



MEMORANDUM

TO: Tukwila City Council
FROM: Carol Lumb, Senior Planner
CC: Mayor Haggerton
Rhonda Berry, City Administrator
Bob Sterbank, City Attorney
DATE: August 20, 2009
SUBJECT: Packet #3 - Handouts

Attached you will find the following handouts relative to the August 25, 2009, Council Work Session on the Planning Commission Recommended DRAFT Shoreline Master Program.

- ❖ **Meeting Agenda**
- ❖ **Updated Table of Contents**
- ❖ **Handout on Regulatory Framework for Public Access Requirements**
This handout provides sections of the Shoreline Management Act that reference public access and the requirements and a short discussion of the Public Trust Doctrine.
- ❖ **Nonconforming Use and Structures Comparison Chart**
- ❖ **DRAFT Matrix B** (*tab previously provided in binder*)
A DRAFT of Matrix B is being provided to give you an idea of the format proposed, and to give you a quick reference to any testimony that was received related to public access.

For the discussion on Public Access, please review the comments in the June 30, 2009, Department of Ecology letter, page 3, on public access (found behind the "DOE Comments" tab in your binder).

In the event that there is time remaining after the Public Access discussion, please be prepared to begin talking about the Pre-existing (Nonconforming) Use and Structures Provisions (*Section 14.6 of the ~~strikeout/underline~~ Planning Commission Recommended Draft SMP found on pages 148-151*). A chart that compares the existing Zoning Code provisions for nonconforming uses and structures and what is proposed under the Draft SMP is included in this packet to aid in discussion.

Please let me know if you have any questions or would like to schedule time with staff to go over any questions. I can be reached at 206-431-3661.



AGENDA

Tukwila City Council SMP Work Session

**August 25, 2009
6:00 p.m. – 8:00 p.m.
City Council Chambers**

- I. Agenda Packet** **6:00 – 6:15 p.m.**
- Opening Comments – Mayor Haggerton
 - Requested Materials – DCD Staff
- II. Public Access** **6:15 – 7:00 p.m.**
- Regulatory Framework for Public Access Requirements
 - Section 11, pages 127-135 of ~~strikeout~~/underline Planning Commission Recommended Draft SMP
 - 6-30-09 DOE Letter: comments on public access
 - Questions from Council
- III. Nonconforming Uses and Structures** *(time permitting)* **7:00 – 7:50 p.m.**
- Nonconforming Uses and Structures Comparison Chart
 - Section 14.6, pages 148-151 of ~~strikeout~~/underline Planning Commission Recommended Draft SMP
 - Questions from Council
- IV. Next Meeting:**
- Next Work Session: September 22, 2009, 6:00 – 8:00 p.m.
 - Topic: Nonconforming Uses and Structures *(if not discussed 8/25/09)*

Regulatory Framework for Public Access Requirements

Washington's Shoreline Management Act (SMA) was adopted by the public in a 1972 referendum "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The SMA has three broad policies:

1. **Encourage water-dependent uses:** "uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the states' shorelines..."
2. **Protect shoreline natural resources,** including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life..."
3. **Promote public access:** "the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."

Washington State Shoreline Master Program Guidelines, 173-26 WAC

WAC 173-26-176 General Policy Goals of the Act and Guidelines for Shorelines of the State.

The utilization of shorelines and the waters they encompass for public access and recreation.

RCW 90.58.020:

"[T]he public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.

"Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for...development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state."

RCW 90.58.100:

"(2) The master programs shall include, when appropriate, the following:

- (b) A public access element making provisions for public access to publicly owned areas;
- (c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;..."

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same."

WAC 173-26-181 Special Policy Goals of the Act and Guidelines for Shorelines of State-Wide Significance.

In accordance with RCW 90.58.020, the “department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the state-wide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.”

WAC 173-26-221 General master program provisions.

The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

Public access.

(a) Applicability.

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) Principles.

Local master programs shall:

- (i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.
- (ii) Protect the rights of navigation and space necessary for water-dependent uses.
- (iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.
- (iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) Planning process to address public access.

Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan

elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible off-site or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201(3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians-including disabled persons-bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) Standards.

Shoreline master programs should implement the following standards:

- (i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.
- (ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include 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 environment. 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.
- (iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non-water-dependent uses and for the subdivision of land into more than four parcels. In these cases, **public access should be required except:**
 - (A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221 (4)(c).
 - (B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable.

