



MEMORANDUM

TO: Tukwila City Council
FROM: Carol Lumb, Senior Planner
CC: Mayor Haggerton
Rhonda Berry, City Administrator
Bob Sterbank, City Attorney
DATE: September 16, 2009
SUBJECT: Packet #4 - Handouts

Attached you will find the following handouts relative to the September 22, 2009, Council Work Session on the Planning Commission Recommended DRAFT Shoreline Master Program.

- ❖ **Meeting Agenda**
- ❖ **Updated Table of Contents**
- ❖ **Summaries from August 11 and August 25 Work Sessions**
- ❖ **Handout Comparing Renton, Kent and Auburn's SMP standards for Nonconforming Uses and Structures, *per Council request***
- ❖ **Copy of WAC 173-27-080, *per Council request***
- ❖ **Draft Criteria for Nonconforming Use and Structure Conditional Use Permit *per Council request***
- ❖ **New Binder Tabs for September and October Work Sessions**

We will be continuing the discussion on nonconforming uses and structures on September 22, 2009. Please see the materials provided for the August 25, 2009 meeting. In addition there are two new items being provided for the discussion as noted above. The Pre-existing (Nonconforming) Use and Structures provisions of the Planning Commission Recommended Draft SMP are found in Section 14.6 of the strikeout/underline Planning Commission Recommended Draft SMP on pages 148-151.

David Radabaugh, shoreline planner and the City's project manager with the Department of Ecology is unable to attend the meeting to discuss the June 30, 2009, letter providing comments on the Planning Commission Recommended Draft SMP due to a medical emergency. DCD staff met with Mr. Radabaugh on August 14, 2009, to go over this letter to better understand some of the issues that are raised. ***Staff can brief the Council on the results of this meeting – if Councilmembers can identify any issues or questions they have on the June 30, 2009 letter, we can let Mr. Radabaugh know as he hopes to be able to attend the October 6, 2009 Work Session.***

Of the issues identified by staff for discussion at a work session, the only one that remains is to discuss the economic analysis prepared by Matthew Gardner and the City's response. The legal ramifications of the economic analysis will be discussed at an Executive Session with the Council

tentatively scheduled for the October 5, 2009, Council meeting. **We would like direction from the Council on whether you want the consultant who is preparing the City's response to the Gardner study, Terry Moore of ECONorthwest, to attend a work session to discuss his findings.** If so, Mr. Moore would be able to attend the work session on October 27, 2009.

For the Work Session on October 6, 2009, staff proposes beginning the discussion on staff responses to comments received on the Planning Commission Recommended Draft SMP reflected in Matrix B. **Staff will not have completed work on Matrix B, so we need direction from the Council on whether you prefer to wait to discuss Matrix B until all staff responses are available. We will discuss this at the end of the work session on September 22, 2009.**

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

September 22, 2009
6:00 p.m. – 8:00 p.m.
City Council Chambers

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- I. Agenda Packet** **6:00 – 6:15 p.m.**
- Opening Comments – Mayor Haggerton
 - Requested Materials – DCD Staff
- II. Nonconforming Uses and Structures** **6:15 – 7:00 p.m.**
- Continue discussion on Nonconforming Uses and Structures
 - Comparison Chart (from 8/25/09 meeting)
 - Other Jurisdictions Approach (new handout)
 - Section 14.6, pages 148-151 of strikeout/underline Planning Commission Recommended Draft SMP
 - Questions from Council
- III. Department of Ecology Letter** **7:00 – 7:50 p.m.**
- DCD staff
 - 6-30-09 Letter (**DOE Comments** tab) Section 11, pages 127-135 of strikeout/underline Planning Commission Recommended Draft SMP
 - Questions from Council
- IV. Next Meeting:**
- Next Work Session: October 6, 2009, 6:00 – 8:00 p.m.
 - Topic: Draft Matrix B

ITEMS NEEDING COUNCIL DIRECTION (*see Packet #4 – Handouts Memo for Clarification*):

1. Identify any issues or questions regarding the June 30, 2009, DOE letter to be passed onto Mr. Radabaugh.
2. Determine if the consultant who is preparing the City's response to the Gardner study, Terry Moore of ECONorthwest, should attend a work session to discuss his findings.
3. Determine whether Council prefers to wait to discuss Matrix B until all staff responses are available.

