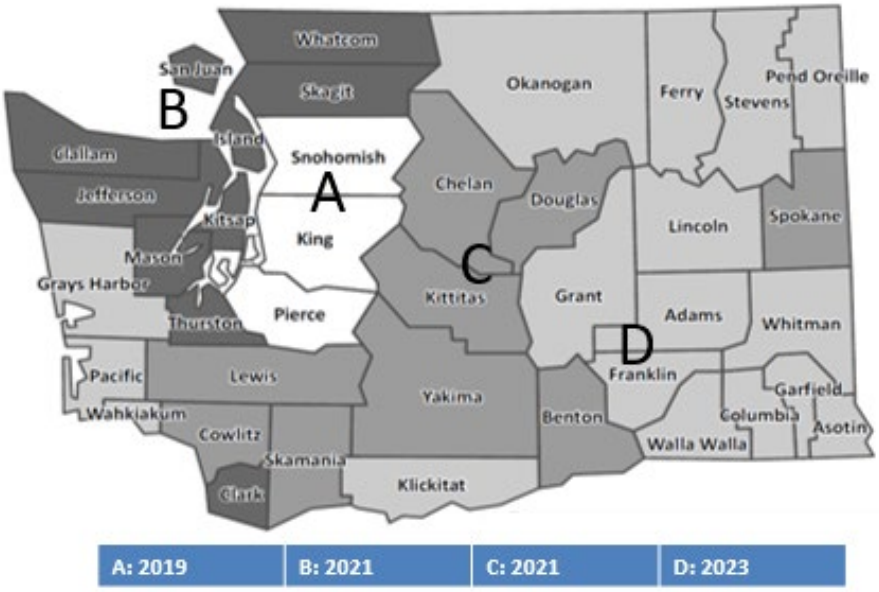
Periodic Review Checklist Guidance: 2021 version

Contents

Introduction

The Shoreline Management Act (SMA) requires each town, city, and county to review, and, if necessary, revise their Shoreline Master Program (SMP) every eight years following a staggered schedule that alternates with similar reviews under the Growth Management Act (GMA). [1] This is referred to as the periodic review.

The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans. (WAC 173-26-090[2][d][iii])



Deadlines for SMA periodic reviews from 2019-2023. The deadlines shown reflect modifications to the statutory scheduled based on availability of funds (per RCW 90.58.080(6).

Periodic Review process

Ecology rules clarify that local legislative action is required to complete this periodic review, even when a local government determines that no changes are needed. [2] Just like GMA reviews, the review is a formal public process that starts with public scoping and concludes with elected officials taking formal action after a public hearing.

[1] RCW 90.58.080(4)
[2] WAC 173-26-090

1. REVIEW

This review will include filling out this checklist, intended to provide a single place for local governments to explain and document their periodic review.

The checklist includes a place to document: (1) the local governments responses to Ecology's annual list of legislative and rule amedments; (2) the local governments review of changes to relevant comprehensive plans and regulations to determine if they remain consistent with the SMP; and (3) the local governments consideration of new information, improved data, or changed local circumstances, thereby meeting all the requirements of WAC 173-26-090(3)(b).

Local governments use the checklist to review whether any changes to their SMP are necessary or otherwise prosed at the time of initial periodic review scoping, in order to determine whether to propose amendments within the public comment period draft, and as a required component of the submittal to Ecology of final action on the SMP periodic review.

2. REVISE, if necessary

If they determine amendments are needed, the local government revises the SMP through the normal local public process, and conclude with legislative action to adopt amendments and go through the normal Ecology approval process[3]. Ecology is required to review all SMP amendments to ensure consistency with the SMA[4] and guidelines[5]. In order to approve a SMP periodic review with proposed amendment, Ecology must conclude that the proposed amendment satisfies the criteria found in WAC 173-26-201(1)(c). This includes the conclusion that the SMP amendment:

- will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i);
- is consistent with all applicable policies and standards of the SMA (WAC 173-26-201(1)(c)(ii);
- all procedural rule requirements for public noticing and consultation have been satisfied WAC 173-26-201(1)(c)(iii); and
- will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv)).

