

REVISED STAFF BUFFER PROPOSAL

Planning Commission Action 12/10/08: Correction on page 2; staff correction on page 1, as noted below.

Area	Characteristics	Environment	Buffer	Modification
MIC/H & MIC/L Zoned property from North City Limits to EMWS Bridge, and North Potential Annexation Area	Fresh/Salt water Transition Zone, Lower flooding risk, Less than 20' difference from OHWM to top of bank, tidal influence	High Impact <u>Intensity (staff correction to reflect correct name of the Environment)</u>	100'	<p>Buffer may be reduced by up to 50% upon construction of the preferred cross section:</p> <ul style="list-style-type: none"> - reslope bank from OHWM (not toe) at max 3:1, using bioengineering techniques - Minimum 20' buffer landward from top of bank - Bank and remaining buffer to be planted with native species with high habitat value <p><u>Comment</u>: Maximum slope is reduced due to measurement from OHWM and to recognize location in the Transition Zone where pronounced tidal influence makes work below OHWM difficult.</p>
LDR Zoned property w/o levees from EMWS to I-405	Moderate flooding risk, Less than 25' difference from OHWM to top of bank, tidal influence on northern section	Shoreline Residential	Distance required to set back slope from toe at 2.5:1 plus 20' setback, Min. 50' width	Removal of invasive species and replanting with native species of high habitat value voluntary unless triggered by requirement for a Shoreline Substantial Development permit
LDR Zoned property with levees from EMWS to I-405	Moderate flooding risk, Less than 25' difference from OHWM to top of bank, tidal influence on northern section	Shoreline Residential	125'	<p>Upon reconstruction of levee in accordance with approved profile, including 10' access easement on the backside of the levee, buffer to be reduced to actual width required.</p> <p><u>Comment</u>: this applies to City-owned property at Fort Dent.</p>

Attachment A
Planning Commission Action

Area	Characteristics	Environment	Buffer	Modification
Commercially zoned property from 42 nd Ave S. Bridge to I-405	Moderate flooding risk, Less than 25' difference from OHWM to top of bank	Urban Conservancy	100'	Buffer may be reduced by up to 50% upon construction of the preferred cross section: <ul style="list-style-type: none"> - reslope bank from toe at max 2.5:1 using bioengineering techniques - Minimum 20' buffer landward from top of bank - Bank and remaining buffer to be planted with native species with high habitat value
West River bank from I-405 to South City Limit, Tukwila 205 Levee and South Annexation Area	High flooding risk, Federally certified and County levee, large water level fluctuations	Urban Conservancy	125'	Upon construction or reconstruction of levee in accordance with approved profile, to include 10' access easement, buffer to be reduced to actual width required.
East River bank without levee from I-405 south to City Limits	Moderate flooding risk, 20 to 25' difference from OHWM to top of bank, Moderate slumping risk, large water level fluctuations	Urban Conservancy	125' <u>100'</u>	Buffer may be reduced by up to 50% upon construction of the preferred cross section: <ul style="list-style-type: none"> - reslope bank from toe at max 2.5:1, using bioengineering techniques - Minimum 20' buffer landward from top of bank - Bank and remaining buffer to be planted with native species with high habitat value
East River bank with levee from I-405 to South City Limit	Moderate flooding risk, 20 to 25' difference from OHWM to top of bank, Moderate slumping risk, large water level fluctuations	Urban Conservancy	125'	Upon reconstruction of levee in accordance with approved profile, to include 10' access easement, buffer to be reduced to actual width required.

Attachment A
Planning Commission Action

Area	Characteristics	Environment	Buffer	Modification
Any shoreline environment where street or road runs parallel to the river through the buffer				End buffer on river side of existing improved street or roadway.

PLANNING COMMISSION ACTION 12/10/08: NO CHANGES MADE

RESPONSE TO PUBLIC COMMENTS REGARDING BUFFERS

Specific Buffer Issues Raised	Staff Response
<p>Variable buffer widths, site by site establishment of buffers. Recommend buffer widths instead of requiring them.</p>	<p>Staff is proposing some changes to address the concerns raised about buffer widths while working within the following constraints:</p> <ol style="list-style-type: none"> 1. Site by site establishment of buffers was previously identified as a concern by the Department of Ecology in response to the staff draft which proposed buffers that resulted from re-sloping the bank to a 2.5:1 slope plus 20 feet at the top of bank, without specifying a starting buffer width or a minimum buffer width. This approach was discouraged by Ecology as it does not provide certainty on the size of the buffer width. Staff believes that the approach shown in Attachment A will address Ecology’s concerns by establishing a specific buffer width, while allowing for site by site reductions when the river bank is re-sloped or the levee is laid back. 2. From an administrative point of view, site by site buffer determinations or recommended buffer widths, as opposed to required buffers would require development of strict criteria and would likely be very difficult to administer. There could also be perceived issues of unfairness between different properties involved in determining buffers. Per Attachment A, staff has instead recommended criteria for buffer reductions tailored to the specific conditions found along different sections of the river. The application of these criteria would result in buffer widths that respond to the specific characteristics of each site. 3. Site by site determinations, rather than the groupings of like areas suggested in Attachment A, do not take into account the generally homogeneous characteristics of the river. The Inventory and Characterization Report, as summarized in Section 7.2 of the Draft SMP

Attachment B
Planning Commission Action

Specific Buffer Issues Raised	Staff Response
	<p>indicated as a key finding that "...at an ecosystem scale, the habitat is largely homogenous throughout the city. With the exception of the functions provided by the transitional mixing zone from salt to fresh water, habitat conditions and functions are relatively similar throughout the shoreline."</p>
<p>Allow buffer reductions for shoreline as allowed in the SAO</p>	<p>The City's SAO allows buffer reductions of up to 50% under certain criteria and only if buffer enhancement is carried out in accordance with an approved plan. Buffer reductions are already allowed in the draft SMP on a case-by-case basis in the Urban Conservancy and High Intensity Environments, provided they do not cause a net loss of shoreline ecological function and that shoreline functions are improved by modifying the banks to a more stable slope and planted as explained in Attachment A. Buffer reduction without enhancement would not meet the criterion utilized for establishing buffer widths – keeping new structures far enough away from the river's edge to prevent property damage due to high flows that cause scouring , erosion, and bank de-stabilization.</p> <p>No buffer reductions would be allowed in the Shoreline Residential Environment because the buffer is already reduced from 100 feet.</p>
<p>Possibility of buffer averaging</p>	<p>Buffer averaging might not provide the minimum functions needed to protect the shoreline. In addition, buffer averaging also would not meet the other important criterion utilized for establishing buffer widths – keeping new structures far enough away from the river's edge to prevent property damage due to high river flows that cause scouring , erosion, and bank de-stabilization.</p>
<p>100-125 ft buffer not appropriate (too large) for commercial/industrial areas. Sensitive Areas BAS not applicable to river, need to take into account commercial/industrial characteristics of shoreline as well as levees</p>	<p>Staff did take into account existing land use in establishing the proposed buffers, the SAO standards for Type 2 watercourses were used only as a starting point, given that buffer functions are similar for the Green/Duwamish as they are for streams. It should be noted that the Washington Department of Fish and Wildlife recommends buffers of 150 feet for rivers of the state. Staff determined that 150 foot buffers would not be practical given the existing developed character in the shoreline. The other factor in establishing buffer</p>

Attachment B
Planning Commission Action

Specific Buffer Issues Raised	Staff Response
	width, as noted in other responses was the protection of structures from bank failures, the need to reslope over-steepened, non-leveed river banks and the need to allow for reconstructing levees to a stable long-term profile. This last factor was the overriding one in establishing the 125 foot buffer for leveed areas.
No explanation provided as to how buffer widths were determined.	Explanations in the Draft SMP for how the proposed buffers were determined need to be expanded. Staff will include discussions of the rationale for establishing buffers in the revised Draft SMP. It will be largely based on the explanation provided to the Planning Commission in two memos (one dated September 9, 2008 from Jim Morrow and one dated October 10, 2008 from Carol Lumb). As explained in the referenced memos, environmental aspects were not the only factor considered in determining proposed buffer widths – the other factors were property protection from erosion and slope failure and the need to additional room for flood conveyance.
Buffer widths are a means to get shoreline restoration at the expense of property owners	<p>Staff has followed the Shoreline Management Act Guidelines, which require that local SMPs prevent not only “no net loss” of shoreline ecological function, but also must include mechanisms to <u>improve and restore</u> shoreline function. WAC 176-26-201 states that “Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions.....Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.” The same section states that “Master programs shall also include policies that promote restoration of ecological functions....”</p> <p>The Characterization and Inventory Report and other scientific information, such as that contained in the WRIA 9 Salmon Habitat Plan recognize the importance of vegetated buffers to salmonids and other wildlife that use the river.</p>
Inconsistency of proposed buffer width of 100 feet for Fish and Wildlife Habitat Conservation Areas	Staff acknowledges the inconsistency and proposes to modify the map to establish a 100 ft buffer for the individual sites that are identified as Fish and

Attachment B
Planning Commission Action

Specific Buffer Issues Raised	Staff Response
(Section 10, SAO – Map 5) given that the river itself is a Fish and Wildlife Habitat Conservation Area and proposed buffer widths vary from 50 to 125 feet.	Wildlife Habitat Conservation Areas. For the river itself, the buffers established for the river will apply. The map is proposed to be modified to reflect this.
Proposed configuration of future levee replacement with a mid-slope bench requires additional area that wouldn't be needed for a straight 2.5:1 slope and is only there to improve habitat at the expense of property owners	The proposed design for future levee replacement with 2:1 slopes and a mid-slope bench is designed to occur within approximately the same width that would be required to construct a levee with a straight 2.5:1 slope. Incorporating a bench does allow for planting that would not compromise the integrity of the levee prism and is permitted by the Corps of Engineers. Planting the bench does allow for improving shoreline ecological functions and provides for no net loss due to the removal of existing trees on the levee.

Attachment C-1 Planning Commission Action

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF PROPOSED REVISIONS.

APPLICABILITY OF SHORELINE DEVELOPMENT STANDARDS

Staff proposes to delete the list of general triggers for compliance with the development standards and instead rely on the definition of development as found in the Shoreline Management Act.. The following revisions are proposed to Section 9.1:

Page 60:

9.1 Applicability

The ~~following development~~ standards ~~of this chapter~~ apply to ~~work that meets the definition of development whether or not a shoreline substantial development permit is required.~~

- ~~• New construction~~
- ~~• Expansion of existing structures~~
- ~~• Any exterior alteration of a structure where the costs stated on all submitted building permit applications for the structure within any 3 year period equals or exceeds 10 % of the building's assessed value.~~
- ~~• Change in building occupancy~~
- ~~• Site modifications, such as, but not limited to land alteration, paving, and riverbank modifications~~

Nonconforming uses, ~~and structures,~~ parking lots and landscape areas will be governed by the standards in Section 14.5TMC 18.70, Nonconforming Development Lots, Structures and Uses.

Attachment C-2 Planning Commission Action

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF PROPOSED REVISIONS.

PARKING AND LOADING REGULATIONS

Due to numerous public comments staff proposes to delete the requirement that parking and loading areas be located landward of the building. Revisions are proposed to the following sections:

Pages 61-62:

9.3 High Intensity and Urban Conservancy Environment Development Standards

A. Standards

The following standards apply in the High Intensity and Urban Conservancy Environment.

