

City of Mukilteo's Response to the Department of Ecology's SMP Periodic Review Initial Determination of Consistency

The changes in **red are required** to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III).
 Changes in **blue are recommended** and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III).

Item	Department of Ecology Required or Recommended Changes	Department of Ecology Rationale	City of Mukilteo Response
Req-1	<p>MMC 17B.16.070 Development regulations for parking.</p> <p>A. On-site parking for single-purpose or joint use/shared parking lots and garages in commercial, mixed-use, and multi-modal development within the two-hundred-foot shoreline jurisdiction in the urban waterfront environment designation and WMU zones shall not be located within seventy-five feet of the OHWM. East of Park Avenue, on-site parking for single-purpose or joint use/shared parking lots and garages shall be located a minimum of five feet from the landward edge of the promenade. Off-street parking is limited to the parking necessary to support a permitted use unless created as shared or joint parking.</p> <p>B. Off-site parking for permitted uses within the shoreline jurisdiction shall be located outside the shoreline jurisdiction in joint-use or shared parking garages or lots where garages are not feasible. If it's necessary for the project success to have accessory parking within seventy-five feet of the shoreline, all accessory parking will be located on a public street or as part of a shared parking garage. This provision does not apply east of Park Avenue.</p> <p>C. Parking garages or parking lots shall be located landward of the permitted shoreline use, such that a building or park use separates the shoreline from the parking lot or stalls. Parking under or landward of buildings is preferred over stand-alone parking lots. Parking to the side must be camouflaged by solid walls with landscaping. This provision does not apply east of Park Avenue.</p>	<p>Required change: For consistency with the Policy of the SMA, WAC 173-26-241 and internal consistency with MMC 17B.25.090, and 17B.56.</p> <p>The WMU zone is exclusively located east of Park Ave, so this subsection is internally inconsistent with itself. Parking is not a preferred use of the shoreline and should be encouraged to locate outside the shoreline or at least landward of the use it is supporting. This allowance does not appear consistent with the Policy of RCW 90.58.020 or WAC 173-26-241.</p> <p>This issue was discussed during the City's SMP Comprehensive update and it was determined that it wasn't appropriate to write code for a specific project, when the City already has two potential relief mechanisms (1) essential public facilities (EPF) projects can apply for a SUP or non EPF projects could apply for a shoreline variance. The exception provided here is not for a particular type of parking (such as, associated with a preferred water-dependent use), it is just based upon location. As proposed this provision would be encouraging a non-preferred, non-water oriented use in close proximity to the OHWM, this is inconsistent with RCW 90.58.020 and WAC 173-26-241(3)(k). Joint-use or shared multimodal transit station parking garages or lots could still be permitted as close as five feet from the landward edge of the promenade as an essential public facility or with the approval of a shoreline variance. This is consistent with the strategy agreed upon during the City's Comprehensive SMP update process.</p> <p>*See also, public comment on this topic.</p>	<p>Based on the conversations with Ecology regarding parking within the shoreline area within seventy-five (75) feet of the OHWM, Ecology states the City has a mechanism for relief of this standard, in those limited instances where it might be appropriate, via shoreline variance or essential public facility exception.</p> <p>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."</p> <p>The City has no objection to this change.</p>

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Req-2	<p>MMC 17B.25.060 Overall building form. Buildings should provide and enhance the pedestrian scale and orientation of the district. The following concepts help to achieve that goal:</p> <p>A. A. When part of a project, buildings should be built to the street property line or right-of-way easement to enclose a pedestrian-oriented landscape. Pedestrian-oriented amenities are important such as outdoor dining associated with an eating establishment, recessed plaza or specific district design standards or landscape needs adjacent to the promenade. The setback should be used for parking. See Section 17B.25.120, Guideline 1: Overall Form, Guideline 6: Street Walls and Guideline 7: Ground Floor Transparency.16.07</p>	<p>Required change: delete this sentence.</p> <p>The existing approved SMP prohibits parking within the shoreline setback and the modification proposed by the City encourages parking in the shoreline setback. It is also unclear which setback is being referenced here. The City’s proposed modification is not consistent with the WAC 173-26-241(3)(k) Transportation and parking, which provides in relevant part, Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.</p> <p>Parking standards are addressed in MMC 17B.56 Off-Street Parking; therefore it is no need to address parking within a subsection related to buildings. Ecology proposes that this sentence be deleted for internal consistency with MMC 17B.56 and for consistency with WAC 173-26-241(3)(k).</p> <p>*See also, public comment on this topic.</p>	<p>The City has no objection to this change as it was in a section for overall building design.</p>
Req-3	<p>MMC 17B.25.090 Off-street parking. A. Off-street parking in commercial areas outside of the two hundred feet shoreline zone shall either be behind or to the side of development with ground-floor retail along the street frontage.</p>	<p>Required change: For consistency with the Policy of the SMA, WAC 173-26-241 and internal consistency with MMC 17B.25.090, and 17B.56.</p> <p>The area beyond 200 feet from the OHWM or otherwise outside the shoreline jurisdiction is not regulated by MMC Title 17B. This proposed amendment to add the phrase outside the two hundred feet shoreline zone changes this provision and makes it inapplicable within the SMP. This is the same as deleting the provision. This proposed modification should be rejected.</p>	<p>City has no objection to the removal of “outside of the 200 feet shoreline zone” for consistency.</p>