The Checklist and SMP submittal worksheet can be used to document the proposed amendment meets all the above criteria.

There may be circumstances where after conducting a public review, a jurisdiction finds no amendments are needed. For example:

- The new laws and rules may not apply to their circumstances.
- Or perhaps they have kept the SMP up-to-date through earlier amendments

[3] WAC 173-26-110 and WAC 173-26-120
[4] RCW 90.58
[5] WAC 173-26 and WAC 173-27

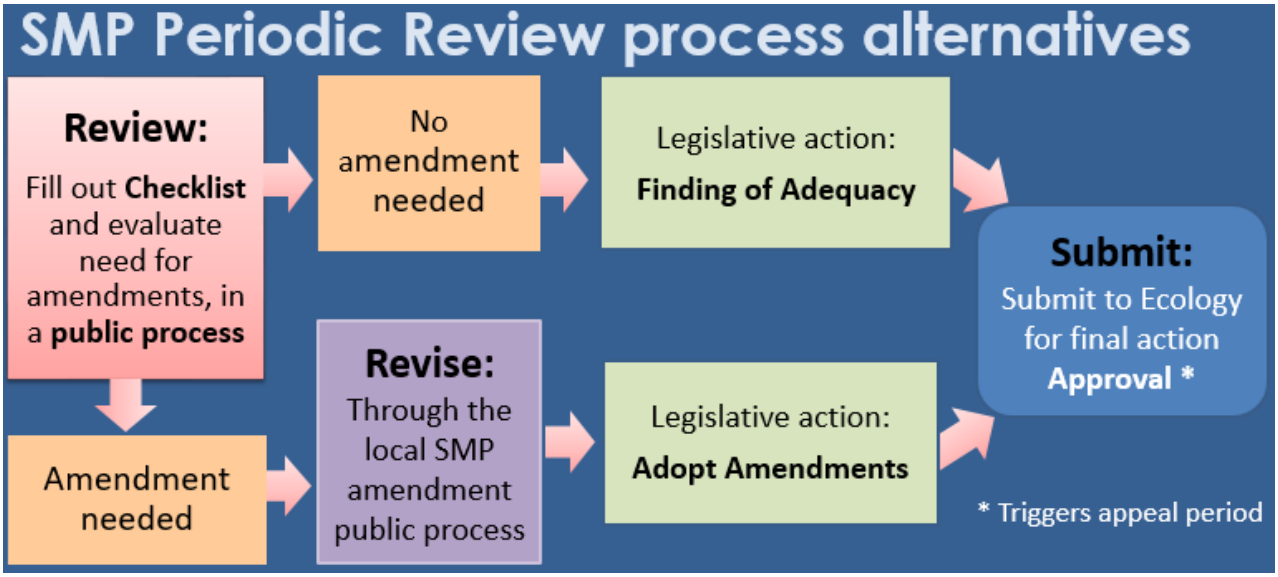
In these cases, the rule asks the local government to adopt a "Finding of Adequacy" by resolution, motion, or ordinance that Ecology would then review and approve[6]. Ecology must affirm even where there is no action. Because Ecology is co-owner of the SMP and Ecology approval is what triggers an appeal period. If someone thinks the local government should have taken action, Ecology is on the hook together with the local government to defend that the SMP actually did not need to be amended.

Ecology reviews findings of adequacy solely for consistency with RCW 90.58.080(4) and WAC 173-26-090. The Checklist and SMP submittal worksheet can be used to document the proposed findings of adequacy are sufficient to meet all the above minimum requirements.

3. ACTION

The periodic review must be accomplished through legislative action concluding with the adoption of an ordinance or in some cases a motion or resolution.

This process must include at least one public hearing and conclude with findings that a review and evaluation occurred and identifying with justification the revisions made or that a revision was not needed. (WAC 173-26-090(2)(c).



