

**ATTACHMENT A:
FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE OF THE CITY OF TUKWILA
SHORELINE MASTER PROGRAM**

SMP Submitted April 9, 2010, Ordinance Numbers 2269, 2270, 2271, and 2272
Prepared by David Radabaugh, on February 28, 2011

Brief Description of Proposed Amendments:

The City of Tukwila is proposing a comprehensive update to their Shoreline Master Program (SMP). The updated SMP will reside as stand-alone chapters within the Tukwila Comprehensive Plan and Municipal Code.

FINDINGS OF FACT

Need for Amendment: The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the local Shoreline Master Program pursuant to RCW 90.58.080.

Amendment History, Review Process: The record indicates the proposed SMP amendments originated from a local planning process that began in 1999. The City established a Shoreline Advisory Committee, which met between September 22, 1999 and March 8, 2000. The Tukwila Planning Commission considered the SMP between May 18, 2000 and September 11, 2002. The local planning process stopped in 2002, after it became clear that Ecology was in the final stages of crafting new Guidelines for the update of SMPs. Ecology adopted new SMP Guidelines in December 2003.

The City of Tukwila restarted its shoreline planning process in 2005 with a grant from the Department of Ecology (Grant No. G0600234). A public hearing before the Planning Commission was held on August 27, 2008, continued to October 9, 2008. Notice of this hearing was published in the Seattle Times on August 22, 2008. An open house was held on January 7, 2009. The City Council held a public hearing on April 20, 2009, continued to July 13, 2009. Notice of this hearing was published in the Seattle Times on April 6, 2009.

During the development of its SMP, the City received comments from property owners and their representatives, environmental organizations, and government agencies.

The Department of Ecology provided comments on the Draft SMP on January 22, 2009 and June 30, 2009.

The City issued a Determination of Nonsignificance for the SMP on August 13, 2008. With passage of Resolutions 2269, 2270, 2271, 2272, on December 14, 2009, the City authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on June 30, 2010. The state comment period began on September 15, 2010 and continued through October 15, 2010. On September 29, 2010, Ecology held a public hearing in Tukwila to seek input on the proposed amendments. Notice of the hearing, including a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the September 8, 2010 edition/s of the Seattle Times, the City official newspaper of record. Notices were mailed to interested parties identified by the City on September 8, 2010. Ten individuals or organizations submitted comments on the proposed amendments. Ecology sent all oral and written comments it received to the City on November 2, 2010. On December 10, 2010, the City submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3),(4) and (5). The City has also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the city.

Ecology reviewed the SMP inventory and characterization report, the restoration plan, and cumulative impacts analysis for consistency with the Guidelines. Ecology reviewed the SMP goals, policies, regulations, environment designations, maps, administrative provisions, definitions, and legal provisions for consistency with the Guidelines.

The Inventory and Characterization Report and Chapters 4 and 7 of the SMP provide a foundation for the environment and buffer system contained in the SMP. The SMP contains provisions for shoreline environments, archaeological and historic resources, critical areas, flood hazard reduction, public access, shoreline vegetation conservation, water quality, storm water, and nonpoint pollution, shoreline stabilization, piers and docks, fill, and dredging. Breakwaters, jetties, groins, and weirs are not permitted in the Tukwila SMP. Shoreline habitat and natural systems enhancement is addressed through the restoration plan, buffer, and landscaping requirements.

The SMP addresses future uses that could be relevant to the Tukwila shoreline including agriculture, aquaculture, boating facilities, commercial development, industry, in-stream structural uses, mining, recreational development, residential development, transportation and parking, and utilities. The SMP also addresses shorelines of statewide significance. The SMP

contains procedures for administering the shoreline regulations through an established permitting system.

