



COMMUNITY DEVELOPMENT DEPARTMENT  
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**MEMORANDUM**

**DATE:** May 18, 2019  
**TO:** City Council  
**FROM:** Cheryl Dungan, Senior Planner  
**RE:** Summary of SMP Periodic Update and related code revisions to MMC 22A.020 & 22E.050

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**Overview:**

The Shoreline Master Program (SMP) consists of local land use policies and regulations specifically designed to manage shoreline uses. The 2006 SMP, a sub-element of the Comprehensive Plan was developed in partnership with the Department of Ecology and must comply with the state *Shoreline Management Act* and *Shoreline Master Program Guidelines*. The shoreline jurisdiction in Marysville is identified in Figures 1 and 2.

The purpose of the Periodic SMP update is to ensure consistency with related updates to state law, city policies and regulations. The amendments were developed by the City to comply with WAC 173-26-090, which requires all local governments to review their SMPs on an eight-year schedule set in state law.

Below is a summary of changes by year to state law related to SMPs and the city’s analysis and proposed changes to the Draft SMP. Additional changes are also being proposed by city staff to streamline both the review and appeal processes to eliminate redundancy in review; place all administrative provisions in Chapter 22E.050 so they are all located in one place; and update language to be consistent with other Chapters of the UDC (although the SMP went through a major revision in 2006, some of the old language regarding review processes were carried over from the 1975 SMP). Revisions to 22A.020 *Definitions* is also proposed.

**The following revisions are proposed to the SMP:**

Row	Summary of change	Review	Action
2017			
a.	OFM adjusted the <b>cost threshold for substantial development</b> to \$7,047.	<i>Substantial Development</i> definition in Chapter 7 needs revision.	<b>Revised Page 95 Substantial development</b> definition to reflect the RCW

Row	Summary of change	Review	Action
		Add definition to 22A.020.200 "S"	<p><b>Revised</b> 22A.020.200"S" to add definition as reflected above.</p> <p>NOTE: City website and permit forms need to be revised to reflect correct \$ amount</p>
b.	Ecology amended rules to clarify that the <b>definition of "development"</b> does not include dismantling or removing structures.	2006 SMP does not exclude removal of existing structures in the definition of <i>Development</i> – Chapter 7	<p><b>Revised</b> SMP Chapter 7 – <i>Development</i> definition to specifically exclude dismantling or removal of structures without associated development or redevelopment in the definition</p> <p><b>Revised</b> MMC 22A.020.050 as reflected above</p>
c.	Ecology adopted rules that clarify <b>exceptions to local review under the SMA.</b>	Separate exemptions and add a new statutory exceptions section in SMP (may add, not required)	<p>Add new section in SMP to address Statutory <b>Exceptions</b> pursuant to WAC 173-27-040 (pg 3 of checklist guidance)</p> <p><b>Added</b> new definition for exceptions in 22A.020.060"E"</p>
d.	Ecology amended rules that clarify <b>permit filing procedures</b> consistent with a 2011 statute.	MMC 22E.050.100 needs to be amended to reflect 2011 statutory amendments	<b>Revised</b> 22E.050.100 SHB appeal period starts 21 days from the date DOE receives the local approval. The city should send the decision to DOE with a return receipt request for documentation of date of receipt
e.	Ecology amended <b>forestry use regulations</b> to clarify that forest practices that only involves timber cutting are not SMA "developments" and do not require SDPs.	Timber cutting as a stand alone activity or project does not require a shoreline permit unless the FP is a substantial development within the SL	<b>N/A</b> – no commercial forests located within shoreline jurisdiction in Marysville.
f.	Ecology clarified the SMA does not apply to lands under <b>exclusive federal jurisdiction</b>	SMP does not apply to federal property – military facility/national park	<b>N/A</b> – Federal property within shoreline jurisdiction.
g.	Ecology clarified "default" provisions for <b>nonconforming uses and development.</b>	Language already exists	<b>No change</b> except removing Chapter 8 from SMP and relocating to Development

