

TO: Linda Ritter, Senior Planner – City of Mukilteo

CC: David Osaki, Planning and Community Development Director – City of Mukilteo;
Jackie Chandler, Shoreline Administrator, WA Department of Ecology

FROM: Misty Blair, Senior Shoreline Planner, WA Department of Ecology

Date: August 2, 2019

Subject: **SMP Periodic Review - Determination of initial concurrence**

Sent via email to: lritter@mukilteowa.gov; dosaki@mukilteowa.gov; jcha461@ecy.wa.gov

Brief Description of Proposed Amendment

The City of Mukilteo (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence to comply with periodic review requirements of RCW 90.58.080(4). The City has elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules. The City proposes amendments to bring the SMP into compliance with requirements of the Act or State Rules that have been added or changed since the City's comprehensive SMP update, including updates to the City's SMP critical areas provisions to incorporate the most current, accurate, and complete scientific and technical information. The City is proposing updates to Shoreline Master Program Policy document for internal consistency, and miscellaneous amendments intended to improve the clarity, consistency, and administration of the SMP.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP was locally adopted on December 12, 2011 and became effective on January 5, 2012 after Ecology final approval. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City's Shoreline Master Program pursuant to RCW 90.58.080(4). The City has identified that this periodic review will result in amendments to the SMP to address updates to the Act or implementing State Rules, changed local circumstances, new information and improved data.

SMP provisions to be changed by the amendment as proposed

The City filled out the Ecology SMP Periodic Review checklist to address requirements of the Act or state rules that have been added or changed since the last SMP amendment. The City identifies their *By the Way Plan*, adopted in 2017, and the *Downtown Waterfront Plan*, adopted in 2016 as containing new information or policy direction warranting amendments to the SMP for internal consistency. SMP Periodic Review checklist items along with the City's locally initiated proposed changes modify the following SMP sections:

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City of Mukilteo Shoreline Master Program

Edits made throughout this document to update references, spelling out acronym within text, improve grammar, make reference to the 2019 Periodic Review effort, and to improve readability.

SMP Chapter 17B.08 Definitions

Section 17B.08.020 Definitions – Minor edits made to:

- Update references;
- Add definition for “aquaculture”;
- Clarify that the definition of “development” does not include dismantling or removing structures;
- Replaced the definition of “floodway” as recommended in Periodic Review Checklist; and
- Add definition for “shoreline restoration project”.

SMP Chapter 17B.12 Shoreline Designations

Only minor edit made including spelling out acronym within text.

Replaced December 2010 version of Figure 1 – Shoreline Environment Designations map with a new FINAL – JUNE 2019 version. No SEDs were changed, map coloring and map key were updated for clarity and ease of implementation. Also updated Figure 2 Zoning map from Draft – February 2010 to FINAL December 12, 2011.

SMP Chapter 17B.13 Procedures

Minor edits made throughout updating references or fixing grammar.

Added Sections 17B.13.015 Exceptions, 17B.13.045 Request for relief from shoreline regulations if needed, and 17B.13.125 Special procedures for Washington State Department of Transportation (WSDOT) projects, as recommended from SMP Periodic Review Checklist.

SMP Chapter 17B.16 Permitted Uses

Section 17B.16.040 Shoreline Permitted Use Matrix, subsection A. Table 1 Permitted Use Matrix - Update aquaculture prohibition to allow aquaculture consistent with tribal treaty rights with a CUP in the Urban Waterfront, Urban Waterfront Park, Aquatic Urban and Aquatic Urban Conservancy SEDs.

Section 17B.16.070 Development regulations for parking – Modified existing 75 foot parking setback standard to allow single purpose or joint use parking lots and garages east of Park Avenue to be setback only 5 feet from the promenade. In total, the proposed amendment excludes the area east of Park Avenue from parking standards of 17B.16.070 subsection A, B, and C.

New Section 17B.16.270 Development regulations for aquaculture – Added requirement for CUP for new aquaculture and includes WAC geoduck standards as applicable to all new aquaculture.

Other miscellaneous edits - Added clarification regarding the setback from required pedestrian amenities per the City’s waterfront promenade standards, updates to references, grammar related re-wording.

SMP Chapter 17B.20 bulk Regulations

Table 1 Bulk Matrix - is modified to change the shoreline setback from the OHWM to the top of Riprap. The WMU setback is further modified per footnote #12 to read 20 feet from top of Riprap rather than 35-50 feet from OHWM.

