

R.W. THORPE & ASSOCIATES, INC.

Seattle • Anchorage • Denver • Winthrop

❖ Planning • Landscape • Environmental • Economics ❖

PRINCIPALS:

Robert W. Thorpe, AICP, President
Stephen Speidel, ASLA, Of Counsel

ASSOCIATES:

Barbara Baker, AICP
Lindsay Diallo, RLA
Lee A. Michaelis, AICP

September 17, 2009

Ms. Carol Lumb, AICP
Senior Planner
Community Development Department
City of Tukwila
6300 Southcenter Boulevard, Suite 100
Tukwila, WA 98188

RECEIVED

SEP 18 2009

COMMUNITY
DEVELOPMENT

CC: Tukwila City Council

Reference: Shorelines Master Program Draft with Recommended Changes

Dear Ms. Lumb,
Honorable Council Members:

On behalf of the Desimone Trust, in cooperation with other property owners who have provided input/testimony in this process, we are transmitting a Summary Matrix of current draft perceived problems and potential draft solutions for your consideration. It summarizes previous information, **but is new in that it utilizes footnotes to provide examples of other jurisdictions' adopted regulations that have been approved by Washington State Department of Ecology.** These examples of approved Master Plan Elements, we trust, will show that they are working in other jurisdictions, and have been approved by DOE.

We have been working with other property owners to provide a consensus, both in informal conversations, and with review of these drafts, and will continue that process through your work sessions.

Enclosed are:

1. Matrix – Recommended Solutions
2. Code Citations in Other Cities
3. Graphics from previous transmittals showing impact on Desimone Trust Properties

I. **Defining SMP Draft – Impacts on Properties.** In our analysis we have attempted to determine the exact impact of proposed regulations on site utilization, short and long term use of the property, impact on jobs, taxes, liability of the future use of the property, and the valuation of the property, as well as **appropriate mitigation to upgrade sites to meet best management practices, LEED and/or sustainability standards.** We have analyzed the impact on site/building utilization, vacancies, taxes, impact on City budgets and on other taxing entities in the City of Tukwila.

We have provided specific language and Code citation that can be utilized to amend the current draft in work sessions and continue to work with Staff and the Council, to provide constructive input to this Draft.

- II. **Overview of Regulation's Impacts.** The regulation as now drafted would have significant impact on utilization, tenant mix, land value, and employment (particularly in base industries that provide a 2:1 or 3:1 employment benefit to service industries, i.e., retail, restaurant, personal and professional services). Thus, a significant reduction in the utilization of these properties along 17 miles of Tukwila shoreline that include not only industrial, but restaurants, hotels, professional offices, would in turn affect the taxes received by the City, the city budget, and its ability to provide public services, and lastly – most importantly – would shift this burden to other properties, i.e. single family and multifamily residents, and provide significant impact, not only on the job base of Tukwila residents, but on their real estate taxes. Secondary economic impacts to individual citizens and homeowners in Tukwila are linked to the impacts on the properties along the shoreline.

We appreciate the opportunity to present this information, and look forward to meeting with Staff to explain our findings.

Respectfully submitted,
R. W. Thorpe & Associates, Inc.



Robert W. Thorpe, AICP
President

CC: Desimone Family Trust Members
Property Owner Representatives

Attachments: Matrix – Recommended Changes
Code Attachments
Aerial Site Analysis – Desimone Properties

Issue No:	Summary of Issue	Existing SMP Regulation	Proposed SMP Regulation	Perceived Problem/Impact	Recommended Change
1.	<p>Buffer Widths</p> <p>Figure 3.7: Page 3.16 River Zone-40 Feet from OHWM Low Impact Zone-60 Foot Buffer (40-100 Feet from OHWM) High Impact Zone-100 Foot Buffer (100-200 Feet from OHWM)</p>	<p>Section 14.6.A Pre-Existing Uses Pre-Existing Uses can not be enlarged, intensified, increased or extended to occupy a greater use of the land and/or structure. Can not be moved or extended in whole or in part to any other portion of the lot. A use terminated for more than 24 consecutive months must become conforming or be granted an extension. Any change of use must be a Permitted, Conditional, or Unclassified use in the SMP.</p>	<p>River Buffer-100 Feet from OHWM High Intensity/Urban Conservancy-100 Foot Buffer 100-200 Feet from the OHWM</p>	<p>The proposed buffers create numerous nonconforming structures and uses, with no clear nexus or rationale for increasing the buffers. There is no relief from the substantial expansion of these buffers, especially for those irregular shaped properties where a majority of the property would be consumed by the proposed buffer. Creation of Nonconforming uses has an adverse effect on property values, redevelopment potential, and the ability to obtain credit.</p>	<p>Create a process (variance, deviation or buffer averaging) that would allow the reduction in buffer size if the result is no net loss of functions and value in the buffer through revegetation and/or other best management practices, especially on non-leveled properties where additional vegetation and other measures can mitigate impacts that may result from development.¹</p>
2.	<p>Nonconforming Uses</p> <p>Chapter 8: Nonconforming: Page 8.1 Special Permit may be issued by Planning Commission to enlarge nonconforming use by no more than 25 percent of the original floor area. Restoration allowed if not destroyed by more than 75 percent of the value. Existing Zoning Regulations are stricter which may apply.</p>	<p>Section 14.6.B Pre-Existing Structures Pre-Existing Structures may not be moved; enlarged or altered that increases its degree of nonconformity. Ordinary maintenance and repair of and upgrades to a pre-existing structure are permitted. A Pre-Existing structure destroyed by any accidental means may be reconstructed to its original dimensions and location on the lot. A pre-existing structure abandoned or vacated for more than 24 consecutive months must become conforming or be granted an extension.</p>	<p>Section 14.6.A Pre-Existing Uses Pre-Existing Uses can not be enlarged, intensified, increased or extended to occupy a greater use of the land and/or structure. Can not be moved or extended in whole or in part to any other portion of the lot. A use terminated for more than 24 consecutive months must become conforming or be granted an extension. Any change of use must be a Permitted, Conditional, or Unclassified use in the SMP.</p>	<p>The proposed regulations do not allow a change of use to another use that is permitted in the underlying zone. This would likely result in many commercial buildings becoming vacant over time.</p> <p>There are no defined criteria for granting a time extension to the 24 months. This creates a decision process that can be perceived as arbitrary, discretionary, costly and have a negative impact on property values.</p>	<p>Revise Section 14.6 to include a comprehensive list of Permitted Uses that can be located within a structure when a pre-existing use goes away.²</p> <p>Revise Section 14.6 to establish decision criteria that would need to be compiled with when determining an extension request similar to other permits listed in Section 14 of the proposed SMP.³</p>
3.	<p>Nonconforming Structures</p> <p>Nonconforming structures are included in Chapter 8 as noted above</p>	<p>Section 14.6.B Pre-Existing Structures Pre-Existing Structures may not be moved; enlarged or altered that increases its degree of nonconformity. Ordinary maintenance and repair of and upgrades to a pre-existing structure are permitted. A Pre-Existing structure destroyed by any accidental means may be reconstructed to its original dimensions and location on the lot. A pre-existing structure abandoned or vacated for more than 24 consecutive months must become conforming or be granted an extension.</p>	<p>Section 14.6.A Pre-Existing Uses Pre-Existing Uses can not be enlarged, intensified, increased or extended to occupy a greater use of the land and/or structure. Can not be moved or extended in whole or in part to any other portion of the lot. A use terminated for more than 24 consecutive months must become conforming or be granted an extension. Any change of use must be a Permitted, Conditional, or Unclassified use in the SMP.</p>	<p>The current zoning code states that a structure cannot be built when destroyed by more than 50 percent of its replacement costs; this creates a conflict between the SMP and the Zoning Code.</p> <p>There are no defined criteria for granting a time extension to the 24 months. This creates a decision process that can be perceived as arbitrary, discretionary, costly and have a negative impact on property values.</p>	<p>Revise Section 14.6 to state that the SMP takes precedence over the city's zoning code when applying pre-existing development regulations.⁴</p> <p>Revise Section 14.6 to establish decision criteria that would need to be compiled with when determining an extension request similar to other permits listed in Section 14 of the proposed SMP.³</p>
4.	<p>Height Restrictions</p> <p>Chapter 18.44 Shoreline Overlay (TMC) River Zone Recreational Structures-15 feet in height Low Impact Zone 35 Feet in height High Impact Zone Height of Underlying zone Public Access Element: Page 4.3</p>	<p>Section 9.3.C: Height Restriction: Page 81 River Buffer Recreational Structures 15 feet in height High Intensity/Urban Conservancy Buffer 45 Feet in height</p>	<p>Section 11: Applicability: Page 126 Public access shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with Section 11.</p>	<p>The proposed height restrictions are substantial and onerous, resulting in a reduction in allowable height from 125 to 45 feet outside the river buffer. Such dramatic height restrictions are not warranted along urbanized, industrial portions of the River.</p>	<p>Make the Height Limit for the area landward of the River Buffer similar to the underlying zone, where it is found that there is minimal impact on residential views. This is consistent with the Shoreline Advisory Body Draft Plan of 2000.⁵</p>
5.	<p>Public Access</p> <p>Public access to and along the water's edge should be provided in new developments. Any modifications or extensions to existing development should be designed to allow public access. A trail system should be developed along the river.</p>	<p>Section 9.10: Vegetation Protection & Landscaping As many significant trees as possible are to be retained on a site proposed for development or redevelopment, taking into account the condition and age of the trees. For any new development or redevelopment invasive vegetation must be removed and native vegetation planted and maintained in the River Buffer, including the river bank, to improve the ecological functions of the shoreline.</p>	<p>Section 11: Applicability: Page 126 Public access shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with Section 11.</p>	<p>Ensure that public access requirements imposed on development are reasonably necessary as a direct result of, and roughly proportional to, the impacts of such development on public access.</p>	<p>Public access requirements imposed on development shall be reasonably necessary as a direct result of, and roughly proportional to, the impacts of such development on public access, as required by RCW 82.02.020 and federal and state constitutional requirements.⁶</p>
6.	<p>Revegetation</p> <p>TMC 18.44.130-River Zone Where the riverbank has been reconstructed, it shall be landscaped with suitable plant material consistent with flood control measures TMC 18.44.140-Low Impact Zone Structures must be landscaped according to the underlying zone and parking lots screened from the river</p>	<p>Section 9.10: Vegetation Protection & Landscaping As many significant trees as possible are to be retained on a site proposed for development or redevelopment, taking into account the condition and age of the trees. For any new development or redevelopment invasive vegetation must be removed and native vegetation planted and maintained in the River Buffer, including the river bank, to improve the ecological functions of the shoreline.</p>	<p>Section 11: Applicability: Page 126 Public access shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with Section 11.</p>	<p>The proposed regulations do not take into consideration the need for such requirements based on the impacts of development, or whether such required improvements are roughly proportional or reasonably necessary as a direct result of the project impacts. As a result, imposition of such requirements on certain development activities could constitute an unconstitutional taking under state and federal constitutions and violate RCW 82.02.020.</p>	<p>City should revise Section 9.10 to ensure that any vegetation protection and landscaping requirements imposed on development are proportional to the impacts of such development, as required by RCW 82.02.020 and state and federal constitutional law.</p>

Footnotes

City of Tukwila Shoreline Master Program Update: Issues of Concern

Prepared by R.W. Thorpe & Associates, Inc.

Revision # 1: September 16, 2009

1. The City of Auburn SMP, which was recently accepted by the Department of Ecology, provides for a process that would allow a property owner the ability to request a buffer reduction in the amount of 35 percent. See the attached regulations for decision criteria established by the City of Auburn that must be met prior to reducing the stream buffer. This process is consistent with the City of Auburn Critical Area Ordinance. Similar action can be taken by the City of Tukwila because the Tukwila CAO defers to the SMP when regulating Class I Streams which the Duwamish River is part of
2. See Department of Ecology (DOE) letter Dated June 30, 2009 Item 6 on Page 3. DOE requests that the City of Tukwila incorporate a list of permitted uses for each shoreline jurisdiction. City staff ultimately needs to coordinate this list with the citizens, Planning Commission, and City Council or incorporate the list of allowable uses for the underlying zones as requested by the Desimone Trust. Examples of a use matrix were sent to Carol Lumb, attached is an example from the City of Everett for reference purposes.
3. Similar to many decision made by City Council regarding Land Use matters; a decision made on a request for extension should be made based on established criteria. Shoreline Variances, Shoreline Conditional Use Permits, and Shoreline Substantial Development Permits all have approval criteria as listed in the proposed SMP on Pages 139 through 144. Establishing decision criteria AND an extension timeframe will make the decision process a more predictable and timely process for City Councilmembers, City Staff and Property Owners.
4. This was an issue of concern for the Desimone Trust when reviewing the Tukwila Urban Center Plan. The language in the proposed SMP needs to be clear that the SMP Pre-Existing Regulations take precedence over the Zoning Code Nonconforming Use and Structures Regulations. The following language which was proposed for the Urban Center Plan should be used in the SMP in Section 14.6 "Where there is a conflict between the Zoning Code regulations and the Shoreline Master Program regarding pre-existing developments, the regulations of the Shoreline Master Program shall apply". This is to clarify that the SMP regulations override any regulations within the current zoning code that govern pre-existing development (structures and uses).
5. In the comment letter of July 13, 2009, the Desimone Trust expressed the concern of requiring Public Access for every property that develops or redevelops. This requirement is not proportional to the level of development that may take place but it is also a piece meal approach to an SMP policy that should be thought out and coordinated. Similar to the comments expressed by Desimone, DOE expressed the same concerns in their letter of June 30, 2009 on Page 3 Item 7. Public Access planning needs to be implemented through a city led public access plan and not a piece meal regulation where every property must contribute. Attached are adopted Whatcom County regulations regarding Public Access. Their regulations identify a "test" that must be met when requiring public access. Public access is defined as both physical and visual. It also identifies other mean for meeting public access other than providing physical waterfront access to the shoreline.
6. Attached is a letter from Mark Hancock who served on the Tukwila Shoreline Advisory Board from 1999 until 2000 which states the previous recommendation of the advisory body which was to leave the height limit consistent with the underlying zone. This would apply to the area from 100-200 feet from the Ordinary High Water Mark.

Table 1. Critical Area Regulations

Critical Area	Minimum Buffer Width	Maximum Buffer Width	How to Measure Buffer Width	Buffer Composition	Buffer Averaging/Width Reduction
<p>Class I Streams</p>	<p>100 feet (<i>Urban Conservancy and Shoreline Residential</i>)</p>	<p>Buffer width may be increased by the Director by up to a maximum of 50% pursuant to Appendix A, Section 16.10.090 (E)(2)(b)</p>	<p>The buffer shall be measured from the ordinary high water mark.</p>	<p>Buffers shall typically consist of an undisturbed area of native vegetation retained or established to achieve the purpose of the buffer. No buildings or structures shall be allowed within the buffer unless as otherwise permitted by Appendix A, 16.10 "Critical Areas" or the Master Program. If the site has previously been disturbed, the buffer area shall be revegetated pursuant to an approved enhancement plan.</p>	<p>Buffer averaging is not permitted Buffer widths may be reduced by up to 35% provided the applicant demonstrates that a reduction will not result in any adverse impact to the stream. Enhancement of the buffer may be required. Buffer width reduction must comply with Appendix A, Section 16.10.090 (E)(1).</p>
	<p>200 feet (<i>Natural</i>)</p>				
Wetlands					
<p>Category I</p>	<p>100 feet</p>	<p>200 feet</p>	<p>The buffer shall be measured perpendicular from the wetland edge as delineated and marked in the field using the 1997 Washington State Wetlands Identification Manual.</p>		
<p>Category II</p>	<p>50 feet</p>	<p>100 feet</p>			

iii. Enhancement of wildlife habitat by adding structures that are likely to be used by wildlife, including wood duck houses, bat boxes, nesting platforms, snags, root wads/stumps, birdhouses, and heron nesting areas.

iv. Additional mitigating measures may include but are not limited to:

(A) Landscaping outside the buffer area with native vegetation or a reduction in the amount of clearing outside the buffer area;

(B) Planting native vegetation within the buffer area, especially vegetation that would increase value for fish and wildlife, increase stream bank or slope stability, improve water quality, or provide aesthetic/recreational value;

(C) Creating a surface channel where a stream was previously culverted or piped;

(D) Removing or modifying existing stream culverts (such as at road crossings) to improve fish passage and flow capabilities which are not detrimental to fish;

(E) Upgrading retention/detention facilities or other drainage facilities beyond required levels; or

(F) Similar measures determined applicable by the director.

c. No structures or improvements shall be permitted within the stream buffer area, including buildings, decks, docks, except as otherwise permitted or required under the city's adopted shoreline master program, or under one of the following circumstances:

i. When the improvements are part of an approved enhancement, restoration or mitigation plan; or

ii. For construction of new public roads and utilities, and accessory structures, when no feasible alternative location exists; or

iii. Construction of foot trails, according to the following criteria:

(A) Designed to minimize impact of permeable materials;

(B) Designed to minimize impact on the stream system;

(C) Of a maximum width of 12 feet;

(D) Located within the outer half of the buffer, i.e., the portion of the buffer that is farther away from the stream; or

iv. Construction of footbridges; or

v. Construction of educational facilities, such as viewing platforms and informational signs.

d. Buffer width averaging may be allowed for Class II and Class III streams only; provided, that all of the following are demonstrated by the applicant:

i. One or more of the enhancement measures identified in subsection (E)(2)(b)(i) through (iv) of this section is implemented;

ii. The total area contained within the buffer after averaging is no less in area than contained within the standard buffer prior to averaging;

iii. The buffer width averaging will result in stream functions and values equal or greater than before averaging; and

iv. The buffer width is not reduced by more than 35 percent in any location than the buffer widths established by this chapter.

e. Stream buffer widths may be reduced by the director on a case-by-case basis by up to 35 percent if an applicant demonstrates that a reduction will not result in any adverse impact to the stream. Further, if an existing buffer is vegetated, a buffer enhancement plan may be required to demonstrate how the function and values of the buffer and stream will be improved. If the existing buffer has been disturbed and/or is not vegetated, an enhancement plan shall be required that identifies measures to enhance

the buffer functions and values and provide additional protection for the stream function and values. Enhancement plans are subject to approval by the planning director.

f. Long-term protection of a regulated stream and its associated buffer shall be provided by one of the following methods, except for the portion of Class I streams which are owned by the State Department of Natural Resources. The stream and buffer shall be placed in a separate tract on which development is prohibited, protected by execution of an easement dedicated to the city, a conservation organization, land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the stream and its buffer shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King or Pierce County recording department.

3. Wildlife Habitat Areas.

a. Buffer widths for critical habitat areas shall be determined by the director based on consideration of the following factors: species recommendations of the Department of Fish and Wildlife; recommendations contained in the wildlife report and the nature and intensity of land uses and activities occurring on the site and on adjacent sites. Buffers shall not be required for secondary or tertiary habitat.

b. Buffer widths for critical habitat areas may be modified by averaging buffer widths or by enhancing or restoring buffer quality.

c. Certain uses and activities which are consistent with the purpose and function of the buffer for critical habitat areas and do not detract from its integrity may be permitted by the director within the buffer depending on the sensitivity of the habitat area. Examples of uses and activities with minimal impact which may be permitted in appropriate cases include permeable pedestrian trails and viewing platforms and utility easements; provided, that any impacts to the buffer resulting from permitted facilities shall be mitigated. When permitted, such facilities shall generally be located as far from the critical habitat area as possible.

d. Long-term protection of critical habitat areas and their associated buffer(s) shall be provided by one of the following methods. The critical habitat area and buffer(s) shall be placed in a separate tract on which development is prohibited, protected by execution of an easement, dedicated to the city, a conservation organization, land trust, or similarly preserved through a permanent protective mechanism acceptable to the city. The location and limitations associated with the critical habitat area and its buffer(s) shall be shown on the face of the deed or plat applicable to the property and shall be recorded with the King or Pierce County recording department.