1. The development standards for the applicable underlying zoning district (Title 18, Tukwila Municipal Code) shall apply.
2. All new development performed by public agencies, or new multi-family, commercial, or industrial development shall provide public access in accordance with the standards in the Public Access Section.
3. Development or re-development of properties in areas of the shoreline armored with revetments or other hard armoring other than levees, or with non-armored river banks must comply with the Vegetation Protection and Landscaping Section.
4. Any new shoreline stabilization or repairs to existing stabilization must comply with Shoreline Stabilization Section.
5. Over-water structures shall be allowed only for water dependent uses and the size limited to the minimum necessary to support the structure's intended use and shall result in no net loss to shoreline ecological function. Overwater structures must comply with the standards in the Overwater Structures Section.

B. Setbacks and Site Configuration

1. The yard setback adjacent to the river is the buffer width established for the applicable shoreline environment.

Attachment C-2 Planning Commission Action

2. A fishing pier, viewing platform or other outdoor feature that provides access to the shoreline is not required to meet a setback from the OHWM.
3. The minimum yard setback for buildings, uses, utilities or development from non-riverfront lot lines is subject to the zoning requirements of the respective zone, except that:
 - a. Where development provides a public access corridor between off-site areas, or public shoreline areas to public shoreline areas, one side yard may be reduced to a zero lot line placement; or
 - b. Where development provides additional public access area(s) equal in area to at least 2.5% of total building area, the front yard (the landward side of the development) may be reduced by 50 percent, except for properties located in the Tukwila Urban Center.

~~3. Except for properties located in the Tukwila Urban Center, loading docks and service areas shall be located on the landward side of the development, or on a side of the parcel not adjacent to the river, unless this requirement renders the project financially infeasible. If a loading dock or service area must be located between the river and a building, a landscape screen, per the Vegetation Protection and Landscaping Section, shall be provided.~~

Pages 69-70:

9.9 Off Street Parking and Loading Requirements

A. In addition to the parking requirements in TMC 18.56, the following requirements apply to all development in the shoreline jurisdiction.

~~B. Parking facilities, loading and service areas shall be located on the landward side of shoreline development except:~~

- ~~1. In the Manufacturing Industrial Center and in areas where there is an average grade difference of five (5) feet or more between the top of the levee and the development site; or~~
- ~~2. If it can be shown to make a project financially infeasible.~~
- ~~3. Parking structures are permitted outside the River Buffer in the Urban Conservancy Environment between I-405 and Strander Boulevard.~~
- ~~4. For parking areas intended to exclusively serve public access to the river may be located on the riverward side of the building~~

~~C.B.~~ C.B. Any parking, loading, or storage facilities ~~permitted located~~ between the river and any building must incorporate additional landscaping in accordance with the Vegetation Protection and Landscaping Section, or berming or other site planning or design techniques to reduce visual and/or environmental impacts from the parking areas utilizing the following screening techniques:

1. A solid evergreen screen of trees and shrubs a minimum six-foot in height; or

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2. Decorative fence a maximum of six feet high with landscaping. Chain link fence, where allowed, shall be vinyl coated and landscaped with native trailing vine or an approved non-native vine other than ivy, except where a safety hazard may exist; or
3. Earth berms at a minimum of four feet high, planted with native plants in accordance with the Vegetation Protection and Landscaping Section.

D.C. Where a parking area is located in the shoreline jurisdiction and adjacent to a public access feature, the parking area shall be screened by a vegetative screen or a built structure that runs the entire length of the parking area adjacent to the amenity. The landscape screening shall comply with the Vegetation Protection and Landscaping Section.

E.D. Where public access to or along the shoreline exists or is proposed, parking areas shall provide pedestrian access from the parking area to the shoreline.

F.E. Parking facilities, loading areas and paved areas shall incorporate low impact development techniques wherever feasible, adequate storm water retention areas, oil/water separators and biofiltration swales, or other treatment techniques and shall comply with the standards and practices formally adopted by the City of Tukwila Public Works Department.

Attachment C-3 Planning Commission Action

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF PROPOSED REVISIONS.

HEIGHT AND LIGHTING LEVEL RESTRICTIONS

In response to comments from the Planning Commission and the public staff proposes to amend this section as follows:

Page 63:

Section 9.3

C. Height Restrictions

1. Except for bridges, approved above ground utility structures, and water dependent uses and their structures, the maximum height for structures shall be as follows:
 - a. 15 feet where located within the River Buffer;
 - b. 45 feet between the outside landward edge of the River Buffer and 200' of the OHWM.

Provided no permit shall be issued for any new or expanded building or structure of more than 35 feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines.

~~[EXCEPT that this maximum may be increased by one story when:~~

- ~~a. Development devotes at least 5% of its building or land area to public shoreline access; or~~
- ~~b. Development devotes at least 10% of its land area to employee shoreline access.]~~ Move this to Section 11- See Attachment E.

These criteria do not apply to properties located in the Tukwila Urban Center district: Delete references to Tukwila Urban Center (and future regulations adopted in the TUC Plan) per direction of Planning Commission

Staff Discussion: Staff does not propose revisions to this section other than to delete the reference to the Tukwila Urban Center district and to move the incentive for public access to Section 11 as noted above. An additional incentive to increase the height of the building to that permitted in the underlying zoning district is also proposed to be added in Attachment E. In Attachment C-2, staff proposes to permit parking on the river side of the building, so the area outside the buffer but still within the shoreline jurisdiction may be utilized by required parking.

Attachment C-3 Planning Commission Action

The following zones and their height limits are found along the Green/Duwamish River:

Zoning District	Height Limit
MIC/H	125'
MIC/L	4 stories/45'
LI	4 stories/45'
LDR	30'
RCC	3 stories/35'
C/LI	4 stories/45'
RCM	3 stories/35'
TUC	115'
HI	115'
TVS	115'

Of the ten zoning districts found along the river, six are not affected by the height restriction within the shoreline jurisdiction.

Staff Recommendation – Lighting: The following change is proposed to address comments from several property owners who expressed site security concerns about limiting the lighting intensity. The goal is to prevent spillover and glare and that can be met without a specific lighting level standard.

Page 63:

D. Lighting

In addition to the lighting standards in the TMC 18.60, Design Guidelines, lighting for the site or development shall be designed and located so that:

1. The minimum light levels in parking areas and paths between the building and street shall be 1 foot-candle;
- ~~2. The maximum illumination at the property line shall be 2 foot-candles;~~
- ~~3.2.~~ Lighting shall be designed to prevent light spillover and glare on adjacent properties and on the river channel, be directed downward so as to illuminate only the immediate area; and be shielded to eliminate direct off-site illumination;
- ~~4.3.~~ The general grounds need not be lighted;
- ~~5.4.~~ The lighting is incorporated into a unified landscape and/or site plan.

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF PROPOSED REVISIONS.

REMOVE REFERENCES TO THE TUC PLAN

The Planning Commission directed that references to different standards for TUC zoned parcels or to the TUC Plan be removed from the draft SMP. This will affect the following sections:

Page 61:

9.3 High Intensity and Urban Conservancy Environment Development Standards

B. Setbacks and Site Configuration

1. The yard setback adjacent to the river is the buffer width established for the applicable shoreline environment.
2. A fishing pier, viewing platform or other outdoor feature that provides access to the shoreline is not required to meet a setback from the OHWM.
3. The minimum yard setback for buildings, uses, utilities or development from non-riverfront lot lines is subject to the zoning requirements of the respective zone, except that:
 - a. Where development provides a public access corridor between off-site areas, or public shoreline areas to public shoreline areas, one side yard may be reduced to a zero lot line placement; or
 - ~~3.b.~~ *Where development provides additional public access area(s) equal in area to at least 2.5% of total building area, the front yard (the landward side of the development) may be reduced by 50 percent, **except for properties located in the Tukwila Urban Center.** *Note the incentives identified in a. and b. are proposed to be moved to Section 11, Public Access. The edit to delete the reference to the TUC will appear in that section.**
4. ~~Except for properties located in the Tukwila Urban Center,~~ Loading docks and service areas shall be located on the landward side of the development, or on a side of the parcel not adjacent to the river, unless this requirement renders the project financially unfeasible. If a loading dock or service area must be located between the river and a building, a landscape screen, per the Vegetation Protection and Landscaping Section, shall be provided. *Note: this entire paragraph proposed for deletion under Attachment C-2.*

C. Height Restrictions

1. Except for bridges, approved above ground utility structures, and water dependent uses and their structures, the maximum height for structures shall be as follows:

Attachment C-4 Planning Commission Action

- a. 15 feet where located within the River Buffer;
- b. 45 feet between the outside landward edge of the River Buffer and 200' of the OHWM.

EXCEPT that this maximum may be increased by one story when:

- a. Development devotes at least 5% of its building or land area to public shoreline access; or
- b. Development devotes at least 10% of its land area to employee shoreline access.

~~These criteria do not apply to properties located in the Tukwila Urban Center district.~~

~~2. In the Transit Oriented Development district, the maximum height for structures is as follows:~~

- ~~a. 15 feet where located within the River Buffer;~~
- ~~b. 5 floors/95 feet maximum outside the River Buffer.~~

~~Note: additional changes are proposed to this section under Attachment C-3.~~

Page 103:

11. PUBLIC ACCESS TO THE SHORELINE

~~C. Properties Located Along Proposed Riverwalk~~

~~A Riverwalk is required on properties abutting both sides of the river between I-405 and Strander Blvd. in accordance with the underlying zoning requirements of the Tukwila Urban Center and Tukwila Urban Center Plan.~~

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF PROPOSED REVISION.

RAIN GARDENS FOR LOW IMPACT DEVELOPMENT

During the discussion of Section 9.4, it was requested that reference to rain gardens be deleted. The proposed revision is below:

Page 63:

9.4 Surface Water and Water Quality

The following standards apply to all shoreline development.

A. New surface water systems may not discharge directly into the river or streams tributary to the river without pre-treatment to reduce pollutants and meet State water quality standards.

B. Such pre-treatment may consist of biofiltration, oil/water separators, or other methods approved by the City of Tukwila Public Works Department.

C. Shoreline development, uses and activities shall not cause any increase in surface runoff, and shall have adequate provisions for storm water detention/infiltration.

D. Stormwater outfalls must be designed so as to cause no net loss of shoreline ecological functions or adverse impacts where functions are impaired. New stormwater outfalls or maintenance of existing outfalls must include shoreline restoration as part of the project.

E. Shoreline development and activities shall have adequate provisions for sanitary sewer.

F. Solid and liquid wastes and untreated effluents shall not be allowed to enter any bodies of water or to be discharged onto shorelands.

G. The use of ~~rain gardens and other~~ low impact development techniques is required, unless such techniques conflict with other provisions of the SMP or are shown to not be feasible due to site conditions.

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF RECOMMENDATION
OF NO CHANGE TO SECTION 9.7.

ARCHAEOLOGICAL, CULTURAL AND HISTORICAL RESOURCES

Exhibit 39, page 11 recommends eliminating Section 9.7, which states as follows:

Page 68:

9.7 Archaeological, Cultural and Historical Resources

In addition to the requirements of TMC 18.50.110, Archaeological/Paleontological Information Preservation Requirements, the following regulations apply.

- A. All land use permits for projects within the shoreline jurisdiction shall be coordinated with affected tribes.

- B. If the City determines that a site has significant archaeological, natural scientific or historical value, a substantial development that would pose a threat to the resources of the site shall not be approved. The City may require that development be postponed in such areas to allow investigation of public acquisition potential, retrieval and preservation of significant artifacts and/or development of a mitigation plan.

