INFORMATIONAL MEMORANDUM

TO: Community Development and Neighborhood Committee
FROM: Jack Pace, DCD Director
BY: Minnie Dhaliwal, Deputy Director, DCD
CC: Mayor Ekberg
DATE: December 4, 2019
SUBJECT: Critical Areas Code and Shoreline Master Program Update

***Please bring your binders***

ISSUE
The City of Tukwila is required to periodically update its Critical Areas Code, Shoreline Master Program and associated regulations for compliance with changes to the Shoreline Management Act, Department of Ecology guidelines, and legislative rules.

BACKGROUND

I. Critical Areas Code Update
On November 26, 2019, the Committee reviewed the public comments received at the public hearing held on September 23, 2019, and asked staff to incorporate the changes discussed below.

II. Shoreline Master Program Update
On September 3, 2019, the City Council reviewed two draft ordinances: one amending the Shoreline Master Plan and the second one amending the shoreline regulations in the zoning code. The public hearing was held on June 24, 2019. The City Council reviewed the draft ordinances including the public comments on August 26, 2019, and asked staff for additional information on non-conforming structures located in the shoreline jurisdiction.

DISCUSSION

I. Critical Areas Code Update
Based on direction from the Committee the following changes will be included in the draft ordinance:

18.45.80 Wetlands Designations, Ratings and Buffers
F. Variation of standard wetland buffer width

2. Interrupted Buffer: Waiver for interrupted buffer may be allowed by the Director as a Type 2 permit if it complies with the following:
   i) The buffer is interrupted by a paved public or private road; existing or future levee legally constructed adjacent to an off channel habitat; legally constructed buildings; or legally approved parking lots. This waiver does not apply to accessory structures such as sheds and garages.
   ii) The existing legal improvement creates a substantial barrier to the buffer function;
iii) The interrupted buffer does not provide additional protection of the critical area from the proposed development; and

iv) The interrupted buffer does not provide significant hydrological, water quality and wildlife functions. This waiver does not apply if large trees or other significant native vegetation exists.

v) Enhancement of remaining buffer is required if feasible.

18.45.100 Watercourse Designations, Ratings and Buffers
E. Variation of standard watercourse buffer width

2. Interrupted Buffer: Waiver for interrupted buffer may be allowed by the Director as a Type 2 permit if it complies with the following:

i) The buffer is interrupted by a paved public or private road; legally constructed buildings; or legally-approved parking lots. This waiver does not apply to accessory structures such as sheds and garages.

ij) The existing legal improvement creates a substantial barrier to the buffer function;

iii) The interrupted buffer does not provide additional protection of the critical area from the proposed development; and

iv) The interrupted buffer does not provide significant hydrological, water quality and wildlife functions. This waiver does not apply if large trees or other significant native vegetation exists.

v) Enhancement of remaining buffer is required if feasible.

18.45.160 Critical Area Master Plan Overlay

I. The critical area buffers widths for those areas that were altered, created or restored as mitigation (Wetland 10, 1, Johnson Creek and the Green River off-channel habitat) at the time of approval of the Sensitive Area Master Plan Permit No. L10-014 (SAMP) shall be vested as shown on [Map A]; provided the adjacent land was cleared and graded pursuant to a city approved grading permit; and provided further that those mitigation measures required by the SAMP were performed and meet the ecological goals, in accordance with the terms of the SAMP.

18.45.190 Time Limitation, Appeals and Vesting
C. Vesting: Projects are vested to critical area ordinance in effect at the time a complete building permit is submitted except for short plats, subdivisions, binding site plans and shoreline permits. Short plats or subdivisions or binding site plans are vested to the critical area ordinance in effect at the time complete application is submitted for preliminary plats or for the binding site plan. The final plat and all future building permits on the lots remain vested to that same critical areas ordinance in effect for the preliminary plat or preliminary binding site plan application, so long as building permits are applied for within five years of the final plat. For single family residential short plats and subdivisions which received preliminary plat approval prior to the adoption of this ordinance, building permits on the lots shall be considered under the critical areas ordinance in effect on the date of the preliminary plat application provided complete building or construction permits are submitted within five years of the final plat approval. Vesting provisions for shoreline permits are provided in TMC 18.44.
II. Shoreline Master Program Update

At the September 3, 2019, meeting the City Council asked staff to review amendments to the section pertaining to the non-conforming structures located in the shoreline jurisdiction. The Council members discussed the impact of adding the phrase "and there is a minimum of 12-foot vegetative buffer landward from the top of the bank" to TMC 18.44.110.G.2.a.(2).

Planning Commission had recommended no limit on the cost of alterations of non-conforming structures on properties that have no reasonable development potential outside the shoreline buffer. The City Council recommended that no limit on the cost of alterations be tied to shoreline buffer restoration requirement. Additionally, the City Council wanted staff to review how adding a minimum width requirement for buffer restoration would impact the affected properties.

There are approximately ten small lots along the river in Tukwila that have no reasonable development potential outside the shoreline buffer. Waiving the limit on the cost of improvements to non-conforming structures in exchange for a minimum of 12-foot vegetative buffer landward from the top of the bank appears feasible for all of them. Additionally, these lots could apply for a Shoreline Variance for relief from standards where there are extraordinary or unique circumstances related to the physical character or configuration of property. Also, a minimum width of 12 feet could accommodate two rows of trees.

Staff recommends the following the revisions:

18.44.110.G.2.a.(2) If the structure is located on a property that has no reasonable development potential outside the shoreline buffer, there shall be no limit on the cost of alterations, provided the applicant restores and/or enhances the shoreline buffer from above the Ordinary High Water Mark to at least 12 feet landward of the top of the slope along the entire length of the subject property to meet the vegetation management standards of this chapter. If the structure is located on a property that has reasonable development potential outside the shoreline buffer, the cost of the alterations may not exceed an aggregate cost of 50% of the value of the building or structure in any 3-year period based upon its most recent assessment, unless the amount over 50% is used to make the building or structure more conforming, or is used to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority.

FINANCIAL IMPACT
No direct impacts are expected due to these changes.

RECOMMENDATION
Committee is being asked to review the code revisions discussed above. Staff will bring back the Shoreline and Critical Areas ordinances incorporating the Committee's recommendations.