4. Geologic Hazard Areas.

a. Required buffer widths for geologic hazard areas shall reflect the sensitivity of the geologic hazard area in question and the types and the risks associated with development and, in those circumstances permitted by these regulations, the type and intensity of human activity and site design proposed to be conducted on or near the area.

b. Required buffers may vary in width. The widths of the buffer shall reflect the sensitivity of the geologic hazard area in question and the types and density of uses proposed on or adjacent to the geologic hazard. In determining the appropriate buffer width, the director shall consider the recommendations contained in any geologic hazards report required by these regulations and prepared by a qualified consultant.

c. Buffers may be reduced to a minimum width of 15 feet when the applicant demonstrates through the geologic hazard report that the reduction will adequately protect the geologic hazard and the proposed development through use of proposed engineering techniques. (Ord. 5894 § 1, 2005.)



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Regional Office • 3190 160th Avenue SE • Bellevue, Washington 98008-5452 • (425) 649-7000

RECEIVED

JUL 02 2009

COMMUNITY
DEVELOPMENT

June 30, 2009

Carol Lumb, AICP
City of Tukwila
6300 Southcenter Blvd, Suite 100
Tukwila, WA 98188-8548

RE: Comments on Planning Commission Recommended Shoreline Master Program

Thank you for the opportunity to comment on the Planning Commission Recommended Draft of the Tukwila Shoreline Master Program (SMP). The Department of Ecology has provided several comments below. This letter is divided into two major sections, general issues and detailed comments. Many of the general issues have been previously discussed in our email of March 5, 2009 and subsequent meetings.

General Issues

1. Maps

All appropriate maps should be included as part of the SMP. This includes the SMP environment designations, sensitive areas map, public access, and armoring.

2. Buffers

The SMP must address the effect of the proposed alternative shoreline buffers allowing for a regraded 2.5:1 slope levee as found at page 68 of the SMP. This alternative buffer has an undefined width. The undefined width is a concern. How will this proposed buffer accomplish no net loss of ecological function and protection equal to that provided by the Sensitive Areas Ordinance?

3. Archaeological Resources

Tukwila Municipal Code 18.50.110 and Draft SMP section 9.7 discuss archaeological resources. Section 9.7 contains several beneficial standards. Ecology has identified two minor concerns during our review.

WAC 173-26-221(1)(c) has two requirements of SMPs. These are:

1. Require that developers and property owners immediately stop work and notify the local government, the office of archaeology and historic preservation and

affected Indian tribes if archaeological resources are uncovered during excavation.

2. Require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.

The Tukwila code and draft SMP do not require property owners to necessarily stop work if archaeological resources are discovered. The TMC does require that discovered resources not be disturbed, the code does not account for the possibility of additional archaeological resources to be present nearby. The SMP needs to require that work cease in such circumstances.

The Tukwila code and draft SMP do not require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes for all sites where archaeological resources are documented. The TMC requires such an evaluation if there is reason to believe that archaeological resources will be disturbed. It is important to systematically know what the extent of the archaeological resources is.

4. Unclassified Use

Section 14.4 of the Draft SMP contains provisions for reviewing Shoreline Unclassified Use Permits. We note that WAC 173-27-160(3) requires that unclassified uses be subject to a shoreline conditional use permit. Section 14.4 of the Draft SMP would not eliminate the need for a Shoreline Conditional Use Permit. The Unclassified Use Permit could be an additional permit requirement. It may be more effective to identify any additional criteria, in addition to the conditional use permit criteria, that must be met in order for an unclassified use to be approved.

It will be necessary to provide a different name for uses that Tukwila has historically labeled as unclassified uses in the SMP. An example of this would be major shoreline conditional use and minor shoreline conditional use.

5. Zoning Standards

Section 9.3.1.1 of the draft SMP provides that standards of the zoning district apply. To be part of the SMP, these standards need to be specifically identified and reviewed by Ecology. The City may wish to consider which of these zoning standards truly need to be in the SMP.

All references to the zoning code need to identify the section of the code, the date of adoption or the section needs to be stated verbatim in the SMP. Ecology will need to review each referenced zoning code section in the SMP.

6. Use Matrix

The SMP must have a use matrix detailing uses that are permitted, conditional, or prohibited in shoreline jurisdiction. Please see the attached example. This example was previously emailed to the City. As discussed in a previous meeting, the SMP needs to identify permitted, conditional, and prohibited uses for each shoreline environment. This information cannot be incorporated by reference. Including this information in a table form is strongly preferred.

7. Public Access

Recent drafts of the Tukwila SMP significantly changed the SMP's approach to public access. Many of the requirements for individual developments to provide public access have been replaced by a public access plan conducted by the City and river trail dedication and/or construction requirements. We note that the City owns a notable amount of property contiguous with the Green River. We also note that the City is developing an extensive trail network along the Green River.

WAC 173-26-221(4)(d)(ii) states, in part, that:

where public access planning as described in WAC 173-26-221(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

Tukwila appears to have the ability to meet important aspects of its shoreline public access needs through implementation of a city led public access plan. Such a plan needs to be fully incorporated into the SMP (including Figure 6). The public access portion of the SMP needs to include identification of existing and planned public access and identified public access projects. Ideally this should include a map in the SMP showing existing and proposed public access. The SMP should include any relevant port planning for public access. The SMP should also include clear policy direction to incorporate public access projects into relevant capital improvement budgeting.

Public access planning must also be integrated with comprehensive plan transportation planning and recreation planning. Public access planning should be included in the SMP public participation process.

Public access standards for new residential development continue to be an important aspect of the SMP update. Public access in new residential developments of greater than four lots is encouraged and supported.

8. Restoration

We understand that Chapter 13, Restoration will change significantly due to the passage of HB 2199.

9. Tukwila South Annexation

The Department of Ecology will wish to review the Draft SMP for consistency with the Tukwila South Annexation Agreement. We do not wish the Tukwila South Annexation to necessitate a shoreline amendment soon after the adoption of the SMP if such a circumstance can be avoided.

10. Comments of Chuck Steele, Floodplain Specialist

Flood Maps. Nowhere in the text of the Draft SMP does the City define their floodplains and/or floodways. This is especially critical because there has been a dramatic change in the Tukwila floodplains which has been formally communicated to the City since September 28, 2007 in the form of a FEMA Preliminary Revised Flood Insurance Study (FIS) with accompanying maps.

While the FIS still credits the Section 205 levee affording 100-year protection to the Southcenter area from I-405 to approximately 180th Street, other levees within the City and within the south annexation area are no longer credited with providing this protection. The result is:

- There is now a floodplain in the south annexation area on the left (west) bank between 196th and 204th Streets. This floodplain did not exist on the earlier May 16, 1995 FEMA Map Panel 967.
- There is now a significant floodway on the right bank roughly between 182nd and 190th Streets, and some floodplain to the north of 182nd Street. Both of these designations are new and neither is on Map Panel 967.

The new floodplain designations represent a major change and result in large floodplains and floodways heretofore not present in the City. Yet the SMP does not acknowledge them or discuss the consequences of them. The current FEMA maps dated May 16, 1995 should not be used because they are not the best available information. They were superseded with FEMA's publication of its September 28, 2007 maps. However, these maps were appealed by all of the Valley cities and King County in early March prior to the March 18, 2008 deadline ending the FEMA Appeal Period. Along with the appeal was a new set of maps that were produced by King County; these maps have been accepted by FEMA and are now being processed for issuance of Revised Preliminary FIRMs in the near future. These maps are the best available information. They were provided to the City of Tukwila in March 2008 and can be found on the King County website.

It appears that Tukwila may not be using the new maps. Using the 1995 maps should not be acceptable for SMP purposes. The difference between the maps is obvious and has significant implications. The 1995 maps show the Green River floodplain, and the floodway for the most

part, mainly confined to the levees. This is unrealistic in that the levees are now known to not provide 100-year flood protection. Regardless of the technicality of formally releasing the maps, all local jurisdictions should be using the revised maps presently as the best available information, specifically for Tukwila Map Plate LG-4 of the King County series. Best available information is required in Chapter 16.52.050 of the Tukwila Municipal Code, Floodplain Management, and best available science is defined at Title 18.06.069 of the TMC.

Shoreline Jurisdiction. My understanding of shoreline jurisdiction is that it must, at a minimum, extend 200 feet from the floodway or 200 feet from Ordinary High Water if there is no floodway. The floodway can be defined either through the SMA definition or by using the floodways on FEMA flood maps. Tukwila defines shoreline jurisdiction only as the channel, banks and “. . . upland area which extends from the ordinary high water mark landward for 200 feet on each side of the river. . . .” If the best available information is being used and the City is supposed to reference the 200 feet to a floodway, shoreline jurisdiction is expanded very significantly. The entire area of the new floodway east of the Green River between roughly 182nd and 190th plus 200 feet would be under shoreline jurisdiction. There would also be a significant expansion of shoreline jurisdiction along Frager Road in the south annexation area.

Biological Opinion. Nowhere in the SMP is there mention of the National Marine Fisheries Service’s Biological Opinion on the National Flood Insurance Program. This Opinion set forth a Reasonable and Prudent Alternative that could severely impact the building of any new levees, through the requirement of such measures as bioengineering methods, inclusion of riparian vegetation and large wood, and measures dealing with channel migration.

Section 9.5, Flood Hazard Reduction. This section contains some good measures. For example, it requires that flood control structures can only be built if no net loss of ecological functions is assured, rehabilitated or replaced flood control structures must have a side slope of 2.5:1, setback levees are prescribed and mid-slope benches for planting native vegetation are specified. It is suggested in 9.5F that in placing flood control structures landward of the floodway “as determined by the U.S. Army Corps of Engineers and the State of Washington, Department of Ecology,” the wording be changed to “as determined by the best available information” since it is FEMA and King County that presently have the best available information.

11. Comments of Richard Robohm, Wetland Specialist

As Ecology’s wetland specialist for King and Kitsap county jurisdictions, I sent a comment letter to the City of Tukwila (City) on November 12, 2004, while the City was in the process of updating its sensitive areas ordinance (SAO).

In my letter I noted the following regarding the wetland rating system that the City proposed to use and later adopted in its updated CAO:

The wetland classification system proposed in the current draft of your SAO is inconsistent with the best available science. The three-tier system of the current

ordinance and proposed draft was developed more than 20 years ago by King County, and is no longer being used by the County. Instead, they are using Ecology's four-tier, function-based rating system. The old system's criteria and thresholds for wetland size and number of vegetation classes are not related to performance of functions and should not be used as a basis for differentiating wetlands for applying varying protection measures. More recent studies have shown that other criteria and thresholds are much better correlated with wetland function.

We understand that our most recent version of the Western Washington rating system was not finalized when you developed your draft SAO. However, we urge the City to revise the SAO to adopt Ecology's *Washington State Wetland Rating System for Western Washington* (2004). [This] rating system ..., which was finalized in August, is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. This function-based rating system represents best available science for rating wetlands in Washington.

An alternative is for the City to adopt a rating system developed for the unique environment in Tukwila. However, this should be based on current scientific knowledge about wetland functions and rating and should include a methodology for applying it in the field to ensure consistency.

The City declined to change its rating system in the new SAO adopted in December 2004. My comments urging the City to adopt a function-based wetland rating system apply with even greater force today. The City and its sensitive areas would be better served by a system that takes account of the hydrologic, water-quality-improvement, and habitat functions of its wetlands.

I recognize that the quality and range of wetlands within the highly urbanized environment of the City are limited, but it is important to evaluate them with the best tools available. The better we understand the functions of these wetlands, the more confidence we can have that proposed policies and regulations will promote the goal of no net loss.

Detailed Comments

1. Elements of the Tukwila South Development Plan or the Tukwila Urban Center Plan that relate to shoreline development (as discussed in Policy 5.5.1, on page 41 for example) need to be included or incorporated into the in the SMP and reviewed by Ecology.
2. Pages 54 and 55 - Are vegetation enhancement requirements adequate and consistent with USACOE requirements? It may be helpful to clearly identify the USACOE maintained levees in the SMP.

3. Page 55 bottom row, Page 56, end of second row - What is meant by last phrase, "Director may reduce the buffer to the actual width required." It is unclear what buffers will actually result from this provision.
4. Pages 56, last row and 70, last sentence - Where the buffer stops at an existing road or street, the cumulative impact analysis will need to identify and analyze actual buffer widths resulting from ending the buffer on river side of existing improved street or roadway.
5. The Shoreline Residential Use regulations in Chapter 8 needs to address lot coverage and shoreline stabilization for each of the applicable shoreline environments, Shoreline Residential, Urban Conservancy, and High Intensity.
6. Page 65 - Last paragraph, first sentence - Is this a reference to all non-residentially zoned areas or areas with nonresidential uses?
7. Page 72 -73 Uses allowed in buffer - The revised cumulative impact analysis should address the aggregate of uses allowed in the buffer. The buffer use provision in section 8.2 could allow for a notable portion of the vegetation in the buffer to be removed.
8. Pages 72, 75, and 77 - Signs should only be allowed in a buffer if they serve a conservation use of an approved existing use in the buffer.
9. Pages 75 and 77 make reference to Tukwila Municipal Code (TMC) 18.62. Water dependent industrial or commercial development must be regulated in the SMP rather than the underlying zoning.
10. Pages 75 and 77 - Built facilities in subsection P should be located outside of the buffer unless a buffer location is necessary for the specific function of the facility.
11. Pages 75 and 77, Subsection R - This would work better if only water dependent or water related essential public facilities are permitted in shoreline jurisdiction.
12. Pages 79 and 81 - While development standards of the underlying zoning district do apply to development within shoreline jurisdiction, they should only be incorporated into the SMP if they address shoreline issues such as shoreline uses and standards. All zoning standards incorporated into the SMP must be reviewed and approved by Ecology.
13. Page 100, Regulation 9.12.A.3 - Where feasible, deck covering that allows light to pass through shall be used.
14. Page 100, Regulation 9.12.A.6 - Preservative used to treat piles should also be approved by the Washington Department of Fish and Wildlife.
15. Page 101, Regulation 9.12.B.1 - Is the no net loss review intended to be site specific?

16. Page 119, Section 10.11.B Define Type II permit process within the SMP.
17. Page 133, Section 11.5. If greater than 35 feet, increased building heights may not block the view of a substantial number of residential uses. Increase building heights need to be analyzed in the cumulative impacts analysis.
18. Page 143, Section 14.1.A. Minimum shoreline jurisdiction also includes all areas landward 200 feet from the floodway in greater than the area extending 200 feet from the Ordinary High Water Mark.
19. Page 143, Section 14.2.A. The shoreline substantial development permit criteria should be included in the SMP. Adopting approval criteria from the zoning code would require Department of Ecology approval of the zoning approval criteria and that the adopted criteria are attached to the SMP. This is also true of page 144, and Section 14.3.B and page 147, Section 14.5.B.
20. Page 148, Section 14.5.A makes reference to a zoning code definition. The definition of pre-existing use should be included in the SMP.
21. Page 150 Sections 14.6.B.6 and 7 need to be analyzed in the cumulative impact analysis. There is concern that allowing for construction of new residences within shoreline buffers will defeat the purpose of the buffers. Ecology would prefer that expansion of such single family residences require a shoreline conditional use permit and be excluded from sensitive areas and their buffers.
22. Page 150, Section 14.6.B.5 - Allowing existing buildings in what would otherwise be buffers to be classified as conforming may defeat the purpose of the buffers. If the structures are not consistent with buffer requirements, then they should be nonconforming.
23. Page 150, Section 6.B.7 - Allowing expansion of nonconforming structures. Ecology supports making this a required shoreline conditional use permit for single family residences.
24. Page 151, Section 14.6.C.1 and 2. These sections should contain language requiring the improvements causing expansion of nonconformity or pre-existing building be the minimum necessary expansion to meet the documented public safety concerns.
25. Page 153, Section 16.2. In order to implement this section as proposed, Tukwila Municipal Code Chapter 8.45 must either be included in the SMP or adopted into the SMP and attached to the SMP. Ecology will need to be able to approve Chapter 8.45 as part of the SMP after review.

Carol Lumb, AICP
June 30, 2009
Page 9

26. Page 155, Section 17. The referenced WAC section do not appear to be correct. The appropriate WAC references appear to be in 173-26 WAC.

If you have questions about any of these comments, Please contact me by telephone at (425) 649-4260 or email at drad461@ecy.wa.gov.

Sincerely,



Dave Radabaugh Shoreline Planner

Cc: Geoff Tallent, Department of Ecology
Chuck Steele, Department of Ecology
Richard Robohm, Department of Ecology

DEPARTMENT OF ECOLOGY
Northwest Regional Office

June 10, 2009

TO: Dave Radabaugh
Shoreline Planner

FROM: Charles L. Steele *CL*
Floodplain Management Specialist

SUBJECT: Review Comments on February 5, 2009
Draft Tukwila Shoreline Master Program

I reviewed the subject document and have the following comments:

Flood Maps. Nowhere in the text of the Draft SMP does the City define their floodplains and/or floodways. This is especially critical because there has been a dramatic change in the Tukwila floodplains which has been formally communicated to the City since September 28, 2007 in the form of a FEMA Preliminary Revised Flood Insurance Study (FIS) with accompanying maps.

While the FIS still credits the Section 205 levee affording 100-year protection to the Southcenter area from I-405 to approximately 180th Street, other levees within the City and within the south annexation area are no longer credited with providing this protection. The result is:

- There is now a floodplain in the south annexation area on the left (west) bank between 196th and 204th Streets. This floodplain did not exist on the earlier May 16, 1995 FEMA Map Panel 967.
- There is now a significant floodway on the right bank roughly between 182nd and 190th Streets, and some floodplain to the north of 182nd Street. Both of these designations are new and neither is on Map Panel 967.

The new floodplain designations represent a major change and result in large floodplains and floodways heretofore not present in the City. Yet the SMP does not acknowledge them or discuss the consequences of them. The current FEMA maps dated May 16, 1995 should not be used because they are not the best available information. They were superseded with FEMA's publication of its September 28, 2007 maps. However, these maps were appealed by all of the Valley cities and King County in early March prior to the March 18, 2008 deadline ending the FEMA Appeal Period. Along with the appeal was a new set of maps that were produced by King County; these maps have been accepted by FEMA and are now being processed for issuance of Revised Preliminary FIRMs in the near future. These maps are the best available information. They were provided to the City of Tukwila in March 2008 and can be found on the King County website.

It appears that Tukwila may not be using the new maps. Using the 1995 maps should not be acceptable for SMP purposes. The difference between the maps is obvious and has significant implications. The 1995 maps show the Green River floodplain, and the floodway for the most part, mainly confined to the levees. This is unrealistic in that the levees are now known to not provide 100-year flood protection. Regardless of the technicality of formally releasing the maps, all local jurisdictions should be using the revised maps presently as the best available information, specifically for Tukwila Map Plate LG-4 of the King County series. Best available information is required in Chapter 16.52.050 of the Tukwila Municipal Code, Floodplain Management, and best available science is defined at Title 18.06.069 of the TMC.

Shoreline Jurisdiction. My understanding of shoreline jurisdiction is that it must, at a minimum, extend 200 feet from the floodway or 200 feet from Ordinary High Water if there is no floodway. The floodway can be defined either through the SMA definition or by using the floodways on FEMA flood maps. Tukwila defines shoreline jurisdiction only as the channel, banks and "... upland area which extends from the ordinary high water mark landward for 200 feet on each side of the river. ..." If the best available information is being used and the City is supposed to reference the 200 feet to a floodway, shoreline jurisdiction is expanded very significantly. The entire area of the new floodway east of the Green River between roughly 182nd and 190th plus 200 feet would be under shoreline jurisdiction. There would also be a significant expansion of shoreline jurisdiction along Frager Road in the south annexation area.

Biological Opinion. Nowhere in the SMP is there mention of the National Marine Fisheries Service's Biological Opinion on the National Flood Insurance Program. This Opinion set forth a Reasonable and Prudent Alternative that could severely impact the building of any new levees, through the requirement of such measures as bioengineering methods, inclusion of riparian vegetation and large wood, and measures dealing with channel migration.

