

7a. Staff Report - Shoreline Master Program Review

Planning Commission Meeting Date: December 6, 2018

Agenda Item: 7a

PLANNING COMMISSION AGENDA ITEM CITY OF SHORELINE, WASHINGTON

AGENDA TITLE: Periodic Review of Shoreline Master Program (SMP)
DEPARTMENT: Planning & Community Development
PRESENTED BY: Miranda Redinger, AICP, Senior Planner
Kate Skone, Associate Planner

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|---|---|--|
| <input type="checkbox"/> Public Hearing | <input checked="" type="checkbox"/> Study Session | <input type="checkbox"/> Recommendation Only |
| <input type="checkbox"/> Discussion | <input type="checkbox"/> Update | <input type="checkbox"/> Other |

INTRODUCTION AND BACKGROUND

As part of its pre-incorporation procedures in 1995, the City adopted by reference Title 25 of the King County Code to serve as its Interim Shoreline Master Program (SMP) (Ordinance No. 23). The City's current SMP was adopted on August 5, 2013 via Ordinance No. 668 and became effective on September 2, 2013. It is contained in Appendix A of the Comprehensive Plan and SMC Title 20, Division II, SMC 20.200 to 20.230.

The City's current SMP is available at the following link:
<http://www.shorelinewa.gov/home/showdocument?id=18579>

In 2003, the Shoreline Management Act (SMA), chapter 90.58 RCW, was amended to require cities to regularly update their SMPs. For the City of Shoreline, RCW 90.58.080(2) requires the City to update its SMP on or before June 30, 2019, and then once every eight years after the date of approval by the Department of Ecology (Ecology). Thus, it is now time to perform a Periodic Review of the current SMP to comply with .080(2).

The purpose of the statutorily-mandated review is to assure that the City's SMP complies with the SMA and its implementing guidelines, WAC 173-26 to 173-27, and to assure consistency of the SMP with the City's comprehensive plan and development regulations adopted under the Growth Management Act (GMA), chapter 36.70A RCW, and other local requirements.

What is the Shoreline Management Act?

Recognizing that shorelines were among the most valuable and fragile of Washington's natural resources, the SMA was passed by Legislature in 1971 and adopted by the public in a 1972 referendum. The SMA acknowledged the demand for a planned,

Approved By: Project Manager 

Planning Director 

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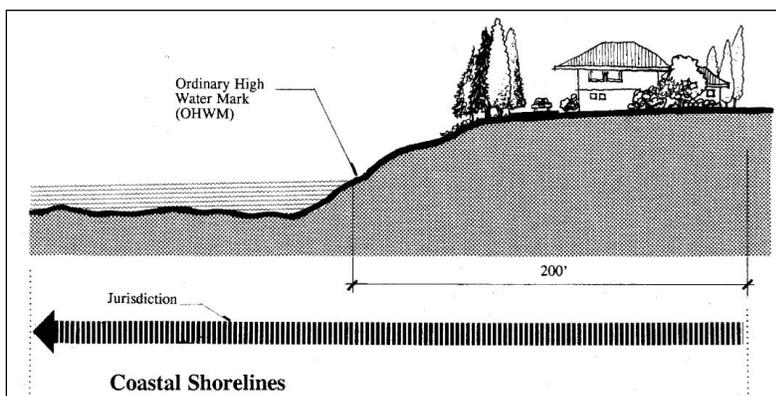
rational, and concerted effort, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines (RCW 90.58.020). However, unlike GMA comprehensive plans and development regulations, a local jurisdiction's SMP is consolidated into the "State Master Program" administered by the Department of Ecology as part of a cooperative program between local government and the State. It is for this reason, unlike the GMA, the City's SMP does not become effective until it has been approved by Ecology. In other words, it is Ecology, not the City of Shoreline, that has final approval authority.

The SMA has three broad policies:

1. **Encourage water-dependent and water-oriented uses:** "[U]ses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shorelines"
2. **Promote public access:** "[T]he public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally."
3. **Protect shoreline natural resources,** including "...the land and its vegetation and wildlife, and the water of the state and their aquatic life...."

Where does the Shoreline Management Act apply?

