Periodic Review Checklist Guidance

Contents

Introduction

This document provides guidance for local governments on using the checklist required as part of the periodic reviews of Shoreline Master Programs (SMPs) under the Shoreline Management Act (SMA). The checklist and this guidance document will be amended regularly to stay current with amended laws and rules. Check to see if you have the most current version before starting your review. Work closely with the Ecology regional shoreline planner assigned to your jurisdiction throughout the review process.

The checklist is available as an MS Word document on Ecology's webpage. For each year between 2007 and 2017 it provides a summary of state laws, rules and applicable updated guidance that may trigger the need for local SMP amendments. If a given year is not listed here, there were no state laws or rules or other applicable documents adopted or published during that year that would trigger a periodic review obligation.

Each item starts with a description of the item and a link to the relevant law, rule or document. This is followed by "Review Considerations" with general observations to aid local review. In some cases we include Administrative tips related to the law or rule. The descriptions here are not intended as a definitive or exhaustive analysis or interpretation of the item.

As described in Ecology's rules, the checklist is used throughout the review process:

At the **beginning of the periodic review**, use the Review column to document review considerations and determine if local amendments are needed to maintain compliance. See WAC 173-26-090(3)(b)(i).

At the end of the review process, use the Action column to indicate where the SMP addresses applicable amended laws, or where no action is needed. See WAC 173-26-090(3)(d)(ii)(D) and WAC 173-26-110(9)(b).

This guidance includes a sample checklist for a hypothetical city. When conducting reviews, we recommend filling out the checklist for all the years listed. Some statutes provide options, and your jurisdiction may decide to adopt one of these options even if elected officials chose not to do so during a previous review. If an item has already been addressed simply note that in the review column. If an item is not applicable, indicate N/A. If you have questions, or suggestions for improving this guidance document, contact your Ecology regional shoreline planner.

2017

2017a. Cost threshold for substantial development ($7,047)

The Office of Financial Management (OFM) revised the cost threshold above which a development will require a Substantial Development Permit (SDP) to **$7,047**. OFM is required to adjust the cost threshold for inflation every five years. (From 2012 – 2017 the amount was $6,416.) The new threshold was effective September 2, 2017.

Law: RCW 90.58.030(3)(e). State Register announcement: WSR 17-17-007.

Review considerations

Local governments are required to apply the new threshold of $7,047 starting September 2, 2017, regardless of the threshold amount that is included in their SMP.

If a local SMP includes a specific cost threshold, it should be revised to $7,047. If an SMP does not include an absolute number but relies on reference to statute, no change to the SMP is required.

ADMINISTRATIVE TIP: Revise permit application forms, websites or other administrative documents to reflect the new cost threshold. There is no need to wait for an SMP amendment to revise administrative documents.

2017 b. Definition of development

Ecology amended permit rules to clarify the definition of "development" does not include projects that involve only dismantling or removing structures without any associated development or re-development. This is not really a new interpretation, it simply codifies the primary holding of the 1992 WA State Supreme Court decision *Cowiche Canyon v Bosley (118 Wn.2d 801).* Ecology included the clarification in rule to address a question about applicability of the SMA that arises frequently.

Rule: WAC 173-26-241(3)(e), effective 9/7/2017.

Review considerations

It is not necessary to adopt this clarification into an SMP - local governments may look to the state rule to answer questions should they arise. However, if a jurisdiction finds the clarification helpful, it may be incorporated into the SMP.

Example language

If a local government chooses to incorporate this clarification, one option is to add a sentence in the SMP definition of development. For example:

> (XX) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. "Development" does not include dismantling or removing structures if there is no other associated development or re-development.

2017 c. Exceptions to local review under the SMA

Ecology adopted WAC 173-27-044 to consolidate three separate laws that create special exceptions to applicability of local Shoreline Master Programs. The rule clarifies that requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review conducted by a local government to implement the SMA do not apply to:

- remedial hazardous substance cleanup actions (1994 law),
- boatyard improvements to meet NPDES requirements (2012 law), and
- certain WSDOT maintenance and safety projects and activities (2015 law).

Ecology also made housekeeping revisions to WAC 173-27-045, a separate rule that describes developments that are not required to meet SMA requirements. The revisions delete reference to RCW 90.58.390 (an emergency law that has since expired), and relocate the reference to the 1994 hazardous substance law to the new WAC 173-27-044.

Bills: ESSB 5994, effective 7/6/2015, EHB 2469, effective 6/7/2012. Laws: RCW 90.58.355; RCW 90.58.356; also see RCW 90.58.045; RCW 80.50. Rule: WAC 173-27-044 & WAC 173-27-045, effective 8/7/2017

Review considerations

The exceptions to SMP review covered under the statutes in these two rules apply whether or not they are included in local SMPs. However, to ensure the statutory directives are implemented consistently, Ecology recommends maintaining a section in their SMP that addresses these exceptions.

> ***NOTE:*** We do not recommend the SMP combine these "exceptions" from SMA permit review directly into the list of "exemptions" from the requirement for a substantial development permit under WAC 173-27-040. Projects that are listed as "permit-exempt" still need to meet substantive standards of the SMA – whereas for these projects there is no local review.

Example language

A local SMP may consolidate all the SMA exceptions to incorporate Ecology's recently revised rules with all applicable statutes as follows:

> (XX) Developments not required to obtain shoreline permits or local reviews
>
> Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:
>
> (i) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.
>
> (ii) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
>
> (iii) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.
>
> (iv) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
>
> (v) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

2017 d. Permit filing procedures

Ecology amended WAC 173-27-044 to incorporate a 2011 law relating to permit filing. These details are important because the date of filing establishes the start of the Shorelines Hearings Board appeal period. Changes include:

- "Date of filing" replaces "date of receipt" for shoreline permits sent to Ecology.
- Requires concurrent filing of permits if there are separate Substantial Development, Conditional Use Permits, and/or Variances.
- Ecology will notify local government and the applicant of the date of filing by telephone or electronic means followed by written communication.

The law clarified that local permit decisions shall be submitted to Ecology by return receipt requested mail. This intent is to bring consistency and predictability to the timing of the appeal period. Using return receipt mail allows local governments to calculate when the appeal period starts and ends without contacting Ecology on every permit. This also helps them administer other related

authorizations like building permits. Using return receipt mail allows local governments to control the timing of the SHB appeal for Shoreline Substantial Development Permits and creates a record of the transmittal, alleviating the scenario where a submittal is lost or delayed by the mail service.