Consistency with SEPA Requirements: The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on August 13, 2008. Copies of the DNS were sent to interested parties pursuant to City SEPA procedures. Ecology did not comment on the DNS

Other Studies or Analyses supporting the SMP update: Ecology reviewed the following reports, studies, map portfolios and data prepared for the City/County in support of the SMP amendment:

- Draft Shoreline Inventory and Characterization Report dated December 2006
- Shoreline Inventory and Characterization Report dated May 2007
- Shoreline Restoration Plan dated May 2007
- Shoreline Restoration Plan dated November 2009
- Cumulative Impacts Analysis dated December 2009
- SEPA Checklist dated August 2008
- Draft Shoreline Master Program dated July 24, 2008
- Draft Shoreline Master Program dated February 5, 2009

Summary of Issues Raised During The Public Review Process: There was considerable public interest expressed during the City's SMP amendment drafting/public review process. Ecology conducted a formal public comment period and public hearing during its review of the SMP. Issues raised during the Ecology comment period have been addressed in the attached responsiveness summary. Considerable debate centered on the following topics:

Buffer Widths

The SMP proposes buffer widths of 100 feet in the High Intensity environment, a minimum of 50 feet in the Shoreline Residential environment, 100 feet in the Urban Conservancy environment without levees, and 125 feet in the Urban Conservancy environment with levees. Concern was raised during the development of the SMP that the buffer widths lacked flexibility and that many individual sites could merit smaller buffers. Representatives of several members of the public recommended establishment of a framework allowing for parcel specific buffers or buffer reduction provisions based on achieving no net loss of ecological function on a parcel level basis.

Section 7.5 of the SMP discusses the rationale for the buffer widths. This section notes that the purposes of the buffers are to:

- a. Support shoreline ecological resources, especially salmonids. This includes area to support vegetated shoreline buffers to allow for shading to maintain relatively cooler

water temperatures, higher dissolved oxygen, filter pollutants, recruit large woody debris, and provide biotic input into the river system.

- b. Provide bank stability and protection of human lives and structures. Lowering the gradient of the levees will reduce maintenance costs, provides additional flood storage, and allows for a vegetated mid-slope bench.

Additional, the Cumulative Impacts Assessment (CIA) provides a qualitative assessment of the effect of the proposed buffer widths. The CIA notes that buffers, unto to themselves will not result in a change in ecological performance due to on-going levee maintenance, the setback levees will result in eventual improvement of ecological function with vegetation enhancement on the envisioned mid-slope benches on the levees.

Creation of Nonconforming Uses and Structures.

The buffer widths in the SMP will create some nonconforming buildings and uses. This is a particular concern of commercial property owners when a change in tenants may create a new use in a nonconforming portion of a structure. Owners of commercial buildings are concerned that such rules will make it difficult to fill vacancies where new tenants may be proposing a different use as classified in the zoning code than the previous use.

Section 14.5.A.5 creates a process by which the City can allow for the approval of a new nonconforming use in an existing building after a change in tenants. Additionally, a required change to this SMP will be the inclusion of a use matrix identifying permitted uses rather than adoption of the zoning code use standards. The use matrix will provide for more broadly described use categories than the Zoning Code's use categories. Thus, it will become less likely that a change in use will involve a change to a different shoreline use category. For uses outside of the shoreline buffer, this change will likely result in fewer changes in shoreline use.

Public Access

The SMP requires dedication of easements and/or construction of public access for qualifying development. Concern has been expressed in public comments that the public access trail construction requirements may not be proportional to the impact that a given project may have on public access demand. It is suggested in the public comments that the SMP be modified to require public access only when the requirements are roughly proportional to, or reasonably necessary as a direct result of, the impacts from the proposed shoreline development.

Section 11.6.A.3 of the SMP allows that "requirements for providing on-site general public access, as distinguished from employee access, will not apply if the applicant can demonstrate one or more of the following: the cost of providing the access, easement or other public amenity on or off the development site is unreasonably disproportionate to the total long-term cost of the proposed development." The SMP effectively includes a provision allowing for proportionality

in public access requirements. Included with the required changes is a change to Section 11.6.A making it clear that Section 11.6.A.3 applies to both onsite and offsite activities.

Landscaping Requirements

The SMP requires that the buffer be landscaped when development is proposed. Concern has been expressed in public comments that imposing a requirement for installation and maintenance of vegetation and landscaping without consideration of an individual need for such requirement would be inconsistent with the SMA and the Shoreline Guidelines.

