LAWYERS

Davis Wright Tremaine LLP

ANCHORAGE BELLEVUE LOS ANGELES NEW YORK PORTLAND SAN FRANCISCO SEATTLE SHANGHAI WASHINGTON, D.C.

CHARLES E. MADUELL
Direct (206) 757-8093
chuckmaduell@dwt.com

SUITE 2200
1201 THIRD AVENUE
SEATTLE, WA 98101-3045

TEL (206) 622-3150
FAX (206) 757-7700
www.dwt.com

January 15, 2009

Tukwila Planning Commission
City of Tukwila
Department of Community Development
6300 Southcenter Blvd., #100
Tukwila, WA 98188

Re: January 15, 2009 Working Session--Comments on Revisions to Shoreline Master Program

Dear Planning Commission Members:

We represent Yellow Transportation, Inc. ("Yellow Transportation), a subsidiary of YRC Worldwide Inc., which owns and operates a national freight distribution center on the Green/Duwamish River at 12855 48th Avenue South, in the City of Tukwila. Per your invitation, we are writing to provide our comments on whether the concerns we expressed in our prior comment letters and testimony on Yellow Transportation's behalf have been adequately addressed by the Staff-proposed revisions to the draft Shoreline Master Program ("SMP") approved by the Planning Commission at its December 10 and 11, 2008 meetings.

As a preliminary matter, Yellow Transportation wishes to acknowledge the revisions made to the SMP that address some of their prior concerns, such as those addressing parking, the repaving of parking lots, and the ability to continue and improve nonconforming uses and structures without triggering compliance with the new SMP requirements. The following comments address outstanding concerns, by relevant subject matter:

1. River Buffer

In comment letters and testimony, Yellow Transportation expressed concerns about the proposed increase in the buffer for its Tukwila freight distribution facility property from 40 feet to 100 feet. The buffer is also a setback, within which no uses or development relating to Yellow Transportation's Tukwila facility would be permitted. Further, it would cause the current uses and improvements to become nonconforming and make it virtually impossible to replicate the facility through redevelopment.

The recent revisions do not provide any additional relief from this buffer. They carry forward the provisions in the original draft SMP that would allow the buffer to be reduced if the property owner reslopes the bank to 2.5:1, provides a 20-foot setback from the top of the new slope, and vegetates both the river bank and the 20-foot setback area in accordance with the vegetation and landscape requirements in the SMP. They also indicate that the reduction achieved can be as much as 50%.

The problem with this alternative is that it is not likely to provide much relief from the 100-foot buffer since the width of the buffer was established in the first place to allow enough room to reconfigure the riverbank to achieve the 2.5:1 slope. Further, the buffer reduction and rationale for the buffer suggest that the buffer width was established for flood control purposes, not to protect shoreline functions and values as required by the Shoreline Management Act.

At the Open House, City staff indicated that the buffer width was based on the buffers established for watercourses in the City's sensitive areas ordinance, Chapter 18.45, and that it would be unfair to provide a smaller buffer for river shoreline development than is required for comparable watercourse shoreline development. To address this concern, while also providing needed flexibility in buffer width in the SMP based on the specific characteristics of a site to address the shoreline protection provided by a buffer, Yellow Transportation proposes that the Planning Commission add an alternative to the buffer reduction standard in the current SMP draft that would essentially mirror the provisions in section 18.45.100(F) of the sensitive areas ordinance for variation of standard watercourse buffer widths. This would result in consistent and comparable treatment of similar watercourses (Types 1 and 2), each with 100-foot buffers, and each able to have their buffers reduced up to 50% provided the standards for buffer reduction in TMC 18.45.100(F) are met.

Language addressing these proposed changes are shown in yellow highlight in Attachment A, attached hereto.

2. Applicability

Yellow Transportation has also expressed concerns that the SMP triggers compliance with its new regulations for relatively minor use and development. To address these concerns, Staff proposed deletion of the list of triggers in Section 9.1 in favor of reliance on the definition of "development" in the Shoreline Management Act. The effect of this change is to substantially broaden the categories of activities subject to compliance with the SMP. We understand, however, that it was made with the intent that the applicability of the various regulations to specific developments would be addressed in the sections relating to such regulations. This intent this intent has not been adequately carried forward and will be addressed in the sections dealing with specific regulations.

There is one additional concern with Section 9.1, however. Yellow Transportation proposes that language be added in Section 9.1 to clarify that improvements made under the nonconforming use provisions are not subject to the requirements of the SMP. According to

staff, this was their intent; however, the current language in Section 9.1 does not adequately reflect this intent.

