March 16, 2012

Barbara Nightingale, Regional Shoreline Planner  
Department of Ecology  
State of Washington  
3190 160th Avenue, SE  
Bellevue, WA 98008-5452

RE: Mercer Island SMP Submittal

Dear Barbara,

Attached please find the City of Mercer Island’s proposed amendments to our Shoreline Master Program (SMP). We have enclosed two hard copies of all documents except Attachment’s 8.4 and 8.5, the record of Planning Commission and City Council meetings, which we have provided in a CD format. All SMP documents in this submittal will be posted on the City’s SMP website http://www.mercergov.org/SMP by next week. The total required submittal would have been about 6,500 pages if we had included all records in hard copy. We appreciate your willingness to accept many of these of thousands of pages of records from the Planning Commission and City Council meetings in an electronic format, thereby saving the city $1,500-$2,000 in reproduction costs and expenses.

We would like to thank you and the Department of Ecology (DOE) for all of the help and assistance you have provided during this long process of Mercer Island’s development of our Draft Shoreline Master Program. You have been available and professional throughout this entire process and we appreciate your help.

We especially appreciate our recent meeting of March 7, 2012. One of the suggestions you made during that meeting was to review and respond to prior DOE comment letters.

Mercer Island has received four official comment letters from DOE: March 30, 2010, June 10, 2010, March 10, 2011 and May 17, 2011. Each letter was helpful as the Draft SMP worked its way through the community, Planning Commission and City Council. Many changes were made to the original proposal as a result of your comments and suggestions. As you noted in your letter
of May 17th, there were three outstanding issues when last reviewed by DOE: buffers, setbacks and dock and pier standards.

This letter will attempt to respond to each of these concerns based upon the Final Draft SMP adopted by the City Council in Resolution 1440.

**Buffers and Setbacks**

Mercer Island understands and appreciates the importance of buffers for protecting and improving water quality and providing habitat. We recognize that nutrients such as nitrate and phosphate may have a long term detrimental impact to Lake Washington. Lawns and landscaping can be a major source of water quality contaminants including herbicides and pesticides in addition to nitrate and phosphorous fertilizers. It is important to keep in mind that the predominant development form on Mercer Island today is finely manicured lawns spreading out to the top of hard bank bulkheads. The existing condition of the Mercer Island shoreline is dominated by lawns and landscaping, rather than dense buffers of native lakeside vegetation. The addition of any vegetation along the shoreline would be beneficial and would be a gain in ecological function.

Following 29 public meetings, the submittal of thousands of pages of evidence and hours upon hours of careful deliberation, the Mercer Island Planning Commission recommended that the existing 25’ setback be retained landward of the OHWM with an added 20’ vegetative area in which the first 5’ shall contain at least 25% native vegetation and at least 25% of the 20’ be covered by vegetation. This vegetated area would be in addition to the existing limitation allowing no more than 10% impervious surface within the 25’ setback. The Planning Commission received comments stating that these standards were too low 1. And, the Planning Commission also heard testimony that this proposal was too restrictive; that existing development standards should be retained. The Commission issued the following Finding: "The Commission believes that the proposed setbacks and vegetation requirements appropriately balance competing environmental and property right value.” Following review, extensive public comment and hours of careful deliberations, the City Council adopted this same finding as an element in Resolution No. 1440.

The proposed SMP code requires the development and installation of a Vegetation Plan for any new development of 500 square feet or more of additional gross floor area or impervious surface 2 and for new and expanded moorage facilities 3 within the shoreline jurisdiction. The area covered by this requirement is the first 20 feet upland from the OHWM. The standards for this vegetation plan are:

- 25% of the entire area shall contain vegetative cover;
- The 5 feet nearest the OHWM shall contain at least 25% native vegetation;

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1 Letter from Futurewise and People for Puget Sound, March 16th, 2011; comments from Rita Moore March 16, 2011.
2 MICC 19.07.110 (E) (9) (d)
3 MICC 19.07.110 (E)(6)(a)(iii)(A)
• The vegetation coverage shall consist of a variety of ground cover shrubs and trees, excluding non-native grasses;
• No plants listed on the current King County Noxious Weed list shall be planted with the shorelands.

So, for any expansion of a structure of 500 feet or more within the shorelands, or for any new or expanded dock, new landscaping will be provided along the shoreline. As illustrated in the Cumulative Impact Analysis, the overall impact of this regulation will be a net increase in ecological function over the current condition as more landscaping replaces lawn along the water’s edge over the SMP planning period.

While some do prefer bigger setbacks and more landscaping, these preferences are not supported by the no net loss standard, private property rights advocates, the Mercer Island Planning Commission or the Mercer Island City Council. The proposed setback and buffer regulations balance competing environmental and property right values in a manner consistent with State Law.

Dock and Pier Standards

The major issue raised by your previous letters was the width of docks, especially within the first 30’ water-ward of the OHWM. The Planning Commission recommended an 8’ maximum width:

After careful consideration of all the facts, the Planning Commission is unconvinced there would be a net loss of shoreline ecological function in comparing an 8’ grated dock with a 4’ or 6’ grated dock and has concluded that no scientific or quantitative relationship between residential dock coverage and significant smolt survival has been conclusively demonstrated.

After reviewing the Planning Commission recommendation, hearing additional public testimony, including comments from Ecology regarding maximum dock width, the City Council did not accept this recommendation of the Planning Commission and amended the maximum dock width from 8’ down to a 4’ within the first 30’ water-ward of the OHWM. The City’s recommended SMP includes this provision and should resolve your concerns.

No Net Loss of Ecological Functions

The City’s Cumulative Impact Analysis conclusively demonstrates the following:

• There will be some level of net loss for the 4 new homes which are forecast to be built on undeveloped land during the planning period.

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4 Planning Commission, Findings of Fact, #18, April 6, 2011
• The will be some level of net gain for each of the 140 homes which are forecast to be redeveloped with new environmental standards proposed in this SMP during the planning period.
• The will be some level of net loss for the 20 new docks and piers which are forecast to be built.
• The will be some level of net gain for each of the 500 docks and piers which are forecast to be repaired or redeveloped with new environmental standards during the planning period.
• There will be some level of net gain for the environmental enhancements forecast to be constructed during the planning period for the City's parks and open spaces.

Base upon the *Cumulative Impact Analysis*, it is clear that this proposed Shoreline Master Program for the City of Mercer Island will result in no net loss of ecological functions necessary to sustain shoreline natural processes on the shorelines of Mercer Island.

We look forward to our continuing collaboration as this proposal advances through the DOE review process.

Sincerely,

[Signature]

Timothy M. Stewart, AICP
Director, Development Services Group.

Cc: Rich Conrad, Mercer Island City Manager
    Mercer Island City Council
    Mercer Island Planning Commission
    Email list of Parties of Interest.