Row	Summary of change	Review	Action
			Regs (Title 22)
h.	Ecology adopted rule amendments to clarify the scope and process for conducting <b>periodic reviews</b> .	Compare processes	<b>No change</b> – reflected in RCWs
i.	Ecology adopted a new rule creating an <b>optional SMP amendment process</b> that allows for a shared local/state public comment period.	Optional SMP amendment process to allow shared state/local review concurrently	<b>No change</b> -MMC 22G allows joint review process
j.	<b>Submittal</b> to Ecology of proposed SMP amendments.	WAC 173-26-110 changed to allow digital submittals of SMP amendments, removed requirement for 2 paper copies.	<b>Revised</b> 22E.050 to allow digital submittals
<b>2016</b>			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the <b>Americans with Disabilities Act</b> .	ADA retrofit exemption for buildings and/or accesses	<b>Added</b> exemption(s) for ADA to SMP and 22A.020.060 “E”
b.	Ecology updated <b>wetlands critical areas guidance</b> including implementation guidance for the 2014 wetlands rating system.	CAO references new implementation guidance	<b>No change</b> CAO adopted in SMP to reflect wetland rating system changes
<b>2015</b>			
a.	The Legislature adopted a <b>90-day target</b> for local review of Washington State Department of Transportation (WSDOT) projects.		<b>Added</b> language 22E.050 where appropriate
<b>2014</b>			
a.	The Legislature raised the cost threshold for requiring a Substantial Development Permit (SDP) for <b>replacement docks on lakes and rivers</b> to \$20,000 (from \$10,000).		<b>Changed</b> Substantial Development Permit definition in SMP & 22A.020 to reflect RCW, so 5 year adjustment reflects whatever the RCW states.
b.	The Legislature created a new definition and policy for <b>floating on-water residences</b> legally established before 7/1/2014.		N/A – no remaining houseboats on slough/ houseboats not permitted

Row	Summary of change	Review	Action
2012			
a.	The Legislature amended the SMA to clarify <b>SMP appeal procedures</b> .	Revise	Revised MMC 22E.050.100 to reflect to be consistent with state law.
2011			
a.	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved <b>federal wetland delineation manual</b> .		No change. SMP adopted CAO which reflects the federal wetland delineation manual
b.	Ecology adopted rules for new commercial <b>geoduck aquaculture</b> .	No commercial geoduck aquaculture in Marysville	N/A
c.	The Legislature created a new definition and policy for <b>floating homes</b> permitted or legally established prior to January 1, 2011.	Floating over water residences definition – check to see if we have...	N/A
d.	The Legislature authorized a new <b>option to classify existing structures as conforming</b> .	Check non-conforming structures in SMP	No Change section in MMC related to non-conforming structures in 2006 comprehensive update of SMP
2010			
a.	The Legislature adopted <b>Growth Management Act – Shoreline Management Act clarifications</b> .	review	Completed in comprehensive update of SMP
2009			
a.	The Legislature created new “relief” procedures for instances in which a <b>shoreline restoration project within a UGA</b> creates a shift in Ordinary High Water Mark.	Review	Reflected in state law
b.	Ecology adopted a rule for certifying <b>wetland mitigation banks</b> .	Review mitigation bank references and/or def	No change allowed in CAO
c.	The Legislature added <b>moratoria authority</b> and procedures to the SMA.	Review	No change reflected in state law