- C. In the event that unforeseen factors constituting an emergency, as defined in RCW 90.58.030, necessitate rapid action to retrieve or preserve artifacts or data identified above, the project may be exempted from any shoreline permit requirements. The City shall notify the Washington State Department of Ecology, the State Attorney General's Office and the State Historic Preservation Office of such an exemption in a timely manner.

- D. Archaeological excavations may be permitted subject to the provision of the Master Program.

- E. Identified historical or archaeological resources shall be considered in park, open space and public access site planning with access to such areas designed and managed so as to give maximum protection to the resource and surrounding environment.

- F. Interpretive signs of historical and archaeological features shall be provided subject to the requirements of the Public Access Section when such signage does not compromise the protection of these features from tampering, damage and/or destruction.

- G. Areas of known or suspected archaeological middens shall not be disturbed and shall be fenced and identified during construction projects on the site.

Attachment C-6 Planning Commission Action

Staff Discussion: Currently TMC 18.50.110 provides regulations on protecting archaeological/paleontological resources in the City. These regulations are found below:

18.50.110 Archaeological/Paleontological Information Preservation Requirements

The following provisions shall apply in all zones:

1. If there is reason to believe that archaeological resources will be disturbed, a cultural resources assessment shall be conducted and, if warranted, an archaeological response plan and provisions for excavation monitoring by a professional archaeologist shall be made prior to beginning construction. The assessment should address the existence and significance of archaeological remains, buildings and structures on the State or Federal historic registers, observable paleontological deposits and may include review by the State Archaeologist.
2. It is recommended that the applicant coordinate a predetermination study by a professional archaeologist during the geotechnical investigation phase, to determine site archaeological potential and the likelihood of disturbing archaeological resources.
3. Excavations into historically native soil, when in an area of archaeological potential, shall have a professional archaeologist on site to ensure that all State statutes regarding archaeological conservation/ preservation are implemented. The applicant shall provide a written commitment to stop work immediately upon discovery of archaeological remains and to consult with the State Office of Archaeology and Historic Preservation (OAH) to assess the remains and develop appropriate treatment measures. These may include refilling the excavation with no further responsibility.
4. An applicant who encounters Indian burials shall not disturb them and shall consult with OAH and affected tribal organizations pursuant to State statutes.
5. The Director is authorized to:
 - a. conduct studies to generally identify areas of archaeological/ paleontological potential;
 - b. make determinations to implement these provisions; and
 - c. waive any and all of the above requirements, except for TMC 18.50.110-4 (reporting of discovered Indian burials), if the proposed action will have no probable significant impact on archaeological or historical resources that are eligible for listing in the National Register of Historic Places, or on observable paleontological resources. Examples of such actions include excavation of fill materials, disturbance of less than 10,000 square feet of native soils to a depth of 12 inches, penetration of native soils with pilings over a maximum 8% of the building footprint, and paving over native soils in a manner that does not damage cultural resources. The above examples are illustrative and not determinative. A case-by-case evaluation of archaeological/paleontological potential value and proposed disturbance must be made.

State Regulation Requirements: The shoreline regulations found in WAC 173-26-221 (1)(c)(i) and (ii) require that shoreline master programs include policies and regulations to protect historic, archaeological and cultural features and qualities of shorelines. Two standards are identified that must be included in SMPs:

Attachment C-6 Planning Commission Action

- 1) developers and property owners are required to immediately stop work and notify the appropriate governmental authorities if archaeological resources are uncovered; and
- 2) site inspection or evaluation by a professional archaeologist must occur for permits issued for development in areas documented to contain archaeological resources.

Staff recommendation: retain the language in Section 9.7, which builds on the protections found in TMC 18.50.110 while also providing regulations on historical resources. TMC 18.50.110 speaks only to archaeological and paleontological resources and does not regulate cultural or historical resources. Ecology stated in its review of the 2007 staff draft SMP that the draft was inconsistent with WAC 173-26-221 as it related to archaeological, cultural and historical resources but did not provide specific recommendation on needed language.

If the Planning Commission recommends deleting Section 9.7, it appears that TMC 18.50.110 while not stated the same as the language in WAC 173-26-221 (1)(c)(i) and (ii) generally provides the same protection to archaeological resources. If the Commission recommends deleting Section 9.7, staff would recommend that Section 9.7 be revised as follows:

9.7 Archaeological, Cultural and Historical Resources

~~In addition to T~~the requirements of TMC 18.50.110, Archaeological/Paleontological Information Preservation Requirements apply to development in the shoreline environment.~~the following regulations apply.~~

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF RECOMMENDED REVISIONS TO SECTION 9.10 AS IDENTIFIED BELOW AND REVISED D.3., USE OF PESTICIDES.

VEGETATION PROTECTION

Staff is proposing changes to this section, some of which are due to public and Planning Commission comments and some to clarify procedures.

Pages 70-77:

9.10 Vegetation Protection and Landscaping

A. Purpose, Objectives and Applicability

1. The purpose of this section is to:
 - a. Regulate the protection of existing trees and native vegetation in the shoreline jurisdiction;
 - b. Establish requirements for removal of invasive plants at the time of development or re-development of sites;
 - c. Establish requirements for landscaping for new development or re-development;
 - d. Establish requirements for the long-term maintenance of native vegetation to prevent establishment of invasive species and promote shoreline ecosystem processes.

2. The City's goal is to preserve as many existing trees as possible and increase the number of native trees, shrubs and other vegetation in the shoreline because of their importance to shoreline ecosystem functions as listed below:
 - a. Overhead tree canopy to provide shade for water temperature control;
 - b. Habitat for birds, insects and small mammals;
 - c. Vegetation that overhangs the river to provide places for fish to shelter;
 - d. Source of insects for fish;
 - e. Filtering of pollutants and slowing of stormwater prior to its entering the river; and
 - f. A long-term source of woody debris for the river.

In addition, trees and other native vegetation are important for aesthetics – it is the City's goal that unsightly invasive vegetation, such as blackberries, be removed from the shoreline and be replaced with native vegetation to promote greater enjoyment of and access to the river.

Attachment C-7 Planning Commission Action

- The City will provide information and technical assistance to property owners for improving vegetation in the shoreline jurisdiction and will work collaboratively with local citizen groups to assist property owners in the removal of invasive vegetation and planting of native vegetation, particularly for residential areas.
3. With the exception of residential development/re-development of 4 or fewer residential units, All activities and developments within the shoreline environment, including residential development must comply with the landscaping and maintenance requirements of this section, whether or not a shoreline substantial development permit is required. Single family residential projects are not exempt if implementing a shoreline stabilization project on the shoreline.
 4. The tree protection and retention requirements apply to existing uses as well as new or re-development.

B. Tree Protection and Retention

- ~~1. To protect the ecological functions that trees provide to the shoreline, removal of any significant tree in the shoreline jurisdiction requires a tree clearing permit, including but not limited to the following situations:
 - a. Trees on federally certified levees as required by Corps of Engineers policies;
 - b. Trees that interfere with access and passage on public trails; and
 - c. Trees that present an imminent hazard to existing structures or the public. If the hazard is not readily apparent, the City may require an evaluation by an International Society of Arborists (ISA) - certified arborist.~~
- 2.1. As many significant trees as possible are to be retained on a site proposed for development or re-development, taking into account the condition and age of the trees. The Director of Community Development or the Planning Commission may require alterations in the arrangement of buildings, parking or other elements of proposed development in order to retain significant trees, particularly those that provide shading to the river. Trees located on properties not undergoing development or re-development may not be removed except those that interfere with access and passage on public trails or that present an imminent hazard to existing structures or the public. If the hazard is not readily apparent, the City may require an evaluation by an International Society of Arborists (ISA) - certified arborist
2. To protect the ecological functions that trees provide to the shoreline, removal of any significant tree in the shoreline jurisdiction requires a Shoreline Tree Removal and Vegetation Clearing Permit and is generally only allowed on sites undergoing development or redevelopment. Only trees that interfere with access and passage on

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public trails or trees that present an imminent hazard to existing structures or the public may be removed from sites without an issued building permit or Federal approval. Factors that will be considered in approving tree removal include but are not limited to: tree condition and health, age, risks to structures, and potential for root or canopy interference with utilities.

3. Prior to any tree removal or site clearing a Type 2 Shoreline Tree Removal and Vegetation Clearing Permit application must be submitted to DCD containing the following items:
 - a. A tree survey is required that shows the diameter, species and locations of all significant trees on a site plan;-
 - b. The A site plan shall that shows trees to be retained and trees to be removed and provides a table showing the number of significant trees to be removed and the number of replacement trees required;
 - c. Tree protection zones and other measures to protect any trees that are to be retained for sites undergoing development or redevelopment ;
 - d. Location of the OHWM, river buffer, shoreline jurisdiction boundary and any sensitive areas with their buffers;
 - e. A landscape plan that shows diameter, species name, spacing and planting location for any required replacement trees and other proposed vegetation;
 - f. An arborist evaluation justifying the removal of hazardous trees if required by the Department;
 - g. an application fee per the current Land Use Permit Fee resolution.

4. Where permitted, significant trees that are removed from the shoreline shall be replaced pursuant to the replacement ratios in Table 31 up to a density of 100 trees per acre (including existing trees). The Director or Planning Commission may require additional trees or shrubs to be installed to mitigate any potential impact from the loss of this vegetation as a result of new development.

Table 1. Tree Replacement Requirements

Diameter* of Tree Removed	No. of Replacement Trees Required
4-6 inches (single trunk) 2 inches (<u>any trunk of a multi-trunk tree</u>)	3
Over 6 – 8 inches	4
Over 8 – 20 inches	6
Over 20 inches	8

* measured at height of 4 feet from the ground

5. If all replacement trees cannot be reasonably accommodated on the site, off-site tree replacement within the shoreline jurisdiction may be allowed at a site approved by the City. If no suitable off-site location is available, the applicant shall pay into a tree

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- replacement fund. The fee shall be based on the value of the replacement trees and their delivery, labor for site preparation and plant installation, soil amendments, mulch, and staking supplies.
6. The City may require the placement and anchoring of removed trees as habitat features along the river bank for development of over 4 residential lots and all non-residential development, as permitted by shoreline conditions, and taking into account potential hazards to boaters, and in accordance with Washington Department of Fish and Wildlife Hydraulics Authorization and Corps of Engineers permit conditions. When conditions prevent placement of tree trunks on-site along the shoreline as large woody debris, the City shall attempt to find an off-site location for eventual placement as part of a restoration project. The applicant will be responsible for the cost of the initial moving the removed trees to the designated location.
 7. Dead or dying trees located ~~along~~ within the shoreline jurisdiction shall be left in place as wildlife snags, unless they present a hazard to structures, facilities or the public.
 8. Topping of trees is prohibited unless absolutely necessary to protect overhead utility lines. Topping of trees will be regulated as removal and tree replacement will be required.
 9. For new development or redevelopment where trees are proposed for retention, tree protection zones shall be indicated on site plans and shall be established in the field prior to commencement of any construction or site clearing activity. A minimum 4 ft high construction barrier shall be installed around significant trees and stands of native trees or vegetation to be retained. Minimum distances from the trunk for the construction barriers shall be based on the approximate age of the tree (height and canopy) as follows¹:
 - a. Young trees (have reached less than 20% of life expectancy): 0.75 feet per inch of trunk diameter
 - b. Mature trees (have reached 20 – 80% of life expectancy): 1 foot per inch of trunk diameter.
 - c. Over mature trees (have reached greater than 80% of life expectancy): 1.5 feet per inch of trunk diameter

C. Landscaping

This section presents landscaping standards for the Shoreline Jurisdiction and is divided into separate sections for the River Buffer and for the remaining part of the Shoreline Jurisdiction for each Environment Designation.

