

July 14, 2014

## CITY COUNCIL STUDY SESSION ITEM

### SUBJECT

Shoreline Master Program Update Study Session 8 – Development of Council SMP Package for Public Hearing.

### STAFF CONTACT

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### FISCAL IMPACT

There is no new fiscal impact anticipated from completion of this process. This work is necessary for completion of the Shoreline Master Program Update that is a component of the Council-endorsed code amendment work program.

### POLICY ISSUES

Should the City Council prepare an SMP Update Package for Public Hearing at the August 4 Regular Session that includes revisions to the Planning Commission Recommended SMP Update Package?

### DIRECTION NEEDED FROM COUNCIL

Action  
 Discussion  
 Information

The City Council has completed its review of the Planning Commission-recommended Shoreline Master Program (SMP) Update. In-depth review was conducted on nine topics identified by the Planning Commission as most important to the development of its recommendation, and also included issues identified as important by the City Council for discussion.

Following each in-depth review, the Council requested additional information from staff in order to prepare a draft package for public hearing. The additional information requested by the Council is provided with this packet and will form the basis for development of the Council's SMP Update Public Hearing Package.

### BACKGROUND/ANALYSIS

During its first meeting on the SMP topic, the City Council endorsed an SMP Update Completion Process for use in finalizing the Planning Commission work for submittal to the Department of Ecology for review and approval. The progress completion of the City Council review of the SMP Update is depicted below:

✓ May 12	Public Access and Park Development Determination of Ordinary High Water Mark Nonconforming Residential Development
✓ May 27	Setbacks/Buffers Vegetation Conservation (review not completed) Critical Areas (review not completed)
✓ June 9	Vegetation Conservation Critical Areas including floodplains (review not completed)
✓ June 23	Critical Areas including floodplains Docks Shoreline Stabilization
July 14	Development of Council SMP Public Hearing Package

During the Study Session scheduled for July 14, staff will present the additional information requested by the Council during the course of its in-depth review. This additional information will assist the Council in identifying revisions to the Planning Commission Recommendation that they wish to be considered during the Public Hearing and evaluated as part of the review required under the State Environmental Policy Act.

1. Public Access. Council requested staff to describe a variation that would require public access to be provided as a component of new or expanded private recreation uses (such as yacht clubs, marinas and community clubs). This variation would build on the Planning Commission-recommended requirement to provide public access to public uses (including parks, and transportation and utility infrastructure). A shoreline park map was also requested to facilitate discussion regarding this topic. The Public Access information requested by the Council is presented in Attachment A.
2. Park Development. Council requested staff to describe a variation on the Planning Commission recommendation that would permit all beach parks to be developed through an administrative permit approval process when a Master Plan had been previously approved by the City Council. The Park Development information requested by the Council is presented in Attachment B. A comparison between the Shoreline Conditional Use Permit process, General Conditional Use Permit process and Administrative Shoreline Permit approval process will be included in the slide presentation prepared for the July 14 Study Session.

3. Determination of Ordinary High Water Mark. Council expressed general support for the measurement of setbacks from a fixed elevation, with the clarification that the fixed elevations would not be used for the purpose of establishing shoreline jurisdiction or determining the location of ordinary high water mark for the purpose of properly locating a new dock or bulkhead. A description of the version necessary to achieve the Council-stated objectives for the Determination of Ordinary High Water Mark is presented Attachment C.
4. Residential Nonconformities. Council requested staff to provide a comparison between the nonconforming provisions recommended by the Planning Commission for structures in shoreline jurisdiction versus the nonconforming structure provisions that apply in critical areas and citywide. This Council-requested comparison information on Residential Nonconformities is presented in Attachment D.
5. Setbacks and Buffers. Council requested that staff summarize two new hybrid versions of the Planning Commission recommendation that would include:
  - a. The string test added to the 50-foot flexible setback in the shoreline residential environment (this option also included the menu option for setback reduction);
  - b. The string test added to the 35-foot fixed setback in the shoreline residential environment.

Council also requested staff to provide comparison information on setbacks and buffers from neighboring jurisdictions with adopted SMPs. The Council-requested information regarding Setbacks and Buffers is presented in Attachment E.

6. Vegetation Conservation. Council requested staff to summarize new hybrid versions of the Planning Commission Tailored Shoreline Greenscape option that achieves the following objectives:
  - a. Mitigation for potential net loss of vegetation;
  - b. Enhancement of user clarity by creating an identifiable activation line (or setback) at 50 feet from OHWM; and
  - c. Mitigation of unintended consequences associated with application of the Tailored Shoreline Greenscape option to property located on the Newport Canals.