WAC 173-26-221(5) requires SMPs to make provision for and have standards for vegetation conservation and restoration as necessary to achieve no net loss of shoreline ecological functions. Establishment of shoreline vegetation is an important aspect of the Tukwila SMP. Section 9.10.C.1 of the SMP allows for a reduced level of landscaping for smaller projects.

Shoreline Environment Designation

The SMP designates the shoreline on the left bank of the Green River between Interurban Avenue South and Interstate 405 as Shoreline Residential. Concern has been raised in public comments that this shoreline should be designated Urban Conservancy.

This site contains a substantial amount of riparian vegetation. For Tukwila, the riparian vegetation helps to retain important ecological functions even though the area is developed with highways and levees. Approximately 100 feet of this area landward of the Ordinary High Water Mark (OHWM) is in public ownership. While an Urban Conservancy designation would provide this area with a larger buffer than the Shoreline Residential designation, the buffer area is in public ownership. The shoreline Residential designation actually allows fewer uses and less intensive uses than the Urban Conservancy Environment. While an Urban Conservancy environment designation is supportable for the site adjacent to Tukwila Park extending along the left bank of the Green River from Interurban Avenue to Southcenter Boulevard, it would not result in greater protection of the site.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Incorporation of Zoning Code Use Provisions and Use Matrix

The SMP has proposed to incorporate the Tukwila Zoning Code use provisions. As proposed, a reader would need to turn to the Tukwila Zoning code in order to determine permissible uses in the SMP. The zoning code can allow for uses that could cause harm to the shoreline environment such as airports and numerous industrial uses. The zoning code also makes reference to provisions that are unworkable in shoreline jurisdiction such as a provision for an unclassified use permit. A SMP must be in a form that is implementable. This is supported by RCW 90.58.090(7) and WAC 173-26-211(4)(a)(IV).

The required changes include a use matrix that somewhat narrows the scope of uses in the shoreline environment to focus more on water-dependant uses and uses that are environmentally consistent with the shoreline environment. The use matrix does recognize the existing commercial and industrial nature of many uses along the Green River in Tukwila in that non-water oriented industrial uses will still be allowed in shoreline jurisdiction.

The Tukwila Zoning Code makes no reference to the water oriented use preferences articulated in WAC 173-26-201(2)(d). While the use matrix and use standards in Chapter 8 of the Tukwila SMP allow for many non-water oriented uses in shoreline jurisdiction, a preference is made for water oriented uses in a manner that recognizes historic land use patterns in the City.

Identification of the Black River Within Shoreline Jurisdiction

The Black River has been identified as being within shoreline jurisdiction in both WAC 173-18-210 and the Renton SMP. Required changes to the Tukwila SMP will include the Black River within Tukwila as shoreline jurisdiction. Portions waterward of the OHWM will be designated Aquatic. Portions landward and within 200 feet of the OHWM will be designated Urban Conservancy.

Aquatic Designation

The City of Tukwila adopted an SMP without an Aquatic designation, but has since concluded that an Aquatic designation would be beneficial. The required changes include designating all areas waterward of the ordinary high water mark as Aquatic. Policies and regulations relating to the Aquatic environment are included in the required changes. This demonstrates consistency with WAC 173-26-211(5)(c).

Aquaculture

The SMP adopted by the City of Tukwila did not address aquaculture. Proposals for new aquaculture in the future within the City of Tukwila will therefore require review and approval of an unclassified CUP, consistent with WAC 173-27-160(3).

The Lower Duwamish River portion of the Tukwila shoreline is a Superfund site. The Department of Health recommends against consumption of fish or crab taken in the Lower Duwamish River with the exception of salmon (which are migratory). The Green River, south of its confluence with the Black River is on the Clean Water Act, Section 303(d) list for temperature, fecal coliform, and dissolved oxygen.

Accessory Use

A definition of accessory use is added to the SMP. This provision will help to clarify the appropriate use of accessory uses when implementing the SMP.