The periodic review must conclude with formal legislative action by elected officials, and formal approval by Ecology. The checklist is a key document used to document local consideration of amendments.

This review, revision, and action steps will be completed as part of the local planning process and must be completed consistent with either the standard review process (WAC 173-26-100) or the optional joint review process (WAC 173-26-104) prior to final submittal of the periodic review to Ecology[7].

Final submittal to Ecology is necessary to begin the state review process which affirmatively concludes the periodic review process by confirming the state review of the local action has occurred and by establishing a definitive appeal window.

[6] WAC 173-26-090(2)(c)(i) and WAC 173-26-090(3)(c)(iv)
[7] WAC 173-26-110 or Findings of Adequacy submittal requirements found in WAC 173-26-090(3)(d)(ii)

How to use the checklist

Ecology rules describe minimum process steps in conducting a periodic review and submitting the review for formal Ecology approval. Ecology's regional shoreline planners can provide technical assistance throughout the process. The example checklist at the end of this guidance document will help demonstrate the level of detail to include.

The table below highlights how the checklist is used throughout the periodic review process with references to relevant rules adopoted under Washington Administrative Code (WAC).

Process step	WAC	How the Checklist fits into the periodic review process
Participation plan	173-26-090 (3)(a)	The participation plan includes an obligation to identify when the public will have an opportunity to comment on the scope of the review and proposed changes, as well as when formal action will be taken. A preliminary checklist will help inform the public's understanding of the scope of review.
Review amendments to the SMA and SMP rules	173-26-090(3)(b)(i)	Part One of the checklist identifies all amendments to the SMA and Ecology rules, organized by year. The format for this part of the checklist should not be amended. Filling out the checklist at the beginning of the periodic review helps local government identify where changes may trigger SMP amendments, and helps the public understand the scope of required changes. At the end of the SMP review the checklist will demonstrate where are changes are located and how they address state requirements.
Review comprehensive plans and regulations, and additional review and analysis	173-26-090(3)(b)(ii) and (iii)	Part Two of the checklist is a flexible, open ended table. In contrast with Part One, this part should be tailored to reflect each county, city or town's situation. The format will vary depending on the kinds and extent of changes to other local plans and regulations, and the specific changed circumstances, new information or improved data that warrant amendments. This document includes examples of options for presenting information.
Take legislative action following public notice and hearing	173-26-090(3)(c)	At the end of the review process, counties and cities must take legislative action declaring the review process complete. When the local government provides notice of the hearing for final legislative action the checklist will be a useful document to help explain proposed changes to the public.
Submit adopted amendments to Ecology	173-26-090(3)(d)(i) & WAC 173-26-110(9)	Regardless of whether a local government uses the "standard" review process[8] or the Joint State/Local Review process[9], the checklist will be included as part of the final submittal to Ecology
Where applicable, submit Finding of Adequacy to Ecology	173-26-090(3)(d)(ii)(D)	Jursdictions that conduct a review may conclude their SMP meets all current laws and rules, and no local circumstances that trigger amendments. These jurisdictions will adopt a "Finding of Adequacy" for Ecology approval. The checklist is used to demonstrate why no changes are needed.

[8] WAC 73-26-100
[9] WAC 173-26-104

Checklist

Ecology rules require local governments to use an Ecology checklist to inform these reviews. **This guidance document explains how to fill out the checklist.**

The checklist has two parts:

Part One identifies amendments to state law, rules and applicable updated guidance adopted between 2007 and 2021 that may trigger the need for local SMP amendments during periodic reviews. Part One is used to demonstate compliance with WAC 173-26-090(2)(d)(i)(A).

This guidance explains each checklist item, provides review considerations, and example language. The checklist and this document are reviewed annually to incorporate new relevant statutes, rules and guidance documents as needed.