Language addressing this proposed change to Section 9.1 is shown in yellow highlight in Attachment C-1, attached hereto.

3. Height

For properties like Yellow Transportation's that are zoned Manufacturing Industrial Center/Heavy Industrial, the height restrictions are substantial and onerous, resulting in a reduction in allowable height from 125 feet to 15 feet within the River Buffer and 45 feet outside the River Buffer. Such dramatic height restrictions are not warranted along the urbanized industrial portions of the River. The SMP revisions to Section 9.3 do not address this concern. Yellow Transportation proposes a tiered approach that would retain the 15-foot maximum height in the River Buffer, retain the 45-foot height within the first 20 feet of the area outside the Buffer, and allow the maximum zoning height to be realized in the remaining portion of the shoreline jurisdictional boundary.

Language addressing these proposed changes to Section 9.3 is shown in yellow highlight in Attachment C-3, attached hereto.

4. Vegetation Protection and Landscaping

The proposed SMP requires installation and maintenance of substantial, expensive revegetation and landscaping, both within and outside of the river buffer. It does so without any consideration of the need for such requirements based on the impacts of development, or whether such required improvements are roughly proportional or reasonably necessary as a direct result of the project impacts. As a result, imposition of such requirements on certain development activities could constitute an unconstitutional taking under state and federal constitutions and violate RCW 82.02.020. *See, e.g., Isla Verde Int'l Holdings, Inc. v. City of Camas,* 146 Wn.2d 740, 761, 49 P.3d 867 (2002) ("development conditions must be tied to a *specific, identified impact* of a development on the community."); RCW 82.02.020 (Exaction is unlawful tax or fee unless City meets burden of establishing that development conditions are reasonably necessary as a direct result of the proposed development); *Nollan v. Cal. Coastal Comm'n,* 483 U.S. 825, 107 S. Ct. 3141, 97 L. Ed. 677 (1987) (City must show "essential nexus" between required condition and impact of development); *Dolan v. City of Tigard*, 512 U.S. 374, 386-94, 114 S. Ct. 2309, 129 L. Ed. 2d 304 (1994) (City must make individualized determination the required condition is "roughly proportional" to the impacts of the proposed development). Further, they purport to impose development conditions to "relieve a preexisting deficiency," which is clearly unlawful. *Benchmark Land Co. v. City of Battleground*, 146 Wn.2d 685, 695, 49 P.3d 860 (2002).

The SMP revisions do not address these concerns. Consequently, Yellow Transportation proposes revisions to Section 9.1 that would require that any vegetation protection and

landscaping requirements imposed on development be proportional to the impacts of such development.

Language addressing these proposed changes to Section 9.10 is shown in yellow highlight in Attachment C-7, attached hereto.

5. Nonconforming Development

The revisions to Section 14.5 address many of the concerns raised by Yellow Transportation in its comment letters and testimony at Planning Commission meetings, especially those relating to reconstruction and replacement of nonconforming structures. However, several of the nonconforming use provisions in Section 14.5(A) are not consistent with and do not provide the same level of relief as those pertaining to nonconforming structures in Section 14.5(B).

For example, nonconforming structures can be abandoned or vacated for up to 24 months, with a 12-month extension, without losing their legal nonconforming status. Nonconforming uses, however, lose their nonconforming status if they cease for 6 consecutive months. There is no need to treat these grace periods differently. For example, if a structure is vacant for 12 months because a tenant cannot be found, the nonconforming structure can continue but the nonconforming use will expire. This makes no sense. The grace period provisions in Sections 14.5(A) and (B) should be made consistent with each other, each allowing a 24-month grace period if a use ceases or a structure is vacant or abandoned.

In addition, an existing use, whether it conforms to the existing underlying zoning or not, should be able to be changed to a use that conforms to those uses permitted by the underlying zoning district in which the property is located.

Finally, allowing the minor expansion of a structure that is nonconforming only because of its location in a buffer, so long as it does not further intrude into the buffer, is reasonable and would have no impact on shoreline functions and values.

Language addressing these proposed changes to Section 14.5 is shown in yellow highlight in Attachment G, attached hereto.

6. Public Access

Like the vegetation protection and landscaping requirements, the public access requirements require extensive and expensive public access improvements for relatively minor development or redevelopment. While the revisions attempt to limit the applicability of these requirements, once applicable, the extent of the public access improvements that must be installed and dedicated do not vary based on need for such requirements to mitigate the impacts

to public access from development or whether such required improvements are roughly proportional or reasonably necessary as a direct result of the project impacts. Thus, imposition of such requirements on certain development activities could constitute an unconstitutional taking under state and federal constitutions and violate RCW 82.02.020. For example, pursuant to Section 11.1, even the addition of one square foot to an existing building can constitute "an increase in demand for public access," thereby triggering installation and dedication of substantial shoreline trails for public use, at great expense to the property owner. Under these circumstances, such an exaction for public access is neither proportional nor constitutional.

