

MUKILTEO CITY COUNCIL AGENDA BILL 2019-83	
SUBJECT TITLE: Public Hearing - Shoreline Master Program Update	Meeting Date: September 3, 2019
Staff Lead: Linda Ritter, Senior Planner Also Presenting: Misty Blair, Senior Shoreline Planner- Department of Ecology	Exhibits: All Exhibits can be found on this link: https://mukilteowa.gov/departments/planning-development/planning-long-range/smp/ <ol style="list-style-type: none"> 1. Ordinance No. 1427 2. Shoreline Master Program Amendments 3. MMC Title 17B - Draft Shoreline Management Regulation Amendments 4. Dept. of Ecology - Periodic Review Checklist 5. Findings of Fact and Conclusions 6. Public Comments/Staff Response 7. Feb. 4, 2019 SEPA Determination (DNS) 8. Waterfront Mixed Use Height Analysis 9. March 20, 2014 Planning Commission Minutes 10A/10B. Dept. of Ecology's Comments 11. Staff Response to the Dept. of Ecology's Comments 12. Resolution No. 2019-04 13. Dept. of Ecology – September 3, 2019 City Council Public Hearing PowerPoint Presentation 14. September 3, 2019 City PowerPoint Presentation
Department Director: David Osaki, Community Development Director	
Estimated Time: 60 minutes	
Previous Review: Council Land Use Committee Work Session - 6/10/2019; Council - 2/28/2018	
Budget Reference: 2019 Final Budget, Community Development: Planning, Page 67: Other Professional Services: \$50,000	

Budget Information:		Account Name Account	
Amount Budgeted: (2018-2019, DOE Grant)	\$20,000	Other Professional Services – Shoreline Master Program	011.58.558.600.41 06
Amount Spent to Date: (2018-2019)	\$19,802		
Expenditure Required:	\$0		
Additional Appropriation Required:	\$0		

RECOMMENDATION

Council **MOTION** to approve Ordinance No. 1427 (**see Exhibits 1-3**) related to updating the Shoreline Master Program and amending Mukilteo Municipal Code (MMC) Title 17B - Shoreline Management Regulations.

[NOTE: Proposed Ordinance No. 1427 reflects the April 18, 2019 Planning Commission recommendation, with additional amendments to incorporate the August 2, 2019 Department of Ecology recommended and required amendments].

AND

Council **MOTION** to approve Resolution No. 2019-004 (see **Exhibit 12**) authorizing staff to forward the Shoreline Master Program and all supporting documents to the Washington State Department of Ecology for final approval.

SUMMARY

A periodic review of the Shoreline Master Program (SMP) is required of local jurisdictions by the Washington State Shoreline Management Act (SMA). The deadline for completion of the required update was June 30, 2019 per RCW 90.58.080(4). Washington State Department of Ecology (DOE) staff has stated that adoption past June 30, 2019 is acceptable, except that grant funds provided to the City for this SMA update effort cannot be expended after June 30, 2019.

Shoreline Master Program amendments ultimately require Washington State DOE approval. This occurs after the City Council action. The City has worked closely with the DOE during the shoreline master program update process.

The City submitted the Planning Commission recommended amendments to the Department of Ecology for review on June 7, 2019. The City received comments for recommended and required changes and initial concurrence from DOE on August 2, 2019 (see **Exhibit 10**).

CHANGES PROPOSED

There are several broad categories of changes, in addition to changes to height and parking.

Updated information regarding city plans adopted since the last update, including:

- 2015-2035 City Comprehensive Plan
- Waterfront Master Plan
- WSF Ferry Terminal project final design
- Japanese Gulch Master Plan as it relates to the shoreline management zone
- Parks, Recreation, Open Space and Arts (PROSA) Plan
- Bike Transit Walk Plan
- Maps and demographic data

Responding to Ecology rule changes and State law changes

- New definition of development which does not include dismantling or removing structures
- New exceptions to local review
- Added dates for filing requirements to comply with a 2011 law
- Added forestry as an exclusion from a shoreline permit
- Added federal jurisdiction as an exemption- this affects NOAA and Coast Guard property
- Updated nonconforming uses and regulations to be consistent with state law
- Updated our process for SMP updates and submittal for compliance with state law
- Incorporated DOE guidance on wetland critical areas, including how to rate (measure) them
- Included new state law regarding processing timelines (90 day target) for WSDOT projects

- Updated for new rules that allows Tulalip Tribal Aquaculture Requests under treaty rights
- Added new ways to request deviations or relief from regulations
- Updated to reflect new FEMA definitions of floodway and flood hazard areas