Section 9.5, Flood Hazard Reduction. This section contains some good measures. For example, it requires that flood control structures can only be built if no net loss of ecological functions is assured, rehabilitated or replaced flood control structures must have a side slope of 2.5:1, setback levees are prescribed and mid-slope benches for planting native vegetation are specified. It is suggested in 9.5F that in placing flood control structures landward of the floodway "as determined by the U.S. Army Corps of Engineers and the State of Washington, Department of Ecology," the wording be changed to "as determined by the best available information" since it is FEMA and King County that presently have the best available information.

cc: Dan Sokol

Radabaugh, David (ECY)

From: Robohm, Richard (ECY)
Sent: Friday, June 26, 2009 3:55 PM
To: Radabaugh, David (ECY)
Subject: RE: Tukwila SMP

Dave,

Re Chapter 10 of the draft Tukwila SMP:

As Ecology's wetland specialist for King and Kitsap county jurisdictions, I sent a comment letter to the City of Tukwila (City) on November 12, 2004, while the City was in the process of updating its sensitive areas ordinance (SAO).

In my letter I noted the following regarding the wetland rating system that the City proposed to use and later adopted in its updated CAO:

The wetland classification system proposed in the current draft of your SAO is inconsistent with the best available science. The three-tier system of the current ordinance and proposed draft was developed more than 20 years ago by King County, and is no longer being used by the County. Instead, they are using Ecology's four-tier, function-based rating system. The old system's criteria and thresholds for wetland size and number of vegetation classes are not related to performance of functions and should not be used as a basis for differentiating wetlands for applying varying protection measures. More recent studies have shown that other criteria and thresholds are much better correlated with wetland function.

We understand that our most recent version of the Western Washington rating system was not finalized when you developed your draft SAO. However, we urge the City to revise the SAO to adopt Ecology's *Washington State Wetland Rating System for Western Washington (2004)*. [This] rating system ..., which was finalized in August, is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. This function-based rating system represents best available science for rating wetlands in Washington.

An alternative is for the City to adopt a rating system developed for the unique environment in Tukwila. However, this should be based on current scientific knowledge about wetland functions and rating and should include a methodology for applying it in the field to ensure consistency.

The City declined to change its rating system in the new SAO adopted in December 2004. My comments urging the City to adopt a function-based wetland rating system apply with even greater force today. The City and its sensitive areas would be better served by a system that takes account of the hydrologic, water-quality-improvement, and habitat functions of its wetlands.

I recognize that the quality and range of wetlands within the highly urbanized environment of the City are limited, but it is important to evaluate them with the best tools available. The better we understand the functions of these wetlands, the more confidence we can have that proposed policies and regulations will promote the goal of no net loss.

Richard K. Robohm
Wetland Specialist
Department of Ecology
425-649-4447

EVERETT SHORELINE MASTER PROGRAM

Table 5.1 Shoreline Use Table

Environment	Deep Water Port	Maritime	Industrial	Mixed-Use Industrial	Multi-Use	Shoreline Residential	Conservancy Recreation	Conservancy	Conservancy Agriculture	Municipal Water Quality	Municipal Watershed	Aquatic	Aquatic Conservancy
Use	X	X	X	P	X	X	P	X	P	P	X	X	X
Agriculture	P	P	P	P	P	X	X	X	X	X	X	P, 12	X
Boating Facilities	P	P	P	P	P	P	P	X	X	P	X	P	C
Commercial													
Water-dependent Water-related	P	P	P	P	P	X	P, 2	X	X	X	x	P, 12	X
Water-employment	P	P	P	P	P	X	P, 2	X	X	X	x	P, 12	X
Nonwater-oriented Forest Practices, 8	X	P, 15 ²	P	P	P	X	P, 2	X	X	X	x	P	X
Industry	P	P	P	P	P	X	P, 3	X	P, 3	P	P	NA	NA
In-stream Structures Log Storage and Rating	P	P	NA	NA	P, 6	X	C, 1	X	C, 1	X	X	P, 12	X
Mining	X	X	P, 5	P, 5	NA	NA	NA	X	NA	X	X	X	C, 14
Parking	X	X	X	X	X	X	X	X	X	X	P	X	X
Recreational Development	P	P	P	P	P	P	P	X	P, 9	P	X	X	X
Residential Development	X	X	X	X	P	P	X	X	X	X	X	X	X
Signs	P	P	P	P	P	P	P	P, 7	P, 7	P, 4	P, 4	P, 10	X
Outdoor Advertising	X	X	X	X	X	X	X	X	X	X	X	X	X
Solid Waste Landfill and In-water Disposal	X	X	X	X	X	X	X	X	X	X	X	X	X
Solid Waste Collection Facilities	P	P	P	P	P	P	P	X	P	P	P	P	X
Solid Waste Transfer Stations	X	X	C	C	X	X	X	X	X	X	X	X	X

¹ Ordinance 2859-05, Effective 11/17/05
² Ordinance 2713-03, Effective 5/18/04

EVERETT SHORELINE MASTER PROGRAM

Table 5.1 Shoreline Use Table page 2

Environment	Deep Water Port	Maritime	Industrial	Mixed-Use Industrial	Multi-Use	Shoreline Residential	Conservancy Recreation	Conservancy	Conservancy ³ Agriculture	Municipal Water Quality	Municipal Watershed	Aquatic	Aquatic Conservancy
Transportation Facilities	P	P	P	P	P	P	P	P, 13	P	P	P	C, 11	C
Utilities and Utility Facilities	P	P	P	P	P	P	P	P	P	P	P	P	C, 14

Note that the proposed use must also be an approved use in the Zoning Code. For example, where industrial activities are permitted in the Shoreline Environment, the Zoning Code may limit permitted uses to certain kinds of industrial activities.

- P = Permitted Use (Note that the Regulations in this Section contain limitations on permitted shoreline uses.
- C = Conditional Use (See Section 2.4 for Conditional Use Criteria)
- X = Prohibited (Not allowed under any circumstances. Limitations in regulations do not apply.)
- 1 = Permitted only in the Agriculture Zone for activities such as food processing.
- 2 = Permitted only in Public Parks for concessions.
- 3 = Permitted only in the Agriculture Zone
- 4 = Directional signs only
- 5 = New log storage activities are prohibited, except on dry land. Expansion of existing areas is prohibited where grounding will occur and in the Aquatic Environment.
- 6 = Permitted in the multi-use zones along the riverfront. However, industrial uses are limited to high tech, office-park-type, non-warehouse type activities.
- 7 = Only interpretive and public access signs
- 8 = Forest practices are allowed in any environment when completed as part of a public access or mitigation/restoration proposal
- 9 = Only minor public access improvements such as trails, boardwalks, overlooks, interpretive signs are permitted. Associated facilities including parking, restrooms, etc., must be located outside of the Conservancy environment, provided that only previous surface parking for public access may be provided in the Conservancy Agriculture environment designated area. In addition, recreation associated with agricultural uses, such as demonstration farms, shall be permitted in the Conservancy Agriculture environment.
- 10 = Permitted on structures allowed over water. (Rev. 11/17/05)
- 11 = Expansion of existing facilities does not require a conditional use.
- 12 = Permitted to the pierhead/harbor line when the use is permitted on the adjacent shoreline site.
- 13 = A conditional use permit is required for expansion of the railroad in the Urban Conservancy environment along Port Gardner Bay.
- 14 = A conditional use permit is not required for water-dependent utilities.
- 15 = Nonwater-oriented commercial uses are only allowed in the North Marina Planned Development Overlay - WC zone area, shown on Figure 5.1. (Ordinance 2766-04)

³ Ordinance 2859-05, Effective 11/17/05

applicable review period following receipt of the site assessment, such stopped work may resume.

- c. Upon receipt of a positive determination of a site's significance, the Administrator may invoke the provisions of SMP 23.90.07.B.1.b through .d above for a Cultural Resource Management Plan, if such action is reasonable and necessary to implement related SMP objectives.
3. The requirements of SMP 23.90.07.B.1 do not apply where an applicant/project proponent has obtained an approved Archeological Excavation and Removal permit from the Washington State Department of Archaeology and Historic Preservation pursuant to WAC 25-48-060, provided that the applicant must adhere to the requirements of said approved permit.

23.90.08 Public Access

23.90.08.A Policies

1. Use and development that provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state are a preferred use.
2. Physical or visual access to shorelines should be incorporated in all new development when the development would either generate a demand for one or more forms of such access, and/or would impair existing legal access opportunities or rights. Public health and safety concerns should also be adequately addressed and maintenance of shoreline ecological functions and/or processes should be assured. As required by the Governing Principles, all such conditions should be consistent with all relevant constitutional and other legal limitations on regulation of private property.
3. Public access should be provided for water-oriented uses and nonwater-dependent uses and developments that increase public use of the shorelines and public aquatic lands, or that would impair existing, legal access opportunities.
4. Nonwater-related uses or activities located on the shoreline should provide public access as a public benefit.
5. Public access area and/or facility requirements should be commensurate with the scale and character of the development and should be reasonable, effective and fair to all affected parties including but not limited to the land owner and the public.
6. Public access design should provide for public safety and minimize potential impacts to private property, individual privacy, and shoreline ecological functions and processes.
7. Shoreline development by public entities, such as local governments, port districts, state agencies, and public utility districts, should provide public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline.

23.90.08.B Regulations

1. In the review of all shoreline substantial development, conditional use permits, or developments of more than four (4) residential lots or dwelling units, consideration of

public access shall be required, subject to the test stated above in SMP 23.90.08.A.2. When appropriate, provisions for adequate public access shall be incorporated into such proposals, including land division, unless the applicant/proponent demonstrates that one or more of the following provisions apply:

- a. Unavoidable health or safety hazards to the public exist that cannot be prevented by any practical means;
 - b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
 - c. The cost of providing the access, easement, alternative amenity, or mitigating the impacts of public access is unreasonably disproportionate to the total long term cost of the proposed development;
 - d. Significant environmental impacts will result from the public access that cannot be mitigated;
 - e. Significant undue and unavoidable conflict between any access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated.
2. When provisions for public access are required as a condition of project approval, the Administrator shall prepare written findings, pursuant to SMP 23.60, demonstrating consistency with the principles of nexus and proportionality and the test stated in SMP 23.90.08.A.2 and SMP 23.50.08.A.
3. Prior to deciding public access is not required pursuant to SMP 23.90.08.B.1.a through .e above, the County must determine that all reasonable alternatives have been exhausted; including, but not limited to:
- a. Regulating access by such means as maintaining a gate and/or limiting hours of use;
 - b. Designing separation of uses and activities (e.g. fences, terracing, use of one-way glazing, hedges, landscaping, etc.); and
 - c. Providing for access at a site geographically separated from the proposal such as a street end, vista, tideland or trail system.
4. Public access shall not be required for the following uses except as determined on a case-by-case basis in conjunction with the provisions of SMP 23.90.08.A and this section:
- a. Single family residential development of four (4) or fewer lots
 - b. Dredging
 - c. Forest Practices
 - d. Landfill and Excavation
 - e. Mining
 - f. Private docks serving four (4) or fewer dwelling units
 - g. Instream Structures
 - h. Shoreline Stabilization

- i. Ecological restoration or enhancement activities not associated with development when the purpose of the project would be undermined.
 - j. Agriculture
5. Public access shall consist of a dedication of land or a physical improvement in the form of a walkway, trail, bikeway, corridor, viewpoint, park, deck, observation tower, pier, boat launching ramp, dock or pier area, or other area serving as a means of view and/or physical approach to public waters and may include interpretive centers and displays.
6. Alternate off-site provision of public access to shorelines may be used upon approval, as a means of offsetting identifiable on-site impacts. If public access is demonstrated to be infeasible or inappropriate on site due to significant interference to operations or hazards to life and property, alternative visual access opportunities may be provided at a location not directly adjacent to the water such as a viewpoint, observation tower, or other areas serving as a means to view public waters such as an interpretive center and displays explaining maritime history and industry, provided that visual access to the water is provided.
7. Public access provided by shoreline street ends, public utilities and rights-of-way shall not be diminished (RCW 35.79.035 and RCW 36.87.130). Shoreline development by public entities shall include public access measures as part of each development project.
8. Public access shall incorporate the following location and design criteria:
 - a. Where open space is provided along the shoreline, and public access can be provided in a manner that will not adversely impact shoreline ecological functions and/or processes, a public pedestrian access walkway parallel to the ordinary high water mark of the property is preferred. The walkway shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the waters edge where appropriate. Fencing may be provided to control damage to plants and other sensitive ecological features and where appropriate. Trails shall be constructed of permeable materials and limited to 5 feet in width to reduce impacts to ecologically sensitive resources.
 - b. Public access shall be located adjacent to other public areas, accesses and connecting trails, connected to the nearest public street; and include provisions for handicapped and physically impaired persons where feasible.
 - c. Where views of the water or shoreline are available and physical access to the waters edge is not present or appropriate, a public viewing area shall be provided.
 - d. Design shall minimize intrusions on privacy by avoiding locations adjacent to windows and/or outdoor private open spaces or by screening or other separation techniques.
 - e. Design shall provide for the safety of users, including the control of offensive conduct through public visibility of the public access area, or through provisions for oversight. The Administrator may authorize a public access to be temporarily closed in order to develop a program to address offensive conduct. If offensive conduct cannot be reasonably controlled, alternative facilities may be approved through a permit revision.

- f. Public amenities appropriate to the use of a public access area such as benches, picnic tables and sufficient public parking to serve the users shall be provided.
 - g. Commercial developments that attract a substantial number of persons and developments by government/public entities may be required to provide public restrooms, facilities for disposal of animal waste and other appropriate public facilities.
9. The minimum width of public access easements shall be 10 feet, unless the Administrator determines that undue hardship would result. In such cases, easement widths may be reduced only to the extent necessary to relieve the hardship.
10. The requirement for public access on a specific site may be fulfilled by:
 - a. Participation in a public access plan incorporated in the Program; or
 - b. Provision of facilities specified in a permit approval.
11. Required public access sites shall be fully developed and available for public use at the time of occupancy of the use or activity or in accordance with other provisions for guaranteeing installation through a monetary performance assurance.
12. Public access facilities shall be maintained over the life of the use or development. Future actions by successors in interest or other parties shall not diminish the usefulness or value of required public access areas and associated improvements.
13. Public access provisions shall run with the land and be recorded via a legal instrument such as an easement, or as a dedication on the face of a plat or short plat. Such legal instruments shall be recorded with the County Auditor's Office prior to the time of building permit approval, occupancy or plat recordation, whichever comes first.
14. Maintenance of the public access facility shall be the responsibility of the owner unless otherwise accepted by a public or non-profit agency through a formal agreement recorded with the County Auditor's Office.
15. Public access facilities shall be available to the public twenty-four (24) hours per day unless specific exceptions are granted through the shoreline permit process subject to the provisions of SMP 23.90.08.B.1.
16. The standard State approved logo or other approved signs that indicate the public's right of access and hours of access shall be installed and maintained by the owner. Such signs shall be posted in conspicuous locations at public access sites.
17. Incentives for public access improvements such as density or bulk and dimensional bonuses shall be considered through applicable provisions of zoning and subdivision regulations.

23.90.09 Site Planning

DATE: October 15, 2008
TO: Tukwila Planning Commission
FROM: Mark Hancock
Member, 1999/2000 Tukwila Shoreline Advisory Board
RE: SMP meetings and review process

The citizens' Shoreline Advisory Board was formed in September, 1999, and met through March, 2000. In reviewing my files from the Shoreline Advisory Board, and in particular the mark-up copy of the March 15, 2000 draft SMP, there are many differences from what is being considered now. The 2000 draft SMP is 79 pages, while the current draft SMP is 122 pages. There was considerable sensitivity and flexibility allowed in the 2000 draft where these requirements applied. Some of the initial ones include:

Public Participation

- There was extensive public participation including the Shoreline Advisory Panel, Tukwila Tomorrow, and numerous public education events. The recommendations that came out of this process were not carried forward.

Buffers

- The 2000 commercial/industrial buffers were 50 feet (mean average width) (Section 4.3A, p. 32, Section 4.3B, p. 33, Section 6.1E, page 48).
- The 2000 plan allowed modulation of buffer width based on site specific conditions (Section 6.1E, page 48).

Public Access

- The 2000 draft includes incentives for providing public access including reduction of required yards (Section 11.1, p. 59) and height increases (Section 11.2, p. 61). It also allows property owners -- at their option -- to provide off-site mitigation or payment in lieu of providing on site public access (Section 14.1, p. 68). It also requires identification of funding sources and priorities for public acquisition of access areas (Section 5.4, p. 40).

Parking and Loading

- The 2000 draft allows these uses on the river side with landscape screening (Section 9.1A, p. 56).

Height Limits

- The 2000 plan says that for commercial/industrial properties height limits between 101-200 feet from the water are the height limit of the underlying zone (Section 11.2, p. 60).

Landscaping

- The 2000 requirements are less extensive than the current proposal and are limited to landscape requirements for the underlying zone, with limited additional requirements along the river (landscape buffer 10 feet in width or the width of the required yard) and in required yards (Section 10.1, pp. 57-58).

EXHIBIT 49 DATE 10/15/08
PROJECT NAME Smp Update
FILE NO 106-088

Economic Impact.

- The 2000 plan included sections on land development use and economic vitality (Section 5.2, Page 38) and private property rights (Section 5.10, page 44).

Applicability (Triggers)

- The 2000 plan defines nonconforming use and nonconforming structure separately. It incorporates by reference TMC 18.70 but does not include the other language in the current Section 9.1 (Section 21.5, p. 92).

I will review this material more fully and submit additional comments before tomorrow's deadline.

