



July 18, 2013

EXHIBIT 13
PAGE 1 OF 13

Erin Martindale, Senior Planner
City of Woodinville
17301 133rd Avenue NE
Woodinville, WA 98072-8534

**RE: ASKO PROCESSING INC.
REASONABLE USE PERMIT RUP12001/SEP12034
15801 & 15701 WOODINVILLE-REDMOND ROAD**

Dear Ms. Martindale,

This letter responds to yours of June 18, 2013 which requested additional response to our prior letter of May 2, 2013. We are anxious to bring this matter before the City's Hearing Examiner and trust that the following will address any remaining issues. We have tried not to repeat our points and ask that you consider the following as additions to our May 2 submittal. You requested three items:

- 1) More detailed narrative on how our request meets the Reasonable Use criteria of WMC 21.24.080: (See Page 2).
 - (i) The application of this chapter would deny all reasonable use of the property;
 - (ii) There is no other reasonable use with less impact on the sensitive area;
 - (iii) The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest; and
 - (iv) Any alterations permitted to the sensitive area shall be the minimum necessary to allow for reasonable use of the property.

- 2) Revisions to the Critical Areas report to provide answers to four issues: (See Page 10).
 - That the reasonable use criteria have been met.
 - That buffer reduction criteria have been met.
 - That buffer alteration criteria have been met.
 - Findings regarding an on-site stream.

- 3) Narrative addressing issues raised by the Department of Ecology: (See Page 13).

1. MORE DETAILED NARRATIVE ON HOW OUR REQUEST MEETS THE REASONABLE USE CRITERIA OF WMC 21.24.080.

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JUL 18 2013

CITY OF WOODINVILLE
DEVELOPMENT SERVICES

RU Criteria (i): The application of this chapter would deny all reasonable use of the property.

As I indicated in my May 2 letter, "Reasonable Use" in this case does not pertain to the proposed uses on the site, but rather on the scale of development. A reasonable use in the Tourist Development Overlay (TDO) would be either a tourism use or an industrial use that is compatible with the TDO design standards. We have no problem meeting these use standards. The current critical area rules, however, if strictly applied, would restrict the scale of development on the applicant's site below what is reasonably expected in the market place. It would also create development at odds with the City's own policies for industrial and tourism development. Allowing the Reasonable Use exception, with its critical area relocation, would resolve this conflict.

Reasonable Industrial Use

I discuss below research I've done into the scale of existing development on other designated industrial lands along Woodinville-Redmond Road. This was done to describe what the industrial market currently demands in gross leasable floor area. I add to this what the City's codes would require for parking, circulation and other impervious surfaces based on floor area. In fact, there is a wide discrepancy between the Code's minimum requirements and how these lands have, in fact, developed.

Commercial development of the ASKO property has never occurred, because a wetland and its associated buffer area bisect most of the site and limit where "reasonable" development can locate. The wetland and its buffer cover the northwest and southeast quarters of the property; steep slopes in the southwest quarter also prevent development. The northeast quarter of the property is the only reasonable location for development. The aerial photos of surrounding development give clear evidence of its reduced developability in an area earmarked by the City for intensive industrial/tourism development. In order to provide a financial incentive for this type of development, a much larger portion of the property is needed.

Your March 14 review Comment 1.a states that our submittal "*does not address what a Reasonable Use would be within the TDO*". Again, referencing my financial incentives comment, while it is not always accepted as argument in Reasonable Use determinations, in this matter it is directly related to implementation of the City's Comprehensive Plan, Economic Development Action Strategy, Tourist District Master Plan and Tourist District Overlay. As I indicated in the May 2 response letter, we are proposing a solution to the site that will both improve water quality protections and achieve the City's policy goals related to industrial development. While we take no issue with the Tourist Development Overlay (TDO), the property is first and foremost an industrial site, according to the City's Comprehensive Plan and Zoning. ASKO's original purchase of the site assumed same; it did not expect that reasonable use of the property for industrial purposes would somehow be denied.

There is nothing in the Tourist District Overlay rules or policies that suggest that a "scarce" industrial land supply should be further restricted by imposing a TDO. In fact, it is quite the opposite. The Purpose statement for the TDO (WMC 21.38.065) states:

"The purpose of the Tourist District Overlay is to provide for tourist-oriented retail and commercial uses in the Sammamish Valley. These uses are additional to the uses permitted in the underlying zoning. Permitted uses in the Tourist District Overlay and development standards are established to ensure that uses and development within the overlay area fit harmoniously and compatibly and inappropriate intrusion is minimized." (Underlines Added).