HEIGHT LIMIT CHANGES PROPOSED

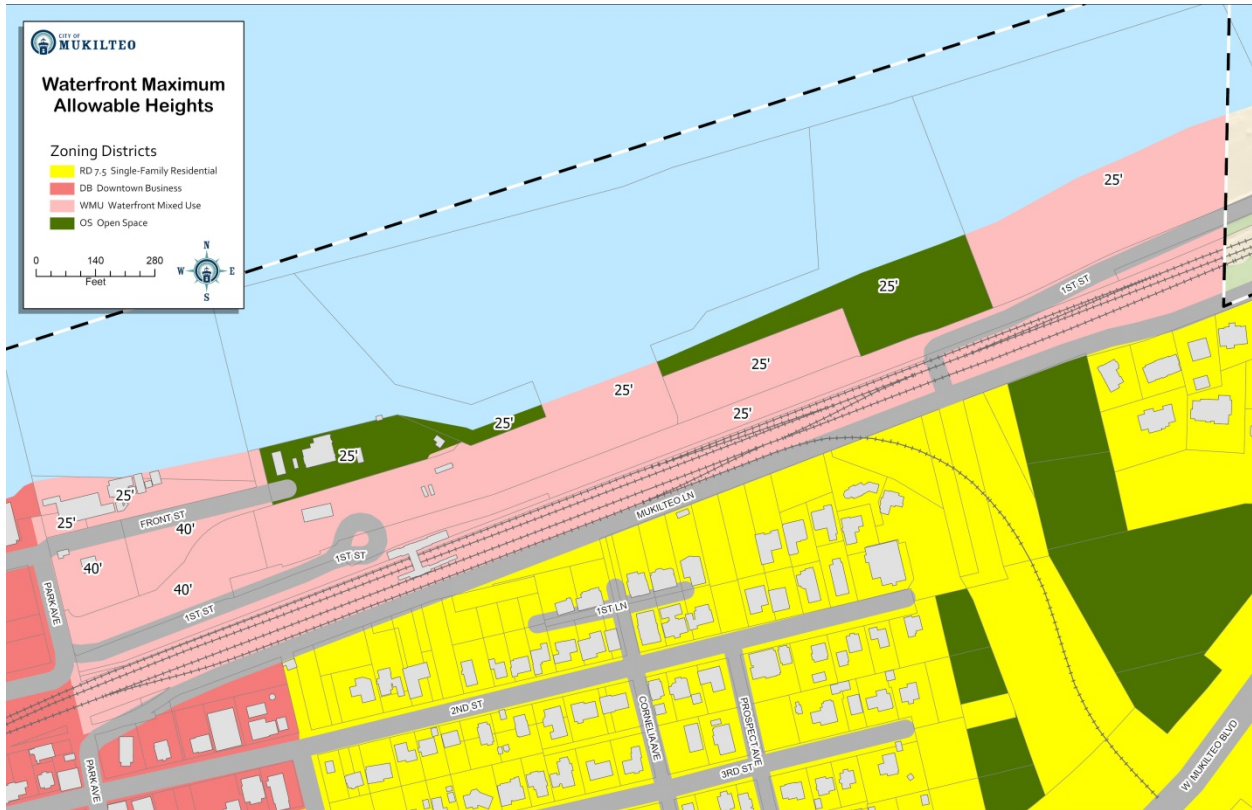
View studies were completed a few years ago as part of the Waterfront Master Plan adoption. Several images are included in the powerpoint presentation to illustrate the impacts of the proposed changes. In addition, for reference, listed below are the heights of several existing waterfront buildings:

- Losvar - 37' (received a variance at time of construction)
- Silver Cloud - 41' at the highest point; 31' for the rest of the property
- Ivar's – no height worksheet is available for reference, but other documents state the building is not higher than 30'

COMPARISON OF PROPOSED SHORELINE MASTER PROGRAM BUILDING HEIGHT AMENDMENT AGAINST EXISTING ZONING REQUIREMENTS

EXISTING Shoreline Designation and Zone	EXISTING CODE Maximum Building Height	PROPOSED FOR ADOPTION IN THIS ORDINANCE Maximum Building Height
SHORELINE MASTER PROGRAM		
“Urban Waterfront” Shoreline Environment (Designation extends from Lighthouse Park to Tulalip Tribes property/city limits)	25 feet, no more than two stories, pitched roof. (exceptions for Essential Public Facilities)	35 feet
ZONING CODE		
“Waterfront Mixed Use” Zone (Generally located east of Park Avenue where tank farm begins)	25 feet, north of Front Street 40 feet, south of Front Street and north of BNSF Railroad	If shoreline master program amendment is passed to allow a height of 35 feet, the zoning code will be amended in the future to increase height to 35 feet to be consistent with shoreline regulations.
“Downtown Business District” Zone (Generally located west of Park Avenue (e.g. Silver Cloud Inn, Ivars, Losvar))	35 feet (currently inconsistent with the Shoreline Master Program height requirement)	No changes proposed and will remain at 35 feet

