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City Council

Consideration of May 28, 2013 Draft of the Shoreline Master Program

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Agenda Item:

Consideration of May 28, 2013 Draft of the Shoreline Master Program

Issue:

Provide staff feedback and direction on the May 28, 2013 Draft of the Shoreline Master Program (Attachment 1) and if appropriate finalize the draft and open the record for written comment.

Committee Recommendation:

None.

City Manager's Recommendation:

Provide feedback and direction to City Staff to finalize the draft Shoreline Master Program prior to public hearing.

Staff Contact:

Keith Stahley, Community Planning and Development Director, 360.753-8227

Presenter(s):

Keith Stahley, Community Planning and Development Director

Background and Analysis:

City Council deliberated on the May 14th, 2013 draft of the Shoreline Master Program on May 14th. At that meeting, Council confirmed that generally the revisions that staff included in the draft were on target and consistent with prior City Council direction. The minutes for this meeting are on included as (Attachment 2). Council and the public may review the meeting in its entirety at on the City's website, olympiawa.gov.

At the May 14th Council meeting Council provided direction to staff to revise paragraph 3.41 18.34.620 - Use and Development Standards Tables D. This section currently reads:

D. Upon demonstration of adequate provisions for protection or creation of the minimum required vegetation conservation area on the same property or offsite as described herein, an applicant may

obtain approval of a development incorporating an increased maximum building height ('VCA bonus') or a reduced minimum principal building setback.

Staff proposes that the section be amended to read:

OMC 18.34.620(D). Upon demonstration of adequate provisions for protection or creation of a vegetation conservation area (VCA) on the same property or offsite as described herein, an applicant may obtain approval of a development including an increased maximum building height ('VCA bonus') as set forth in Table 6.2. At minimum, such VCA must conform to the provisions of OMC 18.34.492 and 18.34.495. If on the development site, such VCA must be at least as wide as described for the site in Table 6.3. If offsite, such VCA must be of at least equal upland area as would otherwise be required onsite and must provide equal or greater environmental benefit; see OMC 18.34.410(l) for guidance.

Note that since Marine Recreation is now covered by Table 6.3 for setbacks, the reference to setback reductions was removed from this paragraph.

Mayor Pro Tem Jones provide staff with a list of issues for consideration in refining the May 14th, 2013 Draft Shoreline Master Program. Staff has responded to Mayor Pro Tem Jones' issues in Attachment 3. Those issues resulting in changes to the May 14th Draft are noted below and are reflected as revisions in the May 28th, 2013 draft. The numbers in parenthesis correspond to the number of the issue included in Mayor Pro Tem Jones' list.

1. Mayor Pro Tem Jones (4): There is needed a definition of "Primary Structure". The term is used frequently.

Staff Response: Staff will add a definition of primary structure to the definition section, such as, "Primary structure meaning the main or principal building on the property. Not an accessory building or structure."

2. Mayor Pro Tem Jones (6): Table 6.1 contains a change in the Waterfront Recreation allowing industrial uses. This appears to be in conflict with the management policies for this environmental designation.

Staff Response: This was an error and is corrected in the May 28th, 2013 draft of the SMP. Industrial uses should be allowed in the Marine Recreation subject to a conditional use permit and not allowed in the Waterfront Recreation shoreline environmental designation.

3. Table 6.3 references reach designations with names like Budd 3A, or 5B but these titles do not show on the environmental designation map. The reader has no orientation to these titles.

Staff Response: We will include reach designations on the final shoreline environmental designation map.

4. Mayor Pro Tem Jones (11): Budd 5C, which is designated Marine Recreation, table 6.3 says that the building setback in this reach may be reduced from 75' to 50' with the provision of a continuous trail on a public easement no less than 12 feet in width. This reach has a good start at getting that trail

in place. It also has great public access and areas that can likely be considered park space.

My recollection is that the Council placed a high priority on a stabilized shoreline in this area through soft engineering. Yet there are greater incentives available through setback reductions for any other of the other identified restoration or improvement actions than for the action the Council was emphasizing.

Current Table 6.3 (Marine Recreation Budd 5C)

See Attachment 3 for current table 6.3.

Staff Response: As noted above in the section of Table 6.3 related to reach Budd 5C setback reductions are provided for public access, parks space, trail, restoration of vegetation, bulkhead removal, and replacement of hardened shoreline with soft structural stabilization. Vegetation restoration could include shoreline softening. The revised portion of Table 6.3 requires shoreline softening in order to achieve any reduction in setbacks. Other measures could be used to meet the full 25 foot setback reduction. Council may wish to consider greater reductions from 75 feet up to 30 feet, for example, in exchange for higher levels of restoration or to encourage the provision of a shoreline trail.