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Req-4	<p>MMC 17B.52B.070 Buffer areas.</p> <p>D. Buffer Requirements. The standard buffer widths in Table 1—Wetland Buffer Widths have been established in accordance with the best available science. They are based on the category of wetland and the habitat score as determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington.</p> <ol style="list-style-type: none"> 1. The use of the buffer widths in Table 1 requires the implementation of the mitigation measures in Table 1A, where applicable, to minimize the impacts of the adjacent land uses. 2. If an applicant chooses not to apply the mitigation measures in Table 1A, then a thirty-three percent increase in the width of all buffers is required. For example, a seventy-five-foot buffer with the mitigation measures would be a one-hundred-foot buffer without them. 3. The buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the existing buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened <u>by thirty-three percent</u> to ensure that adequate functions of the buffer are provided. <p align="center">****</p> <p>K. Existing Designated Buffers. If an existing property has a previously delineated and/or approved wetland and associated buffer approved by the city, the approved wetland buffer will remain in effect for a period of five years <u>or until the approved shoreline permit expires</u>. Redevelopment, and/or additions outside of the existing footprint shall be subject to the previously approved buffer-current buffer standards of Section 17B.52B.070; however, <u>such a proposal may be eligible for additional allowances contained within Section 17B.68 Nonconforming Uses, Buildings, and Lots.</u> A <u>A</u> buffer enhancement plan may be required in accordance with subsection F <u>E</u> of this section if the wetland or buffer has become degraded or is currently not functioning or if the wetland and/or buffer may be negatively affected by proposed new development.</p>	<p>Required changes: For consistency with WAC 173-26-201(2)(c), WAC 173-26-221, and for internal consistency.</p> <ul style="list-style-type: none"> • Add the amount of wetland buffer increase necessary to address inadequate buffers. Change required for consistency with WAC 173-26-221 Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. • Clarification around the use of previous wetland studies for internal consistency with 17B.08.020 “no net loss-shorelines”, 17B.52B.020.A Applicability, 17B.52B.030 Regulated activities, 17B.52B.070.L Existing Legal Nonconforming Use of a Buffer, 17B.52B.070.N Minor Additions, and 17B.68 Nonconforming Uses, Buildings and Lots. 	<p>The City has no objection to this change as it provides more protection for the wetland and its buffer.</p>