Current footnote #12 reads: *Buildings shall be setback thirty to fifty feet along the waterfront to allow for a twenty-five foot pedestrian promenade, landscaping, and additional space to be used for outside uses associated with public, commercial and retail uses.*

Proposed footnote #12 reads: *Buildings shall be set-back twenty (20) feet from the waterfront riprap to allow for a fifteen (15) foot pedestrian promenade with a five (5) foot building setback from the pedestrian promenade.*

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SMP Chapter 17B.25 Design Standards

Section 17B.25.040 Transit-supportive design – is modified to reference the City’s 2016 Downtown Waterfront Master Plan, acknowledge the new Ferry Terminal location, and emphasize multi-modal or intermodal stations to minimize walking distances between transportation modes and commercial waterfront development. This is proposed to address changing local circumstances and for consistency with the City’s Comprehensive Plan.

Section 17B.25.060 Overall building form – adds clarification regarding buildings orientation to the property line adjacent to the street. The City also proposes to remove the current prohibition on parking within the setback with the following change: The setback ~~cannot~~ should be used for parking.

Section 17B.25.065 Building Designs for the waterfront, port, mixed-use, and transportation related buildings – the City proposes to delete existing subsection A and C related to building materials, historic design, and Front Street facades. Remaining provisions in this section are combined and re-organized with existing provisions from Section 17B.25.070.

Section 17B.25.090 Off-street parking-Parking facilities-Lots-Structures – modifications made to clarify where off-street parking is allowed. Standards for transit parking in subsection L. are deleted and replaced with a reference to the standards outlined in 17B.56.040.

Section 17B.25.110 Pedestrian walkway – clarification added to subsection A. providing that the required promenade also has a five (5) foot building setback requirement. The City also proposes to modify the required setback reducing the setback from thirty (30) feet to twenty (20) feet, as follows:
A. All new development will have a minimum setback of ~~thirty~~ twenty (20) feet from rip rap, ~~or from a newly established beach, and shall incorporate twenty-five feet of pedestrian amenities~~ A fifteen (15) foot promenade with a five (5) foot building setback shall be built within the twenty (20) foot setback that conforms to the waterfront promenade standards or to provide access to the beach.

SMP Chapter 17B.52 Critical Areas Regulations (within the two-hundred-foot shoreline jurisdiction)

Section 17B.52B.010 Purpose of critical areas regulations – minor edit to consistently use the term “no net loss of shoreline ecological function.”

SMP Chapter 17B.52B Wetland Regulations

Section 17B.52B.050 Wetland permit process and application requirements – New subsection E. establishes that City verified wetland delineations shall be valid for five years with required buffers established at time of complete permit application.

Section 17B.52B.060 Wetland rating and classification – replaces reference to Ecology’s Wetland Rating System for Western Washington, Publication No. 04-06-025 with a reference to the updated 2014 system.

Section 17B.52B.070 Buffer areas – updates throughout this section to align the City’s wetland standards with the most current, accurate, and complete scientific and technical information available” [WAC 173-26-201 (2)(a)]. Specifically the buffer measurement, buffer width standards and tables, increased buffer allowance, buffer averaging, low impact uses, and stormwater facilities. Buffer reduction allowances are removed from the SMP and minor additional re-organization is proposed.

Section 17B.52B.100 Wetland standards and criteria – modifications made to subsection B.2.e to better align with current Ecology guidance on the use of Preservation as a wetland impact compensatory mitigation method.

SMP Chapter 17B.52D Flood Hazard Areas

Section 17B.52D.040 Designation of frequently flooded areas – updates to this section include clarification that the most recently adopted FEMA maps or panels are adopted by reference into the SMP for the purpose of identifying frequently flooded areas. Additional information is added to describe

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the FEMA FIRM map update process that began in 2010 and include which SED's in the City are identified as high risk flood hazard areas.

SMP Chapter 17B.56 Off-Street Parking

Minor edits made throughout fixing references, updating terms, or adjusting grammar.

Section 17B.56.010 Requirements – removed specific reference to “new or used car sales area.”

Section 17B.56.040 Parking facilities-lots-structures for transit – removed provision that limits park and ride installation until three to five years after the full transit facility is developed and operational. Removes the park and ride 120 parking space limit and adds reference to 17B.56.030 for design standards.