¹ Modified from: Trees and Development, A Technical Guide to Preservation of Trees During Land Development, Nelda Metheny and James R. Clark, 1998.

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1. General Requirements

- a. For any new development or redevelopment in the Shoreline Jurisdiction, except single family residential development of 4 or fewer lots, invasive vegetation must be removed and native vegetation planted and maintained in the River Buffer, including the river bank, to improve the ecological functions of the shoreline.
- a. Removal of invasive species shall be done by hand or with hand-held power tools. Where not feasible and mechanized equipment is needed, the applicant must obtain a Shoreline Tree Removal and Vegetation Clearing Permit and show how the slope stability of the bank will be maintained and a plan must be submitted indicating how the work will be done and what erosion control and tree protection features will be utilized. Federal and State permits may be required for vegetation removal with mechanized equipment.
- b. Trees and other vegetation shading the river shall be retained or replanted when riprap is placed per the approved tree permit if required.
- c. Removal of invasive vegetation may be phased over several years prior to planting if part of an approved plan to allow for alternative approaches, such as sheet mulching and goat grazing. The method selected shall not destabilize the bank or cause erosion.
- d. A combination of native trees, shrubs and groundcovers (including grasses, sedges, rushes and vines) shall be planted. The plants listed in the Riparian Restoration and Management Table of the 2004 Washington Stream Habitat Restoration Guidelines² (as amended) shall provide the basis for plant selection. Site conditions, such as topography, exposure, and hydrology shall be taken into account for plant selection. Other species may be approved if there is adequate justification.
- e. Non-native trees may be used as street trees in cases where conditions are not appropriate for native trees (for example where there are space or height limitations or conflicts with utilities).
- f. Plants shall meet the current American Standard for Nursery Stock (American Nursery and Landscape Association – ANLA).
- g. Plant sizes in the non-buffer areas of all Shoreline Environments shall meet the following minimum size standards, (exceptions to allow planting of trees and shrubs in other sizes may be made for bank plantings, as approved by the City):

Deciduous trees: 2" caliper
Conifers: 6-8' height.

² Washington Department of Fish and Wildlife, Washington Department of Ecology, and US Fish and Wildlife Service, Olympia, Washington

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Shrubs: 24" height
Groundcover/grasses: 4-inch or 1 gallon container
~~Willow stakes — at least ½ inch in diameter~~

Smaller plant sizes (generally 1 gallon, bareroot, plugs, or stakes, depending on plant species) are preferred for buffer plantings. Willow stakes must be at least ½ inch in diameter.

- h. ~~Planting s~~Site preparation ~~and~~, planting ~~and maintenance~~ of vegetation shall be in accordance with best management practices for ensuring the vegetation's long-term health and survival.
- i. Plants may be selected and placed to allow for public and private view corridors and/or access to the water's edge.
- i. Native vegetation in the shoreline installed in accordance with the preceding standards shall be maintained by the property owner to promote healthy growth and prevent establishment of invasive species. Invasive plants (such as blackberry, ivy, knotweed, bindweed) shall be removed on a regular basis.
- j. Areas disturbed by removal of invasive plants shall be replanted with native vegetation where necessary to maintain the density shown in Table 4 and must be replanted in a timely manner, except where a long term removal and re-vegetation plan, as approved by the City, is being implemented.
- j.k. The following standards apply to utilities and loading docks located in the shoreline jurisdiction.
 - 1) Utilities such as pumps, pipes, etc. shall be suitably screened with native vegetation;
 - 2) Utility easements shall be landscaped with native, groundcover, grasses or other low-growing plants as appropriate to the shoreline environment and site conditions;
 - 3) Allowed loading docks and service areas located waterward of the development shall have landscaping that provides extensive visual separation from the river.

2. River Buffer Landscaping Requirements in all Shoreline Environments

The River Buffer in all shoreline environments shall function, in part, as a vegetation management area to filter sediment, capture contaminants in surface water run off, reduce the velocity of water run off, and provide fish and wildlife habitat.

- a. A planting plan prepared by a licensed landscape architect or an approved biologist shall be submitted to the City for approval that shows plant species, size, number and spacing.
- b. Plants shall be installed from the OHWM to the upland edge of the River Buffer (where not otherwise prohibited).
- c. Plantings close to and on the bank shall include native willows, red osier dogwood and other native vegetation that will extend out over the water, to

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provide shade and habitat functions when mature. Species selected must be able to withstand seasonal water level fluctuations.

- d. Minimum plant spacing in the buffer shall follow Table ~~42~~. Existing non-invasive plants may be included in the density calculations.
- e. Irrigation for buffer plantings is required for at least two dry seasons or until plants are established. An irrigation plan is to be included as part of the planting plan.
- f. In the event that a development project allows for setback and benching of the shoreline along an existing levee or revetment, the newly created mid-slope bench area shall be planted and maintained with a variety of native vegetation appropriate for site conditions.

Table 2. River Buffer Vegetation Planting Densities

Plant Material Type	Planting Density
Stakes/cuttings along river bank (willows, red ozier dogwood)	1-2 ft on center or per bioengineering method
Shrubs	3-5 ft on center, depending on species
Trees	15 – 20 ft on center, depending on species
Groundcovers, grasses, sedges, rushes, other herbaceous plants	1 – 1.5 ft on center, depending on species
Native seed mixes	5-25 lbs per acre, depending on species

3. Landscaping Requirements for the Urban Conservancy and High Intensity Environments - Outside of the River Buffer

For the portions of property within the Shoreline Jurisdiction landward of the River Buffer the landscape requirements in the General section of this SMP and the requirements for the underlying zoning as established in TMC Chapter 18.52 shall apply except as indicated below.

- a. Parking Lot Landscape Perimeters: One native tree for each 20 lineal feet of required perimeter landscaping, one shrub for each 4 lineal feet of required perimeter landscaping, and native groundcovers to cover 90% of the landscape area within 3 years, planted at a minimum spacing of 18 inches on-center.
- b. Interior Parking Lot Landscaping: Every 300 square feet of paved surface requires 10 square feet of interior landscaping ~~with~~ within landscape islands separated by no more than 150 feet between islands.
- c. Landscaping shall be provided at yards not adjacent to the river, with the same width as required in the underlying zoning district. This standard may be reduced as follows:
 - 1) Where development provides public access corridor between off-site public area(s) and public shoreline areas, side yard landscaping may be reduced by 25 percent to no less than 3 feet; or
 - 2) Where development provides additional public access area(s) (as allowed by the High Intensity and Urban Conservancy Environment

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Development Standards) equal in area to at least 2.5% of total building area, front yard landscaping may be reduced by 25 percent.

D. Vegetation Management in the Shoreline Jurisdiction

The requirements of this section apply to all existing and new development within the shoreline jurisdiction.

~~1. Invasive plants (such as blackberry, ivy, knotweed, bindweed) shall be removed and replaced with native vegetation. Native vegetation in the shoreline shall be maintained to promote healthy growth and prevent establishment of invasive species.~~

~~2. Areas disturbed by removal of invasive plants shall be replanted with native vegetation to achieve the density shown in Table 4 and must be replanted in a timely manner, except where a long term removal and re-vegetation plan, as approved by the City, is being implemented.~~

~~3. Removal of invasive species shall be done by hand or with hand held power tools. Where not feasible and mechanized equipment is needed, the applicant must obtain a Type II Vegetation Removal Permit and show how the slope stability of the bank will be maintained and a plan must be submitted indicating how the work will be done and what erosion control features will be utilized. Federal and State permits may be required for vegetation removal with mechanized equipment.~~

4.1. Trees and shrubs may only be pruned for safety, to maintain view or access corridors and trails by pruning up or on the sides of trees, to maintain clearance for utility lines, and/or for improving shoreline ecological function. This type of pruning is exempt from any permit requirements. Topping of trees is prohibited except where absolutely necessary to avoid interference with existing utilities.

5.2. Plant debris from removal of invasive plants or pruning shall be removed from the site and disposed of properly.

6.3. Use of pesticides and fertilizers *

a. Pesticides (including herbicides, insecticides, and fungicides) shall not be used in the shoreline jurisdiction except where:

1) No reasonable alternative exists (a) Alternatives such as include manual removal, biological control, and cultural control) are not feasible given the size of the infestation, site characteristics, or the characteristics of the invasive plant species;

2) The use of pesticides has been approved through a comprehensive vegetation or pest management and monitoring plan;

4)3) The pesticide is applied in accordance with state regulations; and

b.4) The proposed herbicide is approved for aquatic use by the U.S. Environmental Protection Agency-; and

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5) The use of pesticides in the shoreline jurisdiction ~~is must be a~~ approved in writing by the City ~~and .~~ ~~The applicant must p~~resents a copy of ~~the Aquatic NPDES Pesticide p~~Permit issued by the Department of Ecology or Washington Department of Agriculture. ~~**~~

~~e.~~

b. Self--contained rodent bait boxes designed to prevent access by other animals are allowed

c. Sports fields, parks, golf courses and other outdoor recreational uses that involve maintenance of extensive areas of turf shall provide and implement an integrated turf management program or integrated pest management plan designed to ensure that water quality in the river is not adversely impacted.

~~7. Vegetation management on the federally certified levees must meet Army Corps of Engineers standards and requirements.~~

* ~~Changes in green to this section are those made in response to Planning Commission comments at meeting of 12/10/08. Changes in blue are previous staff-recommended changes.~~

** ~~Permits are now called Aquatic Pesticide Permits. There are two permits available depending on whether the plants to be controlled are on the State Noxious Weed list. One permit is the Aquatic Plant and Algae Management Permit, issued by the Department of Ecology. The other is the Noxious Weed Control Permit (provided by the Washington Department of Agriculture). The herbicide applicator can apply on-line at the Department of Ecology website for either permit . A 60 day lead time is required because there is a public comment period required. It should be noted that only pesticide applicators licensed by the Department of Agriculture are authorized to use the restricted herbicides that are approved for aquatic use.~~

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PLANNING COMMISSION ACTION: ACCEPTED STAFF RESPONSES TO QUESTIONS AND ADDED DECKS AS A PERMITTED USE IN THE SHORELINE RESIDENTIAL ENVIRONMENT – THIS WILL BE REFLECTED IN SECTION 8.2 A.1.B. OF THE STRIKEOUT/UNDERLINE DRAFT SMP.

OVER-WATER STRUCTURES

The following questions have been posed on uses permitted in residential buffers:

- (a) Would a deck or boat winch cantilevered over water be allowed? On a steep slope the storage of the boat could present a hazard with fuel or other liquids leaking.
- (b) What about a patio at ground level or a fire pit with a seating area? These are recreational type uses that take advantage of a location along the river.
- (c) How about a vegetable garden that might be rototilled? Would this pose an erosion hazard?