Part Two is used to document how each local government has reviewed their SMP to ensure it is consistent with changes to the local comprehensive plans or development regulations, and to address changes in local circumstances, new information or improved data. The checklist includes a simple blank table that is intended to be modified by each local government based on the extent of their local review.

Part One: State laws, rules and guidance review

Part One of the checklist is used to ensure consistency with changes to state laws and rules and applicable guidance. The format for this part of the checklist should not be amended. The checklist includes changes to statutes and rules starting in 2007. Ecology recommends filling out the entire checklist for completeness. Some of the items on the list are legislatively created options that a jurisdiction may choose to take that were not previously included in the comprehensive update.

For each item on the checklist, this guidance starts with a description of the law and links to to the bill and the relevant statute. Each item also includes "review considerations" to help identify if changes to a given local SMP are needed. Some items include example language or optional approaches that can be incorporated into local codes.

2021

2021a. Floating on-water residences

In 2021 the Legislature modified the definition of Floating On-Water Residences (FOWRs) and added requirements specific to expansions. *[The bill was originally adopted in 2020 but was vetoed by the Governor along with other bills due to fiscal concerns related to the COVID-19 pandemic. The Legislature overrode the Governor's veto in 2021.]*

The 2021 law amended the definition to include the term "vessel." It clarified that a Substantial Development Permit is required when replacing or remodeling a floating on-water residence if the size of the existing residence is materially exceeded. The law also requires all replacement FOWRs and remodels which add 120 square feet or more to the living space to include on-board gray-water containment or a waste-water connection that disposes of the gray water to a waste-water disposal system.

The 2021 law modifies a law first created in 2014 in response to concerns raised in Seattle regarding preservation of the existing floating home community. The original 2014 legislation said FOWRs that meet the 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.

(Note that FOWRs are distinct from "floating homes" described under Item 2011c .)

Bills: ESSB 6027, effective 7/25/2021; ESSB 6450 effective 6/12/2014. Law: RCW 90.58.270.

Review considerations

If a jurisdiction has no existing FOWRs, no amendments are needed. Note there are only a handful of local governnments with FOWRs in their jurisdiction.

If a jurisdiction has existing FOWRs, the SMP should include a reference to the statute, or a definition consistent with the statute as revised in 2021, and a policy or regulation that clarifies the legal status of

FOWRs. Local governments may apply reasonable SMP regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing FOWRs and their moorages by rendering these actions impracticable. The regulations must require that if a FOWR is replaced, or remodeled with an additional 120 square feet of living space, it include on-board gray-water containment or a waste-water connection that disposes of the gray water to a waste-water disposal system.

Example language

Below is an example of how an SMP could incorporate the new statute in the context of the existing prohibition on new floating homes. Note the definition could be located in either the Definition Section or the Residential Use Section. This example language incorporates the 2021 and 2014 legislative amendments.

> (XX) "Floating on-water residence" means a vessel or 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. All replacements, and remodels which add one hundred twenty square feet or more to the living space, must require on-board gray-water containment or a waste-water connection that disposes of the gray water to a waste-water disposal system.
>
> (XX) A substantial development permit is not required when replacing or remodeling a floating on-water residence if the size of the existing residence is not materially exceeded. A substantial development permit is required if the replacement or remodel of a floating on-water residence materially exceeds the size of the existing residence.

2021b. Fish passage project permit streamlining

The Legislature amended the SMA to clarify an existing exemption from shoreline permitting for fish passage projects. This amendment was part of a bill that also amended Washington Department of Fish and Wildlife's fish habitat enhancement law (RCW 77.55.181) to clarify that Department of Transportation culvert removal projects, even the portions of a larger road project, are eligible for expedited review. The bill also clarifies that projects that benefit from expedited review are still obligated to meet any requirements of the National Flood Insurance Program.

The changes to the SMA catches up with recent changes to WDFWs law, which now delegates approval for forest practices hydraulic projects to the Department of Natural Resources. It also clarifies that

public projects for the primary purpose of fish passage improvement or fish passage barrier removal do not need to obtain Substantial Development Permits.

