"Washington State requires all waterfront communities, including Bainbridge, to have a Shoreline Master Plan. The new SMP approved by the City of Bainbridge Island in July 2014 is the most over-reaching in the State. In simple terms, the SMP now controls the 200 foot perimeter of Bainbridge Island – meaning what can be built, planted and even personal use."

SUMMARY OF SMP RESTRICTIONS dictated by the new 2014 SMP that affect your Bainbridge shoreline property. Enforcement of these restrictions is triggered by *any* permitting activity *OR* a complaint filed with the City *OR* by inspection as the City of Bainbridge Island now has authority to inspect your property at any time without prior notice or your consent.

1. All Shoreline Homes are now "Non-Conforming" - including *your* home. This designation triggers rigorous review by City Planners and new restrictive requirements. It will cause you to hire experts as an extra step to secure permits. The written SMP goal is to "phase out" all non-conforming structures – including your home. §4.2.1.2 §8.0 Definitions 'Non-Conforming: & "Existing Development'

2. Any activity in the buffer (planting, trimming, etc) must be approved by the City. These constraints are limited only to those directly on the water. Activity on the first Zone (30'- 50') is restricted even further. Those living across the street from the water have no such restrictions. §4.1.2.4.2(b).

3. General SMP gobbledygook. The SMP is purposefully extremely difficult to read and comprehend. Conflicting language throughout lulls you into thinking one thing when a "gotcha" elsewhere will supersede. Specifically, if conflicting SMP language exists the most restrictive prevails. §4.0.1.7

4. Water views will be restricted. You no longer can plant or cut back what and where you want. Species and density is dictated. Both your view and property usability will decline. §4.1.2.5, §4.1.3.7 and §4.1.3.5.8

5. Single Family docks, piers and floats greatly restricted. Regardless of buffer, ALL are labeled non-conforming and will be phased out over time. §4.2.1.2, §4.2.1.9, §6.3.2, §6.3.4, §6.3.8, §6.3.7.2, and §6.2.7.3

6. Home remodel/reconstruction restricted - no more than 25% bigger and many other new restrictions now apply. Older, modest homes fall into this category impacting land value §4.1.6.3.2 and §5.9.4.3

7. New houses and remodels are banned in Natural, Aquatic and Priority Aquatic areas. BANNED not restricted. Elsewhere construction and remodels are restricted to new SMP buffer rules. You can no longer build what you want in this buffer. Permit approval is infinitely more complex. Refer to #11. §5.9.5.1

8. Vacant Homes. You lose the right to occupy your home after 12 months of non-use. §4.2.1.5.2

9. SMP requires City approval for "any human act". Relates to any use of the shoreline. Any human act is broad. You will be required to hire consultants and land use attorneys to make your case. This clause gives City Planners individual authority interpret the SMP §4.1.2.4.2(b) and §8.0

10. Fines for acting without City approval. First infraction is $500. Second infraction within 12 months $1,000 and up to 30 days in jail. §7.0. Note this provision along with others was never reviewed by the public. It is one of many such provisions simply added by City staff without review.

11. Aquatic area motor ban. This basically means boat engines are now PROHIBITED in expanded "mud flat' areas including Eagle Harbor, Manzanita, Murden Cove, Point Monroe, Port Madison, Fletcher Bay and Blakely Harbor. This also includes existing docks in these areas and even City Parks. §3.3.2.7.3, §Table 4-1

12. Pruning, trimming, vegetation removal prohibited Pre-Approval required or fines levied. §4.1.3.1, §4.1.3.7(a), §4.1.3.5, §4.1.2.5, §4.1.2.6.4, §4.1.2.5.1,§4.1.3.4.3(a), §4.1.3.5.2 and §7.0

13. Tree removal permit required. If the City allows you to fell a hazardous tree it must be kept on property as a wildlife habitat §4.1.3.4.3(c)