The SMA applies to all "shorelines of the state" and "shorelands." Under the SMA, "shorelines of the state" include all shorelines and shorelines of statewide significance. The Puget Sound coastline is a shoreline of statewide significance, and the only area in the City of Shoreline subject to the SMA. Shorelines, in general, include all rivers and streams having a mean annual flow of 20 cubic feet per second or greater, and lakes over 20 acres in size.



"Shorelands" is defined as the land extending landward 200 feet in all directions from the ordinary high-water mark (measured on a horizontal plane) and all associated wetlands. The SMA jurisdiction can be expanded to include the entire contiguous floodplain associated with "shorelines of the state."

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What does the SMP regulate?

The SMP is both a planning and a regulatory tool. The SMP is comprised of two components. First, like a GMA comprehensive plan, it sets forth goals and policies that provide a basis for regulations that govern use and development. Second, it contains “use regulations” that regulate development within the jurisdictional boundaries of the SMP through the issuance of permits – substantial development permits, conditional use permits, and variance permits. All use or development activities within the shoreline jurisdiction must meet the goals, policies, and regulations in the SMP regardless of the type of shoreline permit required. This includes over-water structures, new buildings and structures, and land development activities such as clearing, grading, or filling. Policies and regulations developed under the SMA guidelines are designed to achieve the following:

- Achieve no net loss of ecological functions necessary to sustain shoreline natural resources
- Use the most current, accurate, and complete scientific and technical information for development of policies and regulations
- Ensure that each permitted development causes no net loss of ecological functions
- Ensure that exempt development in the aggregate causes no net loss of ecological functions
- Address and fairly allocate the burden of mitigating cumulative impacts of development among development opportunities
- Plan for restoration of ecological functions where they have been impaired
- Promote restoration of ecological functions through a combination of regulatory and nonregulatory programs by a combination of public and private actions
- Prioritize reservation of areas for protecting and restoring ecological functions over provision for water-dependent uses and other uses, and limit non-water-oriented uses in the shoreline
- Require mitigation of adverse impacts of individual developments in accordance with the following sequence:
 - Avoidance of impact
 - Minimization of impact
 - Rectification of impact
 - Reduction or elimination of impact over time
 - Compensation with substitute resources
 - Monitoring
- Require mitigation in proportion to and not in excess of that necessary to ensure no net loss of ecological functions
- Provide preference for compensatory mitigation, when mitigation is required, to be located within the immediate vicinity of the impact
- Ensure that new development meets vegetation conservation objectives
- When there is uncertainty about the extent or condition of an existing ecological resource, ensure that the resource is protected

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What Shorelines and Shorelands are in the City of Shoreline?

The current SMP identifies shorelines by environmental designations (See Exhibit A- Shoreline Environmental Designations Map). The only areas meeting the Ecology threshold for inclusion are along the Puget Sound coastline.

DISCUSSION

Proposed changes to the SMP fall primarily into two categories: those required by Ecology to incorporate changes in State guidance since the 2013 SMP, and those recommended by the City, primarily to integrate changes that were adopted through the Critical Areas Ordinance (CAO) in 2015 into the SMP. The bulleted lists below describe the types of changes that will be proposed. Staff will present actual code language in legislative format at the January 17, 2019 Study Session.

State Required Updates

Not all State-mandated changes will apply to the City of Shoreline, but they include:

- Adjusting the cost threshold for substantial development to \$7,047 (current threshold is \$5,718);
- Clarifying that the definition of “development” does not include dismantling or removing structures by adding the phrase, “Development does not include dismantling or removing structures if there is no other associated development or re-development.” to the current definition;
- Clarifying exceptions to local review under the SMA;
- Clarifying permit filing procedures consistent with a 2011 statute;
- Clarifying that forestry practices that only involve timber cutting are not SMA “developments” and do not require Substantial Development Permits (SDP);
- Clarifying that the SMA does not apply to lands under exclusive federal jurisdiction;
- Clarifying “default” provisions for nonconforming uses and development
- Exempting retrofitting existing structures to comply with the Americans with Disabilities Act; and
- Updating wetlands critical area guidance to incorporate the 2014 wetlands rating system.

