

## SHORELINE MASTER PROGRAM PERIODIC REVIEW

---

### **Burlington SMP Periodic Review Checklist**

This document is intended for use by counties, cities, and towns subject to the Shoreline Management Act (SMA) to conduct the “periodic review” of their Shoreline Master Programs (SMPs). This review is intended to keep SMPs current with amendments to state laws or rules, changes to local plans and regulations, and changes to address local circumstances, new information or improved data. The review is required under the SMA at [RCW 90.58.080\(4\)](#). Ecology’s rule outlining procedures for conducting these reviews is at [WAC 173-26-090](#).

This checklist summarizes amendments to state law, rules and applicable updated guidance adopted between 2007 and 2019 that may trigger the need for local SMP amendments during periodic reviews.

#### **How to use this checklist**

See the associated *Periodic Review Checklist Guidance* for a description of each item, relevant links, review considerations, and example language.

At the beginning of the periodic review,

- Use the review column to document review considerations and determine if local amendments are needed to maintain compliance. See WAC 173-26-090(3)(b)(i).
- Ecology recommends reviewing all items on the checklist. Some items on the checklist prior to the local SMP adoption may be relevant.
- At the end of your review process, Use the checklist as a final summary identifying your final action, indicating where the SMP addresses applicable amended laws, or indicate where no action is needed. See WAC 173-26-090(3)(d)(ii)(D), and WAC 173-26-110(9)(b).

*Local governments should coordinate with their assigned [Ecology regional planner](#) for more information on how to use this checklist and conduct the periodic review.*

PREPARED BY	JURISDICTION	DATE
The Watershed Company: Devin Melville, Environmental Planner	City of Burlington	June 2021

ROW	SUMMARY OF CHANGE	REVIEW	ACTION
<b>2019</b>			
a.	Washington State Office of Financial Management (OFM) adjusted the <b>cost threshold for building freshwater docks</b> .	Chapter 18.09.020(A)(1)(h) contains an outdated cost threshold for docks. The provision doesn't specify whether it is referencing freshwater or saltwater docks, but this may be implied as there are no saltwater shorelines within the City of Burlington.	<b>Mandatory:</b> Update the cost threshold for freshwater docks in Chapter 18.09.020.
b.	The Legislature removed the requirement for a shoreline permit for <b>disposal of dredged materials at Dredged Material Management Program sites</b> .	There are no Dredged Material Management Program sites within the City's shoreline.	No action necessary.
c.	The Legislature added <b>restoring native kelp, eelgrass beds and native oysters</b> as fish habitat enhancement projects.	There are no saltwater shorelines in City limits. Therefore, this legislative amendment does not apply.	No action necessary.
<b>2017</b>			
a.	OFM adjusted the <b>cost threshold for substantial development</b> to \$7,047.	SMP Chapter 18.09.020(A)(1)(a) contains an outdated cost threshold for substantial development, but also includes a reference to the statute (WAC 173-27-040). Chapter 18.03.170 contains a definition for substantial development that includes the outdated cost threshold.	<b>Mandatory:</b> Update cost threshold in Chapters 18.09.020 and 18.03.170 to reflect adjusted cost threshold of \$7,047. This could also be accomplished by solely relying on a reference to the statute (WAC 173-27-040) and removing the cost threshold altogether. Such an action may eliminate the need for future SMP amendment to this section when OFM adjusts the threshold in the future.
b.	Ecology permit rules clarified the <b>definition of "development"</b> does not include dismantling or removing structures.	The current SMP definition for development under Chapter 18.03.040 does not include this clarification.	<b>Recommended:</b> Add sentence to existing definition to incorporate clarification that development does not include dismantling or removing structures.

