

## Susan Coles

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**From:** Ryan, Andrew F [andrew.f.ryan@boeing.com]  
**Sent:** Thursday, May 06, 2010 11:30 AM  
**To:** Susan Coles  
**Subject:** May 4 State SMP and RCW to City Council.doc  
**Attachments:** May 4 State SMP and RCW to City Council.doc

Good morning Susan. Another letter to submit to the City Council and please cc Mr Martin and/or anyone else as appropriate. Should I be sending this to someone other than yourself (ie - city clerk)

Thank you as always

Andy Ryan

CFR: 05/24/10

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6 April 2010

The Burien Planning Commission  
Burien City Council  
c/o Susan Coles, Community Development Department Assistant  
The City of Burien  
400 SW 152<sup>nd</sup> Street  
Burien, WA 98166

At the May 3 Burien City Council meeting, City staff provided an overview of the state SMP guidelines and a recommended plan forward. Critical information regarding the protection of private property goals of the SMA/SMP were omitted from the staff presentation.

The intent of this letter is to provide some information regarding the private property element from the Washington State SMP and RCW 90.58 (entitled Shoreline Management Act of 1971) to supplement the staff presentation and to address what appears to be an ongoing pattern of data bias in the staff provided information.

Attached below are excerpts from the Shoreline Master Programs (SMP)/Guidelines/Wa State Dept of Ecology Website.  
<http://www.ecy.wa.gov/programs/sea/SMA/guidelines/index.html>

The first set of references appears to be the source material for the initial slide provided by staff at the May 3 council meeting.

### **WAC 173-26-181 Special Policy Goals of the Act and Guidelines for Shorelines of State-Wide Significance.**

In accordance with RCW 90.58.020, the "department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;

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(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.”

Summary listing of additional references regarding the Public aspect of the State SMP are listed below. The full text is provided at the end of this letter

(b) The utilization of shorelines and the waters they encompass for public access and recreation. (RCW 90.58.020 & RCW 90.58.100:

(c) Protection and restoration of the ecological functions of shoreline natural resources. (RCW 90.58.020)

**Points that were provided in the staff briefing emphasized the Public aspect of the plan but omitted any reference to the Private aspect of the program. These references are provided below: (emphasis is mine)**

(h) **Recognizing and protecting private property rights.**

**RCW 90.58.020:**

“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 rights consistent with the public interest.”

(i) **Preferential accommodation of single family uses.**

**RCW 90.58.020:**

“Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures....”

**RCW 90.58.100:**

Washington State Shoreline Master Program Guidelines, Chapter 173-26 WAC 9 of 100

“(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.”

What I find disturbing about the private aspect missing from the May 3 presentation is that there is the increasing appearance of intentional omissions of data that are clearly relevant to the SMP issues in city staff presentations and responses to questions asked by either City Council, the Planning Commission, and /or comments made in public forums, or releases.

The staff's presentation to the Council gave the impression that the intent of the SMP is strictly public and environmentally orientated and completely **ignored the State's private protection guidelines.**

Examples of what I consider to be other omissions of pertinent data are provided as follows:

- 1) Commissioner Clingan asked staff at one of the Planning Commission meetings for a clarification on the impact of not allowing appurtenant structures waterwards of the primary structure. The response provided by staff indicated that this regulation only applied to construction, which alleviated Comm. Clingan's concern that the new language would negatively impact existing property owners. The language, provided below, clearly includes "**OR EXTERIOR ALTERATIONS**". There is a **huge** difference in implication to property owners between new construction vs exterior alterations. Exterior alteration could include exterior painting, re-roofing, siding replacement, or other normal maintenance functions. Proposed BMC 20.30.095 would appear to force existing property owners to make a choice between primary structure exterior maintenance (or to be legally permitted) or removal of their waterward appurtenant structures. The staff response failed to address this rather large nuance.

