

December 1, 2014

CITY COUNCIL STUDY SESSION ITEM

SUBJECT

Shoreline Master Program Update Study Session 10 – Response to Council Direction on Drafting of the SMP Update Package for Submittal to Department of Ecology.

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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 (SMP) Update that is a component of the Council-endorsed code amendment work program.

POLICY ISSUES

On September 8, the City Council provided direction for staff to revise the SMP Update Package in preparation for completion of the Cumulative Impact Analysis (CIA) and for submittal to the Department of Ecology for approval. The attachments to this memorandum provide sections of the SMP Update that were edited in response to Council direction received. The City Council is being asked to determine whether the edits address the direction provided on September 8, and to direct staff to finalize the SMP Update for submittal to the Department of Ecology for review and approval.

DIRECTION NEEDED FROM COUNCIL

<u>X</u>	Action
<u>X</u>	Discussion
<u>X</u>	Information

The City Council has completed its review of the Planning Commission recommended Shoreline Master Program Update. In-depth review was conducted by the Council on nine topics considered central to the update process. A public hearing was held on the Planning Commission's recommended option to kick off the Council's in-depth review on May 5, 2014. A second public hearing was held on August 4, 2014, at the culmination of the in-depth review process, to receive public comment on variations to the Planning Commission Recommendation that were being considered by the City Council.

On September 8, Council was provided with a summary of comments received during the August 4 hearing on each of the Council-requested variations. With this information, the Council provided direction for staff to revise the SMP Update package. The purpose of tonight's Study Session is for the City Council to determine whether staff has adequately captured the direction provided on September 8, or whether clarification or alternative direction

is necessary. Once the draft regulatory package is determined to be final, the SMP Update package (including the CIA, final review under the State Environmental Policy Act, and Ecology checklist) will be prepared and transmitted to the Department of Ecology for review and approval.

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. A matrix depicting progress toward completion of the City Council SMP Update review is provided in Attachment A.

Attachments B-H provide sections of the Land Use Code SMP Update package that were revised in response to Council direction received. Revisions are depicted in red-line and strike draft for ease of identification. Attachment I provides the Vegetation Conservation Mitigation Framework that was prepared by The Watershed Company. Attachments J and K provide revisions to the Land Use Code and the Clearing and Grading Code that were needed to conform to the SMP Update revisions. Minutes of the September 8 Study Session, where Council last discussed SMP topic areas and provided direction to staff on desired revisions, are included with this memorandum as Attachment L.

On November 4 and 5, draft revisions to the SMP Update (Attachments B-H) in red-line and strike draft were distributed to the City Council and to stakeholders, together with the Mitigation Framework (Attachment I). The draft revisions and the Mitigation Framework were also posted to the City website on November 12. Revisions made in response to stakeholder input received since the draft release in early November are highlighted in yellow for ease of identification. The majority of the proposed changes are focused on shoreline setbacks and vegetation conservation contained in Attachment F.

Stakeholder Engagement

Many stakeholders have been involved with the SMP Update process since it began. Stakeholder groups have been an important part of the update process and have worked tirelessly to help ensure that the final product meets the Council principles that the SMP be:

- Bellevue Appropriate
- Protective of neighborhood character
- Balanced
- Predictable and flexible.

Draft revisions in response to Council feedback were completed on November 4. These original draft revisions to the SMP Update were provided to Washington Sensible Shorelines Association (WSSA), Save Lake Sammamish (SLS), Newport Shores Homeowner's Association, Meydenbauer Yacht Club, Meydenbauer Bay Neighborhood Association (MBNA), and the City Parks and Utilities Departments. Staff offered opportunities for the stakeholder groups to meet and discuss the draft revisions and to provide feedback. Representatives of WSSA met with staff twice, representatives of the Newport Shores Homeowner's Association and the Parks Department met with staff once, and feedback was provided via email by Meydenbauer Yacht Club and MBNA. No comments were received by staff in response to posting the draft revisions on the City website.