In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

- (C) For individual single-family residences not part of a development planned for more than four parcels.
- (iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.
- (v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

The complete text of the DOE Shoreline Master Program Guidelines can be found at:

<http://www.ecy.wa.gov/programs/sea/sma/guidelines/index.html>

The Public Trust Doctrine

The Public Trust Doctrine is a legal principle derived from English Common Law. The essence of the doctrine is that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses and that this trust is not invalidated by private ownership of the underlying land. The doctrine limits public and private use of tidelands and other shorelands to protect the public's right to use the waters of the state. (Visit the [MSRC Web site](#) and search for the State Supreme Court case *Caminiti v. Boyle*, 107 Wn. 2d 662, 732 P.2d 989)

The Public Trust Doctrine does not allow the public to trespass over privately owned uplands to access the tidelands. It does, however, protect public use of navigable water bodies below the ordinary high water mark.

Protection of the trust is a duty of the State, and the Shoreline Management Act is one of the primary means by which that duty is carried out. The doctrine requires a careful evaluation of the public interest served by any action proposed. This requirement is fulfilled in major part by the planning and permitting requirements of the Shoreline Management Act. (Court case: [MSRC Web site](#) and search for *Portage Bay v. Shorelines Hearings Bd.*, 92 Wn.2d 1, 593 P.2d 151)

Local governments should consider public trust doctrine concepts when developing comprehensive plans, development regulations and shoreline master programs. There are few "bright lines," however, as the Public Trust Doctrine is common law, not statutory law. The extent of its applicability can only be determined by state court decisions. The document below is a good introduction to the case law in Washington State.

- The [Public Trust Doctrine and Coastal Zone Management in Washington State](#), Johnson, Ralph W., Craighton Goepple, David Jansen and Rachel Pascal, 1991.

NONCONFORMING/PRE-EXISTING USES AND STRUCTURES

Comparison of nonconforming use and structure standards in existing Zoning Code (TMC 18.70) and proposed standards in Planning Commission Recommended Draft SMP:

	TMC 18.70.040 Nonconforming Uses	TMC 18.70.050 Nonconforming Structures	Planning Commission Recommended Draft SMP
Nonconforming Uses: must conform to current standards if nonconforming use ceases:	<u>TMC 18.70.040 3.</u> For 6 consecutive months or 365 days in a three year period		<u>Section 14.6 A.3.</u> 24 consecutive months; property owner may request an extension from City Council
Structures containing a <u>use</u> not permitted by code	<u>TMC 18.70.040 4.</u> May not be structurally altered except to change use to one permitted in zone, except minor alterations may be made.		SMP silent on this issue - default would be the same as TMC 18.70.040 4.
Change of use	<u>TMC 18.70.040 5.</u> Proposed new use must be a permitted use in the underlying zone		<u>Section 14.6 A.4.</u> Proposed use must either be the same use as previous one or be permitted by SMP, which is more restrictive than underlying zoning permitted uses.
Nonconforming Structures: must conform to current standards if vacated or abandoned:		<u>TMC 18.70.050 4.</u> For 24 consecutive months; property owner may request an extension from City Council	<u>Section 14.6 B.4.:</u> 24 consecutive months; property owner may request an extension from City Council upon showing reasonable cause
Structure destroyed more than 50% of replacement cost at time of destruction		<u>TMC 18.70.050 2.</u> Must conform to provisions of zoning code except for single family residences, which may be reconstructed to original dimensions and location on lot.	<u>Section 14.6 B.2.:</u> Any structure, including residential, destroyed by accidental means may be reconstructed to its original dimensions and location on the lot,. Redeveloped property required to conform to code.
Expansion of single family structures that have legally nonconforming building setbacks		<u>TMC 18.70.050 6.</u> Permitted to expand along ground floor only along existing building line(s) so long as the existing distance from the nearest point of the structure to the property line is not reduced and the square footage of new intrusion into the setback does not exceed 50% of the square footage of the current intrusion.	<u>Section 14.6 B. 6.</u> Where the structure has legally pre-existing setbacks from the OHWM per the SMP buffer, 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.

