# Staff Report & Recommendations

## Kays Subdivision Outfall: Type III

## Shoreline Conditional Use and Critical Area Permits

(2015-005-SMP) June 15, 2015

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| **PROPOSAL:** | The applicant received preliminary subdivision approval in 2008 (2008-016-SUB). This proposal would extend the stormwater collection system from the subdivision to an outfall in the East Fork of the Lewis River. |
| **LOCATION:** | West edge of West 5th Street downslope to the East Fork of the Lewis River; NW ¼ Section 3 T4NR1E; 45.861594N, -122.678931W. |
| **HEARING:** | The La Center Hearing Examiner will conduct a public hearing beginning at 7:00 PM on July 1, 2015 at La Center City Hall, 214 East 4th Street, La Center, Washington. |
| **KEY ISSUE(S):** | Shoreline Conditional Use permit, Critical Areas impacts and mitigation |
| **RECOMMENDATION:** | **APPROVAL,** subject to conditions |

# I. CONTACT LIST

**OWNER/APPLICANT**

Jerry Nutter
WARAC, LLC.
7211-A NE 43rd Avenue
Vancouver, WA 98661
360.573.2000
jnutter@nuttercorp.com

**APPLICANT'S REPRESENTATIVE**

Kevin Grosz,
The Resource Company, Inc.
915 Broadway, Ste. 250
Vancouver, WA 98660
360.693.4555
kevin@trc-inc.org

**ADJOINING OWNERS**

Eddie Barnhart
555 W. 5th Street
La Center, WA 98629
Parcels: 611668000, 62464000,
63510000 & 63520000

**LA CENTER STAFF**

Jeff Sarvis, Public Works Director
Anthony Cooper, PE, City Engineer
Eric Eisemann, Consulting City Planner
305 NW Pacific Highway
La Center, WA 98629
360.263.7665

## II. OVERVIEW

The applicant proposes to construct an underground stormwater line from the southern terminus of West G Street, across adjacent property to the south, then southwest (downhill) within the West 5th Street right-of-way to the East Fork of the Lewis River (River). (All project lines in this report are conceptual. See application for technical details.)

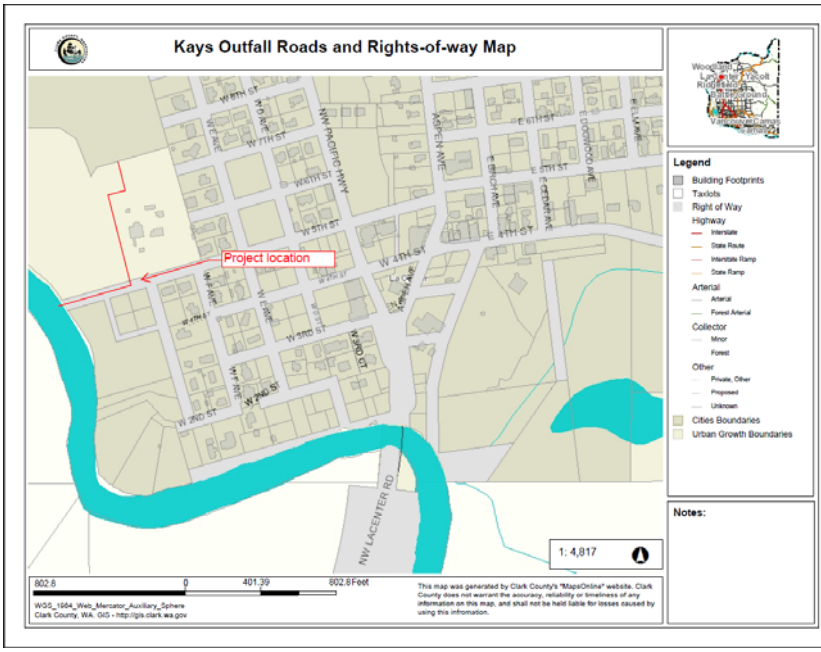



**Figure 1 Stormwater System**

The stormwater system will serve the Kays Subdivision, a 37 lot single-family residential project approved in 2008 (See 2008-0016-SUB), located south of Pacific Highway and one block west of 'E' Street in the NW ¼ of Sec 3, T4N R1E, WM. PIN: 209488000. (See Figure 2 "star".)

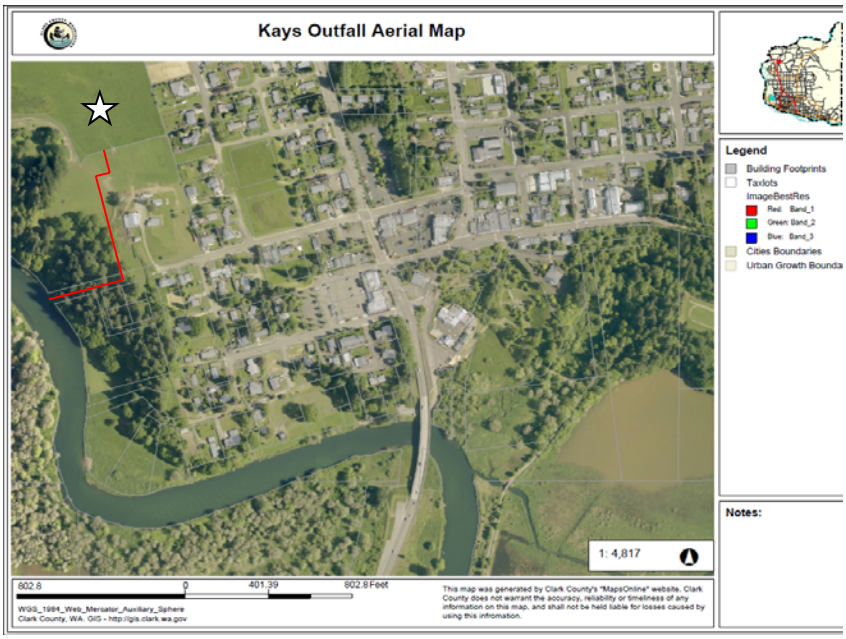



**Figure 2 General Location (Kays Subdivision in upper left corner)**

The project is within the Urban Conservancy shorelands zone. (Figure 3.) The outfall will be located at the Ordinary High Water Mark (OHWM) of the River. Land outside of La Center shorelands and critical areas are not subject to this review.

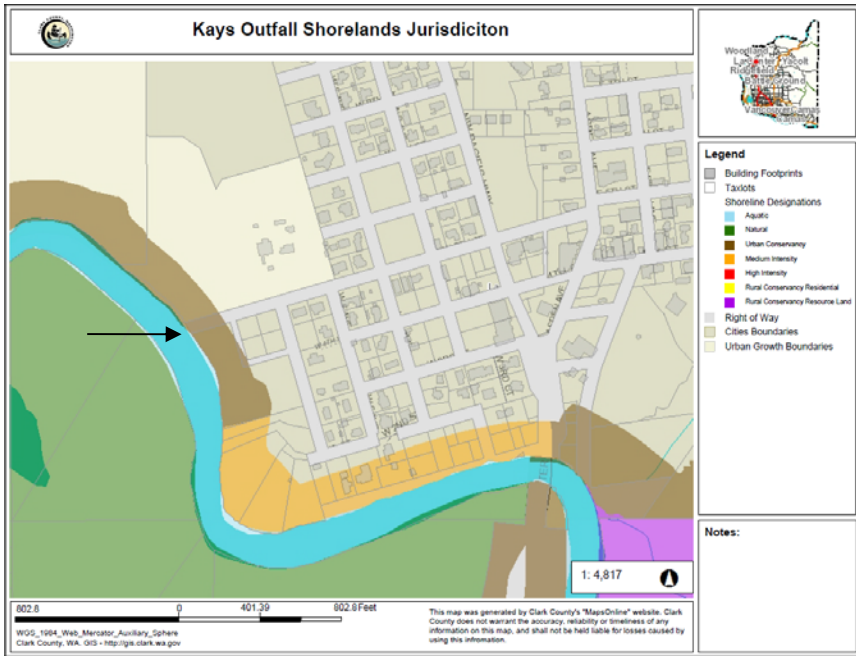
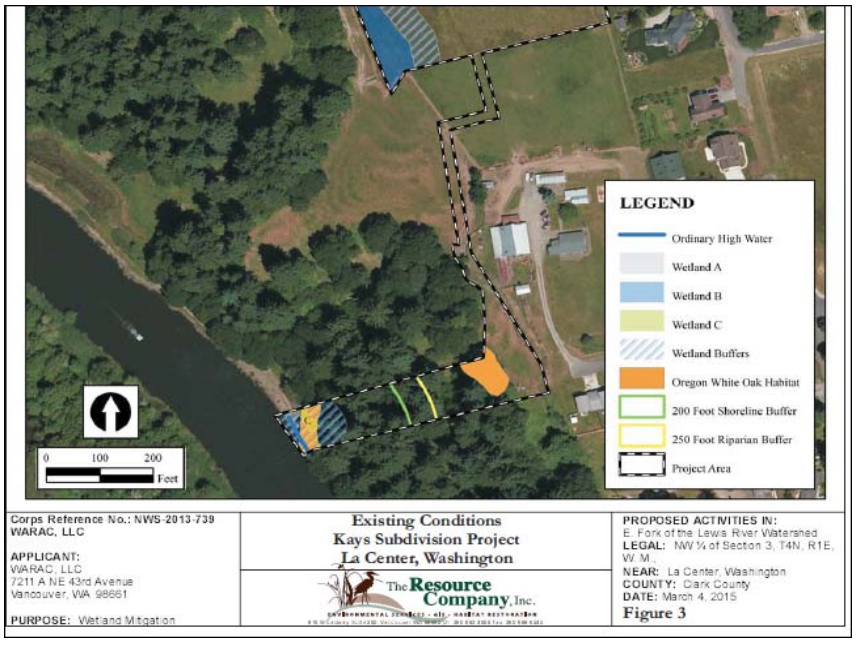



**Figure 3 Shorelands Jurisdiction**

The pipeline will cross shorelands, Riparian Habitat Conservation Areas, 440 s.f. of a Category IV wetland, Oregon white oak stands, and steep slopes. (See Figure 3, Existing Conditions, The Resource Company below.)



The conveyance pipe and outfall will be located within the floodplain and floodway of the River. (Figure 4.)

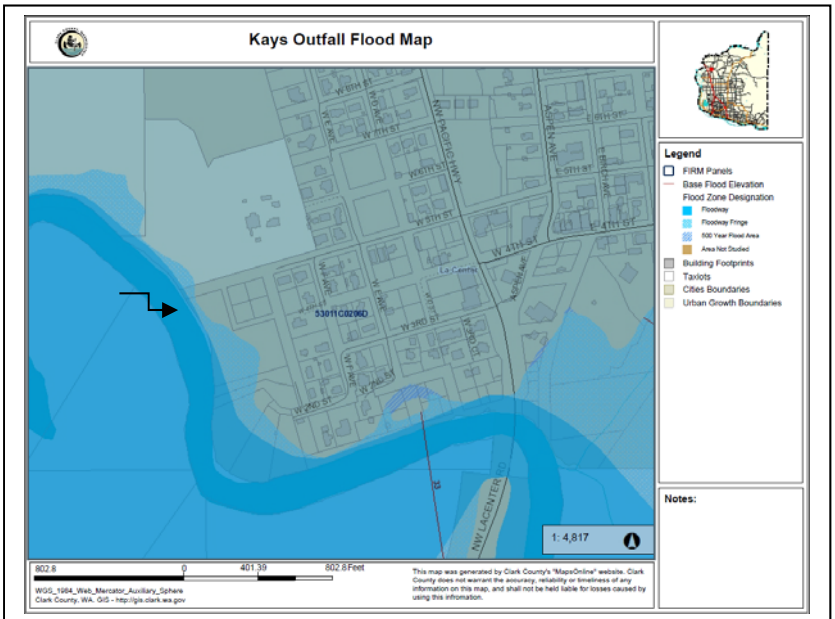



**Figure 4 East Fork of the Lewis River Flood Information**

The project area consists of a forested area on the side-hill slope that transition into an open grassland area adjacent to the river. (Figure 6, Slopes.)

