feet in a worst-case scenario). *See* 4-3-090.F.1.c. A similarly situated commercial development, however, could only reduce its setback/buffer for non-water-oriented development to 75 feet. *See* Shoreline Bulk Table 4-3-090. D.7a, Footnote 5. Does Mr. Pietsch believe that this disparate treatment in buffers and setbacks is somehow based in science, or is it based upon a philosophy that discourages commercial development?

- Greg Zimmerman, Public Works Director, is responsible for a department that "operates and maintains the City's infrastructure including streets, sidewalks, bridges, equipment, water, wastewater, and surface water utility systems."

So why doesn't the Memo address whether a shoreline stabilization hierarchy that leaves retention of existing bulkheads as the least preferred alternative *could* pose a risk to the City's infrastructure? For example, if the Stoneway site was required to remove its bulkhead, could a sudden avulsive event realign the Cedar River and cause untold damage to City and private infrastructure?

- Terry Higashiyama, Community Services Administrator, is responsible for a Department that "operates and maintains City buildings and park facility buildings and manages the capital improvement program which provides planning, design and construction management services for City building projects."

So why doesn't the Memo address whether the Draft SMP's requirement for expensive geotechnical studies to retain or replace existing shoreline stabilization measures will exacerbate or help relieve the budgeting crisis experienced by her Department?

Why doesn't the Memo address whether the Draft SMP's requirements for (1) replacement of solid decking on piers and decks with light penetrating surface materials, and (2) mitigation for impacts of existing bulkheads, including the above-reference geotechnical studies to determine removal or replacement pursuant to the City's preference heirarchy, exacerbate or help relieve the budgeting crisis experienced by her Department?

These are just examples of the types of questions that I would be asking Messrs. Pietsch and Zimmerman and Ms. Higashiyama to respond to, based upon their various stewardships. Instead, it appears that the true scope of the Memo was limited to the Planning Staff's justification for their draft SMP, rather than objectively evaluating the RSC's proposed changes.

### **Reduced Setback for Non-Water-Oriented Development**

Proposed Amendment to Shoreline Bulk Standards, Table 4-3-090. D.7a, Footnote 5:

Non-water-oriented uses may be established closer to OHWM only in cases where the Vegetation Conservation Buffer is varied in accordance with RMC 4-3-090.F.1 Vegetation Conservation. Buildings shall be no closer than ~~65~~75 feet, except as consistent with a Master Site Plan approved prior to the adoption of this Section.

The RSC's proposed change to Shoreline Bulk Standards, Table 4-3-090. D.7a, Footnote 5 is common sense. It would allow a buffer/setback reduction of up to 65 feet from OHWM. The change still protects the environment because to be eligible for a buffer/setback modification, a development proposal must "result in no net loss of ecological functions." See RMC 4-3-090.F.1.d.iv.b. It is a true win-win amendment.

Finally, the Memo ridiculously states that staff is concerned that the 75 foot buffer/setback reduction "is already too generous," implying that reducing it to 65 feet would somehow be impermissible. How can such a statement be justified when any buffer modification must "result in no net loss of ecological functions"? See RMC 4-3-090.F.1.d.iv.b. Anyone who has visited the Riviera Apartments knows that the area from 65 feet and 100 feet from OHWM (*i.e.* the area for the proposed buffer reduction) is nothing more than pavement! The notion that allowing a setback/buffer reduction to within 65 feet of OHWM would injure the environment is patently absurd.

### **Use of Setback/Buffer for Impervious Surface**

Proposed Amendment to Shoreline Bulk Standards, Table 4-3-090.D.7a, Footnote 9:

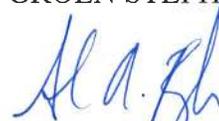
Up to 5% impervious surface is allowed in Vegetation Conservation buffers/setbacks for access to the shoreline, or a pathway up to 6 feet (6') wide, whichever is greater. In addition, for projects that provide public or community access and the opportunity for substantial numbers of people to enjoy the

shoreline, up to 25% impervious surface is allowed, provided that no more than 5% impervious surface is allowed closer than 25' (25 ft.) from OHWM.

This change is also common sense. The Memo response to this proposed change is a huge red herring. Although the Shoreline Management Act (SMA) may encourage the provision of public access, ***nothing in the SMA and WAC Guidelines links the use of a setback/buffer for impervious surface to a requirement to provide public access.*** The Memo tellingly dodges what really is the central issue - *i.e.* whether the RSC's proposed change lies within the City's discretion.

Sincerely,

GROEN STEPHENS & KLINGE LLP



Samuel A. Rodabough  
[sam@GSKlegal.pro](mailto:sam@GSKlegal.pro)

cc: Alex Pietsch, Administrator, Community and Economic Development  
Gregg Zimmerman, Administrator, Department of Public Works  
Terry Higashiyama, Administrator, Department of Community Services  
Chip Vincent, Planning Director  
Erika Conkling, Senior Planner  
Denis Law, Mayor  
Larry Warren, City Attorney  
Renton Shoreline Coalition  
David Halinen, Esq.  
Sandy Mackie, Esq.

# HALINEN LAW OFFICES, P.S.

*A Professional Service Corporation*

David L. Halinen, P.E., Attorney at Law  
*davidhalinen@halinenlaw.com*

1019 Regents Boulevard, Suite 202  
Fircrest, Washington 98466-6037

Tacoma: (253) 627-6680  
Seattle: (206) 443-4684  
Fax: (253) 272-9876

**HAND-DELIVERED AND VIA EMAIL**  
**FOR SUBMITTAL INTO THE RECORD**  
**CONCERNING THE PROPOSED RENTON SMP**

September 27, 2010

Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: The Proposed Renton SMP  
**Rebuttal to Comments Made by Erika Conkling and Alex Pietsch in an Email String that Mr. Pietsch Emailed You on Friday, September 24, 2010 at 4:27:08 PM**

Dear Council Members:

I am a member of the Renton Shoreline Coalition's Steering Committee. On Saturday, September 25, 2010, I saw on Councilman Randy Corman's blog a string of emails that CED Administrator Alex Pietsch emailed you on Friday, September 24, 2010 at 4:27:08 PM. Those emails included (in chronological order):

- (1) A Wednesday, September 22, 2010 10:19 AM email from Renton Senior Planner Erika Conkling to Mr. Pietsch and Planning Director Chip Vincent commenting on her review of the Coalition's September 21, 2010 package of materials concerning the SMP to Mr. Pietsch, Public Works Administrator Gregg Zimmerman, and Community Services Administrator Terry Higashiyama (a package that Ms. Conkling referred to as my materials);
- (2) A Friday, September 24, 2010 2:06:26 PM email from Mr. Pietsch to the Council;
- (3) A Friday, September 24, 2010 4:15 PM reply email from Councilmember Corman to Mr. Pietsch (which was also sent to the Council); and
- (4) A Friday, September 24, 2010 4:27:08 PM email from Mr. Pietsch to Mr. Corman (which was also sent to the rest of the Council, to Jay Covington, and to Chip Vincent).

I am writing to provide rebuttal to the first and last of those four emails, which are misleading.

**Rebuttal to Erika Conkling's Wednesday,  
September 22, 2010 Email**

I address Ms. Conkling's email a paragraph at a time.