Bill: SSB 5192, effective 7/22/2011. Law: RCW 90.58.140(6). Rule: WAC 173-27-130

Review considerations

The SMA amendment applied on its effective date in 2011, regardless of whether permit procedures are specifically outlined in local SMPs. However, if an SMP describes the permit filing process, it should be reviewed for consistency with the 2011 statutory amendments.

Example language

Below is an example of local permit filing procedures which incorporates the 2011 statute:

> (XX) After all local permit administrative appeals or reconsideration periods are complete and the permit documents are amended to incorporate any resulting changes, [COUNTY/CITY] will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.
>
> (i) The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.
>
> (ii) Consistent with RCW 90.58.140(6), the state's Shorelines Hearings Board twenty-one day appeal period starts with the date of filing, which is defined below:
>
> > (A) For projects that only require a Substantial Development Permit: the date that Ecology receives the [COUNTY/CITY] decision.
> >
> > (B) For a Conditional Use Permit (CUP) or Variance: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and [COUNTY/CITY].
> >
> > (C) For SDPs simultaneously mailed with a CUP or VAR to Ecology: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and the [COUNTY/CITY].

2017 e. Forestry use regulations

Ecology amended forestry use regulations to clarify that a forest practice that only involves timber cutting is not considered development under the SMA and does not require permits, but forestry activities other than timber cutting may require a Substantial Development Permit (SDP). Ecology adopted this housekeeping amendment to address a regularly recurring question which is partly answered in Forest Practices Board laws and rules but not addressed in SMA rules. Forest Practices rule WAC 222-50-020(2) states "A substantial development permit must be obtained prior to conducting forest practices which are "substantial developments" within the "shoreline" area as those terms are

defined by the Shoreline Management Act." The authority for that rule is RCW 76.09.240(6). Timber cutting alone is not development because it does not meet the statutory definition in RCW 90.58.030(3)(e)(a).

Rule: WAC 173-27-030(6), effective 9/7/2017.

Review considerations

It is not necessary to amend local SMP forestry regulations to reflect this clarification. However, it could be helpful for jurisdictions with extensive commercial forestry, if questions about applicability of forest practices laws and rules arise frequently.

Sample language

The language from the revised rule could be incorporated into forest use regulations:

> A forest practice that only involves timber cutting is not a development under the act and does not require a shoreline substantial development permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a substantial development permit, as required by WAC 222-50-020.

2017 f. Lands under exclusive federal jurisdiction

Ecology amended a permit rule that addressed lands within federal boundaries to clarify that areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of the SMA. For example, exclusive jurisdiction is ceded to the United States in Rainier National Park (RCW 37.08.200), Olympic National Park (RCW 37.08.210), and for acquisition of land for permanent military installations (RCW 37.08.180).

Rule: WAC 173-22-070, effective 9/7/2017.

Review considerations

It is not necessary to amend local SMPs to reflect this clarification. However, it could be included if a jurisdiction faces questions about applicability of the SMP on lands with exclusive jurisdiction.

Sample language

The language from the revised rule could be incorporated as follows:

> (XX) Areas and uses in those areas that are under exclusive federal jurisdiction as established through federal or state statutes are not subject to the jurisdiction of chapter 90.58 RCW.

Another option is to list the specific areas where the exclusive jurisdiction applies locally (e.g., National Park or military base).

2017 g. Nonconforming uses and development

Ecology revised its rules for nonconforming uses and development. The introductory paragraph of the rule was amended to clarify that unlike other permit and enforcement rules, this rule is a default rule that only applies if a local government has no provisions in their local SMP addressing nonconforming

uses. A primary goal of the revisions was to create separate sections for nonconforming uses, nonconforming structures, and nonconforming lots. Many of the clarifications in this default rule were borrowed from local government innovations developed during the comprehensive SMP updates.

Rule: WAC 173-27-080, effective 9/7/2017

Review considerations

For local governments that adopted their own tailored provisions for nonconforming use and development during the comprehensive update, Ecology's rule amendments will have no effect.

This rule will apply where a local government either has no provisions for nonconforming use and development or has adopted WAC 173-27-080 by reference. Local governments that adopt this WAC by reference or included its provisions within their SMP should review the new rule to determine whether or how to modify how nonconforming use and development is regulated in their jurisdiction.

If a local government has already addressed nonconforming use and development but is considering adopting clarifications, review the revised rule for ideas. Below is a summary of changes from Ecology's previous nonconforming use and development rule to help identify what is different:

(1) Definitions

This section creates separate definitions for nonconforming "use," "structure" and "lots." In the previous version "use" and "structure" were combined into one definition, and the definition of "lots" had been incorporated into the regulation itself rather than having a separate definition.

(2) Nonconforming structures

§ (2)(a) clarifies that existing legal nonconforming structures may continue. This addresses a concern raised during comprehensive updates about the legal rights of nonconforming structures.

§ (2)(b) provides a general rule for expansions of nonconforming structures. The amendments clarify that enlargement or expansions should meet applicable provisions of the SMP. (Many comprehensively updated SMPs created specific allowances for expansion of nonconforming structures, embedded within specific use regulations.) It also clarifies a general rule that a variance would be required for expansions that increase the nonconformity if the SMP does not provide a specific allowance.

§ (2)(c) was not amended from the previous rule. It retains the existing authorization for expansions of preferred single-family residences or addition of appurtenances through a conditional use permit.

§ (2)(f) adds a qualifier to a previous provision that required any nonconforming structure that is moved any distance to meet all applicable provisions of the SMP. This provision was potentially a disincentive to move structures away from the shoreline in circumstance where all dimensional standards (e.g., buffer width) could not be met because of existing constraints (e.g., lot width, presence of a road). The proposed change requires a nonconforming structure that is moved to move "as far as practical" from the shoreline. This allows for the realities of any given parcel to be taken into account.

§ (2)(g) extends the time period for obtaining permits to replace damaged development from 6 months to 2 years. Even in normal circumstances applications can take 6 months to prepare, so a longer timeframe is warranted where a development has been damaged.

§ 3. Nonconforming uses
§ (3)(a) preserves the existing regulation which clarifies that existing nonconforming uses may continue.

§ (3)(b) sets out the general rule that nonconforming uses shall not be enlarged or expanded without a CUP, unless more specific regulations in the SMP apply.

§ (3)(c) modified an existing rule that said nonconforming rights expire if the use is discontinued for 12 months, by clarifying the nonconforming uses may be re-established through a CUP. It was also modified to clarify that water-dependent uses that are episodically dormant or include phased or rotational operations should not be considered "discontinued."