MATRIX B: Council SMP Working Matrix - Comment Summary - DRAFT

Exhibit #	Name	Organization	Address	Subject Property	Issues Raised
Verbal 1 (4/20/09)	Brian Archer		13013 56th Avenue S	Foster Point Resident	Questions include: concern that he was not notified about the meetings on the flood hazard; Channel 21 is not currently broadcasting ; there needs to be more information about flood insurance for this area.
Verbal 2 (4/20/09)	Rick Jerabek	Costco Wholesale Corporation	999 Lake Drive, Issaquah, WA 98027	Costco	Referenced letter dated 4/20/09 signed by Kiersten Jensen; still have variety of concerns - uniform 125 ft. buffer width which is intended to be a natural area. Currently that area is occupied with parking and landscaping on their site - they have concerns about whether Costco could build a new building on the site; proposed landscaping and parking regulations are of concern - proportionality issue - minor projects would trigger requirements for major improvements. Balance needs to be struck here - there is time to appoint another citizens committee since the Council won't be reviewing the SMP for a couple months. See Exhibit 2 for written testimony.
Verbal 3 (4/20/09)	Joseph Desimone	Desimone Trust	5609 SW Manning St, Seattle 98116	Desmine Trust	Concerned about the loss in property value if the SMP is approved - they have \$5 million in property value alone; concerned about nonconforming use and structure section of proposed SMP and limiting the time frame for re-establishing a use - also want the flexibility to have other uses in the building; public access requirements not proportional to the development proposed - See Exhibit 10 for material submitted at hearing.
Verbal 4 (4/20/09)	Dick Hinthorn	Baker Commodities	5795 S. 130th Pl. Tukwila, WA 98168	Baker Commodities	Concerned about increase in the buffer widths - this is a big impact on what they can do on their property; vegetation and landscaping requirements - they have 2200 feet of shoreline that would be affected; they request a continuation of the hearing since Council deliberations will be postponed until sometime in June.
Verbal 5 (4/20/09)	Dixie Archer		13013 56th Avenue S	Foster Point Resident	Another citizen advisory committee should be put together - a lot has happened since the last one met; concern about not receiving a mailed notice about the flood hazard - only heard about the meeting when someone left a notice at their house.
Verbal 6 (7/13/09)	John Ellingham	Bargausen Engineers		Costco	Recommend that property owner be able to request a reduction in buffer width if an engineering study is prepared that shows how much room is needed to set the levee back
Verbal 7 (7/13/09)	Todd Wolsey	Building Owners and Managers of King County		city-wide properties	Economic times are very sobering - legal nonconforming uses an issue - Redmond is taking proactive action to help businesses stay, allow like-kind uses to replace vacating uses; two year time table too short; recognize that City Council must balance environmental concerns with economic issues.
Verbal 8 (7/13/09)	Dick Hinthorn	Baker Commodities		Baker Commodities	Follow up to his 4/20/09 comments; Baker Commodities has been at this location since the 1930's, members of property owner association that has submitted the economic study; 20% of their property will be off-limits for future use; vegetation management a concern; process concerns - lack of work group, lack of cohesion on Planning Commission - two abstentions, one no vote on SMP; ask that concerns of business community be taken into consideration.
Verbal 9 (7/13/09)	Chuck Maduell	Davis, Wright Tremaine	1201 Third Avenue, #2200, Seattle, 98101-3045	Desmine Trust, Innkeepers of American, Yellow Transportation	Member of property owner association, substantial increase in the buffer widths - buffer width not based on need to protect river functions and values, but on needs for resloping bank; justification needs to be based on functions and values; need to be able to obtain a reduction in the buffer width; nonconforming uses/structures - 24 months unreasonable time frame; his clients came to process late because they weren't invited.
Verbal 10 (7/20/09)	Bill Toon	Foster Point resident			Concerned about dredging of river upstream from Kent; Planning Commission doesn't represent the property owners - residents didn't give them authority to act on their behalf - constitutional rights are being impeded.
Verbal 11 (7/20/09)	Joseph Desimone			multiple properties on river	Participated in Gardner Economic analysis; 24 months is unreasonable time period given the current economic climate - should extend time period to 4 years (48 months) and allow PO to request an additional 12 months if property is not leased by then; there will be huge loss of revenue to Tukwila; should allow other uses to replace vacated uses for buildings that fall within buffer; no scientific basis for buffer widths; vegetation and landscaping requirements should be proportional to proposed development; allow two properties to share public access requirements.
1 3/16/09	Jeff Weber	Gordon Derr	2025 First Avenue, Suite 500, Seattle, WA 98121-3140	James Campbell, The Realty Associates, Int. Airport Centers	Letter dated 3/16/09: Opposes increase in shoreline buffers, which in many cases runs through existing buildings; pre-existing uses language is ambiguous - have provided suggested language to clarify & permit a change of use within a pre-existing structure as long as use is permitted in underlying zone;
2 4/20/09	Kiersten Jensen	Costco Wholesale Corporation	999 Lake Drive, Issaquah, WA 98027	Costco	Proposed buffer is too wide; landscaping requirement remains overbroad, requiring removal of invasive species in the buffer area; draft language on preexisting uses will preclude future modification or reasonable expansion by making the costs of such modification or expansions prohibitively expensive.