1. BARNABY'S STUDY AREA



Total Lot Area: 1.48 Acres
Total Buffer Area: 0.64 Acre
Total Area for Development: 0.84 Acre



1 INCH = 50 FEET

16401 W. VALLEY HIGHWAY
PARCEL NUMBER: 2523049007

PREPARED FOR BNY MELLON WEALTH MANAGEMENT OCTOBER 9, 2008
PREPARED BY R.W. THORPE & ASSOCIATES, INC.
705 SECOND AVENUE
SUITE 710

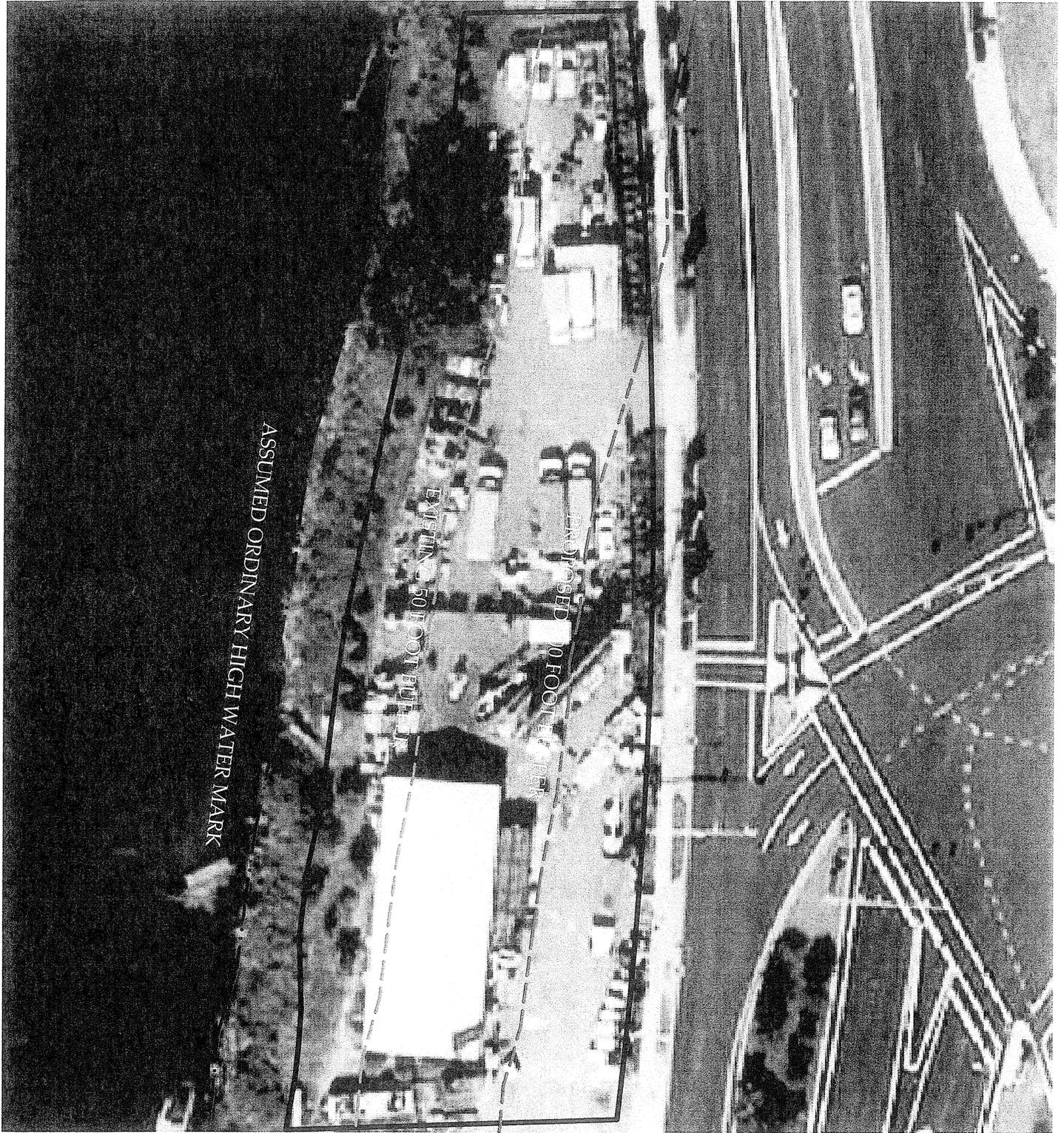
SEATTLE, WA 98104

T: 206.624.6239 | F: 206.625.0930

FIGURE 1

PROPOSED BUFFER

2. AIRPRO STUDY AREA



Total Lot Area: 0.85 Acres

Total Buffer Area: 0.69 Acre

Total Area for Development: 0.16 Acre



1 INCH = 50 FEET

10625 E. MARGINAL WAY S.
PARCEL NUMBER: 0423049083

PREPARED FOR BNY MELLON WEALTH MANAGEMENT OCTOBER 9, 2008

PREPARED BY R.W. THORPE & ASSOCIATES, INC.

705 SECOND AVENUE

SUITE 710

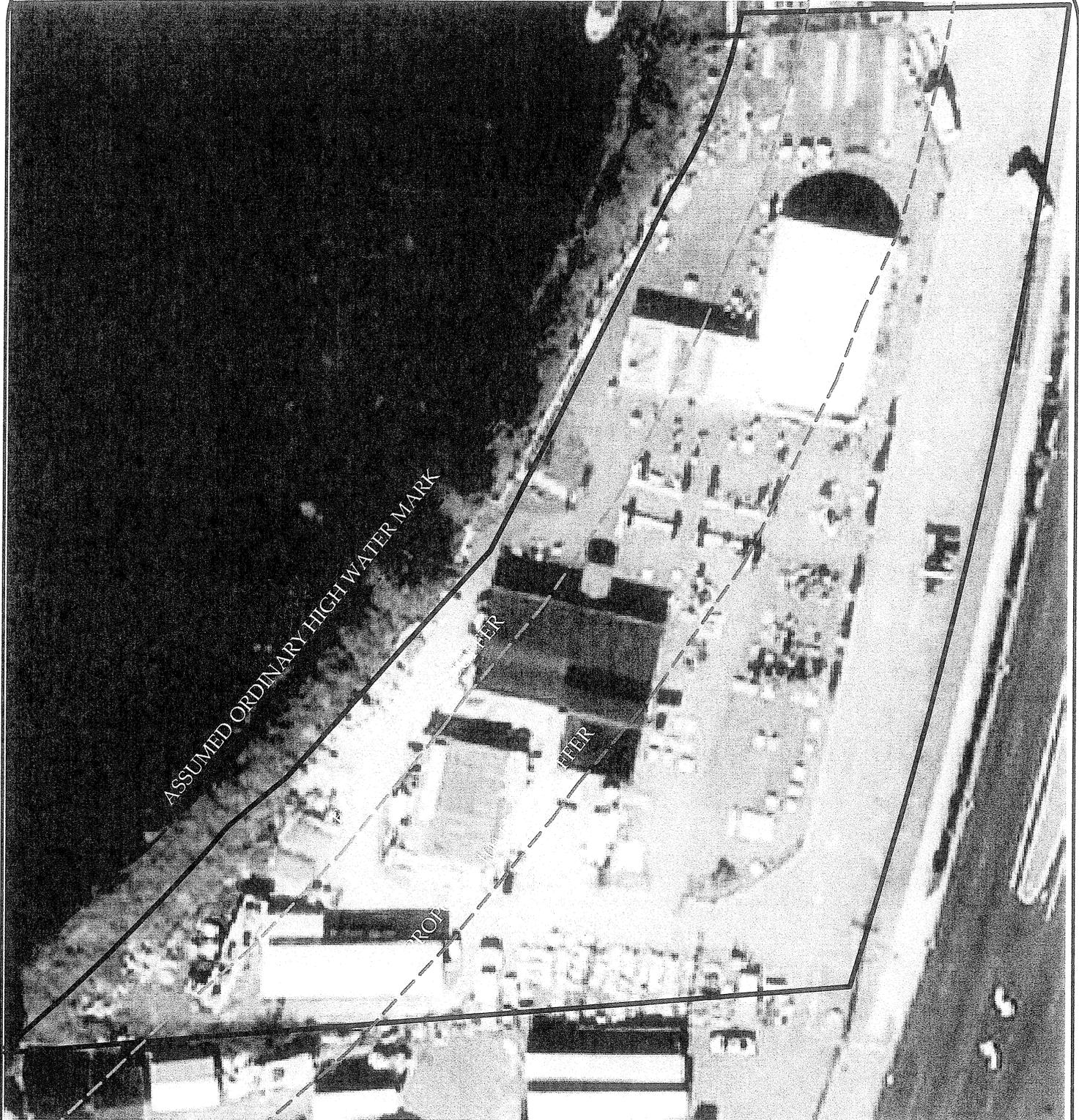
SEATTLE, WA 98104

T: 206.624.6239 | F: 206.625.0930

FIGURE 2

PROPOSED BUFFER

3. SECRET GARDEN STATUARY



Total Lot Area: 1.46 Acres
Total Buffer Area: 0.80 Acre
Total Area for Development: 0.66 Acre



1 INCH = 50 FEET

10655 TUKWILA INTERN. BLVD.
PARCEL NUMBER: 0423049169

PREPARED FOR BNY MELLON WEALTH MANAGEMENT OCTOBER 9, 2008

PREPARED BY R.W. THORPE & ASSOCIATES, INC.

705 SECOND AVENUE

SUITE 710

SEATTLE, WA 98104

T: 206.624.6239 | F: 206.625.0930

FIGURE 3

PROPOSED BUFFER

R.W. THORPE & ASSOCIATES, INC.

Seattle • Anchorage • Denver • Winthrop

❖ Planning • Landscape • Environmental • Economics ❖

PRINCIPALS:

Robert W. Thorpe, AICP, President
Stephen Speidel, ASLA, Of Counsel

ASSOCIATES:

Barbara Baker, AICP
Lindsay Diallo, RLA
Lee A. Michaelis, AICP

October 9, 2009

Carol Lumb, Senior Planner
Department of Community Development
City of Tukwila
6300 Southcenter Boulevard Suite 100
Tukwila, WA 98188

RE: Recommended Revisions to the Shoreline Master Program

Dear Ms. Lumb:

Thank you for meeting with Mr. Desimone, Mr. Thorpe, and me on Thursday to discuss the on going review and update process of the City of Tukwila Shoreline Master Program. We are very pleased to see that the City Council has considered our proposed changes and have already began to make changes to the regulations regarding nonconforming structures and uses. We believe this is a very positive step in addressing the concerns of the Desimone Family as well as other property owners along the Duwamish River. We are also pleased to see that city staff and City Council are continuing to review the requirements for landscape/revegetation requirements and the possibility of buffer reduction process. Briefly I would like to summarize our recommendations regarding buffer widths and Landscape Requirements.

- **Request that the city establish a buffer reduction process for Class I Streams similar to the already established process for other streams in the city.** The decision should be an Administrative process that can be determined at the local level and not a Shoreline Variance process. This gives the City the ability to make the decision based on local factors and also provides a more predicable process for property owners.
- **Any requirement for the removal of invasive species and/or the installation of new landscaping needs to be proportionate to the amount of impact that a property owner is proposing.**

There are still some areas of concern that we request the City Council focus on during their October 27, 2009 Work Session. These concerns are the regulations pertaining to Public Access and Height Restrictions.

The Height Incentives provide for in Section 11.5 do not provide sufficient incentives for those properties that are losing up to 80 feet due to the new regulations. The following proposed changes are based on a percentage of the underlying zone and not strictly by the number of stories.

“B. The maximum height for structures may be increased by ~~one story~~ 25% of the underlying zone when:

1. Development devotes at least 5% of its building or land area to public shoreline access; or
2. Development devotes at least 10% of its land area to employee shoreline access.” [11.5 Public Access Incentives Page 129]

With these changes, the following are some examples of the allowed height for those underlying zones that exceed 45 feet

Underlying Zone	Maximum Height Outside Buffer	25 Percent of Allowed Height	New Height within High Intensity/Urban Conservancy Buffers (45 feet + Height Incentive)
MIC/H	145'	31.25'	76.25'
TUC	115'	28.75'	73.75'
HI	115'	28.75'	73.75'

The requirement for Public Access continues to be too demanding. Public Access (trails and access points) should be identified on Map 6 and established prior to adoption of the SMP. Requiring any property that creates an increased in demand for Public Access under criteria 1 below does not represent a thought out process in determining which locations would benefit the public the most. Beneficial access points to the proposed trails should be identified on Map 6. We are proposing the following changes to reflect our desire to change the Public Access requirements.

“11.1 Applicability

A. Public access shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with this section as further discussed below where any of the following conditions are present.

~~1. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.~~

2. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.

3. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.

4. Where the development is proposed by a public entity or on public lands.

5. Where identified on the Shoreline Public Access Map.

~~For the purposes of this section, an "increase in demand for public access" is determined by evaluating whether the development reflects an increase in the land use intensity, for example converting a warehouse to office or retail use, or a significant increase in the square footage of an existing building. A significant increase is defined as an increase of 3,000 square feet [11.1 Applicability Page 126]~~

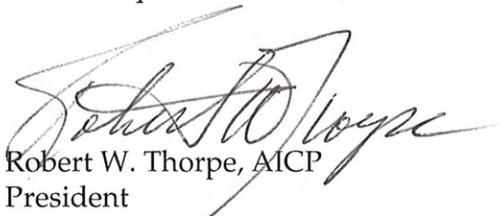
C. Development on Properties Where Public Access Points are Planned

A 10-foot wide trail easement dedicated to the City for public access from the adjacent right of way to the river shall be provided in areas identified for new shoreline access points (Shoreline Public Access Map, Map 6). [New Section 11.3.C Page 128]

Thank you for considering the above revisions to the City of Tukwila Shoreline Master Program and for including these comments in the Council SMP Working Matrix. We look forward to continuing to work with you and the City Council to develop and Shoreline Master Program that can be favorable to everyone. If you have any questions about these comments please call me Robert W. Thorpe, AICP or Lee A. Michaelis, AICP at 206.624.6239.

Sincerely,

R. W. Thorpe & Associates, Inc.


Robert W. Thorpe, AICP
President


Lee A. Michaelis, AIPC
Planning Director

R.W. THORPE & ASSOCIATES, INC.

Seattle • Anchorage • Denver • Winthrop

❖ Planning • Landscape • Environmental • Economics ❖

RECEIVED

PRINCIPALS:

Robert W. Thorpe, AICP, President
Stephen Speidel, ASLA, Of Counsel

NOV 12 2009

COMMUNITY
DEVELOPMENT

ASSOCIATES:

Barbara Baker, AICP
Lindsay Diallo, RLA
Lee A. Michaelis, AICP

November 12, 2009

Joan Hernandez, Council President
Tukwila City Council
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

RE: Shoreline Master Program Update ~ November 17, 2009 Work Session

Honorable President Hernandez and Members of the City Council:

On behalf of the Desimone Trust and the rest of our staff at R.W. Thorpe and Associates, Inc, we would like to thank you and the City of Tukwila staff on the excellent work made to date on the update of the Shoreline Management Plan update. When we started this process in October of 2008 it was not apparent that any recommended changes were going to be accepted or made by the Planning Commission. As of the City Council Work Session last week (November 4, 2009), we are pleased to see that the City Council and staff have listened to our concerns and have addressed several of them, with just a little more work to do to fully respond to our recommendations.

When we started our review we, along with many property owners, had a small but important list of issues. We have continued to work together with most of the property owners to identify common interests and concerns. These issues included:

1. A lack of a buffer reduction process other than re-sloping and a Shoreline Variance.
2. The continued use of nonconforming structures and uses.
3. The substantial decrease in height within the shorelines buffers.
4. The lack of a direct connection between development impacts and the need for public access.
5. The lack of a direct connection between development impacts and the need for revegetation or enhancement of the buffer.

We are pleased to say that of the five items listed above, three of the items have much improved regulations (Items 2, 4, and 5) and one item has had positive amendments (Item #3). Item number 1 continues to be a concern for a majority of property owners along the Duwamish/Green River because it eliminates major portions of properties and impacts the development potential and future economic conditions of the properties. A summary of the current status can be found on the attached revised matrix. Each Councilmember previously received this matrix that identified the key issues and our recommendation. The last column describes how the city responded to those concerns.

Following the last Council Work Session, a new concern was identified that we request that the City Council re-consider and not adopt or clarify the intent. Section 14.3.C.2. The approval of Conditional Use Permits should be based on the individual application and how it complies with the stated criteria. It appears that this section gives priority to those applications that are submitted and approved first. Clarification is needed on the statement "In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area." It appears that a permit can be denied if there are "too many" applied for.

With this letter we would also like to reiterate our request that the following recommendations be discussed at the City Council Work Session of November 17 and incorporated into the City Council adopted SMP Update. These recommendations are regarding items number 1 and number 2 from the list above.

Buffer Reduction Process

There have been numerous requests to create a buffer reduction process that is fair and predictable. The request has been for an administrative reduction process where a property owner could apply to the Community Development Director. The Director would have the ability to reduce the buffer by as much as 35 percent if the property owner met certain criteria and proved that there would be no loss in function or value to the shoreline area.

This request has met resistance by City Staff and has not been considered or recommended for discussion to City Council. The staff report of October 27, 2009 did not discuss the option of allowing an administrative review process or that one was even considered. It stated that buffer reduction can be obtained through constructing the appropriate shoreline profile or applying for a Shoreline Variance. A Shoreline Variance would be an appropriate process for those properties that are so encumbered by impacted property that the property owner would not be able to enjoy any reasonable use of the property. This process typically includes impacts to the critical areas and loss of functions and values as a way of accommodating a reasonable use. The buffer reduction process would allow the city to review and implement additional guidelines if, in their professional opinion, based on scientific data, that a potential for loss of functions and values were to occur.

We reiterate our previous request that the City Council create a process that would allow the reduction in buffer size if the result is no net loss of functions and value in the buffer through revegetation and/or other best management practices, especially on non-leveed properties where additional vegetation and other measures can mitigate impacts that may result from development.

Building Height Incentives

In our letter to the Council dated October 9, 2009, we made a detailed request that the City Council review and discuss the height incentives provided when a development devotes land area for public and/or private shoreline access. We requested that instead of providing a one story incentive, the incentive be 25 percent of the underlying zone. This request was made because it is not an incentive to provide only one additional story when some property owners are losing up to 80 feet of height.

We are very pleased that City Council is considering offering two separate incentives that would allow a property owner to increase the building height; one incentive for buffer restoration and/or enhancement and another incentive for devoting land area to private and/or public shoreline access. At a minimum a property owner has the opportunity for a 20 percent increase.

As part of council discussion, we request that the following be considered and that the council recommends a 20 percent increase for either of the incentives and perhaps adding a third category.

1. A property owner should be able to achieve at least 20 percent height increase, of the underlying zone, by meeting one of the incentive options; not both.
2. We also understand the desire to not allow a property owner to obtain a combined 40 percent height increase.
3. A third incentive should be discussed that would allow the property owner to obtain 20 percent height increase by increasing water quality runoff into the river through stormwater facility upgrades.
4. It is unclear by the proposed language whether the incentive is based on the underlying zone or the shoreline designation.
5. Section 9.3 and Section 11.5 should be amended as follows:

Section 9.3 Height Restrictions

"Provided, no permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines. The Director may approve a ~~40%~~ 20% increase in height, as determined by the maximum height of the underlying zone, if the project proponent provides substantial additional restoration and/or enhancement of the shoreline buffer, beyond what may otherwise be required. The enhancement and/or restoration is subject to the standards of Section 9.10, Vegetation Protection and Landscaping. If the required buffer has already been restored, the project proponent may provide a 20% wider buffer which has been restored and/or enhanced in order to obtain the ~~40%~~ 20% increase in height. The enhancement/restoration is subject to the standards of Section 9.10, Vegetation Protection and Landscaping. This incentive cannot be combined with the incentives allowed in Section 11.5 of these regulations."

Section 11.5 Public Access Incentives

"B. The maximum height for structures may be increased by ~~40%~~ 20%, as determined by the underlying zone, when:

1. Development devotes at least 5% of its building or land area to public shoreline access;
or
2. Development devotes at least 10% of its land area to employee shoreline access.

This incentive cannot be combined with the incentives allowed in Section 9.3 of these regulations."

We appreciate the Council's time on these issues and we look forward to continued support and cooperation. If you have any questions regarding this letter or other issues raised in the past, please feel free to contact Robert W. Thorpe, AICP or Lee A. Michaelis, AICP at 206.624.6239

Sincerely,
R.W. Thorpe & Associates, Inc.