Note the previous WAC 173-27-080(4) was deleted in its entirety. The rule had said if an updated SMP requires a CUP for an existing use, that use should be considered a nonconforming use. The previous rule was deleted because those uses should be treated no differently from other existing uses.

§ 4. Nonconforming lots
The only change was to move the definition into the definition section.

Example language

Local governments may incorporate the language from the revised rule either directly into their SMP, or by reference. If the provisions are incorporated directly they may be modified or tailored.

> **(1) Definitions**
>
> (a) "Nonconforming use" means an existing shoreline use that was lawfully established prior to the effective date of the act or the applicable master program,-but which does not conform to present use regulations due to subsequent changes to the master program.
>
> (b) "Nonconforming development" or "nonconforming structure" means an existing structure that was lawfully constructed at the time it was built but is no longer fully consistent with present regulations such as setbacks, buffers or yards; area; bulk; height or density standards due to subsequent changes to the master program.
>
> (c) "Nonconforming lot" means a lot that met dimensional requirements of the applicable master program at the time of its establishment but now contains less than the required width, depth or area due to subsequent changes to the master program.
>
> **(2) Nonconforming structures**
>
> (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 may continue as legal nonconforming structures and may be maintained and repaired.
>
> (b) Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In the absence of other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where

construction would not be allowed for new structures, unless a shoreline variance permit is obtained.

(c) Nonconforming single-family residences that are located landward of the ordinary high water mark may be enlarged or expanded in conformance with applicable bulk and dimensional standards by the addition of space to the main structure or by the addition of normal appurtenances as defined in WAC 173-27-040 (2)(g) upon approval of a conditional use permit.

(d) A structure for which a variance has been issued shall be considered a legal nonconforming structure and the requirements of this section shall apply as they apply to preexisting nonconformities.

(e) In the absence of other more specific regulations, a structure which is being or has been used for a nonconforming use may be used for a different nonconforming use only upon the approval of a conditional use permit. A conditional use permit may be approved only upon a finding that:

(i) No reasonable alternative conforming use is practical; and

(ii) The proposed use will be at least as consistent with the policies and provisions of the act and the master program and as compatible with the uses in the area as the preexisting use.

In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of the master program and the Shoreline Management Act and to assure that the use will not become a nuisance or a hazard.

(f) A nonconforming structure which is moved any distance must be brought as closely as practicable into conformance with the applicable master program and the act.

(g) If a nonconforming development is damaged to an extent not exceeding seventy-five percent of the replacement cost of the original development, it may be reconstructed to those configurations existing immediately prior to the time the development was damaged, provided that application is made for the permits necessary to restore the development within two years of the date the damage occurred.

(3) Nonconforming uses

(a) Uses that were legally established and are nonconforming with regard to the use regulations of the master program may continue as legal nonconforming uses.

(b) In the absence of other more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit.

(c) If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and

any subsequent use shall be conforming unless re-establishment of the use is authorized through a conditional use permit which must be applied for within the two-year period. Water-dependent uses should not be considered discontinued when they are inactive due to dormancy, or where the use includes phased or rotational operations as part of typical operations. A use authorized pursuant to subsection (2)(e) of this section shall be considered a conforming use for purposes of this section.

(4) Nonconforming lot

A nonconforming lot may be developed if permitted by other land use regulations of the local government and so long as such development conforms to all other requirements of the applicable master program and the act.

2017 h. Periodic reviews

Ecology adopted rule amendments to clarify the scope and process for conducting periodic reviews of SMPs required by RCW 90.58.080(4).

Rule: WAC 173-26-090, effective 9/7/2017.

Review considerations

This rule describes the process local governments must follow when conducting periodic reviews. It is not necessary to include any of these new provisions in local SMPs – they provide direction on how to undertake the periodic review process. If an SMP describes the periodic review scope and procedures, consider reviewing that section of code for consistency with the periodic review rule.

Example language

If an SMP includes a description of periodic review procedures, and would like to add further clarification, one option would be to cite Ecology's WAC by reference. For example:

> (X) The CITY/COUNTY will conduct the periodic review process consistent with requirements of RCW 90.58.080 and WAC 173-26-090.

2017 i. Optional SMP amendment process

This new rule establishes an optional SMP amendment process that allows for a shared local/state public comment period for efficiency.

Rule: WAC 173-26-104, effective 9/7/2017.

Review considerations

Local governments that want to use these provisions should review local amendment procedures to ensure there are no impediments to using this new option. (These provisions may be contained either in the SMP or elsewhere in the land use code.) A key consideration is coordinating with Ecology on the public comment period, as Ecology needs to send notice to the state interested parties list at the same time as the local governments notice. Note that the optional process also asks local governments to send a draft to Ecology for an initial determination before final local adoption. This has been a common practice on an informal basis for many years and can be done without amending the SMP.

2017 j. Submittal to Ecology of proposed SMP amendments

Ecology made a few minor amendments to WAC 173-26-110, the rule that describes what local governments provide to Ecology for final review of SMP amendments. The rule clarifies that submittals may be in digital form, and deleted the requirement to send two paper copies. It clarified that the submittal should include a summary of amendments made in response to public comments. It also clarified that local governments will submit their final periodic review checklist when taking action on the periodic review.

NOTE: Ecology also made a few housekeeping amendments to WAC 173-26-120, which describes the state process for reviewing SMPs. Those amendments should not trigger any amendments to SMPs. The one exception might be the clarification from statute that SMPs are effective 14 days after Ecology's approval letter - this was adopted by the Legislature as described under 2010 amendments.

Rule: WAC 173-26-110, WAC 173-26-120, effective 9/7/2017.

Review considerations

If a local SMP includes a description of the SMP submittal process, they should review the amendments for consistency.

2016

2016 a. Americans with Disabilities Act permit exemption

The legislature created a new shoreline permit exemption in 2016. Retrofitting an existing structure does not require a Substantial Development Permit (SDP) if the project is undertaken to comply with the Americans with Disabilities Act or otherwise provide physical access to a structure by individuals with disabilities. The amended law was incorporated into Ecology's rule in 2017.

Bill: SHB 2847, effective 6/9/2016. RCW 90.58.030(3)(e)(xiii), WAC 173-27-040(2)(q).

Review considerations

This SMA amendment applied on its effective date, regardless of whether the exemption is specifically listed in the SMP. For SMPs that simply cite the RCW list of exemption, no change is needed.

For SMPs that spell out all the statutory exemptions, add the new exemption to the list.