Exhibit #	Name	Organization	Address	Subject Property	Issues Raised
3 4/20/09	Molly Lawrence	Gordon Derr	2025 First Avenue, Suite 500, Seattle, WA 98121-3140	Walton	Draft SMP does not comply with applicable legal requirements and does not adequately protect the interests of property owners with existing developments; concerned about 125 ft. buffer and nonconforming use and structure provisions may prevent continued use and operation of their buildings if the larger buffer is approved. Regarding the legal basis for the proposed buffers, this is predicated on reconstruction of the levees, which if it occurs will take place at some undetermined future date, is not directly related to future development on Walton's property and violate RCW 82.02.020 and Walton's right to substantive due process. RCW 82.02.020 precludes the City from applying uniform buffers which are not directly related to the impacts of development (Citizens Alliance v. Ron Sims)
4 4/20/09	John Storm	Harnigh Group/NC Machinery	17035 W Valley Hwy, Tukwila 98188	16711 to 17035 W Valley Hy	Buffer can be reduced further from the current 100 feet for non-leveed river bank; believe Bellevue language described in 1/15/09 letter should be used for non-conforming uses and structures; different shoreline designation should be used - High Intensity Environment better describes their property than Urban Conservancy.
5 4/20/09	Jeff Weber	Gordon Derr	2025 First Avenue, Suite 500, Seattle, WA 98121-3140	James Campbell, The Realty Associates, Int. Airport Centers	Letter dated 4/20/09 plus testimony: Changes needed to Section 14.6 regarding preexisting uses and structures; SMP is legally defective - proposed buffers violate property owners' constitutional rights; uniform buffers not reasonably necessary and not needed to achieve no net loss and violate RCW 82.02.020.
6 4/20/09	Chuck Maduell	Davis, Wright Tremaine	1201 Third Ave., #2200, Seattle, WA 98101-3045	Residence Inn by Marriott, (Innkeepers, USA) 16201 West Valley Hwy	Increase in buffer to 100 feet cuts through middle of existing hotel development causing improvements and uses to become nonconforming - SMP does not provide practical relief for this situation. A 50-foot buffer is more practical - not reasonable to require property owners to reconfigure river bank and re-vegetate in order to obtain a buffer reduction; vegetation and landscaping requirements are imposed are not proportional to the impacts of proposed development and violates RCW 82.02.020; nonconforming section should be amended to allow a change of use from one nonconforming use to another for a structure wholly or partially within the shoreline buffer; requirements for public access should be roughly proportional to impacts of development.
7 4/20/09	Chuck Maduell	Davis, Wright Tremaine	1201 Third Ave., #2200, Seattle, WA 98101-3045	Yellow Transportation, 12855 48th Ave. S.	No demonstrated need for increasing buffer width or relief provided - process such as provided in TMC 18.45.100 F for a buffer reduction request should be included in the SMP; vegetation and landscaping requirements are not proportional to the impacts of proposed development and violates RCW 82.02.020; nonconforming section should be amended to allow a change of use from one nonconforming use to another for a structure wholly or partially within the shoreline buffer; requirements for public access should be roughly proportional to impacts of development.
8 4/20/09	Chuck Maduell	Davis, Wright Tremaine	1201 Third Ave., #2200, Seattle, WA 98101-3045	Desmine Trust	Proposed buffer is too wide, causing current uses and improvements on many of the Trust properties to become nonconforming and making it difficult if not impossible to redevelop; height limitation is onerous and not warranted on the urbanized, highly industrialize development along the river; vegetation and landscaping requirements remain overbroad and violate RCW 82.02.020, nonconforming section should be amended to allow a change of use from one nonconforming use to another for a structure wholly or partially within the shoreline buffer - for properties that have leased tenants, current draft should be amended with language proposed earlier; requirements for public access should be roughly proportional to impacts of development.
9 4/20/09	Chuck Maduell	Davis, Wright Tremaine	1201 Third Ave, #2200 Seattle, WA 98101-3045	Innkeepers USA/Residence Inn by Marriott	Submitted aerial photo illustrating approximate location of proposed new buffer on property.
10 4/20/09	Joseph Desimone	Desimone Trust	5609 SW Manning St, Seattle 98116	Desmine Trust	Provided aerial photo of Barnaby's site with proposed buffer showing most of building is located in buffer area; map provided of AirPro site showing most of the site located in the proposed new buffer;
11 4/20/09	Greg Haffner	Curran Law Firm,	P.O. Box 140, Kent, WA 98035-0140	Strander Family properties	Proposed new buffer would include approximately one-third of their property on S. 48th St. - because trail intervenes between their property line and the river they do not own or control the river bank which would need to be resloped in order to obtain a buffer reduction; propose language to address this problem; concern about pre-existing use provisions in Section 14.6 - propose language to address this concern; no economic impact analysis has been prepared which is contrary to the Economic Development section of the City's Comprehensive Plan.
12 4/20/09	Courtney Kaylor	McCullough Hill, PS	701 Fifth Ave., Suite 7220, Seattle, WA 98104	La Pianta	Major concerns are the buffer width, height restrictions in the shoreline jurisdiction and the vegetation and landscaping requirements. Submitted assessed value information for properties in the shoreline totalling over \$39 million dollars; also submitted COE document on the Design and Construction of Levees
13 4/20/09	Lara Fowler	Gordon Thomas Honeywell, LLP	600 University Ave., Suite 2100, Seattle, WA 98101-4185	Baker Commodities	Referenced litigation with City about use, development and redevelopment of Baker Commodities site - settlement reached in 1996; remain concerned about the increased buffer width which may impair their ability to use buildings that will fall within the new buffer and decreases the value of the property; also concerned about the potential for triggering vegetation requirements and that any amount of redevelopment or new construction would require all 2,200 linear feet of its shoreline to be cleared of invasive plants and re-vegetated.
14 4/20/09	Jeff Weber	Gordon Derr	2025 First Avenue, Suite 500, Seattle, WA 98121-3140	Campbell Properties	Conflict between SMP and TMC 16.52 - provided suggested wording changes.