TABLE OF CONTENTS

Letter from Mayor Haggerton, dated July 23, 2009

TAB: Draft SMP

Strike-Out/Underlined Version of the Planning Commission Recommended DRAFT Shoreline Master Program

TAB: Matrix B

DRAFT Council SMP Working Matrix - Comment Summary

TAB: Matrix A

Public Comments from STAFF Draft of SMP

TAB: DOE Comments

Letter from Department of Ecology, dated June 30, 2009, regarding DOE comments on the Planning Commission Recommended DRAFT Shoreline Master Program

TAB: BUFFERS

Buffer related information, including:

1. Memo from Jim Morrow and Jack Pace, dated September 9, 2008
2. Memo from Carol Lumb, dated October 10, 2008
3. Memo from Jim Morrow, dated January 26, 2009
4. Memo from Jim Morrow, dated May 8, 2008
5. King County Flood Management Plan, Sections 5.9.9 and 5.9.10
6. Memo from Jim Morrow, dated July 13, 2009
7. Memo from Jim Morrow, dated July 14, 2009
8. Shoreline Buffer Determination – Planning Commission excerpt from February 5, 2009
9. Levee Profiles

TAB: October 27, 2009 – Work Session

Information not yet distributed.

TAB: October 6, 2009 – Work Session

Information not yet distributed.

TAB: September 22, 2009 – Work Session

Meeting Agenda

MEMO - Packet #4 Handouts, dated September 16, 2009

- *Handout Comparing Surrounding Cities SMP Standards for Nonconforming Uses and Structures*
- *Copy of WAC 173-27-080*
- *DRAFT Criteria for Nonconforming Use and Structure Conditional Uses Permit*

TAB: August 25, 2009 – Work Session

Meeting Agenda

Work Session Summary

MEMO - Packet #3 Handouts, dated August 20, 2009

- *Regulatory Framework for Public Access Requirements*
- *Nonconforming/Pre-existing Uses and Structures Chart*

TAB: August 11, 2009 – Work Session

Meeting Agenda

Work Session Summary

MEMO - Packet #2 Handouts, dated August 6, 2009

- *Memo – Sandra Whiting, Vegetation Protection and Landscaping*

TAB: July 28, 2009 – Work Session

Meeting Agenda

Work Session Summary

MEMO - Packet #1 Handouts, dated July 23, 2009

TAB: July 14, 2009 – Work Session

Meeting Agenda

Work Session Summary

TAB: July 7, 2009 – Work Session

Meeting Agenda

Work Session Summary

TAB: MISC.

- Duwamish River Transition Map *(distributed for July 28 Work Session)*
- 2009 FEMA Letters – May 22, May 12 and April 24 *(distributed for August 11 Work Session)*
- Memo – Jim Morrow, Flood Insurance Program *(distributed for August 11 Work Session)*
- Chronology of Public Comment/Input Process *(distributed for August 11 Work Session)*



Shoreline Master Program Work Session No. 4

Location: City Hall Council Chambers
Date: August 11, 2009
Begin Time: 6:09 p.m.
End Time: 7:59 p.m.

PRESENT

Elected Officials: Jim Haggerton, Mayor; Joan Hernandez, Council President; Councilmembers: Dennis Robertson, Verna Griffin, Kathy Hougardy and De'Sean Quinn

Staff: Jack Pace, Community Development Director; Nora Gierloff, Community Development Deputy Director; Carol Lumb, Senior Planner; Sandra Whiting, Urban Environmentalist; Rhonda Berry, City Administrator; and Kimberly Matej, Legislative Analyst

The work session consisted of presentations and discussions regarding the Council review of the Shoreline Master Program (SMP). The Shoreline Master Program will regulate the area 200 feet from the ordinary high water mark through the City and potential annexation areas. The Work Session focused on Vegetation Protection and Landscaping.

As a result of the Work Session, staff will review the following items further:

- Issues involving proportionality.
- Language clarifying what applies to levee versus non-levee areas.
- Targeting the Transition Zone as a priority area for transferring required vegetation plantings.

Councilmembers identified the need for additional Work Sessions to continue review of the SMP. The following additional sessions will be scheduled:

- Tuesday, September 22 – 6:00 p.m. to 8:00 p.m. – Non-Conforming Uses & Structures
- Tuesday, October 6 – 6:00 p.m. to 8:00 p.m. – Economic Impact and DOE Letter
- Tuesday, October 27 – 3:00 p.m. to 7:00 p.m. – Matrix B

The next Work Session scheduled for Tuesday, August 25, 2009, will focus on Public Access (prepare to begin discussion of Non-Conforming Use and Structures if time).