Reasonable Tourism Use

The code and policy language seems to be all about *integrating* industrial and tourist uses, which include, among others, larger scale wine and brewery manufacturers. Smaller scale retail tourist uses are potential "intrusions" if the effect is to reduce the ability of these larger scale uses to thrive. Although we are not specifically requesting these uses at this time, the Purpose statement would seem to support Reasonable Use exceptions if needed to allow tourist oriented uses to locate along Woodinville-Redmond Road, even if that requires adjustment to critical areas.

The following additional uses are allowed in the Industrial zone under WMC 21.38.065(2):

- Wineries, breweries and distilleries,
- Beer and wine tasting events and facilities,
- Manufacture of arts and crafts;
- Bakeries,
- Bike shops,
- Delicatessens,
- Art/Northwest craft shops,
- Food stores,
- Theaters,
- Museums,
- Outdoor performance centers,
- Lodging facilities,
- Conference centers,
- Passenger train stations,
- Parks, trails and recreation services providing rental of bicycles, roller skates or Blades, canoes, kayaks, rowboats, and flotation devices;
- Restaurants,
- Antique stores and bookstores;

- River-related uses and accessories, such as small-boat rentals or steamboat quays/docking.

It is unlikely that most of these uses – which are encouraged by the TDO Master Plan – could be located on the applicant’s property without some Reasonable Use relief. For instance, wineries, breweries and similar types of industrial use require large warehouses with parking for employees and tourists. Because development is restricted to the northeast quarter of the property, this effectively denies reasonable use of the property. The zoning does not allow exclusive commercial, retail, or residential land uses, so there is no other reasonable use of the property.

We researched the record of the TDO adoption in this area. I refer to a memorandum from Hal H. Hart, Community Services Director, to the Planning Commission, dated September 16, 2009. The memorandum provides background on proposed amendments¹ to the City’s zoning map affixing a TDO overlay to the underlying Industrial Zone. The memorandum summarizes previous discussions held by the Commission on the subject. Mr. Hart summarizes the purpose of the TDO amendments to:

1. Add definitions
2. Allow tasting rooms
3. Allow distilleries
4. “Modify the Tourist District Overlay requirements to allow existing manufacturing uses as a permitted use, so that the existing businesses in the expansion area would not become a legal, nonconforming use/structure/site.”
5. “Review the Overlay requirements for requirements that would conflict with the existing businesses in the overlay expansion areas.”

Regarding Item No. 4, the memorandum (at Page 104) describes the City’s intent that new manufacturing businesses, and all tourist uses, would be required to comply with the TDO standards, while giving existing businesses relief from the new rules. Clearly the intent of the City was to encourage tourist related activities in the "winery/brewery" TDO, without unduly inhibiting site development for those and other industries. The intended use of the ASKO property (industrial) is better achieved by a reconfiguration of critical areas, which – if done according to “responsible environmental practices” -- achieves both the industrial goals of the city without precluding its tourism goals.

Impact on Critical Areas

We looked at how the TDO rules would inhibit the market or development potential of industrial lands around or near critical areas. There are added requirements² for manufacturing uses locating in the TDO which require some Reasonable Use exception relief. These include:

¹ ZMA09002 and ZCA09018

² WMC 21.38.065 (5).

- Site and landscape design which facilitate pedestrian, bicycle, and vehicular traffic flow adjacent manufacturing and tourist-related uses;
- Site design which minimizes connections to the Woodinville-Redmond Road
- Developments providing a 10-foot width of pedestrian-oriented space
- A 10-foot sidewalk/bike path
- Pedestrian-oriented design along the SR202 frontage
- Activity located indoors
- Loading and service areas screened from public roads and trails
- 20-foot landscaped setback from residentially zoned or developed areas

These requirements potentially crowd existing critical areas. The Reasonable Use exception requires that as critical areas are reorganized on the property, this not diminish their functions and values. This has been accomplished with the critical areas plan developed by the applicant.