Recommended revisions to Table 6.3 (Marine Recreation Budd 5C)

See Attachment 1 or Attachment 3 for recommended revisions to Table 6.3.

5. Mayor Pro Tem Jones (12): Table 6.3 (as proposed by staff) provides a setback reduction to zero for water oriented uses that differ, depending on environmental designation of the reach.

Marine Recreation at Budd 5C - from 50' down to 0' for water dependent and water related uses.

Waterfront Recreation at Cap 6 - from 30' down to 0' for water dependent uses.

Urban Intensity at Budd 3A - from 30' down to 0' for water oriented uses.

Urban Intensity at Budd 4 - from 50' down to 0' for water oriented uses.

Urban Intensity at Budd 5A - from 50' down to 0' for water oriented uses.

I recall that the Council was interested in providing a zero setback for water dependent uses. Water oriented and water related uses were not provided special treatment.

Staff Response and Other Information: Council discussed setbacks and VCA widths at great length on several occasions and provided some direction regarding reductions in setback and VCA widths for water dependent uses. Given the potential for confusion around this issue and the guidance provided by the Department of Ecology staff felt it was important that Council be informed about the definitions of the three different shoreline use categories before making a final decision about how

to proceed.

Definitions of the Water Dependent, Water Related, Water Enjoyment and Water Oriented Uses from the Washington Administrative Code:

(39) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

(40) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

(41) "Water-oriented use" means a use that is water dependent, water-related, or water-enjoyment, or a combination of such uses.

(43) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

List of uses typically associated with different shoreline use categories from the 2009 TRPC draft SMP for Lacey, Olympia and Tumwater.

Water-dependent uses include, but are not limited to:

- A. Aquaculture,
- B. Boat launch facilities,
- C. Ferry terminals,
- D. Hydroelectric power plants,
- E. Marinas,
- F. Marine construction, dismantling and repair,
- G. Marine and limnological research and education,
- H. Private and public docks for public moorage,
- I. Terminal and transfer facilities for marine commerce and industry,
- J. Water intakes and outfalls,
- K. Log booming, and

L. Tug and barge facilities.

Water-enjoyment uses include but are not limited to:

- A. Aquarium, with direct water intake
- B. Restaurants,
- C. Public golf courses,
- D. Museums,
- E. Shared use paths
- F. Boardwalks, and
- G. Viewing towers.

Water-related uses include, but are not limited to:

- A. Warehousing or storage facilities,
- B. Support services for fish hatcheries,
- C. Seafood processing plants,
- D. Wood products manufacturing,
- E. Log storage,
- F. Watercraft sales, and
- G. Boating supplies.

Department of Ecology guidance from their February 5, 2013 correspondence to Mr. Stamm.

6. 2.24 (A) - a preference for water-dependent commercial use, followed by water related and then water enjoyment commercial uses, is not reflected in Tables 6.1 and 6.2. The City appears to have more accurately reflected preferences as they are presented in the Guidelines; consider using that verbiage instead. In addition, non-water oriented commercial uses can also be considered when providing a significant public benefit such as public access or ecological restoration - WAC 173-26-241 (d), 1st paragraph and (i) & (ii).

Staff looks forward to receiving council direction on how to finalize table 6.3 of the SMP.

During Council's deliberations on May 14, 2013 staff suggested revision to 3.41 18.34.620 - Use and Development Standards Tables paragraph E. 8 to add the following underlined text:

8. Water dependent, Water Related, Water Oriented and Listed uses may encroach the required setback and vegetation conservation area as described in Table 6.3 so long as they provide for mitigation of the encroachment at a ratio determined to offset the impacts of the encroachment and in no case less than a 2 square feet of mitigation for every 1 square foot of encroachment within the required vegetation conservation area and demonstrate no net loss of environmental function. Required mitigation shall meet the vegetation restoration standards noted in 5 above. Reductions to less than a 20 foot setback shall only be allowed where alternative public access has been provided sufficient to mitigate the loss of direct public access to the shoreline and in no case shall public access be less than 12 feet as described in paragraph 4 above. Projects proposing setbacks less than 20 feet shall also meet the shoreline bulkhead removal or hardening replacement requirements of 5 or 6 above for each linear foot of shoreline impacted. Mitigation required may take place on site or off site.

