

January 15, 2009

**VIA HAND DELIVERY**

Tukwila Planning Commission  
City of Tukwila  
6200 Southcenter Boulevard, Suite 100  
Tukwila, WA 98188

Re: Comments on City of Tukwila Shoreline Master Program Update

Dear Planning Commissioners:

We represent the James Campbell Co. LLC and The Realty Associates Fund VII, L.P., ("RAF") a Delaware limited partnership, both of which own property in the City of Tukwila. We also represent International Airport Centers LLC, ("IAC") which owns property in the City's annexation area. On behalf of those entities, we previously submitted written comments and oral testimony regarding the City's Shoreline Master Program update ("SMP").

We appreciate the efforts by the City staff and Planning Commission to address our comments in the revised draft of the SMP that the Planning Commission reviewed on December 10-11, 2008 (the "Revised Proposal"). Substantial progress has been made.

The purpose of this letter is to discuss those areas where we do not feel the City's revisions adequately address our previous comments, and to propose changes to the City's language on a number of points. Our proposed language changes to § 14.5 of the SMP are set forth in Exhibit A. Our proposed language changes to § 11.5 of the SMP are set forth in Exhibit B. In both cases, our changes are highlighted in yellow, per staff's request.

**A. Nonconforming Development**

With respect to § 14.5 of the SMP (nonconforming development), the Revised Proposal represents significant progress over the previous version, particularly with respect to the provisions regarding nonconforming structures.

Based on the City's approach to the nonconforming structure provisions, we believe there is a need for a few changes to the nonconforming use provisions (§ 14.5.A) to make them consistent with the approach taken to nonconforming structures (see Exhibit A for specific language):

- In § 14.5.A.3, the period during which a nonconforming use may be ceased before compliance with current regulations is required should be increased to 24 months to be consistent with the approach the City has taken in the nonconforming structure provisions. (As discussed

below, we believe the proper length of time for the extension period in the nonconforming structure context should be 24 months, and we suggest the same approach in the nonconforming use context.)

- The rest of our proposed changes to § 14.5.A (in § 14.5.A.4, 5, and 6) are meant to recognize the reality that, in many if not most cases, nonconforming use situations will also involve nonconforming structures given the strictness of the SMP's regulations. Given the large number of structures that will become nonconforming under the new SMP, we believe the City understands the importance of ensuring that existing nonconforming structures can continue to be used for any uses that are allowed in the underlying zoning district, as long as the provisions for alteration, rebuilding, etc. of nonconforming structures are followed. Our changes are meant to carry out this goal.

With respect to the nonconforming structure provisions (§ 14.5.B), we have a number of minor changes that we believe are consistent with the City's intent:

- In § 14.5.B.1, we suggest a change to make clear that no such structure may be enlarged or altered in such a way that it *increases* its impacts. This makes the language consistent with the language later in this subsection and is consistent with the City's evident intent to avoid increasing impacts beyond those that may already exist.

- In § 14.5.B.4, we suggest increasing to 24 months the potential extension period for the time a structure may remain vacant before it must come into compliance with current regulations. TMC ch. 18.70 provides for a 24 month extension, and given that the new SMP's regulations are so stringent, we can see no reason why the extension period should be shorter in the SMP than in ch. 18.70.

- In § 14.5.B.8, we suggest a revision to make clear that uses allowed in the underlying zoning district are allowed to expand within an existing nonconforming structure. As noted above, given the large number of structures that will become nonconforming under the proposed SMP, it is critical that existing nonconforming structures can continue to be used for any uses that are allowed in the underlying zoning district (as long as the provisions for alteration, rebuilding, etc. of nonconforming structures are followed).

- Finally, we suggest the addition of a new § 14.5.B.9 to provide some additional flexibility in the event of reconstruction.

## **B. Height**

With respect to § 9.3 of the SMP (height), we continue to believe it is unnecessary and undesirable to set a height limit within the shoreline area (outside of the buffer) that is different from the height limit in the underlying zoning district. However, if the City is not willing to change its approach on this score, we nonetheless suggest a change to § 11.5, which allows height increases in certain situations where public access is provided (see Exhibit B for specific language).