14. Bulkheads severely prohibited. Severe restrictions including only 50% repair every 5 years. §6.2.7.2(b)

15. The First 30 Feet of *your* Shoreline (50' if you are classified as "Natural" or "Island Conservancy"). In SMP jargon this is called **Zone 1**. Section 4 of the updated SMP takes 114 rambling pages of definitions and cross references to describe the restrictions in this zone. Simply put the City can now micro-manage *everything* you plant and do in Zone 1. EVERYTHING. The City's stated SMP goal is to, over ten years, evolve Zone 1 to have a 65% canopy coverage with trees and other vegetation you probably don't want. (You have to read the entire SMP to figure this out)

16. Building Permits. *Any* activity that disturbs existing vegetation, including any new, remodel or rebuild construction, the City now requires a new recorded "city approved vegetation easement" that dictates what species will be replanted and where it will be planted in the first 200' from the shoreline which will be monitored and secured by a surety bond! Additionally required is a restriction to be recorded on your property that a bulkhead cannot be built for 100 years. §4.1.2.7.1, §4.1.2.7.2, §6.1.5.4 and § 4.1.2.5.1.

Note: This document was prepared to summarize the effects of the new SMP. Bainbridge had a 125-page 1996 SMP before this. The new 2014 SMP is well over 400 pages. It was voted into law by the Bainbridge City Council with a vote of 4-3 based on recommendations from City Staff. Previously, the Director of Planning at the City of Bainbridge Island was asked to prepare a Summary because the SMP is very difficult to understand. The City never complied. Nor did the City prepare shoreline homeowners about the effect of this SMP. This summary document was prepared by *Preserve Responsible Shoreline Management* and vetted by our legal team to alert shoreline homeowners the effects this new legislation has on them.

BAINBRIDGE SMP:
THE COST OF "NONCONFORMING"

Given the complexity and size of the Bainbridge SMP, it's hardly surprising that the consequences of the nonconforming status it imposes on existing shoreline homes are not widely understood. It is even less surprising that prospective purchasers who are strangers to the Island fail to understand how *this type* of nonconforming label is so radically different and potentially far more expensive than other types of zoning nonconformities.

A Bainbridge shoreline nonconforming home cannot be repaired or rebuilt if it is damaged or destroyed by something other than an Act of God (an Act of God being something like a huge storm, an earthquake or a forest fire). So if you have a kitchen fire, you're essentially either evicted from your house or just eating out forever, depending on the damage. (And no subsequent owner of the house can repair or rebuild this damage either – this prohibition 'runs with the land,' as they say.)

Even if damaged by an Act of God, a Bainbridge shoreline nonconforming home cannot be repaired or rebuilt if the home is located 'somewhere that no home can be built in the future' (per City Council & staff discussion at CC Meeting). That doesn't just mean a home on Pt. Monroe; it would also mean a house in the buffer. The reason? The City designates the *use* of a home located in a non-permissible location as a "nonconforming *use*." And, the City says, a house with a nonconforming use cannot be repaired or rebuilt.

A Bainbridge shoreline nonconforming home that is also a nonconforming *use* can have its *right to use for single-family residential purposes – its only permissible zoned use – taken from its owner*. That is, not using a house with a nonconforming use for twelve consecutive months is deemed to be *abandonment* of that use. And *that* results in loss of the right for anyone to ever use the house again.

In theory, you *should* be able to solve these problems by complying with the SMP. But this is where it gets really expensive. You would have to pick up your house off its foundation & move it away from the water so it complies with SMP buffers & set-backs. How much would *that* cost? And then you would have to remove any trees (assuming you can get City pre-approval), & accessory structures that are in the way of, or actually located where, the house is supposed to go? This assumes that you have enough space on the lot for the house & its accessory structures. And you would have to remove all non-native vegetation (including trees) & re-vegetate with all native vegetation, installing trees, bushes & other plants that will achieve a 65% overhanging "vegetation canopy" in 10 years. And *then, presumably*, you should be able to repair the damage.