Bill: SSB 5381, effective 7/25/2021. Law: RCW 90.58.147.

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 to the statute list of exemptions, no change is needed. For SMPs that list the exemptions in detail, review to ensure fish habitat enhancement projects are included.

Example language

SMPs can include the lengthy exemption language directly from statutes, or may include a simple reference to the relevant Ecology statute. For example, in the list of Substantial Development Permit exemptions the SMP could address this as follows:

> (x) projects designed to improve fish or wildlife habitat or fish passage consistent with RCW 90.58.147.

Other legislation or rule amendments:

The 2021 Legislature adopted two other amendments to the SMA that do not trigger the need for local SMP amendments. These are not included as checklist items.

- The Legislature adopted a clarification bill (SHB 1193) titled "affirming the process for disposing of dredged materials for federal navigation channel maintenance and improvement." The bill amends RCW 90.58.355 to affirm that actions taken on the Columbia River by the US Army Corps of Engineers (Corps) to maintain and improve federal navigation channels are exempt from local shoreline review. The bill clarifies a legal question that arose on the Columbia River over whether ports in their role as non-federal sponsors need to obtain shoreline permits on behalf of the Corps when the project takes place on port-owned property. If a navigation project is undertaken by the Corps and is addressed in a federal plan, a port does not need to apply for shoreline permits to authorize the federal action.
- The Legislature amended the Shoreline Management Act and Department of Natural Resources leasing laws (ESSB 5145) to prohibit seabed mining of hard minerals. The minerals described in the law are not currently known to exist in commercial quantities in Washington but should they be discovered, this law will prevent them from being mined. This bill applies to jurisdictions with marine waters. The prohibition applies whether or not it is included in a local SMP. The bill amends an original section of the SMA from 1971 that prohibits surface drilling for oil or gas (RCW 90.58.160).

2019

2019a. Cost thresholds for freshwater docks

In addition to the general Substantial Development Permit (SDP) cost threshold *(see item 2017a below)*, the SMA includes a separate dollar threshold for "construction of a dock on freshwater, including a community dock, designed for pleasure craft only, for the private noncommercial us of the owner, lessee, or contract purchaser of single and multiple family residences."

In 2014 the Legislature raised these cost thresholds, and required the Office of Financial Management (OFM) to adjust the cost threshold for inflation every five years, starting in 2018. OFM adopted the first adjustment to these thresholds effective November 4, 2018. (*Notice of the new thresholds was published in the State Register on October 4, 2018 in WSR 18-21-013.)*

The new thresholds are:

> (I) $**22,500 dollars for docks that are constructed to replace existing docks**, and are of equal or lesser square footage than the existing dock being replaced, *or*
>
> (II) **$11,200 for all other docks constructed in fresh waters**.

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

Review considerations

Local governments are required to apply the new thresholds starting November 4, 2018, regardless of the threshold amount that is included in their SMP.

If an SMP does not include an absolute number but relies on reference to statute *(which includes an indication that the threshold changes based on inflation)* no change to the SMP is required.

If a local SMP includes a specific cost threshold, it should be revised to match the current numbers.

If a city or county has no freshwater systems, this provision does not apply and the checklist should indicate "not applicable."

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-two thousand five hundred dollars ($22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or

(B) Eleven thousand two hundred ($11,200) 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.

ADMINISTRATIVE TIP: *Consider revising 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 make these changes as the change implements a statutory directive.*

Other legislation or rule amendments:

The 2019 Legislature adopted a clarifying amendment to the SMA that does not trigger the need for local SMP amendments. This amendment is not included as a checklist item.

- The Legislature amended the SMA (HB 1480) to clarify a local shoreline permit is not needed for disposal of dredged materials at open water disposal sites approved through the Dredged Material Management Program (DMMP) process. The statutory direction not to apply the SMA for ongoing use of existing DMMP sites applies whether or not a local SMP has been amended. The following counties and cities have open water disposal sites managed by DMMP within their jurisdiction: Clallam, Grays Harbor, Pacific, Pierce, Skagit, and Whatcom Counties, and the cities of Everett, Seattle, and Port Angeles.