Exhibit #	Name	Organization	Address	Subject Property	Issues Raised
15 (7/13/09)	John Wannamaker	GVA Kidder Mathews	12886 Interurban Ave. S, Tukwila, Wa 98168	Tukwila Shoreline Property owners group	City should have undertaken an economic impact analysis - SMP will have substantial negative impact on City, property values, revenue; two critical areas: 1. legal defects - buffers do not contain sufficient flexibility for reduction - look to Auburn for example of Ecology approved program; 2. impact of SMP on existing uses that are now in buffer and become nonconforming uses - 24 months insufficient time and requirement to replace existing use with same use too restrictive.
16 (7/13/09)	Richard Desimone			number of family properties	Have paid taxes that support Tukwila for many generations - don't mind as we get good roads, fire protection and police service - not in this for the quick dollar, in it for a reasonable rate of return on our investment in a community that we believe has benefited from our involvement, ownership and business development over the years. Sometimes have to make choices between good environmental stewardship and economic growth - problem is SMP doesn't do this. Concern he wants to address is 24 month time limit on re-letting space vacated by a nonconforming use in buffer - 24 month time period unreasonable with no basis in fact - according to Gardner study it can take up to 6 years to replace a tenant; other aspect of concern is the restriction on the type of uses that can replace a vacated use - this is too restrictive - property owners won't be able to find new tenants with the exact same use.
17 (7/13/09)	Jeff Weber	Gordon Derr	2025 First Avenue, Suite 500, Seattle, WA 98121-3140	Campbell Properties, Walton Properties	Have commented extensively previously; both clients have properties behind levees - if there is a problem with the levees, then the whole valley should share the burden not just the property owner behind it; issue of pre-existing uses - have submitted language to address this issue; issue of new FEMA maps, SMP prohibits development in the floodway, which conflicts with City's flood plain ordinance. Gardner Report makes three key points on economic impact of the SMP: 1. proposed buffer will negatively impact the value of the affected real estate; 2. proposed buffer will have direct, negative impact on the City through a reduction in the revenues derived from property taxes; 3. proposed buffer will negatively impact City through potential reduction in local employment and revenues generated for city from sales taxes and other indirect and induced revenue streams.
18 (7/13/09)	Diane Summerhays	Southwest King County Chamber of Commerce	14220 Interurban Avenue S., #134, Tukwila, WA 98168/P.O. Box 58591, Seattle, WA 98138	businesses along shoreline	Members of the Chamber committed to future economic health of the City; concerns about proposed river buffers, restrictions on re-leasing of vacant space within buffer within time period proposed in SMP; potential economic burden of vegetation requirements; recommend City form a formal "stakeholders" group to provide a forum for genuine dialogue with the community to find win/win solution to these issues.
19 (7/13/09)	Shaunta Hyde	The Boeing Company	P.O. box 3707, Seattle, WA 98124-2207	Boeing properties	Provided written testimony during Planning Commission review in 2008 and have met with staff on the SMP, staff has reached out many times since; have also attended the public open houses. Have reviewed the environmental designations, land use regulations and development standards and have no current concerns with the language or understanding of how these standards are to be implemented. Plan is well thought out and all encompassing document that provides a bit of flexibility. Policies support individual corporations' restoration work, habitat improvements and sound environmental stewardship creating a strategic approach along the river and turning basin.
20 (7/13/09)	Lara Fowler	Gordon Thomas Honeywell, LLP	600 University Ave., Suite 2100, Seattle, WA 98101-4185	Baker Commodities	Submitted comments at 4/20/09 hearing; Baker Commodities is among the property owners who participated in the preparation of the Gardner Economic report and supports its conclusions on the potential economic impacts of the SMP on property owners and the City; three key areas of concern: 1. draft SMP must meet existing legal agreements with Baker Commodities; due to shape of their property, proposed increase in buffer widths greatly impacts potential future uses of their property - approximately 20% of the 11.87 acres would be affected; 3. if any activity triggers the vegetation requirements as proposed, there would be potentially disproportionate impact to their property given the approximately 2,200 linear feet of shoreline owned by Baker Commodities.
21 (7/13/09)	Robert Thorpe, Lee Michaelis	R.W. Thorpe & Associates	705 Second Avenue, #710, Seattle, WA 98104	Desimone Trust properties	Took two of the Trust properties, Airpro in Duwamish River industrial area and former Barnaby's restaurant in the TUC to look at impacts of the draft SMP & recommend the following: consider allowing reduction in buffer without resloping of river bank by providing public access as permitted by current King County shoreline regulations or by enhancing the remaining buffer and improving the functions and values of the River Buffer; allow any use permitted in underlying zone to fill vacated buildings rather than limit to use like vacated use; allow the consolidation of nonconforming structures into one structure in event buildings are destroyed by accidental means with provision that rebuilt structure be located in approximately the same location as the furthest building from the OHWM that was destroyed; City hasn't justified need for proposed vegetation and landscaping regulations or proportion of redevelopment and amount of mitigation for that development - amount of vegetation/landscaping should be proportional to the amount of development proposed; requiring all property owners to provide public access exceeds the intent of the SMA - see WAC 173-26-221(4)(c) -
21 continued	" "	" "	" "	" "	Tukwila should complete a comprehensive public access plan to determine need for public access and identify areas that are deficient in providing public access; height restrictions onerous given constraints on property with proposed new buffer widths; vacancy or abandonment period for pre-existing development should be extended to 48 months with option for Council extension of 12 months.