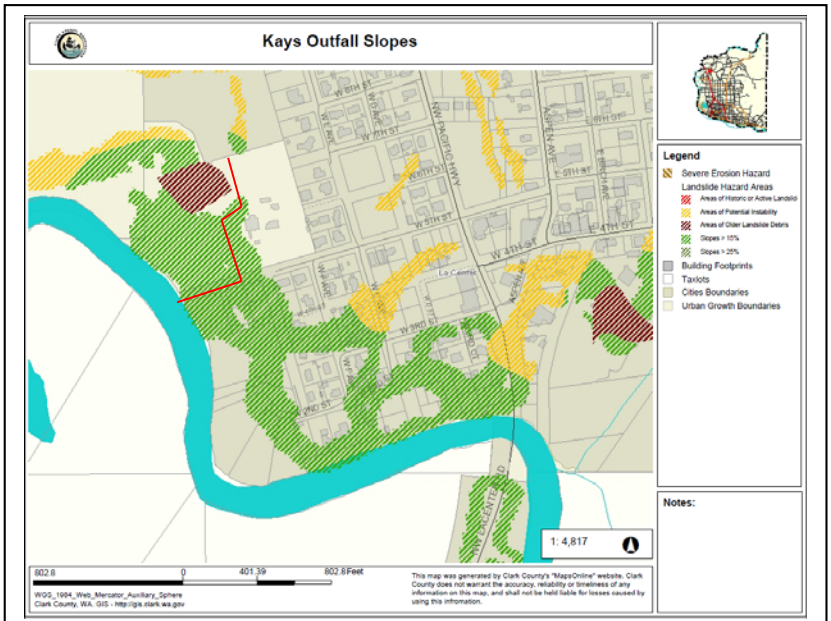



**Figure 4 Kays Outfall Slopes**

Vegetation in the forested area consists of western red cedar, Oregon white oak and Douglas fir. The shrub layer consists of vine maple and snowberry; grounds cover is predominantly sword fern, blackberry and stinging nettle. The grassland is dominated by native and non-native grasses and is used as a pasture. The underground pipe will create temporary impacts across several habitat areas on the Barnhart property (under Clark County jurisdiction), down West 5th Street, and in the River. An archeological investigation concluded there are no cultural resources within 1.6 acre project site.

The project area falls within a La Center LDR 7.5 zone and La Center Urban Growth Area (Clark County R1-7.5/UH-10 zone). (Figure 8 Kays Outfall Zoning.)

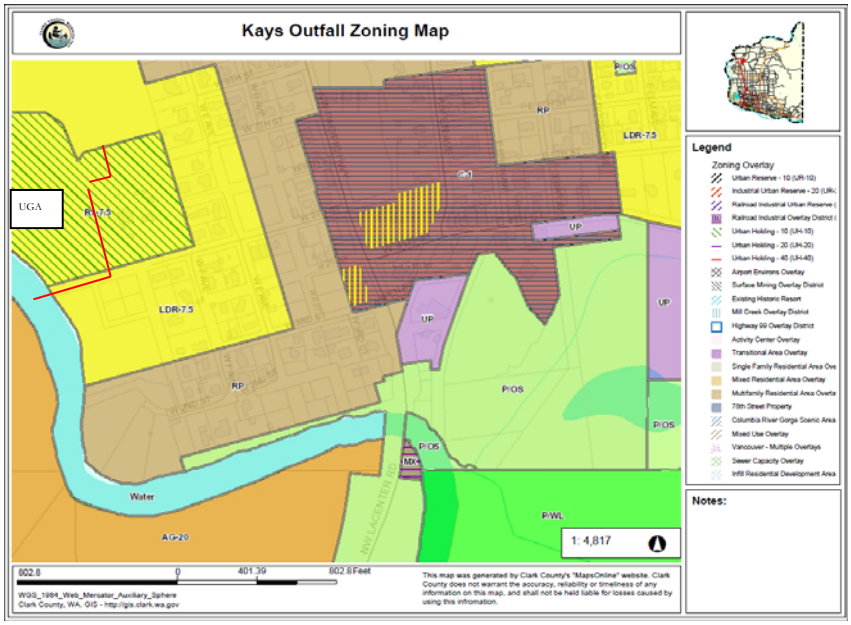



**Figure 5 Kays Outfall Zoning**

# III. REVIEW

## III. A Jurisdiction

La Center's jurisdiction is confined to the area within the City limits zone LDR 7.5, the West 5th Street public right-of-way and the shoreline of the River. The area of construction on the Barnhart property is within the La Center UGA but under Clark County land use jurisdiction. Consequently, this review will not address the critical areas, such as, habitat and slopes outside of the City's land use jurisdiction. The applicant will work with Clark County to secure construction permits in the UGA.

## III.B Applicable regulations

In La Center, zoning district boundaries normally go to the centerline of the street. (LCMC 18.110.030.1.) However, when a City annexes land, the annexation goes to the opposite side of a right-of-way. (RCW 35A.14.410.) Consequently, W. 5th Street is zoned City LDR-7.5.

The relevant La Center Regulations include:

- Low Density Residential, LDR-7.5, LCMC 18.130,
- Critical Areas, LCMC 18.300(S),
- Environmental Policy (SEPA), LCMA 187.310,
- La Center Shoreline Administration, LCMC 18.330,
- La Center Shoreline Master Program
- Stormwater and Erosion Control, LCMC 18.320, and
- La Center Engineering Standards.

## III.C Public Notice

The Battle Ground Reflector published legal notice of the Shoreline Substantial Development - Conditional Use, Critical Areas permit, SEPA DNS, and public hearing for Kays Subdivision Stormwater Outfall (File # 2015-005-SMP) on June 10, 2015. The Department of Ecology entered the SEPA Checklist and DNS in the Ecology SEPA Register on June 11, 2015. (Ecology SEPA # 201502954.) The SEPA comment period closes on June 24, 2015. The City has not received any public comments as of this writing.

## III.D Proposal

As a condition of approval for Kays Subdivision, the applicant is required to provide a stormwater outfall. The topography of this area leads all stormwater to the East Fork of the Lewis River (River). The proposed stormwater line exits the subdivision at the southern terminus of West G Street, crosses the adjacent property to the south (in the La Center UGA) and travels southwest downhill (within the West 5th Street right-of-way) to the River. The southern one-third of the stormwater outfall pipe and the energy dissipater are located within the 200-foot shoreline buffer for the River, designated as Urban Conservancy. The pipeline will be constructed perpendicular to the stream will require a Shoreline Substantial Development – Conditional Use Permit and Critical area permit.

### III.E Analysis

**LCMC 18.130 (Low Density Residential District)**

This chapter regulates uses within the Low Density Residential (LDR-7.5) zoning district and establishes design and dimensional requirements.

Response: West 5th Street is zoned LDR-7.5. Public utilities are allowed in the LCR-7.5 zoning district. **(**LCMC Table 18.130.080(8)). The applicant will construct the stormwater line within the W. 5th St. unimproved right-of-way; therefore the proposal will not exceed the 35-foot height limit in the LDR-7.5 zone. Lot area, lot coverage, lot dimension and setback standards are not applicable to underground utilities. Therefore, the proposal is consistent with the base zone requirements in Chapter 18.130.

**Shorelines Master Program (SMP)** [1]

Applicability

The East Fork of the Lewis River is a Shoreline of the Statewide Significance (SSWS). The La Center Shoreline Master Program (SMP) applies to all of the shorelands and waters within the La Center city limits that fall under the jurisdiction of RCW 90.58. Such shorelands include: (a) lands extending two hundred (200) feet in all directions as measured on a horizontal plane from the ordinary high water mark (OHWM) of a designated waterway, b. floodways and contiguous floodplain areas landward, two hundred (200) feet from such floodways, and (c) buffers for critical areas that occur within shorelines of the state. (SMP, II, A, p. 5.)

Administration

Any use or development activity planned and carried out within a shoreland shall be consistent with the La Center Shoreline SMP and implementing regulations. (LCMC 18.330.010(1) and (2)). Substantial development as defined by this program and RCW 90.58.030 shall not be undertaken by any person on the shorelines of the state without first obtaining a substantial development permit from the shoreline administrator, unless the use or development is specifically identified as exempt from a substantial development permit. (SMP II, B, p.6.) The proposed outfall and construction do not qualify for a listed exemption.

The La Center Hearing Examiner is responsible for making final determinations on shoreline substantial development permits, including conditional use permits. (LCMC 18.330.020(5).) The City shall notify the Washington Department of Ecology (WDOE) of the decision of the Hearing Examiner. Within 30-days of issuance of the final Hearing Examiner decision, the City shall provide WDOE and the state Attorney General with:

(a) A copy of the complete application per WAC 173-27-180;
(b) Findings and conclusions that establish the basis for the decision including but not limited to identification of shoreline environment designation, applicable program policies and regulations and the consistency of the project with appropriate review criteria for the type of permit(s);
(c) The final decision of the city;

[1] City of La Center Shoreline Master Program (2012): http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/lacenter/smp_noapp.pdf

(d) The permit data sheet per WAC 173-27-990;
(e) Affidavit of public notice; and
(f) The applicable SEPA documents.
(LCMC 18.330.030.)

WDOE shall have the authority to approve, approve with conditions or deny a conditional use permit or on consistency with the policy and provisions of the Shoreline Management Act, WAC 173-27-160, 173-27-170 and 173-27-210, and the criteria listed in the La Center SMP. No construction pursuant to a shoreline conditional use authorized by this program shall begin or be authorized and no building, grading or other construction permits shall be issued by the city until 21 days from the date the decision was filed. (LCMC 18.330.060.(1))

The La Center SMP classifies the project location within Shoreline jurisdiction as "Urban Conservancy". Within the Urban Conservancy zone the La Center SMP classifies "Underground Utilities", such as the proposed stormwater pipe and outfall, as "Conditional Uses" with zero setback requirements. (SMP Table 6-1, p. 70.) Therefore, the applicant proposes substantial development within the Urban Conservancy zone requiring an SMP conditional use permit.

Applicable SMP Regulation and Approval Criteria

Note: To save space and for ease of reading, the staff report identifies and quotes relevant regulations but eliminates those portions of the regulation NOT germane to the project. The characters "…" indicate deleted text. Quoted text is differentiated by a slightly smaller font.

