

Matrix of Proposed 18.44 Edits

Section	Change	Comment Summary/Staff Discussion	Source	Recommendation
18.44.010	Purpose and Applicability Commenter: The purpose should include fiscal prudence and respect of private property rights. Has an analysis of economic impact been made with respect to the SMP and these proposed changes? The indifference to economic impact is not only extremely risky but contrary to portions of the economic development element of the Comp Plan.	The proposed changes do not expand the existing buffers or significantly change the permitted shoreline uses. They are unlikely to create new non-conformities. From the Department of Ecology: <i>It's reasonably clear that most common forms of regulations limiting property use does not require compensation, even where a property's value has been significantly diminished. This holds as long as the regulation is reasonably related to protecting legitimate public interests. The SMA addresses the takings issue by identifying the public purposes of the law and requiring appropriate flexibility in its implementation.</i>	Public - D4 p.1	Staff - No change
18.44.030	Shoreline Use Matrix: Fill for remediation, <u>flood hazard reduction</u> , or ecological restoration	Request to clarify that fill that occurs as part of a flood hazard reduction action is a permitted rather than conditional use.	Public - D1 item 1	Staff - Make Change
18.44.030	Shoreline Use Matrix: Recreational facilities, including boat launching (public) - Permitted subject to notes 3 and 23.	Commenter stated that these uses should be kept as conditional due to the impacts to a Shoreline of State Wide Significance. Staff responds that due the emphasis on public access and enjoyment in the SMA it is appropriate to allow these uses without the additional barrier of a CUP.	Public D8 p.2	Staff - No change
18.44.030	Shoreline Use Matrix: Piers, Docks and other overwater structures - <u>Permitted Conditional</u> in the buffer subject to notes 19, 20, 21	Commenter states given the known ecological impacts associated with overwater structures we strongly encourage the higher standard of conditional use. There is some protection built into the requirements in the notes but Staff supports the change.	Public D8 p.2	Staff - Make Change
18.44.030	Shoreline Use Matrix: Edit to note 11. The maximum height of the fence along the shoreline shall not exceed four feet <u>in residential areas or, except a maximum height of six feet in commercial areas may be allowed where there is a demonstrated need to ensure public safety and security of property, and so long as the fence is located directly adjacent to existing paved areas, and</u> The fence shall not extend waterward beyond the top of the bank. Chain-link fences must be vinyl coated.	Commenter states that fencing is important to the safety of the public and the security of goods and materials stored on property and proposes adding the language shown in red. Staff suggests the revisions to that language in blue.	Public - D5 p.3	Staff - Make the combined public and staff changes

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18.44.030	Shoreline Use Matrix: Note 29. Patios and decks are permitted within the shoreline buffer so long as they do not exceed 18 inches in height, are limited to a maximum of 200 square feet and 50% of the width of the river frontage. Decks or patios must be located landward of the top of the bank and be constructed to be pervious and of environmentally-friendly materials.	This current code language has been moved into a footnote of the use table. Commissioner Mann expressed concern that this was too limiting. The dimensions of the permitted deck would vary due to lot width. This limitation has not been a subject of public complaints.	PC	Staff - No change
18.44.030	Shoreline Use Matrix: Bridges (public) <u>Add a new note 35. Not permitted in the transition zone.</u>	Per note 31 vehicle bridges are already limited to locations where they connect public rights-of-way. Essential streets are defined as limited to locations "where no feasible alternative location exists based on an analysis of technology and system efficiency." 18.06.285	Public - D4 p. 3	Staff - Do not add language
18.44.040 A	4. The Director may reduce the standard buffer on a case-by-case basis by up to 50% upon construction of the following cross section: a. Reslope bank from OHWM (not toe) to be no steeper than 3:1, using bioengineering techniques b. Minimum 20' buffer landward from top of bank c. Bank and remaining buffer to be planted with native species with high habitat value	Commenter states that given Tukwila's urban landscape, the existing required buffers are already below BAS for fully functioning riparian buffers. Reducing the buffer by 50% is not founded in BAS. We encourage the City to apply the standard in the CAO. Staff responds that this is an example of the incentives praised by commenter. In most cases the width needed to provide the cross section would not allow for a full 50% reduction. This is a provision found in our current code and not a new proposal.	Public D8 p.2	Staff - No change
18.44.040 A	5. Upon reconstruction of a levee to the levee standards of this chapter, the Director may reduce the buffer to actual width required for the levee. If fill is placed along the back slope of a new levee, the buffer may be reduced to the point where the ground plane intersects the back slope of the levee. If the property owner provides a 15-foot levee maintenance easement landward from the landward toe of the levee or levee wall which: <u>1) meets the width required by the agency providing maintenance; 2) prohibits the construction of any structures and 3) allows the City to access the area to inspect the levee and make any necessary repairs; then</u> that area may be outside of the shoreline buffer and allow incidental uses such as parking.	The King County Flood Control District which currently provides maintenance and inspection of levees within Tukwila has increased its access road standard from 10 to 15 feet. This may be modified again in the future so instead of providing a specific number Staff's suggestion is to reference whatever standard is in place at the time of levee reconstruction.	Staff/Public - D1 Item 2	Staff - Make Change