Example language

Local governments may incorporate the revised rule directly into exemption language:

> (xx) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 (42 U.S.C. Sec. 12101 et seq.) or to otherwise provide physical access to the structure by individuals with disabilities.

2016 b. Wetlands critical areas guidance

Ecology published a revised *Wetlands Guidance for Critical Areas Ordinance Updates* in 2016. The new guidebook replaces the former "Guidance for Small Cities." There are separate versions for Eastern and Western Washington. Ecology's rule directs local governments to consult the department's technical guidance documents on wetlands. The primary changes in this document are related to the new 2014 Washington state wetland rating system. Ecology's 2003 rule directs local governments to use either the state wetland rating system, or to develop their own scientifically based method for categorizing wetlands.

Other changes addressed include: addition of a buffer table to be used if minimizing measures are not used; emphasis on the requirement to provide wildlife corridors where possible in exchange for buffer reduction; guidance on using wetlands for stormwater management facilities; revisions to exemptions for small wetlands; recommended language addressing agricultural activities in non-VSP jurisdictions; and addition of recent mitigation documents and guidance.

Rule: WAC 173-26-221(2)(c)(i)(A) and (B); Guidance update: Wetlands guidance document, June 2016; 2014 Wetland rating system manuals.

Review considerations

The updated wetlands guidance is directed at updating critical areas ordinances (CAOs). The key provision is the updates to the 2014 Wetland Rating System. Other guidance in the 2016 guidance document may also be applicable. How this guidance applies to individual local government will vary widely depending on how critical areas are addressed in the SMP. Consult Ecology's regional planner for tailored assistance on potential SMP wetland revisions.

2015

2015 a. 90-day target for local review for WSDOT project

The Legislature adopted a 90-day target for local review of Washington State Department of Transportation (WSDOT) projects. The law also allows WSDOT projects that address safety risks to begin 21 days after the date of filing if the project will achieve no net loss of ecological functions.

Bill: ESSB 5994, effective 7/6/2015. Laws: RCW 47.01.485; RCW 90.58.140. Rule: WAC 173-27-125

Review considerations

It is not necessary to include these provisions in SMPs, but a reference could help ensure SMPs are implemented consistent with the statute.

Example language

If a local governments chooses to incorporate this legislative direction into an SMP, one option is to use the following language from the revised rule.

> (XX) Special procedures for WSDOT projects.
>
> (i) Permit review time for projects on a state highway. Pursuant to RCW 47.01.485, the Legislature established a target of 90 days review time for local governments.

(ii) Optional process allowing construction to commence twenty-one days after date of filing. Pursuant to RCW 90.58.140, Washington State Department of Transportation projects that address significant public safety risks may begin twenty-one days after the date of filing if all components of the project will achieve no net loss of shoreline ecological functions.

2014

2014 a. Replacement docks on lakes and rivers

The Legislature revised the cost threshold for requiring a Substantial Development Permit (SDP) for replacement docks on lakes and rivers. The fair market value for purposes of an SDP exemption for a dock in fresh water is raised to $20,000 (from $10,000) in certain circumstances. To clarify how the new rule is different, here are the changes from the previous permit exemption law:

> "This exception applies if either: (i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (ii) In fresh waters the fair market value of the dock does not exceed: (A) twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or (B) ~~t~~Ten thousand dollars ~~but~~ for all other docks constructed in fresh waters. However, if subsequent construction ~~having a fair market value exceeding two thousand five hundred dollars~~ occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter."

NOTE: The Legislature also directed to OFM the dollar thresholds after July 2018. Ecology will revise the checklist and this guidance document to reflect this change when the new number is effective.

Bill: SHB 1090, effective 6/12/2014. RCW 90.58.030(3)(e). Rule WAC 173-27-040(2)(h).

Review considerations

This SMA amendment applied on its effective date, regardless of whether the exemption is specifically listed in the SMP. If an SMP simply cites the RCW for lists of exemption, no change is needed.

If an SMP repeats the WAC, modify the exemption section for consistency.

Example language

The new rule language could be incorporated directly into the SMP section on permit exemptions. For example:

> (XX) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:

(i) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or

(ii) In fresh waters the fair market value of the dock does not exceed:

(A) twenty thousand dollars for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or

(B) Ten thousand dollars for all other docks constructed in fresh waters.

However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.

2014 b. Floating on-water residences

The Legislature created a new definition and policy for "floating on-water residences (FOWRs)." FOWRs that meet the new definition and were legally established before 7/1/2014 shall be considered a conforming use, and must be accommodated through SMP regulations that will not effectively preclude maintenance, repair, replacement, and remodeling. This bill responded to concerns raised in Seattle regarding preservation of the existing floating home community. *(See provisions for "floating homes" under 2011 statutes. The statutes are similar but slightly different.)*

Bill: ESSB 6450 effective 6/12/2014. Law: RCW 90.58.270. Rules: Definition: WAC 173-26-030(3)(d)(18); Use regulation: WAC 173-26-241(3)(j).

Review considerations

If a jurisdiction has no existing FOWRs, no amendments are needed.

If a jurisdiction has existing FOWRs, the SMP should include a reference to the statute, or a definition consistent with the statute, and a policy or regulation that clarifies the legal status of FOWRs. If the jurisdictions SMP specifically regulates FOWR's, then the regulations should be reviewed to make sure they appropriately recognize on-going maintenance of FOWR. Local governments may apply reasonable SMP regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

Example language

The new statutory definition can be included in the definition section or in the Residential Use section of the SMP together with the new policy clarification. SMPs should already include a prohibition on establishment of new overwater residences, as the Legislative amendments did not change this long-standing policy. Additional policies or general development standards specific to floating on-water residence can be added if existing floating on-water residences will be managed by a local SMP.

An example of how an SMP could incorporate the new statute in the context of the existing prohibition on new floating homes:

(XX) "Floating on-water residence" means any floating structure other than a floating home, as defined by this chapter: (a) that is designed or used primarily as a residence on the water and has detachable utilities; and (b) whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

(XX) New over-water residential developments are prohibited. Existing floating on-water residences legally established and moored within a marina within the [COUNTY/CITY] prior to July 1, 2014 are considered a conforming use and should be accommodated through reasonable permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

2012

2012 a. SMP appeal procedures

The Legislature amended the SMA to clarify SMP appeal procedures. These provisions are not about appeals of individual permits. They describe the appeal pathway after Ecology's approval of a Shoreline Master Program. For jurisdictions "fully planning" under GMA, Ecology's approval of an SMP is to the Growth Management Hearings Boards. For jurisdictions "partially planning" (Critical Areas and Resource Lands only), appeals are to the Shorelines Hearings Board.