G. Shoreline Conditional Use Permit

1. The purpose of the conditional use permit is to provide greater flexibility in varying the application of the use regulations of this program in a manner that will be consistent with the policies of the Act and this program.
2. When a conditional use is requested, the Shoreline Administrator shall be the approval authority for the City. However, shoreline conditional uses must have approval from WDOE, which shall have final approval authority under WAC 173-27-200.
3. Conditional use permits shall be authorized only when they are consistent with the following criteria:
    a. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this program;
    b. The use will not interfere with normal public use of public shorelines;
    c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area;
    d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
    e. The public interest will suffer no substantial detrimental effect;
    f. Consideration has been given to cumulative impact of additional requests for like actions in the area.
4. Other uses not specifically identified in this program are considered unclassified uses….
5. Uses specifically prohibited by this program may not be authorized.
6. The burden of proving that a proposed shoreline conditional use meets the criteria of this program and WAC 173-27-160 shall be on the applicant. Absence of such proof shall be grounds for denial of the application.
7. The City is authorized to impose conditions and standards to enable a proposed shoreline conditional use to satisfy the conditional use criteria. (SMP II, G.)

**Analysis**

**Chapter III. Shoreline Master Program Goals & Policies & Responses (SMP)**

A. General Shoreline Goals. The general goals of this Program are to:

1. Use the full potential of shorelines in accordance with the opportunities presented by their relationship to the surrounding area, their natural resource values, and their unique aesthetic qualities offered by water, topography, and views; and
2. Develop a physical environment that is both ordered and diversified and which integrates water and shoreline uses while achieving a net gain of ecological function.

Response: The applicant will place the utility line below grade through the shoreline area. After installation, the contractor will backfill the excavated trench with native soil and re-vegetate the site will native plant materials. The energy dissipater manhole man-hole cover (which will be at ground level) will be visually undetectable once the plantings on the restored trench matures. The proposed use will not impact any views, topography or negatively affect the ecological function of the Shoreline.

B. Shorelines of Statewide Significance (SSWS)

The East Fork of the Lewis River, along with its associated shorelands is designated as a SSWS and will be managed as follows:

1. Preferences shall be given to the uses that are consistent with the statewide interest in such shorelines. These are uses that:
   a. Recognize and protect the statewide interest over local interest;
   b. Preserve the natural character of the shoreline
   c. Result in long term over short term benefit;
   d. Protect the resources and ecological functions of the shoreline;
   e. Increase public access to publically owned areas of the shorelines;
   f. Increase recreational opportunities for the public in the shoreline; and
   g. Provide for other elements as defined in RCW 90.58.100 deemed appropriate or necessary.
2. Uses that are not consistent with these policies should not be permitted on SSWS.
3. Those limited shorelines containing unique, scarce and/or sensitive resources should be protected.
4. Development should be focused in already developed shoreline areas to reduce adverse environmental impacts and to preserve undeveloped shoreline areas. In general, SSWS should be preserved for future generations by;
   a. Restricting or prohibiting development that would irretrievably damage shoreline resources, and
   b. Evaluating the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.

Response: The project area within the shorelands is an undeveloped city right-of-way. The project ecology includes a woodland, small wetland, and eroded bank area.

Above the shorelands through part of 5th Street right-of-way the pipe will be on top of the existing ground and anchored to prevent pipe movement. Within shoreline jurisdiction the pipe will be below ground. The opportunity for public access to the SSWS down the right-of-way will be enhanced because the construction zone must be maintained over time. The project will not impact privately-owned shorelands. The outfall will be below the OHWM of the River. A manhole cover will be visible at surface level. Consequently, utility lines will not interfere with the normal public use of this shoreline, nor prohibit or minimize the potential for water related uses to be located in this area in the future.

The project has been designed using the most current engineering and geotechnical information to prevent irretrievable damage to the shoreline. The excavated trench will be backfilled with native soil once the pipeline has been installed. Erosion control best management practices (BMPs) will be employed. The trench will be re-vegetated upon completion of the work. The shoreline adjacent to the River will be planted with native trees and shrubs to enhance and protect the shoreline area and provide long-term ecological benefits superior to the eroded bank. The proposed use is compatible with the area and will not impact any views, topography or negatively affect the ecological function of the Shoreline.

C. Archaeological, Historic, and Cultural Resources

1. Goal: …. Preserve and prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value.
2. Policies
   a. …. Every effort should be made to identify, protect, preserve, and restore important archaeological, historic, and cultural sites located in shorelands of the state….
   b. Where appropriate, make access to such sites available to parties of interest.…
   c. Encourage acquisition ….
   d. …. Foster a greater appreciation of shoreline management, local history, maritime activities, environmental conservation, and maritime history.
   e. Contribute to the state and local inventory of archaeological sites….

Response: Archeological Services, LLC conducted a Cultural Resources Survey in March 2015, including surface and subsurface investigations. The investigation did not identify any historic or archaeological resources in or adjacent to the project area. (Report in project file.) If qualifying cultural resources are discovered during explorations or construction on the project site, work

will stop and, before work recommences on that portion of the site, a professional archaeologist will assess the significance of any resources discovered and notify DAHP and affected Native American Tribes to determine the appropriate course of action.

D. Conservation

1. Goal. …. Protect shoreline resources, vegetation, important features, ecological functions and the processes that sustain them to the maximum extent practicable.
2. Policies
   a. …. High value habitat or high quality associated wetlands should be considered … to remain in an unaltered condition.
   b. …. Avoid, minimize and mitigate impacts to … result in no net loss of watershed processes and shorelines functions.
   c. …. Ensure the preservation of non-renewable resources, including unique, scenic and ecologically sensitive features, wetlands, and wildlife habitat.
   d. …. Provide administrative and regulatory assistance to those proposals to create, restore or enhance habitat for priority species.
   e. Regulatory, non-regulatory, and incentive programs should all be used for the protection and conservation of wildlife habitat areas ….
   f. …. Retain existing vegetation along shorelines should be encouraged….

Response: The construction zone is confined to the unimproved city right-of-way, avoiding larger impacts. Temporary construction impacts will occur but they will be fully mitigated by re-vegetation of the surface. The pipeline will cross a small Category IV wetland at the base of the slope. However, the wetland impact will be temporary. The wetland will be restored and enhanced as part of the overall development project. A compensatory mitigation plan addresses the temporary wetland and habitat impacts caused by the installation of the stormwater pipeline. Erosion control BMP's will be employed that will ensure that no net loss of ecological function, ecological value or critical areas will occur.

E. Economic Development

1. Goal. …. Create and maintain an economic environment that is balanced with the natural and human environment.

Response:

The proposed underground stormwater facility will serve a residential development and is only tangentially related to the economic development goal.

F. Flood Prevention and Flood Damage Minimization

1. Goal. …. Prevent public and private losses from occurring, and … minimize them to the extent possible, and maintain and restore natural flow regimes.
2. Policies
   a. …. Prevent flood damage.
   b. Flood management works should be located, designed, constructed and maintained to protect against the following:
      i. Loss of life, injury or loss of property;
      ii. Loss to physical integrity of the shoreline;
      iii. Loss of water quality and natural ground water movement;
      iv. Loss to fish and other life forms and their habitat and damage to vegetation;

v. Damage to recreational resources and aesthetic values and features including point and channel bars, islands and other shore features and scenery.

c. Non-structural flood hazard reduction measures are preferred…. ensures no net loss of ecological functions and ecosystem-wide processes.

d. …. Avoid channelization and/or reduction in shoreline function….

e. ….Consider the removal or relocation of structures in flood-prone areas.

f. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be allowed when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction.

Response: The subsurface placement of the stormwater pipeline will not cause any reduction in flood storage capacity. The outfall has been designed so that it will not alter the stream course or bank or any areas below the ordinary high water mark. Consequently, no loss of physical integrity, property, life, or habitat will occur. Because the pipeline will be underground, channelization will not occur.

I. Shoreline Modification and Stabilization

1. Goal. ….Avoid or minimize modification or destabilization to the maximum extent feasible. …. Use least destructive to the shoreline environment, including associated waters.
2. Policies
   a. New or expanded shore stabilization, including bulkheads ….
   b. …. Avoid the need for structural shoreline armoring works using all methods available.
   c. …. Use natural, non-structural shoreline stabilization measures structural stabilization measures. …. Hierarchy of preference:
      i. No action;
      ii. Flexible stabilization works constructed of natural materials, including soft shore protection, bioengineering, beach nourishment, protective berms, or vegetative stabilization.
      iii. Rigid works constructed of structural materials such as riprap or concrete.
   d. …. Accommodate the physical character and hydraulic energy potential of a specific shoreline reach….
   e. …. Incorporate multiple use, restoration, and/or public shore access ….
   f. …. Coordinate with affected property owners and public agencies.
   g. …. Jetties, breakwaters, weirs, or groin systems ….
   h. …. Floating, portable or submerged breakwater structures….
   i. …. Levee setback ….
   j. …. Channel migration …. net loss of ecological functions with the rivers and streams should be limited.

Response: The applicant did not propose any stream bank modifications or stabilizations, such as armoring or re-channelization, with this project. The pipeline will be located underground. The project will plant native trees and shrubs along the shoreline to stabilize the area surrounding the pipeline between the ordinary high water mark and the existing tree line.

J. Shoreline Use and Development

1. Goal. …. Balance the preservation and development of shorelines in a manner that allows for mutually compatible uses. ….
2. Policies
   a. …. Priority order is: (1) water-dependent, (2) water-related, and (3) water-enjoyment

b. …. Locate uses on shorelines in such a manner as to:
   i. Retain or improve the quality of shoreline function;
   ii. Respect the property rights of others;
   iii. …. Do not create risk or harm to neighboring or downstream properties; and
   iv. Preserve and/or restore, to the maximum reasonable extent, the shoreline's natural features and functions….
c. …. Encourage:
   i. Uses that enhance their specific areas or employ innovative features…;
   ii. The redevelopment of any area not suitable for preservation of natural features…:
   iii. Master planning …;
   iv. Shared uses and joint use facilities …; and
   v. …. Restoration of shoreline areas that are degraded … .
d. Uses proposed on lands adjacent to but outside of immediate shoreline jurisdiction… .

Response: Underground utilities perpendicular to the shoreline are a conditional use permitted within the Urban Conservancy zone. Undergrounding the utility, ground restoration, and habitat enhancement will not result in the reduction of shoreline function. Temporary impacts will occur during the trench excavation but use of BMPs for erosion control and re-vegetation will mitigate temporary construction impacts. The utility will be underground and anchored and; therefore, the project will not increase risk of flooding or other damage to downstream properties, there will be no decrease in flood storage, and not unanticipated alteration of the bank will occur.

K. Transportation, Utilities, and Essential Public Facilities

1. Goal. …. Avoid … adverse effects on existing shoreline use and development or shoreline ecological functions and/or processes.
2. Policies
   a. …. Locate ... utilities … outside of the shoreline jurisdiction to the maximum extent possible to reduce interference with natural shoreline functions and appropriate shoreline uses.
   b. Circulation systems ….
   c. …. Transportation corridors …
   d. … Low volume roads…
   e. …. Locate local utility … corridors should … avoid creating barriers between adjacent uplands and the shoreline ...
   f. … New utility … facilities … should … combine public and private interests ….
   g. … Relocate … relocate existing utility … that limit public shoreline access…
   h. … Locate utility … facilities … to protect the shorelands and water from contamination and degradation.
   i. … Essential public facilities …

Response: The underground stormwater line is perpendicular to the shoreline. It will be constructed within an unimproved city right-of-way in narrow footprint to minimize temporary impacts to shoreline and critical lands. The only aspect of the stormwater line that will be visible after construction is a manhole cover at ground level and discharge point. The underground project will not impact the aesthetic quality of the shoreline because it generally will not be visible. Additional native vegetation will enhance the existing degraded habitat value. The result will be no loss of shoreline access. The topography of the area requires all stormwater to flow to the River. The applicant evaluated other locations for the stormwater line but concluded the use of an existing right-of-way created the least impact on shoreland values and functions.

