Testimony to the Washington Department of Ecology on the Sammamish Shoreline Master Program Update

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The Sammamish SMP is not perfect, but it is the product of considerable time and effort, and in its current form it is a balanced and viable approach. Its adoption should not be delayed; its defects can be addressed in a future revision. However, if it is determined that the SMP is to undergo substantive rework at this time, the following changes should be considered, for the reasons stated.

1. **Faulty definition of Development** The definition of “Development”, 25.02.010 (26), is overly broad due to its use of the terminology “exterior alteration” of structures. The WAC definition uses “exterior alteration” as well, but both uses are problematic in that exterior alteration can be interpreted as including external repairs that do not change the envelope of a structure, such as the replacement of siding or a roof. Such repairs should not be subject to the restrictions associated with Development that expansion of a structure triggers. Therefore “exterior alteration” should be replaced by “expansion” in the definition of Development.

2. **No threshold for vegetation removal** The requirement to submit a “restoration or enhancement plan” for the removal or replacement of vegetation is found in the following two sections:
   - 25.06.020(8) (d) Select Vegetation Removal Activities
   - 25.06.020(8) (e) Conservation, Preservation, Restoration and/or Enhancement
These requirements fail to make any distinction as regards the scale of such activity. Consequently, if strictly enforced, the code would require a “restoration or enhancement plan” for the removal of a single loosestrife plant, blackberry vine, or bush that has died. This is not reasonable, and is what prompts citizens to disrespect the code and perform work “under the radar”. These subsections should prescribe a threshold for the scale of such activity below which a “restoration or enhancement plan” is not required.

3. **Docks unfairly restricted in subdivisions** At most only two docks are allowed for an entire subdivision. Section 25.07.080(6) Subdivision states:
   - (c) All new subdivisions shall be allowed one additional shared use dock. An existing dock may remain for either shared use or use by one lot in the subdivision.
That is regardless of the number of waterfront lots within the subdivision. This is unreasonably restrictive and at odds with WAC 173-26, which recognizes that docks are legitimate water-dependent uses for single-family residences. The same standard should be applied for waterfront lots within subdivisions as elsewhere.
4. **Non-conforming structures created**  A substantial number of existing, legally built homes closer than 50 feet from OHWM will become non-conforming if the SMP is adopted as currently written, as their footprints will fall within the 45 foot “shoreline setback” plus five foot “building setback” as defined in the draft SMP. Being officially non-conforming negatively impacts insurability and market value, thru no fault of the property owner. To avoid this, the SMP should define the boundary of this combined setback as going around the lakeward projection of the footprints of such houses into the 50 foot region, thus eliminating the non-conforming status in such cases.

5. **Liberal Construction clause problematic**  Section 25.01.090 Liberal Construction states:

   In accordance with RCW 90.58.090, this Program is exempt from the rule of strict construction; therefore this Program shall be liberally construed to give full effect to its goals, policies and regulations.

This clause opens the door to significant misapplication of the code based on a permit reviewer’s personal agenda or that of his department. The SMP, for the most part, has been carefully written to be explicit in its requirements. This both protects the developer or user from arbitrariness in the application of this code and protects the environment from actions that would be harmful if not explicitly controlled. Liberal construction defeats this. Note that the cited RCW does not require or recommend that a master program contain a liberal construction clause. Section 25.01.090 should be removed.

6. **Ombudsman provision needed**  Disputes between an applicant and the city as to the interpretation or applicability of city code are presently commonplace and ongoing. (Liberal construction contributes to this.) Currently the SMP references SMC 20.05 (Procedures for Land Use Permit Applications, Public Notice, Hearings and Appeals) but that code only offers two appeal options – to a hearing examiner or to the State Shoreline Hearings Board. Both of those appeal processes are onerous and expensive. The SMP should provide or reference a streamlined mechanism for dispute resolution via an ombudsman function internal to the city.