Conkling Email Paragraph 1:

*I finished reading and analyzing Mr. Halinen's latest submittal. With the exception of the cover letter and the attached three page table, the other documents have already been received and reviewed by the City. The cover letter introduces the documents. The three page table presents, in a different style, the same issues that have already been presented, and revives the RCW 82.02.020 argument (which has been dismissed recently in case law, where it was decided that 82.02.020 does not apply within areas under the jurisdiction of the SMA because the SMA is a state issue, not a local issue).*

**Rebuttal:**

Ms. Conkling implies that the Coalition's 9-21-10 three-page table submitted as part of the Coalition's September 21, 2010 package of materials is irrelevant. To the contrary, it was created so that the readers (especially Mr. Zimmerman and Ms. Higashiyama, who had not previously been publicly involved in the SMP proceedings, as well as Council members and others) could readily compare and contrast in that one document the only section of the SMP Guidelines that mentions existing shoreline stabilization structures [namely, WAC 173-26-231(a)(iii)(C)] with (a) the primary draft SMP provision concerning such structures (Draft RMC 4-3-090.F.4.c), (b) the Coalition's 9-9-10 proposed revisions to subsection iii thereof, and (c) further compromise revisions to subsection iii that the Coalition proposed. The table was also created so that the reader could readily connect relevant comments from the Coalition relating to each of those four segments of the table.

Ms. Conkling's comment that the table "*revives the RCW 82.02.020 argument*" (as if it and the essential nexus and rough proportionality tests that are connected with it<sup>1</sup> are now dead) was prompted by the Coalition's following two comment paragraphs beginning in the right-most column at the bottom of page 1 and continuing at the top of page 2 of the table:

- (2) Regardless of whether an existing shoreline stabilization structure would be proposed to be replaced or merely retained, Draft RMC 4-3-090.F.4.c.iii mandates that, on sites that have an existing shoreline stabilization structure, *every* change of use involve both (a) a demonstration of need for the structure documented by a geotechnical analysis to protect principal uses or structures and (b) an evaluation of the existing shoreline stabilization structure in

---

<sup>1</sup> The essential nexus and rough proportionality tests are explained starting near the bottom of page 3 and continuing on page 4, below.

relation to the draft SMP's hierarchy of shoreline stabilization alternatives.<sup>2</sup> ***The linkage*** of (i) that required demonstration and that required evaluation (and the burdens of the cost and potential results thereof) to (ii) a mere change of use when no replacement of the existing shoreline stabilization structure is proposed is unfair to owners of property protected by existing shoreline stabilization structures.

**Further, on its face, that linkage amounts to an unconstitutional regulatory taking and a violation of RCW 82.02.020 because of the lack of a nexus between (A) an ostensible problem caused by the proposed change of use of the shoreline property and (B) the retention of the existing shoreline stabilization structure.** (Note that when an existing shoreline stabilization structure is not being expanded in conjunction with a change of use, the change of use is causing no problem in relation to the existing shoreline stabilization structure and thus the change of use cannot serve as a lawful basis for the linkage.)

(Emphasis added.) It is true that in *Citizens for Rational Shoreline Planning v. Whatcom County*, 155 Wn. App. 937, 230 P.3d 1074 (2010), Division 1 of the Washington Court of Appeals dismissed an RCW 82.02.020-based challenge to a portion of Whatcom County's recently enacted SMP on the theory that the SMA is a state issue, not a local issue, and that RCW 82.02.020 only applies to local requirements. However, that decision is not final because a petition for review of it is still pending before the Washington Supreme Court.

The related and much more important point, though, is that, whether or not RCW 82.02.020 constrains SMPs, (a) the constitutional law of regulatory takings most certainly constrains and trumps conflicting SMPs and (b) the two-part "essential nexus" and "rough proportionality" test that is at the heart of such constitutional protections of private property rights is the same test that is at the heart of statutory protections of private property rights under RCW 82.02.020. In view of the Fifth Amendment to the United States Constitution,<sup>3</sup> the United

---

<sup>2</sup> Note that as Attachment A to the Coalition's September 9, 2010 letter to the Renton Planning and Development Committee makes clear, WAC 173-26-231 calls for SMPs to require a demonstration of need documented by a geotechnical analysis and an evaluation of shoreline stabilization alternatives in the context of ***new and expanded*** shoreline stabilization structures rather than in the context of ***existing*** shoreline stabilization structures.

<sup>3</sup> Amendment 5 - Trial and Punishment, Compensation for Takings. Ratified 12/15/1791.

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; ***nor shall private property be taken for public use, without just compensation.***

(Emphasis added.)

States Supreme Court adopted important constitutional safeguards limiting the authority of government to impose requirements and conditions of approval on development in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Together, those two decisions formulated the two-part essential nexus and rough proportionality test for use in determining whether a particular requirement or condition of approval constitutes an impermissible taking. Under the first part of the test, the court must determine whether there is a connection between the requirement or condition of approval and the impact resulting from the use of the owner's property without the requirement or condition of approval. *Nollan*, 483 U.S. at 836-37. If the required nexus exists, the court must next decide whether the requirement or condition of approval is related both in nature and extent to the impact of the proposed development. *Dolan*, 512 U.S. at 391. Requirements or conditions of approval that are not supported by nexus *and* proportionality are "not a valid regulation of land use but 'an out-and-out plan of extortion.'" *Nollan*, 483 U.S. at 837 (citations omitted).

Under Draft RMC 4-3-090.F.4.c.iii and other related Draft SMP provisions, inappropriate requirements that are prerequisites to City approval of a proposed change of use include requiring an applicant to (1) expend financial resources and time and effort on a demonstration of need by means of a geotechnical analysis that has a particular prescribed content, (2) expend financial resources and time and effort on an "evaluation of the existing shoreline stabilization structure in relation to the hierarchy of shoreline stabilization alternatives established in [Draft RMC 4-3-090.F.4.a.iii]" as to whether a more "preferred" level of shoreline stabilization is infeasible, (3) make payment(s) to the City to fund the City's hiring of a third party review consultant to review the geotechnical analysis and the evaluation in relation to the hierarchy and then advise the City, and (4) eliminate or construct modifications to the existing stabilization structure if the City determines that there is "insufficient need" for the existing stabilization structure or that a "preferred alternative" would not be infeasible.

In situations where an existing shoreline stabilization structure is not being expanded in conjunction with a proposed change of use (or, for that matter, in conjunction with a proposed change of principal structure) but would merely stay the same size and in the same location, no new impact related to the existing shoreline stabilization structure stems from the change of use. (In other words, with or without the change of use, the existing shoreline stabilization structure would remain in place and the ostensible "ongoing impact" that it may have, if any, would continue.) Thus, in such situations, there is no connection (nexus) between (a) the four above-noted inappropriate requirements contemplated by Draft RMC 4-3-090.F.4.c.iii and (b) the proposed change of use (or change of principal structure). Lacking such a nexus in such situations, Draft RMC 4-3-090.F.4.c.iii would be facially unconstitutional if enacted and would thus fail to protect private property rights.<sup>4</sup>

---

<sup>4</sup> Development requirements and conditions of approval violate property owners' Substantive Due Process rights under the constitution when they fail to advance a legitimate governmental end or are "unduly burdensome." See *Guimont v. Clarke*, 121 Wn.2d 586; 854 P.2d 1; *Sintra, Inc. v. City of Seattle*, 131 Wn.2d 640; 935 P.2d 555. The expenditures required by the first three of the four above-stated inappropriate requirements would not serve a legitimate governmental end because the studies and reviews that are involved relate to the potential for elimination of or construction of modifications to the existing stabilization structures, which under the above-noted situation