Here is what the regulation really says: (emphasis is mine again)

#### **20.30.095 Residential Development**

Single family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. **Residential development shall mean the construction *or exterior alteration* of one or more buildings, structures or portions thereof which are designed for and used to provide a place of abode for human beings including one and two family detached dwellings, multi-family residences, townhouses and condominiums, together with appurtenances and accessory structures.**

Item g. below is a subset of 20.30.095 above

**g. Accessory structures and Appurtenances.** Accessory structures and appurtenances must be proportional in size and purpose to the residence and compatible with onsite and adjacent structures, uses and natural features. **Accessory structures and appurtenances that are not water-dependent are not permitted waterward of the principal residence unless clearly water-dependent** (buoys, docks and floats) and used for recreational or personal use. Except for fences less than 6 feet high, accessory and appurtenant structures shall not be located within shoreline buffers or riparian buffer setbacks to assure that buffer integrity is maintained.

It should be noted, the language stating that "Accessory structures and appurtenances that are not water-dependent are not permitted waterward of the principal residence" was **added subsequent** to the SAC recommendation by the Planning Commission. This was not a SAC or State requirement.

- 2) Staff has gone on record a number of times declaring that redefining existing properties does not make properties unbuildable. An example, from a City of Burien FAQ sheet, is provided below: (the question is bolded, the staff response is the "A." item)

**11. Are there limits on repairing houses, fences, bulkheads, docks or other structures?**

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

(FAQ Rev. date 3/10/2010) R:\PL\DAVID\Shorelines\PublicOutReach\SHORELINE MASTER PROGRAM FAQ FINAL.do

This is another example of a truthful, but partial response. The requirements being imposed by the local jurisdiction are the issue driving this whole problem and the above response downplays any significance of that. It is the local jurisdiction changes that are being imposed that apply the limits on repairing our properties (ref 20.30.095 above).

Another example from the same FAQ

**14. Can I replace or repair my existing bulkhead?**

A: Yes. Existing bulkheads may be replaced with a similar structure if the new structure does not extend toward the water. Repair is also allowed if the proposed repair is comparable to the original condition including factors such as its size, shape, configuration, location and external appearance.

The actual regulation s says:

**20.30.070 Bulkheads and Other Shoreline Stabilization Structures**

An existing shoreline stabilization structure may be replaced with a similar structure if the following apply:

- i. The existing structure can no longer adequately serve its purpose of stabilizing the shoreline to protect the *primary structure*

Source: Planning Commission Draft IV-19 3/30/2010

This is another example of a partial, and potentially misleading, response from staff. Per the regulation, bulkheads can only be repaired to protect primary structure, not appurtenances or property.

**3) Public "Open House" meetings**

Staff stated that public meetings were held, along w/ breakout teams, etc. Again, a true statement, however the nature of those meetings were significantly different than the output from the SAC and Planning Commission.

Items like "you're house will be reclassified non-conforming, you have to re-vegetate your property if you want to rebuild/remodel/etc, or you can only rebuild your bulkhead to protect primary residence, not appurtenances. Things that were presented were items like :recommended buoy configurations, preferred native plants for our locations, and classification of the beach areas into different reaches. As one of my neighbors so aptly stated to me after the Gregory Heights open house, " I just came to make sure the City isn't trying to f@#! us over, looks like it will be OK." In the end those meetings resulted in the shoreline property owners dropping their guard with the assumption that the SMP revision was just an administrative process w/ no real impact. How wrong could we have been?

I have attended the majority of the public open house meetings, the planning committee meetings, and City Council meetings related to the SMP, and these are just a few examples of incomplete or misleading responses that I have observed. I believe the actual, or appearance this kind of activity, whether intentional or not, will drive more of a wedge between property owners and the City on this important SMP issue. I am not aware of any of the property owners that are against protecting the environment, and am hoping we can get to some honest roundtable discussions to address workable solutions to the issues before us. The devil is truly in the details here, and we cannot afford to gloss over relevant points that have significant implications.

Sincerely,

Andrew Ryan

#### Additional Reference Material

Full text of additional references regarding the Public aspect of the State SMP are listed below.

#### **(b) The utilization of shorelines and the waters they encompass for public access and recreation.**

##### **RCW 90.58.020:**

"[T]he public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.

"Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for...development that will provide an opportunity for . . . substantial numbers of people to enjoy the shorelines of the state."

##### **RCW 90.58.100:**

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

(b) A public access element making provisions for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;..."

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same."

#### **(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...."