Response to City Council Direction

To help facilitate review of the Council-directed revisions, this memorandum provides a summary of the direction provided on September 8 and describes where in the attachments the responsive edits can be found. Refer to Attachment L for a copy of the Study Session minutes from September 8, 2014.

Council-Directed changes regarding Public Access

Physical access should continue to be required to public uses. *Visual* access should be an added requirement applicable to new and expanding private shoreline recreation uses (such as yacht clubs, marinas and community clubs). No public access should be required to private residential uses. No physical public access should be required to private shoreline recreation uses.

Public Access Revisions. Edits to the SMP Update in response to the Council-directed revisions on Public Access can be found in the following locations:

1. LUC 20.25E.060.I .1 (Attachment E)
2. LUC 20.25E.070.C.3.c.ix (Attachment G)

Stakeholder Feedback on Public Access Provisions. Representatives of the Meydenbauer Yacht Club provided feedback that has been incorporated in LUC 20.25E.060.I (Attachment E), and they have communicated to City staff that their interests have been fully addressed by the edits contained in this packet.

Council-Directed changes regarding Park Development

A Conditional Use Permit (CUP) should be required for beach parks with no Council-Adopted Master Plan. Meydenbauer Bay Park should be regulated the same as other beach parks with Council-Adopted Master Plans, which means that an administrative shoreline permit should be required and the implementation principles should be removed from the SMP Update.

Park Development Revisions. Edits to the SMP Update in response to the Council-directed revisions on Park Development can be found in the following locations:

1. LUC 20.25E.030 (Attachment C)
2. LUC 20.25E.280 (Attachment H)
3. LUC Conformance Amendments - Section 7 (Attachment J)

Stakeholder Feedback on Park Development Provisions. MBNA expressed its continuing concerns “about the types of development and structures that will be proposed for the park.” MBNA is also opposed to “administrative approval of beach

park development without public involvement in the process since the Council adopted plan is vague and subject to change, as is being made clear in Phase 1 of the park development.”

Council-Directed changes regarding Ordinary High Water Mark

Measurement of shoreline jurisdiction should be based on the definition of Ordinary High Water Mark (not a static elevation). Static elevation should be used as a default for measurement of structure setback where a statistically valid lake study has been completed. Site specific OHWM determinations by qualified professionals are available as an off-ramp option. Lake Sammamish elevation should be included in the SMP Update as 31.2 NAVD based on 2004 Lake Study.

Ordinary High Water Mark Revisions. Edits to the SMP Update in response to the Council-directed revisions on OHWM can be found in the following locations:

1. LUC 20.25E.010.C.2 (Attachment B)
2. LUC 20.25E.050.B.2 (Attachment D)
3. LUC 20.25E.065.E.1 (Attachment F)

Stakeholder Feedback on OHWM Provisions. There was no discussion of this change by any of the stakeholders.

Council-Directed changes regarding Shoreline Setbacks and Vegetation Conservation

The shoreline setback should be located at 50 feet with exceptions for existing structure footprints, flexibility to allow shoreline property owners to reduce their setback to a minimum of 25 feet, and allowance for a one-time expansion within 25 feet of OHWM consistent with the Planning Commission recommendation. A shoreline variance is appropriate for further encroachments within 25 feet of OHWM. Impacts should be offset with mitigation that has a nexus and rough proportionality to the impacts created by encroachments into the required setbacks. Vegetation conservation requirements should apply when new development or expansion is proposed within the shoreline setbacks, but landscape development provisions are too complicated and should be eliminated. Council discussion on September 8 focused on the need to identify units of impact that are required to be offset with units of mitigation that have a nexus and rough proportionality.