The Revised Proposal (at § 11.5) allows maximum height to be increased to the height permitted in the underlying zoning district for properties that construct a public access trail along the river in areas identified for new shoreline trail segments. Given the evident purpose of providing adequate public access trails wherever possible, we believe it is only logical that a property that contains or abuts an existing public access trail should also be able to obtain the maximum height permitted in the underlying zoning district if the existing trail meets the applicable design standard or the property owner provides any necessary improvements to upgrade the existing trail to the applicable standard along the property frontage.

The City's current approach treats increased height as something that can only be obtained if the City "gets" a particular (very significant) amount of public access improvement. However, it is improper to set the permissible height limit in such a "transactional" manner. To the extent that the City is justified in requiring public access at all, it is only in response to the impacts of a development proposal. If there is already an existing public access trail that addresses those impacts (or that can be upgraded to address those impacts), then there is no justification for the City to withhold the development potential represented by a higher height limit.

### **C. Buffers**

Unfortunately, the Revised Proposal does not remedy the fundamental legal and technical defects in the proposed buffers for our clients' properties, as identified in our October 9, 2008, comment letter. Rather than repeating the contents of that letter here, we incorporate it by reference. We continue to request that the City rewrite the buffer requirements so that buffers are established on a site-specific basis where, and only to the extent, necessary to address project-specific impacts and achieve "no net loss" of ecological functions necessary to sustain shoreline natural resources.

Again, we appreciate the staff's efforts and cooperative attitude in this matter, and the progress the Planning Commission has made so far. We hope that you will make the additional changes set forth herein. Thank you for your consideration.

Very truly yours,

GORDONDERR LLP



Jeff S. Weber

cc: John Wanamaker

## Attachment E Planning Commission Action

**PLANNING COMMISSION ACTION 12/11/08:** CORRECTED REFERENCE TO FUTURE PARK GRANDMOTHER'S HILL TO "DUWAMISH RIVERBEND HILL" IN SECOND NEW PARAGRAPH UNDER SECTION 11; STAFF CORRECTED DUPLICATIVE LANGUAGE IN SAME PARAGRAPH.

### **PUBLIC ACCESS REQUIREMENTS**

In response to a substantial number of comments from the public and Planning Commission staff has proposed a rewrite of Chapter 11 with significant changes to the applicability and standards.

Pages 102-107:

## **11. PUBLIC ACCESS TO THE SHORELINE**

Public access to the shorelines of the state is one of the key goals of the Shoreline Management Act – of the seven uses identified in RCW 90.58.020 as having preference in the shoreline, two relate to public access and recreational opportunities along the shoreline.

The City of Tukwila is fortunate to have a number of public access sites already along the Green/Duwamish River in addition to the Green River Trail, which runs along almost the entire length of the river through the City. Other public access points are available at the North Winds Wier also provide public access to the river, the Tukwila Community Center, Codiga Park, Bicentennial Park at Strander Boulevard and parking available on Christianson Road and at S. 180<sup>th</sup> Street. A future habitat restoration project is planned at Duwamish Riverbend Grandmother's Hill, on South 115<sup>th</sup> Street, which will also include public access to the river. The Public Access Map (Map 6) identifies several street ends that could be improved or to which amenities could be added that would offer opportunities for neighborhood access to the river and/or the Green River Trail.

The Shoreline Public Access Map identifies several potential trail sites on the river to supplement the existing Green River trail system. The largest stretch of potential trail runs from S. 180<sup>th</sup> on the left bank to the end of south annexation area. A pedestrian bridge to link the area south of S. 180<sup>th</sup> Street to the existing trail on the right bank is being discussed as well. A second area where improvement is needed in public access relates to boat launches for small hand launched boats. Several potential sites have been identified in the Tukwila Parks Department Capital Improvement Program to address this need at City owned sites.