Minutes by KAM.

Hand-Outs Distributed Outside of Meeting:

Memo dated August 6, 2009 (included Meeting Agenda)



Shoreline Master Program Work Session No. 5

Location: City Hall Council Chambers
Date: August 25, 2009
Begin Time: 6:08 p.m.
End Time: 8:02 p.m.

PRESENT

Elected Officials: Jim Haggerton, Mayor; Joan Hernandez, Council President; Councilmembers: Dennis Robertson, Verna Griffin, Kathy Hougardy and De'Sean Quinn

Staff: Jack Pace, Community Development Director; Nora Gierloff, Community Development Deputy Director; Carol Lumb, Senior Planner; Rhonda Berry, City Administrator; and Kimberly Matej, Legislative Analyst

The work session consisted of presentations and discussions regarding the Council review of the Shoreline Master Program (SMP). The Shoreline Master Program will regulate the area 200 feet from the ordinary high water mark through the City and potential annexation areas. The Work Session focused on Public Access and Nonconforming Uses and Structures.

As a result of the Work Session, the items below will be forthcoming to Council:

- A copy of Carol's notes regarding Non-Conforming Uses and Structures from other jurisdictions.
- A copy of the Washington Administrative Code relative to Non-Conforming Uses and Structures.
- Develop DRAFT Shoreline Conditional Use criteria.

The next Work Session scheduled for Tuesday, September 22, 2009, will continue to focus on Nonconforming (Pre-Existing) Use and Structures.

A handwritten signature in black ink, appearing to be "KAM", is written over a horizontal line.

Minutes by KAM.

Hand-Outs Distributed Outside of Meeting:

Memo dated August 20, 2009 (included Meeting Agenda)

COMPARISON HANDOUT

NONCONFORMING USES AND STRUCTURES

How other cities are addressing the issue of nonconforming uses and structures:

Renton: SMP primarily defers to Renton's municipal code – generally nonconforming structures, if vacant or left abandoned for more than 2 years must be brought into conformance; nonconforming structures may be altered if the aggregate cost does not exceed 50% of the value of the structure and shall not result in an increase in the nonconformity.

For nonconforming uses, the use must conform if it is abandoned or if the intent of property owner to discontinue use is apparent and discontinued for a period of one year; changes to a different nonconforming use – to qualify as a continuation of an existing nonconforming use, the replacement nonconforming use shall reflect the nature and purpose of the preexisting nonconforming use and be considered to be the same or related use classification.

The Draft Renton SMP allows minor and moderate alterations or renovations to lawfully established buildings and/or structures and ties approval to partial compliance with Vegetation Management provisions of the SMP provided the proposed alteration or expansion results in no net loss of ecological function.

- A minor alteration is an expansion of floor area by up to 500 sq. ft. or by up to 10% whichever is less – expansion shall not extend further waterward; expansion of impervious surface by up to 1,000 sq. ft. or by up to 10% whichever is less. Partial compliance with the SMP performance standards is required including at least 50% of the area between an existing building and the water's edge or at least 15 feet must comply with the Vegetation Management provisions of the SMP.
- Moderate alterations or renovations are defined as expansion of floor area by 500 sq. ft. or more or by more than 10 % but not more than 25% whichever is less. Moderate alterations require 80% of the area between the building and the water's edge or at least 15 feet to be vegetated with native plants.

Kent: defers to WAC 173-27-080- See attached for these provisions, summarized below:
Nonconforming Structures – if a legally established structure and used for conforming use, but is nonconforming regarding setbacks, buffers, yards, area, bulk, height or density, the structure may be maintained and repaired and may be enlarged or expanded provided the enlargement doesn't increase the extent of nonconformity by further encroaching on or into areas where construction or use would not be allowed.

Nonconforming uses – shall not be enlarged or expanded except that nonconforming single family residences that are located landward of OHWM may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

Auburn: Structures and Uses: Uses the provisions from WAC 173-27-080 – see above under City of Kent.

Change in nonconforming use: A structure being used or that has been used for a nonconforming use may be used for a different nonconforming use on the approval of a Shoreline CUP. The criteria for approval of the CUP are as follows (from WAC 173-27-080 (6)):

- a. No reasonable alternative conforming use is practical;
- b. Proposed use will be at least as consistent with policies & provisions of SMP and as compatible with uses in the area as the preexisting use; and
- c. Meets WAC 173-27-160 Conditional Use Permit review criteria;
- d. Conditions may be established as necessary to assure compliance with previous findings, the requirements of the SMP and to assure the use will not become a nuisance or hazard.