Robert W. Thorpe, AICP
President


Lee A. Michaelis, AICP
Planning Director

Encl. Issues Matrix

Issue No:	Summary of Issue	Existing SMP Regulation	Proposed SMP Regulation	Recommended Change	City Staff Recommended Changes
1.	<p>Buffer Widths</p> <p>High Impact Zone-100 Foot Buffer 100-200 Feet from OHWM</p>	<p>Figure 3.7: Page 3.16</p> <p>River Zone-40 Feet from OHWM Low Impact Zone-60 Foot Buffer (40-100 Feet from OHWM) High Impact Zone-100 Foot Buffer 100-200 Feet from OHWM</p>	<p>River Buffer-100 Feet from OHWM</p> <p>High Intensity/Urban Conservancy-100 Foot Buffer 100-200 Feet from the OHWM</p>	<p>Create a process (variance, deviation or buffer averaging) that would allow the reduction in buffer size if the result is no net loss of functions and value in the buffer through revegetation and/or other best management practices, especially on non-leveled properties where additional vegetation and other measures can mitigate impacts that may result from development.</p>	<p>City Staff recommends maintaining the re-sloping process as a means for buffer reduction and also maintains that the Shoreline Variance Process be utilized to review other requests for relief. See Section 14.5 of Staff Report 10/27/2009</p> <p>NO CHANGES RECOMMENDED</p>
2.	<p>Nonconforming Uses</p> <p>Existing Zoning Regulations are stricter which may apply.</p>	<p>Chapter 8: Nonconforming: Page 8.1</p> <p>Special Permit may be issued by Planning Commission to enlarge nonconforming use by no more than 25 percent of the original floor area. Restoration allowed if not destroyed by more than 75 percent of the value.</p>	<p>Section 14.6.A Pre-Existing Uses</p> <p>Pre-Existing Uses can not be enlarged, intensified, increased or extended to occupy a greater use of the land and/or structure. Can not be moved or extended in whole or in part to any other portion of the lot. A use terminated for more than 24 consecutive months must become conforming or be granted an extension. Any change of use must be a Permitted, Conditional, or Unclassified use in the SMP.</p>	<p>Revise Section 14.6 to include a comprehensive list of Permitted Uses that can be located within a structure when a pre-existing use goes away.</p> <p>Revise Section 14.6 to establish decision criteria that would need to be complied with when determining an extension request similar to other permits listed in Section 14 of the proposed SMP.</p>	<p>Staff has identified that any permitted use in the underlying zone may be relocated into a structure that was occupied by a nonconforming use. After abandonment of more than 24 months an additional nonconforming use can occupy the building or an extension may be granted with the approval of a Shoreline Conditional Use Permit See Section 14.5 of Staff Report 10/27/2009</p> <p>CHANGES MADE</p>
3.	<p>Nonconforming Structures</p> <p>Nonconforming structures are included in Chapter 8 as noted above</p>	<p>Section 14.6.B Pre-Existing Structures</p> <p>Pre-Existing Structures may not be moved, enlarged or altered that increases its degree of nonconformity. Ordinary maintenance and repair of and upgrades to a pre-existing structure are permitted. A Pre-Existing structure destroyed by any accidental means may be reconstructed to its original dimensions and location on the lot. A pre-existing structure abandoned or vacated for more than 24 consecutive months must become conforming or be granted an extension.</p>	<p>Section 9.3.C Height Restriction: Page 81</p> <p>River Buffer Recreational Structures 15 feet in height</p> <p>High Intensity/Urban Conservancy Buffer 45 Feet in height</p>	<p>Revise Section 14.6 to state that the SMP takes precedence over the city's zoning code when applying pre-existing development regulations.</p> <p>Revise Section 14.6 to establish decision criteria that would need to be complied with when determining an extension request similar to other permits listed in Section 14 of the proposed SMP.</p>	<p>After abandonment of more than 24 months an additional nonconforming use can occupy the building or an extension may be granted with the approval of a Shoreline Conditional Use Permit See Section 14.5 of Staff Report 10/27/2009</p> <p>CHANGES MADE</p>
4.	<p>Height Restrictions</p> <p>Recreational Structures-15 feet in height Low Impact Zone 35 Feet in height High Impact Zone Height of Underlying zone</p>	<p>Chapter 18.44 Shoreline Overlay (TMC)</p> <p>River Zone Recreational Structures-15 feet in height Low Impact Zone 35 Feet in height High Impact Zone Height of Underlying zone</p>	<p>Section 9.10 Vegetation Protection & Landscaping</p> <p>As many significant trees as possible are to be retained on a site proposed for development or re-development, taking into account the condition and age of the trees.</p> <p>For any new development or redevelopment invasive vegetation must be removed and native vegetation planted and maintained in the River Buffer, including the river bank, to improve the ecological functions of the shoreline.</p>	<p>Make the Height Limit for the area landward of the River Buffer similar to the underlying zone, where it is found that there is minimal impact on residential views. This is consistent with the Shoreline Advisory Body Draft Plan of 2000.</p>	<p>Staff is recommending a 10 percent height increase for substantial buffer enhancement. As well as 10 percent for public access, for a potential increase in 20 percent, unless Council grants a higher percentage. See Section 9.3 & 11.5 of Staff Report 11/10/2009</p> <p>CHANGES MADE</p>
5.	<p>Public Access</p> <p>Public access to and along the water's edge should be provided in new developments. Any modifications or extensions to existing development should be designed to allow public access. A trail system should be developed along the river.</p>	<p>Public Access Element: Page 4.3</p> <p>Public access to and along the water's edge should be provided in new developments. Any modifications or extensions to existing development should be designed to allow public access. A trail system should be developed along the river.</p>	<p>Section 11: Applicability: Page 126</p> <p>Public access shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with Section 11.</p>	<p>Public access requirements imposed on development shall be reasonably necessary as a direct result of and roughly proportional to, the impacts of such development on public access, as required by RCW 82.02.020 and federal and state constitutional requirements.</p>	<p>Staff has provided language that states that the Director has the discretion on the amount of Public Access required based on the impact and size of the new project. See Section 11.1 of Staff Report 11/10/2009</p> <p>CHANGES RECOMMENDED</p>
6.	<p>Revegetation</p> <p>Where the riverbank has been reconstructed, it shall be landscaped with suitable plant material consistent with flood control measures</p>	<p>TMC 18.44.130-River Zone</p> <p>Where the riverbank has been reconstructed, it shall be landscaped with suitable plant material consistent with flood control measures</p> <p>TMC 18.44.140-Low Impact Zone</p> <p>Structures must be landscaped according to the underlying zone and parking lots screened from the river</p>	<p>Section 9.10 Vegetation Protection & Landscaping</p> <p>As many significant trees as possible are to be retained on a site proposed for development or re-development, taking into account the condition and age of the trees.</p> <p>For any new development or redevelopment invasive vegetation must be removed and native vegetation planted and maintained in the River Buffer, including the river bank, to improve the ecological functions of the shoreline.</p>	<p>City should revise Section 9.10 to ensure that any vegetation protection and landscaping requirements imposed on development are proportional to the impacts of such development, as required by RCW 82.02.020 and state and federal constitutional law.</p>	<p>Staff has provided language that states that the Director has the discretion on the amount of Landscaping required based on the impact and size of the new project. See Section 9.10.C.1a of Staff Report 10/27/2009</p> <p>CHANGES RECOMMENDED</p>

R.W. THORPE & ASSOCIATES, INC.

Seattle • Anchorage • Denver • Winthrop

❖ Planning • Landscape • Environmental • Economics ❖

PRINCIPALS:

Robert W. Thorpe, AICP, President
Stephen Speidel, ASLA, Of Counsel

ASSOCIATES:

Barbara Baker, AICP
Lindsay Diallo, RLA
Lee A. Michaelis, AICP

November 23, 2009

Honorable Jim Haggerton, Mayor
Honorable Council Members

tukmayor@ci.tukwila.wa.us

Joan Hernandez

jhernandez@ci.tukwila.wa.us

Joe Duffie

Pam Linder

Dennis Robertson

Verna Griffin

Kathy Hougardy

De'Sean Quinn

City of Tukwila

6200 Southcenter Blvd.

Tukwila, WA 98188

Reference: Discussion of Shorelines Management Master Plan Program

Two Remaining Issues to be Addressed – 2 Proposed Amendments Attached

Honorable Mayor and Honorable Council Members:

We appreciate all the hard work of the Council, and the time spent with numerous property owners, meeting individually. We believe we have made progress on several issues. However, we have two final proposed language changes. We have shared these with all the other property owners, and we have had phone conversations, directly or indirectly, with virtually all involved in this process. We believe there is general consensus among the property owners that there are still two significant issues that have very significant tenant/owner impacts to the long term use of properties, their “rentability”, their income stream, value, and Highest and Best Use – a key appraisal element to Bank/Financial Institution’s loan options. The language proposed to you in emails and in personal contacts addresses those issues.

Those issues are:

1. Buffer Reduction Process – Proposed Amendment Attached.
2. Non-conforming issues – Proposed Amendment Attached.
3. An issue tangential to (1) and (2) is the valuation of property, and the ability to finance future use, with the existing non-conforming and buffer language. This would affect financing--we submit significantly affect uses, employment, and tax base to the City.

Note: Our discussion with several Commercial Bank loan officers, MAI Appraisers and Commercial/Industrial Brokers indicates a much different answer than presented by Staff – i.e., there is a very highly likely impact on financing/loan processing to the detriment of virtually every property owner in the shorelines areas.

Issue 1 – Buffer Reduction Process. Attached is language that sets forth a proposed 35% reduction, provided various steps are followed.

1. Significant buffer enhancement
2. Water quality improvements – sustainability issues related to detention ponds, bioswales.
3. Pervious surface – replace parking/impervious areas.
4. Roof gardens

Other sustainability issues – see Urban Land Institute's *Sustainability Review*

Issue 2 – Non-Conforming Structures. Current language does not provide a reasonable option for carrying continuing issues forward. This is largely tied to the reslope requirements in Item 7e and the requirement to obtain a Shoreline Conditional Use Permit in Item 7f.

Attached with this handout is proposed language for these two issues, as recommended to Council Members last Friday.

Respectfully submitted,
R. W. Thorpe & Associates, Inc.



Robert W. Thorpe, AICP
President



Lee A. Michaelis, AICP
Planning Director

- Attachments:
- A. Buffer Reduction Process (New Sections)
 - B. Non-conforming Structures (Revised Section 14.5.B.7)
 - C. RWT CV & Selected List of Condemnation Cases

RECOMMENDED BUFFER REDUCTION PROCESS

NEW SECTIONS:

- New section in 7.6 Shoreline Residential Environment following section C and should be titled:
 - D. Allowable Buffer Reductions (Page 62 of the SMP Draft in Council's Packet)
- New section in 7.7 Urban Conservancy Environment following Figure 6 of Section C and should be titled:
 - D. Allowable Buffer Reductions (Page 67 of the SMP Draft in Council's Packet)
- New section in 7.8 High Intensity Environment following section B and before the last paragraph on Page 69 and should be titled:
 - D. Allowable Buffer Reductions

Allowable Buffer Reduction

River buffer widths, for levee and non-levee properties, may be reduced by the Director of Community Development or his/her designee by up to 35 percent if an applicant demonstrates that a reduction will not result in any adverse impact to the river or remaining buffer, following reduction. Further, if an existing buffer is vegetated, a buffer enhancement shall be required to demonstrate how the function and values of the buffer and river will be improved. If the existing buffer has been disturbed and/or is not vegetated, an enhancement plan shall be required that identifies measures to enhance the buffer functions and values. Enhancement plans are subject to approval by the Director of Community Development. In reviewing the enhancement plan, the director will review whether the plan has implemented two or more of the measures from sections A, B, and/or C.

A. Riparian Buffer Restoration and/or Enhancement

1. Invasive species are to be removed by hand where appropriate; small wheeled tractors may be used in large areas where no structures are located.
2. Existing river bank and new buffer areas should be planted with native vegetation that represents both woody (trees and shrubs) and herbaceous species.
3. Trees shall be planted at spacing adequate to establish canopy and dependant on existing site conditions.
4. All planting shall be in compliance with Section 9.10 Vegetation Protection and Landscaping.

B. Water Quality and Pollutant Removal (Stormwater Runoff)

1. Favorable consideration will be given to those properties that replace existing catch basins along right of ways and in existing parking lots with units capable of filtering oils, garbage, and heavy metal particles from stormwater.
2. Removal of portions of existing impervious surfaces, outside of the buffer, and replanted with pervious paving materials to restore hydrologic connection and reduce the amount of polluted stormwater runoff.
3. As part of building remodels the owner, where appropriate, should consider the incorporation of the following building techniques:
 - a. Rooftop Rain Gardens
 - b. Water re-use for on-site landscape irrigation
 - c. Installation of solar panels.

C. Bank Stabilization

Significantly degraded river banks that are actively eroding and have little or no riparian vegetation shall be stabilized using acceptable bioengineering techniques to include

1. Log structures
2. Bank Resloping
3. Riparian Zone Restoration

D. Perpetual Protection

All river buffer reduction projects shall be protected in perpetuity through a conservation easement, placement in a separate tract, deed transfer, or other legally

binding agreement. The location and limitations associated with the river and its buffer shall be shown and recorded with a Notice on Title with the King County Auditor.

E. Monitoring Requirements

Monitoring is required for all buffer reduction projects. The objective of monitoring is to quantify the success of the enhancement plan. The success of such projects must be guaranteed and documented in annual monitoring reports for a period of 3 years after completion of the project. Successful enhancement projects should result in river segments with stable banks, in-river habitat, and/or a healthy riparian buffer.

Monitoring reports must include a narrative description and photos accurately depicting the river and riparian habitat. Monitoring requirements must also include habitat assessments to document pre- and post- project habitat conditions. Annual riparian vegetation surveys documenting the survivorship of planted riparian species are required for all buffer reduction projects that include a riparian restoration component.

A qualified biologist or environmental specialist should complete the monitoring reports. The first monitoring report should be submitted at the beginning of the first growing season after completion of the enhancement plan and should be submitted annually for a period of 3 years.

1. Narrative Description/Photos

The narrative should include a description of the physical condition of the river buffer including a description and photos of observed aquatic life, bank stability, in-river habitat, substrate, and riparian zone.

2. Habitat Assessment

A pre-project habitat assessment must be completed to document existing conditions within the river buffer. A second post-project habitat assessment must be completed at the end of the required monitoring period. A comparison of the two assessments will help quantify the ecological gain of the enhancement plan.

3. Riparian Vegetation Survey

An annual detailed vegetative survey including photos of the riparian plantings is required for all buffer reduction projects that include riparian restoration. The survey should be completed during the normal growing season. Planted riparian species must be guaranteed at a 75% survivorship for the duration of the required monitoring period.

B. Non-conforming Structures (Page 147)

Where a lawful structure exists at the effective date of adoption of the SMP that could not be built under the terms of the SMP by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued as an allowed, legal structure so long as the structure remains otherwise lawful subject to the following provisions:

1. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to a nonconforming structure is permitted, including but not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
2. Should such structure be destroyed by any accidental means the structure may be reconstructed to its original dimensions and location on the lot, provided application is made for permits within twelve (12) months of the date the damage occurred and all reconstruction is completed within two years of permit issuance. In the event that the property is redeveloped, such redevelopment must be in conformity with the provisions of this SMP.
3. Should such structure be moved for any reason or any distance whatsoever, it shall thereafter conform to the regulations of this SMP after it is moved.
4. When a non-conforming structure, or structure and premises in combination, is vacated or abandoned for 24 consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the SMP. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council may grant an extension of time beyond the 24 consecutive months per 14.5 C.
5. Residential structures and uses located in any single-family or multiple-family residential zoning district and in existence at the time of adoption of this SMP shall not be deemed nonconforming in terms of height, use, or location provisions of this title. Such buildings may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be changed except as provided in the non-conforming uses section of this chapter.
6. Single-family structures in single or multiple family residential zone districts, which have legally non-conforming setbacks from the OHWM per the SMP buffer, shall be allowed to expand the ground floor only along the existing building line(s), so long as the existing distance from the nearest point of the structure to the OHWM is not reduced, and the square footage of new intrusion into the buffer does not exceed 50% of the square footage of the current intrusion.
7. Within the shoreline jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced, provided that:

Revision Section 14.5.B.7 Nonconforming Structures
November 23, 2009 City Council Committee of the Whole

- a. The new construction is within the original dimensions and location on the lot;
 - b. The new construction does not further intrude into or adversely impact the required buffer;
 - c. The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
 - d. The reconstruction will not create adverse impacts to shoreline ecological functions and/or processes;
 - e. ~~For properties in non-leveed portions of the river, the applicant re-slopes the bank to a 2.5:1 or 3:1 angle (per Table 3) and restores and/or enhances the entire shoreline buffer in the area between the new construction and the river, to include~~ but not limited to paved areas no longer in use on the property. ~~For properties behind the levees that do not meet the minimum profile, restore and/or enhance the remaining buffer area and the removal of invasive vegetation and planting with native vegetation on the levee prism as permitted by the COE; and~~
 - f. ~~The property owner applies for and is granted approval of a Shoreline Conditional Use Permit.~~
8. A non-conforming use, within a non-conforming structure, shall not be allowed to expand into any other portion of the structure.

Qualifications of Robert W. Thorpe, AICP

Principal/President

EDUCATION

University of Washington: Dual Masters Program: M-Urban Planning/Design (Urban Planning Curriculum) M-Urban Development (MBA Curriculum), 1973.

University of Nebraska: BS Business Administration and Economics, Minors: Architecture and Art, 1966.

Bellevue Community College: 1974 to 1976 - Real Estate Certificate.

MAI Course Work: Seattle University, MAI Course 1A, '77; MAI Course 1B, '78; Bellingham, WA - Feasibility I: '77, II: '78; Bellevue - Course 7 - Standards of Practice, '84, 520- Highest & Best Use, U. of Phoenix, Tukwila '04.

EXPERIENCE

Principal, R.W. Thorpe & Associates, Inc., Seattle/Anchorage/Denver/Winthrop, ('74-'75 Part Time), 1976 to present. Project management / supervision to all team projects. Over 5,000 total assignments, 1,000 Rezones, Comprehensive Plan Changes, CUPs and Shorelines Permits, etc.; 400 EISs / Environmental Reports; 500 Highest and Best Use Analyses. Expert Witness – Highest and Best Use, Takings, SEPA, and Urban Planning

Instructor / Lecturer, Bellevue Community College, 1976 to present; Graduate Program, Univ. of Washington - Real Estate, Urban Planning and Real Estate Classes - 1973 to present; Washington State University - Regional Planning and Landscape Architecture, 1981 to present; University of Nebraska - 1984 to present; University of Alaska, Juneau - 1986; University of Colorado, Denver - 1988 to present; Arizona State, Tempe - 1996. BIAW/ Master Builders/ NAHB Instructor – 1992 to Present. Chair, Land Planning and Development, MBAU - King County MBA.

Assistant Director, Community Development / Building Department, City of Mercer Island, 1971 to 1976. Staff to Planning Commission and City Council; new Comprehensive Plan, environmental factors study, land use planning, zoning, ordinance writing, transit study; Mercer Island Drainage Study Team, design guidelines; Administered Subdivision and Shorelines Management Regulations; I-90 Design Team and City's EIS Coordinator; Lake Washington Shorelines Management Master Program Staff. Mercer Island Responsible Official - SEPA.

Regional Planner, Daniel, Mann, Johnson & Mendenhall, Seattle, WA, 1970 to 1971. Auburn-Bothell Corridor Study; Juneau Transit Study; Alaska Land Use Study – Phase I.

Design Planner, Harstad Associates, Inc., Seattle, WA, 1969 to 1970. Comprehensive Plans for North Bend, Kitsap County, Mercer Island, WA. Ski Resort - Smith Ferry, Idaho; Master Planning for a 13,000 Acre Nettleton Lakes PUD in Kitsap County; and a 12,000 Acre Master Plan - El Rincon, Baja, Mexico. Various Land Use / Feasibility studies/Urban Design/ Landscape Design.

Site Planner / Industrial Engineer, Boeing Company, Seattle, WA, 1966 to 1969. Industrial Siting Studies; Facilities Planning and Implementation. New facilities at Auburn and Everett.

PROFESSIONAL ASSOCIATIONS/EDUCATIONAL

AICP - American Institute of Certified Planners, 1978 to present (Charter Member)

American Institute of Appraisers (MAI, Candidate - Various years) – Associate/Instructor

American Planning Association – APA – Puget Sound Chapter – President 2006 - 2007

AIA - R/UDAT Team Member - Farmington, New Mexico - 1989

Alumni Development Commissioner (Past District Advisor) – Kappa Sigma International Fraternity

Bellevue Community College Faculty 1977 to present – Senior Faculty – Real Estate/ Land Planning/Appraisal

Boys & Girls Club – Mercer Island – Board of Directors - 2007

Building Industry Legal Trust Fund - Advisory Committee, 1992 to 2008 – 2005/2006 Chair

Emmanuel Episcopal Church – Development Committee – Co-Chair – Permitting/Landscape Architecture

Habitat for Humanity of East King County – Past Board Member (2003-2006 – Three year term.)