### **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 except for the development of 9 or fewer single family lots~~ where any of the following conditions are present:- However,

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~~private access (shared access among lot owners) to the riverfront for the lots created through the short plat process is required~~

- ~~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.~~
- ~~4.—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 an increase in the square footage of an existing building.~~

~~B. The provisions of this section do not apply to the following:~~

- ~~1. Short plats of four or fewer lots;~~
- ~~2. Where providing such access would cause unavoidable health or safety hazards;~~
- ~~3. Where providing such access would create inherent and unavoidable security problems;~~
- ~~or~~
- ~~4. Where providing such access would cause significant ecological impacts that cannot be mitigated.~~

### 11.2 General Standards

A. To improve public access to the Green/Duwamish River, sites shall be designed to provide:

1. Safe, visible and accessible pedestrian and non-motorized vehicle connections between proposed development and the river’s edge particularly when the site is adjacent to the Green River Trail or other approved trail system; and
2. Public pathway entrances that are clearly visible from the street edge; and
3. Clearly identified pathways that are separate from vehicular circulation areas. This may be accomplished through the use of special paving materials such as precast pavers, bomonite, changes in color or distinct and detailed scoring patterns and textures.
4. Site elements that are organized to clearly distinguish between public and private access and circulation systems.

B. Required public access shall be fully developed and available for public use at the time of occupancy in accordance with development permit conditions except where the decision maker determines an appropriate mechanism for delayed public access implementation is necessary for practical reasons. Where appropriate, a bond or cash assignment may be approved, on review

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and approval by the Director of Community Development, to extend this requirement for 90 days from the date the Certificate of Occupancy is issued.

C. Public access easements and related permit conditions shall be recorded on the deed of title or the face of the plat, short plat or approved site plan as a condition tied to the use of the land. Recording with the County shall occur prior to the issuance of an Occupancy Permit or final plat approval. Upon redevelopment of such a site, the easement may be relocated to facilitate the continued public access to the shoreline.

D. Approved signs indicating the public's right of access and hours of access, if restricted, shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. Signs should be designed to distinguish between public and provide private areas. Signs controlling or restricting public access may be approved as a condition of permit approval.

E. Required access must be maintained throughout the life of the project.

F. Public access features shall be separated from residential uses through the use of setbacks, low walls, berms, landscaping, or other device of a scale and materials appropriate to the site.

A. Shared public access between developments is encouraged. Where access is to be shared between adjacent developments, the minimum width for the individual access easement may be reduced; provided that the total width of easements contributed by each adjacent development equals a width that complies with Fire Department requirements and/or exceeds the minimum for an individual access.

B. Public access sites shall be connected directly to the nearest public area (e.g., street, public park, or adjoining public access easement), typically the nearest public area. Where connections are not currently possible, the site shall be designed to accommodate logical future connections.

### **11.3 Requirements for Shoreline Trails and Riverwalk**

#### **A. Development on Properties Abutting Existing Green River Trail**

- ~~1. Development **or re-development** on properties abutting the existing trail shall upgrade the trail along the property frontage to meet **current-the** standards of a **16-14** foot wide trail with 2 foot shoulders on each side.~~
- ~~2. **Trail connectors shall be provided from the nearest public area (e.g., street, public park or adjoining public access easement). This access may be located in the required side yard setback.**~~

#### **B. Development on Properties Where New Trails are Planned**

- ~~1. **An 18-foot wide trail easement dedicated to the City 16' wide paved trail with a 2' wide shoulder on each side** for public access along the river shall be provided in areas~~

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identified for new shoreline trail segments (**Shoreline Public Access Map, Map 6**).

- ~~2. Trail connectors shall be provided from the nearest public area (e.g., street, public park, or adjoining public access easement). This access may be located in the required side yard setback.~~
- ~~3. At least one public parking stall shall be provided where feasible at all private access points to the Green River Trail. These parking stalls shall be identified by appropriate signage. The number of parking stalls required is dependent upon the amount of shoreline frontage of the parcel. All publicly owned access points shall provide public parking stalls, identified by appropriate signage.~~

### ~~C. Properties Located Along Proposed Riverwalk~~

~~A Riverwalk is required on properties abutting both sides of the river between I-405 and Strander Blvd. in accordance with the underlying zoning requirements of the Tukwila Urban Center and Tukwila Urban Center Plan.~~

### ~~11.4. Standards for Public Access and Amenities~~

~~A. Proposed development on sites that do not abut existing trails or future trails must comply with the requirements of this section.~~

~~B. A plan must be submitted to provide the minimum number of public access points using **Table 5**, based on the size or value of the proposed development as follows:~~

