Shoreline Master Program (SMP) Update Timeline

8/8 Revised draft available (tentative date)

8/29 Planning Commission Meeting: Process and Procedures of the Shoreline Master Program Update (presentation by Town Attorney Bob Sterbank); review of revised SMP draft

9/12 Council Meeting: Discussion regarding revised draft; Planning Commission comments

9/26 Planning Commission Meeting: continued review of SMP draft/revisions

10/3 Council Meeting: Focus on Planning Commission comments

10/21 Council Retreat Discussion of SMP

11/7 Council/Planning Commission Joint **Public Hearing** on SMP Update

11/28 Planning Commission Meeting: Recapture of Public Hearing; discussion; recommendation to Town

12/5 Council Meeting: Discussion; SMP adoption

Hunts Point Shoreline Master Program Update

Town Council Meeting
July 11, 2011

Purposes of Presentation:

- Discuss Shoreline Management Act framework
  - Why is City updating its Shoreline Master Program?
  - Address lingering questions
- Update Council on current status of SMP update
- Outline next steps

What is the Shoreline Management Act (SMA) ?

- Adopted in 1971, confirmed via initiative process.
- Controversial developments (built or proposed) over the water spurred SMA's passage.
- Affects all "development" within "shoreline," *i.e.*, 200 feet landward of ordinary high water mark.
- Alternative version, pushed by WEC, would have regulated *500 feet* landward of OHWM.

How Does the SMA Work?

- SMA states that it "establishes a *cooperative* program of shoreline management between local government and the state." RCW 90.58.050.

RCW 90.58.050

- "Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter."

What 90.58.050 Means:

- SMA requires a local government to prepare and adopt a "shoreline master program" or "SMP."
- SMP functions like set of special shoreline zoning regulations, applicable to the waters of the state and their underlying beds, and the jurisdictional "shoreline" (200' landward from the water (OHWM)).
- SMP requires approval by Dept. of Ecology.

What 90.58.050 Means:

- SMPs must be regularly updated (every 7-8 years), by deadlines set by the Legislature.
- Hunts Point must complete its SMP update December 1, 2011. RCW 90.58.080(2)(a)(iii).
- Hunts Point may request additional year to comply, and DOE must grant if DOE finds that Town is likely to adopt SMP within the additional year. 90.58.080(8).

Lingering Question No. 1: Can Town "Just Say No" to New Regulatory Burden?

- No. SMA requires the Town to update its SMP by date certain. RCW 90.58.080(2)(a)(iii).
- What are the consequences if Town doesn't comply?
- If Town does not comply, DOE is authorized to adopt an SMP for the Town, and impose it within Town boundaries. RCW 90.58.070(2).

The SMP Update: Content

- SMA specifies content, not just process, for SMPs.
- RCW 90.58.020: legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance . . . ."
- Lake Washington is a shoreline of statewide significance. RCW 90.58.030(2)(f)(iv) (lakes of more than 1,000 acres are shorelines of statewide significance).

SMP Update: Content cont.

Local government, in developing SMPs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide 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;

SMP Content cont.

"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*, ports, shoreline recreational uses including but not limited to parks, marinas, *piers,* and other improvements facilitating public access to shorelines of the state. . . ." RCW 90.58.020.

SMP Content cont.

"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 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." RCW 90.58.100(6).

SMP Content cont.

- SMPs must include, "when appropriate," certain specified "elements," or chapters.
- "Elements include use (specifying categories or public and private land uses), public access, recreation, economic development and conservation).

SMP Content cont.

- SMPs must be based on scientific information. 90.58.100(1).
- A local government adopting an SMP must:
  - "Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;
  - Conduct or support such further research, studies, surveys, and interviews as are deemed necessary; [and]
  - Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data."

  RCW 90.58.100(1)(c) - (e).

SMP Update: Content cont.

- In addition to the above content, the SMA requires Ecology to adopt "guidelines" (read: regulations) consistent with 90.58.020 and governing local government preparation of master programs ("SMPs").
- Ecology guidelines codified at WAC 173-26.

SMP Content cont.

- Key provisions of Ecology guidelines:
  - Goals mirror those set out in 90.58.020, including "recognizing and protecting property rights," and "preferential accommodation of single family uses." WAC 173-26-176(3)(h) and (i).
  - SMP policies should be pursued only to extent consistent with all relevant constitutional and other legal limitations. ***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(5).

  So far, so good. But. . .

SMP Content cont.

- Ecology guidelines also contain environmental "teeth". SMP must:
  - Use process that identifies and inventories "current and potential ecological functions" of affected shorelines.
  - Achieve "no net loss" of those ecological functions, whether as mitigated, or with all shoreline development - even permit-exempt development - - considered in the aggregate.
  - "Include goals and policies that provide for *restoration* of such impaired ecological functions."

  WAC 173-26-186(8)(a)-(c).

SMP Content Cont.

- Ecology guidelines have specific science requirements.
- SMP must be based on "an analysis incorporating the most current, accurate, and complete scientific or technical information available. " Town must identify:
  - Scientific information and management recommendations on which the master program provisions are based;
  - Assumptions made concerning, and data gaps in, the scientific information; and
  - Risks to ecological functions associated with SMP.

SMP Content cont.