Section 17B.56.050 Parking spaces next to the shoreline – modifies the current 75 foot setback from the OHWM for parking to add an allowance for parking east of Park Avenue to be located 5 feet from the promenade. This new parking allowance applies to the area identified below with the red circle.



Section 17B.56.110 Master parking study required for tank farm site – This subsection is retitled, *joint parking and common parking areas*. The tank farm reference is removed and the provision is reduced to a single sentence which encourages joint use parking to promote the reduction of impervious surface.

SMP Chapter 17B.68 Nonconforming Uses, Buildings and Lots

Section 17B.68.015 Applicability – New section sets the applicability of this section and provides that if critical areas are involved the more restrictive standard between 17B.68 and 17B.52 shall apply.

Section 17B.68.060 Nonconforming buildings – the term “building” is replaced with “structure” throughout. Additional modifications made to increase consistency with the State default nonconforming language from WAC 173-27-080. Reclassifies nonconforming structures as conforming. Additional language from WAC 173-27-080 is added to address the enlargement and expansion, relocation, replacement, maintenance, and repair of nonconforming structures.

SMP Chapter 17B.72 Administration

Minor edits made throughout removing pronouns *him and his or her*.

Section 17B.72.050 Zoning and shoreline regulations review – City proposes to add a more specific WAC reference as it relates to the reference to periodic reviews and adjustments.

Section 17B.72.060 Amendments to Mukilteo shoreline regulations – WAC references are updated, and specific reference to Ecology’s written notice of final action and effective date of revisions to the SMP are added.

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Section 17B.72.070 Moratoria authority – added new moratoria section consistent with RCW 90.58.

SMP Chapter 17B.84 State Environmental Policy Act (SEPA)

Section 17B.84.050 Flexible thresholds for categorical exemptions and **Section 17B.84.051 Categorical exemptions without flexible thresholds** – updates proposed for internal consistency with SEPA regulations outside the shoreline jurisdiction as allowed per WAC 197-11-800.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. The City executed this plan by hosting an open house, creating a web page, and initiating outreach to residence, neighboring jurisdictions and tribes.

The City used Ecology’s checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on March 18 and continued through April 18, 2019. A joint local/state public hearing was held at the Mukilteo City Hall Council Chambers at 7:00 pm on April 18, 2019.

The City provided notice to local interested parties, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period and public hearing to state interested parties on or before March 18, 2019.

Six individuals provided verbal testimony and written comments. One Commenter expressed concern about the noise and light impacts from ferry terminal and surrounding downtown waterfront development. Multiple comments expressed opposition to the allowance for commuter parking within the shoreline and questioned how this amendment would implement the purpose and intent of the City’s SMP, Downtown Waterfront Master Plan, Japanese Gulch Master Plan, or By the Way Plan. The Tulalip Tribe provided oral testimony expressing an interest in the other public testimony related to potential parking areas and affirming their intention to continue to discuss options for flexibility for future uses on the former Tank Farm site. The City summarized and provided responses to these comments within the City’s *2019 Shoreline Master Program Update Public Comments Received and City Responses to Comments* submittal document. City staff updated the Public Tidelands map, as a result of comments received, to accurately reflect private tideland ownership in form of Losvar Condominiums.

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The City also issued a SEPA Determination of Non-Significance (DNS) for the City of Mukilteo Shoreline Master Program Periodic Review Amendment on February 4, 2019. A copy of this DNS and the associated SEPA Checklist was provided to Ecology for this SMP Amendment adoption record.

The City provided their initial submittal of the proposed SMP amendments to Ecology pursuant to WAC 173-26-104 via certified mail on June 7, 2019 and the submittal was determined to be complete. This began Ecology's review and initial determination.

Consistency with Chapter 90.58 RCW

The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Periodic Review Checklist, which was completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology's final decision on the proposed amendments to the City's SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Parking Standards of the SMP

The City proposes to modify parking standards (MMC 17B.16, 17B.25, and 17B.56) within the SMP to exempt or exclude the area east of Park Ave from some of the location, use, and setback standards. Ecology has identified changes to the City's proposed amendment to the SMP's parking provisions that are necessary for consistency with RCW 90.58.020, WAC 173-24-241(3)(k), and for internal consistency (Attachment 1, Items Req-1 through Req-3, and Req-6).