- ~~1. Short plats from 5-9 lots: \_\_\_\_\_ 4 points~~
- ~~2. Subdivisions: \_\_\_\_\_ 6 points~~
- ~~3. Commercial development/redevelopment: *(depending on value to be determined)*~~
- ~~4. Industrial development/redevelopment \_\_\_\_\_ *(depending on value to be determined)*~~

~~C. Public access amenities provided under this section must meet the standards in the Design Guidelines Section.~~

~~**Table 5. Public Access Matrix.**~~

<del><b>Type of Public Access</b></del>	<del><b>Points</b></del>
<del><b>Physical amenities</b></del>	
<del>1. Public open space area adjacent to river, minimum of 10 ft. by 10 ft.</del>	<del>3, with 1 additional point for each additional 50 sq. ft.</del>
<del>2. Passive recreation shelters for such uses as fishing, bird watching or picnicking, with appropriate access</del>	<del>3</del>
<del>3. Public fishing pier with appropriate access</del>	<del>10</del>
<del>4. Public boat ramp with appropriate access</del>	<del>10</del>
<del>5. Ten ft. wide public access easement to water's edge</del>	<del>2</del>
<del>6. Improved 10 ft. wide dedicated public access corridor from a</del>	<del>5</del>

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public road to the riverfront (handicapped accessible & all-weather surface if feasible)	
<del>7. Dedicated parking stall for river users</del>	<del>2</del>
<del>8. Unpaved trail</del>	<del>1/100 linear feet, minimum 500 linear feet required</del>
<b>Visual Access</b>	
<del>9. Exposed building face(s) facing the river accessible to the public.</del>	<del>0.5/each 10% of exposed building face</del>
<del>10. A public viewing platform, deck, patio or balcony, 25 sq. ft. minimum</del>	<del>3</del>
<del>11. Publicly accessible rooftop deck, 50 sq. ft. minimum</del>	<del>4</del>
<b>*Cultural amenities</b>	
<del>12. Interpretive sign at public access area</del>	<del>1</del>
<del>13. Interpretive kiosk at public access area</del>	<del>2</del>
<del>14. Outdoor artwork on the river side of the site, accessible to public viewing; art must be reviewed and approved by the City's Arts Commission</del>	<del>3</del>
<b>*Public furnishings associated with public access</b>	
<del>15. Bench</del>	<del>1</del>
<del>16. Picnic table</del>	<del>1</del>
<del>17. Drinking fountain</del>	<del>3</del>

~~\* A maximum of three points may be accumulated from a combination of items from Cultural Amenities and Public Furnishings.~~

### **11.45 Publicly-Owned Shorelines**

A. Shoreline development by any public entities, including but not limited to the City of Tukwila, King County, port districts, state agencies, or public utility districts, shall include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, impact to the shoreline environment or other provisions listed in this section.

B. The following requirements apply to street ends and City-owned property adjacent to the River, as shown in **Public Access Map, Map 6**.

1. Public right-of-way and "road-ends," or portions thereof, shall not be vacated and shall be maintained for future public access.
2. Unimproved right-of-ways and portions of right-of-ways, such as street ends and turn-outs, shall be dedicated to public access uses until such time as the portion becomes improved right-of-way. Uses shall be limited to passive outdoor recreation, car top boat launching, fishing, interpretive/educational uses, and/or parking, which accommodates these uses, and shall be designed so as to not interfere with the privacy of adjacent residential uses.

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3. City-owned facilities within the Shoreline Jurisdiction shall provide new trails and trail connections to the Green River Trail in accordance with approved plans and this SMP.
4. All City-owned recreational facilities within the shoreline jurisdiction, unless qualifying for an exemption as specified in this Chapter, shall make adequate provisions for
  - a. Nonmotorized and pedestrian access;
  - b. The prevention of trespass onto adjacent properties through landscaping, fencing or other appropriate measures;
  - c. Signage indicating the public right-of-way to shoreline areas; and
  - d. Mechanisms to prevent environmental degradation of the shoreline from public use.