Exhibit #	Name	Organization	Address	Subject Property	Issues Raised
22 (7/13/09)	Jack McCullough	McCullough Hill, PS	701 fifth Avenue, #7220, Seattle, WA 98104	La Pianta	Provided six cross sections prepared by Goldsmith Land Development Services showing existing and proposed levee conditions in vicinity of Tukwila South in comparison to City's current and proposed SMP regulations; La Pianta provided comments at the April 20, 2009 public hearing; issue of trail width on top of levee. How will the "no man's land" between the outward toe of the levee and the landward end of the buffer be treated? Suggested that the buffer end at the landward toe of the levee if it meets the COE approved profile. Is ok with 18' trail for new levee only, no widening on existing levee. There are no views to protect so the height language serves no purpose, only constrains development. Will propose language by the end of the month.
23 (7/20/09)	Don Scanlon		13410 40th Ave. S. Tukwila, WA 98168	city-wide properties	Has read the posted comments on the draft SMP - there is a larger picture here - Tukwila is part of a larger group of jurisdictions working to restore salmon habitat through the WRIA 9 process - river needs to be wider to allow shallow water habitat the young salmon need. Tukwila should develop a SMP that accommodates the restoration process and not have a plan forced on the City.
24 (7/20/09)	Jeff Weber	Gordon Derr	2025 First Avenue, Suite 500, Seattle, WA 98121-3140	Campbell Property, Walton CWWA Tukwila LLC	City Attorney's comments at 7/7/09 work session on preferred levee profile required by NMFS Biological Opinion incorrect and that FEMA would not certify levees unless sufficient vegetation is planted, which can only be accomplished through incorporation of a mid-slope bench is incorrect as well - review of BiOp does not support these contentions. The Reasonable and Prudent Alternative #5 regarding levee vegetation does not foreclose the possibility of satisfactory alternative to the City's preferred levee profile. Submitted aerial photo of Walton property, 9/22/08 NOAA letter to FEMA and Biological Opinion, 5/14/09 NMFS letter to FEMA, 4/24/09 letter from FEMA to NMFS, existing FIRM for Campbell property, Plate LG-4, Draft Flood Boundary Work Map prepared by Northwest Hydraulic Consultants 3/18/08.
25 (7/20/09)	Louie Sanft		6120 52nd Ave. S., Seattle, WA 98118	Al and Ruth Sanft and Louie Sanft properties	Submitted a copy of his 11/3/08 comments on SMP to Mayor and Council members. DCD is attempting to pass an updated SMP quickly without any input from residents, businesses, property owners or other constituents residing in Tukwila. Major concerns: draft SMP doesn't take into account the effect of the SMP on residents and businesses within the shoreline area including the economic impact; the community is being excluded from helping design the SMP. Community members have not had enough time to review the SMP and determine full impact it may have on them. Requests PC to slow down process and include the community in the planning, design and implementation of a new SMP. Attached copy of nine issues identified with the SMP: SMP treats all properties the same; increased setback is too much; nonconforming properties that currently conform to regulations; lack of public participation in drafting SMP; landscape requirements; public access requirements; economic impact of SMP; compensation for property owners; legal cost of defending City against legal challenges that will be filed against SMP.
CM Robertson (7/6 & 7/13/09)					Section 7.2: last bullet on page 50 and bullet at top of page 51 need language added to reflect the importance of the Transition Zone (TZ).
CM Robertson (7/6 & 7/13/09)					Table 3, page 54, under "Modification", update to use "City Profile" where appropriate, revise terminology related to maximum slope (should be "not to be steeper than") and "adverse impacts to river" - this should be broader to include shoreline functions, not just river.
CM Robertson (7/6 & 7/13/09)					Section 7.5 A., page 57: this entire section needs to be re-written as a definition of the City Profile; need to add a reference to the human safety aspects of the buffers - no mention of this issue; last paragraph, next to last sentence rather than refer to natural slopes, should characterize them as "less steep".
CM Robertson (7/6 & 7/13/09)					Section 7.5 A, page 58, first paragraph, needs to be expanded to include the new FEMA standards and information.
CM Robertson (7/6 & 7/13/09)					Section 7.5 B., page 60: include information about the cost of repairs to the levees over the years.
CM Robertson (7/6 & 7/13/09)					Section 7.5 B, page 61: reference to Appendix D - net Loss Analysis where is this? Needs to be included in the document
CM Robertson (7/6 & 7/13/09)					Section 7.6 C., page 64, last paragraph on the page: are we saying that outside of 50' the slope is stable? Suggest adding "or greater" at the end of the last sentence.
CM Robertson (7/6 & 7/13/09)					Section 7.6 B, page X: sentence that says "The buffer width is the maximum needed to reconfigure the river bank to achieve an overall slope of 2.5:1" - should the sentence use the word "minimum" instead of "maximum?"
CM Robertson					Section 7.7 C., page 67: last paragraph, which is struck through - the second, third and fourth sentences should be added back into the text: "During high flow events, the water surface can be as much as 16 feet above ordinary high water. At locations further down river, the water surface elevation difference is much less pronounced due to the wider channel width and proximity to Puget Sound. For example at the Tukwila International Blvd. bridge, this difference is approximately four feet."