Note that Chapter 173-26 WAC (i.e., the State SMP Guidelines) mandates that local governments avoid such unconstitutional regulatory enactments in their SMPs. It stresses that (a) the planning policies and regulatory provisions of shoreline master programs may be achieved by means other than the regulation of development and (b) relevant constitutional and legal limitations that protect private property rights must be respected. Among other statements in Chapter 173-26 WAC to that effect is the following excerpt from WAC 173-26-186 (Governing principles of the guidelines):

**The governing principles listed below are intended to articulate a set of foundational concepts that underpin the guidelines, *guide the development of the planning policies and regulatory provisions of master programs*, and provide direction to the department in reviewing and approving master programs. These governing principles, along with the policy statement of RCW 90.58.020, other relevant provisions of the act, the regulatory reform policies and provisions of RCW 34.05.328, and the policy goals set forth in WAC 173-26-176 and 173-26-181 should be used to assist in interpretation of any ambiguous provisions and reconciliation of any conflicting provisions of the guidelines.**

\*  
\*  
\*

(4) **The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, only one of which is the *regulation* of development. Other means, as authorized by RCW 90.58.240, include, but are not limited to:** The acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.

(5) The policy goals of the act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. **Planning policies should be pursued *through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060) on the regulation of private property.* Local government should use a *process designed to assure***

---

lack nexus and would amount to an unconstitutional regulatory taking. Further, a requirement to eliminate or construct modifications to existing stabilization structures would be unduly oppressive to the property owners.

*that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights.*

(Emphasis added.) Likewise, WAC 173-26-186(8)(a), another part of the governing principles from the State SMP Guidelines, states:

(i) Local master programs shall include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline; *local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.*

(Emphasis added.) Similarly, WAC 173-26-191 (Master program contents) states in relevant part:

(1) **Master program concepts.** The following concepts are the basis for effective shoreline master programs.

(a) **Master program policies and regulations.** Shoreline master programs are both planning and regulatory tools . . . .

The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline. **Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property.** The policies may be pursued by other means as provided in RCW 90.58.240 . . . .

(2) **Basic requirements.** This chapter describes the basic components and content required in a master program . . . .

(a) **Master program contents.** Master programs shall include the following contents:

- \*
- \*
- \*

(ii) **Master program regulations.** RCW 90.58.100 states:

*"The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state."*

In order to implement the directives of the Shoreline Management Act, master program regulations shall:

\*  
\*  
\*

(D) ***Design*** and implement *regulations and mitigation standards* in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(Emphasis added.)

In fact, in proposed RMC 4-3-090.D.8, the draft SMP itself stresses the importance of private property rights protection. That section states:

**8. Private Property Rights:** Regulation of private property to implement any Program goals such as public access and protection of ecological functions ***must*** be consistent with all relevant constitutional and other legal limitations. These include, but are not limited to, property rights guaranteed by the United States Constitution and the Washington State Constitution, applicable federal and state case law, and state statutes, such as RCW 34.05.328, 43.21C.060, and 82.02.020. The Reviewing Official shall have the authority to make findings concerning public access regarding nexus and proportionality on any shoreline permit.

In view of these governing principles and Master Program Concepts from the State SMP Guidelines,<sup>5</sup> the City Council has a clear duty to see that Draft RMC 4-3-090.F.4.c.iii is revised to eliminate the SMP's facial constitutional defects before the Council approves the SMP.

Conkling Email Paragraph 2:

*The "compromise" that Mr. Halinen speaks of on the third page of the table document, is not really a compromise, it is a demand for what they have been asking for all along for shoreline stabilization, which is unrestricted replacement of an existing bulkhead even if a use changes or has been discontinued, based on a needs assessment that does not require a geotechnical report, and without having to follow the hierarchy of shoreline stabilization alternatives.*

---

<sup>5</sup> Note that I brought these principles to the attention of the Planning Commission and City Planning Staff over a year ago in a September 11, 2009 letter, as well as during oral testimony before the Planning Commission.

**Rebuttal:**

In view of the above-explained unconstitutionality of Draft RMC 4-3-090.F.4.c.iii (and that section's violation of RCW 82.02.020 for like reasons if the Washington Supreme Court ultimately reverses the Court of Appeals decision in the Whatcom County case), the Coalition's 9-9-10 and further 9-21-10 proposed revisions to Draft RMC 4-3-090.F.4.c.iii were major compromises. Why? Two reasons:

- (1) In situations where an existing shoreline stabilization structure is not being expanded in conjunction with a proposed change of use (or a proposed change of principal structure) but would merely stay the same size and in the same location, no new impact related to the existing shoreline stabilization structure would stem from the change of use or principal structure and thus no nexus would exist that would constitutionally allow the City to require (a) any demonstration of need (by a geotechnical analysis or any other means), (b) any evaluation of the hierarchy, or (c) any elimination of the existing shoreline stabilization or reconstruction of it in terms of the hierarchy; and
- (2) The Coalition's 9-9-10 proposed revisions and further 9-21-10 proposed revisions would only partially remedy RMC 4-3-090.F.4.c.iii's constitutional defect because, even with those previously proposed revisions, RMC 4-3-090.F.4.c.iii would still call for a demonstration of need (although without the arbitrary criteria for geotechnical analysis inappropriate for situations involving existing shoreline stabilization structures and without the need for evaluation of the hierarchy of preferred alternatives).

Conkling Email Paragraph 3, Section 1:

*Outlined below is our reasoning why Mr. Halinen's request is infeasible:*

*1. The proposed revision changes the language to apply to all "replacements of existing structures." This means any replacement that would qualify as a repair for an existing use (including single-family homes) under Subsection c.i, would have to follow the rules in Subsection c.iii, which would call for a needs assessment (albeit one that doesn't require a geotech report). Nevertheless, this would increase the restriction and complication of replacing bulkheads universally. It was our specific intention not to make things more complicated than necessary for those entitled to repair/replace their bulkheads, especially for single-family homeowners. Frankly, it is surprising that the single-family property owners represented by the Renton Shoreline Coalition would agree to such an additional requirement.*

**Rebuttal:**

Neither I nor any other members of the Renton Shoreline Coalition with whom I have discussed this assertion by Ms. Conkling were aware that a replacement would qualify as a repair for an existing use under Subsection c.i of RMC 4-3-090.F.4. As far as we can recall, City Staff never mentioned that. Because Staff intends that to be the case (which we think is a good idea), Subsection c.i should be amended to replace the word “repaired” with the phrase “repaired or replaced” to make that intention clear.

Conkling Email Paragraph 3, Section 2:

*2. The proposed change that protects existing and changed uses and structures is a violation of SMP guidelines according to DOE.*

**Rebuttal:**

Perhaps DOE failed to consider the above-noted constitutional violation that RMC 4-3-090.F.4.c.iii poses. The above-quoted excerpts from WAC 173-26-186 (Governing principles of the guidelines) are a clear and important part of DOE’s SMP Guidelines.