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18.44.050 C 3.	b. 45 feet between the outside landward edge of the River Buffer and 200 feet of the OHWM	This current code language limits building height in the shoreline for those zones with allowed heights greater than 45 feet - TUC-CC, TUC-WP, HI, MIC-H, TVS. This can cause developers to place parking within shoreline jurisdiction rather than the proposed building. If the height limit was removed the incentive below would no longer apply. All projects over 35 feet would still be subject to the State standard of not blocking the views of a substantial number of residences.	PC	Staff - No change
18.44.050 C 3.	d. The Director may approve a 30% increase in height for structures within the shoreline jurisdiction if the project proponent provides additional restoration and/or enhancement of the entire shoreline buffer, beyond what may otherwise be required including, but not limited to, paved areas no longer in use on the property in accordance with the standards of TMC Section 18.44.080060, "Vegetation Protection and Landscaping." If the required buffer has already been restored, the project proponent may provide a 20% wider buffer, planted accordance with TMC Section 18.44.060, "Vegetation Protection and Landscaping" and/or enhanced in order to obtain the 15% increase in height in accordance with TMC Section 18.44.080060, "Vegetation Protection and Landscaping." e. Incentives may not be used to increase building height above that permitted in the underlying zoning district.	Increasing the height incentive from 15% (6.75 feet) to 30% (13.5 feet) may increase its use. Rogers commented that 35% (15.75 feet) would better align with the height needed for a commercial building story. Haffner commented that a non-building incentive should be available for sites devoted to parking. WRIA 9 commented that they are encouraged to see various incentives being used to increase the likelihood that shoreline restoration will occur.	Staff/Public - D1 item 3, D4 p. 4, D8 p.1	Staff - Make change to 16' and drop percentage language.
18.44.050 E 9.	New, redeveloped or replaced flood hazard reduction structures may deviate from the minimum levee profile only as follows must have an overall waterward slope no steeper than 2.5:1 unless it is not physically possible to achieve such a slope. A floodwall may be substituted for all or a portion of a levee back slope only where necessary to avoid encroachment or damage to a structure legally constructed prior to the date of adoption of this subsection, and which structure has not lost its nonconforming status or to allow area for waterward habitat restoration development. The floodwall shall be designed to be the minimum necessary to provide 15-10 feet of clearance between the levee and the building, or the minimum necessary to preserve access needed for building functionality while meeting all engineering safety standards. A floodwall may also be used where necessary to prevent the levee from encroaching upon a railroad easement recorded prior to the date of adoption of this subsection.	Commenter asks that floodwalls be allowed to preserve private property in any situation where there is no loss of ecological function in the shoreline. No specific language proposed.	Public - D4 p. 4	Staff - No further change