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. *(Notice of the new threshold was published in the State Register on August 3, 2017 in WSR 17-17-007.)*

Law: RCW 90.58.030(3)(e).

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 an SMP does not include an absolute number but relies on reference to statute, which includes an indication that the threshold changes based on inflation, no change to the SMP is required.

If a local SMP includes a specific cost threshold, it should be revised to $7,047.

> ***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 make these changes as the change is implementing a statutory directive.*

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 in the 1992 WA State Supreme Court decision in *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

This definition applies whether or not the clarification is added to local SMPs. 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), 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, Ecology recommends local governments maintain a consolidated section in their SMP that addresses these exceptions to ensure consistent implementation.

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.

Example 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 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.

Example 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, or in addition to this general approach, could be to state specifically 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. A primary goal was to improve the structure of the rule to create separate for nonconforming uses, nonconforming structures, and nonconforming lots. 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. Many of the clarifications in this default rule were borrowed from local government innovations 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 and 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.

Other legislation or rule amendments

Ecology's 2017 rule amendments included several other changes that are not related to specific language in local SMPs. There are no corresponding checklist items for these amendments.

- Ecology amended WAC 173-26-090 to clarify the scope and process for conducting periodic reviews of SMPs required by the SMA at RCW 90.58.080(4).
- Ecology adopted WAC 173-26-104 to establish an optional SMP amendment process that allows for a shared local/state public comment period for efficiency. The optional process requires local governments to send a draft to Ecology for an initial determination before final local adoption.
- Ecology amended 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.

- Ecology 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. This included clarification from statute that SMPs are effective 14 days after Ecology's approval letter as adopted by the Legislature as described under 2010a.

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 an 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 *Wetland Guidance for CAO 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);*Wetland Guidance for CAO Updates: Western Washington Version*; *Wetland Guidance for CAO Updates: Eastern Washington Version*;; *Washington State Wetland Rating System for Western Washington: 2014 Update*; *Washington State Wetland Rating System for Eastern Washington: 2014 Update*

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

The 2014 Legislature adopted two amendments to the SMA that have been subsequently revised, and so are found in the more recent checklist items as noted below.

- The Legislature adjusted the cost threshold for requiring a Substantial Development Permit (SDP) for replacement docks on lakes and rivers [SHB 1090, amending RCW 90.58.030(3)(e)]. The fair market value for purposes of an SDP exemption for a dock in fresh water was raised. This amount was subsequently adjusted for inflation by OFM in late 2018. See Item 2019a for review considerations and example language.

- The Legislature created a new definition and policy for "floating on-water residences (FOWRs)," [ESSB 6450, amending RCW 90.58.270.] 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 Item 2021a for review considerations and example language.

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: *Corps of Engineers Wetlands Delineation Manual*

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 resources.

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 is 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 requirement

(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.

Part Two: Local review amendments

In addition to the requirements in Part One to ensure consistency with changes to state laws and rules, the periodic review process includes review of changes specific to each jurisdiction:

- Changes to the **comprehensive plan or development regulations** since the last SMP amendment that trigger a need for revisions to the SMP for internal consistency. For example, this may include zoning code amendments, annexations of shoreline areas, and amendments to critical area regulations. WAC 173-26-191(1)(e) and WAC 173-26-211(3) provide additional guidance on determining internal consistency.
- Changes deemed necessary to address **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. Incorporate changes to clarify the SMP to address issues included within any Administrative Interpretations.

Part two provides the location for documentation of the review, evaluation, and consistency analysis to support proposed changes (amendments) or findings of adequacy (no amendments). Inlcuding consideration of whether the significance of the new information, improved data, and changed local circumstances warrants amendments.

The tables 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)(ii) and (iii).