Bill: EHB 2671, effective 6/7/2012. Law: RCW 90.58.190

Review considerations

This law should not affect most SMPs, which do not typically outline the SMP appeal process. If an SMP does describe the appeal steps for amendments to shoreline master programs, it should be reviewed for consistency with RCW 90.58.190.

2011

2011 a. Federal wetlands delineation manual

Ecology repealed the State Delineation Manual rule and replaced it with a rule requiring that identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements.

Rule: WAC 173-22-035, effective 3/14/2011. Guidance: Wetland Delineation Manual guidance.

Review considerations

All SMPs should use language from the new WAC because the state delineation manual rule has been repealed. Consult Ecology's website for wetland delineation manual guidance.

Example language

The following language should be included in the applicable section of the SMP (or the applicable critical areas code if wetland delineation is addressed in a CAO adopted by reference):

> Identification of wetlands and delineation of their boundaries shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements.

2011 b. Geoduck aquaculture

Ecology adopted extensive new rules for new commercial geoduck aquaculture. This rule was adopted with advice from a stakeholder committee consistent with Legislative requirements of RCW 43.21A.681.

Rules: WAC 173-26-020(2); WAC 173-26-241(3)(b), effective 3/14/2011.

Review considerations

If a local government has no saltwater shorelines, no SMP amendments are needed.

If a local government has saltwater shorelines, aquaculture regulations should be reviewed for consistency with the geoduck rules. Consult Ecology regional planner for recommendations.

Review for the following elements:

Review the **definition** of "aquaculture," to clarify it does not include wild geoduck harvest.

Review **siting considerations** to ensure commercial geoduck aquaculture is only allowed where sediments, topography, land and water access support geoduck aquaculture operations without significant clearing or grading.

Review **permit requirements**:

- Ensure that planting, growing, and harvesting of farm-raised geoducks requires a substantial development permit if a specific project or practice causes substantial interference with normal public use of the surface waters, but not otherwise. (The source of this provision was Attorney General Opinion 2007 No. 1.) This provision clarifies that even though new geoduck operations require a CUP, in some cases they may also need an SDP but only if the project causes substantial interference with public access or passage.
- Ensure that local permit process provides public notice to all property owners within 300 feet of the proposed project boundary, and notice to tribes with usual and accustomed fishing rights to the area.
- The SMP should minimize redundancy between federal, state and local commercial geoduck aquaculture permit application requirements. Measures to consider include accepting documentation that has been submitted to other permitting agencies, and using permit applications that mirror federal or state permit applications (such as the JARPA form). Permit application requirements should be reviewed to ensure they include the following:
    - A narrative description and timeline for all anticipated geoduck planting and harvesting activities,

  - A baseline ecological survey of the proposed site to allow consideration of the ecological effects,
  - Measures to achieve no net loss of ecological functions consistent with the mitigation sequence described in Ecology rules [WAC- 173-26-201 (2)(e)], and
  - A description of management practices that address impacts from mooring, parking, noise, lights, litter, and other activities associated with geoduck planting and harvesting operations.
- Ensure new geoduck aquaculture projects require a Conditional Use Permit (CUP). However, local governments have discretion to determine whether to require a CUP for projects that convert existing non-geoduck aquaculture to geoduck aquaculture. Review for the following:
  - Subsequent cycles of planting and harvest shall not require a new CUP.
  - Applicants may submit a single CUP for multiple sites within an inlet, bay or other defined feature, as long as all sites are under control of the same applicant and within the same local government jurisdiction.
  - Review permit requirements to ensure the SMP allows work during low tides. SMP have discretion to require limits and conditions to reduce impacts, such as noise and lighting, to adjacent existing uses.
  - Local governments should establish monitoring and reporting requirements necessary to verify that geoduck aquaculture operations are in compliance with shoreline limits and conditions set forth in CUPs and to support cumulative impacts analysis.
    - Conditional use permits should be reviewed using the best scientific and technical information available.
    - Review requirements to apply best management practices to accomplish the intent of limits and conditions.
    - Local governments should review the detailed considerations found in WAC 173-26-241(3)(b)(iv)(L)(I)-(XII).

2011 c. Floating homes

The Legislature declared floating homes permitted or legally established prior to January 1, 2011, must be classified as a "conforming preferred use." SMPs may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable. The law includes a definition of “floating homes.” This bill responded to concerns raised by the Seattle floating home community regarding preservation of historic floating homes.

Bill: SHB 1783, effective 7/22/2011. RCW 90.58.270(5 and 6). Rules: Definition: WAC 173-26-030(3)(d)(17); Use regulation: WAC 173-26-241(3)(j).

Review considerations

Local governments without floating homes need not amend their SMP to address this statute.

Jurisdictions with floating homes must include a definition consistent with the statute, and a policy or regulation that clarifies the legal status of floating homes. In addition, regulations that address floating homes should be reviewed to ensure the SMP only imposes reasonable conditions and mitigation that

will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

Example language

The example definition can be included in the definition section or in the Residential Use section with the example policy statement. Note that SMPs should already include a prohibition on establishment of new overwater residences, as the Legislative amendments did not change this long-standing policy. Additional policies or general development standards specific to floating homes can be added if existing floating homes will be managed by a local SMP.

> (XX) "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.
>
> (XXI) New over-water residences are not a preferred use and should be prohibited.
>
> (XXII) A floating home permitted or legally established prior to January 1, 2011 is considered a conforming preferred use. "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable. Floating homes should be accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

2011 d. Option to classify existing structures as conforming

The Legislature created a new option: SMPs amended after September 1, 2011 may classify legally established residential structures as conforming, even if they do not meet updated standards for setbacks, buffers, or yards; area; bulk; height; or density. Redevelopment, expansion and replacement is allowed, so long as it is consistent with the local SMP and No Net Loss requirements. Appurtenant structures are included; bulkheads and other shoreline modifications and over-water structures are excluded.

Bill: SSB 5451, effective 7/22/2011. RCW 90.58.620. Rule: WAC 173-26-241(3)(j).

Review considerations

This law is optional. It is one way local government can address existing development. Local governments may also address existing structures by clarifying the existing rights and allowances for nonconforming use and development without changing the legal status.

2010

2010 a. Growth Management Act – Shoreline Management Act clarifications

Both the GMA and SMA were amended to resolve differing and occasionally contrary legal interpretations that had been issued at that time regarding the relationship between the laws.