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18.44.050 H 1.	<u>Halting the continuing decline of Puget Sound Chinook salmon and Southern Resident Orca calls for an improvement to current shoreline conditions, which have been degraded by human activity over time.</u> All shoreline development and uses shall <u>at a minimum</u> occur in a manner that results in no net loss of shoreline ecological functions through the careful location and design of all allowed development and uses. In cases where impacts to shoreline ecological functions from allowed development and uses are unavoidable, those impacts shall be mitigated according to the provisions of this section; in that event, the "no net loss" standard is met.	Commenter states that staff's proposed new language calling for an improvement in shoreline conditions is contrary to the no net loss standard and should therefore not be added. Staff's intent with the language was informational and consistent with the Shoreline Restoration Plan discussed in Chapter 5 of the SMP. Comp Plan Goal 5.9 calls for "restored, enhanced and protected natural environment" and Goal 5.10 calls for "improved water quality and quantity control programs... that improve the river's water quality."	Public - D1 item 4	Staff - Delete the first sentence but keep "at a minimum."
18.44.050 F 6	<u>Shoreline armoring such as rip rap rock revetments and other hard shoreline stabilization techniques are detrimental to river processes and habitat creation.</u> Where allowed, shoreline armoring shall be designed, constructed and maintained in a manner that does not result in a net loss of shoreline ecological functions, including fish habitat, and shall conform to the requirements of the 2004 Washington State Department of Fish and Wildlife (or as amended) criteria and guidelines for integrated stream bank protection (Washington State Department of Fish and Wildlife, Washington Department of Ecology and U.S. Fish and Wildlife Service, Olympia, Washington), U. S. Army Corps of Engineers and other regulatory requirements. The hard shoreline stabilization must be designed and approved by an engineer licensed in the State of Washington and qualified to design shoreline stabilization structures.	Commenter: The proposed initial new comment about hard revetments is contrary to the rest of the paragraph, and other parts of the SMP, that allow them when appropriate. Staff: The added language explains why there are limitations on the use of shoreline armoring.	Public - D4 p.4	Staff - Keep language as proposed.
18.44.050 K 4.	4. Over-water Structures. Where allowed, over-water structures such as piers, wharves, <u>bridges</u> , and docks shall meet the following standards: h. 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. <u>This standard may be modified for bridges if necessary to accommodate the proposed use.</u> The use of skirting is not permitted.	Commenter: The standard for shading should <u>not</u> be modified for bridges. Strike new language. Staff: Bridges provide essential connectivity in our urban environment. Grating can create safety issues for bicycle traffic and therefore some flexibility should be allowed in order to maximize multi-modal use.	Public - D4 p. 4	Staff - Keep proposed language from staff draft shown in red
18.44.060 A	5. a. (2) (2) Noxious weed control within vegetative buffers, if work is selective only for noxious species; is done by hand removal/spraying of individual plants; spraying is conducted by a licensed applicator (<u>with the required aquatic endorsements from WADOE if work is in an aquatic site</u>); and no area-wide vegetation removal or grubbing is conducted. Control methods not meeting these criteria may still apply for a restoration exemption, or other authorization as applicable.	Commenter: This is nicely worded. You may want to add that the "licensed herbicide applicator" needs to have the required aquatic herbicide permits from WA Ecology if the application occurs in an aquatic site.	Public - D7 p.1	Staff - Add new language

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18.44.060 C	Tree Protection <u>10. No storage of equipment or refuse, parking of vehicles, dumping of materials or chemicals, or placement of permanent heavy structures or items shall occur within the CRZ.</u>	Commenter: Parking of vehicles within a CRZ (critical root zone) should be allowed if the parking preceded the planting. Staff: This section only applies when a site is developed or redeveloped, at which time the site should be brought up to current code.	Public - D4 p. 4	Staff - Keep proposed language from staff draft
18.44.060 D	3. a. <u>(6) The use follows Best Management Practices as described by the KCNWCP current practice documents.</u>	King County Noxious Weed Control Program also has jurisdiction in this area.	Public - D7 p.2	Staff - Add new language
18.44.060 D	4. Restoration Project Plantings: Restoration projects may overplant the site as a way to discourage the re-establishment of invasive species. Thinning of vegetation <u>to improve plant survival and health</u> without a separate shoreline vegetation removal permit may be permitted five to ten years after planting if this approach is approved as part of the restoration project's maintenance and monitoring plan and with approval by the City prior to thinning work.	Commenter recommends adding language about the purpose of thinning for these densely planted restoration sites. Staff proposes the additional language in red.	Public - D8 p.1	Staff - Add new language
18.44.080 C	1. Development on Properties Abutting Existing Green River Trail. An applicant seeking to develop property abutting the existing trail shall meet public access requirements by upgrading the trail along the property frontage to meet the standards of a 44 <u>12</u> -foot-wide trail with 2-foot shoulders on each side. <u>If a 12 foot wide trail exists on the property it shall mean public access requirements have been met if access to the trail exists within 1000 feet of the property.</u>	The proposed change clarifies when a trail fulfills the public access requirements for a property.	Staff	PC - Add the proposed language from staff draft
18.44.080 C	2. Development on Properties Where New Regional Trails are Planned. An applicant seeking to develop property abutting the river in areas identified for new shoreline trail segments shall meet public access requirements by dedicating an 48 <u>16</u> -foot-wide trail easement to the City for public access along the river. 3. On-Site Trail Standards. <u>Trails providing access within a property, park or restoration site shall be developed at a width appropriate to the expected usage and environmental sensitivity of the site.</u>	Commenter encourages the City to add smaller trail width standards to address different circumstances including a minimal width for natural areas to minimize impacts to critical areas and shoreline environments while still encouraging access. Staff proposes an additional standard for paths through natural areas not used for regional access.	Public - D8 p.2	Staff - Add new language
18.44.090	The Green/Duwamish River is an amenity that should be valued and celebrated when designing projects that will be located along its length. <u>The river and its tributaries support salmon runs and resident trout, including ESA-listed Chinook salmon, Bull Trout and Steelhead.</u> If any portion of a project falls within the shoreline jurisdiction, then the entire project will be reviewed under these guidelines as well as the relevant sections of the Design Review Chapter of the Zoning Code (TMC Chapter 18.60). The standards of TMC Chapter 18.60 shall guide the type of review, whether administrative or by the Board of Architectural Review.	Commenter states that the placement of this language infers that ESA requirements would apply to upland parts of projects adjacent to the shoreline and that this language would be better placed in the Ordinance Whereas clauses not regulations. Staff's intent was to further explain the intent behind the regulations.	Staff/Public - D1 item 5	Staff - Delete the proposed new language.