Conkling Email Paragraph 3, Section 3:

*3. Our formal memorandum outlines the need for a geotechnical report, but simply stated: a geotechnical report is the standard for needs assessment for new development and it is the standard analysis we use in the RMC to study such issues.*

**Rebuttal:**

As I have pointed out in the bottom paragraph of page 4, above, in situations where an existing shoreline stabilization structure is not being expanded in conjunction with a proposed change of use (or, for that matter, a proposed change of principal structure) but would merely stay the same size and in the same location, no new impact related to the existing shoreline stabilization structure stems from the change of use. (With or without the change of use, the existing shoreline stabilization structure would remain in place and the ostensible “ongoing impact” that it may have, if any, would continue.) Thus, in such situations, there is no connection (nexus) between (a) the four above-noted requirements (including the requirement for a “demonstration of need”) contemplated by Draft RMC 4-3-090.F.4.c.iii and (b) the proposed change of use (or change of principal structure), rendering Draft RMC 4-3-090.F.4.c.iii facially unconstitutional if enacted and out of compliance with the above-quoted portions of WAC 173-26-186 (Governing principles of the guidelines).

Conkling Email Paragraph 3, Section 4:

*4. Eliminating the shoreline stabilization hierarchy undermines the whole SMPs approach to shoreline stabilization and to achieving no net loss, given our existing conditions. The WAC and our Inventory both conclude that hard armoring doesn't create one-time impacts to the environment, rather on-going impacts with cumulative negative effects. The environmental effect of "doing nothing" is continued degradation, making it impossible to achieve no net loss without provisions that result in cumulative improvements over time. Given our existing conditions and built environment, we know that removing bulkheads will be difficult, and not possible in many cases. The hierarchy establishes where it is possible to make changes to bulkheads and mitigate for the cumulative impacts they create. DOE has gone on record that it doesn't expect communities to be returned to pristine conditions, but merely to do the best they can. The hierarchy is the way Renton's SMP does this. DOE recognizes this as Barbara Nightingale has made the comment several times that getting rid of the hierarchy undermines our whole SMP.*

**Rebuttal:**

The statement "*Eliminating the shoreline stabilization hierarchy undermines the whole SMPs approach to shoreline stabilization and to achieving no net loss, given our existing conditions*" is misleading. First, the Coalition has only requested elimination of the evaluation of the shoreline stabilization hierarchy in regard to *existing* shoreline stabilization structures, not in regard to *new* shoreline stabilization structures or in regard to *expansions* of existing shoreline stabilization structures, which are to be treated as new structures under the SMP.

Second, the idea that eliminating the shoreline stabilization hierarchy in regard to existing shoreline stabilization structures would undermine the SMP's whole approach to "*achieving no net loss, given our existing conditions*" betrays a fundamental misunderstanding of how "no net loss" operates on a project-by-project review basis when there is a change of use. Whether or not any adverse impacts of existing hard armoring are one-time or ongoing, a change of use that does not involve an expansion of an existing shoreline stabilization structure will do nothing to exacerbate the impact situation—thus, the lack of nexus that is an essential prerequisite to the SMP constitutionally requiring an evaluation of the shoreline stabilization hierarchy in the context of a change of use. (Analogizing to peak-hour traffic impacts for a perhaps more frequently considered illustration, if an existing use that generates 100 PM-peak-hour automobile trips is proposed to be changed to a different use that would generate 100 or fewer PM-peak-hour trips, the essential nexus test would forbid special requirements or "mitigating" conditions of approval related to the number of peak-hours trips generated by the proposed change in use even though there would be ongoing traffic from the site and corresponding ongoing impacts to traffic flow and congestion on streets and pavement wear impacts to streets because those ongoing impacts are not being increased by the proposed change of use and there is nothing to mitigate.)

Part of “doing the best it can” means having the SMP’s regulations stay within the limits of what is constitutionally and legally permissible.

Conkling Email Paragraph 4, Section 1:

*Mr. Halinen also brings attention to some “minor” changes on pages 8, 9, and 11 of a document submitted for Council review which marks up portions of the code. These changes would have major impacts:*

*1. The first proposed change is to re-title the table regarding “Alteration of an Existing Structure” (for non-single family residential) to “Alteration of an Existing Development/Use.” This appears to be a backdoor attempt to achieving the Mr. Halinen’s desired outcome regarding shoreline stabilization on the Stoneway site.*

*There is reason to support the continuation of non-conforming structures. Likewise, there is no reason to support non-conforming uses. Except in sensitive natural or conservancy areas where uses are quite limited, the underlying zoning determines use in other overlay areas. Which means in most cases, if this change were made, non-conforming uses would be perpetuated in areas that the City doesn’t want them, and would be subject to more relaxed restrictions in the shoreline than in the rest of the City.*

**Rebuttal:**

First, Ms. Conkling’s assertion that “[t]hese changes would have major impacts” is untrue in view of the second sentence of the introductory paragraph of Draft RMC 4-1-095F. In regard to any alterations or expansion authorized under the two tables following that paragraph, that sentence requires that “the proposed alteration or expansion will result in no net loss of shoreline ecological function.”

Second, in regard to Ms. Conkling’s “backdoor attempt” assertion, note that the Coalition is today providing the City Council with a letter dated September 25, 2010 with an attached Exhibit 1 setting forth not only all of the minor changes to Draft RMC 4-1-095F that the Coalition seeks but also seven comments from the Coalition demonstrating why the revisions ought to be made. (For your convenience I have attached a copy of that Exhibit 1 to that letter.) Note that with the Coalition’s requested minor changes to Draft RMC 4-1-095F, the only portion of the “Partial Compliance for Non-Single-Family Development” table that could have any bearing on significant redevelopment of the Old Stoneway Site would be the section on Major Alterations, a section that, in regard to the Old Stoneway Site (a site that has no docks), would require (a) either (i) full compliance with the applicable buffer regulations or (ii) “[a]n approved alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and

processes as the full required setback and buffer” and (b) mitigation for impacts of existing shoreline stabilization in one of the three listed ways. Nothing is inappropriate about that.

Third, Ms. Conkling’s assertion that “*there is no reason to support non-conforming uses*” is a red herring. The point of the Coalition’s proposed revisions to have alterations of uses and development come within the scope of the two alterations tables in Draft RMC 4-1-095F is to recognize that sites that already have uses and development on them should not be treated like unused or undeveloped sites but, rather, be subject to the scope of the two partial alteration tables. The Coalition’s proposed revisions are consistent with both the title of Draft RMC 4-1-095F (which is “Partial and Full Compliance, Alteration of an Existing Structure *or Site*”) and with Draft RMC 4-1-095F’s first sentence (which states “[t]he following provisions shall apply to lawfully established *uses, buildings and/or structures and related site development* that do not meet the specific standards of the Shoreline Master Program,” not just to buildings and structures). (Emphasis added.)

Fourth, Ms. Conkling’s assertion that the Coalition’s proposed changes would mean that “*non-conforming uses would be perpetuated in areas that the City doesn’t want them, and would be subject to more relaxed restrictions in the shoreline than in the rest of the City*” does not make sense because the change of use would have to abide by SMP regulations subject to the provisions of the table, which are quite reasonable.

