Minority Report, Planning Commission Recommendation for SWP Update

To: Sammamish City Council  
From: Scott Hamilton, Member, Sammamish Planning Commission  
November 18, 2008

CC: Sammamish Planning Commission

Dissent from the Planning Commission Recommendation for Approval by the City Council of the SMP Update

I Dissent from the Planning Commission Recommendation for Approval of the SMP Update and file this Minority Report explaining the reasons for this Dissent.

Before detailing the reasons for my Dissent, some context will be useful for the Council. Since it is probable that I will not be present when the SMP is handed off to the Council, please bear with a somewhat longer transmittal letter than may be customary.

Context and Background

The Staff and Consultants worked very hard to craft a document that meets State requirements while being sensitive to local concerns. The process before the Planning Commission included a great deal of public testimony. Many of the flaws identified in public testimony were corrected in the Final Draft SMP Update. Some stakeholders may still identify regulations in testimony to the City Council that they feel are flawed; the Commission and Staff carefully weighed all comments provided, accepting many public suggestions and not accepting some.

I broadly concur with the overall result of the SMP Updates forwarded to Council; my Dissent is based solely on what I believe to be inadequate references to, reliance on or use of Low Impact Development.

Employment of LID practices may enable property owners to build beyond impervious surface restrictions (either new-build, remodeling or replacement (the latter in the event of a fire or natural disaster)) specified in the SMP Update. The SMP only cites LID practices as a mitigation to allow the removal of 20 percentage points more trees rather than providing the ability (or a “relief valve”) for property owners seeking to use their property to the most feasible extent while still achieving the goals of SMP.

I believe that it is important to demonstrate clearly to property owners what and how they may obtain the highest and best use of their land through the use of LID practices rather than come away with the impression that there is a “taking” of their properties, regardless of the logical and statutory goals of SMP Updates.
One commissioner commented that (paraphrasing) if a property owner wants to do something beyond the limitations cited in SMP, LID enables them to do so. However, the language of the SMP Update doesn’t tell the reader this, except for the detail about how you can remove more trees—a concept (tree rem oval) that actually is the antithesis of LID.

**Detailed Objections**

1. The SMP Update does not adequately incorporate references to or reliance upon Low Impact Development as a mechanism to support and complement the goals and objectives of the SMP Update.

   - Language is ambiguous regarding the use of LID;
   - Where language is specific about what benefit may be gained for using LID, it is to be used as an incentive permitting the removal of an additional 20% points of trees. On a percentage basis, this clause actually allows 28% more tree clearing (70% reduced to 50% is a 28% reduction.)

There are only two specific references to LID in the entire document:

- 25.04.080 (2): Low Impact Development (LID) practices should be incorporated where site conditions are feasible in order to minimize impervious surface area and surface runoff in accordance with the Technical Guidance Manual for Puget Sound and the City’s LID Ordinance (SMC 21A.85). The original language began, “…LID techniques should be encouraged….” The Commission voted to change the language to that cited above.
- 25.09.010 (2) (c) (iii): The applicant/property owner earns at least fourteen (14) low impact development incentive points by implementing one or more of the LID techniques allowed in SMC 21A.85.040.

There is a third item that for the knowledgeable infers LID but which is ambiguous at best:

- 25-04-080 (3) Where geologic conditions are conducive to infiltration, the City encourages infiltration systems for stormwater to mimic the natural infiltration

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1 A specific page number cannot be provided for the City Council because page numbers between the Draft SMP Update working document used by the Commission will likely not correspond with the copy presented to the Council for its approval. The citation referenced is on Pgs. 25-26 of the Draft SMP.

2 The original language began, “…LID techniques should be encouraged….” The Commission voted to change the language to that cited above.

3 The relevant portion to which this subsection pertains reads: “In addition to meeting the buffer requirements in 25.09.010(2)(b), seventy percent (70%) of the significant trees within the shoreline jurisdictions must be retained, provided that the Director may reduce this to 50% of significant trees if one or more of the following mitigation measures is implemented:”

4 “Encourage(s)” is defined as: 1. to give hope of confidence to; 2. to urge; 3. to stimulate, to help to develop. *Oxford American Dictionary*. The change from “encourage” to “incorporate” (25.04.080 (2)) is significant; “incorporate” is defined as: 1. to include as a part. *Oxford American Dictionary*. 
and groundwater interflow processes as long as the infiltration will not create or exacerbate slope instability or degrade water quality.\(^5\)

The one specific description and its application of the benefit of LID (25.09.010 (2) (c) (iii)) is not in keeping with the actual intent and goals of LID.

2. LID promotes clean water and protects the eco-system, supporting SMP goals.

The objective and goals of SMP Updates as adopted by the State are clear and unambiguous. The goals of clean water and promoting healthy habitat are understandable and admirable social policy. LID is a mechanism that promotes clean water and protects the eco-system. Thus, this should be a critical element of SMP.

The State Department of Ecology, in an e-mail\(^6\) dated October 17 (3:43pm) to the city, from David Radabaugh and CCd to five other ECY officials, writes: “My co-workers have noted the following [in the Whatcom County SMP]:”

23.90.09 A 2. Policies. Low impact and sustainable development practices such as rain gardens, and pervious surfacing methods including but not limited to, porous paving blocks, porous concrete and other similar materials, **should be incorporated** in developments where site conditions allow to maintain shoreline ecological functions and processes. Topographical modification, vegetation clearing, use of impervious surfaces and alteration to natural drainage or other features should be limited to the minimum necessary to accommodate approved uses and development. An engineering geologist should be consulted prior to using infiltration practices on shore bluffs. (Emphasis added.)

23.90.09 B. Regulations

Impervious surfacing for parking lot-space areas **shall** be minimized through the use of alternative surfaces where feasible, consistent with the May 2005 Low Impact Development Technical Guidance Manual for Puget Sound. (Emphasis added.)

Note the uses of “should be incorporated” and “shall” in the SMP cited by Ecology and compare this with the weaker, ambiguous language of our SMP Update.

3. A lot has changed in a short period of time about LID.

- The Pollution Control Hearings Board has ruled LID be standard practice for Phase 1 cities. It is only a matter of time before this is true of Phase 2 cities.
- King County is moving aggressively toward adopting more LID practices.
- Seattle is likewise moving aggressively toward adopting more LID practices.
- The Puget Sound Partnership on November 6 issued its *Draft 2020 Action Plan For Puget Sound* that recommends adoption of LID practices on an area-wide basis. LID is just one recommendation to achieve the goals to:

\(^5\) This section should be reworded by the Council from “encourage” to effect a “should incorporate” principal.

\(^6\) If the Council receives the Matrix of Comments prepared by Staff, the referenced e-mail was not included in the Matrix. The full e-mail was provided to the Commissioners in their information packets.
4. Summary

It is for the reasons outlined above that I Dissented from the Commission Recommendation.

5. Request and Remedy

The following recommendations are made to improve and strengthen the SMP.

- Include an over-arching section that describes how the use of LID practices may benefit property owners as they seek to achieve their objectives for use and development of their property.
- Detail what LID practices are, how they may be used and the benefits from them.
- Require certain LID practices where site conditions are feasible.

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