Minimum Area Necessary

Your March Comment 1.b states that *"there is no analysis that the 80,000 square foot is the minimum necessary to provide for Reasonable Use."* It requested a comparison with other buildings in the North Industrial area. Submitted below are aerial photos of the immediate vicinity of the ASKO property showing high levels of impervious surfaces. Most properties exceed our requested 57% coverage and closely approximate (or exceed) the 85% code maximum.



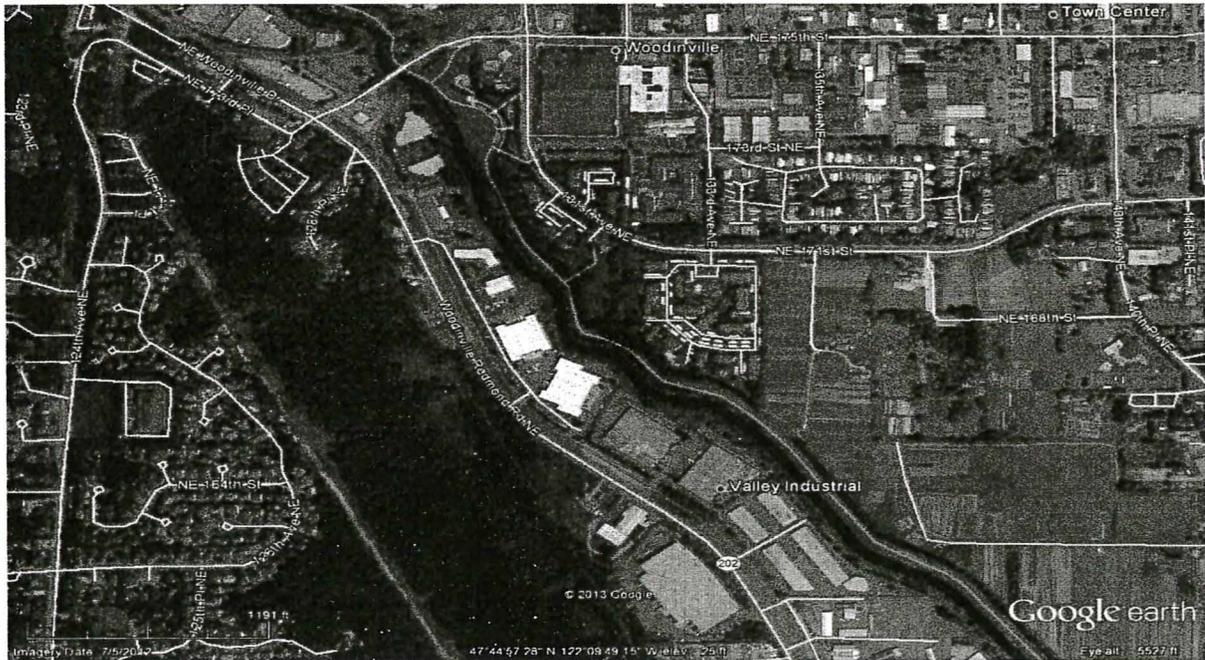
We have also researched assessor records for the developed areas between NE 175th Street and NE 145th Street to determine the amount of lot coverage in the Valley Industrial area. Actual development is a sign of how the market views “reasonable use”. Based on the size of existing industrial buildings, we calculated what the code would require for parking, circulation and other impervious surfaces.

Thirty five (35) parcels were shown as developed according to the King County Assessor. Actual ground floor areas and total floor areas were taken from these 35 records. Based on the total square footage for each building, required parking was computed based on Woodinville code. The resulting lot coverage averaged 43% for the cumulative building and parking lot coverage (See Table). This calculation excluded loading dock areas, driving lanes outside of parking areas, fire lanes and turnarounds. It is not unreasonable to add 8-10% to the 43% to allow for these impervious surfaces. The 51-53% compares with the 57.49% proposed on the ASKO site.