- What about public input?
- Requirement to use scientific and technical information. . . does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties . . ." WAC 173-26-201(2)(a).

BUT:

- "Where information collected by or provided to local governments conflicts or is inconsistent, SMP must be based "*on a reasoned, objective evaluation of the relative merits of the conflicting data.*" *Id.*

Lingering Question No. 2: Isn't this SMP Update a "taking"?

- No. Diminution of property value does not constitute a "taking" unless regulation works a "deprivation of all economically viable use," or is such an interference with "reasonable investment-backed expectations" as to constitute a regulatory taking.
- In Washington, the public retains an interest in navigation over water and shoreline under the "public trust doctrine," notwithstanding private ownership of fee interest in shoreline or lake bed. Regulations that protect this interest are not a taking.

Hunts Point SMP Update Process

- Determine Jurisdiction (shoreline + 200' landward) - Completed December, 2009
- Inventory & Analysis - Completed June, 2011
- Draft Environment Designations, Goals, Policies, Regulations - Completed Fall, 2010
- Cumulative Impact Analysis & Restoration Planning - Summer 2011
- Planning Commission deliberation and recommendation - Fall 2011
- City Council deliberation - Winter 2012.
- Adoption - Spring 2012

The SMP Update Process

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What is the purpose of the Inventory/Analysis Report?

- Establishes the baseline against which the updated SMP will be evaluated to determine if the goal of "no net loss of ecological functions" is met.
- Informs shoreline management recommendations that should be carried forward into the updated SMP.

Shoreline Inventory - Report Preparation

- All "pertinent and available" information was collected from a variety of sources.
- Shoreline armoring was the only set of new primary data obtained for this effort.
- The report analyzes the shoreline's current ecological function, accommodation of preferred land uses, and provision of shoreline public access.

Key Findings of the Analysis

- The performance of shoreline ecological function:
  - Shoreline armoring = 81.4%
  - Overwater coverage = 4.1 acres
- Wetherill Nature Preserve is an important area of high ecological function.
- Good News: Incremental redevelopment of piers & bulkheads, with enhancement, has potential to improve ecological functions:
  - Pier Grating
  - Vegetation
  - Cove beaches

What is Status of SMP Update?

- Planning Commission is considering drafts – most recent issued June 20, 2011
- Draft contains "elements" required by SMA, along with policies and use regulations.
- Of greatest interest to affected Hunts Point residents are provisions relating to shoreline setbacks, and piers/docks.

SMP Update Status

- Comparison of the existing Hunts Point SMP regulations for setbacks and piers/docks, with the proposed standard, is shown on handout prepared by Town Planner.
- Standard for piers/docks matches what is allowed under current U.S. Army Corps of Engineers (ACOE) and Department of Fish & Wildlife general permits, with exception allowed by individual permit only if approved by ACOE.

SMP Update Status

- Residential shoreline setback in proposed draft matches existing Hunts Point SMP (i.e., stringline between adjacent residences, or per underlying plat).
- Proposed new impervious surface area limitation within first 100' landward of OHWM.

Lingering Question No. 3: Why Can't We Just Continue Allowing What's Currently Built?

- Allowing all properties to, say, build a dock as long as the longest existing dock may not comply with "no net loss" of ecological functions standard.
- Key question: What does science show?
- Allowing properties to repair and replace nonconforming structures / docks indefinitely would differ from the way Town Zoning Code treats nonconforming structures on upland properties.

Next Steps

- Planning Commission will deliberate on proposed draft in coming months, and forward recommendation to Town Council before end of 2011.
- Town Council will hold a public hearing, and set a schedule for its consideration of the draft SMP.

Lingering Question No. 4: Isn't There A Role for Public Input?

- Yes. Ecology guidelines state: "local government shall solicit public and agency comment" during SMP drafting. Degree of public and agency involvement "should be gauged according to the level of complexity, anticipated controversy, and range of issues covered in the draft proposal." WAC 173-26-110.
- Guidelines require, at a minimum:
  - At least one public hearing;
  - Published notice in a newspaper of general circulation;
  - Consultation with other agencies and groups, including "adjacent local governments with jurisdiction over common shorelines of the state." WAC 173-26-110(1) - (3).

Question 4 cont.

- This provides avenue for Hunts Point to collaborate with Point communities and other similarly situated communities developing SMPs.
- But, recall WAC 173-26-201(2)(a): SMPs must be based on "analysis incorporating the most current, accurate, and complete scientific or technical information available;" in the event of conflict, base SMP "on a reasoned, objective evaluation of the relative merits of the conflicting data."

Lingering Question No. 5: Why Can't the Town Represent My Individual Interest?

- Representative democracy means Town Council members represent interest of City at large, not individual citizens, or even group of individual citizens.
- SMA mandates consideration of a broader public interest: "the interests of all the people shall be paramount," and "the 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 . . . ." RCW 90.58.020.

Closing Thought: Inherent Tension in SMP Process.

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.

For More Info .....

- Additional information available:
  - Handouts on table
  - Please feel free to contact the Town Planner or me with additional comments or questions.

Bob Sterbank
Kenyon Disend, PLLC
11 Front Street South
Issaquah, WA 98027
(425) 392-7090
bob@kenyondisend.com