Sound expensive? Not compared with the 'easy' route – demolish the house & build a new one farther back. In either case - remember, for City permission you have to sign a conservation easement for native vegetation *in perpetuity*, replant with all-native vegetation & give up the right to have a bulkhead for 100 years. The cost for either one? A lot of money plus a loss of water views, non-native plants & any truly effective protection for your home. It makes sense that a realtor wouldn't begin to know how to explain all this to a client. And how can the City say this will not affect market value? W*ho* would want to buy a house with all of these problems – unless there was a deep, deep discount in the price?

This appeal is aimed at reducing the number of individual lawsuits people will have to file to protect their homes. By pooling our financial resources, we stand a better chance of defeating this egregious SMP. Please donate what you can to PRSM, P.O. BOX 10945, BAINBRIDGE ISLAND, WA 98110.

CITY PRE-APPROVAL REQUIRED
FOR
ALL SHORELINE HOMEOWNER ACTIVITY

Fines of $500 and $1000, $500/day, 30 Days in Jail & a Misdemeanor on Your Record – All New Penalties for Failure to Get New City "Pre-Approval" for Everyday Activities. Every shoreline homeowner needs to know that there is a $500 fine for engaging in any activity on his/her private property without City pre-approval. This is the fine for the first offense for something that is not a 'continuing violation' of the SMP. If you do something that is considered to be a 'continuing violation' – such as failing to replant with native vegetation after you remove some other vegetation (native or non-native) - you pay $500/day until you fill that hole with native vegetation. If you commit a second violation of any part of the SMP within a year, your punishment is $1,000 and/or 30 days in jail (plus a misdemeanor on your record).

The City Never Gave Anyone Advance Warning of These New Penalties. The reason this may be news to you is because the City never discussed this at any of its meetings and it never put out any written notice to warn you. Right now there seems to be little enforcement of these broad provisions, but the City has the power and can enforce them at any time it wants. But we cannot expect this to continue and so you need to know about all the City "pre-approvals" of activities that are required by the SMP - activities that have nothing to do with construction and that apply to all parts of your land, not just the buffer.

Any "Human Activity" on Your Property Requires City Pre-Approval – Yes! That's What it Says!
The SMP states that its regulations cover normal maintenance of your house and garden, as well as any other "human activity" on your land. But, while there are limitations on the type of *permits* that can be required by governments, the City apparently thinks it can engage in this micromanagement by calling this a "pre-approval." But you have to submit an application, pay a fee and wait for approval/denial. What's the difference?

Pre-approval of activities applies everywhere in the entire 200 ft. deep "shoreline jurisdiction" part of your property (which may, in fact, be *all* of your property). So, if you want to have your daughter's wedding in the garden, you would need City pre-approval, the same as you would for a barbecue with friends there next weekend. You would need City pre-approval to play catch with your grandson or frisbee with your dog. Since "activity" infers action though, perhaps the only thing you don't need City pre-approval to do is to sit in a chair in the garden. Except, there is potential damage in even this, damage the City is committed to preventing: you would "disturb" vegetation by sitting on the ground or placing a chair on vegetation. The SMP says anytime that happens, anywhere on your property, you must plant native vegetation there. (But there is no definition of what it means to "disturb" vegetation and there is no threshold amount of disturbance that requires native vegetation planting.) So, forget any tent for the kids this summer…

All Gardening Has to Have City Pre-Approval: Vegetation Micro-Management. The City has established itself as the micromanager of 'your' garden. You cannot remove any vegetation, or any part of vegetation – alive or dead and regardless of amount – without City pre-approval. The City likes to say that weeding isn't regulated; but it's specifically "unlawful" and subject to punishment under section 7.2 to remove any kind or amount of vegetation without City pre-approval. (Under SMP 4.0.1.7, this - the more "restrictive provision" – prevails.) If you want to remove more than one plant, you need an actual

clearing permit, the same permit the City requires for construction: this is required for even the most minor clearing.