Setback and Vegetation Conservation Revisions. Edits to the SMP Update in response to the Council-directed revisions on Setbacks and Vegetation Conservation can be found in the following locations:

1. LUC 20.25E.050.A (Attachment D)
2. LUC 20.25E.060.K.5 (Attachment E)
3. LUC 20.25E.065 (Attachment F)
4. LUC 20.25E.280 (Attachment H)
5. BCC 23.76.035 Clearing and Grading Code Amendments (Attachment K)

Description of the Revisions. Revisions to the setback and vegetation conservation provisions applicable to residential development were the most substantive changes made in response to Council direction. Staff worked with The Watershed Company and Richard Settle to come up with an approach that would meet the Council objectives outlined above while ensuring that the required Cumulative Impact Analysis would ultimately conclude that no net loss of shoreline ecological function could be achieved. The approach was built on the foundation provided in the Planning Commission greenscape option which included a 50-foot activation line that triggered the need to provide mitigation when proposed development would impact existing shoreline vegetation. The Watershed Company-proposed Vegetation Conservation Mitigation Framework (included in Attachment I) provided a surgical approach for ensuring that there is a nexus and rough proportionality between proposed impacts and required mitigation. This framework was used by staff and Richard Settle to draft code revisions intended to ensure certainty, flexibility, fairness and stewardship incentives while achieving no net loss.

Details of the setback and vegetation conservation draft provisions are summarized below and describe the outcome that was intended to respond to Council direction. The draft revisions to the SMP Update are designed to achieve no net loss of shoreline ecological functions and other shoreline functions, including the SMA's high priority policy to accommodate single-family residences, and to comply with constitutional limitations on land use and environmental regulations that require "nexus" and "proportionality" between the impacts of a regulated activity and the regulatory requirements imposed on that activity.

The revised draft SMP Update provisions recognize, as do the state Shoreline Guidelines, that the benchmark for measuring loss of shoreline ecological functions is not restored shoreline ecological functions or pre-European settlement pristine ecological functions, but the actual state of existing shoreline ecological functions. The revised draft SMP Update provisions are based on the actual intensely developed existing state of the City's shorelines. No requirements are imposed by the SMP on the owners of presently-developed shorelines, no matter how degraded their ecological function may be. For example, under the draft revisions, the footprint exception to shoreline setbacks allows structures to be rebuilt and enlarged vertically within their existing footprint, no matter what the distance from the OHWM. And, such structures may be maintained and rebuilt under the City's nonconforming shoreline structure regulations.

The revised regulations relating to setbacks recognize the footprint exception and provide incentives to allow development to within 25 feet of OHWM. Most of the revised SMP Update provisions pertain to mitigation options for development that causes loss of ecological functions provided by existing vegetation. These functions are aquatic habitat, terrestrial habitat, and water quality protection. Under the draft mitigation options, vegetation mitigation is required only for development or disturbance that causes loss of shoreline vegetation ecological functions. Required vegetation mitigation is proportionate to impact (loss) of vegetation function. Loss of more ecologically valuable vegetation function requires more mitigation. Loss of less ecologically valuable vegetation function requires less mitigation. The options do not restrict the kinds of vegetation that may be planted to mitigate such losses. Different credit is given for different kinds of vegetation depending on ecological function value. The owner ultimately chooses the level of impact and the range of mitigation required to offset that impact.

The revised regulations contain a new option to mitigate in advance or “bank” vegetation mitigation for potential development in the future. This advance mitigation credit allows owners to plant vegetation anytime and to accumulate mitigation credits in return. The credits grow over the years as the vegetation grows and becomes more ecologically valuable, and can be used to mitigate for impacts proposed in the future. The revised draft SMP Update has another important new feature that rewards good stewardship when vegetation is retained or enhanced.

The revised regulations also make clear that the landowner has broad discretion to eliminate dangerous trees and prune, trim, and relocate plantings to maintain views of the waters and to ensure safety and security. In short, the draft revisions included in Attachment F were designed to protect existing shoreline ecological functions, while recognizing the urbanized condition of the Bellevue shoreline and providing a wide range of choices to meet shoreline requirements.

Stakeholder Feedback on Setbacks and Vegetation Conservation Provisions.