The law included a number of provisions that clarified the applicability of SMA provisions during the interim period before Ecology approved a comprehensively updated SMP that are no longer applicable. For example, RCW 36.70A.480 clarifies that critical area regulations adopted under GMA apply within shorelines until Ecology approves a comprehensive SMP update. It also created special GMA provisions for existing "grandfathered" uses in the shoreline. The amendments clarified that critical areas in shorelines must be regulated to "assure no net loss of shoreline ecological function" as provided in Ecology's SMP Guidelines rules. This provision applies to Ecology's test for review of SMP amendments. The Legislature also amended the effective date for SMP amendments. The effective date is fourteen days from the date of Ecology's written notice of final action to the local government stating Ecology has approved or rejected the proposed SMP.

Bill: EHB 1653, effective 3/18/2010. Laws: RCW 90.58.610; RCW 36.70A.480. Rule: WAC 173-26-221(2)(a).

Review considerations

The statutory amendments were effective immediately upon adoption independent of local SMPs. Jurisdictions with comprehensive SMP updates that were adopted before this law went into effect may consider reviewing how their SMP address critical areas. Key considerations include clarifying what critical area provisions are adopted by reference and whether or not exclusions apply. Contact Ecology's regional planner for assistance.

If an SMP describes the "effective date" of SMP amendments, it should be revised to clarify SMPs are effective 14 days from Ecology's written notice of final action.

2009

2009 a. Shoreline restoration projects within a UGA

The Legislature created new "relief" procedures for instances in which a shoreline restoration project within an Urban Growth Area creates a shift in Ordinary High Water Mark, and this shift creates a hardship for properties subject to new or extra regulation. The Legislature was responding to concerns that SMP regulations on the Duwamish River in Seattle and other urban rivers have in some cases stopped habitat restoration projects or resulted in a redesign that reduced the restoration benefits.

In most locations, the land area where shoreline regulations apply is measured 200 feet landward from the Ordinary High Water Mark. The new law could be applied in cases where a habitat restoration projects changes the location of the ordinary high water mark and therefore shifts the 200-foot area where shoreline regulations apply. Property owners may request relief from shoreline regulations

triggered by a restoration project, if the regulations would "preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent."

Applications for relief are filed with the local government as part of a required permit such as a shoreline permit (or a building permit if no shoreline permit is required). The request must meet the criteria outlined in the Act. After local approval, the request is submitted to Ecology for review and approval. A 20-day public notice period is required prior to Ecology's decision, unless the relief issue is already addressed in an SMP. Ecology must act within 30 days of the close of the public notice period or within 30 days of receipt of the proposal if public notice is not required.

Bill: HB 2199, effective 7/26/2009. RCW 90.58.580. Rule: WAC 173-27-215

Review considerations

Local governments may want to include this option in local SMPs – though the process may be used even if the provision is not in the SMP.

Example language

Option 1. Adopt Ecology rule by reference. If a local government elects to incorporate Ecology's rule by reference, a simple reference to the rules could be inserted into an applicable section of SMP code. For example:

> (X) The [COUNTY/CITY] may grant relief from shoreline master program development standards and use regulations resulting from shoreline restoration projects within urban growth areas consistent with criteria and procedures in WAC 173-27-215.

Option 2. Incorporate Ecology's rule into an SMP. A more elaborate option is to incorporate the rule provisions into their SMP. For example:

> (X) Shoreline restoration projects—relief from shoreline master program development standards and use regulations.
>
> (1) Purpose of section. This section incorporates statutory direction from RCW 90.58.580. In adopting RCW 90.58.580, the legislature found that restoration of degraded shoreline conditions is important to the ecological function of our waters. However, restoration projects that shift the location of the shoreline can inadvertently create hardships for property owners, particularly in urban areas. Hardship may occur when a shoreline restoration project shifts Shoreline Management Act regulations into areas that had not previously been regulated under the act or shifts the location of required shoreline buffers. The intent of this section is to provide relief to property owners in such cases, while protecting the viability of shoreline restoration projects.
>
> (2) Conditions and criteria for providing relief. The [COUNTY/CITY] may grant relief from shoreline master program development standards and use regulations within urban growth areas when the following apply:

(a) A shoreline restoration project causes or would cause a landward shift in the ordinary high water mark, resulting in the following:

(i) Land that had not been regulated under this chapter prior to construction of the restoration project is brought under shoreline jurisdiction; or

(ii) Additional regulatory requirements apply due to a landward shift in required shoreline buffers or other regulations of the applicable shoreline master program; and

(iii) Application of shoreline master program regulations would preclude or interfere with use of the property permitted by local development regulations, thus presenting a hardship to the project proponent;

(b) The proposed relief meets the following criteria:

(i) The proposed relief is the minimum necessary to relieve the hardship;

(ii) After granting the proposed relief, there is net environmental benefit from the restoration project;

(iii) Granting the proposed relief is consistent with the objectives of the shoreline restoration project and consistent with the shoreline master program; and

(iv) Where a shoreline restoration project is created as mitigation to obtain a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and

(c) The application for relief must be submitted to the department of Ecology for written approval or disapproval. This review must occur during Ecology's normal review of a shoreline substantial development permit, conditional use permit, or variance. If no such permit is required, then Ecology shall conduct its review when [COUNTY/CITY] provides a copy of a complete application and all supporting information necessary to conduct the review.

(i) Except as otherwise provided in subsection (3) of this section, Ecology shall provide at least twenty days notice to parties that have indicated interest to Ecology in reviewing applications for relief under this section, and post the notice on its web site.

(ii) Ecology shall act within thirty calendar days of the close of the public notice period, or within thirty days of receipt of the proposal from [COUNTY/CITY] if additional public notice is not required.

(3) The public notice requirements of subsection (2)(c) of this section do not apply if the relevant shoreline restoration project was included in the [COUNTY/CITY] shoreline master program, provided:

(a) The restoration plan has been approved by Ecology under applicable shoreline master program guidelines;

(b) The shoreline restoration project is specifically identified in the shoreline master program or restoration plan or is located along a shoreline reach identified in the shoreline master program or restoration plan as appropriate for granting relief from shoreline regulations; and

(c) The shoreline master program or restoration plan includes policies addressing the nature of the relief and why, when, and how it would be applied.

(4) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high water mark.

(5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise.

(6) For the purposes of this subsection, "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.