You need City pre-approval to cut, trim, or prune anything with a stem greater than 3". Not even a "hazard tree," can be removed without City pre-approval: you have to get at least one arborist's report & prove to the City that there is no other option but removal to save your lives/home. And even if the City allows you to cut the hazard tree down, you have to keep it on your property as wildlife habitat.

You Must Have City Pre-Approval Before You Plant Anything & Everything You Plant Must be Native. It's an SMP violation not to replace any removed vegetation with native vegetation; where any tree is removed, a native one must be planted in its place. Planting non-native vegetation violates the SMP unless you can convince the City that a non-native plant will serve the same "ecological functions" as a native one. And, this is very important - these native regulations apply to your *entire* property, not just your buffer. (These are "outside the buffer" planting requirements.)

House Maintenance Also Requires City Pre-Approval. There are no precise regulations for home maintenance as there are for gardening, but the SMP is very clear that pre-approval is required for all routine maintenance of your house. So, the next time you clean out your gutters, paint the trim or replace a broken window, get City pre-approval – or face a big fine.

How Can the City Require Pre-Approval for Doing Something Your Zoning Allows? You may wonder how the City has the authority to require pre-approval of activities that are typical of single-family residential use, which is allowed by our "residential" zoning. We don't think it does have that authority, clearly not outside the shoreline buffer. That is one reason we are suing.

If the City Can Regulate Every Activity of *Ours*, It Can Regulate Every Activity of *Yours*. People who live upland of shoreline properties need to pay attention. If the City can take away *our* right to use our land outside the buffer – i.e., not in an ecologically sensitive area - the City can take away *your* right to use your land as you wish. After all, your single-family residential activities are the same as ours & they result in the same kind of damage/pollution. What and how *you* cut, trim, prune and remove vegetation also affect wildlife habitat & food chains; so why *wouldn't* the City want to control *your* land?

Give to PRSM Today. Your Contribution is Now Tax Deductible. Preserve Reasonable Shoreline Management is a 501(c)(3) non-profit corporation with the sole purpose of preserving the constitutional rights the Bainbridge SMP is taking away from shoreline homeowners. Your contribution to PRSM (IRS Tax ID #47-1869162) is tax deductible under the Internal Revenue Code. Now you can donate by credit card, using the form included with this letter. Or, make your check payable to PRSM and mail your donation to: PRSM, P.O. Box 10945, Bainbridge Island, WA 98110.

LJY
5/31/15

THE BAINBRIDGE SMP IS OPPRESSIVE,
UNREASONABLE & UNCONSTITUTIONAL

Colonial Americans rebelled for freedom from an oppressive government. Now shoreline homeowners find themselves engaged in the same kind of battle against a government – this time, remarkably, the City of Bainbridge Island. In the Declaration of Independence our forefathers pronounced that all men have the right to "life, liberty and the pursuit of happiness." Our battle against the City is a battle for liberty and the freedom to pursue happiness – on our very own land.

For, this city has enacted unjust laws that purport to regulate, in the words of the SMP, all "human activity" in the 200- ft. wide "shoreline jurisdiction." For some people, this "shoreline jurisdiction" is their entire property. The SMP states that before any proposed human activity in the shoreline jurisdiction can take place, the City must have given its pre-approval. Failure to get City pre-approval means, first, a $500 fine and then, if done again within 12 months, a $1,000 fine and/or 30 days in jail.

How can an individual say he has "liberty" or can engage in the "pursuit of happiness" when the SMP says it has control over everything he can do on *his* land.

The City hasn't limited its regulations just to the buffer, where there is at least some degree of scientific justification for keeping the area free of human activity. Instead, the SMP purports to control the entire 200-ft. "shoreline jurisdiction." And whereas the State SMA only deals with new development, the City regulates activities having nothing to do with new development. In addition to broadly requiring City pre-approval for all "human activity," the SMP specifically requires pre-approval for normal maintenance of homes and gardens. We do not believe that the City can require an application for normal activities that are expressly allowed by the property's zoning. Besides, the State's SMP Guidelines specifically state that an SMP is *not* to be applied retroactively, whether to existing gardens or otherwise. Requiring City pre-approvals for any maintenance of an existing house or garden is a direct violation of this State provision.