### **11.5 Public Access Incentives**

1. The minimum yard setback for buildings, uses, utilities or development from non-riverfront lot lines may be reduced as follows:
  - a) Where development provides a public access corridor between off-site areas, or public shoreline areas to public shoreline areas, one side yard may be reduced to a zero lot line placement; or
  - b) Where development provides additional public access area(s) equal in area to at least 2.5% of total building area, the front yard (the landward side of the development) may be reduced by 50 percent.
2. The maximum height for structures may be increased by one story when:
  - a) Development devotes at least 5% of its building or land area to public shoreline access; or
  - b) Development devotes at least 10% of its land area to employee shoreline access.
3. The maximum height for structures may be increased to the height permitted in the underlying zoning district for properties that construct a 14' wide paved trail with a two-foot wide shoulder on each side for public access along the river in areas identified for new shoreline trail segments, or where, in the case of properties containing or abutting existing public access trails, the existing trail either meets the standard of a 14 foot wide trail with 2 foot shoulders on either side or the property owner provides any necessary improvements to upgrade the existing trail to that standard along the property frontage.

### **11.6 Exemptions from Provision of On-Site Public Access**

- A. Requirements for providing on-site general public access, as distinguished from employee access, will not apply if the applicant can demonstrate one or more of the following:
1. Unavoidable health or safety hazards to the public exist related to the primary use that cannot be prevented by any practical means;
  2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;

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3. The cost of providing the access, easement or other public amenity on or off the development site is unreasonably disproportionate to the total long-term cost of the proposed development.
4. Unavoidable environmental harm or net loss of shoreline ecological functions that cannot be adequately mitigated will result from the public access.
5. Access is not feasible due to the configuration of existing parcels and structures, such that access areas are blocked in a way that cannot be remedied reasonably by the proposed development.
6. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.
7. Space is needed for water dependent uses or navigation.

B. In order to meet any of the above referenced conditions, the applicant must first demonstrate, and the City determine in its findings through a Type II decision, that all reasonable alternatives have been exhausted, including but not limited to:

1. Regulating access by such means as maintaining a gate and/or limiting hours of use;
2. Designing separation of uses and activities through fencing, terracing, hedges or other design features; or
3. Providing access on a site geographically separate from the proposal such as a street end cannot be accomplished.

C. If the above conditions are demonstrated, and the proposed development is not subject to the Parks Impact Fee, alternative provisions for meeting public access are required and include:

1. Development of public access at an adjacent street end;
2. Protection through easement or setbacks of landmarks, unique natural features or other areas valuable for their interpretive potential
3. Contribution of materials and/or labor, toward projects identified in the Parks and Recreation Master Plan, the Shoreline Restoration Plan, or other City adopted plan;
4. ~~Payment into the Shoreline Public Access Fund established by the City. The amount of the payment would be 150% of the value of the materials, labor and any other costs associated with the cost of on site compliance as provided by formal quotes by a minimum of 2 independent licensed contractors. The payment would be due at the time the development permit is issued.~~

### ~~11.7 — Shoreline Public Access Fund~~

~~A. The City shall establish a Shoreline Public Access Fund, from which funds will be withdrawn to fund the purchase of trail property or amenities for public usage or enjoyment along the river.~~

~~B. Monies shall be assessed and paid into the Shoreline Public Access Fund as noted in this chapter.~~

~~C. Monies paid to the Shoreline Public Access Fund shall be applied to projects located as close to the contributing property as possible.~~

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**PLANNING COMMISSION ACTION 12/11/08:** THE PLANNING COMMISSION APPROVED THE STAFF RECOMMENDED REVISIONS TO SECTION 14.5 AND CHANGED SECTION 14.5 B.4 TO REQUIRE APPROVAL OF AN EXTENSION BY THE CITY COUNCIL.