Conkling Email Paragraph 4, Section 2:

*2. The second set of changes make a change to the third option for mitigating shoreline stabilization impacts when changes are made to a non-conforming structure. If the proposed change is accepted, site improvement to mitigate the impacts of shoreline stabilization would never have to be considered. Instead they could simply contribute financially to a fund. The Planning Commission had excellent discussions on off-site mitigation provisions and it was very clear that these were to be limited to a last-resort option. This change would go against the Planning Commission direction.*

**Rebuttal:**

Ms. Conkling’s statement that “*If the proposed change is accepted, site improvement to mitigate the impacts of shoreline stabilization would never have to be considered*” is accurate and is exactly what the Coalition intends. Why this is appropriate is set forth in Comments 5 and 7 on attached Exhibit 1 to the Coalition’s September 25, 2010 letter to the Council, comments that each state as follows:

This third option shouldn’t be predicated on “infeasibility” of the first two but, rather, should be a true project proponent option. “Infeasibility” is inherently vague, confusing and subject to wide controversy. If the third option is predicated on infeasibility of the first two, scarce private and public resources may be

squandered on time-consuming studies and City review of the first two options. Instead, it would be wiser to empower project proponents to readily elect the third option to make contributions to the off-site vegetation conservation fund so that the resources will benefit the environment. The Coalition's proposed revision would do that.

Note that with the City controlling the vegetation conservation fund, the City will be able to direct the expenditure of the contributions on mitigation projects in Renton so there is no need to worry that the funds may be spent on mitigation projects in outlying areas of the County, which had been the Planning Commission's main concern in regard to off-site mitigation.

**Rebuttal to Alex Pietsch's Email of Friday,**  
**September 24, 2010 at 4:27:08 PM**

Pietsch Email Paragraph:

*The proposed SMP allows existing bulkheads to be maintained and even replaced for existing uses. If we were to eliminate the requirement to consider alternatives and justify the necessity of hard armoring through a geotech report when the use changes and/or there is new development, we would be essentially preserving the bulkhead forever. It is not that we don't believe this bulkhead may be necessary in this location. We simply would like to have an expert tell us so in a complete, formal, and legally defensible way.*

**Rebuttal:**

Mr. Pietsch's statement presupposes that there is no constitutional or legal limitation on the City (a) requiring an elimination of or construction of an alternate to an existing shoreline stabilization structure in conjunction with a proposed change of use when there is no proposed expansion of the existing shoreline stabilization structure and thus no increase in the structure's impact or (b) requiring studies relating to the "need" for the structure. In view of the discussion on pages 3 through 7, above, that presupposition is incorrect. The City's desire for such studies is not a constitutional basis for regulations purporting to require them in such situations.

Thank you for your consideration of the above.

Sincerely,

HALINEN LAW OFFICES, P.S.

  
David L. Halinen

Attachment: Copy of Exhibit 1 to the Renton Shoreline Coalition's September 25, 2010 letter to the City Council

cc: Renton Shoreline Coalition Steering Committee Members Jeanne DeMund, Greg James, Lowell Anderson, Laurie Baker, Charlie Conner and Anne Simpson, Buzz and Pat Dana, Bud and Marilyn Dennison, Monica Fix, Kevin Iden, and Marlene Winter (via email, with copies of attachment)

Sandy Mackie, Perkins Coie (via email, with copy of attachment)

Samuel A. Rodabough, Groen Stephens & Klinge, LLP (via email, with copy of attachment)

Renton Mayor Denis Law (hand-delivered and via email, with copy of attachment)

Larry Warren, Renton City Attorney (hand-delivered and via email, with copy of attachment)

Alex Pietsch, Administrator, Department of Community and Economic Development (hand-delivered and via email, with copy of attachment)

Gregg Zimmerman, P.E., Administrator, Department of Public Works (hand-delivered and via email, with copy of attachment)

Terry Higashiyama, Administrator, Department of Community Services (hand-delivered and via email, with copy of attachment)

Chip Vincent, Renton Planning Director (hand-delivered and via email, with copy of attachment)

Erika Conkling, Senior Planner, Renton Planning Division (hand-delivered and via email, with copy of attachment)

## Exhibit 1 to RSC's September 25, 2010 Letter to City Council

Draft RMC 4-1-095F is set forth below with the Renton Shoreline Coalition's requested revisions yellow-highlighted (with underlining and strikethrough) and with the Coalition's notes and comments in red.

### F. Partial and Full Compliance, Alteration of an Existing Structure or Site:

**Comment 1:** This existing section heading and this paragraph's first sentence show that Section F is to apply to "uses" and "site development," not just to buildings and structures.

The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of the Shoreline Master Program. Alteration or expansion of existing uses, buildings, structures, and/or development may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function. In no case shall a structure with a non-conforming setback from the shoreline be allowed to extend further waterward than the existing structure.

**Comment 2:** These proposed revisions are consistent with the immediately prior sentence.

**Comment 3:** Note that "no net loss" is the predicate of Section F, so none of the proposed revisions should be a concern.

**1. Partial Compliance for Non-Single-Family Development:** The following provisions shall apply to all development except single family:

**Comment 4:** These proposed revisions are for consistency with the paragraph above and the substance of this table.

Alteration of an Existing <u>Use/Structure/Development</u>		Compliance Standard
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq.ft. or up to 10% (whichever is less); or Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less); or Remodeling or renovation that equals less than 30% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:                             <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge, provided that the area to be revegetated does not exceed 10 feet, unless a greater area is desired by the applicant, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> </ul>

Moderate Alteration	Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge, or at least 10 feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>• Piers and Docks shall be required to replace any solid decking with light penetrating surfacing materials.</li> </ul>
	Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less); or	
	Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	
Major Alteration	Expansion of building footprint by more than 25%; or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water's edge if the full buffer cannot be planted, or at least 10 feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>• Piers and Docks shall be required to replace any solid decking with light penetrating surfacing materials.</li> <li>• Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways:               <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> </ul> </li> </ul>
	Expansion of impervious surface by more than 25%; or	
	Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	

**Comment 5: This third option shouldn't be predicated on "infeasibility" of the first two but, rather, should be a true project proponent option. "Infeasibility" is inherently vague, confusing and subject to wide controversy. If the third option is predicated on infeasibility of the first two, scarce private and public resources may be squandered on time-consuming studies**

		<ul style="list-style-type: none"> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would identify near shore mitigation to improve shoreline function or values on-site, or</li> <li>○ <b>If the two alternatives above are infeasible,</b> then the project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul>
--	--	----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

**and City review of the first two options. Instead, it would be wiser to empower project proponents to readily elect the third option to make contributions to the off-site**

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.

**vegetation conservation fund so that the resources will benefit the environment. The Coalition's proposed revision would do that. Note that with the City controlling the vegetation conservation fund, the City will be able to direct the expenditure of the contributions on mitigation projects in Renton so there is no need to worry that the funds may be spent on mitigation projects in outlying areas of the County, which had been the Planning Commission's main concern in regard to off-site mitigation.**

**2. Partial Compliance for Single-Family Development:** Lawfully constructed single-family homes built before the adoption of the Shoreline Master Program (**{Insert Ordinance Adoption Date Here}**) shall be considered conforming if expansion replacement is consistent with the standards below:

Alteration of an Existing <b>Use/Structure/Development</b>		Compliance Standard
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq.ft. outside of the required* setback; or Expansion of impervious surface by up to 1,000 sq. ft. outside of the required* setback.	No site changes required.
Moderate Alteration	Expansion of building footprint within the required* setback in any amount, or total expansion of 500 sq. ft. to 1,000 sq. ft.; or Expansion of impervious surface within the required* setback in any amount, or total expansion of 1,000 sq. ft. to 1,500 sq.ft.	<ul style="list-style-type: none"> <li>● Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge provided that the area to be revegetated need not be more than 25% of the lot depth in feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>● Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> </ul>

**Comment 6: These proposed revisions are for consistency with the paragraph above and the substance of this table.**

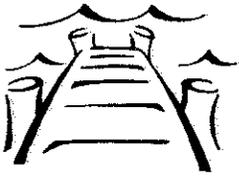
Major Alteration	Expansion of building footprint by more than 1,000 sq.ft., or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either: <ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water's edge if the full buffer cannot be planted, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> <li>• Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways: <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would identify near shore mitigation to improve shoreline function or values on-site, or</li> <li>○ If the two alternatives above are infeasible, then the project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul> </li> </ul>
	Expansion of impervious surface by more than 1,500 sq.ft.	