L. Views and Aesthetics

1. Goal. …. Assure … continued enjoyment of the physical and aesthetic qualities of the shorelines…
2. Policies
   a. …. Identify … scenic vistas and high aesthetic value… and encourage others … preservation of these values…
   b. …. Provide visual and physical linkage to the shoreline and enhance the waterfront.
   c. …. Avoid obstructing the views of others to the maximum extent feasible.

Response:
The project will be underground and not visible except for a manhole cover over a vault; therefore, the project will not obstruct views. Re-vegetation with native materials will enhance the shoreland habitat functions and values and will enhance the area aesthetics.

M. Water Quality and Quantity

1. Goal. …. Protect and enhance the quality and quantity of the region's water resources … and maintain and restore natural flow regimes.
2. Policies
   a. …. Maintain or improve … the quality and quantity of surface and ground water…
   b. …. Minimize the inadvertent release of chemicals, activities that cause erosion, storm water runoff, and faulty on-site sewage …
   c. …. Improve … water temperature and reduce the adverse effects of erosion and runoff.
   d. Strive to maintain and restore natural flows.

Response: The applicant shall comply with La Center BMPs for erosion control; including silt fences, inlet protection, turbidity curtain, stabilized construction entrances, and stabilization of exposed soils. The proposal will not create any new impervious surfaces in the Shoreline or riparian areas other than a small manhole cover and underground vault. Stormwater flowing through the pipeline will be treated prior to leaving Kays Subdivision and will meet the water quality standards of the La Center Municipal Code and the 1992 Stormwater Management Manual for the Puget Sound. This will consist of on-site stormwater filter system, listed in the LCMC as an experimental BMP and subject to the LCMC as conditional.

**IV. Shoreline Designations (SMP)**

4. Urban Conservancy Shoreline Designation
   a. Purpose. The purpose of the Urban Conservancy shoreline designation is to protect and restore ecological functions of open space, floodplains, and other sensitive lands, where they exist alongside urban and developed settings, while allowing a variety of compatible uses.

Response:
The project area is designated Urban Conservancy.

   c. Management Policies. In addition to the other applicable policies and regulations of this program the following management policies shall apply:

i. Uses that preserve the natural character of the area or promote preservation of open space or critical areas are favored providing they are compatible with the Urban Conservancy setting,
ii. Single family residential development …
iii. …. Thinning or removal of vegetation should be limited to that necessary to remove noxious vegetation and invasive species; provide physical or visual access to the shoreline; and to maintain or enhance an existing use.
iv. Low intensity water-oriented commercial uses …, and
v. Public access and public recreation objectives …

Response:
The applicant does not propose to develop single-family residential use, low intensity water-oriented use, or public recreation uses. The underground project will not restrict recreational access or the use of the area. The contractor will replant the narrow construction zone with native vegetation. The project area will remain in public-right-way and will function as open space, as it does now.

The 24 inch HDPE pipe used for the sloped portion of the project within the shoreline buffer is flexible and will allow the contractor to place the pipeline around existing trees. However, the contractor may remove some smaller trees and shrubs within the construction area. Any trees and shrubs removed within the habitat area will be used to construct small brush piles within the riparian buffer. The project will plant native trees and shrubs on the bench between the OHWM and the existing tree line. Oregon white oaks, a Washington Department of Fish and Wildlife priority habitat, are present in the uplands. The applicant prepared a Fish and Wildlife Habitat Conservation Area mitigation plan consistent with city regulations. Plant materials over the pipeline will be managed so as to provide access to the pipeline.

**Chapter V. General Shoreline Use & Development Regulations (SMP)**
All uses and development activities in shorelines shall be subject to the following general regulations in addition to the applicable use-specific regulations in Chapter VI.

**A. General *Shoreline* Use and *Development* Regulations**
1. Shoreline uses and developments that are water-dependent shall be given priority.
2. WAC 173-26-201 (Process to Prepare or Amend "Shoreline Master Programs") requires that the SEPA "Mitigation" Sequence be incorporated into "shoreline master programs" as follows:
   a. "To assure no net loss of shoreline ecological functions, master programs shall include provisions that require proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. …The analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA …. Mitigation… measures shall be applied in the following sequence of steps listed in order of priority, with" (i) "of this subsection being top priority."
      i. "Avoiding …;"
      ii. "Minimizing…;"
      iii. "Rectifying…;"
      iv. "Reducing…;"
      v. "Compensating…"; and

vi. "Monitoring…."

b. "…. Lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable. …. :"
   i. "Application of the mitigation sequence achieves no net loss of ecological functions …."
   ii. "When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. ….."

Response: The project is designed so that the temporary construction zone will have a minimal footprint within the shoreline buffer. All components of the pipeline within the shoreline buffer will be placed subsurface, except of the discharge and energy dissipater/ man-hole cover which will be located at the ground surface. The trench will be backfilled and restored by planting native herbaceous vegetation within the construction zone. Temporary wetland and habitat (riparian buffer) impacts will be further compensated by planting native trees and shrubs between the ordinary high water mark and the existing tree line within the easement area.

3. …. Do not cause impacts that require remedial action or loss of shoreline functions on other properties.

Response: Shoreline construction activity will occur with the city right-of-way. No adjacent properties will be affected.

4. …. Avoid shoreline stabilization … unless stabilization is the only alternative to protecting public safety and existing primary structures.

Response: The underground piping and below-water outfall ensure that shoreline stabilization is not necessary.

5. …. Do not clear, grade, fill, excavate or otherwise alter shorelands prior to issuance of the necessary permits ….

Response: Clearing, grading, filling, excavation, or any other alterations will not occur until all appropriate permits have been issued to ensure that there is no net loss in ecological functions.

6. Non-water-oriented uses shall not adversely impact or displace water-oriented shoreline uses.

Response: The project is a non-water-oriented use. Because the outfall pipe is below grade the project will not impact or displace water-oriented shoreline uses.

7. Single-family residential…

Response: Not applicable, residences are not proposed.

8. …. Minimize interference with surface navigation; consider impacts to public views and allow for the safe, unobstructed passage of fish and wildlife…

Response: The stormwater outfall will be at the OHWM and will not interfere with surface navigation, public views, and/or fish and wildlife passage.

9. Hazardous materials…

Response: This project does not include the handling or disposal of hazardous materials. Vehicle fueling will not occur within shorelands.

10. In-water work shall be scheduled to protect biological productivity, including fish runs and spawning, and in-water work shall not occur in areas used for commercial fishing during a fishing season.

Response: The applicant will conduct in-water work during time periods as outlined by Washington Department of Fish and Wildlife and the U.S. Army Corps of Engineers in their Hydraulic Project Approval (HPA) and Section 404 of the Clean Water Act respectively and Section 10 of the Rivers and Harbors Acts. The Resource Company is currently preparing a biological assessment by to address in-water issues.

11. ….Prior or phased projects….

Response: The proposed project is not dependent on prior approval or phasing; not Applicable

12. Within urban growth areas….

Response: Not applicable; the project is within city limits.

**B. Archeological, Cultural and Historic Resources**

3. ….Provide for a site inspection and evaluation by a professional archaeologist prior to issuance or as a condition of any shoreline permit or approval … by the City. Work may not begin until the inspection and evaluation have been completed and the City has issued its permit or approval.
4. If any item of possible archaeological interest (including human skeletal remains) is discovered on site, all work shall immediately stop, and the City, State Department of Archaeology and Historic Preservation (DAHP), and affected Native American Tribes shall be notified of such finding. A stop-work order will be issued. The shoreline permit will be temporarily suspended. All applicable state and federal permits shall be secured prior to commencement of the activities they regulate and as a condition for resumption of development activities. Development activities may resume only upon receipt of City approval.
5. If the discovery includes human skeletal remains, the find must be secured and protected from further disturbance; the Clark County Medical Examiner and local law enforcement shall be notified in the most expeditious manner possible. The County Medical Examiner will assume jurisdiction over the site and the human skeletal remains, and will make a determination of whether they are crime-related. If they are not, DAHP will take jurisdiction over the remains and report them to the appropriate parties. The State Physical Anthropologist will make a determination of whether the remains are Native American and report that finding to the affected parties. DAHP will handle all consultation with the affected parties as to the preservation, excavation, and disposition of the remains.

6. See LCMC 18.360 (Archaeological Resource Protection) for additional requirements.

Response: Archaeological Services, LLC conducted a Cultural Resources Survey, including surface and subsurface investigations in March 2015 as required by SMMP and LCMC 18.360. The investigations did not reveal the presence of cultural resources in the project area. A copy the report is included in the applicant's materials. Consistent with the SMP and LCMC 18.360.100, if any qualifying cultural resources are discovered during explorations or construction on the project site, work will stop immediately and before work recommences on that portion of the site, a professional archaeologist will assess the significance of any resources discovered and notify DAHP and affected Native American Tribes to determine the appropriate course of action.

