

Memorandum

TO: Planning Staff

FROM: John Sonnen, Planning Director

DATE: February 24, 2010

SUBJECT: Director's interpretation of 'disturbance areas' for Water Resource Area permits to address the issues outlined in the LUBA remand (Hood Street office building)

To address the issue raised by the Land Use Board of Appeals ('LUBA') remand of the City's approval of the office building on Hood Street (Coston property), Staff has formulated this interpretation of what constitutes disturbance area. This interpretation will be applied to all Water Resource Area ('WRA') permits reviewed by the City, until new regulations are adopted later this year. (The Council recently authorized Staff to take a comprehensive evaluation of the effectiveness of our WRA regulations under Chapter 32). The purpose is to provide clarity in determining the exact area, and extent of, the disturbed area of development when reviewing applications that include a WRA. This written interpretation will be provided to all applicants requesting a WRA permit at the time of the pre-application.

This interpretation will be used by Staff to determine how to calculate the "Maximum Disturbance Area" (MDA) for WRA applications. All WRA applications will require a detailed Disturbance Area Plan that will delineate the total allowable disturbance area on the site for the purposes of compliance under Chapter 32.

The pertinent language is found in Chapter 32.090 (A) and (B) Reduction in Standards for Hardship:

"...Development shall disturb the minimum necessary area to allow the proposed use or activity, and in any situation no more than 5,000 square feet of the water resource area, including access roads and driveways..."

Per the LUBA remand, the 5,000 SF is an absolute limitation on the area that may be disturbed in conjunction with the development. There is no exception for temporary disturbances or for any areas that will be subject to mitigation or replanting.

Director's Interpretation:

Under the existing CDC language, no activities associated with the development, other than those activities specifically exempted under Section 32.020 (D) Exceptions, may disturb any portion of the WRA without receiving an approval of the hardship variance as prescribed in 32.090 (which has a limitation of 5,000 s.f).

Section 32.050 provides for certain levels of development and specifies those uses which are permitted to encroach into the WRA. However, even these permitted encroachments are counted towards the lot area included in the 5,000 SF limitation outlined in Section 32.090 *Reductions for Hardship*.

Section 32.090 provides the standards under which a hardship may be granted for development activities within a WRA. It clearly limits the total area of disturbance related to development within a WRA to 5,000 SF. Therefore, in order to confirm that proposals do not exceed this number, all applications requesting a reduction in standards under Chapter 32.090 must submit a *Disturbance Area Plan* which shall be used to calculate the Maximum Disturbance Area (MDA) on the site and the MDA cannot exceed 5,000 s.f. Any disturbance in excess of 5,000 s.f. would require the approval of a variance pursuant to Chapter 75.

In order to determine the exact square footage of the MDA, all applicants shall prepare and submit with their application a Disturbance Area Plan which shall include the delineation of the boundaries of the WRA, as defined under Chapter 32, and **all development activities that result in the disturbance of any portion of the WRA**, including temporary/underground development activities. However, the CDC does not currently include a definition for 'disturbance'. The definition of *disturb* is cited in the LUBA remand is below. It is quoted directly from the Metro Title 3 Model Ordinance.

“Disturb - man made changes to the existing physical status of the land, which are made in connection with development. The following uses are excluded from the definition; enhancement or restoration of the Water Quality Resource Area or planting native cover identified in the Metro Native Plant List.”

However, Staff believes that this definition still lacks sufficient clarity. Also, Chapter 32 already exempts the uses 'excluded' under Metro's definition. Therefore, Staff proposes the following, supplemented, definition of 'disturb' which will be utilized for the purposes of satisfying the criteria of Chapter 32.

Disturb: *man-made changes to the existing physical status of the land, which are made in connection with development that would result in the destruction, damage, or removal of vegetation; or the compaction or contamination of the soil, not including stormwater run-off or the routine maintenance of the property consistent with CDC Chapter 32.*

All activities which disturb, as defined above, must be included in the MDA calculation. In accordance with Section 32.090, the MDA on a lot may not exceed 5,000 s.f. without a variance under Chapter 75 of the CDC. Note that the MDA will include even those uses permitted under other Sections of the Code.

Common examples of uses and activities that are to be included in the required Disturbance Area Plan are:

- All areas necessary to provide access (even temporarily) into the WRA in association with the development. It does not matter if the activities are permanent or temporary.
- All utilities, stormwater facilities, rain gardens, paths, etc. both above or below the ground surface proposed in conjunction with the development as well as the area necessary for their construction.

The required Disturbance Area Plan shall also provide the following elements:

1. A separate **construction plan** sheet and narrative that includes and addresses all phases of construction; including the location of employee parking areas, contractor offices, equipment staging, stockpile areas, trailers, refuse containers, material storage, etc. and site access and egress;
2. A narrative shall be included that provides a general description of the construction methods (e.g. tilt wall construction) proposed to ensure that all activities are included within the MDA;
3. Description of all development (permanent and temporary) within the WRA;
4. Fencing type and location;
5. Emergency vehicle access during construction;
6. Erosion control and sediment control measures; and
7. Calculation of the total MDA, as the term is defined in this section.

Any questions or clarifications of this proposed interpretation should be directed to the Planning Director.