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18.44.090	4. Design of Flood walls			
	<u>To prevent long stretches of blank walls the exposed portion of new floodwalls should be designed to incorporate brick or stone facing, textured concrete block, design elements formed into the concrete or vegetation to cover the wall within 3 years.</u>	With greater flexibility in the use of floodwalls more may be constructed in the coming years. Requiring design standards will help to mitigate their appearance.	PC	Staff - Add new language
18.44.100	B. Changes in Shoreline Jurisdiction Due to Restoration.			
	1. Relief may be granted from Shoreline Master Program standards and use regulations in cases where shoreline restoration projects result in a change in the location of the OHWM and associated Shoreline Jurisdiction <u>and/or critical area buffers</u> on the subject property and/or adjacent properties, and where application of this chapter's regulations would preclude or interfere with the uses permitted by the underlying zoning, thus presenting a hardship to the project proponent.	This section allows relief for adjacent parcels when a restoration project causes the movement of the OHWM and extends shoreline jurisdiction onto areas that were not previously subject to shoreline regulations. Wetlands may also be created as part of restoration projects. If so these wetland buffer impacts are also eligible to be modified.	Staff	PC - Add the proposed language from staff draft
	3. Consistent with the provisions of subparagraphs B.1.a, 1.b and 1.c above, the Shoreline Residential Environment Buffer , High Intensity, or Urban Conservancy Environment, <u>or critical area</u> 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:	The legislative intent is to relieve adjacent properties of regulation due solely to the restoration work so to be effective we need to be able to grant relief from both shoreline and wetland buffers.	Staff	PC - Add the proposed language from staff draft
18.44.110	G 2 a. (2) <u>If the structure is located on a property that has no reasonable development potential outside the shoreline buffer, there shall be no limit on the cost of alterations. If the structure is located on a property that has reasonable development potential outside the shoreline buffer</u> the cost of the alterations may not exceed an aggregate cost of 50% of the value of the building or structure in any 3-year period based upon its most recent assessment, unless the amount over 50% is used to make the building or structure more conforming, or is used to restore to a safe condition any portion of a building or structure declared unsafe by a proper authority.	Commenter states that the limitation on improvements to non-conforming structures results in their being left vacant because they cannot be improved sufficiently to make them marketable. Either repair and maintenance should be allowed without limits or add the proposed language. Staff's response is that "reasonable development potential" is a subjective standard that would be difficult to apply consistently. The intent of non-conforming regulations is to limit reinvestment in properties and buildings that are not consistent with area goals. Shoreline variances may be used for cases of true hardship.	Public - D5 p.1	Staff - No change
18.44.110	<u>G 2 a. (3) Maintenance, repair or replacement of an existing private bridge is allowed, without a conditional use permit, when it the maintenance, repair or replacement does not involve the use of hazardous substances, sealants or other liquid oily substances, and provided the location of a replaced bridge may not encroach further into the shoreline buffer than the existing bridge.</u>	Commenter requests that repair, maintenance and replacement of private bridges be expressly allowed without cost limits or a conditional use permit and has proposed new language. Staff agrees for repair and maintenance but replacing a bridge should be subject to review. Staff recommends striking the language in blue from the suggested additions.	Public - D5 p.2	Staff - add the proposed language in red

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18.44.110	<u>G 6 e. The area beneath a non-conforming structure may be converted to parking lot area if the non-conforming structure is demolished.</u>	Commenter requests clarification that if a non-conforming structure is demolished the footprint can be incorporated into an existing parking lot. Staff agrees that this would be the least intrusive use of the new area.	Public - D5 p.3	Staff - add the proposed new language
18.44.110	H 1. Revisions to previously issued shoreline permits shall be reviewed under the SMP in effect at the time of submittal of the revision, and not the SMP under which the original shoreline permit was approved and processed in accordance with WAC 173-27-100.	Commenter states we strongly support the new language for time limits. Shoreline permits should not be treated as existing in perpetuity and reasonable time limits should be instituted.	Public - D8 p.2	Staff - No change from the staff draft
18.44.110	Commenter suggests that a vesting provision be added to the Shoreline regulations to assure that when a project is phased into first land development (grading, utilities) followed by building permits those later permits are vested to the version of the shoreline regulations in effect when the shorelline work was done.	Staff responds that unlike critical areas regulations the shoreline buffer width changes much less frequently (in Tukwila once in 45 years) and shoreline jurisdiction is fixed by state law.	Public - D2 p.1	Staff - No change