Address	Land Area (Acres)	Land Area (Sq. Ft.)	Parking Area + Ground Floor Area	Lot Coverage
16225 Woodinville-Redmond Rd 98072	1.14	49,504	56,600	114.33%
14710 Woodinville-Redmond Rd 98072	1.17	50,965	48,453	95.07%
15815 Woodinville-Redmond Rd NE 98072	0.53	23,149	21,389	92.40%
14450 Woodinville-Redmond Rd 98052	0.94	41,040	35,589	86.72%
17270 Woodinville-Redmond Rd 98072	1.3	56,420	47,933	84.96%
16111 Woodinville-Redmond Rd 98072	9.95	433,353	278,931	64.37%
17030 Woodinville-Redmond Rd NE 98072	1.91	83,078	53,387	64.26%
15525 Woodinville-Redmond Rd NE 98072	4.25	185,002	113,468	61.33%
14300 NE 145th Street 98072	2.34	102,061	61,567	60.32%
15010 Woodinville-Redmond Rd 98072	8.35	363,771	217,194	59.71%
16240 Woodinville-Redmond Rd 98072	5.11	222,558	132,413	59.50%
16220 Woodinville-Redmond Rd NE 98072	5.2	226,296	132,413	58.51%
15801 Woodinville-Redmond Rd. (ASKO)	6.119	266,544	153,237	57.49%
15540 Woodinville-Redmond Rd 98072	11.12	484,387	267,975	55.32%
15500 Woodinville-Redmond Rd NE 98072	8.78	382,457	205,255	53.67%
16110 Woodinville-Redmond Rd 98072	9.06	394,654	202,937	51.42%
15000 Woodinville-Redmond Rd NE 98072	6.51	283,758	140,030	49.35%
15300 Woodinville-Redmond Rd 98072	10.64	463,564	219,227	47.29%
15323 Woodinville-Redmond Rd NE 98072	3.88	169,013	76,575	45.31%
15925 Woodinville-Redmond Rd NE 98072	1.16	50,579	22,726	44.93%
14479 Woodinville-Redmond Rd 98072	1.59	69,100	30,004	43.42%
15007 Woodinville-Redmond Rd 98072	0.57	24,830	9,768	39.34%
14030 NE 145th Street 98072	5.8	252,648	95,607	37.84%
16750 Woodinville-Redmond Rd NE 98072	9.76	425,106	154,153	36.26%
14580 NE 145th Street 98072	5.26	229,125	82,679	36.08%
15902 Woodinville-Redmond Rd 98072	2.43	105,851	37,133	35.08%
15511 Woodinville-Redmond Rd 98072	2.69	117,339	35,976	30.66%

Address	Land Area (Acres)	Land Area (Sq. Ft.)	Parking Area + Ground Floor Area	Lot Coverage
16928 Woodinville-Redmond Rd 98072	3.66	159,264	45,089	28.31%
17280 Woodinville-Redmond Rd 98072	2.13	92,622	25,326	27.34%
15900 Woodinville-Redmond Rd 98072	7.65	333,234	82,576	24.78%
16026 Woodinville-Redmond Rd 98072	2.51	109,124	18,406	16.87%
15901 Woodinville-Redmond Rd 98072	1.36	59,448	8,253	13.88%
15029 Woodinville-Redmond Rd NE 98072	2.39	104,108	13,219	12.70%
15800 Woodinville-Redmond Rd 98072	5	217,800	26,984	12.39%
14066 NE 145th Street 98072	18.78	818,057	36,866	4.51%
	171.04	7,449,808.64	3,189,335.66	42.81%