Nonconforming use and development standards.

When nonconforming use and development standards do not exist in the applicable master program, the following definitions and standards shall apply:

(1) "Nonconforming use or development" means a shoreline use or development which was lawfully constructed or established prior to the effective date of the act or the applicable master program, or amendments thereto, but which does not conform to present regulations or standards of the program.

(2) Structures that were legally established and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.

(3) Uses and developments that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC [173-27-040](#) (2)(g) upon approval of a conditional use permit.

(4) A use which is listed as a conditional use but which existed prior to adoption of the master program or any relevant amendment and for which a conditional use permit has not been obtained shall be considered a nonconforming use. A use which is listed as a conditional use but which existed prior to the applicability of the master program to the site and for which a conditional use permit has not been obtained shall be considered a nonconforming use.

(5) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

(6) A structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(a) No reasonable alternative conforming use is practical; and

(b) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

(7) A nonconforming structure which is moved any distance must be brought into conformance with the applicable master program and the act.

(8) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided

that application is made for the permits necessary to restore the development within six months of the date the damage occurred, all permits are obtained and the restoration is completed within two years of permit issuance.

(9) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming. A use authorized pursuant to subsection (6) of this section shall be considered a conforming use for purposes of this section.

(10) An undeveloped lot, tract, parcel, site, or division of land located landward of the ordinary high water mark which was established in accordance with local and state subdivision requirements prior to the effective date of the act or the applicable master program but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

[Statutory Authority: RCW [90.58.140](#)(3) and [90.58.200](#). 96-20-075 (Order 95-17), § 173-27-080, filed 9/30/96, effective 10/31/96.]

Draft Criteria for Nonconforming Use and Structure Time Extension

Note: The clean version of the Planning Commission Recommended Draft SMP is being used rather than the strikeout/underline version in order to see more easily the proposed draft language requested by the City Council.

14.6 Pre-Existing Development

A. Pre-existing Uses

Any preexisting lawful use of land that would not be allowed under the terms of this SMP may be continued as an allowed, legal pre-existing 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 pre-existing 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 unless TMC 18.66.120 applies;
2. No pre-existing 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 pre-existing use ceases for any reason for a period of more than 24 consecutive months, 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 beyond the 24 consecutive months. The City Council shall consider special circumstances and economic effects in re-establishing the pre-existing use.
4. If a change of use is proposed to a use determined to be pre-existing by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP 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.
5. A structure that is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a Shoreline Conditional Use permit. In addition to the conditional use criteria in Section 14.3, before approving a conditional use for a change in non-conforming use, the following findings must be made:
 - a. No reasonable alternative conforming use is practical;
 - b. 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 preexisting use;
 - 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 structure(s) associated with the non-conforming use shall not be expanded in a manner that increases the extent of the nonconformity;
 - e. The change in use will not create adverse impacts to shoreline ecological functions and/or processes;
 - f. 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; and
 - g. The use complies with the conditional use permit criteria of this Program.

The preference is to reduce exterior uses in the buffer to the maximum extent possible.

B. Pre-existing 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 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 pre-existing 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 pre-existing 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 a 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. The City Council shall consider special circumstances and economic 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 pre-existing uses section of this chapter.
6. Single-family structures in single- or multiple family residential zone districts, which have legally pre-existing 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.

9. A pre-existing-use, within a pre-existing structure, shall not be allowed to expand into any other portion of the structure.

C. Requests for Time Extension – Nonconforming Uses and Structures

A property owner may request, prior to the end of the 24 consecutive months, an extension of time beyond the 24 consecutive months. Such a request shall be considered as a conditional use permit and may be approved only when:

1. For a nonconforming use, a finding is made that no reasonable alternative conforming use is practical;
2. For a nonconforming structure, special economic circumstances prevent the lease or sale of said structure within 24 months; and
3. The applicant restores and/or enhances the shoreline buffer on the property to offset the impact of the continuation of the pre-existing use. For nonconforming uses, 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 for which a time extension is being requested. 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 nonconforming structures, for each six month extension of time requested, 15% of the available buffer must be restored/enhanced..

Conditions may be attached to the permit that are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

D. Building Safety

1. Nothing in this SMP shall be deemed to prevent the strengthening or restoring to a safe condition of any pre-existing 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 pre-existing 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.

E. Pre-existing 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.

F. Pre-existing 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.
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.