Row	Summary of change	Review	Action
2007			
a.	The Legislature clarified <b>options for defining "floodway"</b> as either the area that has been established in FEMA maps, or the floodway criteria set in the SMA.	Review floodway definition for consistency with SMA / FEMA	<p><b>Chapter 7</b> def changed to refer to FEMA maps;</p> <p>MMC 22A.020.070 "F" <b>added</b> to floodway def</p> <p><b>Change</b> to EN-36 Policy in 2015 Comp plan to be consistent with allowed uses in CAO and SMP</p>
b.	Ecology amended rules to clarify that comprehensively updated SMPs shall include a <b>list and map of streams and lakes</b> that are in shoreline jurisdiction.	Check to see if list is necessary	<p><b>No change required</b> to SMP</p> <p><b>Change</b> to 2015 Comp plan Environmental element section c to add Qwuloolt estuary and remove West Fork Quilceda Creek</p>
c.	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include <b>fish habitat enhancement projects</b> that conform to the provisions of RCW 77.55.181.	Fish habitat enhancement projects exemption	<b>No change</b> RCW reference reflected in exemption def in both SMP & development regs

**Other city initiated changes to the SMP include the following:**

- Amend Chapter 8 to remove all administrative provisions from the SMP as allowed under RCW 90.58.140(3). This allows the city the ability to more expeditiously revise the shoreline review procedures without having to amend the SMP.
- Map revision to the Ebey Slough Environment to exclude the area westerly of the newly constructed levee by the USACE associated with the Qwuloolt project.

**The following revisions are proposed to 22E.050 – Shoreline Management Master Program:**

- Revise the decision making process to include exemptions;
- Give Hearing Examiner final decision making authority on SCUPs and variances;
- Add language authorizing CD to forward decisions to DOE;

- Make all appeals (including administrative) directly appealable to the SHB;
- Change commencement of construction days after authorization of permit from 30 to 21 to be consistent with state law;
- Change authority to grant extensions to permits from City Council and Hearing Examiner to CD Director;
- Change authority to rescind permits from City Council to hearing examiner;
- Change authority to place a ‘stop work order’ from Mayor to CD Director;
- Authority to rescind a permit changed from City Council to HE;
- Appeals to rescissions of permits or of modifications to permits are also appealed directly to the SHB;
- Transferred language directly from SMP to MMC regarding nonconforming uses; documentation of project review actions; and amendments to SMP as previously required by DOE; and
- Eliminated ‘Streamside Protection Zone’ from 22E.050 as it pre-dates GMA and CAO.
- Add shoreline conditional use permit criteria
- Add shoreline variance criteria

**Recommendation:** Staff recommends the Council affirm the Planning Commission’s recommendation to adopt the *2019 Periodic Update to the Shoreline Master Program*; remove all administrative provisions from Chapter 8 of the SMP and include them in the *City’s Uniform Development Code (UDC)*, specifically MMC Chapter 22E.050 – *Shoreline Management Master Program* and to adopt the following revision’s to MMC Chapter 22E.050 as follows, specifically Section(s): 22E.050.080; 22E.050.090; 22E.050.100; 22E.050.110; 22E.050.120; 22E.050.150; 22E.050.160; 22E.050.170; 22E.050.180; 22E.050.190; 22E.050.200; 22E.050.210; and adding a new Section 22E.050.220; and MMC 22A.020.050 “D”; 22A.020.060 “E”; 22A.020.070 “F”; and 22A.020.200 “S”.

### **Map Amendment to the Ebey Slough Environment Map**

A new levee was constructed along the west side of the recently inundated Qwuloolt Marsh Restoration Project to protect an existing industrial park and city infrastructure. Therefore, the area westward of the levee has been removed from shoreline jurisdiction. The boundary is the constructed levee.

The map was amended to be consistent with the new Aquatic Urban Environment designation in the updated plan.

No amendments were made to the Quilceda Creek Environment Map

# SEPA COMPLIANCE



PERIODIC UPDATE OF THE  
SHORELINE MASTER  
PROGRAM  
(working Draft)

# Draft Revisions to MMC 22E.050

# Draft Revisions to MMC 22A.020

# Planning Commission Minutes

WAC 173-26-290  
&  
RCW 90.58.140(3)

**DRAFT  
ORDINANCE**