To address these concerns, Yellow Transportation proposes revisions to Section 11 that would require that the public access requirements imposed on development be proportional to the impacts of such development on public access. Language addressing these proposed changes to Section 11 is shown in yellow highlight in Attachment E, attached hereto.

Thank you for your consideration of these comments.

Very truly yours,

Davis Wright Tremaine LLP

Charles E. Maduell

Enclosures

cc: Brad Schroeder, Vice President, Finance & Properties, YRC Worldwide Inc.
Joseph J. Pec, Esq., Enterprise Transportation & Shared Services Counsel, YRC Worldwide Inc.

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~~ Intensity (staff correction to reflect correct name of the Environment)	100'	Buffer may be reduced by up to 50% upon under either of the following circumstances: 1. ~~e~~Construction of the preferred cross section: - 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; or 2. The Director may reduce the standard Buffer on a case-by-case basis. The approved buffer width shall not result in greater than a 50% reduction in width. Any buffer reduction proposal must demonstrate to the satisfaction of the Director that it will not result in direct, indirect or long-term adverse impacts to the shoreline, and that: a. The buffer is vegetated and includes an enhancement plan as may be required to improve the buffer function and value; or b. If there is no significant vegetation in the buffer, a buffer may be reduced only if an enhancement plan is provided. The

				plan must include using a variety of native vegetation that improves the functional attributes of the buffer and provides additional protection for the shoreline functions and values. Comment re: 1st buffer reduction: 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. Comment re: 2nd buffer reduction: This variation in shoreline buffer width is consistent with the required buffer and allowable buffer variation for Type II watercourses in TMC 18.45.100 .
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'	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. Comment: this applies to City-owned property at Fort Dent.

Area	Characteristics	Environment	Buffer	Modification
Commercially zoned property from 42nd 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 under either of the following circumstances: 1. eConstruction of the preferred cross section: - 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; or 2. The Director may reduce the standard Buffer on a case-by-case basis. The approved buffer width shall not result in greater than a 50% reduction in width. Any buffer reduction proposal must demonstrate to the satisfaction of the Director that it will not result in direct, indirect or long-term adverse impacts to the shoreline, and that: a. The buffer is vegetated and includes an enhancement plan as may be required to improve the buffer function and value; or b. If there is no significant vegetation in the buffer, a buffer may be reduced only if an enhancement plan is provided. The plan must include using a variety of native vegetation that improves the functional attributes of the buffer and provides additional protection for the

				shoreline functions and values. Comment re: 1st buffer reduction: 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. Comment re: 2nd buffer reduction: - This variation in shoreline buffer width is consistent with the required buffer and allowable buffer variation for Type II watercourses in TMC 18.45.100 .
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'~~ 100'	Buffer may be reduced by up to 50% upon under either of the following circumstances: 1. eConstruction of the preferred cross section: - 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; or 2. The Director may reduce the standard Buffer on a case-by-case basis. The

				approved buffer width shall not result in greater than a 50% reduction in width. Any buffer reduction proposal must demonstrate to the satisfaction of the Director that it will not result in direct, indirect or long-term adverse impacts to the shoreline, and that: a. The buffer is vegetated and includes an enhancement plan as may be required to improve the buffer function and value; or b. If there is no significant vegetation in the buffer, a buffer may be reduced only if an enhancement plan is provided. The plan must include using a variety of native vegetation that improves the functional attributes of the buffer and provides additional protection for the shoreline functions and values. Comment re: 1st buffer reduction: 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. Comment re: 2nd buffer reduction: - This variation in shoreline buffer width is consistent with the required buffer and allowable buffer variation for Type II watercourses in TMC 18.45.100 .
East River bank **with levee** from I-405 to South	Moderate flooding risk, 20 to 25' difference from	Urban Conservancy	125'	Upon reconstruction of levee in accordance with approved profile, to

City Limit	OHWM to top of bank, Moderate slumping risk, large water level fluctuations			include 10' access easement, buffer to be reduced to actual width required.

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: 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~~

They do not apply to ~~Nonconforming~~ nonconforming uses, ~~and~~ structures, parking lots and landscape areas~~-~~, which are~~will~~ ~~be~~ governed by the standards in Section 14.5~~TMC 18.70,~~ Nonconforming Development~~Lots, Structures and Uses~~.