**Comment 7:**  
This third option shouldn't be predicated on "infeasibility" of the first two but, rather, should be a true project

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.

**proponent option. "Infeasibility" is inherently vague, confusing and subject to wide controversy. If the third option is predicated on infeasibility of the first two, scarce private and public resources may be squandered on time-consuming studies and City review of the first two options. Instead, it would be wiser to empower project proponents to readily elect the third option to make contributions to the off-site vegetation conservation fund so that the resources will benefit the environment. The Coalition's proposed revision would do that.**

**Note that with the City controlling the vegetation conservation fund, the City will be able to direct the expenditure of the contributions on mitigation projects in Renton so there is no need to worry that the funds may be spent on mitigation projects in outlying areas of the County, which had been the Planning Commission's main concern in regard to off-site mitigation.**



## Renton Shoreline Coalition

P.O. Box 624  
Renton, Washington 98057-0624

**HAND-DELIVERED FOR SUBMITTAL INTO THE  
RECORD CONCERNING THE PROPOSED RENTON SMP**

September 25, 2010

Renton City Council  
1055 S. Grady Way, Seventh Floor  
Renton, Washington 98057

Re: Renton's Proposed SMP

Dear Councilmembers:

Thank you for referring the Draft SMP to the Committee of the Whole for further consideration, including consideration of the text revisions that the Coalition has requested. We very much appreciate the effort that you are putting into your review of this. Some of you may be tired of this, but please don't tune us out.

We are disappointed that all the Coalition's text revisions that the September 23, 2010 City Staff memorandum addressed were opposed by Staff. For the many reasons we and our members and neighbors have advanced, we urge you to approve those revisions despite that memorandum's opposition. Please remember that the shoreline property owners will be the ones forced to bear the SMP's many regulatory burdens and unintended adverse consequences, not Staff.

In addition, we request that you especially consider and approve a set of the Coalition's requested revisions that the September 23, 2010 City Staff memorandum did not address: namely, the mere addition of nine words and deletion of two unwarranted phrases from Draft RMC 4-1-095F (a section titled "Partial and Full Compliance, Alteration of an Existing Structure or Site"). In a nutshell, these requested revisions, which are set forth on Exhibit 1, attached, along with Coalition comments concerning them, would:

- (1) Clarify that all sites—single-family sites as well as non-single-family sites including the Old Stoneway Site—that have lawfully established uses will be entitled to have alteration or expansion of uses, buildings, structures and/or development take place with partial compliance with the SMP standards as set forth in the SMP's two partial compliance tables "provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function;" and
- (2) Provide both single-family and non-single-family developments that have existing shoreline stabilization an opportunity to use the third mitigation option listed in those two tables without having to prove "infeasibility" of the first two options—an inherently vague, disputable, and needless high hurdle that shoreline owners simply should not have to clear.

Please make these revisions to the SMP before sending it to Ecology. You have the power to make the SMP better. We are relying on you, our elected representatives, to demonstrate your support of the taxpaying shoreline property owners by making these revisions.

Sincerely,

RENTON SHORELINE COALITION

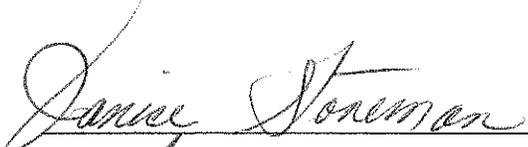
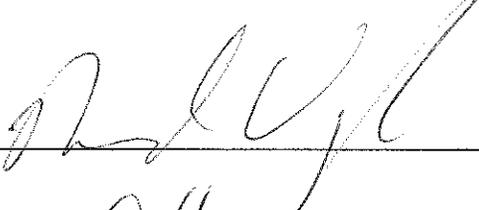
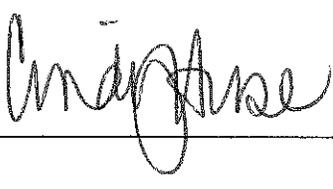
Kevin Iden, Co-Director and Steering Committee Member, and our members, neighbors, and supporters who have signed on the pages below.

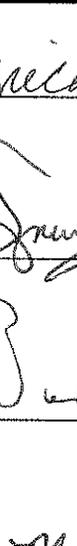
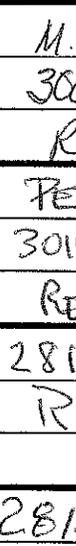
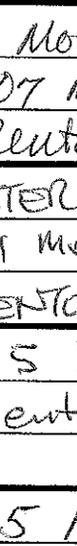
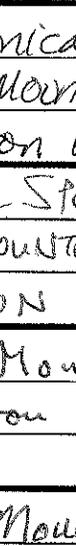
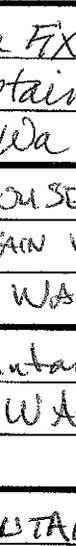
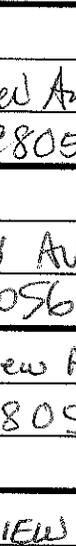
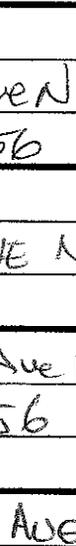
CITY OF RENTON

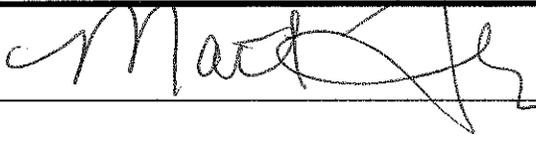
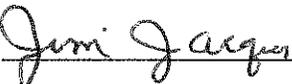
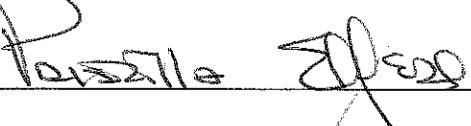
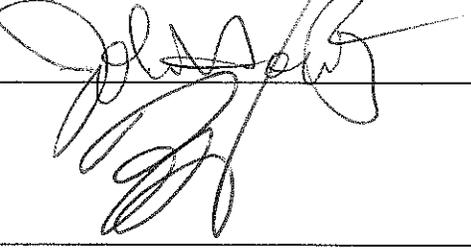
SEP 27 2010

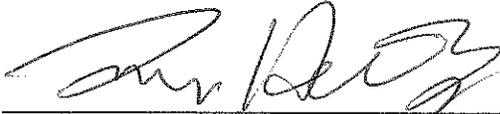
RECEIVED  
CITY CLERK'S OFFICE

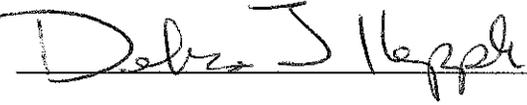
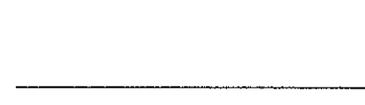
*Hand Delivered*