Stakeholder feedback on this section came from WSSA and the Newport Shores Homeowners Association. Two meetings were held with WSSA representatives. During the first meeting, WSSA representatives asked staff to provide an orientation to the proposed revisions and, in return, they provided some early feedback on the draft. During the second meeting, WSSA representatives provided a list of revisions that they requested to be included in the draft revisions before they were transmitted to the City Council for review. Requested clarifications and revisions from WSSA representatives were included in LUC 20.25E.065 to the extent that those revisions were consistent with the Council direction and could be incorporated while maintaining the objective of no net loss. Refer to yellow highlights in Attachment F for changes made to the draft revisions since their release in early November. The Newport Shores Homeowners Association met with staff on one occasion. During the meeting they requested staff to provide an orientation to the proposed revisions, and the board members present concluded that they understood how the revised draft would apply to their residences and their common property and that they had no further comments.

Council-Directed changes regarding Residential Moorage

Moorage walkway width for residential docks should be increased from 4 feet to 5 feet in width.

Residential Moorage Revisions. Edits to the SMP Update in response to the Council-directed revisions on Residential Moorage can be found in the following locations:

1. LUC Chart 20.25E.065.H.4 (Attachment F)

Stakeholder Feedback on Residential Moorage Provisions. There has been no discussion of this change by any of the stakeholders.

Council-Directed changes regarding Constitutional Limitations

Provisions should be included in the SMP Update to acknowledge that application of the SMP regulations must be consistent with state and federal constitutional and other legal limitations.

Constitutional Limitation Revisions. Edits to the SMP Update in response to the Council-directed revisions on Constitutional limitations can be found in the following locations:

1. LUC 20.25E.010. A and C.1 (Attachment B)

Stakeholder Feedback on Residential Moorage Provisions. There has been no discussion of this change by any of the stakeholders.

Council-Directed changes regarding Utility System and Facility Mitigation

Provisions should be included to clarify that mitigation is required for new or expanded utility and transportation projects in the same manner.

City Project Mitigation Revisions. Edits to the SMP Update in response to the Council-directed revisions on City Project Mitigation can be found in the following location:

1. LUC 20.25E.070.D and E (Attachment G)

Stakeholder Feedback on Residential Moorage Provisions. There has been no discussion of this change by any of the stakeholders.

In addition to the revisions detailed above, staff included minor revisions requested by the Department of Ecology after its unsolicited review that were identified for inclusion in the SMP Update by the City Council during the March 10 Study Session. These are all non-substantive in nature and are intended to narrow the scope of outstanding issues raised by Ecology before the draft is submitted for state review. Light Rail Conformance Amendments were also identified for inclusion in the SMP Update by the City Council during the April 28 Study Session. The amendments necessary for the SMP Update to be consistent with the Light Rail Overlay can be found in LUC 20.25E.030 Transportation and Utilities Chart and in LUC 20.25E.070.D.3.g (Attachments C and G).

At the December 1 Study Session, the City Council is being asked to determine whether the revisions respond to the direction provided on September 8, and to direct staff to finalize the SMP Update for submittal to the Department of Ecology for review and approval.

ALTERNATIVES

1. Affirm edits are consistent with revisions directed by Council to be included in the SMP Update prior to submittal for Department of Ecology review and approval.
2. Provide staff with alternative direction regarding necessary revisions to the Council's SMP Update prior to submittal for Department of Ecology review and approval.

ATTACHMENTS

- A. City Council SMP Update Review Schedule
- B. LUC 20.25E.010
- C. LUC 20.25E.030
- D. LUC 20.25E.050
- E. LUC 20.25E.060
- F. LUC 20.25E.065
- G. LUC 20.25E.070
- H. LUC 20.25E.280
- I. Vegetation Conservation: Mitigation Framework (The Watershed Company dated November 19, 2014)
- J. General Land Use Code Conformance Amendments (excerpt of revised section)
- K. Clearing and Grading Code Conformance Amendments
- L. City Council Study Session Minutes from September 8, 2014