CURRENT WATERFRONT ZONING REQUIREMENTS



PROPOSED HEIGHT LIMITS IN SHORELINE MASTER PROGRAM



PARKING CHANGES PROPOSED

The Department of Ecology's required changes were specific to parking within the shoreline environment and also to wetland impact allowances. In response to the DOE required change request, this ordinance will restore a 75 foot shoreline setback from the ordinary high water mark for any parking facilities.

For further background on this issue, the Planning Commission recommended that parking be allowed to setback as close as five feet from the promenade. This would allow parking as close as 38 feet from the Ordinary High Water Mark.

The Department of Ecology's comment was that parking is not a preferred use of the shoreline and is not to be allowed closer than 75 feet for the Ordinary High Water Mark, unless approved through a shoreline variance or essential public facilities process (i.e. for example the WSF ferry terminal permitting process).

The City's response to the Department of Ecology's comment was that "the proposed change, as recommended by the Planning Commission, was intended to implement the City's adopted GMA Downtown Waterfront Master {Subarea} Plan (2016) and the Tank Farm Property Binding Site Plan (which transferred Department of Defense properties to various local, State and Federal and Tribal agencies). These documents (Downtown Waterfront Plan and Binding Site Plan) envision enhanced public access to the waterfront while allowing the property owners and opportunity to develop their property in the future for interim and/or long term uses."

However, as a "required" Department of Ecology change, proposed Ordinance No. 1427 deletes the Planning Commission's recommended allowance for parking to be within five feet of the promenade and restores the 75 foot shoreline parking setback requirement (from the Ordinary High Water Mark).

BACKGROUND

The SMA requires all SMP's to be reviewed and, if needed, revised on an eight (8) year schedule. This review ensures that local SMP's stay current with changes in state laws and rules, remains consistent with other city plans and regulations, and is responsive to changing circumstances, new information and improved data.

Areas subject to shoreline management jurisdiction in Mukilteo are shown on the adopted Shoreline Environment Designation Map. There are no changes to the Shoreline Environment Designation Map proposed for this update.

Proposed Ordinance No. 1427 (**see Exhibit 1**) would, if approved, adopt amendments to:

1. Shoreline Master Plan, which includes background information and goals and policies (**see Exhibit 2**); and,
2. Shoreline Development Regulations (Title 17B MMC), which includes development standards and identifies allowable uses in the shoreline environment (**see Exhibit 3**).

The State is not requiring major updates to Mukilteo's inventory, restoration efforts, or cumulative impacts analysis.

PROCESS OF SMP UPDATE

SHORELINE MANAGEMENT REGULATIONS

Staff prepared amendments to the shoreline development regulations based on updates required by the SMA between 2007 and 2017. A DOE periodic review checklist (**see Exhibit 4**) has been prepared to demonstrate that regulations required by DOE have been incorporated into the current set of amendments.

Certain project information from both the Downtown Waterfront Master Plan and also the Parks, Recreation, Open Space and Arts (PROSA) Plan have been incorporated into the amendments to ensure consistency between all of these planning documents.

PLANNING COMMISSION'S REVIEW OF THE SHORELINE MASTER PROGRAM

The Planning Commission held a public hearing on the proposed SMA amendments on April 18, 2019. As provided for in State law, this was a joint public hearing with DOE.

The following outlines the Planning Commission review process leading up to the April 18, 2019 public hearing.

October 2018 - November 2018	Planning Commission review of proposed development regulation amendments
January 2019 - February 2019	Planning Commission review of draft Shoreline Master Program
February 22, 2019 - April 18, 2019	City Public Comment period on draft SMP
March 19, 2019 - April 18, 2019	DOE Public Comment period on draft SMP
April 18, 2019	Joint DOE/ Planning Commission Open House and Public Hearing

PLANNING COMMISSION PUBLIC HEARING

At the Planning Commission's April 18, 2019 public hearing, DOE presented an overview of the State mandate process for the periodic review and update.