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<p>Req-5 Rec-1</p>	<p>MMC 17B.52B.090 Wetland alteration and mitigation. B. Altering Wetlands. Unless otherwise approved by the city and Ecology through a shoreline variance, alteration of wetlands and/or their buffers may <u>only</u> be permitted subject to the following criteria:</p> <ol style="list-style-type: none"> 1. Category I Wetlands. Alterations of Category I wetlands shall be avoided. 2. Category I and III <u>II, III, and IV</u> Wetlands. With respect to activities proposed in Category I and III <u>II, III, and IV</u> wetlands, the following standards shall apply: <ol style="list-style-type: none"> a. Water-dependent activities may be allowed where there are no practicable alternatives that would have a less adverse impact on the wetland, its buffer, and other critical areas. b. <u>Low-impact public access and water-oriented recreational development, such as raised boardwalks, may be allowed if they provide opportunities for substantial numbers of the general public to enjoy the shoreline and incorporates interpretive signs or other mechanism to inform the public about shoreline and wetland functions.</u> c. Where non-water-dependent or non-public-access activities are proposed, it shall be presumed that alternative locations are available, and activities and uses shall be prohibited, unless the applicant demonstrates that: <ol style="list-style-type: none"> i. The basic project purpose cannot reasonably be accomplished and successfully avoided, or result in less adverse impact on a wetland on another site or sites in the general region; and ii. All alternative designs of the project as proposed, that would avoid or result in less of an adverse impact on a wetland or its buffer, such as a reduction in the size, scope, configuration, or density of the project, are not feasible. 3. Category IV Wetlands. Activities and uses that result in unavoidable and necessary impacts may be permitted in Category IV wetlands and associated buffers in accordance with an approved critical area report and mitigation plan, and only if the proposed activity is the only reasonable alternative that will accomplish the applicant's objective. Full mitigation for the acreage and lost functions will be provided under the requirements of this chapter. 	<p>Required change: Delete these wetland impact allowances. Recommended change: include Category IV wetlands in the allowance of 17B.52B.090.B.2 and make modifications to allow public access and water-oriented recreational development.</p> <p>Changes required for consistency with WAC 173-26-221 Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. Wetlands within the shoreline jurisdiction contribute to the shoreline ecological function, as such all wetland (regardless of size or category) must be protected within the shoreline.</p> <ul style="list-style-type: none"> • This provision does not rely on the principles of the SMA to establish what is necessary. WAC 173-26-221 provides that all development and uses within the shoreline shall be designed consistent with mitigation sequencing. Ecology find that, if implemented, these provisions could result in a net loss of shoreline ecological function. These standards allow for wetland to be filled or otherwise impacted without regard for the use prioritization standards of the SMP and without full implementation of mitigation sequencing. 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 these provisions are based upon Ecology Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001); however according • 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. <p>All SMP provisions must use the most current, accurate, and complete scientific and technical information available, as relevant or applicable to the issues of concern. The most recent Ecology Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001) does not support this provision.</p>	<p>The City has no objection to this change as it provides more protection for the wetland and its buffer.</p> <p>The City has no objection to this change as it adds Category IV wetlands to the list.</p>

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Rec-2	<p>MMC 17B.52B.100 Wetland standards and criteria. B. Wetland Mitigation Ratios – Subsection 2.e e. Preservation. Preservation of high quality wetland and buffer may be allowed as compensation for wetland impacts on a case-by-case basis. <u>Preservation can only be used in combination with other forms of mitigation.</u> Mitigation ratios for preservation in combination with other forms of mitigation will generally range from 10:1 to 20:1, as determined on a case-by-case basis, depending on the quality of the wetlands being lost or degraded and the quality of the wetlands being preserved. Guidance in the Department of Ecology’s publication “Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance” will be consulted during consideration of preservation as compensatory mitigation.</p>	<p>Recommended change: Clarify that preservation can only be considered in combination with other methods of mitigation that provide a functional lift.</p> <p>Change recommended for consistency with WAC 173-26-201(2)(a) Use of scientific and technical information and WAC 173-26-201(2)(c) Protection of ecological functions of the shorelines. All SMP provisions must use the most current, accurate, and complete scientific and technical information available, as relevant or applicable to the issues of concern. We find that the most recent Ecology Wetland Guidance for CAO Updates – Western Washington Version, June 2016 (Publication No. 16-06-001) provides discussion on mitigation ratios for preservation in combination with other forms of mitigation, but it also acknowledges the potential for wetland area loss. A preservation only option for wetland mitigation does not compensate for lost or impacted functions within the shoreline. This is not preferred approached for wetland mitigation within the shoreline jurisdiction.</p>	<p>The City has no objection to this change as it provides clarity to this section for preservation.</p>
Req-6	<p>MMC 17B.56.050 Parking spaces next to the shoreline. All off-street parking spaces east of Park Avenue within the shoreline jurisdiction shall be located a minimum of five feet from the landward edge of the promenade. All other off-street parking spaces along the remainder of the shoreline zone shall be a minimum of seventy-five feet landward of the ordinary high water mark.</p>	<p>Required change: Delete the proposed modification.</p> <p>The City’s proposed modification does not appear consistent with the WAC 173-26-241(3)(k) Transportation and parking, which provides in relevant part, <i>Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.</i> According to the City’s Shoreline Use Matrix, commercial parking lots and garages are only allowed in the Urban Waterfront SED [Shoreline Environment Designation] and only allowed when in conjunction with a multimodal transit station. This provision applies to all off-street parking associated with an authorized use, including commercial parking lots and garages. Even in support of an authorized use, parking is not water-oriented and should not be allowed within a shoreline buffer/setback because it could be displacing or excluding preferred uses such as public access, ecological benefit, or even water-enjoyment.</p> <p>*See also, public comment on this topic.</p>	<p>Based on the conversations with the Ecology regarding parking within the shoreline area within seventy-five (75) feet of the OHWM, Ecology states the City has a mechanism for relief of this standard, in those limited instances where it might be appropriate, via shoreline variance or essential public facility exception.</p> <p>This request was based on the development of the Downtown Waterfront Master Plan and the Binding Site Plan for the Tank Farm Property which provides the public access to the waterfront while allowing the property owners and opportunity to maximum the use of their property.</p> <p>The City has no objection to this change.</p>