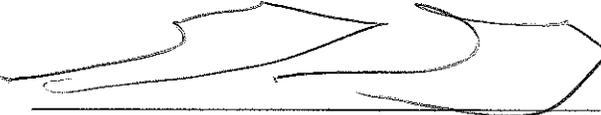
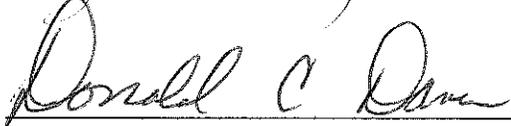
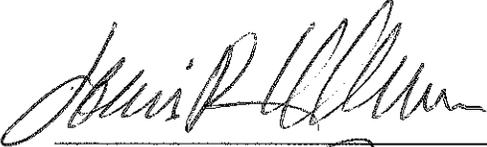
Signature	Printed Name and Address:
	LISA LORD 3307 MTN VIEW AVEN. RENTON, WA 98056
	3101 MT. View Ave N, Renton, WA 98056
	3101 MT. View Ave N Renton, WA 98056
	3205 Mt View Ave N. Renton WA 98056
	3209 Mt View N Renton WA 98056
	5115 Ripley LN N Renton WA 98056
	5127 Ripley Ln Renton, WA 98056
	5227 Ripley LN Renton, WA 98056
	same

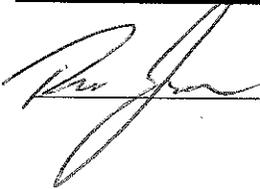
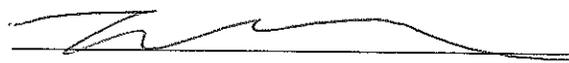
Signature	Printed Name and Address:
	M. Monica Fox 3007 Mountain View Ave N
	Renton WA 98056
	PETER SPOUSE 3011 MOUNTAIN VIEW AVE N
	RENTON WA 98056
	2815 Mountain View Ave N Renton WA 98056
	2815 MOUNTAIN VIEW AVE N RENTON WA 98056
	2801 MOUNTAIN VIEW Ave N.
	KAREN BRITNARD 2807 MOUNTAIN VIEW AVE N
	RENTON WA 98056
	DAVID CHILDERS 3115 MOUNTAINVIEW AVE N.
	RENTON, WA 98056
	Kathleen Dahlby 3213 Mt View Ave N
	Renton, WA 98056
	Thomas Dahlby
	

Signature	Printed Name and Address:
	MATT Flynn 5301 Ripley Lane N Renton WA 98056
	RITA Dye 7029 Ripley Lane N Renton, wa 98056
	Robert W Dye 7029 Ripley Lane N Renton WA 98056
	Nancy Franz 7009 Ripley Lane Renton WA 98056
	Jimi JACQUES 6833 Ripley Lane N Renton WA 98056
	RICHARD H ELFERS 6823 RIPLEY LN RENTON WA 98056
	PRISCILLA ELFERS 6823 Ripley Lane Renton WA 98056
	JOHN HOLSTZ 6809 RIPLEY LANE RENTON, WA 98056 3613 LIC WA Blvd N Renton, WA 98056

Signature	Printed Name and Address:
	3613 Lake WA Blvd N Renton, WA 98056
	3611 Lake Washington Blvd N Renton, WA 98056
Dae Hee Bang	Dae Hee Bang
Virginia & Rly	3607 Lk Washington Blvd N. Renton WA 98056
Summer Riley	//
	//
Patricia Marshall	2909 Mtn VW AVE N Renton, WA 98056 (PATRICIA MARSHALL)
Robert H. Burr	Robert H. Burr 3013 Mtn View Ave N. Renton, WA 98056
Charles F Conner	CHARLES F CONNER 3001 MTN VIEW AVE N Renton WA 98056
	//

Signature	Printed Name and Address:
	Debra K. Heppler 2805 Mt. View Ave N Renton, WA 98056
	Bill Heppler 2805 Mt. View Ave N. Renton, WA 98056
	Marlene Winter 2731 Mt. View Ave N Renton, WA 98056
	

Signature	Printed Name and Address:
	Alwyn Geiser 5031 Ripley Ln N Renton WA, 98056
	Alwyn Geiser 5029 Ripley Ln N Renton WA, 98056
	Sharon Smith 5221 Ripley Ln N Renton WA 98056
	5219 Ripley Ln N. Renton WA 98056 DONALD C DANA
	7005 Ripley Lane N Renton WA 98056 Louis R Williams
	6831 Ripley Lane N Renton 98056 George Johnston
	Irene Wilmore 6827 Ripley Lane N. Renton WA 98056
	Susan Barber 7023 Ripley Lane N Renton, WA 98056
	5219 Ripley Ln N Renton, WA 98056 Patricia A. Dana

Signature	Printed Name and Address:
	ROY JONES 6801 RIPLEY LN N RENTON WA 98056
	KEVIN IDEN 5121 RIPLEY LANE N. RENTON, WA 98056

**Exhibit 1 to RSC's September 25, 2010 Letter to City Council**

Draft RMC 4-1-095F is set forth below with the Renton Shoreline Coalition's requested revisions yellow-highlighted (with underlining and ~~strikethrough~~) and with the Coalition's notes and comments in red.

**Comment 1:** This existing section heading and this paragraph's first sentence show that Section F is to apply to "uses" and "site development," not just to buildings and structures.

**F. Partial and Full Compliance, Alteration of an Existing Structure or Site:**

The following provisions shall apply to lawfully established uses, buildings and/or structures and related site development that do not meet the specific standards of the Shoreline Master Program.

**Comment 2:** These proposed revisions are consistent with the immediately prior sentence.

Alteration or expansion of existing uses, buildings, structures, and/or development may take place with partial compliance with the standards of this code, as provided below, provided that the proposed alteration or expansion will result in no net loss of shoreline ecological function. In no case shall a structure with a non-conforming setback from the shoreline be allowed to extend further waterward than the existing structure.

**Comment 3:** Note that "no net loss" is the predicate of Section F, so none of the proposed revisions should be a concern.

**1. Partial Compliance for Non-Single-Family Development:** The following provisions shall apply to all development except single family:

**Comment 4:** These proposed revisions are for consistency with the paragraph above and the substance of this table.

Alteration of an Existing <u>Use/Structure/Development</u>		Compliance Standard
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq.ft. or up to 10% (whichever is less); or Expansion of impervious surface by up to 1,000 sq. ft. or up to 10% (whichever is less); or Remodeling or renovation that equals less than 30% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:                             <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 50% of the area between an existing building and the water's edge, provided that the area to be revegetated does not exceed 10 feet, unless a greater area is desired by the applicant, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> </ul>

Moderate Alteration	Expansion of building footprint by more than 500 sq. ft. or between 10.1-25% (whichever is less); or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge, or at least 10 feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>• Piers and Docks shall be required to replace any solid decking with light penetrating surfacing materials.</li> </ul>
	Expansion of impervious surface by more than 1,000 sq. ft., or between 10.1-25% (whichever is less); or	
	Remodeling or renovation that equals 30.1-50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	
Major Alteration	Expansion of building footprint by more than 25%; or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water's edge if the full buffer cannot be planted, or at least 10 feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Remove over water structures that do not provide public access, or do not serve a water-dependent use.</li> <li>• Piers and Docks shall be required to replace any solid decking with light penetrating surfacing materials.</li> <li>• Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways:               <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> </ul> </li> </ul>
	Expansion of impervious surface by more than 25%; or	
	Remodeling or renovation that equals more than 50% of the replacement value of the existing structures or improvements, excluding plumbing, electrical and mechanical systems and normal repair and maintenance.	