Finding. *The City proposes to allow parking within the shoreline setback within the Urban Waterfront SED located east of Park Ave. This would be allowed a minimum of 5 feet from the landward edge of the*

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promenade rather than the standard 75 feet from the ordinary high water mark standard that currently applies to all shorelines within the City. Ecology finds that this proposed exception would reduce the setback from 75 feet to approximately 25 feet (the promenade is provided a 20 foot area from the OHWM plus the additional 5 foot setback). RCW 90.58.020 provides that preference shall be given to water-oriented uses, public access, and ecological restoration. According to WAC 173-26-241(3)(k), parking is not a preferred use of the shoreline. Ecology finds that the proposed standard for east of Park Ave does not consider the proposed shoreline use, will not foster additional public access, and will not result in ecological benefit.

Ecology finds that proposed amendments to allow parking within 75 feet of the OHWM east of Park Ave are not consistent with the policy of the SMA or implementing Guidelines of WAC 173-26 (Identified in Attachment 1, Item Req-1 through Req-3, and Req-6).

Critical Areas Protection Standards of the SMP

The City's SMP critical area protection standards are contained within MMC 17B.52. The City proposes changes to the wetland protections standards as identified within the SMP Periodic Review checklist or as necessary to remain up-to-date with the most current, accurate, and complete scientific and technical information. Ecology has identified changes to the City's SMP critical areas provisions that are necessary for consistency with WAC 173-26-201(2)(a) & (c), and WAC 173-26-221 (Attachment 1, Items Req-4 & Req-5).

Finding. *Ecology finds that the SMP provisions of MMC 17B.52B.070 and 17B.52B.090 are not consistent with the wetland protection requirements of WAC 173-26-221(2) or the use of scientific information standard of WAC 173-26-201(2). Ecology also finds that if implemented, these provisions could result in a net loss of shoreline ecological function. The City's SMP contains standards for when a wetland can be filled or otherwise impacted. Ecology finds that allowing wetland and buffer impacts based on an unavoidable impacts analysis and to achieve reasonable use should only be authorized through a shoreline variance. Ecology finds that wetland buffer reduction standards must be based upon the most current and accurate scientific and technical information; therefore modifications to the proposed amendments are necessary to reflect the use of Ecology wetland guidance.*

Finding. *WAC 173-26-221 provides that all development and uses within the shoreline shall be designed consistent with mitigation sequencing.*

Ecology also finds that these provisions are inconsistent with WAC 173-26-201(2)(c) which provides that,

even in situations where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master programs provisions shall, to the greatest extent feasible , protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Ecology finds that these provision (identified in Attachment 1, item Req-5) should be removed from the SMP Critical Areas Regulations for consistency with the statute and guideline. Ecology finds that MMC 17B.52B.070 and 17B.52B.090 must be modified (Attachment 1, items Req-4 and Req-5) for consistency with WAC 173-26-221(2) and WAC 173-26-201(2).

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Finding. Ecology finds that MMC 17B.52B.070.K establishes buffers for new development based upon previously established delineations. Ecology finds that shoreline permits and wetland delineations are only valid for a period of 5 years. Ecology further finds that the SMP no net loss of ecological function standard must be based on existing conditions when new development or use is proposed. Therefore, Ecology finds that modifications to MMC 17B.52B.070.K are necessary for consistency with WAC 173-26-201(2)(a) or WAC 173-26-201(2)(c) (Attachment 1, Item Req-4).

Additional items identified as recommended changes

In addition to the issues identified above as requiring changes to ensure consistency with the SMA and its implementing guidelines, Ecology has also identified changes recommended to fix minor errors, provide clarity or improve implementation. These items can be found within Attachment 1, items Rec-1 through Rec-5.

Findings. Ecology finds that Attachment 1, items Rec-1 through Rec-5 recommended changes, if implemented would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines, however, the inclusion of these changes are at the discretion of the City and are not necessary in order to approve this Periodic Review amendment.

INITIAL DETERMINATION

After review by Ecology of the complete record submitted, Ecology has determined that the City proposed amendments, subject to and including Ecology's required and recommended changes (itemized in Attachment 1), are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

Next Steps

- Consider the changes provided by Ecology, as required and recommended, to resolve the issues identified above and within Attachment 1. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.
- If these issues are resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment promptly after formal submittal is provided consistent with WAC 173-26-110.