Two individuals testified orally at the Planning Commission's April 18, 2019 public hearing, and two individuals provided both oral and written comments. Following the public hearing, the Planning Commission recommended approval of Ordinance No. 1427 to the City Council along with the Findings of Facts and Conclusions (**see Exhibit 5**).

PUBLIC COMMENTS/SEPA

The City has provided public notice of the SMP update process including, but not limited to, mailing notices to property owners within the shoreline jurisdiction. The City has received six (6) comments on the SMP, including those who testified at the April 18, 2019 Planning Commission public hearing. **Exhibit 6** identifies the comments received and the City's response to those comments.

Pursuant to the State Environmental Policy Act, the City of Mukilteo issued a Determination of Non-Significance (DNS) on the proposed amendments on February 4, 2019 (**see Exhibit 7**). SEPA provided an additional opportunity for public comment.

JUNE 10, 2019 CITY COUNCIL WORK SESSION

The City Council held a work session on the Planning Commission's proposed SMP amendments on June 10, 2019. At the work session, the Council expressed concerns regarding the SMP's proposed height changes in the "Urban Waterfront" shoreline environment from 25 feet to 35 feet.

This shoreline building height amendment had its origins in 2014. At that time, the Planning Commission held a work session to review the waterfront redevelopment view analysis prepared by Barker Landscape Architects. The view analysis model evaluated building height along the Tank Farm at twenty-five (25) feet and at thirty-five (35) feet. The analysis considered different locations and angles (**Exhibit 8**). Representatives from NOAA and the Tulalip Tribes attended the meeting to discuss a potential increase in building height (**see Exhibit 9**).

The NOAA representative stated that increased building height would enable them to have higher ceilings for safety reasons because they work with chemicals (NOTE: NOAA has Federal pre-emption authority over city land use requirements). The Tulalip Tribes representative expressed the Tribes desire to work with the City towards a viable development plan.

The proposed SMP building height change from 25 feet to 35 feet for the Urban Waterfront Shoreline Designation would make the shoreline code requirements consistent with the City's Downtown Business District zoning requirements.

Further, if shoreline master program amendment is passed to allow a height of 35 feet, the Waterfront Mixed Use (WMU) Zoning District zoning code will be amended in the future to increase height north of Front Street from 25 feet to 35 feet so that the two regulations (shoreline master program and zoning code) have consistent height regulations east of Park Avenue.

The following table compares the existing (25 feet) and the proposed (35 feet) shoreline master program maximum height requirements to the zoning districts (Waterfront Mixed Use and Downtown Business District) in the area subject to shoreline jurisdiction.

AUGUST 2, 2019 DEPARTMENT OF ECOLOGY'S COMMENTS

On June 7, 2019, staff sent the Planning Commission recommended draft SMP, the periodic review checklist (**Exhibit 4**), and public comments with staff responses to public comments (**Exhibit 6**) to the DOE for review. The DOE had 30 days to review the documents and provide feedback to the City.

On August 2, 2019 the City received SMP comments from the Department of Ecology (**Exhibit 10**). The intent of the Department of Ecology's initial review is to provide local elected officials an opportunity to consider Ecology's analysis before local government adoption.

The Department of Ecology made an initial determination that the City's SMP update and shoreline management regulations are consistent with applicable laws, if certain changes are made. The Department of Ecology's categorized these changes into: "Recommended changes" and "Required changes".

The Department of Ecology's recommended changes clarified sections within the Shoreline Management regulations. Staff has included these recommended clarifications into proposed Ordinance No. 1427. Ecology also recommended required changes related to parking (as discussed above) and wetland impact allowances, which are addressed in the plan update.

Attached are staff's responses to the DOE's comments (**see Exhibit 11**).

COUNCIL ACTION

At the September 3, 2019 Public Hearing, Council will determine whether or not to accept the Planning Commission and /or DOE's recommendations and adopt Ordinance No. 1427 approving the SMP Update and amending the City's Shoreline Management Regulations.

After approval of the Ordinance, Council will consider Resolution No. 2019-04 (**Exhibit 12**) authorizing staff to forward the Shoreline Master Program and all supporting documents to the Washington State DOE for final approval.

ALTERNATIVES

Council may:

- Adopt Ordinance No. 1427, as presented, which incorporates the Planning Commission recommendation, as revised by the DOE comments.
- Amend and then adopt Ordinance No. 1427, as amended.
- Continue the public hearing to accept additional public comment and/or discuss other alternatives.