International Conference of Shopping Centers Associate, Chair of Downtown Retail Committee Council

King County Executive - DDES Reorganization Committee - 1994

Master Builders Association – King/Snohomish Counties – MBA University - Chair, Land Development Education

Mercer Island Development Advisory Committee - 1991 to 1998 and 2002

Mercer Island Downtown Development Advisory Board 2006

National Association of Homebuilders – NAHB Instructor, Land Development Classes

Neighborhood Retailers of Washington – 1990's

University of Washington - Certificate in Real Estate Instructor - 1996 – present – Masters Program, Guest Lecturer

Urban Land Institute (ULI)

Qualifications of Robert W. Thorpe, AICP, Principal/President

SPECIAL EXPERIENCE/EXPERTISE

- Witness: Qualified Expert Witness in Washington, Oregon, Alaska and Federal courts, and Judicial Mediation Boards. Quasi-judicial proceedings before Planning Commissions, Councils and Hearing Examiners. Land use, "takings" condemnation, SEPA/NEPA, shorelines, SAO's, development costs, etc.
- Instructor / Senior Faculty Member: Bellevue Community College. Urban Planning, Land Development and Real Estate Appraisal and Real Estate Finance 1976 to present.
- Instructor: University of Washington – Graduate Program/Certificate in Real Estate
- Instructor: Real Estate Classes - Washington Association of Commercial Realtors, Building Industry of Washington, National Association of Homebuilders, and Chair – Land Planning/Urban Development/Finance, Master Builders of King and Snohomish Counties (MBAU).
- Graduate Classes: Regional Planning / Environmental Services / Landscape Architecture, Washington State University, 1981- present..
- Guest Lecturer / Graduate / Undergraduate Urban Planning Class, University of Washington, Extension Division – 1995 to present, University of Nebraska, 1985 to present, and University of Alaska, Juneau, 1985 to 1986, Guest Lecturer. Regional Planning / Landscape Architecture - Washington State University, 1981 to present, Program Advisory Committee. Senior Critiques and Guest Lecturer, Senior Faculty / Real Estate Advisory Committee.
- Advisory Committee/ Staff: Washington State DOE - SEPA Guidelines, 1972-1973.
- Washington State DOE – Shorelines Management / Lake Washington Model Program, 1972-1973.

Speaker:

- Site Selection, Zoning, Highest and Best Use Most Probable Use, Development Costs – 30+ years
- Land Planning and Land Economics", miscellaneous real estate appraisal/professional societies, 30+ years
- League of Oregon Cities - Design Commissions / Tree Ordinances / SAO's 1074 & 1976
- Open Space Conference - Boulder, Colorado - July 1988
- Retail Site Selection / Zoning - NACOR, 1993 to present
- King County Assessor - Highest and Best Use Classes - 1996, 1997, 1999
- ICSC - Washington / Oregon Conference - Port Ludlow – 1999, Semiahmoo 2003
- Law Seminars International, Seattle – Eminent Domain "Property Owners Perspective" 7/2001
- Law Seminars International, Seattle – Valuation – Temporary Takings "Proving What Has Been Lost" 11/01
- Law Seminars International, Seattle – Government Takings – "Partial Takings" 12/2003
- Appraisal Institute – Miscellaneous – 1985 to present, MAI classes – 2004
- Planning Law Conferences – Regulatory Takings – Planning Association of Washington – Bellevue 4/07 & 4/09
- Law Seminars International, Seattle – Government Takings Panel Practice Session (Kinnon Williams, Atty.), 11/2007.

PROJECTS AND STUDIES (Prior to R.W. Thorpe & Associates, Inc.)

P = Project Manager, A = Author, R = Review

City of Mercer Island – Assistant Director/SEPA Official

P	Zoning / Subdivision – Update	R	City Budgets – Co-authored/Reviewed, 5 years
P	Responsible Official - SEPA Ordinance	P	Capital Improvement Programs, 5 years
P	Administrator - Shorelines Management	A	An Approach to Environmental Zoning
A	I-90 EIS - Mercer Island, Technical Review	A	Cost Benefit Analysis – Rezones
R	Design Guidelines-Design Commission	A	Comprehensive Plan Elements
P	Island Attitude Survey (Open Space)		

Harstad Associates, Inc., Seattle - Urban Designer/Planner

- Nettleton Lakes Project - Kitsap County (Hood Canal), WA - Master Plan / PUD for 13,000 acre / residential recreational development - 1,000-slip marina, Robert Trent Jones, Sr. 36 hole golf course
- Smith Ferry, ID - Master Plan: Waterfront Residential / Ski Area / Marina
- El Rincon, Baja, Mexico - 12,000 Acre Recreational Master Plan
- Comprehensive Plans - North Bend, Mercer Island, Wapato, Kitsap County, WA; Cutbank, Deer Lodge, MT

Daniel, Mann, Johnson & Mendenhall, Seattle – Regional / Environmental Planner

- Phase II - Auburn / Bothell Corridor Study - State Highway Feasibility Study (I-605) Land use, environmental/economic/demographic/ communities and citizen group coordination.
- Support services: Juneau Transit Study and Alaska State Land Use Study.

Condemnation/Valuation/Feasibility – 1998 to present

- **Kilroy Industries - SeaTac Office Park – Moratorium/ Dev. Guidelines – D. Reynolds, Atty. (98 & 99)**
- **Seattle School District - Condemnation (1998)**
- **Schaake Property - Ellensburg – H&BU, Master Plan - Bill Mundy, MAI (Ellensburg Approved) (98)**
- **Hom et.al. (SeaTac Airport Condemnation) - 8 properties - Rogers & Hurley, Attys. (98)**
- **Gilbert, Thurston Co. Impact Fees – S. Mackie, Atty. (99)**
- **J. Campbell Estate - King County Condemn. (99)**
- **Gillian Family- Lynwood-Tax Appeal J. Dore, Atty. (99)**
- **Torrance v. King County (Kent Valley) E. Spencer, Attorney, Graham & Dunn (1999)**
- **Merlino - Bellevue Condemn. M. Rogers, Attorney (99)**
- **Diamond & Republic Parking, et.al. – Seattle Convention Center Condemnations Mundy & Associates (99)**
- **Burlington Northern & Santa Fe Railroad - Portland, Ore. Litigation Bullivant Houser Bailey, Portland(2000)**
- **DINA Corporation - 2nd & Virginia - Highest & Best Use, Mediation - Diamond/ Foreman (2000)**
- **Davis and Tisdale - Issaquah Highlands - Road Condemnation - M. Rogers, J. Fitzgerald, Attys. (2000)**
- **Sound Heating - Pierce County Public Works Taking D. Pierson, Attorney (2000)**
- **Blethen, William - Meydenbauer Bay - Bellevue - Tax Appeal - D. Spencer, (01)**
- **PGP Valuation - 80 Acre - Juanita - for WS DNR - Highest & Best Use (01)**
- **Abicht Condemnation Pierce Co. H&BU (02)**
- **Beck – Canyon Road H&BU – Pierce Co. – R. Pierson (02)**
- **Bennett Condemnation – City of Tumwater (02)**
- **Earth Justice Canyon Club – Jackson Wyoming, Expert Witness - H&BU, Master Plan Alternatives (02)**
- **ELSCA– Expert Witness/Cost of Trail - P.Eglick, Atty (02)**
- **Larson WS DOT Taking MPU & H&BU (02)**
- **Motel 6 - City of SeaTac Condemnation - A. Gibbons Appr. (02)**
- **Dollar Rent-A-Car - City of SeaTac Condemnation (02)**
- **PGP Valuation - City of Seattle Greenbelt (02)**
- **PGP Valuation – Tri-Cities DNR Sites – Appraisal/ Development Options (02)**
- **Port of Seattle (client) v. All American Homes – Condemnation – Graham & Dunn, Attorneys (02)**
- **Premier Design v. NW Cascade - Land Dev. (02)**
- **Rocinante Family Trust Fed. Wy. Parking Lot Take (02)**
- **Sargent, Gary - WS DOT - I-90 Interchange - Issaquah - R. Hill, Attorney (02)**
- **Sawyer – Canyon Road H&BU – Pierce Co. (02)**
- **Swauk Creek Ranch, Kittitas County, 4000 Acres – H&BU Tax Donation – Mundy & Associates (02)**
- **Weatherwax Farms, Inc. – Elk Run, Co. (02)**
- **Betz Wineries – Feasibility (2003)**
- **Eastey ST Taking (MLK Condemnation) R.Pierson, Atty (03)**
- **Legacy Partners c/o Scott Wallace Blvu. ST Condemn. (03)**
- **Happy Valley – Sahallee Wy Road Widening S. Smith, Atty (03)**
- **Kentwood Plaza - Titus Condemnation (03)**
- **Third Ave South Grp./Filson Monorail Take R.Hoefer, Appr.(03)**
- **Scheiber, Glen -- Feas. & Permit Appl. (03)**
- **Scandia Business Park v. Zipper Zeman (03)**
- **Alberg – Carnation BPA Take – McElroy Law Firm (04)**
- **Chen, L. -- Monorail Take – D. Dunphy Atty (04)**
- **Dally, D. – Seattle Sound Transit Take (04)**
- **DNR – Kitsap Co. 20 Ac. Tracts H&BU (04)**
- **Grace Church ST Take - Parking - R. Pierson, Atty (04)**
- **Hand, B. Tukwila Trailer Pk. Alternative Uses (04)**
- **Happy Valley (King County) Scott Smith, Attorney -- Mediation Settlement (04)**
- **Jack’s Auto ST Take – H&BU - R. Pierson, Atty (04)**
- **Lago de Plata H&BU (Road Widening) (2004)**
- **Marsh Chiropractic KCFD Taking H&BU - R. Pierson, Atty (04)**
- **Master Builders Assoc. - School Impact Fee Analysis (04)**
- **Mercerwood Shore Club – Tax Appeal (04)**
- **Miller – PetCo Building Monorail Take S. Smith, Atty (04)**
- **Parker, R. Seattle Taking Impact (04)**
- **PGP Auburn/ Gas Pipeline Easement (04)**
- **Pittmon, Seattle Sound Transit Take - Richard Pierson, Attorney – Mediation/Settlement (04)**
- **Power, Vic - Okanogan Co. Take - R. Price, Atty (04)**
- **Raab, G. - SR 202 Take - R. Pierson Atty (04)**
- **Sayani – Westmark v. City of Buien - J. Groen, Atty (04)**
- **Stewart (Agricultural District) v. King County – Negotiation Elaine Stewart, Graham & Dunn (04)**
- **Seattle Monorail vs. Various Property Owners (04)**
- **Seattle Tennis Club Tax Appeal - D. Spencer, Atty (04)**
- **Sound Transit v. Eastey Family (8 properties) (04)**
- **Sound Transit v. Sebco/Jay Ayers - Taking/H&BU (04)**
- **Stockpot – King Co./Brightwater Mitigation C. Maduell, Atty (04)**
- **Transnation v. Reid Brian Lawler, Atty. (04)**
- **Turple, E. - SR 202 Take - R. Pierson Atty (04)**
- **Verizon - Mt. Vernon I-5 Overpass Take (04)**
- **Bruya, E. Monorail Taking Impact Kevin Roberts, Atty (05)**
- **Carosino - ST Take – Bridge Impact Analysis (05)**
- **Chotzen – Starbucks MLK – Cost to Cure – R. Pierson, Atty (05)**
- **Churchill – I-405 Take H&BU - L. Studebaker , Atty (05)**
- **Coe – Lk. Forest Pk. WSDOT Take – H&BU/Prob Use (05)**
- **Dickey, C. - Tukwila SEBCO/ST Taking - D. Dunphy Atty (05)**
- **Easty, P. - Metro Pipeline Impact (05)**
- **Hoang ST Take MLK Jr Way (05)**
- **Hoefer - Seattle Monrail v. “Sinking Ship Garage” (05)**
- **MBA Don Davis – Various Cities Pub. Cost to Dev. (05)**
- **McElroy – Franklin Co Exp. Wit. Mineral Rights/Tax (05)**
- **Nelson, M. – Tacoma Net Yield Analysis (05)**
- **PGP – Brickyard Feasibility/MPU (05)**
- **Titus Covington Condemnation (05)**
- **Westward Mobile Home Pk. - ST take J. Dore, Atty (05)**
- **Wick, D. – WA DNR Bothell – 26 Ac. Site (05)**

(Continued – next page)

Condemnation/Valuation/Feasibility – 1998 to present

(Continued from Page 1)

- Acton Const. Emerald Heights Take / Feasibility - Graham & Dunn, L. Smith, Attorney (06)
- Coe, G. Kittitas Co. - Tax Donation/ H&BU (06)
- Kennedy H&BU – Alan Pope, Appraiser (06)
- Klein, E – Blaine Airport Taking H&BU – R. Pierson, Atty (06)
- K-Mart Yakima – Road Taking – Graham & Dunn, Larry Smith, Attorney (06)
- Malk Seattle - Sound Transit Take – D. Dunphy, Atty (06)
- Nelson Fam. – Redmond – SR 202 Taking/MPU (06)
- Renski, C. - Seattle ST Take/ MPU - D. Dunphy, Atty (06)
- Rhodes, D. Federal Way Taking Impact (06)
- Saddle Mountain v. Joshi - Sand/ Gravel Valuation (06)
- U. S. Bank Turners Corner Snohomish Co. Hwy Take (06)
- Richardson v. Federal Way (R. Pierson, Atty) (06)
- Pierson v. Roller (R. Pierson, Atty) (06)
- Bever – WS DOT, Chehalis (06)
- WS DOT v. Holmes Electric – Renton (06)
- City of Federal Way v. Rhodes (06)
- City of Covington v. Shanlian Trust (06)
- City of Bothell v. Schnitzbanc (K. Williams, Atty) (06)
- City of Bothell v. Anderson (K. Williams, Atty) (06)
- City of SeaTac v. Dollar/Scandia (Pierson/Houlihan, Atys) (07)
- Sound Transit v. Allen, Guerzon, Farden) D. Dunphy, Atty (07)
- Kent School District v. Basra (J. Milne, Atty) (07)
- King County v. Stringfellow – North Bend
- Redmond v. Kindercare (R. Pierson, Atty) (07)
- WS DOT v. Riedel (R. Pierson, Atty) (07)
- WS DOT v. Merlino - Renton (J. Fitzgerald, Atty) (07)
- Snohomish Co. ROW Taking: Vanbuskirk (07)
- City of Kent v. Edris Capital (J. Dore, Atty) (08)
- Port of Bellingham (Pending) (08)
- Pierce County v. Roller (R. Pierson, Atty) (08)
- Methow Valley PUD v. Various Owners (R. Pierson, Atty) (08)
- Cities of Tumwater, Olympia, Lacey v. Bar-K (Olympia Brewery) (Scott Smith, Atty) (08)
- Snohomish Co. ROW Takings: (08)
 - Beverly Park
 - Pyper Property
 - Kohler Property
 - Lake Stevens Road Taking
- City of Seattle v. Heglund (09)

R.W. THORPE & ASSOCIATES, INC.

Seattle • Anchorage • Denver • Winthrop

❖ Planning • Landscape • Environmental • Economics ❖

PRINCIPALS:

Robert W. Thorpe, AICP, President
Stephen Speidel, ASLA, Of Counsel

ASSOCIATES:

Barbara Baker, AICP
Lindsay Diallo, RLA
Lee A. Michaelis, AICP

December 4, 2009

RECEIVED

Joan Hernandez, Council President
Tukwila City Council
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

DEC 07 2009
COMMUNITY
DEVELOPMENT

RECEIVED

DEC 04 2009
CITY OF TUKWILA
CITY CLERK

RE: Shoreline Master Program Update ~ December 7, 2009 Meeting

Honorable President Hernandez and Members of the City Council:

On behalf of the Desimone Trust we submit for your review and discussion the attached handouts for your December 4, 2009 meeting. Please consider these changes during your meeting.

We appreciate the Council's time on these issues and we look forward to continued support and cooperation. If you have any questions regarding this letter or other issues raised in the past, please feel free to contact Robert W. Thorpe, AICP or Lee A. Michaelis, AICP at 206.624.6239

Sincerely,

R.W. Thorpe & Associates, Inc.

Robert W. Thorpe, AICP
President

Lee A. Michaelis, AICP
Planning Director

Encl.

Originals to: Council ✓
Copies to: Mayor
City Administrator
S. Pace; C. Lumb
City Clerk

BUFFER WIDTHS ESTABLISHED BASED ON RECOMMENDED SLOPE

Current Regulations:

Section 7.6C Shoreline Residential Environment

"Based on an analysis of the river elevations and existing banks, **a 50 foot minimum buffer in the Shoreline Residential Environment would allow room to achieve a 2.5:1 bank slope with an additional 20 foot setback from the top of the slope** – a distance that will allow for bank stability and in-turn, protection of new structures from high flows, and bank failures." [emphasis added]

TMC 18.44.040.A Shoreline Residential Environment

"The Shoreline Residential River Buffer shall consist of the area needed to achieve a 2.5:1 slope of the river bank, measured from the toe of the bank to the top of the bank, plus 20 linear feet measured from the top of the bank landward; provided, that in no case shall the Shoreline Residential Buffer be less than 50 feet landward of the OHWM."

Section 7.7C Urban Conservancy Environment

"The buffer width of 100 feet allows enough room to reconfigure the river bank to achieve a slope of 2.5:1, the "angle of repose" or the maximum angle of a stable slope and allow for some restoration and improvement of shoreline function through the installation of native plants and other habitat features. The actual amount of area needed to achieve a 2.5:1 slope may be less than 100 feet, depending on the character of the river bank and can only be determined on a site-by-site basis." [emphasis added].

TMC 18.44.050 Urban Conservancy Environment

"The Urban Conservancy Environment Buffer shall consist of that area measured 100 feet landward of the OHWM for non-leveed portions of the river, and that area measured 125 feet landward from the OHWM for leveed portions of the river."

Policy Questions:

1. **How can a 2.5:1 slope be achieved in the 50' Residential Environment Buffer and it requires a 100' Urban Conservancy Buffer to accomplish the same slope.?**
2. Should the Urban Conservancy Environment have the same minimum buffer as the Shoreline Residential Environment width since the recommended slope of 2.5:1 is the same? This fosters consistency between residential and commercial properties.
3. Would a buffer reduction process, previously proposed, grant commercial property owners the same rights of use for their property outside the 50 foot buffer? This process would benefit property owners and the functions and values of the stream by providing mitigation measures.

Recommendation:

1. Approve a 50' Buffer for the Urban Conservancy Environment; or
2. Review and approve, as is or with amendments, the Buffer Reduction Process, presented to the City Council on November 23, 2009
3. Revise Section 7.7C Urban Conservancy Environment
"The buffer width of ~~100~~50 feet allows enough room to reconfigure the river bank to achieve a slope of 2.5:1, the "angle of repose" or the maximum angle of a stable slope and allow for some restoration and improvement of shoreline function through the installation of native plants and other habitat features. The actual amount of area needed to achieve a 2.5:1 slope may be less than ~~100~~50 feet, depending on the character of the river bank and can only be determined on a site-by-site basis."

4. Revise TMC 18.44.050 Urban Conservancy Environment

A. Urban Conservancy Environment Buffer – Delineated

The Urban Conservancy Environment Buffer shall consist of that area needed to achieve a 2.5:1 slope of the river bank, measured from the toe of the bank to the top of the bank, plus 20 linear feet measured from the top of the bank landward; provided, that in no case shall the Shoreline Residential Buffer be less than 50 feet landward of the OHWM.~~measured 100 feet landward of the OHWM for non-leveed portions of the river, and that area measured 125 feet landward from the OHWM for leveed portions of the river.~~3.

*urban
conservancy*

CONTINUATION OF NON-CONFORMING USES

Current Regulations:

TMC 18.44.130.F.1.e Nonconforming Use Changed to another Nonconforming Use

e. A structure that is being or has been used for a non-conforming use may be used for a different non-conforming use only **upon the approval of a Shoreline Conditional Use permit**. In addition to the conditional use criteria in TMC 18.44.130(c), before approving a conditional use for a change in non-conforming use, the following findings must be made:"

- 1) No reasonable alternative conforming use is practical;
- 2) The proposed use will be at least as consistent with the policies and provisions of the SMP and as compatible with the uses in the area as the pre-existing use;
- 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
- 4) The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity;
- 5) The change in use will not create adverse impacts to shoreline ecological functions and/or processes;
- 6) The applicant restores and/or **enhances the entire shoreline buffer**, including but not limited to, paved areas no longer in use on the property, to offset the impact of the change of use per the vegetation management standards of this program. This may include the restoration of paved areas to vegetated area if no longer in use;
- 7) **The use complies with the conditional use permit criteria of this Program;** and
- 8) The preference is to reduce exterior uses in the buffer to the maximum extent possible.