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.

2. In the Tukwila South area, and in areas zoned Manufacturing Industrial Center/Heavy Industrial or Tukwila Urban Center, the maximum height for structures will be as follows:
   a. 15 feet where located within the River Buffer;
   b. 45 feet between the landward edge of the River Buffer and 120' from the OHWM.
   c. the maximum height in the area from 120' to 200' from the OHWM shall be governed by the underlying zoning and master plan approvals, where applicable. Pursuant to RCW 90.58.320, the City finds that overriding considerations of the public interest, including promotion of the economic well being of the City and its citizens by permitting reasonable commercial and industrial development in an already urbanized area, will be served by allowing such development.

   For purposes of this SMP, "Tukwila South" shall mean the existing portion of the City located south of South 178th Street/South 180th Street and west of the Green River, together with the south potential annexation area.

[] *Move this to Section 11- See Attachment E.: 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.

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-fott 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;

4.The lighting is incorporated into a unified landscape and/or site plan.

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.

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, ~~A~~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, to the extent that impacts from such activities or development create the need for the landscaping and maintenance provided for in this section. 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 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 ~~3~~1 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 (any trunk of a multi-trunk tree)	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 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 follows[1]:
    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

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

separate sections for the River Buffer and for the remaining part of the Shoreline Jurisdiction for each Environment Designation.

1. General Requirements

~~a.~~For any new development or redevelopment in the Shoreline Jurisdiction, except single family residential development of 4 or fewer lots or development that does not adversely affect vegetation in the River Buffer or create the need for revegetation, 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 to the extent necessary to mitigate impacts from the development to River Buffer vegetation.

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 Guidelines[2] (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~~

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

~~and shrubs in other sizes may be made for bank plantings, as approved by the City):~~

Deciduous trees:	2" caliper
Conifers:	6-8' height.
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 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 L~~l~~ot 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:

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

5) The use of pesticides in the shoreline jurisdiction is must be aapproved in writing by the City and . Tthe applicant must ppresents a copy of the Aquatic NPDES Pesticide pPermit issued by the Department of Ecology or Washington Department of Agriculture. **

c.

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.

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:

Page 119:

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~~24 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.~~;~~ Upon request of the owner, prior to the end of the 24 consecutive months, and upon reasonable cause shown, the City Council may grant an extension of time of up to 24 months beyond the 24 consecutive months. The City Council shall consider special circumstances and economics impacting the sale or lease of said structure or premises.

4. No existing structure devoted to a use not permitted ~~by this title~~ in the underlying zoning districte 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,~~For purposes of this paragraph, "substantially improved" does not include 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~~in the underlying zoning district in which it is located 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.

6. If an existing nonconforming use is located in or associated with an existing structure, the use may be continued, and may be changed to another use if that use would be permitted in the underlying zoning district in which it is located, as long as the structure (including all associated impervious surfaces) complies with section 14.5.B below.

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 increases its impacts to 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 24~~12~~ months beyond the 24 consecutive months. The City Council ~~Director~~ shall consider special circumstances and economics 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.

8. A nonconforming use~~,~~ within a nonconforming structure, except a use that would be allowed in the underlying zoning district in which it is located, shall not be allowed to expand into any other portion of the nonconforming structure.

9. A nonconforming structure that is nonconforming by reason of restrictions on buffers and is allowed to be reconstructed to its original dimensions under paragraphs 2 or 7 in this subsection may be expanded by a factor of 10% so long as the new construction does not further intrude into or adversely impact the required buffer.

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.

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.

~~1.~~ 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 impacts to public access because of an increase in~~the~~ land use intensity, for example converting a warehouse to office or retail use, or a significant ~~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. When public access is required by development under Section 11.1, the property owner is required to provide public access amenities proportional to and reasonably necessary as a direct result of the impacts of the development on public access. When required t~~T~~o improve public access to the Green/Duwamish River, sites should~~hall~~ 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 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 to the extent such improvements are reasonably necessary as a direct result of the development's impact on public access.

~~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.~~

~~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-weather surface if feasible)~~	~~5~~
~~7. Dedicated parking stall for river users~~	~~2~~
~~8. Unpaved trail~~	~~1/100 linear feet, minimum 500 linear feet required~~
~~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
~~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~~
~~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.~~4~~5 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

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 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, <u>and the proposed development is not subject to the Parks Impact Fee,</u> 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 <u>Shoreline Public Access Fund</u>**~~

~~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.~~