There is no real rationale for the City's regulation of the entire 200-ft. area; the City's own scientists said that a 30 ft. buffer was adequate to protect the shoreline from residential use. Nevertheless, on the basis of what it described as "public policy" intended, the City said, to *reduce* the number of homes in the buffer, the City *increased* the size of the buffers from 50 ft. to 75, 115 and 150 feet. The goal might have sounded good, but the means used to effectuate that policy was not reasonably likely to do so. And it didn't. In litigation, the City now admits that the ***bigger buffers increased the number of homes in the buffer from 39% to 50%.*** A regulation based on policy is only constitutionally valid if it is reasonably likely that the regulation will achieve the policy goal; here, common sense tells you that bigger buffers mean *more* homes will be trapped in the buffer, *not less.*

The SMP takes the right of private landowners to protect their land with a bulkhead. Nowhere in the case that this City of Bainbridge lost just 15 years ago, *Biggers v. City of Bainbridge Island*, did the Washington Supreme Court say that the City could take away this right; it said just the opposite. But, to get a construction permit, the SMP requires you to sign a covenant on title prohibiting a bulkhead for 100 years; this is what the U.S. Supreme Court has called an "unconstitutional condition." It amounts to the taking of an interest in property – a 100-yr. easement – for which the City is not paying just compensation. In addition, completely unrelated to new construction, the SMP prohibits new and replacement bulkheads in the following circumstances: on feeder bluffs where people need them the most, in critical areas and anywhere that erosion is "unrelated to water." Taking the right to protect an individual's land without compensation violates both the Washington Constitution and U.S. Constitution.

In similar fashion, the SMP takes an interest in property – an easement in perpetuity– when, to get a construction permit, it requires a land owner to execute a conservation easement, recorded on title, that forever binds the property to native vegetation. This requirement constitutes yet another "unconstitutional condition."

One of the most cruel takings by the SMP involves the people of Pt. Monroe, whose normal, residential use of their homes has been designated by the City as a *nonconforming use* because their overwater houses are 'located where that no house can be built in the future.' This same 'logic' could easily be applied to houses located in the new, bigger buffers (that is, 50% of all shoreline homes). The implications of being designated a "nonconforming use" are horrendous. You cannot *repair or rebuild your home* if the use is deemed nonconforming. If your house is unoccupied for 12 consecutive months, the SMP says that you have lost your right to ever occupy that home again – you and anyone else. When the British appropriated private homes, colonial Americans fought. Is it any wonder we are fighting now?

The SMP is supposed to be based on the best available and applicable science. But the science underlying the City's buffers is science that comes from cattle feed lots and commercial crop production, and from streams in the Midwest. This science was misapplied to justify buffers that are far larger than is actually warranted by single-family residential use. The City chose to ignore the newer and more applicable science that was presented to it by a Yale Ph.D. with years of experience in Pacific Northwest ecological research. This constitutes a violation of the State SMA and a failure to use *relevant* science. Science from streams in the Midwest with cattle feedlots and commercial crops is simply not relevant to single-family residential use on the Puget Sound.

Quite simply, the Bainbridge SMP constitutes an unreimbursed taking of private land to create a native vegetation conservancy. Each native plant the homeowner would like to remove, but is prohibited from doing by the SMP, and every native plant the homeowner is forced to plant in the 200 ft. shoreline jurisdiction, constitutes a "physical invasion" of the individual's land, as characterized by the U.S. Supreme Court. Eventually, native vegetation takes over the lawn and it takes the property owner's right and ability to use the land for any simple lawn sport, such as croquet. The right to use the property has a clear market value, a market value the City has failed to pay.