Policy Questions:

1. Should a change of use from a nonconforming use to another nonconforming use require a Shoreline Conditional Use Permit or be administered as a Type 2 Decision? To be consistent with the SMP edits to eliminate the requirement of a Shoreline Conditional Use Permit, the Zoning Code should reflect the policy decision made by the City Council to allow the director to make the decision for these types of changes and not require a Shoreline Conditional Use Permit.
2. Should a change of use from one nonconforming use to another nonconforming use be offered the same mitigation measures as those allowed for the request for continuation of pre-existing use. TMC 18.44.130.F.3.a.3? This allows for a proportional mitigation based on impacts and not a complete revegetation of the property's buffer

Recommendation:

1. All requirements for approval of a Shoreline Conditional Use Permit should be changed to a Type 2 Administrative decision. This is consistent with City Council discussion at the Meeting of November 23, 2009.
2. Allow property owners to restore the shoreline buffer based on the size of the existing building using the nonconforming use.
3. See the back side of this sheet for changes to the Nonconforming Use section of the proposed Zoning Code.

TMC 18.44.130.F.1.e Nonconforming Uses

e. A structure that is being or has been used for a non-conforming use may be used for a different non-conforming use after demonstrating the following criteria have been met only upon the approval of a Shoreline Conditional Use permit. In addition to the conditional use criteria in TMC 18.44.130(c), ~~before approving a conditional use for a change in non-conforming use, the following findings must be made:~~

- 1) No reasonable alternative conforming use is practical;
- 2) The proposed use will be at least as consistent with the policies and provisions of the SMP and as compatible with the uses in the area as the pre-existing use;
- 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
- 4) The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity;
- 5) The change in use will not create adverse impacts to shoreline ecological functions and/or processes;
- 6) The applicant restores and/or enhances the entire shoreline buffer on the property to offset the impact of the change of use from one nonconforming use to another nonconforming use. The amount of buffer to be restored and/or enhanced will be determined based on the percentage of the existing building used by the non-conforming use. Depending on the size of the area to be restored and/or enhanced, the Director may require targeted plantings rather than a linear planting arrangement. The vegetation management standards of this program shall be used for guidance on any restoration/enhancement, including but not limited to, paved areas no longer in use on the property, to offset the impact of the change of use per the vegetation management standards of this program. This may include the restoration of paved areas to vegetated area if no longer in use; and
- 7) ~~The use complies with the conditional use permit criteria of this Program; and~~
- 8) The preference is to reduce exterior uses in the buffer to the maximum extent possible.

CONTINUATION & ALTERATIONS OF NON-CONFORMING STRUCTURES

Current Regulations:

TMC 18.44.130.F.2 Nonconforming Structures (only those regulations in question are included)

2. Non-Conforming Structures. Where a lawful structure exists on the effective date of adoption of this chapter that could not be built under the terms of this chapter by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued as an allowed, legal structure so long as the structure remains otherwise lawful subject to the following provisions:
 - a. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. **Ordinary maintenance and repair of and upgrades to a non-conforming structure are permitted, including but not limited to, painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization.** These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
 - b. **Should such structure be destroyed by any accidental means, the structure may be reconstructed to its original dimensions and location on the lot provided application is made for permits within 12 months of the date the damage occurred and all reconstruction is completed within two years of permit issuance.** In the event the property is redeveloped, such re-development must be in conformity with the provisions of this chapter.
 - g. Within the Shoreline Jurisdiction, existing structures that do not meet the requirements of the SMP may be **remodeled, reconstructed or replaced**, provided that:
 - 1) The new construction is within the original dimensions and location on the lot;
 - 2) The new construction does not further intrude into or adversely impact the required buffer;
 - 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
 - 4) The reconstruction will not create adverse impacts to shoreline ecological functions and/or processes;
 - 5) For properties in non-leveed portions of the river, the applicant re-slopes the bank to a 2.5:1 or 3:1 angle as applicable depending on the property's shoreline environment designation and restores and/or enhances the entire shoreline buffer, including but not limited to, paved areas no longer in use on the property. For properties behind levees that do not meet the minimum profile, restore and/or enhance the remaining buffer area and remove invasive vegetation and plant with native vegetation on the levee prism as permitted by the COE; and
 - 6) **The property owner applies for and is granted approval of a Shoreline Conditional Use permit.**

Policy Questions:

1. How much repair and maintenance should a property owner be allowed to complete before additional mitigation measures are imposed? An amount of 50 percent of the assessed value was discussed at the November 23, 2009 City Council meeting.
2. Should this distinguish between exterior alterations and interior alterations?
3. Should Resloping of buffers occur if a property owner cannot achieve the recommended slope? Resloping of stable slopes may cause additional eroding.
4. Should a Shoreline Conditional Use be required to remodel a nonconforming structure?

Recommendation:

1. Allow a structure that has been destroyed by accidental means be completely replaced in an 'as is' condition without imposing additional mitigation measure. This policy has been established in number 2.b on the other side of this sheet. Number 2.g needs to be re-worded to state "if not by accidental means" so that there is consistency.
2. Do not use the term alter because it is undefined and the interpretation can vary. A more appropriate distinguishment should be exterior changes and interior changes.
3. If a threshold is needed to trigger section 2.g; it should apply to exterior alterations that exceed 75 percent of the assessed building.
4. Eliminate the need for a Shoreline Conditional Use Permit. This is consistent with previous Council policy decisions.

TMC 18.44.130.F.2 Nonconforming Structures (only those regulations in question are included)

2. Non-Conforming Structures. Where a lawful structure exists on the effective date of adoption of this chapter that could not be built under the terms of this chapter by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued as an allowed, legal structure so long as the structure remains otherwise lawful subject to the following provisions:
 - a. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to the exterior of a non-conforming structure, not exceeding 75 percent of the assessed value of the nonconforming structure, are permitted, including but not limited to, painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
 - b. Should such structure be destroyed by any accidental means, the structure may be reconstructed to its original dimensions and location on the lot provided application is made for permits within 12 months of the date the damage occurred and all reconstruction is completed within two years of permit issuance. In the event the property is redeveloped, such re-development must be in conformity with the provisions of this chapter.
 - g. Within the Shoreline Jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced beyond the 75 percent threshold of the assessed value of the nonconforming structure, provided that:
 - 1) The new construction is within the original dimensions and location on the lot;
 - 2) The new construction does not further intrude into or adversely impact the required buffer;
 - 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
 - 4) The reconstruction will not create adverse impacts to shoreline ecological functions and/or processes;
 - 5) For properties in non-leveed portions of the river, the applicant re-slopes the bank to a 2.5:1 or 3:1 angle as applicable depending on the property's shoreline environment designation. Where an existing nonconforming structure would prohibit the property owner from achieving the recommended 2.5:1 slope, no sloping would be required in the area between the nonconforming structure and the river. The property owner would also be required to and restores and/or enhances the entire a portion of the shoreline buffer, including but not limited to, paved areas no longer in use on the property. The amount of buffer to be restored

and/or enhanced will be determined based on the size of the existing building and its impacts to the shoreline buffer. Depending on the size of the area to be restored and/or enhanced, the Director may require targeted plantings rather than a linear planting arrangement. The vegetation management standards of this program shall be used for guidance on any restoration/enhancement. For properties behind levees that do not meet the minimum profile, restore and/or enhance the remaining buffer area and remove invasive vegetation and plant with native vegetation on the levee prism as permitted by the COE; and

~~6) The property owner applies for and is granted approval of a Shoreline Conditional Use~~

R.W. THORPE & ASSOCIATES, INC.

Seattle • Anchorage • Denver • Winthrop

❖ Planning • Landscape • Environmental • Economics ❖

PRINCIPALS:

Robert W. Thorpe, AICP, President
Stephen Speidel, ASLA, Of Counsel

ASSOCIATES:

Barbara Baker, AICP
Lindsay Diallo, RLA
Lee A. Michaelis, AICP

December 4, 2009

RECEIVED

Joan Hernandez, Council President
Tukwila City Council
City of Tukwila
6200 Southcenter Boulevard
Tukwila, WA 98188

DEC 07 2009
COMMUNITY
DEVELOPMENT

RECEIVED

DEC 04 2009
CITY OF TUKWILA
CITY CLERK

RE: Shoreline Master Program Update ~ December 7, 2009 Meeting

Honorable President Hernandez and Members of the City Council:

On behalf of the Desimone Trust we submit for your review and discussion the attached handouts for your December 4, 2009 meeting. Please consider these changes during your meeting.

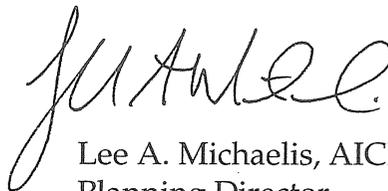
We appreciate the Council's time on these issues and we look forward to continued support and cooperation. If you have any questions regarding this letter or other issues raised in the past, please feel free to contact Robert W. Thorpe, AICP or Lee A. Michaelis, AICP at 206.624.6239

Sincerely,

R. W. Thorpe & Associates, Inc.



Robert W. Thorpe, AICP
President



Lee A. Michaelis, AICP
Planning Director

Encl.

Originals to: Council ✓
Copies to: Mayor
City Administrator
S. Pace; C. Lamb
City Clerk

BUFFER WIDTHS ESTABLISHED BASED ON RECOMMENDED SLOPE

Current Regulations:

Section 7.6C Shoreline Residential Environment

"Based on an analysis of the river elevations and existing banks, a 50 foot minimum buffer in the Shoreline Residential Environment would allow room to achieve a 2.5:1 bank slope with an additional 20 foot setback from the top of the slope – a distance that will allow for bank stability and in-turn, protection of new structures from high flows, and bank failures." [emphasis added]

TMC 18.44.040.A Shoreline Residential Environment

"The Shoreline Residential River Buffer shall consist of the area needed to achieve a 2.5:1 slope of the river bank, measured from the toe of the bank to the top of the bank, plus 20 linear feet measured from the top of the bank landward; provided, that in no case shall the Shoreline Residential Buffer be less than 50 feet landward of the OHWM."

Section 7.7C Urban Conservancy Environment

"The buffer width of 100 feet allows enough room to reconfigure the river bank to achieve a slope of 2.5:1, the "angle of repose" or the maximum angle of a stable slope and allow for some restoration and improvement of shoreline function through the installation of native plants and other habitat features. The actual amount of area needed to achieve a 2.5:1 slope may be less than 100 feet, depending on the character of the river bank and can only be determined on a site-by-site basis." [emphasis added].

TMC 18.44.050 Urban Conservancy Environment

"The Urban Conservancy Environment Buffer shall consist of that area measured 100 feet landward of the OHWM for non-leveed portions of the river, and that area measured 125 feet landward from the OHWM for leveed portions of the river."

Policy Questions:

1. How can a 2.5:1 slope be achieved in the 50' Residential Environment Buffer and it requires a 100' Urban Conservancy Buffer to accomplish the same slope.?
2. Should the Urban Conservancy Environment have the same minimum buffer as the Shoreline Residential Environment width since the recommended slope of 2.5:1 is the same? This fosters consistency between residential and commercial properties.
3. Would a buffer reduction process, previously proposed, grant commercial property owners the same rights of use for their property outside the 50 foot buffer? This process would benefit property owners and the functions and values of the stream by providing mitigation measures.

Recommendation:

1. Approve a 50' Buffer for the Urban Conservancy Environment; or
2. Review and approve, as is or with amendments, the Buffer Reduction Process, presented to the City Council on November 23, 2009
3. Revise Section 7.7C Urban Conservancy Environment
"The buffer width of ~~100~~ 50 feet allows enough room to reconfigure the river bank to achieve a slope of 2.5:1, the "angle of repose" or the maximum angle of a stable slope and allow for some restoration and improvement of shoreline function through the installation of native plants and other habitat features. The actual amount of area needed to achieve a 2.5:1 slope may be less than ~~100~~ 50 feet, depending on the character of the river bank and can only be determined on a site-by-site basis."

4. Revise TMC 18.44.050 Urban Conservancy Environment

A. Urban Conservancy Environment Buffer – Delineated

The Urban Conservancy Environment Buffer shall consist of that area needed to achieve a 2.5:1 slope of the river bank, measured from the toe of the bank to the top of the bank, plus 20 linear feet measured from the top of the bank landward; provided, that in no case shall the Shoreline Residential Buffer be less than 50 feet landward of the OHWM, measured 100 feet landward of the OHWM for non-leveed portions of the river, and that area measured 125 feet landward from the OHWM for leveed portions of the river.3.

urban conservancy

CONTINUATION OF NON-CONFORMING USES

Current Regulations:

TMC 18.44.130.F.1.e Nonconforming Use Changed to another Nonconforming Use

e. A structure that is being or has been used for a non-conforming use may be used for a different non-conforming use only **upon the approval of a Shoreline Conditional Use permit**. In addition to the conditional use criteria in TMC 18.44.130(c), before approving a conditional use for a change in non-conforming use, the following findings must be made:"

- 1) No reasonable alternative conforming use is practical;
- 2) The proposed use will be at least as consistent with the policies and provisions of the SMP and as compatible with the uses in the area as the pre-existing use;
- 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
- 4) The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity;
- 5) The change in use will not create adverse impacts to shoreline ecological functions and/or processes;
- 6) The applicant restores and/or enhances the entire shoreline buffer, including but not limited to, paved areas no longer in use on the property, to offset the impact of the change of use per the vegetation management standards of this program. This may include the restoration of paved areas to vegetated area if no longer in use;
- 7) The use complies with the conditional use permit criteria of this Program; and
- 8) The preference is to reduce exterior uses in the buffer to the maximum extent possible.

Policy Questions:

1. Should a change of use from a nonconforming use to another nonconforming use require a Shoreline Conditional Use Permit or be administered as a Type 2 Decision? To be consistent with the SMP edits to eliminate the requirement of a Shoreline Conditional Use Permit, the Zoning Code should reflect the policy decision made by the City Council to allow the director to make the decision for these types of changes and not require a Shoreline Conditional Use Permit.
2. Should a change of use from one nonconforming use to another nonconforming use be offered the same mitigation measures as those allowed for the request for continuation of pre-existing use. TMC 18.44.130.F.3.a.3? This allows for a proportional mitigation based on impacts and not a complete revegetation of the property's buffer

Recommendation:

1. All requirements for approval of a Shoreline Conditional Use Permit should be changed to a Type 2 Administrative decision. This is consistent with City Council discussion at the Meeting of November 23, 2009.
2. Allow property owners to restore the shoreline buffer based on the size of the existing building using the nonconforming use.
3. See the back side of this sheet for changes to the Nonconforming Use section of the proposed Zoning Code.

TMC 18.44.130.F.1.e Nonconforming Uses

e. A structure that is being or has been used for a non-conforming use may be used for a different non-conforming use after demonstrating the following criteria have been met only upon the approval of a Shoreline Conditional Use permit. In addition to the conditional use criteria in TMC 18.44.130(e), before approving a conditional use for a change in non-conforming use, the following findings must be made:"

- 1) No reasonable alternative conforming use is practical;
- 2) The proposed use will be at least as consistent with the policies and provisions of the SMP and as compatible with the uses in the area as the pre-existing use;
- 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
- 4) The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity;
- 5) The change in use will not create adverse impacts to shoreline ecological functions and/or processes;
- 6) The applicant restores and/or enhances the entire shoreline buffer on the property to offset the impact of the change of use from one nonconforming use to another nonconforming use. The amount of buffer to be restored and/or enhanced will be determined based on the percentage of the existing building used by the non-conforming use. Depending on the size of the area to be restored and/or enhanced, the Director may require targeted plantings rather than a linear planting arrangement. The vegetation management standards of this program shall be used for guidance on any restoration/enhancement, including but not limited to, paved areas no longer in use on the property, to offset the impact of the change of use per the vegetation management standards of this program. This may include the restoration of paved areas to vegetated area if no longer in use; and
- ~~7) The use complies with the conditional use permit criteria of this Program; and~~
- 8) The preference is to reduce exterior uses in the buffer to the maximum extent possible.

CONTINUATION & ALTERATIONS OF NON-CONFORMING STRUCTURES

Current Regulations:

TMC 18.44.130.F.2 Nonconforming Structures (only those regulations in question are included)

2. Non-Conforming Structures. Where a lawful structure exists on the effective date of adoption of this chapter that could not be built under the terms of this chapter by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued as an allowed, legal structure so long as the structure remains otherwise lawful subject to the following provisions:
 - a. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. **Ordinary maintenance and repair of and upgrades to a non-conforming structure are permitted, including but not limited to, painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization.** These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
 - b. **Should such structure be destroyed by any accidental means, the structure may be reconstructed to its original dimensions and location on the lot provided application is made for permits within 12 months of the date the damage occurred and all reconstruction is completed within two years of permit issuance.** In the event the property is redeveloped, such re-development must be in conformity with the provisions of this chapter.
 - g. Within the Shoreline Jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced, provided that:
 - 1) The new construction is within the original dimensions and location on the lot;
 - 2) The new construction does not further intrude into or adversely impact the required buffer;
 - 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
 - 4) The reconstruction will not create adverse impacts to shoreline ecological functions and/or processes;
 - 5) For properties in non-leveed portions of the river, the applicant re-slopes the bank to a 2.5:1 or 3:1 angle as applicable depending on the property's shoreline environment designation and restores and/or enhances the entire shoreline buffer, including but not limited to, paved areas no longer in use on the property. For properties behind levees that do not meet the minimum profile, restore and/or enhance the remaining buffer area and remove invasive vegetation and plant with native vegetation on the levee prism as permitted by the COE; and
 - 6) **The property owner applies for and is granted approval of a Shoreline Conditional Use permit.**

Policy Questions:

1. How much repair and maintenance should a property owner be allowed to complete before additional mitigation measures are imposed? An amount of 50 percent of the assessed value was discussed at the November 23, 2009 City Council meeting.
2. Should this distinguish between exterior alterations and interior alterations?
3. Should Resloping of buffers occur if a property owner cannot achieve the recommended slope? Resloping of stable slopes may cause additional eroding.
4. Should a Shoreline Conditional Use be required to remodel a nonconforming structure?

Recommendation:

1. Allow a structure that has been destroyed by accidental means be completely replaced in an 'as is' condition without imposing additional mitigation measure. This policy has been established in number 2.b on the other side of this sheet. Number 2.g needs to be re-worded to state "if not by accidental means" so that there is consistency.
2. Do not use the term alter because it is undefined and the interpretation can vary. A more appropriate distinguishment should be exterior changes and interior changes.
3. If a threshold is needed to trigger section 2.g; it should apply to exterior alterations that exceed 75 percent of the assessed building.
4. Eliminate the need for a Shoreline Conditional Use Permit. This is consistent with previous Council policy decisions.