2009 b. Wetland mitigation banks

Pursuant to RCW 90.84, Ecology adopted a rule for certifying wetland mitigation banks. The purpose of the rules is to encourage banking by providing an efficient, predictable statewide framework for the certification and operation of environmentally sound banks. The goal of the rule is to (a) Provide timely review of bank proposals; (b) Establish coordination among state, local, tribal, and federal agencies involved in the certification of banks; (c) Ensure consistency with existing federal mitigation rules; and (d) Provide incentives to encourage bank sponsors (sponsors) to locate and design banks that provide the greatest ecological benefits.

The extensive rule includes an overview section, outlines the certification process, describes how to establish and operate banks and use bank credits, establishes certification compliance requirements, describes the roles of the parties involved in a bank, and establishes an appeals process.

Law: RCW 90.84. Rule: WAC 173-700, effective 10/4/2009, WAC 173-26-221(2)(c)(i)(F). Guidance: Ecology webpage on wetland mitigation banks.

Review considerations

Ecology recommends local governments include SMP provision authorizing use of mitigation banks.

Example language

It is not necessary to adopt the contents of the state rule into SMPs. If mitigation banking in not already allowed in a CAO adopted by reference, a simple statement could be incorporated into applicable SMP section addressing wetlands compensatory mitigation:

(x) Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

2009 c. Moratoria authority

This law adds moratoria authority and procedures to the SMA, including a maximum duration of 18 months at the local level, plus a six-month review period at Ecology for a local Shoreline Master Program amendment that is subject to a moratorium.

Review considerations

The moratoria procedures may be included in an SMP but it is not necessary – local governments can simply rely on the statute or adopt these provisions into other ordinances. Or local governments may incorporate statutory requirements into the SMP or other development regulations if desired, as long as they are consistent with the statute.

Bill: HB 1379, effective 7/26/2009. Law: RCW 90.58.590. Rule: WAC 173-27-085

Example language

If a local government elects to address moratoria authority, the following incorporates RCW 90.58.590:

> **(X) Moratoria authority and requirements**
>
> (1) [COUNTY/CITY] has authority to adopting a moratorium control or other interim control on development under RCW 90.58.590.
>
> (2) Before adopting the moratorium must:
>
> (i) Hold a public hearing on the moratorium or control;
>
> (ii) Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the desired and likely outcomes;
>
> (iii) Notify the department of Ecology of the moratorium or control immediately after its adoption. The notification must specify the time, place, and date of any public hearing.
>
> (b) The public hearing must be held within sixty days of the adoption of the moratorium or control.
>
> (3) A moratorium or control adopted under this section may be effective for up to six months if a detailed work plan for remedying the issues and circumstances necessitating the moratorium or control is developed and made available for public review.
>
> (4) A moratorium or control may be renewed for one or more six-month period if [COUNTY/CITY] complies with the requirements in subsection (2) above before each renewal.

2007

2007 a. Options for defining floodway

The Legislature clarified options for defining "floodway" as either the area that has been established in Federal Emergency Management Agency maps, or the floodway criteria set in the SMA. The “SMA floodway” described in the SMA is essentially a biological definition, unlike the FEMA floodway which is derived from a model.

Bill: HB 1413, effective 7/22/2007. Law: RCW 90.58.030.

Review considerations

Local governments should review their definition of “floodway” for consistency with the two options under this statute.

Example language

Option 1. If a local government elects to use FEMA maps to define the floodway, Ecology recommends the SMP include the following definition:

> "Floodway" means the area that has been established in effective federal emergency management agency flood insurance rate maps or floodway maps. The floodway does not include lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

The word “established” in this suggested definition is consistent with the SMA definition and “effective” indicates that the map is FEMA’s approved FIRM – not a preliminary or draft map – and also takes into account potential future changes to the maps. Reference to a specific dated version of the FIRM is not required.

Option 2. If the SMA floodway is used, the definition in the SMP should be consistent with RCW 90.58.030(2)(b)(ii).

> The SMA floodway “…consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.”

2007 b. List and map of streams and lakes

These rule amendments clarify that comprehensively updated SMPs shall include a list and map of streams and lakes that are in shoreline jurisdiction. *(The SMP list and map will then supersede the list in Ecology rules).* The amendments also clarify that if a stream segment or lake is subsequently discovered to meet the SMA criteria, the SMP shall be amended within three years of the discovery.

Rules: WACs 173-18-044; 173-18-046; 173-20-044; 173-20-046; and 173-22-050, effective 2/2/2007

Review considerations

If a jurisdiction has identified any new streams or lakes since the comprehensive update, the lists and maps should be updated.

2007 c. Fish habitat enhancement projects

Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include fish habitat enhancement projects that conform to the provisions of RCW 77.55.181.

Review considerations

This SMA amendment applied on its effective date, regardless of whether the exemption is specifically listed in the SMP.

For SMPs that simply cite the RCW list of exemptions, no change is needed. For SMPs that list the exemptions in detail, review to ensure fish habitat enhancement projects are include.

Rule: WAC 173-27-040(2)(p), effective 2/2/2007.

Example language

SMPs can include the lengthy exemption language directly from WAC 173-27-040, or may include a simple reference to the relevant Ecology WAC and WDFW statute. For example:

> (x) Consistent with WAC 173-27-040, a public or private project designed to improve fish or wildlife habitat or fish passage, that conforms to the provisions of RCW 77.55.181

Other review elements

In addition to ensuring consistency with changes to state laws and rules, local governments will review changes to their comprehensive plan or development regulations since their last SMP amendment and revise the SMP for internal consistency, where necessary. For example, consider zoning code amendments, annexations of shoreline areas, and amendments to critical area regulations.

Local governments should also incorporate changes deemed necessary to address changing local circumstances, new information or improved data. This is an intentionally broad review category and circumstances will vary widely. For example, an issue that might trigger a close review is a levee setback project or natural channel migration that brought significant new areas into shoreline jurisdiction.

Local governments may also review implementation challenges that have arisen since the comprehensive SMP update. Consider insights learned from permit review that could improve the efficiency or effectiveness of the SMP. Consider reviewing Administrative Interpretations that have been issued as a potential source of ideas to clarify the SMP.

The table below is one simple option for documenting these kinds of revisions. This table is likely too simplistic for more complex amendments. This table may be revised and modified as needed, or local governments may present information in whatever format makes sense. See WAC 173-26-090(3)(b)(i).

SMP section	Summary of change	Review	Action

Example checklist

The following is an example checklist for a hypothetical City that comprehensively updated its SMP in 2015. This example illustrates how a checklist might look after final review and action at the end of the review process.

Review: The Review column is used at the beginning of the review process to document how the item applies to the city's SMP to determine if local amendments are needed to maintain compliance. In some cases the review may be iterative, if a review is extensive. This example checklist illustrates how the review column might be written at the end of the review process to capture the final city finding and recommendation for action.