### NONCONFORMING USES, STRUCTURES, PARKING LOTS AND LANDSCAPE AREAS

In order to address comments about treatment of non-conformities created by the new SMP development standards, staff proposes to add a new nonconforming section specific to shorelines rather than referencing the existing Zoning Code standards. Section 14.5 is proposed to be revised as follows:

Page 119:

### 14.5 Nonconforming Development

~~A. A nonconforming use or development is a shoreline use or development that was lawfully constructed or established prior to the effective date of the SMP but that does not conform to present regulations or standards of the program.~~

~~B. The provisions of TMC 18.70, Nonconforming Lots, Structures and Uses shall apply to the shoreline jurisdiction.~~

#### A. Nonconforming Uses

~~Any preexisting lawful use of land made nonconforming under the terms of this SMP may be continued as a nonconforming use, defined in TMC Chapter 18.06, or as hereafter amended, so long as that use remains lawful, subject to the following:~~

~~1. No such nonconforming use shall be enlarged, intensified, increased or extended to occupy a greater use of the land, structure or combination of the two, than was occupied at the effective date of adoption of this SMP;~~

~~2. No nonconforming use shall be moved or extended in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this SMP;~~

~~3. If any such nonconforming use ceases for any reason for a period of more than six consecutive months, or a total of 365 days in a three year time period, whichever occurs first, any subsequent use shall conform to the regulations specified by this SMP for the shoreline environment in which such use is located. 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 of up to 24 months beyond the 24 consecutive months. The City Council shall consider special circumstances and economics impacting the sale or lease of said structure or premises.~~

~~4. No existing structure devoted to a use not permitted by this title in the underlying zoning districts in which it is located shall be substantially improved as defined by the Washington State Building Code, except in changing the use of the structure to a use permitted in the zone in which it is located. If any building is devoted in whole or in part to any nonconforming use as allowed under the specific shoreline environment, For purposes of this paragraph, "substantially improved" does not include work may be done in any period of twelve consecutive months on ordinary maintenance and repairs,~~

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or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50% of the current replacement value.

5. If a change of use is proposed to a use determined to be nonconforming by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP in the underlying zoning district in which it is located or a use approved under a Conditional Use or Unclassified Use Permit process. For purposes of implementing this section, a change of use constitutes a change from one Permitted, Conditional or Unclassified Use category to another such use category as listed within the zoning code.

6. If an existing nonconforming use is located in or associated with an existing structure, the use may be continued, and may be changed to another use if that use would be permitted in the underlying zoning district in which it is located, as long as the structure (including all associated impervious surfaces) complies with section 14.5.B below.

### **B. Nonconforming Structures**

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 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. 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 nonconforming 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 ~~Director~~ may grant an extension of time of up to 2412 months beyond the 24 consecutive months. The City Council ~~Director~~ shall consider special circumstances and economics impacting the sale or lease of said structure.
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.

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6. Single-family structures in single- or multiple family residential zone districts, which have legally nonconforming 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:
  - 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 new construction does not threaten the public health, safety or welfare; and
  - d. The structure otherwise meets the requirements of the SMP.
8. A nonconforming use, within a nonconforming structure, except a use that would be allowed in the underlying zoning district in which it is located, shall not be allowed to expand into any other portion of the nonconforming structure.
9. A nonconforming structure that is that is nonconforming by reason of restrictions on buffers and is allowed to be reconstructed to its original dimensions under paragraphs 2 or 7 in this subsection may be expanded by a factor of 10% so long as the new construction does not further intrude into or adversely impact the required buffer.

### **C. Building Safety**

1. Nothing in this SMP shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming building or part thereof declared to be unsafe by order of any City official charged with protecting the public safety.
2. Alterations or expansion of a nonconforming use which are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed.

### **D. Nonconforming Parking Lots**

1. Nothing contained in this SMP shall be construed to require a change in any aspect of a structure or facility covered thereunder including, without limitation, parking lot layout, loading space requirements and curb-cuts, for any structure or facility which existed on the date of adoption of this SMP.
2. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment less than 100%, the requirements of the SMP shall be complied with for the additional parking area.
3. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment greater than 100%, the requirements of the SMP shall be complied with for the entire parking area.

### **E. Nonconforming Landscape Areas**

1. Adoption of the vegetation protection and landscaping regulations contained in this SMP shall not be construed to require a change in the landscape improvements for any legal landscape area which existed on the date of adoption of this SMP, unless and until the property is redeveloped or alteration of the existing structure beyond the thresholds provided herein.

## Attachment G Planning Commission Action

2. At such time as the property is redeveloped or the existing structure is altered beyond the thresholds provided herein and the associated premises does not comply with the vegetation protection and landscaping requirements of this SMP, a landscape plan which conforms to the requirements of this SMP shall be submitted to the Director for approval.