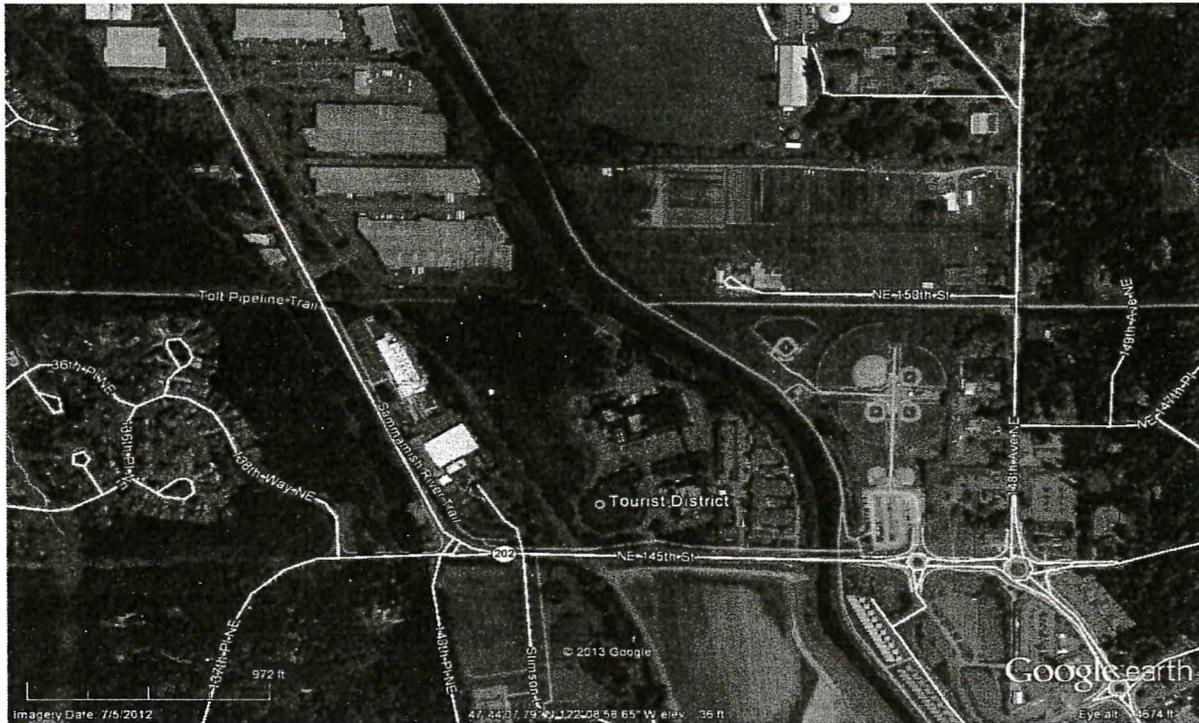
The detailed analysis is available upon request and will be presented at hearing. The figures reinforce the premise that successful industrial development in the City's industrial zone requires the amount of lot coverage requested by the applicant.



175th Street to Site

It is important to note that our analysis was based on the City's minimum parking criteria. A review of the three aerial photos shows a much higher actual lot coverage by existing industries. This is an indicator of what the market requires in this area. While the table – based on assessor records -- shows the ASKO site lying in the upper 1/3 percentile of properties; it is highly likely that the 57% lot coverage would be significantly lower on the list if actual impervious surfaces were measured on all

35 properties. The assessor records appear to understate the actual amount of impervious surface on the properties.



Site to NE 145th

TDO Lot Coverage

The size of tourist-related industry also requires flexibility on lot coverage. If the ASKO property is to join others as a candidate site for tourist uses, relief must be granted and alternative mitigation allowed. The City's Strategic Economic Development Action Plan contains numerous policies and actions promoting the wine industry which has several businesses located in the buildings along SR 202. Sites range from Chateau St. Michelle (105 acres) to properties similar in size to ASKO. The developing wine and brew industries extend beyond the Hollywood Schoolhouse and south. The factory portions of these sites (St. Michelle contains both production/retail areas and concert/open space areas) are intensively developed with production areas, shipping areas, loading docks, parking areas and travel lanes. The intensity of these winery and brewery activities along with other industrial uses are easily visible on the attached aerial photos (See above). If the ASKO site is to remain competitive in the Woodinville industrial market, it must be able to maximize use of the site, in line of course with effective protections of critical areas.

Further regarding your Comment 1.b, in our May 2 letter, we list the Industrial land use policies of the City's comprehensive plan which call for a "diverse" industrial base which

clusters the community's industrial uses on increasingly scarce land. The Economic Development Strategic Action Plan speaks to the need to incentivize industrial uses, particularly in the areas of technology, wineries and breweries.

"Retaining businesses and attracting new businesses by maintaining a high quality community requires balancing the provision of these amenities with the limited use of incentives which reduce the costs that growth or development would otherwise pay. Such incentives may include permitting process assistance or expedited permitting; flexibility in permitting or impact fees; flexibility in development regulations, particularly height limits; and City investments in site improvements, transportation infrastructure or utilities". -- Page 10

"Priority 3: Continue to improve the City's business climate: *Assess and modify existing incentives and regulations Analyze existing incentives and regulations to understand their net impact on development Modify incentives and regulations to ensure future development is in desired locations and of desired character."*

"Priority 2: Practice "proactive zoning": reevaluate and modify land use zoning to meet City fiscal goals and Vision *Assess current land use zoning and permitted uses and their fiscal implications for the City given expected future trends, including sales tax streamlining [Exhibit 2-1] Modify zoning as necessary to most appropriately respond to market demand given fiscal goals and the City's Vision Consider expanded retail and tourism-related uses in the South Industrial area Concentrate industrial and large-scale retail in the North Industrial area -- Page 16*

Again, as evidenced by the aerial view of surrounding developed lands, the community's apparent desire for industrial highest and best use in the North Industrial Area is underserved on the ASKO site without some Reasonable Use relief.