**C. Critical Areas Protection**

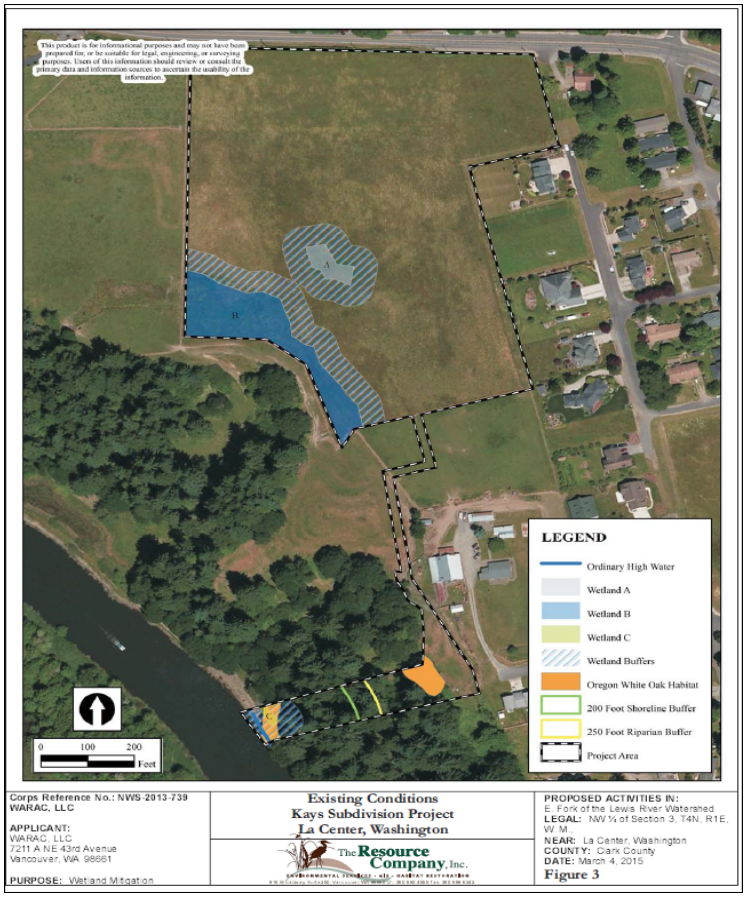
1. General Provisions.
   a. Critical areas defined in Appendix C (LCMC 18.300) which are located within the shoreline jurisdiction are protected under this section.
   b. Any allowed use, development, or activity proposed on a parcel with a critical area located in the shoreline jurisdiction shall be regulated under the provisions of this program.
   c. Any allowed use, development, or activity meeting the definition of a development exempt from the shoreline substantial development permit process outlined in WAC 173-27-040 and Section II.C of this program shall be consistent with the policies and provisions of this program for critical areas protection.
   d. Provisions of the critical areas regulations that are not consistent with the Act and supporting WAC chapters shall not apply in shoreline jurisdiction.
   e. Habitat that cannot be replaced or restored within twenty (20) years shall be preserved.
   f. …. single-family residence….
   g. Unless otherwise stated, no development shall be constructed, located, extended, modified, converted, or altered, or land divided without full compliance with this program and LCMC Title 18.
   h. Reasonable use exceptions under LCMC 18.300.080 determination shall not apply in the shoreline jurisdiction.
   i. Unless otherwise stated, critical area buffers within the shoreline jurisdiction shall be protected and/or enhanced in accordance with this program and LCMC Title 18.
   j. Shoreline uses and developments and their associated structures and equipment shall be located, designed and operated using best management practices to protect critical areas.
   k. The applicant shall demonstrate all reasonable efforts have been taken to avoid, and where unavoidable, minimize and mitigate impacts such that no net loss of critical area and shoreline ecological function is achieved. Mitigation shall occur in the following order of priority:
      i. Avoiding…;
      Ii. Minimizing…;
      iii. Rectifying…;
      iv. Reducing…;
      v. Compensating…; and
      vi. Monitoring….
   l. In addition to compensatory mitigation, unavoidable adverse impacts may be addressed through restoration efforts.

Response: The proposed stormwater facility is a conditional use within shorelands and is allowed in a public right-of-way. The proposed habitat disturbance will be enhanced within as

part of the project. The project is not a single-family development and the applicant is not requesting a reasonable use exemption. Because of local topography, storm water flows to the River. The applicant investigated alternative project location, none of which would avoid shorelands. The applicant selected a direct route down W. 5th Street through shorelands and confined the construction activity to the right-of-way. The project will impact 440 S.F. of category IV wetland. The applicant's mitigation plan will restore the ground surface and plant the construction zone in native plants. The monitoring plan will commence the summer after project completion and will continue in years 2, 3, 4, 5, 7 and 10. (See Habitat and Mitigation Report, page 9.)

2. Applicable Critical Areas. For purposes of this program, the following critical areas will be protected under this program:
   a. Critical Aquifer Recharge Areas, defined in LCMC 18.300.090(1)….
   b. Fish and Wildlife Habitat Conservation Areas, defined in LCMC 18.300.090(2)….
   c. Frequently Flooded Areas, defined in LCMC 18.300.090(3)….
   d. Geologically Hazardous Areas, defined in LCMC 18.300.090(4) ….
   e. Slopes with Gradients of 25 Percent or Greater, defined in LCMC 18.300.090(5)….
   f. Wetlands, defined LCMC 18.300.090(6)….

Response: The project area contains Frequently Flooded Areas, Fish and Wildlife Habitat Conservation Areas, Geologically Hazardous Areas, Slopes with Gradients of 25 Percent of Greater, and Wetlands. (See Figure 3, Wetland and Habitat Mitigation Report below.)



The Resource Company prepared reports addressing the fish and wildlife issues and the wetlands issues. MacKay and Sposito prepared a response to the frequently flooded areas, and Columbia West Engineering has prepared a description of the geological hazardous areas and slopes with gradients of 25 percent or greater within the stormwater outfall alignment.

3. Fish and Wildlife Habitat Conservation Areas
    a. General Provisions
        i. Designated habitat areas are those defined in LCMC 18.300.090(2) and those described below:
            (a) Waterbodies defined as waters of the state (RCW 90.40.020), including waters, bed, and bank;
            (b) WDNR Classification System Type S, F, Np, and Ns waterbodies as defined and mapped based on WAC 222-16-030 (Forest Practices Rules);
            (c) Riparian Priority Habitat Areas – areas extending landward on each side of the stream or waterbody from the ordinary high water mark to the edge of the one hundred (100) year floodplain, or the following distances, if greater:
            (i) WDNR Type S waters, two hundred, fifty (250) feet;
            …
            (d) Other Priority Habitats and Species (PHS) Areas - areas identified by and consistent with WDFW priority habitats and species criteria, including areas within one thousand (1,000) feet of individual species point sites. The city shall defer to WDFW in regards to classification, mapping and interpretation of priority habitat species.
        ii. The above habitat areas are mapped in the adopted "Fish and Wildlife Habitat Conservation Areas Map." Maps are on file with the City Planner.
        iii. In the event of inconsistencies, official habitat area definitions shall prevail over the maps in determining applicability of this section. The city shall follow the recommendations of WDFW in the interpretation of site-specific conditions as they relate to the definition of priority habitat and species.
        iv. The portion of the riparian priority habitat area nearest to the OHWM shall be set aside for vegetation conservation and protection of the waterbody within the shoreline jurisdiction.
        v. Where development proposals require a Species and Habitat Assessment Report under LCMC 18.300.090(B)(4), the review will be part of the approvals required under this program.

Response: The East Fork of the Lewis River is a waterway of the state and a Type S stream. The applicant prepared figures showing the reach of the 250-foot riparian zone upland from the OHWM of the River. Within the riparian buffer, the project will impact 440 S.F. of a Category IV wetland and 8,455 S.F. of riparian habitat conservation area (RCHA). (See Figures 8, 10, 11 and 12 of the Wetland and Habitat Mitigation Plan.)

At the close of construction the wetland impact area will be returned to pre-construction contours and planted with native shrubs. The RHCA will be restored to pre-construction contours and re-seeded with native seed mix. The non-forested RCHA, 4,630 S.F. adjacent to the OHWM will be planted with native willows.

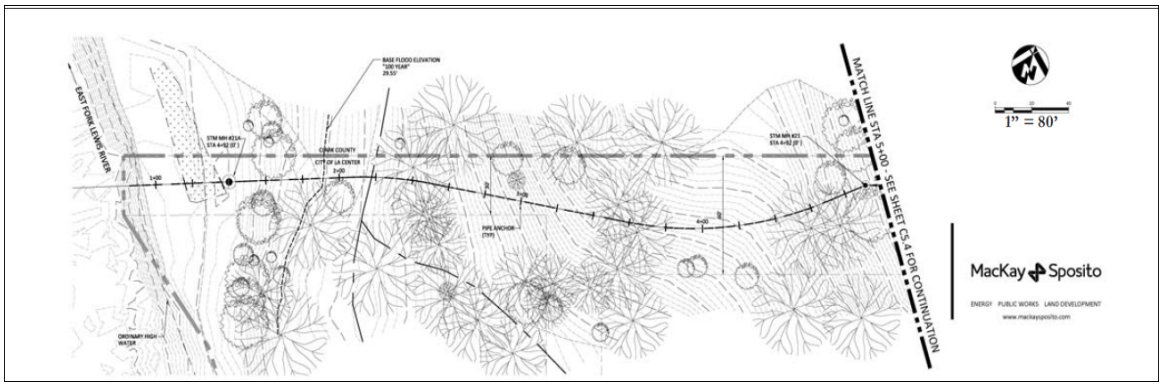
    b. Regulated Activities

i. All construction, development, earth movement, clearing, or other site disturbance proposals within a habitat area which require a permit … shall comply with the requirements of this section.
ii. Proposed new single-family residential development….
iii. Agricultural activities….
iv. Class IV G forest practices (conversions).

Response: The proposed project requires a permit and habitat area impact review.

c. Standards
   i. Any alterations within designated habitat areas in the shoreline jurisdiction require a review and approval prior to clearing or development and prior to issuance of any city permit or statement of exemption.
   ii. Alterations within the designated habitat areas shall:
      (a) Avoid impacts to the habitat conservation areas….
      (b) Substantially maintain the level of habitat functions and values….
      (c) Minimize habitat disruption or alteration beyond the extent required….
      (d) Compensate for impacts to the habitat conservation areas to meet the standard of no net loss of shoreline ecological functions… using … best available science.
   iii. … Prepare a mitigation plan in accordance with the provisions of LCMC 18.300.090(2)(i) is required.

Response: In addition to a small wetland an Oregon white oak (*Quercus garryana*) woodland occurs along the base of the slope within the 200-foot shoreline buffer and RCHA one occurs upslope from the shorelands and RHCA. Oregon white oak woodlands are listed as a priority habitat by WDFW and are regulated under the city's Critical Lands Ordinance. The pipe used for this section is flexible and can be shaped to avoid trees and tree removal. Consequently, construction can avoid all Oregon white oak trees by routing around the trees but within the tree driplines. (See Figures 13, Wetland Habitat Mitigation Report below.)

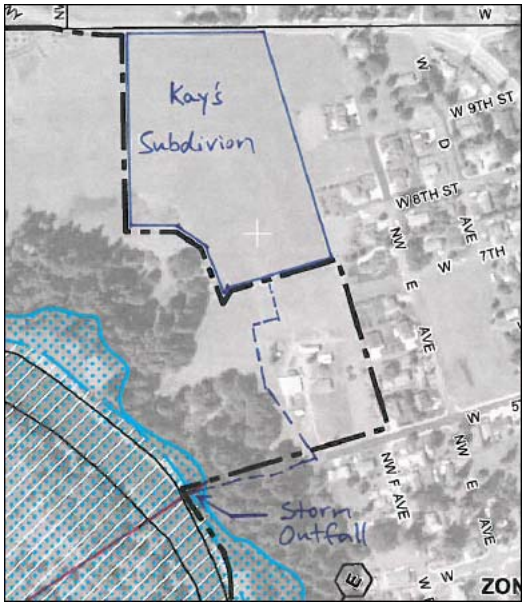



Because the construction route and zone is very narrow (Figure 11, Wetland Habitat and Mitigation report), excavation within the dripline should avoid adverse impacts to the Oregon white oak trees. Some small trees and shrubs will be removed during construction; any trees and shrubs removed within the RCHA will be used to construct small brush piles within the riparian buffer. Once the pipe installation has been completed the trench will be backfilled and planted with native herbaceous vegetation. Native trees and shrubs will be planted in the easement between the OHWM and the existing tree line.

4. Frequently Flooded Areas
   a. General Provisions. The areas of special flood hazard identified by the Federal Emergency Management Agency … are adopted by reference and declared to be a part of this program. … In addition, Map 27 Potential Channel Migration Zone (CMZ) Areas (Inventory and Characterization Report, Vol. 1, Lewis and Salmon-Washougal Watersheds and Rural Areas) is hereby incorporated by reference.

      i. This section shall apply to all frequently flooded areas within the shoreline jurisdiction as defined in LCMC 18.300.090(3) ….
      ii. Where development proposals require a Floodplain Permit under LCMC 18.300.090(3), the review will be part of the approvals required under this program.
      iii. The degree of flood protection required by this section is considered reasonable for regulatory purposes, and is based upon scientific and engineering considerations. ….