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CM Robertson (7/6 & 7/13/09)					Figure 4, page 68 should show a mid-slope bench as this illustration is of the leveed portion of the river. Paragraph above this figure doesn't mention vegetation requirements & maybe it should.
CM Robertson (7/6 & 7/13/09)					Section 7.8 A, page 68, last sentence in first paragraph: suggest specifying what the minimum protective buffer will be. Also there should be a discussion about water dependent uses in this section.
CM Robertson (7/6 & 7/13/09)					Section 7.8 A., page 69, paragraph at top of page, when describing the Transition Zone, should use the word "critically" instead of particularly (third line) and extremely (sixth line).
CM Robertson (7/6 & 7/13/09)					Section 7.8 B, page 69, need to add another bullet to establish a different definition for no net loss in the Transition Zone
CM Robertson (7/6 & 7/13/09)					Secton 7. 8, page 70, Figure 5 should show a bench.
CM Robertson (7/6 & 7/13/09)					Restoration Plan comments: page 13, add bullet to identify Transition Zone as high priority for restoration sites.
CM Linder (7/13/09)					Have any other cities had their SMP approved or preapproved? If so, do these jurisdictions have a 2.5:1 ratio? If they don't what slope ratio do they have and why?
CM Linder (7/13/09)					What are the implications if the City does not participate in the flood insurance program for property owners?
CM Linder (7/7/09)					Requested a memo summarizing the three themes identified by Public Works Director Morrow from the public testimony on the buffer widths and levees.
CM Linder (7/7/09)					Please provide a chronology of public comments and/or opportunities for input on the SMP.
CM Linder (7/7/09)					Please provide a memo summarizing the comments from City Attorney Bob Sterbank
CM Robertson (7/6 & 7/13/09)					What is the relationship between the policies in Restoration Plan on page 19 and those in the draft SMP?
CM Quinn (7/13/09)					Looking for incentives to achieve SMP goals: what about a transfer of development rights program, or property tax exemption or using floor area ratio?
CM Griffin (7/15/09)					What happens if the City does not submit an adopted SMP by the deadline? Are there financial penalties?
CM Linder (7/14/09)					Please provide a decision tree that identifies how the biological opinion impacted FEMA and the COE in their respective areas (flood insurance program and levees).
CM Linder (7/13/09)					Questions from 7/13/09 public hearing: 1. why can't we use the language Jeff Weber has provided? 2. SMP inconsistent with TMC 16.52; 3. Why can't we use the approach suggested by Costco on levee layback? 4. Economic study - response? 5. Appoint another stakeholder group? 6. What happens if we opt not to protect the floodway? 7. Was the buffer width created to accommodate the need for 2.5:1 slope?
Council request (7/14/09)					Need information on the following for the buffer discussion: 1. criteria for the 50, 100, and 125 foot buffers; 2. COE standard for levees; 3. how are other cities along the river approaching buffers and levee profile? 4. Provide engineering study; 5. what if the City reduces the buffer to less than what is proposed? 6. Want profile of Kent's levee cross section (with two benches) and Tukwila's; 7. Need map of Transition Zone location;
CM Hougardy (8/11/09)					Please clarify what vegetation requirements apply to property owners that are protected by levees.
CM Robertson (8/11/09)					Under Section 9.10.B.5, add a statement that in the event on-site tree replacement is not feasible, priority for off-site planting shall be in the Transition Zone.
Dept of Ecology 6/30/09					General Issues: 1. maps - incorporate maps into document; 2. buffers - undefined buffer width is a concern when buffer reductions are approved; 3. archaeological resources - need to include language that requires development to stop if archaeological resources are discovered and to require site inspection or evaluation when archaeological resources are on-site; 4. SMA uses the term "unclassified use" in a different context from Tukwila's zoning code approach - need to resolve the conflicts between the two; 5. where possible, references to other portions of zoning code should be removed from SMP as this will require Ecology to review and approve zoning code sections; 6. a use matrix must be included in the SMP; 7. the SMP needs to include a public access plan - can be a "gap analysis;" 8. Restoration Section needs to be revised to reflect passage of HB 2199; 9. Tukwila rating system.
Dept of Ecology 6/30/09					South annexation agreement must be reviewed against SMP to ensure consistency; 10. SMP must include discussion on new FEMA maps, NMFS Biological Opinion, how shoreline jurisdiction addresses the new floodway areas, and flood hazard reduction; 11. Section 10 of SMP should use Ecology wetland rating system.