In summary, we submit that Item 1 is met as follows:

- (i) The strict application of this chapter, without a Reasonable Use Exception would deny reasonable use of the property because:
 - a) It would diminish the stock of Industrial buildable lands, which the City's Comprehensive Plan says is in limited supply.
 - b) It would discourage or preclude a mix of industrial and tourist oriented businesses, which in the Industrial/Tourist District is considered by the City to be the desired and reasonable highest and best use.
 - c) It would not employ reasonable measures to ensure that Industrial land use policies of the City were met while protecting or improving critical areas.
 - d) It would restrict uses to either non-industrial categories or limit potential industrial floor area and parking below what the market demands or supports.

2) REVISIONS TO THE CRITICAL AREAS REPORT TO PROVIDE ANSWERS TO FOUR ISSUES

The City has asked that four issues be expanded upon. These had been addressed to some extent in our prior letter:

- That the reasonable use criteria have been met.
- That buffer reduction criteria have been met.
- That buffer alteration criteria have been met.
- Findings regarding an on-site stream.

The Critical Area Report has been revised to include added discussion on these points. They are summarized as follows:

REASONABLE USE CRITERIA HAVE BEEN MET

The first criteria were addressed under item 1 on Pages 2 thru 8.

RU Criteria (ii): There is no other reasonable use with less impact on the sensitive area.

Under Criteria (i) (Page 3) we listed various uses allowed in an Industrial/TDO district, many of which would have difficulty being built on this impacted property. By their industrial nature, they would have no less impact on sensitive areas, with or without a Reasonable Use exception. They are large, they require parking, and they involve outdoor traffic activity. Any property in an industrial zone will have a potential impact on adjacent sensitive areas. By the same token, none will have any greater impact if effective mitigation can be built into site design.

A mitigation sequence was followed by the applicant to avoid, minimize, rectify, reduce, and compensate for wetland and buffer impacts on this property from the proposed action in accordance with Woodinville Municipal Code (WMC 21.24.350). A summary of these mitigating measures is listed below.

- Efforts to avoid impacts involved locating a portion of the building in the northeast corner of the property where there is no wetland.
- Efforts to minimize impacts involved only filling the central ditch and eastern swale that has the lowest species diversity and habitat functions, in order to protect the western half of Wetland A that provides relatively more valuable functions.
- Efforts to rectify the wetland impacts involve enhancing the western half of Wetland A by invasive species removal, retaining hydrology, and planting native species. In addition, buffer impacts will be rectified by enhancement actions such as invasive species removal and planting native species.

- Efforts to reduce buffer impacts over time involve preserving and maintaining a buffer surrounding the western half of Wetland A that functions better than existing conditions.
- Efforts to compensate for wetland impacts involve wetland creation, which is described in the Critical Area Report.

These efforts serve to protect the sensitive areas, regardless of what industrial or tourist uses are built. These measures will protect the reorganized sensitive areas.

RU Criteria (iii): The proposed development does not pose an unreasonable threat to the public health, safety or welfare on or off the development proposal site and is consistent with the general purposes of this chapter and the public interest

The proposed footprint of this commercial development requires permanent impacts to approximately 24,064 ft² of Wetland A (see Critical Areas Report, Figure 2 in Appendix A). This development will require filling the eastern swale and central ditch of Wetland A. By developing the least valuable portion of Wetland A, this design minimizes the impact in accordance with Woodinville Municipal Code (WMC 21.24.350). This design does not pose an unreasonable threat to public health, safety or welfare either on- or off-site. In addition, the design is consistent with the general purposes of the Critical Area regulations (WMC 21.24) and the public interest.