Action: The Action column documents the City's final action, indicating a citation to where the SMP code addresses applicable amended laws, or indicates where no action is needed.

Row	*Summary of change*	*Review*	*Action*
2017			
a.	OFM adjusted the **cost threshold for substantial development** to $7,047.	2015 SMP includes reference to previous $6,416 cost threshold.	X.2.14: definition of Substantial Development amending SDP cost threshold to new inflation-adjusted amount of $7,047 *NOTE:* City website and permit application forms were revised with new cost thresholds.
b.	Ecology permit rules clarified the **definition of "development"** does not include dismantling or removing structures.	2015 SMP does not clarify that removing structures does not constitute "development." This issue has come up at the counter frequently enough that staff recommend adding this optional clarification to the SMP.	X.2.10: amended definition of development to include Ecology example code.
c.	Ecology adopted rules clarifying **exceptions to local review under the SMA.**	Ecology's revised rule addressing exceptions incorporated a 2015 Legislative statutory exceptions for WSDOT projects that went into effect after the 2015 SMP was approved. Other statutory exceptions in WAC 173-27-044 and WAC 173-27-045 were in the SMP but included among the list of permit-exemptions.	X.2.15: statutory exceptions moved from list of permit exemptions to new section. X.2.17: Created new section consolidating all exceptions into new section based on Ecology example code.

Row	Summary of change	Review	Action
d.	Ecology amended rules clarifying **permit filing procedures** consistent with a 2011 statute.	2015 SMP describes filing procedures for permit by stating "permits shall be filed with Department of Ecology pursuant to WAC 173-27-130." Ecology amendments apply to the city, but no local amendments are needed.	N/A. Note: Administrator amended the *SMP Staff Manual* to clarify concurrent filing of SDPs, CUPs and Variances.
e.	Ecology amended **forestry use regulations** to clarify that forest practices that only involves timber cutting are not SMA "developments" and do not require SDPs.	Not applicable. No commercial forestry in City.	N/A
f.	Ecology clarified the SMA does not apply to lands under **exclusive federal jurisdiction**	Not applicable. No lands with exclusive federal jurisdiction in city limits	N/A
g.	Ecology clarified "default" provisions for **nonconforming uses and development**.	2015 SMP includes tailored nonconforming use and development provisions.	No amendments needed. City will retain existing nonconforming use and development provisions.
h.	Ecology adopted rule amendments to clarify the scope and process for conducting **periodic reviews**.	2015 SMP already referenced statutory obligation to conduct reviews under RCW 90.58.080. City may follow Ecology procedures for conducing reviews without amending the SMP.	No amendments needed.
i.	Ecology adopted a new rule creating an **optional SMP amendment process** that allows for a shared local/state public comment period.	2015 SMP does not address the details of the SMP amendment process. Staff identified minor amendment to Land Use Code ZZ.24.10 defining the local amendment process to include reference to joint notice process for SMP amendments.	No amendment to SMP needed. Minor amendment to Land Use Code ZZ.24.10 added to the docket for amendments in 2019 to ensure the process for shared local/state comment period on SMPs is clear.
j.	**Submittal** to Ecology of proposed SMP amendments.	2015 SMP does not address the details of the SMP submittal process, relies on state rule.	No amendments to SMP needed. NOTE: Staff updated internal procedures manual to clarify SMP amendments are sent via email attachment rather than 2 paper copies.

Row	Summary of change	Review	Action
2016			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structure to comply with the **Americans with Disabilities Act**.	2015 SMP does not include new permit exemption for retrofits to comply with ADA	X.2.15: new permit exemption added consistent with Ecology example code. NOTE: City website and permit application forms were revised with new cost thresholds.
b.	Ecology updated **wetlands critical areas guidance** including implementation guidance for the 2014 wetlands rating system.	City's 2017 Critical Areas Ordinance amended by Ord. 17-012 incorporated Ecology's new rating system and other clarifications. City had incorporated Ecology recommendations on wetlands (Ecology comment letter of July 12, 2017).	X.5.23: Updated date of Critical Areas Code adopted by reference
2015			
a.	The Legislature adopted a **90-day target** for local review of Washington State Department of Transportation (WSDOT) projects.	2015 SMP was adopted prior to effective date of 2015 legislation.	X.3.14: adopted Ecology example code incorporating direction to conduct review consistent with legislative targets.
2014			
a.	The Legislature raised the cost threshold for requiring a Substantial Development Permit (SDP) for **replacement docks on lakes and rivers** to $20,000 (from $10,000).	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
b.	The Legislature created a new definition and policy for **floating on-water residences** legally established before 7/1/2014.	The city includes no floating on-water residences.	N/A
2012			
a.	The Legislature amended the SMA to clarify **SMP appeal procedures**.	SMP does not clarify SMP appeal process. City will rely on state laws and rules.	N/A

Row	Summary of change	Review	Action
2011			
a.	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved **federal wetland delineation manual**.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
b.	Ecology adopted rules for new commercial **geoduck aquaculture**.	No marine shorelines in city.	N/A
c.	The Legislature created a new definition and policy for **floating homes** permitted or legally established prior to January 1, 2011.	No floating homes in city.	N/A
d.	The Legislature authorizing a new **option to classify existing structures as conforming**.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
2010			
a.	The Legislature adopted **Growth Management Act – Shoreline Management Act clarifications**.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
2009			
a.	The Legislature created new "relief" procedures for instances in which a **shoreline restoration project within a UGA** creates a shift in Ordinary High Water Mark.	City had not incorporated this new statutory option in the 2015 SMP. An applicant had requested use of this process in 2017, and new staff were not aware of the provision. It is not necessary to include these into the SMP but including it will help ensure the option is better understood.	X. 17.3.7: SMP amended to include Ecology example code.
b.	Ecology adopted a rule for certifying **wetland mitigation banks**.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
c.	The Legislature added **moratoria authority** and procedures to the SMA.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update

Row	Summary of change	Review	Action
2007			
a.	The Legislature clarified **options for defining "floodway"** as either the area that has been established in FEMA maps, or the floodway criteria set in the SMA.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
b.	Ecology amended rules to clarify that comprehensively updated SMPs shall include a **list and map of streams and lakes** that are in shoreline jurisdiction.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update
c.	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include **fish habitat enhancement projects** that conform to the provisions of RCW 77.55.181.	Incorporated into 2015 SMP.	N/A. Addressed during comprehensive update