For more information about State required updated, see Ecology’s Checklist Guidance at:

<https://fortress.wa.gov/ecy/ezshare/sea/ShorelinePlannerToolbox//ChecklistGuidance.pdf>

City Recommended Updates

RCW 90.58.090(4) and RCW 36.70A.480(3) required a SMP to provide for management of designated critical areas located within the shorelines of the state. The current SMP incorporates by reference the 2006 critical areas regulations adopted by

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Ordinance No. 398. In 2015, via Ordinance No. 723, the City did an extensive update to its critical area regulations. Since incorporation of the 2015 regulations into the City's SMP required review and approval by Ecology, the 2006 regulations remain applicable within the shoreline jurisdictional area due to a time consideration. This can make pertinent regulations difficult to locate, which can result in gaps and a lack of clarity.

The updated SMP will:

- Incorporate the 2015 CAO by embedding it within the SMP
- Codify rather than adopt the CAO by reference
- Make the pertinent CAO regulations easier to locate in the code, rather than as an attachment to the SMP
- Provide the ability to amend CAO language as necessary to fit the shoreline jurisdiction, which will increase clarity and fill gaps

Specific changes to types of critical areas may include:

- General Provisions (for all critical area types in the shoreline jurisdiction)
 - Improve clarity and predictability
 - Improve standards for critical area reports and mitigation plans
 - Clarify allowed activities and exemptions
 - Improve standards for critical area review process, including involvement of qualified third-party reviewers
 - Modify problematic and unclear code sections
 - Bring standards into alignment with Best Available Science (BAS)
 - Update definitions related to critical areas
- Geologic Hazard Areas
 - Improve standards for hazards assessment
 - Update definitions of geologic hazard types consistent with BAS and to eliminate redundancy
 - Alteration no longer prohibited in very high landslide hazards or their buffers. Used to require Critical Areas Reasonable Use Permit (CARUP) or Critical Areas Special Use Permit (CASUP); now permitted with geotechnical analysis and recommendations, assuming consistency with code requirements and design criteria
 - Buffers for moderate to high risk landslide hazard areas based on recommendation by qualified professional (with potential for no buffer), rather than minimum buffer
 - Modify classifications so that bulkheads would not be classified as geologic hazards (instead, considered an engineered/abated hazard)
- Streams and Fish & Wildlife Habitat Conservation Areas
 - Combine Streams with Fish & Wildlife Habitat section based on State model code provisions
 - Update standards based on State recommendations, including adoption of the State Water Typing System

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- Address sites where existing, legally established roadways, railroads, paved areas, or other structures occur between the site and the stream
- Development proposals are allowed in these areas if a critical area report determines and the Director concurs that it is a physically separated and functionally isolated stream buffer
- Wetlands
 - Fewer substantive changes, since the existing SMP wetlands subchapter was already updated in 2013 from what was originally in the 2006 CAO
 - Update wetland rating standards consistent with Washington State DOE 2014 Wetland Rating System for Western Washington
 - Address sites where existing, legally established roadways, railroads, paved areas, or other structures occur between the site and the wetland. Development proposals are allowed in these areas if a critical area report determines and the Director concurs that it is a physically separated and functionally isolated wetland buffer

Public and Stakeholder Outreach

As stated in RCW 90.58.130 and WAC 173-26-090, a Public Participation Plan (PPP) is required to be established so as to inform, involve, invite, and encourage participation by all interested persons, private entities, tribes, and governmental agencies. The City has prepared a PPP for the Periodic Review. It anticipates an Open House, which will take place prior to the January 17, 2019 Study Session where the Planning Commission and public will review potential changes in legislative format. The PPP also anticipates development of a web page, Frequently Asked Questions sheet, outreach to neighboring jurisdictions and tribes, and opportunities to create a dialog with Neighborhood Associations that border the coastline and with residents of 27th Avenue NW (otherwise known as Apple Tree Lane).

NEXT STEPS

January 17, 2019- Planning Commission Study Session, including public Open House prior to meeting

February 21, 2019- Planning Commission Public Hearing (intended to also fulfill joint DOE review and public comment period)

March 2019- Council Study Session

April 2019- Council Resolution to Adopt

May 2019- Ecology approval of SMP

June 2019- Council adopts final SMP by Ordinance

RECOMMENDATION

No action is required at this time. This introductory Study Session is an opportunity for the Commission to become familiar with the existing SMP and the Periodic Review process, and to ask questions of staff.

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EXHIBIT A



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