The SMP micromanages all vegetation in the 200 ft. area, alive or dead. Outside the buffer, this constitutes a violation of the First Amendment's freedom of expression. What and where you put vegetation on the canvas of the land is every bit as inspired by the artistic instinct as is paint on a canvas. If there was no art in gardens, why would anyone pay admission to see plants they have already seen before? It is the arrangement that makes art, as well as the colors used by the garden artist; this is an expression of the human soul. The SMP supposedly dictates the identity and location of vegetation based purely on the "ecological functions" of plants; this prohibits all use of the land for artistic purposes – a constitutional violation.

The SMP takes the shoreline homeowners "right to access water," which one court has described as being perhaps the most valuable right a property has. The SMP does this by prohibiting docks, piers and floats both by certain area designations and based on the physical characteristics of the shoreline and the homeowners properties.

The SMP labeling of all "existing homes" as nonconforming takes market value from property owners because of what the SMP refuses to allow nonconforming homes to do. A nonconforming home cannot be repaired/rebuilt under the SMP if it was destroyed by an accident – only damage by an Act of God allows you to repair/rebuild. Nonconforming homes cannot be expanded by more than 25% of the original footprint or more than once; even a

600 sq. ft. cabin is limited to a maximum size of 750 sq. ft. These are precisely the kinds of nonconforming restrictions that assessors, banks and buyers don't like.

To build a new house, the house must be farther from the water and landscaping must consist of tall trees and bushes with a 65% vegetation canopy – in front of the water view as well as everywhere else. To get a construction permit, the SMP requires that you sign a conservation easement, committing the property to this type of landscaping "in perpetuity," and you must secure that commitment with a surety bond for a *minimum* of 5 years; (this is *in addition* to the surety bond you have to post for the house). This conservation easement over the 200 ft. area essentially takes your "right to use" the property for any purpose you choose: your use must be to grow native vegetation.

Plus, you give up your "right to exclude others" from your land: the SMP allows garden inspectors to come on your property at any time without notice and without your consent. And, of course, to get a construction permit you also have to sign a covenant recorded on title prohibiting any no bulkhead on the property for 100 years. Many buyers usually want to either remodel or rebuild; with all these limitations the SMP quite simply makes Bainbridge waterfront property unattractive.

Existing property owners not engaged in any construction activities are worthy of the same protections from overreaching governmental regulations that the U.S. Supreme Court has extended to people with construction permits in the *Nollan* and *Dolan* cases. That is, to justify the taking of a property right, there must be a logical relationship between some kind of damage that is being done to the shoreline by that individual and the kind of property right being taken. Under *Nollan,* to justify all the SMP pre-approval requirements, there should be proof of some quantifiable damage to the shoreline that is not being addressed by the buffers. Under *Dolan,* the taking of property rights and the amount of restrictions should be roughly proportionate to the amount of damage that is being caused by normal residential use. In fact, existing homeowners not involved in construction deserve even more protection than those with construction permits; existing homeowners aren't getting anything in return for all these takings and restrictions and they aren't bringing in the bulldozers.

In the words of U.S. Supreme Court Justice Oliver Wendell Holmes, the Bainbridge SMP simply "goes too far." Holmes used this phrase to describe a Fifth Amendment "taking" of private property without just compensation. The City has taken property interests and rights through SMP regulations that are unduly oppressive, without first paying just compensation as required by the Washington Constitution.

How can people on this Island allow this to happen? If the government is allowed to do this to one group of homeowners, what keeps it from doing it to *others*?

Please help us in our battle against an unjust law. Send your check today to **PRSM (Preserve Reasonable Shoreline Management)** at P.O. Box 10945, Bainbridge Island, WA 98110. Or make a credit card donation by going to the PRSM website at www.prsm-bi.com. PRSM is a qualified 501(c)(3) non-profit organization so your donations are tax-deductible.

BAINBRIDGE SMP:
THE COST OF "NONCONFORMING"

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