Staff answers are as follows:

- (a) A deck associated with a single family residence would be considered an “appurtenance” as defined by WAC 172-27-040 (2)(g) – a use necessarily connected to the use and enjoyment of a single-family residence and located landward of the OHWM and the perimeter of a wetland although it is not clear that a deck would be an approved use in the Shoreline Buffer as it is not specifically identified in the list of permitted uses. A boat winch would be considered a boat lift as regulated under Section 9.12 C. Fluid leaks would be addressed through the new proposed language in Attachment C-9.
- (b) A patio at ground level or fire pit with seating area would be permitted in the river buffer as long as the use did not threaten the stability of the river bank.
- (c) A garden would be permitted in the river buffer area; erosion could occur through rototilling of garden spaces – most gardeners are aware of the hazards of uncovered tilled areas in terms of erosion, however, there could be public education efforts to remind residents about the importance of preventing sediment from washing off-site into the river.

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Planning Commission Action

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF RECOMMENDED REVISIONS TO SECTION 9.12 IDENTIFIED BELOW.

MARINAS

Exhibit 38 recommends:

- (1) requiring that new marinas, boat yards, and dry docks provide pump out, holding and/or treatment facilities for sewage contained on boats or vessels;
- (2) adequate restroom facilities; and
- (3) limiting new marinas, launch ramps and accessory uses to locations where water depths are adequate to avoid the need for dredging and minimize potential loss of ecological functions and processes. A concern was also expressed about contamination from boats stored on site from spills of gasoline or motor fluids.

Regarding (2) above, the number of restroom facilities required for development is determined by the Building Code. Staff proposes the following revisions to Section 9.12 to address (1) and (3) above:

Pages 78-81:

9.12 Marinas, Boat Yards, Dry Docks, Boat Launches, Piers, Docks and Other Over-water Structures

A. General Requirements

1. Prior to issuance of a shoreline substantial development permit for construction of piers, docks, wharves or other over-water structures the applicant shall present approvals from State or Federal agencies, as applicable.
2. Structures must be designed by a qualified engineer and must demonstrate the project will result in no net loss of shoreline ecological function and will be stable against the forces of flowing water, wave action and the wakes of passing vessels.
3. In-water structures shall be designed and located to minimize shading of native aquatic vegetation and fish passage areas. Removal of shoreline, riparian and aquatic vegetation shall be limited to the minimum extent necessary to construct the project. All areas disturbed by construction shall be replanted with native vegetation as part of the project.
4. New or replacement in-water structures shall be designed and located such that natural hydraulic and geologic processes, such as erosion, wave action or floods will not necessitate the following:
 - a. reinforcement of the shoreline or stream bank with new bulkheads or similar artificial structures to protect the in-water structure; or

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- b. dredging.
5. No structures are allowed on top of over-water structures except for properties located north of the Turning Basin.
6. Pilings or other associated structures in direct contact with water shall not be treated with preservatives unless the applicant can demonstrate that no feasible alternative to protect the materials exists and that non-wood alternatives are not economically feasible. In that case, only compounds approved for marine use may be used and must be applied by the manufacturer per current best management practices of the Western Wood Preservers Institute. The applicant must present verification that the best management practices were followed.
7. All over-water structures shall be constructed and maintained in a safe and sound condition. Abandoned or unsafe over-water structures shall be removed or repaired promptly by the owner. Accumulated debris shall be regularly removed and disposed of properly so as not to jeopardize the integrity of the structure. Replacement of in-water structures shall include proper removal of abandoned or other manmade structures and debris.
8. Boat owners who store motorized boats on-site are encouraged to use best management practices to avoid fuel and other fluid spills.*

B. Marinas, Boat yards and Dry Docks

1. All uses under this category shall be designed to achieve no net loss of shoreline ecological functions.
2. Commercial/Industrial marinas and dry docks shall be located no further upriver than Turning Basin #3.
3. Marinas shall be located, designed, constructed and operated to avoid or minimize adverse impacts on fish, wildlife, water quality, native shoreline vegetation, navigation, public access, existing in-water recreational activities and adjacent water uses.
4. Marinas shall submit a fuel spill prevention and contingency plan to the City for approval. Haul-out and boat maintenance facilities must meet the City's stormwater management requirements and not allow the release of chemicals, petroleum or suspended solids to the river.
5. Marinas, boat yards and dry docks must be located a minimum of 100 feet from Fish and Wildlife Habitat Areas (see **Sensitive Areas in the Shoreline Map, Map 5**).

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6. Marinas, boat yards and dry docks shall provide pump out, holding and/or treatment facilities for sewage contained on boats or vessels.
7. New marinas, launch ramps and accessory uses must be located where water depths are adequate to avoid the need for dredging.

C. Boat Launches and Boat Lifts

1. Boat launch ramps and vehicle access to the ramps shall be designed to not cause erosion; the use of pervious paving materials, such as grasscrete, are encouraged.
2. Boat launch ramps shall be designed to minimize areas of landfill or the need for shoreline protective structures.
3. Access to the boat ramp and parking for the ramp shall be located a sufficient distance from any frontage road to provide safe maneuvering of boats and trailers.
4. Launching rails shall be adequately anchored to the ground.
5. Launch ramps and boat lifts shall extend waterward past the OHWM only as far as necessary to achieve their purpose.
6. Boat lifts and canopies must meet the standards of the U.S. Army Corps of Engineers Regional General Permit Number 1 for Watercraft Lifts in Fresh and Marine/Estuarine Waters within the State of Washington.

D. Over-water Structures

Where allowed, over-water structures such as piers, wharves and docks shall meet the following standards:

1. The size of new over-water structures shall be limited to the minimum necessary to support the structure's intended use and must be compatible with any existing channel control or flood management structures. No dock or pier on residential properties, including finger pier, moorage or over water structure or device shall be wider than four feet.
2. Over-water structures shall not extend waterward of the OHWM any more than necessary to permit launching of watercraft, while also ensuring that watercraft do not rest on tidal substrate at any time.
3. Adverse impacts of over-water structures on water quality, river flows, fish habitat, shoreline vegetation, and public access shall be minimized and mitigated. Mitigation measures may include joint use of existing structures, open decking or piers, replacement of non-native vegetation, installation of in-water habitat features or restoration of shallow water habitat.

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4. Any proposals for in-water or over-water structures shall provide a pre-construction habitat evaluation, including an evaluation of salmonid and bull trout habitat and shoreline ecological functions and demonstrate how the project achieves no net loss of shoreline ecological functions.
5. Over-water structures shall obtain all necessary state and federal permits prior to construction or repair.
6. All over-water structures must be designed by a qualified engineer to ensure that they are adequately anchored to the bank in a manner so as not to cause future downstream hazards or significant modifications to the river geomorphology and are able to withstand high flows.
7. Over-water structures shall not obstruct normal public use of the river for navigation or recreational purposes.
8. Shading impacts to fish shall be minimized by using grating on at least 30% of the surface area of the over-water structure on residential areas and at least 50% of the over-water structure on all other properties. The use of skirting is not permitted.
9. If floats are used, the flotation shall be fully enclosed and contained in a shell (such as polystyrene) that prevents breakup or loss of the flotation material into the water, damage from ultraviolet radiation, and damage from rubbing against pilings or waterborne debris.
10. Floats may not rest on the tidal substrate at any time and stoppers on the piling anchoring the floats must be installed to ensure at least 1 foot of clearance above the substrate. Anchor lines may not rest on the substrate at any time.
11. The number of pilings to support over-water structures, including floats shall be limited to the minimum necessary. Pilings shall conform to the pilings standards contained in the US Army Corps of Engineers Regional General Permit No. 6.
12. No over-water structure shall be located closer than five (5) feet from the side property line extended, except that such structures may abut property lines for the common use of adjacent property owners when mutually agreed upon by the property owners in an easement recorded with the King County. A copy of this agreement shall be submitted to the Department of Community Development and accompany an application for a development permit and/or Shoreline Permit.

* This regulation would be implemented through public education efforts, such as articles in the Hazelnut and referrals to the Department of Ecology, which has responsibility for enforcing water quality standards.

Attachment D Planning Commission Action

PLANNING COMMISSION ACTION 12/10/08: ACCEPTED STAFF EXPLANATION.

NO NET LOSS TERMINOLOGY AND THE SENSITIVE AREAS ORDINANCE

Staff wanted to correct information that was provided at your work session on October 22, 2008. We checked the "no net loss" phrase in Section 10.1.C. of the draft SMP and determined it was not taken directly from the SAO. The SAO does not specifically use the term "no net loss," but does include language about preventing loss of sensitive areas. It states as one of the purposes under 18.45.010.B.8: "Prevent the *loss* of wetland and watercourse function and acreage, and strive for a gain over present conditions" (emphasis added). This purpose statement, together with the requirements in the SAO for wetland creation or enhancement of wetland functions, and the restrictions on piping or rerouting streams, get at the intent of no net loss, in the sense of wetland/watercourse acreage and functions.

The test of "no net loss" is a specific requirement of the SMP Guidelines for the shoreline itself and the sensitive areas located within the shoreline. In WAC 173-26-221(2)(c)(i)(C) it states that "Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions,.....". WAC 173-26-221(2)(iv)(C)(I) states that master programs shall "provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss."

Therefore, although the exact phrase "no net loss" did not come directly from the SAO, it is required to be applied to sensitive areas in the shoreline.

PLANNING COMMISSION ACTION 12/11/08: CORRECTED REFERENCE TO FUTURE PARK GRANDMOTHER’S HILL TO “DUWAMISH RIVERBEND HILL” IN SECOND NEW PARAGRAPH UNDER SECTION 11; STAFF CORRECTED DUPLICATIVE LANGUAGE IN SAME PARAGRAPH.

PUBLIC ACCESS REQUIREMENTS

In response to a substantial number of comments from the public and Planning Commission staff has proposed a rewrite of Chapter 11 with significant changes to the applicability and standards.

Pages 102-107:

11. PUBLIC ACCESS TO THE SHORELINE

Public access to the shorelines of the state is one of the key goals of the Shoreline Management Act – of the seven uses identified in RCW 90.58.020 as having preference in the shoreline, two relate to public access and recreational opportunities along the shoreline.

The City of Tukwila is fortunate to have a number of public access sites already along the Green/Duwamish River in addition to the Green River Trail, which runs along almost the entire length of the river through the City. Other public access points are available at the North Winds Wier also provide public access to the river, the Tukwila Community Center, Codiga Park, Bicentennial Park at Strander Boulevard and parking available on Christianson Road and at S. 180th Street. A future habitat restoration project is planned at Duwamish Riverbend Grandmother’s Hill, on South 115th Street, which will also include public access to the river. The Public Access Map (Map 6) identifies several street ends that could be improved or to which amenities could be added that would offer opportunities for neighborhood access to the river and/or the Green River Trail.

The Shoreline Public Access Map identifies several potential trail sites on the river to supplement the existing Green River trail system. The largest stretch of potential trail runs from S. 180th on the left bank to the end of south annexation area. A pedestrian bridge to link the area south of S. 180th Street to the existing trail on the right bank is being discussed as well. A second area where improvement is needed in public access relates to boat launches for small hand launched boats. Several potential sites have been identified in the Tukwila Parks Department Capital Improvement Program to address this need at City owned sites.

11.1 Applicability

A. Public access shall be provided on all property that abuts the Green/Duwamish River shoreline in accordance with this section as further discussed below ~~except for the development of 9 or fewer single family lots where any of the following conditions are present:- However, private access (shared access among lot owners) to the riverfront for the lots created through the~~

short plat process is required

1. Where a development or use will create increased demand for public access to the shoreline, the development or use shall provide public access to mitigate this impact.
2. Where a development or use will interfere with an existing public access way, the development or use shall provide public access to mitigate this impact. Impacts to public access may include blocking access or discouraging use of existing on-site or nearby accesses.
3. Where a use or development will interfere with a public use of lands or waters subject to the public trust doctrine, the development shall provide public access to mitigate this impact.
4. Where the development is proposed by a public entity or on public lands.
- 4—5. Where identified on the Shoreline Public Access Map.