6. Mayor Pro Tem Jones (14): New nonconforming language is generally clunky.

Staff Response: Staff has revised this section and the revised language is included in the May 28, 2013 draft Shoreline Master Program. This section has been simplified, and various redundancies and unnecessary language has been eliminated. The whole section was moved from the zoning code's nonconforming chapter (chapter 18.37) to the shoreline master program - in chapter 18.34 of the Olympia Municipal Code. In addition, the prior version had a 50% threshold about when a structure was damaged fire or natural disaster. However, in internal staff discussions, it was felt that the 50% threshold does not provide significant value within this context. Accordingly, the section (18.34.910 (B)) was revised to allow rebuilding when any portion of a structure is damaged or destroyed by fire or natural disaster.

Council will find new changes to the May 28th, 2013 draft of the SMP are highlighted in single underline while revisions proposed on May 14th use a double underline for new text and single and double strikethrough for text that has been deleted in May 28th or May 14th drafts respectively. Please note that all proposed changes will be shown in bill-format in the attachment, except that staff simply removed all of the nonconforming sections and replaced them with new nonconforming section.

Summary of revisions:

The primary areas of revisions include how existing buildings are treated, building setbacks and heights and incentives for achieving shoreline restoration objectives as well as consideration of further administrative flexibility.

1. General policies and regulations were revised and improved flexibility by encouraging alternative mitigation approaches when appropriate. (2.3 Shoreline Ecological Protection and Mitigation Policies) New sections were added on advance mitigation and fee in-lieu programs. (3.21 18.34.410 - No-Net-Loss and Mitigation)
2. The Urban Intensity (2.11), Port Marine Industrial(2.12) and Marine Recreation Designations (2.9) were specifically identified as designations where "preference should be given for innovative approaches that would enable the concentration of mitigation into larger habitat sites in areas that will provide greater critical area or shoreline function."
3. In general, the policies are revised to highlight the City's willingness to consider incentives, alternative approaches, innovative restorations strategies, and comprehensive and coordinated approaches to mitigation and restoration that might require looking at off-site mitigation to be successful.
4. Water-related & water-dependent industry changed from prohibited to conditional use in Marine Recreation environment (**Table 6.1**).
5. Where equivalent area would be provided, Shoreline Administrator authorized to grant 50% reduction in minimum VCA (buffer) width instead of just 25% reduction. And, maximum percentage of VCA not used for vegetation conservation increased from 25% to 33%. 3.33 18.34.495 - Vegetation Conservation Area Standards

6. **Table 6.2** was revised to remove setback requirements.
7. **Table 6.3** was inserted to include setback and incentive requirements and as noted previously to allow reductions in setbacks for water dependent, water related and water enjoyment uses. A 30 foot vegetation conservation area was proposed in the reaches where greater flexibility is proposed (3A, 4, 5A, 5C and CAP 6).
8. **Section 3.41 18.34.620 - Use and Development Standards Tables** has been amended to add section E that defines required shoreline improvements to achieve setback reductions.
9. Substantial revisions to chapter 18.37 OMC (nonconforming uses) including moving this chapter to **18.34** with the rest of the SMP, also clarifications dealing with the effects of the regulations on existing buildings and uses and elimination of redundant language.

There were also numerous changes responding to the Department of Ecology's comments (a few not made due to citywide substantive implications - such as changing maximum width and length of all piers and docks or size of 'small building' allowed in VCA - these could lead to post-submittal discussion with the Department of Ecology); most changes per the Department of Ecology were editorial clarifications or resolution of inconsistencies between our proposal and specific requirements of the SMA guidelines. Some substantive highlights of changes responsive to the Department of Ecology's recommendations include:

1. Floating homes specifically prohibited citywide; live-aboard vessels may be approved at marinas.
2. Changed so neither recreational use nor maintenance are reasons for filling aquatic areas;
3. Fill for shoreline protection changed from permitted to conditional use.
4. Clarified that SMA jurisdiction extends 200 from any floodways (normally from OHWM)
5. Clarification that OMC 18.32 (critical areas) is to be made part of SMA - and small wetland exemption not applicable if SMA applies.
6. Clarified that trails are a form of transportation facility, but standards for roads and trails differ.
7. Public recreational floats limited to 200 square feet each.

Neighborhood/Community Interests:

See public testimony, written comment and the record generated to date.

Financial Impact:

None.

Options:

1. Provide staff feedback and direction on the May 28, 2013 Draft SMP and open the record to accept written comments until June 25, 2013.
2. Provide staff feedback and direction on the May 28, 2013 Draft SMP and continue deliberations to June 18, 2013 and reschedule the public hearing to a future date.