Response: The project will occur in a frequently flooded area as mapped by the Flood Insurance Rate Map of Clark County. (FIRM Map excerpt below.) The base flood elevation is 29.55 ft.




   b. Regulated Activities
      i. The following activities are allowed outright in the floodway in accordance with RCW 86.16:

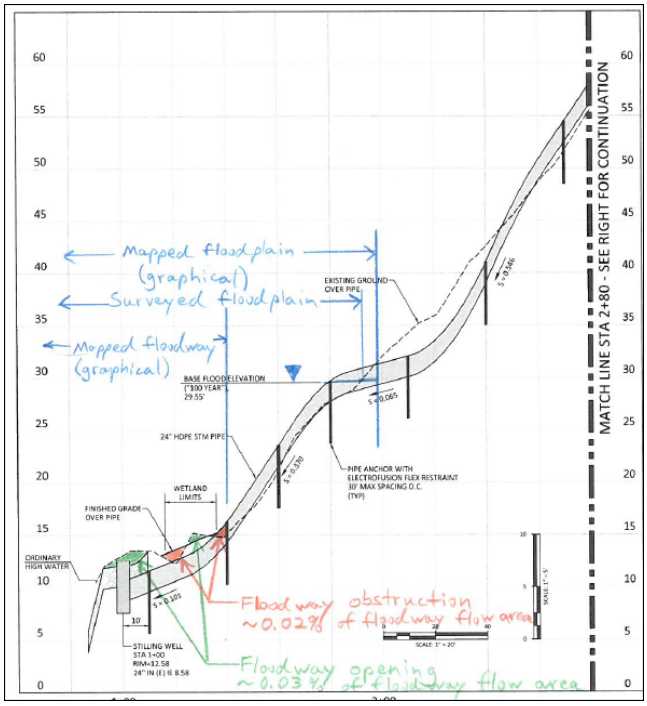
Response: The proposed stormwater facility is not permitted outright.

   c. Standards
      i. Construction in frequently flooded areas is subject to the standards specified in LCMC 18.300.090(3).
      ii. Structural flood hazard reduction measures …

iii. When necessary, in-stream structures shall be located, designed, and maintained in such a manner that minimizes flood potential and the damage affected by flooding.
iv. Fills are prohibited in floodplains except where the applicant clearly demonstrates that the geohydraulic characteristics will not be altered in a way that increases flood velocity or risk of damage to life or property, and flood storage capacity will not be reduced (see also Sections V.G.2.i and VI.D.2).
v. Fill shall be avoided in critical areas or buffers where possible. ….
vi. Dikes and levees ….

Response: McKay and Sposito, project engineers, conclude the project does not reduce the capacity of the floodplain. Excavation, backfill, and material placed over the outfall pipe provides a net increase of approximately 2 cubic yards for the pipe. For the outfall structure and the channel that connects the outfall structure to the main river channel, the excavation, structure placement entails 5 cubic yards of net removal for the outfall. The combined effect is a reduction of material (by approximately 3 cubic yards) and a corresponding increase in floodplain volume capacity. (See applicant's materials, Frequently flooded areas.)

The project does not negatively impact the Base Flood Elevation. In cross section, the minor amount of fill represents a blockage of 0.02% of the floodway area at low river flow velocities (less than 1 foot per second) and submerged water depth of 15 feet. This is coupled with a 0.03% increase an open area in the floodway section (for the same velocity and depth range) for the corresponding proposed outfall channel. The net effect is a negligible increase in floodway flow capacity.




The proposed outfall structures are not susceptible to water damage and are designed to withstand the forces involved with the low flood velocities.

5. Geologically Hazardous Areas
   a. General Provisions
      i. Geologically hazardous areas include: erosion hazard areas, landslide hazard areas, seismic hazard areas, and steep slope hazard areas as defined in LCMC 18.300.090(4) and (5).
      ii. Approximate locations of geologically hazardous areas are identified on adopted maps that are on file with the City Planner. Where the maps and definitions of geologic hazard areas conflict, the definitions shall prevail.
      iii. Where development proposals require a geologically hazardous area review under LCMC 18.300.090(4)(d), the review will be part of the approvals required under this program.

Response: Columbia West Engineering, Inc. identified a steep section of the W 5th Street right-of-way that requires additional attention and construction strategies. (See application materials, Section 4, Columbia West, Inc. technical memorandum.)


   b. Regulated Activities
      i. All construction, development, earth movement, clearing, or other site disturbance which requires a permit, approval or other authorization from the County in or within one hundred (100) feet of a geologic hazard area that is not specifically identified as exempt in Section II.C shall comply with the requirements of this section.
      ii. Class IV G forest practices (conversions).
   c. Standards

i. - iii. Relating to buffers and setbacks.

Response:
Response: Columbia West Engineering conducted a field reconnaissance within the proposed outfall route in the fall of 2008. Their comments and recommendations follow: Based on topographic maps, the slope from the west end of W. 5th Street drops from an elevation of approximately 134 feet above mean sea level (amsl)) down to the River at approximately 10 feet amsl. Slopes vary from 5 to 60 percent within the project area. Soils within the project area are predominantly damp to wet, stiff clay.

Columbia West recommended the following constructions strategies.

1. Pipes conveying stormwater over slope surfaces or buried within the slope should be fitted with flexible joints. The pipeline should be monitored periodically for leaks and proper water conveyance to prevent leaking pipes that may cause saturated subsurface conditions and reduced slope stability.
2. Stormwater should not be discharged over steep portions of the slope as shown in the map that accompanies their November 20, 2008 recommendations memo.
3. Trench backfill material within steep slope areas should consist of angular gravel, ballast, or similar interlocking material capable of achieving adjacent slope grades.
4. Adequate outfall protection is required.

Columbia West reviewed sheet C5.3 *Offsite Storm Plan and Profile* dated February 10, 2015. The plan indicated the stormwater pipe will traverse steep slope areas above ground and will be restrained at regular intervals. The plan indicates the stormwater outfall will discharge beneath the OHWM of the River. The plan incorporates Columbia West's recommendations regarding stormwater utility construction in steep slope areas. Provided restraints, joints, and energy dissipation are designed and constructed properly and incorporate Columbia West's recommendations, the construction of the planned stormwater pipeline is feasible and reasonable.

6. Wetlands
    a. General Provisions
        i. A wetland permit is required for any development activity that is within wetlands and wetland buffers subject to this program….
        ii. This section shall not apply to wetlands created from non-wetland sites….
        iii. A wetland determination is required ….
        iv. The location of a wetland and its boundary shall be determined through the performance of a field investigation utilizing the methodology contained in the Corps of Engineers Wetland Delineation Manual (1987), applicable regional supplements and as specified in LCMC 18.300.090(F) ….
        v. All buffers shall be measured horizontally outward from the delineated wetland boundary.
        vi. Wetland buffer widths shall be determined by the Shoreline Administrator in accordance with the standards in LCMC 18.300.090(6).
        vii. All wetland permits require approval of a preliminary and a final enhancement/mitigation plan in accordance with the provisions of LCMC 18.300.090(6)(l) and (m).

viii. Wetland permit application, processing, preliminary approval, and final approval procedures are set out in LCMC 18.300.090(6)(n) and (o) and will be part of the approvals required under this program.

Response: The project will impact 440 s.f. of Wetland C, a Category IV, HGM class, depressional wetland that is temporarily flooded. The Resource Company, a qualified professional organization, conducted a field evaluation and delineated the wetland. (See applicant's Materials, Section 4, Wetland Delineation and Assessment.)

b. Regulated Activities. No development or activity in wetlands or wetland buffers subject to this program shall be allowed unless it is demonstrated that:
   i. The proposed development or activity will not result in a net loss of wetland functions to the point of net loss of ecological function; and
   ii. The proposed development or activity complies with all state, local and federal laws, including those related to sediment control, pollution control, floodplain restrictions, stormwater management, wetlands protection, and on-site wastewater disposal.

Response: The project will enhance 807 s.f. of Wetland C with 22 native shrubs and ground cover to ensure no-net-loss of wetland function and value.

c. Standards
   i. Stormwater facilities are prohibited within wetlands and wetland buffers.[2]
   ii. Road and utility crossings into and through wetlands and wetland buffers are allowed provided all the following conditions are met:
      (a) Buffer functions, as they pertain to protection of the adjacent wetland and its functions, are replaced;
      (b) Impacts to the buffer and wetland are first avoided and minimized; and
      (c) The activity does not result in a decrease in wetland acreage or classification.
   iii. Regulated activities not involving stormwater management, road and utility crossings ….
   iv. Wetland mitigation for unavoidable impacts shall be required using the following prioritization:
      (a) On-site. Locate mitigation according to the following priority:
         (i) Within or adjacent to the same wetland as the impact;
         ….
   v. The various types of wetland mitigation allowed are listed below in the general order of preference.
      (a) Re-establishment ….
      (b) Rehabilitation….
      (c) Creation (Establishment)….
      (d) Enhancement….
   vi. The mitigation ratios for each of the mitigation types described in Section VI.C.6.c.v above are specified in Appendix 8-C of Wetlands in Washington State Vol. 2: Guidance for Protecting and Managing Wetlands (2005), as amended.

[2]. LCMC 18.300.050(S)(4)(b) expressly allows "below or aboveground utilities, facilities and improvements, where necessary to serve development consistent with the La Center comprehensive plan and development code, including … storm and sanitary sewer systems … where there is no other reasonable alternative, based on topographic and environmental conditions, as determined by the director."

vii. The Shoreline Administrator has the authority to approve preservation of existing wetlands as wetland mitigation ….
viii. Wetland mitigation shall be required in accordance with the wetland mitigation standards in this section for the following indirect wetland impacts:
  (a) Buffer loss resulting from wetland fills permitted under this section;
  (b) Reduction of wetland buffers beyond the maximum reduction allowed under Appendix C (LCMC 18.300.090(6)(i)); provided, that such reductions are limited as follows:
    (i) Road and utility crossings in the wetland buffer approved in accordance with Appendix C (LCMC 18.300.090(6)(h)(iii)); and
    (ii) The total indirect wetland impact from buffer reductions is less than one-quarter (1/4) acre; and
  (c) Unavoidable loss of wetland function due to stormwater discharges that do not meet the wetland protections standards in Appendix C (LCMC 18.300.090(6)(j)).
ix. Wetland mitigation shall be protected by the water quality function wetland buffers required in Appendix C (LCMC 18.300.090(6)(h)).
  (a) Reductions to the required buffers may be applied in accordance with Appendix C (LCMC 18.300.090(6)(i)).
  (b) All wetland buffers shall be included within the mitigation site and subject to the conservation covenant required under Appendix C (LCMC 18.300.090(6)(l) and (m)).
x. Alternate wetland mitigation …
xi. Applicants may seek buffer reductions….
xii. Monitoring of wetland mitigation is required for a minimum of ten years. Additional monitoring may be required for projects which propose a forested component.