For the purposes of this section, an “increase in demand for public access” is determined by evaluating whether the development reflects an increase in the land use intensity, for example converting a warehouse to office or retail use, or an increase in the square footage of an existing building.

B. The provisions of this section do not apply to the following:

1. Short plats of four or fewer lots;
2. Where providing such access would cause unavoidable health or safety hazards;
3. Where providing such access would create inherent and unavoidable security problems;
or
4. Where providing such access would cause significant ecological impacts that cannot be mitigated.

11.2 General Standards

- A. To improve public access to the Green/Duwamish River, sites shall be designed to provide:
1. Safe, visible and accessible pedestrian and non-motorized vehicle connections between proposed development and the river’s edge particularly when the site is adjacent to the Green River Trail or other approved trail system; and
 2. Public pathway entrances that are clearly visible from the street edge; and
 3. Clearly identified pathways that are separate from vehicular circulation areas. This may be accomplished through the use of special paving materials such as precast pavers, bomonite, changes in color or distinct and detailed scoring patterns and textures.
 4. Site elements that are organized to clearly distinguish between public and private access and circulation systems.
- B. Required public access shall be fully developed and available for public use at the time of occupancy in accordance with development permit conditions except where the decision maker determines an appropriate mechanism for delayed public access implementation is necessary for practical reasons. Where appropriate, a bond or cash assignment may be approved, on review and approval by the Director of Community Development, to extend this requirement for 90 days

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from the date the Certificate of Occupancy is issued.

C. Public access easements and related permit conditions shall be recorded on the deed of title or the face of the plat, short plat or approved site plan as a condition tied to the use of the land. Recording with the County shall occur prior to the issuance of an Occupancy Permit or final plat approval. Upon redevelopment of such a site, the easement may be relocated to facilitate the continued public access to the shoreline.

D. Approved signs indicating the public's right of access and hours of access, if restricted, shall be constructed, installed and maintained by the applicant in conspicuous locations at public access sites. Signs should be designed to distinguish between public and provide private areas. Signs controlling or restricting public access may be approved as a condition of permit approval.

E. Required access must be maintained throughout the life of the project.

F. Public access features shall be separated from residential uses through the use of setbacks, low walls, berms, landscaping, or other device of a scale and materials appropriate to the site.

A. Shared public access between developments is encouraged. Where access is to be shared between adjacent developments, the minimum width for the individual access easement may be reduced; provided that the total width of easements contributed by each adjacent development equals a width that complies with Fire Department requirements and/or exceeds the minimum for an individual access.

B. Public access sites shall be connected directly to the nearest public area (e.g., street, public park, or adjoining public access easement), typically the nearest public area. Where connections are not currently possible, the site shall be designed to accommodate logical future connections.

11.3 Requirements for Shoreline Trails and Riverwalk

A. Development on Properties Abutting Existing Green River Trail

1. Development ~~or re-development~~ on properties abutting the existing trail shall upgrade the trail along the property frontage to meet ~~current~~ the standards of a ~~16-14~~ foot wide trail with 2 foot shoulders on each side.
2. ~~Trail connectors shall be provided from the nearest public area (e.g., street, public park or adjoining public access easement). This access may be located in the required side yard setback.~~

B. Development on Properties Where New Trails are Planned

1. ~~An 18-foot wide trail easement dedicated to the City 16' wide paved trail with a 2' wide shoulder on each side~~ for public access along the river shall be provided in areas identified for new shoreline trail segments (**Shoreline Public Access Map, Map 6**).

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- ~~2. Trail connectors shall be provided from the nearest public area (e.g., street, public park, or adjoining public access easement). This access may be located in the required side yard setback.~~
- ~~3. At least one public parking stall shall be provided where feasible at all private access points to the Green River Trail. These parking stalls shall be identified by appropriate signage. The number of parking stalls required is dependent upon the amount of shoreline frontage of the parcel. All publicly owned access points shall provide public parking stalls, identified by appropriate signage.~~

~~C. Properties Located Along Proposed Riverwalk~~

~~A Riverwalk is required on properties abutting both sides of the river between I-405 and Strander Blvd. in accordance with the underlying zoning requirements of the Tukwila Urban Center and Tukwila Urban Center Plan.~~

~~11.4. Standards for Public Access and Amenities~~

~~A. Proposed development on sites that do not abut existing trails or future trails must comply with the requirements of this section.~~

~~B. A plan must be submitted to provide the minimum number of public access points using **Table 5**, based on the size or value of the proposed development as follows:~~

- ~~1. Short plats from 5-9 lots: 4 points~~
- ~~2. Subdivisions: 6 points~~
- ~~3. Commercial development/redevelopment: (depending on value to be determined)~~
- ~~4. Industrial development/redevelopment (depending on value to be determined)~~

~~C. Public access amenities provided under this section must meet the standards in the Design Guidelines Section.~~

Table 5. Public Access Matrix.

Type of Public Access	Points
Physical amenities	
1. Public open space area adjacent to river, minimum of 10 ft. by 10 ft.	3, with 1 additional point for each additional 50 sq. ft.
2. Passive recreation shelters for such uses as fishing, bird watching or picnicking, with appropriate access	3
3. Public fishing pier with appropriate access	10
4. Public boat ramp with appropriate access	10
5. Ten ft. wide public access easement to water's edge	2
6. Improved 10 ft. wide dedicated public access corridor from a public road to the riverfront (handicapped accessible & all-	5

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weather surface if feasible)	
7. Dedicated parking stall for river users	2
8. Unpaved trail	1/100 linear feet, minimum 500 linear feet required
Visual Access	
9. Exposed building face(s) facing the river accessible to the public.	0.5/each 10% of exposed building face
10. A public viewing platform, deck, patio or balcony, 25 sq. ft. minimum	3
11. Publicly accessible rooftop deck, 50 sq. ft. minimum	4
*Cultural amenities	
12. Interpretive sign at public access area	1
13. Interpretive kiosk at public access area	2
14. Outdoor artwork on the river side of the site, accessible to public viewing; art must be reviewed and approved by the City's Arts Commission	3
*Public furnishings associated with public access	
15. Bench	1
16. Picnic table	1
17. Drinking fountain	3

~~*— A maximum of three points may be accumulated from a combination of items from Cultural Amenities and Public Furnishings.~~

11.45 Publicly-Owned Shorelines

A. Shoreline development by any public entities, including but not limited to the City of Tukwila, King County, port districts, state agencies, or public utility districts, shall include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, impact to the shoreline environment or other provisions listed in this section.

B. The following requirements apply to street ends and City-owned property adjacent to the River, as shown in **Public Access Map, Map 6**.

1. Public right-of-way and "road-ends," or portions thereof, shall not be vacated and shall be maintained for future public access.
2. Unimproved right-of-ways and portions of right-of-ways, such as street ends and turn-outs, shall be dedicated to public access uses until such time as the portion becomes improved right-of-way. Uses shall be limited to passive outdoor recreation, car top boat launching, fishing, interpretive/educational uses, and/or parking, which accommodates these uses, and shall be designed so as to not interfere with the privacy of adjacent residential uses.
3. City-owned facilities within the Shoreline Jurisdiction shall provide new trails and

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trail connections to the Green River Trail in accordance with approved plans and this SMP.

4. All City-owned recreational facilities within the shoreline jurisdiction, unless qualifying for an exemption as specified in this Chapter, shall make adequate provisions for
 - a. Nonmotorized and pedestrian access;
 - b. The prevention of trespass onto adjacent properties through landscaping, fencing or other appropriate measures;
 - c. Signage indicating the public right-of-way to shoreline areas; and
 - d. Mechanisms to prevent environmental degradation of the shoreline from public use.

11.5 Public Access Incentives

1. The minimum yard setback for buildings, uses, utilities or development from non-riverfront lot lines may be reduced as follows:
 - a) Where development provides a public access corridor between off-site areas, or public shoreline areas to public shoreline areas, one side yard may be reduced to a zero lot line placement; or
 - b) Where development provides additional public access area(s) equal in area to at least 2.5% of total building area, the front yard (the landward side of the development) may be reduced by 50 percent.
2. The maximum height for structures may be increased by one story when:
 - a) Development devotes at least 5% of its building or land area to public shoreline access; or
 - b) Development devotes at least 10% of its land area to employee shoreline access.
3. The maximum height for structures may be increased to the height permitted in the underlying zoning district for properties that construct a 14' wide paved trail with a two-foot wide shoulder on each side for public access along the river in areas identified for new shoreline trail segments.

11.6 Exemptions from Provision of On-Site Public Access

A. Requirements for providing on-site general public access, as distinguished from employee access, will not apply if the applicant can demonstrate one or more of the following:

1. Unavoidable health or safety hazards to the public exist related to the primary use that cannot be prevented by any practical means;
2. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;
3. The cost of providing the access, easement or other public amenity on or off the development site is unreasonably disproportionate to the total long-term cost of the proposed development.
4. Unavoidable environmental harm or net loss of shoreline ecological functions that

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cannot be adequately mitigated will result from the public access.

5. Access is not feasible due to the configuration of existing parcels and structures, such that access areas are blocked in a way that cannot be remedied reasonably by the proposed development.
6. Significant undue and unavoidable conflict between the proposed access and adjacent uses would occur and cannot be mitigated.
7. Space is needed for water dependent uses or navigation.

B. In order to meet any of the above referenced conditions, the applicant must first demonstrate, and the City determine in its findings through a Type II decision, that all reasonable alternatives have been exhausted, including but not limited to:

1. Regulating access by such means as maintaining a gate and/or limiting hours of use;
2. Designing separation of uses and activities through fencing, terracing, hedges or other design features; or
3. Providing access on a site geographically separate from the proposal such as a street end cannot be accomplished.

C. If the above conditions are demonstrated, and the proposed development is not subject to the Parks Impact Fee, alternative provisions for meeting public access are required and include:

1. Development of public access at an adjacent street end;
2. Protection through easement or setbacks of landmarks, unique natural features or other areas valuable for their interpretive potential
3. Contribution of materials and/or labor, toward projects identified in the Parks and Recreation Master Plan, the Shoreline Restoration Plan, or other City adopted plan;
4. ~~Payment into the Shoreline Public Access Fund established by the City. The amount of the payment would be 150% of the value of the materials, labor and any other costs associated with the cost of on-site compliance as provided by formal quotes by a minimum of 2 independent licensed contractors. The payment would be due at the time the development permit is issued.~~

~~11.7 — Shoreline Public Access Fund~~

~~A. The City shall establish a Shoreline Public Access Fund, from which funds will be withdrawn to fund the purchase of trail property or amenities for public usage or enjoyment along the river.~~

~~B. Monies shall be assessed and paid into the Shoreline Public Access Fund as noted in this chapter.~~

~~C. Monies paid to the Shoreline Public Access Fund shall be applied to projects located as close to the contributing property as possible.~~

PLANNING COMMISSION ACTION 12/11/08: ACCEPTED STAFF PROPOSED REVISIONS TO SECTION 13.

SHORELINE RESTORATION

The intent of these changes is to minimize the impact of shoreline restoration projects on adjacent properties in those cases where the OHWM would move, thereby moving the shoreline jurisdiction further landward. The language has been revised based on public comments.