**Comment 5:** This third option shouldn't be predicated on "infeasibility" of the first two but, rather, should be a true project proponent option. "Infeasibility" is inherently vague, confusing and subject to wide controversy. If the third option is predicated on infeasibility of the first two, scarce private and public resources may be squandered on time-consuming studies

		<ul style="list-style-type: none"> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would identify near shore mitigation to improve shoreline function or values on-site, or</li> <li>○ <del>If the two alternatives above are infeasible,</del> then The project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul>	<p>and City review of the first two options. Instead, it would be wiser to empower project proponents to readily elect the third option to make contributions to the off-site</p>
--	--	--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------	-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.  vegetation conservation fund so that the resources will benefit the environment. The Coalition's proposed revision would do that.

Note that with the City controlling the vegetation conservation fund, the City will be able to direct the expenditure of the contributions on mitigation projects in Renton so there is no need to worry that the funds may be spent on mitigation projects in outlying areas of the County, which had been the Planning Commission's main concern in regard to off-site mitigation.

**2. Partial Compliance for Single-Family Development:** Lawfully constructed single-family homes

built before the adoption of the Shoreline Master Program (**{Insert Ordinance Adoption Date Here}**)

shall be considered conforming if expansion replacement is consistent with the standards below:

<b>Alteration of an Existing Use/Structure/Development</b>		<b>Compliance Standard</b>
Alteration Without Expansion	Expansion or remodel that does not change the building footprint or increase impervious surface.	No site changes required.
Minor Alteration	Expansion of building footprint by up to 500 sq.ft. outside of the required* setback; or Expansion of impervious surface by up to 1,000 sq. ft. outside of the required* setback.	No site changes required.
Moderate Alteration	Expansion of building footprint within the required* setback in any amount, or total expansion of 500 sq. ft. to 1,000 sq. ft.; or Expansion of impervious surface within the required* setback in any amount, or total expansion of 1,000 sq. ft. to 1,500 sq.ft.	<ul style="list-style-type: none"> <li>● Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Partial compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of at least 80% of the area between an existing building and the water's edge provided that the area to be revegetated need not be more than 25% of the lot depth in feet, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>● Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> </ul>

**Comment 6:** These proposed revisions are for consistency with the paragraph above and the substance of this table.

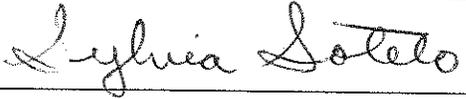
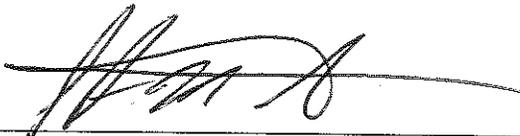
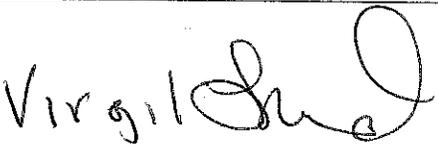
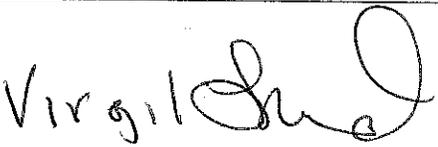
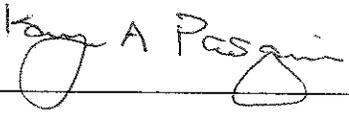
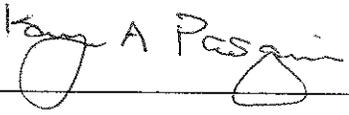
Major Alteration	Expansion of building footprint by more than 1,000 sq.ft., or	<ul style="list-style-type: none"> <li>• Install site improvements that protect the ecological functions and processes of the shoreline, consisting of either:               <ul style="list-style-type: none"> <li>○ Full compliance with Vegetation Conservation provisions of RMC 4-3-090.F.1 Vegetation Conservation consisting of revegetation of a native community of the full required* buffer, or 100% of the area between an existing building and the water's edge if the full buffer cannot be planted, or</li> <li>○ An alternate mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would provide at least equal protection of ecological functions and processes as the full required* setback and buffer.</li> </ul> </li> <li>• Docks shall be required to replace solid decking with light penetrating surfacing materials.</li> <li>• Developments with existing shoreline stabilization shall mitigate for the impacts of shoreline stabilization in one of the following ways:               <ul style="list-style-type: none"> <li>○ Shoreline stabilization structures not conforming to, or otherwise permitted by, the provisions of this code shall be reviewed and upgraded according to the standards of RMC 4-3-090F.4.a.iii Shoreline Stabilization Alternatives Hierarchy, or</li> <li>○ An alternative mitigation proposal prepared by a qualified professional and approved by the Reviewing Official that would identify near shore mitigation to improve shoreline function or values on-site, or</li> <li>○ <del>If the two alternatives above are infeasible,</del> then The project proponent shall contribute to an off-site vegetation conservation fund, in accordance with RMC 4-3-090F.1.k.</li> </ul> </li> </ul>
	Expansion of impervious surface by more than 1,500 sq.ft.	

**Comment 7:**  
 This third option shouldn't be predicated on "infeasibility" of the first two but, rather, should be a true project

\*The full buffer/setback as required in RMC 4-3-090D.7.a Shoreline Bulk Standards, or as modified under RMC 4-3-090F.1 Vegetation Conservation.

proponent option. "Infeasibility" is inherently vague, confusing and subject to wide controversy. If the third option is predicated on infeasibility of the first two, scarce private and public resources may be squandered on time-consuming studies and City review of the first two options. Instead, it would be wiser to empower project proponents to readily elect the third option to make contributions to the off-site vegetation conservation fund so that the resources will benefit the environment. The Coalition's proposed revision would do that.

Note that with the City controlling the vegetation conservation fund, the City will be able to direct the expenditure of the contributions on mitigation projects in Renton so there is no need to worry that the funds may be spent on mitigation projects in outlying areas of the County, which had been the Planning Commission's main concern in regard to off-site mitigation.

Signature	Printed Name and Address:
	Sylvia Sotelo 5021 Ripley Ln. #5
	Renton, WA 98056
	Steve Jensen 5021 Ripley Ln #4 Renton 98056
	Margaret Heimsoth 5021 Ripley Ln. N1 #109
	Renton, WA 98056
	Virgil Lund 5021 Ripley Ln N 105
	Renton WA 98056
	KARYN PASQUIER 3709 LE WA BLVD N
	RENTON WA 98056

Signature	Printed Name and Address:
<i>Vikki Littleman</i>	VIKKI LITTLEMAN 3805 LEWA BLVD N RENTON WA 98056

Renton City Council  
September 25, 2010  
Page \_\_

SMP Letter

Signature	Printed Name and Address:
<i>Marjorie K Grundhaus</i>	MARJORIE K GRUNDHAUS
	7001 RIPLEY LANE N
	RENTON, WA 98056

Renton City Council  
September 25, 2010  
Page 2

SMP Letter

Signature	Printed Name and Address:
<i>Dayna E. Morgan</i>	Dayna E. Morgan
	5021 Ripley Ln #210 {Bldg 2} Cove
	Renton WA 98052

Renton City Council  
September 25, 2010  
Page \_\_

SMP Letter

Signature	Printed Name and Address:
<i>Jack C. Wright</i>	JACK C. WRIGHT 5021 RIPLEY LN N # 205 Renton, WA 98056