Because the setback and vegetation conservation topics are so closely related, the staff combined these topics and created three variations that could be used to achieve Council's stated objectives. The Council-requested information regarding Setbacks, Buffers, and Vegetation Conservation has been consolidated in Attachment E for ease of discussion and use. Attachment E also includes comparison information on setbacks, buffers and vegetation conservation from neighboring jurisdictions with adopted SMPs.

7. Critical Areas. Council did not request new variations related to the critical areas topic. Attachment F contains the two options considered by the Planning Commission during its work on the SMP Update. The Planning Commission-recommended option would change the way floodplains are regulated in shoreline jurisdiction. The alternative option described in Attachment F would retain the existing floodplain regulations in shoreline jurisdiction as they currently apply citywide. If the alternative option is

selected, modifications to the citywide floodplain provisions would be considered as part of an holistic review and update of the Critical Areas Overlay.

8. Residential Moorage. Council did not request new variations related to the Residential Moorage topic. Attachment G contains the two options considered by the Planning Commission during its work on the SMP Update. The Planning Commission-recommended option adopts minimum standards for docks, and allows for departures with approval from the Washington Department of Fish and Wildlife (WDFW) or the United States Army Corps of Engineers (USACE). The alternative option described in Attachment G would provide minimum standards for dock development and flexibility for departures that are neighborhood compatible or required to provide for reasonable accommodation of a handicap.
9. Shoreline Stabilization. Council did not request new variations related to the Shoreline Stabilization topic. Attachment H contains the two options considered by the Planning Commission during its work on the SMP Update. The Planning Commission-recommended option adopts performance standards for shoreline stabilization and allows for total replacement of existing stabilization measures. The alternative option described in Attachment H includes a threshold that would require compliance with new stabilization standards if more that 50 percent of the linear length of the bulkhead was being replaced.

In addition to the Council-requested information, staff requests the City Council to consider the following additional revisions to the Planning Commission Recommendation to address stakeholder concerns voiced during the SMP in-depth review.

1. Constitution Limitations. During the Council's in-depth review of the SMP, constitutional limitations on the application of government regulation were a topic of conversation. The federal and state constitutions place limitations on the scope of permitting that must be taken into account when code provisions are applied to a specific project proposal. Constitutional limitations on the application of Shoreline Master Programs are specifically acknowledged in the Shoreline Guidelines which note that shoreline planning policies "should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations." WAC 173-26-186(5). The City Council could include a provision in the Bellevue Shoreline Master Program that acknowledges its application must be consistent with state and federal constitutional and other legal limitations.
2. Utility System and Facility Mitigation. As a component of the Cumulative Impact Analysis (CIA), The Watershed Company noted that it was unclear as to whether mitigation would be required for new or expanded utility projects. The CIA went on to state that without such a provision, "unavoidable impacts to shoreline functions could occur." Working Draft CIA, The Watershed Company, 2014; Page 36. Mitigation for development of utility projects was intended to be provided for in the Bellevue SMP (as it is for other public projects such as roads and light rail). The City Council could direct staff to clarify this language to ensure that the mitigation obligation is clear, and the concern raised in the CIA could be proactively addressed.

Staff will be present at the July 14 meeting to walk through the information provided and to support Council's development of an SMP Update Package for public hearing.

## **ALTERNATIVES**

### Content of the SMP Update Package:

1. Identify revisions to the Planning Commission Recommended SMP Update for consideration during a future public hearing.
2. Provide staff with alternative direction regarding the Council's SMP Update Public Hearing Package.

### Public Hearing on the Council's SMP Update Package:

1. Direct staff to provide notice for a public hearing on the Council's SMP Update Public Hearing Package for August 4, 2014.
2. Provide staff with alternative direction.

## **ATTACHMENTS**

- A. Public Access Options for Council Consideration
- B. Park Development Options for Council Consideration
- C. Determination of Ordinary High Water Mark Options for Council Consideration
- D. Residential Nonconformities Comparison Table
- E. Setbacks, Buffers and Vegetation Conservation Options for Council Consideration
- F. Critical Areas Options for Council Consideration
- G. Residential Moorage Options for Council Consideration
- H. Shoreline Stabilization Options for Council Consideration