13. SHORELINE RESTORATION

13.1 Shoreline Substantial Development Permit Not Required

Shoreline restoration projects shall be allowed without a Shoreline Substantial Development Permit when these projects meet the criteria established by WAC 173-27-040(o) and (p).

13.2 Changes in Shoreline Jurisdiction due to Restoration

In cases where shoreline restoration projects result in a change in the location of the OHWM and associated shoreline jurisdiction on the subject property and/or adjacent properties, the following standards shall apply:

A. The portion of property that moves from outside shoreline jurisdiction to inside shoreline jurisdiction as a result of the shoreline restoration project:

1. may be developed for the full range of uses of the underlying zoning consistent with

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the zoning code, including uses that are not water-oriented.

~~2. is not required to obtain a shoreline substantial development permit.~~

~~3.2. is not subject to the SMP provisions for public access; and~~

3. is not subject to shoreline design review; and

4. while required to obtain a shoreline substantial development permit if over the thresholds, is not subject to the development standards set forth in this Program.

The intent of the exemptions identified in A 1-4 is to implement the restoration projects of the Shoreline Master Program Restoration Plan, which reflect the projects identified in the Water Resource Inventory (WRIA) 9 Plan pursuant to Policy 5.2 of this Master Program.

B. The Shoreline Residential Environment Buffer, High Intensity or Urban Conservancy Environment Buffer width may be reduced to no less than 25 feet measured from the new location of the OHWM for the portion of the property that moves from outside the shoreline jurisdiction to inside shoreline jurisdiction as a result of the shoreline restoration project, subject to the following standards:

1. The 25 foot buffer area must be vegetated according to the requirements of the Vegetation Protection and Landscaping Section or as otherwise approved by the City; and
2. The proponents of the restoration project are responsible for the installation and maintenance of the vegetation.

A.C. The habitat restoration project proponents must record with King County a survey that identifies the location of the OHWM location prior to implementation of the shoreline restoration project, any structures that fall within the shoreline jurisdiction and the new location of the OHWM once construction of the shoreline restoration project is completed.

B.D. Shoreline restoration projects must obtain all U.S. Army Corps of Engineers and Washington State Department of Fish and Wildlife approvals as well as written approval from the City.

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PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION APPROVED THE STAFF RECOMMENDED REVISIONS TO SECTION 14.5 AND CHANGED SECTION 14.5 B.4 TO REQUIRE APPROVAL OF AN EXTENSION BY THE CITY COUNCIL.

NONCONFORMING USES, STRUCTURES, PARKING LOTS AND LANDSCAPE AREAS

In order to address comments about treatment of non-conformities created by the new SMP development standards, staff proposes to add a new nonconforming section specific to shorelines rather than referencing the existing Zoning Code standards. Section 14.5 is proposed to be revised as follows:

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14.5 Nonconforming Development

~~A. A nonconforming use or development is a shoreline use or development that was lawfully constructed or established prior to the effective date of the SMP but that does not conform to present regulations or standards of the program.~~

~~B. The provisions of TMC 18.70, Nonconforming Lots, Structures and Uses shall apply to the shoreline jurisdiction.~~

A. Nonconforming Uses

~~Any preexisting lawful use of land made nonconforming under the terms of this SMP may be continued as a nonconforming use, defined in TMC Chapter 18.06, or as hereafter amended, so long as that use remains lawful, subject to the following:~~

- ~~1. No such nonconforming use shall be enlarged, intensified, increased or extended to occupy a greater use of the land, structure or combination of the two, than was occupied at the effective date of adoption of this SMP;~~
- ~~2. No nonconforming use shall be moved or extended in whole or in part to any other portion of the lot or parcel occupied by such use at the effective date of adoption or amendment of this SMP;~~
- ~~3. If any such nonconforming use ceases for any reason for a period of more than six consecutive months, or a total of 365 days in a three-year time period, whichever occurs first, any subsequent use shall conform to the regulations specified by this SMP for the shoreline environment in which such use is located;~~
- ~~4. No existing structure devoted to a use not permitted by this title in the zone in which it is located shall be substantially improved as defined by the Washington State Building Code, except in changing the use of the structure to a use permitted in the zone in which it is located. If any building is devoted in whole or in part to any nonconforming use as allowed under the specific shoreline environment, work may be done in any period of twelve consecutive months on ordinary maintenance and repairs, or on repair or replacement of nonbearing walls, fixtures, wiring or plumbing to an extent not exceeding 50% of the current replacement value~~
- ~~5. If a change of use is proposed to a use determined to be nonconforming by application of provisions in this SMP, the proposed new use must be a permitted use in the SMP or a use approved under a Conditional Use or Unclassified Use Permit process. For purposes of implementing this section, a~~

change of use constitutes a change from one Permitted, Conditional or Unclassified Use category to another such use category as listed within the zoning code.

B. Nonconforming Structures

Where a lawful structure exists at the effective date of adoption of the SMP that could not be built under the terms of the SMP by reason of restrictions on height, buffers or other characteristics of the structure, it may be continued so long as the structure remains otherwise lawful subject to the following provisions:

1. No such structure may be enlarged or altered in such a way that increases its degree of nonconformity or impacts the functions and values of the shoreline environment. Ordinary maintenance and repair of and upgrades to a nonconforming structure is permitted, including but not limited to painting, roof repair and replacement, plumbing, wiring, mechanical equipment repair/replacement, repaving and weatherization. These and other alterations, additions or enlargements may be allowed as long as the work done does not extend further into any required buffer, increase the amount of impervious surface, or increase the impacts to the functions and values of the shoreline environment. Complete plans shall be required of all work contemplated under this section.
2. Should such structure be destroyed by any accidental means the structure may be reconstructed to its original dimensions and location on the lot. In the event that the property is redeveloped, such redevelopment must be in conformity with the provisions of this SMP.
3. Should such structure be moved for any reason or any distance whatsoever, it shall thereafter conform to the regulations of this SMP after it is moved.
4. When a nonconforming structure, or structure and premises in combination, is vacated or abandoned for 24 consecutive months, the structure, or structure and premises in combination, shall thereafter be required to be in conformance with the regulations of the SMP. Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council ~~Director~~ may grant an extension of time of up to 12 months beyond the 24 consecutive months. The City Council ~~Director~~ shall consider special circumstances and economic impacting the sale or lease of said structure.
5. Residential structures and uses located in any single-family or multiple-family residential zoning district and in existence at the time of adoption of this SMP shall not be deemed nonconforming in terms of height, use, or location provisions of this title. Such buildings may be rebuilt after a fire or other natural disaster to their original dimensions, location and height, but may not be changed except as provided in the non-conforming uses section of this chapter.
6. Single-family structures in single- or multiple family residential zone districts, which have legally nonconforming setbacks from the OHWM per the SMP buffer, shall be allowed to expand the ground floor only along the existing building line(s), so long as the existing distance from the nearest point of the structure to the OHWM is not reduced, and the square footage of new intrusion into the buffer does not exceed 50% of the square footage of the current intrusion.
7. Within the shoreline jurisdiction, existing structures that do not meet the requirements of the SMP may be remodeled, reconstructed or replaced, provided that:
 - a. The new construction is within the original dimensions and location on the lot;
 - b. The new construction does not further intrude into or adversely impact the required buffer;
 - c. The new construction does not threaten the public health, safety or welfare; and
 - d. The structure otherwise meets the requirements of the SMP.

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8. A nonconforming use, within a nonconforming structure, shall not be allowed to expand into any other portion of the nonconforming structure.

C. Building Safety

1. Nothing in this SMP shall be deemed to prevent the strengthening or restoring to a safe condition of any nonconforming building or part thereof declared to be unsafe by order of any City official charged with protecting the public safety.
2. Alterations or expansion of a nonconforming use which are required by law or a public agency in order to comply with public health or safety regulations are the only alterations or expansions allowed.

D. Nonconforming Parking Lots

1. Nothing contained in this SMP shall be construed to require a change in any aspect of a structure or facility covered thereunder including, without limitation, parking lot layout, loading space requirements and curb-cuts, for any structure or facility which existed on the date of adoption of this SMP.
2. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment less than 100%, the requirements of the SMP shall be complied with for the additional parking area.
3. If a change of use takes place, or an addition is proposed, which requires an increase in the parking area by an increment greater than 100%, the requirements of the SMP shall be complied with for the entire parking area.

E. Nonconforming Landscape Areas

1. Adoption of the vegetation protection and landscaping regulations contained in this SMP shall not be construed to require a change in the landscape improvements for any legal landscape area which existed on the date of adoption of this SMP, unless and until the property is redeveloped or alteration of the existing structure beyond the thresholds provided herein.
2. At such time as the property is redeveloped or the existing structure is altered beyond the thresholds provided herein and the associated premises does not comply with the vegetation protection and landscaping requirements of this SMP, a landscape plan which conforms to the requirements of this SMP shall be submitted to the Director for approval.

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PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION ACCEPTED STAFF'S EXPLANATION.

PUBLIC NOTICE CONCERNS

Concern was expressed about the timing of the public notice for the SMP and the lack of notice to property owners if notice is only mailed to the entity paying the property taxes drawn from the King County Assessor's data base.

Staff Response: Public notice was mailed to property owners using data from the King County Assessor's Office records. The first mailing notifying property owners of the August 19 open house and the August 28, 2008 public hearing was sent out August 6 and August 13, 2008. To address concerns expressed at the hearing about the need for additional time to review the draft SMP the Planning Commission continued the public hearing to October 9, 2008 to allow additional time for review and comment on the draft SMP. A second mailing was sent out September 11 and 12, 2008 to notify property owners of a second Open House on October 1 and of the continued public hearing on October 9, 2008. After the public hearing was closed on October 9, 2008, the Planning Commission established a cut off date of Thursday, October 16, 2008 for written comments to be received on the Master Program.

To address the issue of reaching beyond the payer of property taxes, the City sent a third mailing on September 25, 2008 to individuals or businesses listed as the payee of the City's surface water fee to reach property owners, as this data base reflects property owners not tenants of property. An e-mail data base has also been created to be able to quickly reach individuals if needed.

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Planning Commission Action

PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION MADE NO REVISIONS TO THE STAFF EXPLANATION.

SPEED OF SMP REVIEW PROCESS

Comments were received that the SMP public review process has been rushed and that more time should be taken for review. The outreach efforts from the initial work on the shoreline update in 1999 to the most recent are summarized below. Included are relevant events that affected the timeline of the SMP review.