TMC 18.44.130.F.2 Nonconforming Structures (only those regulations in question are included)

2. Non-Conforming Structures. Where a lawful structure exists on the effective date of adoption of this chapter that could not be built under the terms of this chapter by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued as an allowed, legal structure so long as the structure remains otherwise lawful subject to the following provisions:
 - a. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to the exterior of a non-conforming structure, not exceeding 75 percent of the assessed value of the nonconforming structure, are permitted, including but not limited to, painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
 - b. Should such structure be destroyed by any accidental means, the structure may be reconstructed to its original dimensions and location on the lot provided application is made for permits within 12 months of the date the damage occurred and all reconstruction is completed within two years of permit issuance. In the event the property is redeveloped, such re-development must be in conformity with the provisions of this chapter.
 - g. Within the Shoreline Jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced beyond the 75 percent threshold of the assessed value of the nonconforming structure, provided that:
 - 1) The new construction is within the original dimensions and location on the lot;
 - 2) The new construction does not further intrude into or adversely impact the required buffer;
 - 3) The use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
 - 4) The reconstruction will not create adverse impacts to shoreline ecological functions and/or processes;
 - 5) For properties in non-leveed portions of the river, the applicant re-slopes the bank to a 2.5:1 or 3:1 angle as applicable depending on the property's shoreline environment designation. Where an existing nonconforming structure would prohibit the property owner from achieving the recommended 2.5:1 slope, no sloping would be required in the area between the nonconforming structure and the river. The property owner would also be required to and restores and/or enhances the entire a portion of the shoreline buffer, including but not limited to, paved areas no longer in use on the property. The amount of buffer to be restored

and/or enhanced will be determined based on the size of the existing building and its impacts to the shoreline buffer. Depending on the size of the area to be restored and/or enhanced, the Director may require targeted plantings rather than a linear planting arrangement. The vegetation management standards of this program shall be used for guidance on any restoration/enhancement. For properties behind levees that do not meet the minimum profile, restore and/or enhance the remaining buffer area and remove invasive vegetation and plant with native vegetation on the levee prism as permitted by the COE; and

~~6) The property owner applies for and is granted approval of a Shoreline Conditional Use~~

Proposed Amendment Creating Alternative Buffer Reduction Process For Non-Leveed Properties in Urban Conservancy and High Intensity Shoreline Environments

Add the following language to SMP Section 7.7.C (Following Figure 4 and before “Buffer Levee Area” of Section 7.7.C add the following), to SMP Section 7.8.B (Following Figure 7 and before the paragraph that begins “As an alternate to the 100 foot buffer...” of Section 7.8.B add the following), and to TMP 18.44.050.D & 18.44.060.D:(renumber as paragraphs 2-3(e)(iii)):

Buffer widths for non-levee properties within the Urban Conservancy Environment, may be reduced by the Director of Community Development or his/her designee by up to 50 % if an applicant demonstrates that a reduction (1) will provide enough area to achieve a 2.5:1 slope plus 20 feet from the top of the slope ; and (2) will not result in any adverse impact to the river or remaining buffer, following reduction. To demonstrate that reduced buffer will provide enough area to achieve a 2.5:1 slope plus 20 feet and that no adverse impacts will result from the proposed buffer reduction, the property owner must submit a report from a Geotechnical Engineer or other qualified professional concluding that there is sufficient area for a 2.5:1 slope, that the reduced buffer will have no impact to the stability of the river bank, and that no flood hazard or other life/safety issues will result from the buffer reduction.

Further, if an existing buffer is vegetated, a buffer enhancement plan shall be required to demonstrate how the function and values of the buffer and river will be improved. If the existing buffer has been disturbed and/or is not vegetated, an enhancement plan shall be required that identifies measures to enhance the buffer functions and values. Enhancement plans are subject to approval by the Director of Community Development. In reviewing the enhancement plan, the director will review whether the plan has implemented two or more of the measures from sections A, B, and/or C. This section is not intended to require a property owner to implement measures from each of sections A, B, and C below.

A. Riparian Buffer Restoration and/or Enhancement

1. Invasive species are to be removed by hand where appropriate; small wheeled tractors may be used in large areas where no structures are located.
2. Existing river bank and new buffer areas should be planted with native vegetation that represents both woody (trees and shrubs) and herbaceous species.
3. Trees shall be planted at spacing adequate to establish canopy and dependant on existing site conditions.
4. All planting shall be in compliance with Section 9.10 Vegetation Protection and Landscaping.

B. Water Quality and Pollutant Removal (Stormwater Runoff)

1. Favorable consideration will be given to those properties that replace existing catch basins along right of ways and in existing parking lots with units capable of filtering oils, garbage, and heavy metal particles from stormwater.
2. Removal of portions of existing impervious surfaces, outside of the buffer, and replanted with pervious paving materials to restore hydrologic connection and reduce the amount of polluted stormwater runoff.
3. As part of building remodels the owner, where appropriate, should consider the incorporation of the following building techniques:
 - Rooftop Rain Gardens
 - Water re-use for on-site landscape irrigation
 - Installation of solar panels.

C. Bank Stabilization

Significantly degraded river banks that are actively eroding and have little or no riparian vegetation shall be stabilized using acceptable bioengineering techniques to include

1. Log structures
2. Bank Resloping
3. Riparian Zone Restoration

D. Perpetual Protection

All river buffer reduction projects shall be protected in perpetuity through a conservation easement, placement in a separate tract, deed transfer, or other legally binding agreement. The location and limitations associated with the river and its buffer shall be shown and recorded with a Notice on Title with the King County Auditor.

E. Monitoring Requirements

Monitoring is required for all buffer reduction projects. The objective of monitoring is to quantify the success of the enhancement plan. The success of such projects must be guaranteed and documented in annual monitoring reports for a period of 3 years after completion of the project. Successful enhancement projects should result in river segments with stable banks, in-river habitat, and/or a healthy riparian buffer.

Monitoring reports must include a narrative description and photos accurately depicting the river and riparian habitat. Monitoring requirements must also include habitat assessments to document pre- and post- project habitat conditions. Annual riparian vegetation surveys documenting the survivorship of planted riparian species are required for all buffer reduction projects that include a riparian restoration component.

A qualified biologist or environmental specialist should complete the monitoring reports. The first monitoring report should be submitted at the beginning of the first growing season after completion of the enhancement plan and should be submitted annually for a period of 3 years.

1. Narrative Description/Photos

The narrative should include a description of the physical condition of the river buffer including a description and photos of observed aquatic life, bank stability, in-river habitat, substrate, and riparian zone.

2. Habitat Assessment

A pre-project habitat assessment must be completed to document existing conditions within the river buffer. A second post-project habitat assessment must be completed at the end of the required monitoring period. A comparison of the two assessments will help quantify the ecological gain of the enhancement plan.

3. Riparian Vegetation Survey

An annual detailed vegetative survey including photos of the riparian plantings is required for all buffer reduction projects that include riparian restoration. The survey should be completed during the normal growing season. Planted riparian species must be guaranteed at a 75% survivorship for the duration of the required monitoring period.

Justification: The justification in the SMP for buffers for non-leveed properties is to provide sufficient area to allow for a 2.5:1 slope, which the City considers to be a stable slope, plus 20 feet. According to the SMP, the City considers a 50-foot buffer to be the minimum necessary to provide for a 2.5:1 slope plus 20 feet, and imposes such 50 foot buffer on residential properties in the Residential Environment. For similar nonleveed properties in the Urban Conservancy and High Intensity Environment, the City presumes a 100 foot buffer is necessary to provide for a 2.5:1 slope plus 20 feet, and will only allow a reduction up to 50 feet only if the buffer is resloped to a 2.5:1 slope with a 20-foot setback from the top of the slope.

While residential property owners benefit from a presumption in the SMP that a 50-foot buffer is sufficient to achieve a 2.5:1 slope plus 20 feet, commercial/industrial owners of nonleveed properties are not allowed a buffer reduction to up to 50 feet even if they can prove that the reduced buffer is sufficient to achieve a 2.5:1 slope plus 20 feet. Instead, the SMP requires commercial/industrial owners to actually reslope the bank, a very expensive and time consuming proposition given not just the cost to do so but also the federal, state and local permits required.

This is unfair and unreasonable. If the purpose of the buffer is to provide for sufficient area to allow for a more stable slope of 2.5:1 plus 20 feet, then a commercial/industrial owner of a nonleveed property should be allowed, at the time of development or redevelopment of the property, to obtain a buffer reduction if it can demonstrate that there is sufficient area in a reduced buffer to allow for a 2.5:1 slope plus 20 feet and that such reduction would not otherwise adversely affect shoreline functions and values. And further, like residential property owners,

they should be allowed to achieve up to a minimum 50-foot buffer reduction if they can make that showing. Such a buffer reduction process for nonleveed properties is consistent with the SMP's rationale for buffers for nonleveed properties, including the following rationale for the Residential Environment Buffers (which applies equally to nonleveed properties in the Urban Conservancy/High Intensity Environments), and the science¹:

The proposed buffer area for the Shoreline Residential Environment will allow for removal of invasive plants, planting of native vegetation in the riparian zone and inclusion of other features to improve shoreline habitat. ***It also will prevent the placement of any structures in an area that could potentially prove unstable. In the event of bank erosion or slope failures, the buffer will provide sufficient space for re-sloping the bank to a more stable 2.5:1 slope, either through bank stabilization projects or through natural bank failures that result in the natural angle of repose (2.5:1 or greater).***

SMP, Section 7.6, p. 62 (emphasis added)

¹All of the scientific justification in the record supporting the need for a 2.5:1 slope relates solely to levee profiles for construction and repair of levees. It does not support a conclusion that all, existing nonleveed banks should and must be resloped to a 2.5:1 slope without armoring in order to achieve a stable bank or to protect existing or new development from flood hazards. In fact, resloping a stable, armored bank that is steeper than 2.5:1 to a 2.5:1 unarmored bank may make the existing bank less stable and more prone to erosion. Even so, if the City believes that a buffer large enough to support a 2.5:1 slope plus 20 feet is required for nonleveed properties, the proposed buffer reduction process will provide for a buffer wide enough to accomplish this purpose, for it will ensure that the buffer is wide enough to accommodate a 2.5:1 slope plus 20 feet. There is no need to require that the bank also be resloped, just like there is no need to reslope the bank for the required 100-foot buffer because it is presumed to be large enough to allow for a 2.5:1 slope plus 20 feet.

Proposed Amendment to 18.44.130(D)(2)(a) and (g)

2. Non-Conforming Structures. Where a lawful structure exists on the effective date of adoption of this chapter that could not be built under the terms of this chapter by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued as an allowed, legal structure so long as the structure remains otherwise lawful subject to the following provisions:

a. Such structures may be repaired, maintained, upgraded, and altered, provided that, No such (1) the structure-structure may not be enlarged or altered in such a way that increases its degree of nonconformity or increases its impacts to the functions and values of the shoreline environment, and (2) the cost of the alterations may not exceed an aggregate cost of fifty percent (50%) of the value of the building or structure, based upon its most recent assessment or appraisal, unless the amount over fifty percent (50%) is used to make the building or structure more conforming, or is used to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority. ~~Ordinary maintenance and repair of and upgrades to a non-conforming structure are permitted, including but not limited to, painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.~~

....

g. ~~Within the Shoreline Jurisdiction, existing structures that do not meet the requirements of the SMP may be altered or partially reconstructed provided that:~~

~~1) The new construction is within the original dimensions and location on the lot;~~

~~2) The new construction does not further intrude into or adversely impact the required buffer;~~

~~3) The use or activity within the structure is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;~~

~~4) The reconstruction will not create adverse impacts to shoreline ecological functions and/or processes;~~

~~5) For properties in non-leveed portions of the river, the applicant re-slopes the bank to a 2.5:1 or 3:1 angle as applicable depending on the property's shoreline environment designation and restores and/or enhances the entire shoreline buffer, including but not limited to, paved areas no longer in use on the property. Where an existing building would prevent the re-sloping of the bank to 2.5:1 or 3:1 as applicable, the applicant must re-slope to the extent possible, remove invasive vegetation and re-vegetate according to the provisions of this chapter. For properties behind levees that do not meet the minimum profile, restore and/or enhance the remaining buffer area~~

~~and remove invasive vegetation and plant with native vegetation on the levee prism as permitted by the COE; and~~

~~6) The property owner applies for and is granted approval of a Type 2 permit.~~

~~h. A non-conforming use, within a non-conforming structure, shall not be allowed to expand into any other portion of the structure.~~

~~3. For the purposes of this section, altered or partially reconstructed is defined as work that does not exceed 50% of the assessed valuation of the building over a three-year period.~~

Justification: Subsections 2(a) and 2(g) in the Nonconforming Structure provisions relate to permissible alterations to legal nonconforming shoreline structures. Many city and county Shoreline Master Programs, including those of Seattle, Bellevue, and King County, allow a nonconforming structure to be maintained, renovated, repaired or structurally altered so long as the alteration does not increase the degree of nonconformity. Some jurisdictions, like Renton and Auburn, place a limit on the amount of structural alterations that are allowed, typically some percentage (50-75%) of the structure's value.

Originally, as recommended by the Planning Commission, and consistent with Tukwila's current nonconforming structure provisions relating to structures that do not meet the requirements of the Sensitive Areas Overlay District (see TMC 18.70.050), Section 2(g) allowed nonconforming structures to be remodeled, reconstructed or replaced so long as it did not increase the degree of nonconformity. That is, the proposed SMP adopted an approach like Seattle and King County's. Since then, the City Council has placed so many limits in Section 2(g) on altering nonconforming structures that, as currently proposed, just about any alterations, even the minor repair and maintenance work allowed in Section 2(a), would essentially require compliance with the new SMP requirements (e.g., reslope the bank to a 2 ½: 1 slope; revegetate the buffer; etc.). Now, for all practical purposes, Section 2(a) has been written out of the nonconforming structure section since the new definition of alterations subject to Section 2(g) requirements (any work up to 50% of the structure's value), would essentially include all of the minor alterations allowed by Section 2(a).

While we understand that the City Council wants to discourage continuation of nonconforming structures by placing limits on their modification and alteration, no jurisdiction that we are aware of imposes these kinds of requirements on modification or alteration of shoreline structures. For good reason, they would be so prohibitively expensive that they would discourage even fairly minor maintenance and renovation of shoreline structures that nearly every jurisdiction allows.

While we would prefer that the City take the approach that jurisdictions like Seattle and King County do, and allow shoreline property owners to modify and alter existing legal nonconforming structures so long as they do not increase their nonconformity, we understand that the City Council desires to place a limit on such modifications and alterations to encourage redevelopment consistent with the new SMP provisions. Under these circumstances, we propose a 50% value limit on the alterations allowed to

nonconforming shoreline structures, similar to the approach taken by the City of Renton and other jurisdictions that place a limit on such alterations. Any alterations costing more than 50% of the value of the existing structure would require compliance with the new SMP requirements, including the use, buffer, vegetation and public access requirements.

Proposed Amendment to Nonconforming Use Provisions in TMC 18.44.130(E)(1)(e):

1. Non-Conforming Uses. Any non-conforming lawful use of land that would not be allowed under the terms of this SMP may be continued as an allowed, legal, non-conforming use, defined in TMC Chapter 18.06 or as hereafter amended, so long as that use remains lawful, subject to the following:

....

e. A structure that is being or has been used for a non-conforming use may be used for a different non-conforming use only upon the approval of a Type II permit subject to notice. Before approving a change in non-conforming use, the following findings must be made:

- 1) No reasonable alternative conforming use is practical;
- 2) The proposed use will be at least as consistent with the policies and provisions of the SMP and as compatible with the uses in the area as the pre-existing use;
- 3) the use or activity is enlarged, intensified, increased or altered only to the minimum amount necessary to achieve the intended functional purpose;
- 4) The structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the non-conformity;
- 5) The change in use will not create adverse impacts to shoreline ecological functions and/or processes;
- 6) The applicant restores and/or enhances the **entire** shoreline buffer, including but not limited to, paved areas no longer in use on the property, to offset the impact of the change of use per the vegetation management standards of this program. The amount of buffer to be restored and/or enhanced will be determined based on the percentage of the existing building used by the nonconforming use. Depending on the size of the area to be restored and/or enhanced, the Director may require targeted plantings rather than a linear planting arrangement. The vegetation management standards of this program shall be used for guidance on any restoration/enhancement This may include the restoration of paved areas to vegetated area if no longer in use;
- 7) The use complies with the Type II permit process of TMC Chapter 18.104; and
- 8) The preference is to reduce exterior uses in the buffer to the maximum extent possible.

Justification: Many commercial and industrial structures along the river that are set back from the river consistent with current buffer requirements in the SMP will now become nonconforming because of the new buffer requirements in the SMP. These new buffer requirements will now prohibit all of the commercial and industrial uses under which these structures were lawfully developed, uses that are and will remain permitted by the underlying zoning for these properties. When any of the existing tenants in these buildings leave, if the landlord cannot find a tenant to continue the exact same use, the space in the building will have to be left vacant unless the entire shoreline is revegetated, even if the new use is otherwise allowed by the underlying zoning and will have no or less impact on shoreline functions and values, including buffers and shoreline vegetation. While it is appropriate to require the property owner to “offset the impact of the change of use per the vegetation management standards of this program,” the requirement to revegetate the entire shoreline goes far beyond any reasonable or proportional mitigation measure. Nor does any jurisdiction in Washington require this.

Urban Conservancy Buffer
SMP Section 7.7C
----- 100' - BUFFER



800 Sq. Ft.

Approximate area of building encroachment into the river buffer.

3,500 Ft.

Approximate lineal footage of river shoreline.

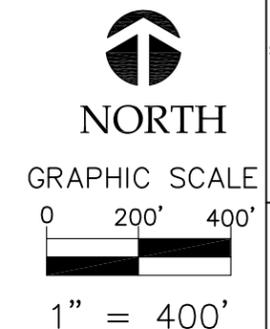
295,640 Sq. Ft. 

Approximate Area of buffer to be restored or enhanced for the nonconforming structure.

\$886,920

Cost of enhancing property buffer at \$3.00 a square foot.

SMP Section 14.5.B.7.e
TMC 18.44.130.E.2.g.5



CITY OF TUKWILA SHORELINE MASTER PROGRAM UPDATE

DESIMONE TRUST

R.W. Thorpe & Associates, Inc.

Seattle • Anchorage • Denver

Planning ◊
Landscape Architecture
Environmental ◊ Economics
◊ Project Management

710 Hoge Building
705 Second Avenue
Seattle Washington 98104

Telephone: 206.624.6239
Fax: 206.625.0930
E-Mail: planning@rwta.com

CLIENT REPRESENTATIVES

BNY Mellon

Wealth Management Office
1201 Third Avenue - Suite 5010
Seattle, WA 98101

ISSUED

No.	Description	Rev.	Ch'd	App'd	Date
1	Existing Conditions	KE	LM	RW	10/3/08
2	Revegetation Impacts	LM	RT		12/7/09

REVISIONS

No.	Description	Rev.	Ch'd	App'd	Date

RWTA JOB NO. 0809079

SOURCE:

KING COUNTY IMAP
2005 AERIAL IMAGE

SITE PLAN:

OXBOW

PROPOSED REGULATIONS

Carol Lumb - Proposed SMP Amendments from Desimone Trust

From: "Lee A. Michaelis"
To: , , ,
Date: 12/11/2009 4:06 PM
Subject: Proposed SMP Amendments from Desimone Trust
CC: , , ,
Attachments: , , ,

Dear City of Tukwila Councilmembers:

On behalf of the Desimone Trust, we are submitting these proposed amendments for discussion by the City Council on Monday evening. Attached you will find two documents the ProposedAmendments.pdf documents identifies three areas that we suggest need further discussion:

- Buffer Reduction Process
- Nonconforming Uses
- Nonconforming Structures

Following each amendment is the Justification that explains the rationale behind the suggested amendment.

Also attached is an aerial photo of the Boeing Recreation Building on the Oxbow Peninsula. This graphic details the **800 square foot** encroachment into the buffer and the 295,640 Sq. Ft. of buffer that would be required to be enhanced if a new user would want to locate in the building.

If you have any questions about these graphics, please feel free to call our offices on Monday to discuss.

Lee A. Michaelis, AICP

R.W. Thorpe & Associates, Inc.
705 Second Avenue, Suite 710
Seattle, WA 98104
P: 206.624.6239 | F: 206.625.0930
E: lmichaelis@rwta.com | W: www.rwta.com

This email communication, including any attachments, may contain proprietary, confidential, or privileged information and is intended solely for the use of the individual or entity to which it is addressed. If you are not the intended recipient or their authorized agent, be advised that you have received this email in error and that any use, dissemination, forwarding, printing, or copying of this email is strictly prohibited. If you have received this email in error, please notify the sender immediately at lmichaelis@rwta.com, delete this email, and destroy all copies and any attachment.

-