BUFFER REDUCTION CRITERIA HAVE BEEN MET

From the revised Critical Areas Report (with new language underlined):

According to the Woodinville Municipal Code (WMC 21.24.330), a 50-foot buffer is required around a Class 3 wetland but a 25-foot buffer reduction is allowed when enhancement occurs. The proposed buffers around the mitigation site (wetland creation and existing wetland area) will vary from 25 to 75 feet wide. A 25-foot buffer will be used along two portions of the mitigation site, while wider buffer areas will occur in all four corners of the mitigation site. Buffer reduction is allowed when the existing buffer is significantly degraded and enhancement will improve functions and values in accordance with the Woodinville Municipal Code (WMC 21.24.330 [d]).

The mitigation section of the CAR outlines how buffer enhancement will improve functions and values.

BUFFER ALTERATION CRITERIA HAVE BEEN MET

The Woodinville Municipal Code (21.24.330.1.d) states that the standard buffer width can be reduced with enhancement based on the following criteria:

- the existing buffer is significantly degraded.

- the enhancement will provide a net improvement in wetland and buffer functions and values.
- the enhancement plan is prepared by a qualified biologist and is approved by Development Services Director.

Our mitigation plan discusses the buffer enhancement in several areas.

1. Pages 18-19 summarizes the mitigation concept.

“Buffer enhancement in this 32,003 ft² area involves selective removal of invasive ...soil amendments, and supplemental planting of native species. This involves clearing and grubbing out the roots of Himalayan blackberry throughout the buffer area. The soil would be amended by covering the ground with overlapping layers of cardboard and coarse wood chips....Supplement planting of woody and herbaceous species will include tree, shrub, and herbaceous species that improve the functions and values of the buffer.”

2. Pages 21-22 lists the Goals, objectives, and performance standards for buffer enhancement.

Goal 3: Enhance a 32,003 ft² buffer area surrounding the wetland creation and enhancement areas in the northwest corner of the ASKO property.

Objective 1: Remove invasive and non-native species from 32,003 ft² of the buffer enhancement area.

Performance Standard:

1. Invasive and non-native species will have 10% or less aerial coverage within the buffer enhancement area in all five years of monitoring. These plants include Himalayan blackberry, evergreen blackberry, and reed canarygrass.

Objective 2: Enhance 32,003 ft² of buffer habitat by planting native tree, shrub, and herbaceous species.

Performance Standards:

1. Survival of planted trees and shrubs within the buffer enhancement area will be a minimum of: 100% after one year, 85% after three years, and 80% after five years.
2. Tree and shrub canopy cover percentages (including beneficial native volunteers) during the monitoring period will be:
 - 10% or greater at the end of Year 1
 - 20% or greater at the end of Year 3
 - 40% or greater at the end of Year 5

Objective 3: Increase the species richness and abundance in the buffer enhancement area

Performance Standard:

1. A minimum of two native tree species and three native shrub species will be established within the buffer enhancement area at Year 5.
3. Pages 23-24 describes the mitigation site construction sequence. Included are buffer enhancement elements.

FINDINGS REGARDING AN ON-SITE STREAM

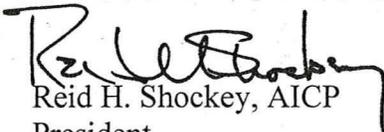
As noted in our revised Critical Areas Report at Page 13 (Topography), “although the King County map identifies a stream that flows east along the southern boundary of the ASKO property, we assume this runoff flows through a pipe underneath the parking lot of the adjacent warehouse.” No stream was found during our site investigation.

3) NARRATIVE ADDRESSING ISSUES RAISED BY THE DEPARTMENT OF ECOLOGY

Regarding the Department of Ecology comments (e-mails, Patrick McGraner, February 11, 2013 and June 12, 2013), our efforts to avoid or minimize impacts did not produce as good of a water quality product as that designed for the site as part of our Reasonable Use request. In terms of any nexus or proportionality test, ASKO’s proposed mitigation plan produces a better result for the environment, while allowing *reasonable use* of the site in accordance with the underlying industrial zoning and plan policies. The site will have twice the amount of wetland as is being filled. We are fully prepared to undertake the Ecology and Corps of Engineers permitting once the Reasonable Use decision is made.

We trust this letter responds to the points raised in yours of June 18, 2013. If you have questions, please contact me at your convenience. We look forward to having this matter scheduled for hearing and hope we will have the Staff’s support.

Sincerely,
SHOCKEY PLANNING GROUP


Reid H. Shockey, AICP
President

cc: Mike Kelly, ASKO

Enclosure: Revised Critical Areas Report