- 9/22/1999 – 3/8/2000: Shoreline Panel, consisting of two business representatives and two single family property owners, met to review a staff draft SMP; Panel provided a draft SMP for Planning Commission review with several issues identified on which there was not Panel consensus.
- 5/18/2000 – 10/26/2000: Planning Commission conducted its review the draft SMP as it came from the Panel;
- 11/29/2000: Department of Ecology adopts new shoreline regulations; the Planning Commission sets aside review of the draft SMP while staff evaluates the major differences between the former and new regulations; memo provided to Planning Commission.
- 8/27/2001: Shoreline Hearings Board invalidates new Ecology shoreline regulations; work on SMP update set aside while the regulations are revised.
- 9/11/2002: status report provided to Planning Commission on the SMP update.
- 12/17/2003: new shoreline regulations issued after a negotiated settlement is reached with the appealing parties (environmental groups and business organizations).
- 11/2005: short notice on the SMP provided in the Hazelnut.
- 12/2005: City applies for grant funding from Ecology to assist with SMP update. Grant funding awarded in early 2006; due to other work in progress, staff was not available to work on the update until 2007.
- Tukwila Days presence 2006, 2007, 2008, where information about the SMP Update has been available and sign-up sheets to receive information provided;
- February 2007 – ongoing: posted information on the City's web site about the update of the shoreline master program and posted documents as they have become available for public review (Draft Inventory and Characterization Report, Draft Restoration Plan in February , 2007, Draft SMP Update and Draft Cumulative Impact Analysis July 25, 2008, environmental documents August 13, 2008).
- February, 2007 article in the Hazelnut.
- July 24, 2008 joint City Council/Planning Commission briefing on the proposed draft SMP.
- August 5, 2008 briefing on draft SMP to the Chamber of Commerce.
- Public notice mailed by first class mail to property owners along the river about the Open House and public hearing August 8 (residential properties) and August 14, 2008 (commercial/industrial properties).

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- Meetings with property owners – ongoing since July 24, 2008.
- Public notice boards installed in four locations along the Green River trail with notice of the public hearing posted on August 20, 2008.
- Open House held August 19 and October 1, 2008
- Public Hearing held August 28, 2008 and continued to October 9, 2008.
- Second public notice mailed September 11 and 12, 2008 to property owners; notice mailed to those listed on City's utility data base on September 25, 2008.
- Notice posted on the City's television channel August 15, 2008.

RCW 90.58.080 establishes a timeline for adoption of updated SMPs for all jurisdictions in the state. For King County and its cities with shorelines of statewide significance, the deadline to adopt is December 1, 2009 unless grant monies were received to assist in the update, in which case the deadline is three years from the date of receiving the grant monies, or February 17, 2009 for Tukwila. Ecology has provided flexibility on adoption dates for the SMP for the City and the City is in the process of requesting an extension from February 17, 2009 to June 30, 2009 to reflect the current expected adoption date of the SMP.

Ultimately, if the City does not adopt a SMP that can be approved by the Department of Ecology by the deadline, or refuses to adopt a program, RCW 90.58.070 (2) provides a mechanism for the Dept. of Ecology to step in and adopt regulations for the City

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PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION
MADE NO REVISIONS TO THE STAFF EXPLANATION.

PUBLIC PARTICIPATION

A number of comments provided on the draft SMP requested the establishment of a stakeholders group to advise the City on a draft SMP prior to the Planning Commission reviewing a document.

Staff Response: Regarding the request for a stakeholder's group, the Mayor and Council President provided a response on this issue at the public hearing on October 9, 2008, which follows on the next page.

The City's municipal code (TMC 18.108.060) does not establish a process for reviewing legislative actions such as the shoreline master program. In terms of the regulatory context of what is required for legislative actions by the City, under state law, when a City Council holds a public hearing on a proposed legislative action, the Planning Commission has flexibility on the degree of public outreach and number of public hearings held on the legislative action.

PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION MADE NO REVISIONS TO THE STAFF EXPLANATION.

GREEN/DUWAMISH RIVER BUFFERS AND REGULATIONS

Shoreline Environment	Existing Regulations	No Regulations or Adopt Another Jurisdiction's Regulations	State Regulations	Proposed Regulations
Single Family Residential	<p>Tukwila SMP (1974; TMC 18.44): 40-ft setback from Mean High Water Mark (River Zone) (only a few single family residential properties are governed by the City's current SMP)</p> <p>King County SMP (Title 25 KCC): 20-ft setback from OHWM.</p>	<p>The Shoreline Management Act, adopted in 1971, requires all jurisdictions with shorelines of statewide significance or shorelines of the state to adopt policies and regulations to protect these resources.</p> <p>If the City did not adopt a SMP that could be approved by the Department of Ecology by the deadline, RCW 90.58.070 (2) provides a mechanism for the Dept. of Ecology to step in and adopt regulations for the City.</p> <p>If Tukwila were to adopt another jurisdiction's regulations we would need to confirm through our own Inventory and Characterization Report that these regulations fit with the shoreline conditions we have in Tukwila.</p>	<p>The RCW's and WAC regulations on shoreline master programs do not specify a particular width for buffers – rather local jurisdictions are permitted flexibility in developing shoreline buffers, development standards and policies to comply with the shoreline requirements to fit the local characteristics.</p> <p>If the State is required to step in and adopt a Master Program for a local jurisdiction, while it will take input from citizens, business owners and the City, it is likely the regulations will not be as reflective of local conditions and local desires as those actually written by the local jurisdiction.</p>	<p>Buffer location is proposed to be where the slope would be at a 2.5:1 angle plus 20 feet, minimum of 50-ft for single family residential areas</p>
Commercial/Industrial Properties	<p>Tukwila SMP (1974; TMC 18.44): 40-ft setback from Mean High Water Mark</p> <p>King County SMP (Title 25 KCC): 50-ft from OHWM.</p>	<p>See above</p>	<p>See above</p>	<p>Originally proposed 100-ft (High Intensity, Urban Conservancy north of I-405)</p> <p>Originally proposed 125-ft (Urban Conservancy south of I-405)</p>

PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION MADE NO REVISIONS TO THE STAFF EXPLANATION.

REQUESTS FOR AN ECONOMIC IMPACT ANALYSIS OF THE PROPOSED SMP

A number of commenters to the draft SMP have requested an analysis of its economic impacts. The Shoreline Management Act requires local jurisdictions to prepare shoreline master programs (SMP) that protect the public interests associated with shorelines of the state while at the same time recognizing and protecting private property rights consistent with the public interest. The draft SMP attempts to balance these requirements and the staff proposed revisions to the July 24, 2008 draft SMP hopefully address some of the provisions that commenters believe have potential economic impact, such as the public access, parking and nonconforming use sections.

However failure to adopt an SMP that meets the current state and federal regulatory requirements could ultimately result in DOE creating a plan for us which could well have more serious economic impacts to the City. The regulatory forces shaping the parameters of our decisions on the revised SMP, such as the listing of Puget Sound Chinook salmon as a threatened species under the Endangered Species Act, require us to make difficult decisions that have an impact on peoples' lives, business and the environment. The Act requires the development of recovery plans for endangered or threatened species. While we're committed to making the best management decisions we can using the best available science, refusing to respond to the changed regulatory circumstances is not an option for Tukwila.

Even prior to the listing of Chinook in 1999 a coalition involving federal, state, tribal and local governments, business representatives, the agricultural and forestry industries, conservation and environmental groups along with the local watershed planning areas began to develop a "Shared Strategy" salmon recovery initiative. This was a voluntary, collaborative process to develop technically sound solutions at the local level. After review by NOAA and USFWS this was adopted as the regional Chinook recovery strategy in 2002. As members of WRIA 9 our City Council has committed to adopting an SMP that is consistent with both the Puget Sound Salmon Recovery Plan and the WRIA 9 Salmon Habitat Plan "Making Our Watershed fit for a King".

The need to do our part to halt the Chinook's slide toward extinction is an obligation that the City must meet under the ESA. Current guidelines state that the status of a species must be determined solely on the basis of the "best scientific and commercial evidence available" and may not consider any economic consequences of listing, though the designation of critical habitat for the species is subject to such analysis. The ESA is clear that private landowners are not allowed to do anything on their lands which would violate the take prohibition of a listed species. However if they act in accordance with an approved habitat conservation strategy such as the regional Shared Strategy and its implementation at the local level through stormwater, shoreline, sensitive area and other regulations they are protected from claims arising from incidental takes.

Attachment L Planning Commission Action

There would also be significant negative consequences to failing to maintain our flood control infrastructure and regulations in a way that allows our property owners to either be outside of the flood plain due to protection by federally certified levees or to qualify for federal flood insurance. The new draft FEMA flood maps are showing large areas in south King County (including a small area of Tukwila) that had previously been designated as outside of the floodplain and floodway as within them because the levees are not ACOE certified. This could have dramatic implications on those properties such as moratoriums on new development as recently enacted in Auburn, 150 foot setback requirements for new construction and requirements to raise the finished floor levels 1' above flood elevation triggered by a 50% change in use of the building. Should the 205 levee be decertified the entire Southcenter business area could be subject to similar restrictions.

While any change in the regulatory environment is likely to have some economic impact we must also weigh that against the economic impact of not making a change. The economic impact of the proposed shoreline regulations must be balanced with the economic impact of failing to protect our landowners against ESA taking claims and the economic repercussions of the extinction of the Puget Sound Chinook salmon run. Failing to align our flood control regulations with federal requirements could trigger onerous and inflexible development restrictions. In any of these circumstances the economic impacts of non-action could be significant for shoreline landowners.

Attachment M Planning Commission Action

PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION REVISED THE DEFINITION FOR “NO NET LOSS” TO DELETE THE SECOND SENTENCE; MADE NO OTHER REVISIONS TO THE NEW DEFINITIONS.

NEW DEFINITIONS

The following proposed new definitions were provided to the Planning Commission for its meeting on October 8, 2009. Since that time, discussion by the Commission determined that the term “rain garden” should be stricken from the Draft SMP, so staff has stricken the proposed definition for inclusion in Section 3 of the Draft SMP.

Armoring: means the control of shoreline erosion with hardened structures, such as bulkheads, sea walls, and riprap.

Large Woody Debris (LWD): means whole trees with root wads and limbs attached, cut logs at least 4 inches in diameter along most of their length, root wads at least 6.5 feet long and 8 inches in diameter. Large woody debris is installed to address a deficiency of habitat and natural channel forming processes.

No Net Loss: means a standard intended to ensure that shoreline development or uses, whether permitted or exempt, are located and designed to avoid loss or degradation of shoreline ecological functions that are necessary to sustain shoreline natural resources. ~~The standard is met when proposed uses or developments are in compliance with the provisions of this master program.~~—In cases where unavoidable loss results from allowed uses or developments, the standard is met through appropriate mitigation, consistent with the provisions of this master program.

~~**Rain Garden:** (also known as a bioretention area) means a natural or landscaped basin that captures and soaks up (retains) water that runs off roofs, driveways, sidewalks, parking areas or other impervious surfaces. A rain garden has permeable soils with compost amendments and surface mulch and is planted with native trees, shrubs, and other plants. A rain garden collects rain water like a sponge and allows it to slowly filter into the ground. It is one example of a low impact development technique for management of stormwater run-off. (Definition modified from Puget Sound Partnership Low Impact Development Technical Guidance Manual for Puget Sound, and Portland Metro Sustainable Living Website).~~

Attachment N Planning Commission Action

PLANNING COMMISSION ACTION 12/11/08: THE PLANNING COMMISSION MADE NO REVISIONS TO THE STAFF EXPLANATION.

CONSISTENCY OF THE SMP WITH TUKWILA'S COMPREHENSIVE PLAN

A number of commenters to the draft SMP have raised the question of the consistency of the draft plan with policies contained in the City's existing Comprehensive Plan. The main element that has been highlighted as posing a conflict is support for economic development. Both the Comprehensive Plan and the SMP acknowledge that the policy goals of economic development and environmental protection must be balanced in a sustainable manner, see Goal 5.3. The proposed buffers and development standards in the draft SMP are an extension of those in Tukwila's Sensitive Areas Ordinance which have been in place since 2004. It is also recognized that taken as a whole, the Comprehensive Plan contains goals that require policy makers to balance competing interests. This is the case with the goals of the shoreline section.