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Dept of Ecology 6/30/09				Detailed Comments	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 SMP and reviewed by Ecology
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					Page 65, 1st paragraph, first sentence: is this a reference to all non-residentially zoned areas or areas with nonresidential uses?
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					Page 100, regulation 9.12 A.3: where feasible, deck covering that allows light to pass through shall be used.
Dept of Ecology 6/30/09					Page 100, regulation 9.12 A.6: preservative used to treat piles should also be approved by the Washington Department of Fish and Wildlife.
Dept of Ecology 6/30/09					Page 101, regulation 9.12.B.1: is the no net loss review intended to be site specific?
Dept of Ecology 6/30/09					Page 119, section 10.11B: define Type II permit process within the SMP.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					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 OHWM.
Dept of Ecology 6/30/09					Page 143, Section 14.22.A: the shoreline substantial development permit criteria should be included in the SMP. Adopting approval criteria from the zoning code would require 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.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					Page 150, Sections 14.6.B.7 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.

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Dept of Ecology 6/30/09					Page 150, Sections 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.
Dept of Ecology 6/30/09					Page 150, Section 14.6.B.7: allowing expansion of nonconforming structures. Ecology supports making this a required shoreline conditional use permit for single family residences.
Dept of Ecology 6/30/09					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.
Dept of Ecology 6/30/09					Page 153, Section 16.2: in order to implement this section as proposed, TMC 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.
Dept of Ecology 6/30/09					Page 155, Section 17: the referenced WAC section do not appear to be correct. The appropriate WAC references appear to be in WAC 173-26.

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