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Rec-3	<p>MMC 17B.68.060 Nonconforming buildings. Nonconforming structures may be altered, repaired, enlarged, added to or moved only as regulated <u>allowed</u> by this section.</p> <p>A. Structures that were legally established and are used for a conforming use but are nonconforming with regard to setbacks, buffers or yards; area; bulk; height or density <u>may continue as a legal nonconforming structure</u> and may be maintained and repaired. <u>Legal nonconforming residential structures and appurtenant structure shall be considered conforming structures, but are still eligible for the allowances provided in this section.</u></p>	<p>Recommend making these two different provisions to distinguish between single family residential development (which can be considered conforming) and other structures.</p> <p>Suggested edits provided to enable the structures classified as “conforming” can still use the non-conforming provisions that follow. Otherwise, those structure could only be maintained and repaired. This is also intended to improve consistency with RCW 90.58.620, which authorizes non-conforming residential structures to be considered conforming structures.</p> <p>As proposed subsection A. appears to reclassify all existing structures as conforming, so it is unclear how or when a structure would be classified as nonconforming to use the following nonconforming allowances of 17B.68.060.B-G.</p>	<p>The City has no objection to this change as it provides clarity.</p>
Rec-4	<p>MMC 17B.72.050 Zoning and shoreline regulations review. This title shall be periodically reviewed and adjustments shall be made as are necessary to reflect changing local circumstances, new information or improved data, and changes in state statutes and regulations. This review process shall be consistent with WAC 173-26-104090 and shall include public hearings to obtain the views and comments of the public.</p>	<p><u>Recommended change:</u> WAC 173-26-104 refers to the Joint Review Process for amending a Shoreline Master Program. This provision is speaking to the periodic review or other locally initiated SMP review and amendment process which is actually outlined in WAC 173-26-090.</p>	<p>The City has no objection to this change as the wrong section of the WAC was cited.</p>
Rec-5	<p>MMC 17B.72.060 Amendments to Mukilteo shoreline regulations.</p> <p>A. Any of the provisions of this title may be amended as provided for in RCW 90.58.060 and 90.58.100 and Chapter 173-26-201 WAC. Amendments or revisions to this title become effective 14 days from the Washington State Department of Ecology’s written notice of final action.</p> <p>B. Proposals for shoreline environment redesignation (i.e., amendment to the shoreline maps and descriptions) must demonstrate consistency with the criteria set forth in <u>WAC 173-26-110, WAC 173-26-201(1)(c), and WAC 173-22-040 173-26-211.</u></p> <p>C. Amendments to the shoreline master program may follow the optional SMP amendment process that allows for a shared local/state public comment period for efficiency as outline in WAC 173.26.104.</p> <p>D. D. Amendment submittals sent to the Washington State Department of Ecology for final review should by in digital format and include a summary of amendments made in response to public comments and the final periodic review checklist <u>as and</u> clarified in WAC 173-26-110 and WAC 173-26-120</p>	<p><u>Recommended Changes:</u> WAC and RCW references need to be modified for accuracy.</p> <p>A. RCW 90.58.060 is a section that sets the rule making process for Ecology to modify/amend the SMA Guidelines contained within WAC 173-26 and 173-27. The correct reference for the City’s local amendment process to amend a shoreline master program are contained within RCW 90.58.100 as previously referenced here prior to this proposed amendment. Recommend modifying to maintain a reference to RCW 90.58.100 and add specific WAC references related to amendment process and content.</p> <p>B. No changes were proposed to this provision, but the existing WAC referenced is not correct and should be updated.</p> <p>C. N/A</p> <p>D. typo</p>	<p>The City has no objection to this change as it ensures the correct sections of the WAC have been cited.</p>