Response: There is a conflict between subsection (c)(i) of the SMP and LCMC 18.300.050(S), the La Center Critical Area code designed to regulate impacts to critical areas subject to the city's SMP. Subsection (4)(b) expressly allows *"below or aboveground utilities, facilities and improvements, where necessary to serve development consistent with the La Center comprehensive plan and development code, including … storm and sanitary sewer systems … where there is no other reasonable alternative, based on topographic and environmental conditions, as determined by the director."*

The city approved the preliminary plat for Kays Subdivision in 2008 because it was consistent with the city's comprehensive plan and development regulations. Because of geography and topography, storm water from Kays Subdivision, after treatment within the subdivision, naturally flows to the East Fork of the Lewis River. The shorelands along this reach of the River are encumbered with associated wetlands. To avoid potential landslide issues on undeveloped land between the subdivision and the River, Kays considered alternative routes for stormwater conveyance. The proposed route will have the least adverse effect upon critical areas and shorelands.

The city concludes that because of topography and environmental conditions there is no other reasonable alternative to impacting 400 s.f. of Category IV wetland and buffer within the shorelands.

Wetland vegetation is dominated by herbaceous cover and no trees or shrubs occur within the wetland. The pipeline construction will be a temporary impact to the wetland and a portion of the buffer that will be restored once the pipe has been installed. In addition to restoring the

trench area of the wetland and buffer, the remainder of the wetland will be enhanced by planting native trees and shrubs. TRC has prepared a wetland mitigation plan to address the temporary impacts and compensation that is enclosed for review with this document.

D. Flood Prevention and Flood Damage Minimization
   3. Development in floodplains shall not significantly or cumulatively increase flood hazard or be inconsistent with an adopted comprehensive flood hazard management plan.
   4. New development or new uses in the shoreline jurisdiction, including subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The actual location of the channel migration zone on site must be delineated by a qualified professional.
   5. New structural flood hazard reduction measures…
   6. In-stream structures shall be located, designed, and maintained in such a manner that minimizes flood potential and the damage affected by flooding.
   7. Fills are prohibited in floodplains unless the applicant clearly demonstrates that the geohydraulic characteristics will not be altered in a way that increases flood velocity or risk of damage to life or property; and flood storage capacity will not be reduced. See also Section V.G.2.
   8. Fill shall be avoided in critical areas or buffers where possible. Pile or pier supports …
   9. Dikes and levees …
   10. Removal of gravel …
   11. Removal of beaver dams …
   12. Non-structural flood hazard reduction measures are preferred to structural measures. Flood hazard reduction measures should be accomplished in a manner that ensures no net loss of ecological functions and ecosystem-wide processes.
   13. Flood protection measures that result in channelization and/or reduction in shoreline function should be avoided.

Response: Section C. Critical Areas, Frequently Flooded Areas, substantially addressed this SMP section. Kays Subdivision is outside the floodplain but the necessary stormwater outfall cannot avoid discharging into the floodplain of the River unless the outfall was placed on steep slopes or landslide debris above the floodplain, which is an unacceptable risk. The outfall pipe and structures are below ground. The outfall to the River will be protected from erosion by reducing flows to non-erosive velocities of less than 3-fps using corrugated plastic pipe. The pipeline trench and vault are the minimal amount of fill necessary to serve the discharge needs.

E. Public Access
   3. Provisions for adequate public access shall be incorporated into all shoreline development proposals that involve public funding unless the proponent demonstrates public access is not feasible due to one or more of the reasons stated in Section V.E.3 below.
   4. Provisions for adequate public access shall be incorporated into all land divisions and other shoreline development proposals (except residential development of less than four (4) parcels).
   5. Public access will not be required where the proponent demonstrates one or more of the following:
      ….

Response: The project is not publically funded and is an off-site utility facility necessary to serve a subdivision. Although public access may not be required, the project is located in the W. 5th Street right-of-way and public access is not prohibited.

F. Restoration
   3. Restoration of ecological functions and processes shall be encouraged and allowed on all shorelines and shall be located, designed and implemented in accordance with applicable policies and regulations of this program and consistent with other City programs. See also Section VI.D.5.
   4. Impacts to shoreline functions shall be fully mitigated. Such mitigation may include elements from the Restoration Plan.
   5. Elements of the Clark Coalition Shoreline Restoration Plan may also be implemented in any shoreline designation to improve shoreline function.
   6. Restoration efforts shall be developed by a qualified professional, shall be based on federal, state, and local guidance and shall consider the following:
      a. Riparian soil conditions;
      b. In-stream fish habitats; and
      c. Healthy aquatic and terrestrial food webs.

Response: The habitat value of the wetland and buffer is low but habitat values increase in the Oregon white oak zone. The project will remove underbrush and invasive species in the white oak zone and will replant disturbed areas with native species. In the wetland and wetland buffer the Habitat Mitigation plan enhance the wetland and buffer by planting native willows and ground cover. The applicant has demonstrated that implementation of the Mitigation Plan will fully mitigate construction impacts to shoreline functions.

G. Site Planning and Development
   3. General
      a. Vehicle and pedestrian circulation systems…
      b. Parking, storage, and non-water dependent accessory structures…
      c. Trails and uses near the shoreline …
      d. Elevated walkways …
      e. Fencing, walls, hedges, and similar features…
      f. Exterior lighting …

Response: The project will not create vehicle or pedestrian accessways, parking, trails, elevated walkways, fencing or exterior lighting. This section is not applicable.

   4. Clearing, Grading, Fill and Excavation
      a. Land disturbing activities such as clearing, grading, fill and excavation shall be conducted in such a way as to minimize impacts to soils and native vegetation, and shall at a minimum meet the requirements of the International Building Code (IBC) as adopted under LCMC 15.05.030.
      b. Clearing, grading, fill and excavation shall be scheduled to minimize adverse impacts, including but not limited to, damage to water quality and aquatic life
      c. Clearing, grading fill and excavation shall not result in substantial changes to surface water drainage patterns off the project site and onto adjacent properties.
      d. Developments shall include provisions to control erosion during construction and to ensure preservation of native vegetation for bank stability.

e. Clearing, filling, or excavation shall not be conducted where shoreline stabilization will be necessary to protect materials placed or removed. Disturbed areas shall be stabilized immediately and revegetated with native vegetation.
f. Fills shall be permitted only in conjunction with a permitted use, and shall be of the minimum size necessary to support that use. Speculative fills are prohibited.
g. Any placement of materials from off-site…
h. Soil, gravel or other substrate transported to the site for fill shall be screened and documented that it is uncontaminated. Use of any contaminated materials as fill is prohibited.
i. Fills shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.
j. Fills water ward of the ordinary high-water mark shall be allowed only when necessary to support:
    i. water-dependent use, "or public access,
    ii. cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan,
    iii. disposal of dredged material considered suitable under, and conducted in accordance with the dredged material management program of WDNR,
    iv. expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible,
    v. mitigation, environmental restoration, beach nourishment or enhancement projects.
k. Fills water ward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit.
l. Excavation below the OHWM is considered dredging and subject to provisions under that section in Section VI.D.
m. For the purposes of this program, preparatory work associated with the conversion of land to non-forestry uses and/or developments shall not be considered a forest practice and shall be reviewed in accordance with the provisions for the proposed non-forestry use, the general provisions of this program, and shall be limited to the minimum necessary to accommodate an approved use.

Response: The proposal will not excavate below the OHWM and will not fill water-ward of the OHWM. The finished grade of the pipe will be above the OHWM. The outfall will be above the OHWM but stabilizing rock will secure the outfall at the mark. Construction activity will occur during low water window. After construction, disturbed areas will be planted in native materials enhancing the value of the shorelands.

5. Building Design

Response: The project does not involve buildings; not applicable.

H. Vegetation Conservation
1. Existing native vegetation within the shoreline jurisdiction shall be retained and removal of such vegetation avoided. Where removal of native vegetation cannot be avoided, it shall be minimized to protect ecological functions.
2. Lost functions may be replaced by enhancing other functions if no net loss in overall functions is demonstrated and habitat connectivity is maintained. Mitigation shall be provided consistent with an approved mitigation plan.

3. Clearing of invasive or non-native shoreline vegetation or plants listed on the State Noxious Weed List using hand-held equipment is permitted in shoreline locations if native vegetation is promptly re-established in the disturbed area. In circumstances where the use of hand-held equipment is impractical or unreliable, the Shoreline Administrator may approve other methods of removal, such as the use of certain herbicides, providing such approval is obtained prior to the commencement of removal.
4. If non-native vegetation is to be removed, then it shall be replaced with native vegetation within the shoreline jurisdiction.
5. Thinning of trees is limited as follows:
    a. Removal of no more than twenty-five percent (25%) of the canopy of any tree or group of trees (calculated based on the area of the crown, or upper portion(s) comprised of branches and leaves or as determined by a certified arborist) in any given five-year period;
    b. Pruning of trees that does not affect shoreline ecological functions. No more than twenty percent (20%) of the limbs on any single tree may be removed and no more than twenty percent (20%) of the canopy cover in any single stand of trees may be removed in a given five- (5-) year period. Pruning shall comply with the National Arborist Association pruning standards, unless the tree is a hazard tree as defined in LCMC 18.350.070. New structures or development within a shoreline area should be sited to avoid the creation of future hazard trees.
6. Mitigation requirements for removal of vegetation shall be determined after review of a habitat management plan prepared by a qualified professional that assesses the cumulative impacts associated with removing riparian vegetation.
7. Topping trees is prohibited.
8. Natural features such as snags, stumps, logs or uprooted trees, which do not intrude on the navigational channel or threaten public safety, and existing structures and facilities, shall be left undisturbed.
9. Natural in-stream features….
10. Aquatic weed control ….
11. Unless otherwise stated, the vegetation conservation regulations of this program do not apply to commercial forest practices ….
12. The conversion of forest lands ….

Response: The project will remove small trees and shrubs, other than Oregon white oak within the shoreline buffer for this project. Trees will not be topped or pruned because the project will be underground. Trees and shrubs removed within the habitat area will be used to construct small brush piles within the riparian buffer of the River. The area between the OHWM and the existing tree line will be planted with native trees and shrubs. There are no stumps, logs, uprooted trees, or snags within the project area that will be removed. Aquatic weeds do not exist within the project area and control will not be necessary. The project is not subject to the Washington State Forest Practices Act.

I. Views and Aesthetics
    1. Visual access shall be maintained, enhanced, and preserved on shoreline street-ends, public utility rights-of-way above and below the ordinary high water mark and view corridors whenever appropriate.
    2. Development on or over the water shall be constructed to avoid interference with views from surrounding properties to the adjoining shoreline and adjoining waters to the extent practical.
    3. Any new or expanded building or structure over thirty-five (35) feet in height ….

Response: The project within shoreline jurisdiction will occur below ground. Other than the manhole cover the project will not be visible within shorelands but will be visible within the W 5th St. right-of-way above SMA jurisdiction. The project will remove underbrush in the sloped area which could make public access easier.

J. Water Quality and Quantity
1. The location, design, construction, and management of all shoreline uses and activities shall protect the quality and quantity of surface and ground water adjacent to the site.
2. All shoreline development shall comply with the applicable requirements of LCMC 18.320 (Stormwater and Erosion Control).
3. Best management practices (BMPs) for control of erosion and sedimentation shall be implemented for all shoreline development.
4. Potentially harmful materials …
5. Herbicides, fungicides, fertilizers, and pesticides …
6. Any structure or feature in the Aquatic shoreline designation …
7. Conveyance of any substance not composed entirely of surface and stormwater directly to water resources shall be in accordance with LCMC 18.320.
8. Septic systems …

Response: The project does not involve septic systems the Aquatic zone, herbicides or other harmful materials. The project will require an erosion control consistent with city standards. The La Center Public Work Department and City Engineer have reviewed the stormwater plans and construction activity shall not begin without city review and approval.