Minimum Buffers

While the SMP has provisions for standard prescriptive buffers, it also makes provision for reduced buffers if levees are modified to reduce their profile and allow for 15 foot wide area for vegetation. As proposed, the SMP contains some scenarios where there could be no minimum buffer when reduced pursuant to the SMP. The SMP contains natural environment and habitat use policies in Section 6.9 that require no net loss of ecological function and requires protection of wildlife, vegetation, wetlands, and watercourses. Table 3 within the SMP requires, in many cases, that buffers that are reduced under these provisions to be no less than 50 percent of the width of the standard buffers. Given that the standard buffers in question are 100 or 125 feet, this results in a modified buffer that is no less than 50 feet. In order to ensure internal consistency with these portions of the SMP, a required change to the SMP specifies that the buffer must be a minimum of 50 feet when the buffer reduction standards are met.

Signs

The adopted SMP incorporates Tukwila's sign code, allowing a broad array of signs in shoreline jurisdiction. A required change limits signs in shoreline jurisdiction to interpretive, water related, public safety, and road purposes.

Uses in Buffers

A modification to the SMP is included in the required changes that only allows non-water oriented essential public facilities within buffers if there is no feasible location available outside of the buffer.

Building Height Restrictions

The SMP proposes to allow building height to be increased to the maximum allowed under the zoning code (115 feet in some cases) if an applicant constructs a shoreline trail to City specifications in a manner consistent with the City's Green River Trail Plan. Building heights of 115 feet in shoreline jurisdiction are not analyzed in the Cumulative Impacts Analysis. A required change is included eliminating the SMP reference to zoning height limits and requiring an analysis of view blockage and environmental impacts.

The adopted SMP allows increased building height as an incentive for both public access and enhancement of vegetation in the shoreline buffer. A required change to the SMP makes it clear that if a building is proposed with a height of greater than 35 feet, then there must be a demonstration that the proposed building will not block the views of a substantial number of residences consistent with RCW 90.58.320.

Required changes have been included that require any development over 35 feet in height to analyze whether the views of a substantial number of residences will be blocked. Additionally,

the height limit references to the zoning code proposed in the SMP will be removed by the required changes.

A required change establishes the height limit for buildings in the Shoreline Residential Environment at 30 feet. While the zoning code is not referenced or incorporated in the required changes, this limit is consistent with the Tukwila Zoning Code.

One comment letter suggested that RCW 90.58.320 should be read to mean that the SMA applies a 35 foot building height limit only if the City has demonstrated that the building will block views of a substantial number of residents. RCW 90.58.320 creates a minimum requirement. It does not restrict a local government's ability to limit building height in shoreline jurisdiction.

Wetland Manual and Mitigation

Required changes have been included to make the wetland protection provisions contained with the SMP consistent with the current Ecology guidance regarding wetland protection.

Restoration Provisions

Prior to the adoption of EHB 2199, the City of Tukwila was developing provisions for regulatory relief for property that is brought into shoreline jurisdiction because a restoration project has moved the ordinary high water mark. EHB 2199 subsequently became law and has been codified as RCW 90.58.580. The regulatory relief being drafted by the City can be read to be inconsistent with the requirements of RCW 90.58.580. Therefore, a required change is included to make it clear that the provisions of RCW 90.58.580 is applicable. The relief provisions drafted by the City can be utilized as guidance in a manner that is consistent with RCW 90.58.580.

Flood Plains

Ecology requires and updated the discussion of floodplain management in the SMP. A required change identified the updated discussion in an underline/strikeout format in Chapter 4 of the SMP. The text modifications address the current status of levees in Tukwila.

Typographical Error

A minor typographical error is addressed in required change 6.

Mitigation Sequencing

A required change clarifies that mitigation sequencing is a requirement for all projects consistent with WAC 173-26-201(2)(e)(i).

Shoreline Permits

A required change eliminates a requirement for a Type II permit from the SMP. The Type II permit was proposed by the City to address concerns about shoreline exempt projects in critical areas. While this is a legitimate concern on the part of the City, the concern can be addressed through suggested change 12 requiring a written exemption for such activities.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, together with responses to public comment (summarized in Attachment D), Ecology concludes that the City's SMP proposal, subject to and including Ecology's required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments. City officials have been briefed regarding the content of both the required and recommended changes.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the City has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the City's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the City. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the City has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.