**Chapter VI. SPECIFIC SHORELINE USE REGULATIONS (SMP)**

A. General Provisions
1. This chapter contains the regulations that apply to specific uses, developments, and activities in the shoreline jurisdiction.
2. These regulations are intended to work in concert with all sections of this program and in particular the Goals and Policies (Chapter III) and General Use and Development Regulations (Chapter V).

C. Use Specific Development Regulations

12. Utilities Uses.
These provisions apply to services and facilities that produce, convey, store, or process power, gas, wastewater, communications, and similar services and functions. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence or other approved use are accessory utilities and shall be considered a part of the primary use.
a. Utility facilities shall be located outside shoreline jurisdiction whenever feasible. Where distribution and transmission lines (except electrical transmission lines) must be located in the shoreline jurisdiction they shall be located underground. Where overhead electrical transmission lines….
b. Utilities shall be designed, located and installed in such a way as to minimize impacts to scenic views, and minimize conflicts with present and planned land and shoreline uses.
c. Transmission, distribution, and conveyance facilities shall be located in existing rights-of-way and corridors, or shall cross shoreline jurisdictional areas by the shortest, most direct route feasible, unless such route would cause significant environmental damage.
d. Utility production and processing facilities….

Response: The applicant considered alternatives for the placement of the stormwater outfall and conveyance pipe. All of those considered either would require a shorelines permit in another area of the City adjacent to the River. All features proposed will be perpendicular to the River. The proposed project is located within the W. 5th Street right-of-way.

13. Stormwater control facilities are limited to detention / retention / treatment ponds, media filtration facilities, and lagoons or infiltration basins.
    a. Within the shoreline jurisdiction they shall only be permitted under the following circumstances:
        i. The stormwater facilities are designed to mimic and resemble natural wetlands and meet applicable City or State stormwater management standards;
        ii. Discharge water meets state water quality standards: and
        iii. Low impact development approaches have been considered and implemented to the maximum extent feasible.
    b. Outfalls shall be designed and constructed to avoid impacts to existing native aquatic vegetation attached to or rooted in the substrate. In river and stream shorelines, storm waters outfall structures may require permanent bank hardening to prevent failure of the outfall structure or erosion of the shoreline. Diffusers or discharge points must be located offshore at a distance beyond the nearshore area to avoid impacts to those habitats.
    c. Water reclamation discharge facilities ….
    d. Construction of underwater utilities or those within the wetland perimeter shall be scheduled to avoid major fish migratory runs or use construction methods that do not cause disturbance to the habitat or migration.
    e. All underwater pipelines transporting liquids intrinsically harmful …
    f. Upon completion of utility installation/maintenance projects on shorelines, banks shall, at a minimum, be restored to pre-project configuration, replanted and provided with maintenance care until the newly planted vegetation is fully established. Plantings shall be native species and/or be similar to vegetation in the surrounding area.

Response: This section specifically allows stormwater facilities and systems within shorelands. The project involves an underground stormwater pipe, energy dissipater and manhole, and discharge point. Stormwater treatment occurs in Kays Subdivision. Stormwater management design for this project is based on and complies with the stormwater requirements for the La Center Municipal Code (LCMC) and the 1992 Stormwater Management Manual for the Puget Sound Basin. The outfall to the River will be protected from erosion by reducing flows to non-erosive velocities of less than 3-fps using corrugated plastic pipe. The discharge point is an energy dissipater manhole. No rock or rip-rap will be used.

D. Shoreline Modification Regulations

1. General Requirements
    a. Shoreline Modifications shall only be allowed where it can be demonstrated that the proposed activities are necessary to support or protect an allowed use or structure, or are necessary for reconfiguration of the shoreline or bed lands to provide for an allowed water-dependent use, shoreline mitigation or enhancement purposes.
    b. Modifications shall only be allowed when impacts are avoided, minimized, and mitigated to assure no net loss of shoreline ecological functions.

c. In-water work shall be scheduled to protect biological productivity including fish runs and spawning. In-water work shall not occur in areas used for commercial fishing during a fishing season unless specifically addressed and mitigated for in the permit.

Response: As discussed above, the project is an underground pipe, energy dissipater manhole, and discharge. The project will not result in a net loss of shoreline ecological functions if the Mitigation Plan is implemented and monitored, as required. It is essential that the discharge point be secured to prevent damage during flood periods.

**Chapter 18.310 LCMC (Environmental Policy)**

This chapter requires submittal of a SEPA environmental checklist and provides authority for issuance of Determination of Non-Significance, if appropriate.

Response: The applicant submitted an environmental checklist per 18.310 LCMC. City consulting planning staff conducted lead agency review. The City published a Determination of Non-Significance on June 10th. The City did not receive any comments prior to issuance of the staff report.

**APPROVAL CRITERIA**

3. Conditional use permits shall be authorized only when they are consistent with the following criteria:
   a. The proposed use is consistent with the policies of RCW 90.58.020, WAC 173-27-160 and all provisions of this program;

Recommended finding: The La Center Shoreline Master Program(SMP) and LCMC 18.300(S) implement RCW 90.58.020 and WAC 173-27-160. The proposal for Kays Subdivision Stormwater Outfall has demonstrated compliance with applicable SMP Goals, Policies, and Specific Development Regulations for the Urban Conservancy Goal.

   b. The use will not interfere with normal public use of public shorelines;

Recommended finding: Construction of the proposed underground outfall and discharge structure will occur within a narrow construction zone within the West 5th Street right-of-way. Public access along this route will be maintained. The proposed stormwater pipe will be located underground and will not interfere with normal public access or use of the public shorelands.

   c. That the proposed use of the site and design of the project is compatible with other authorized uses within the area;

Recommended finding: The shoreland designation in and around the project site is Urban Conservancy. The nearby uses include single-family residences and unimproved shorelands. Abutting property owners will not see the underground pipe or the at-grade manhole cover. Because the facility will be underground, access along and water-related uses within the shorelands will not be limited. The proposed project is compatible with other authorized uses within the area.

   d. That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and

Recommended finding: The proposed use is an underground stormwater pipe, energy dissipater manhole, and discharge point. Primary impacts to the environment are related to construction. After construction the contractor is required to backfill the trench and enhance the disturbed, wetland, wetland buffer, riparian habitat conservation area and Oregon White oak woodlands. Therefore, the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located

e. The public interest will suffer no substantial detrimental effect;

Recommended finding: The proposed stormwater pipe and discharge point will not limit access to the shorelands because it will be located within the W. 5th Street right-of-way and will primarily be underground. All impacts to the shorelands and critical areas will be mitigated consistent with adopted city SMP and critical area regulations. Therefore, public interest will not suffer a substantial detrimental as a result of this project.

f. Consideration has been given to cumulative impact of additional requests for like actions in the area.

Recommended finding: The application materials adequately addressed all applicable SMP Goals, Policies and Regulations and LCMC Critical Area regulations. Other low density residential lands in the general area may develop in the future. The proposed project will not impede such development. Given the proximity of steep slopes it is unlikely that other residential development will propose similar outfall projects. Therefore, this project has considered the cumulative impacts of additional requests for like actions.

For these reasons, the proposed Kays Subdivision Stormwater Outfall project has met the required burden of proof and can be approved.

## IV. CONCLUSIONS & RECOMMENDATION

The review authority finds the applicant has sustained the burden of proving the application complies with the applicable provisions of the La Center Shoreline Master Program and Municipal Code. The subject application should be **APPROVED, SUBJECT TO THE FOLLOWING CONDITIONS:**

1. The applicant, at time of engineering approval, shall demonstrate compliance with all applicable La Center regulations, goals and policies contained herein.

2. The design and construction of storm drainage shall be in accordance with the LCMC and applicable city engineering standards for public works.

3. Construction shall not proceed without an approved erosion control plan.

4. Prior to site disturbance, the applicant shall consult with the City Public Works Director and Public Works Engineer to incorporate the recommendations made by Columbia West Engineering into the site grading, erosion control plans, structural fills, and suitable crushed aggregate trench backfill.

5. As-constructed drawing(s) will be provided in '*.dwg' electronic format as well as Mylar and paper.

6. Construction plans shall identify staging areas for all equipment, contractors, deliveries, and supplies prior to construction plan approval.

7. Construction plans shall identify and show all utilities with trench and location details.

8. The findings and recommendations of the following reports shall be incorporated herein and considered as conditions of approval through final design of the outfall project except as otherwise noted herein:

    a. Kays Subdivision Stormwater Outfall: Wetland Delineation and Assessment", The Resource Company, July 10, 2014;

    b. "Kays Subdivision Wetland and Habitat Mitigation" The Resource Company, March 4, 2015;

    c. "Geotechnical Recommendation for Proposed Stormwater Discharge", Columbia West, Inc., November 20, 20008;

    d. "Cultural Resource Survey of the Kays Subdivision Stormwater Outfall Project Area" Archaeological Services, LLC, March 22, 2015; and

    e. "Technical Information Report: Kays Subdivision, MacKay & Sposito, June 6, 2014Geotechnical Recommendations for Proposed Stormwater Discharge" Columbia West Engineering, Inc., November 20, 2008.

9. Prior to soil disturbance, the developer shall install flags, stakes, fencing and/or signs, consistent with LCMC 18.300.090 and -.110, along Wetland C and associated buffers, riparian habitat conservation area and shorelines.

10. The developer shall install permanent signs along the perimeter of Wetland C at the conclusion of advising the public of the presence of protected areas. Signage will read "Wetland Buffer to Remain in Natural Vegetated State" or an approved equal. An affidavit of posting will must be returned to the City prior to final platting. Codes, Covenants and Restrictions (CC&R's) shall include a provision requiring that such signs be permanently maintained.

11. The applicant shall monitor all mitigation areas for a period of ten (10) years, and submit yearly monitoring reports to the City. The required yearly monitoring activity shall include a complete count (not transects) of all woody vegetation within the wetland and buffer enhancement areas.

12. Watering of the mitigation area shall take place only between 6:00 am and 9:00 am.

13. All erosion control measures shall be designed, approved, installed and maintained consistent with Chapter 18.320 LCMC. Where these standards differ, the more stringent shall apply. All erosion control measures shall be in place prior to removal of vegetation or any construction activity and shall be maintained during all phases of construction.

14. Construction plans shall identify staging areas for all equipment, contractors, deliveries, and supplies prior to construction plan approval.

15. Site development earthwork for site grading and construction of sewer, storm drain, water, and street systems within critical areas shall be limited to the dry weather season between May 1st and October 31st with planting and seeding erosion control measures completed by October 1st.

## V. APPEALS

The applicant, applicant's representative, or any person, agency or firm with an interest in the matter may appeal the Critical area decision. The appellant shall file the appeal together with the requisite fee and information within 14 calendar days of the date of the decision being appealed. (§18.030.130 LCMC.)

The applicant, applicant's representative, or any person, agency or firm with an interest in the matter may appeal the Washington Department of Ecology decisions on conditional use requests shall to the Shorelines Hearing Board as specified in Section VII.E.3 of the Shoreline Master Program. [Ord. 2013-01 § 3 (Exh. D), 2013.]

Anthony Cooper, P.E.
City Engineer
City of La Center