c.	Ecology adopted rules clarifying <b>exceptions to local review under the SMA</b> .	The SMP does not include a list of exceptions to local review under the SMA, nor is it required to do so.	<b>Recommended:</b> In order to ensure consistent implementation of the SMP, add a consolidated section in the SMP to include all statutory exceptions to local review identified in WAC 173-27-044.
d.	Ecology amended rules clarifying <b>permit filing procedures</b> consistent with a 2011 statute.	Chapter 18.09.020(A)(3) and (4) include some permit filing procedures for shoreline permits, but does not incorporate all amended rules from the 2011 statute. For example, concurrent filing of permits and notification from Ecology are not included.	<b>Recommended:</b> Update Chapter 18.09.020 to describe that all shoreline permits adhere to permit filing procedures pursuant to WAC 173-27-130.
e.	Ecology amended <b>forestry use regulations</b> to clarify that forest practices that only involves timber cutting are not SMA “developments” and do not require SDPs.	The current SMP does not address forest practices, nor is it required to. The City of Burlington does not contain forest lands in shoreline jurisdiction.	No action necessary.
f.	Ecology clarified the SMA does not apply to lands under <b>exclusive federal jurisdiction</b> .	SMP Chapter 18.09.080 addresses Applicability to Federal Agencies; however, the City of Burlington does not contain lands under exclusive federal jurisdiction.	No action necessary.
g.	Ecology clarified “default” provisions for <b>nonconforming uses and development</b> .	Chapter 18.09.040 establishes the City’s definitions and standards for nonconforming structures and uses. Nonconforming lot is not included or defined.	<b>Recommended:</b> Define each nonconforming type (use, development/structure, and lot) for consistency.
h.	Ecology adopted rule amendments to clarify the scope and process for conducting <b>periodic reviews</b> .	This is optional. The current SMP does not address the process for conducting periodic reviews nor is it required to.	No action necessary.
i.	Ecology adopted a new rule creating an optional SMP amendment process that allows for a shared local/state public comment period.	The SMP does not address the amendment process, nor is it required to.	No action necessary.
j.	<b>Submittal</b> to Ecology of proposed SMP amendments.	The SMP does not address submittal of proposed SMP amendments to Ecology, nor is it required to.	No action necessary.

2016			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the <b>Americans with Disabilities Act (ADA)</b> .	The SMP does not address the new ADA exemption. <b>etla</b>	<b>Recommended:</b> Include the new ADA exemption in the list of exemptions in Chapter 18.09.020.
b.	Ecology updated <b>wetlands critical areas guidance</b> including implementation guidance for the 2014 wetlands rating system.	Applicable sections of the Critical Areas Ordinance (CAO) pertaining to wetlands have been incorporated into the SMP and have been included as Appendix A, Shoreline Wetland, Fish and Wildlife Habitat, and General Critical Areas Regulations. Appendix A, Section IV (A)(2) and (C)(3)(b) reference the outdated 2004 wetland rating system, publication #04-06-025, but includes subsequent revisions. The City's Critical Area Regulations (Ordinance No. 1853) include references to the 2014 rating system.	<b>Mandatory:</b> Update shoreline critical areas regulations in Appendix A to reference the 2014 wetland rating system, publication #14-06-29. <sup>[DM1]</sup>
2015			
a.	The Legislature adopted a <b>90-day target</b> for local review of Washington State Department of Transportation (WSDOT) projects.	The SMP does not address this WSDOT review target, nor is it required to.	No action necessary.
2014			
a.	The Legislature created a new definition and policy for <b>floating on-water residences</b> legally established before 7/1/2014.	The SMP prohibits floating homes, houseboats, and live-aboard vessels. There are no such existing floating homes, houseboats, and live-aboard vessels in Burlington.	No action necessary.
City of Burlington Shoreline Master Program Update, Ordinance No. 1786, adopted June 2013.			
2012			
a.	The Legislature amended the SMA to clarify <b>SMP appeal procedures</b> .	The current SMP does not address SMP update appeal procedures, nor is it required to since the SMP does not already outline the appeal process.	No action necessary.

2011			
a.	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved <b>federal wetland delineation manual</b> .	Applicable sections of the Critical Areas Ordinance (CAO) pertaining to wetlands have been incorporated into the SMP and have been included as Appendix A, Shoreline Wetland, Fish and Wildlife Habitat, and General Critical Areas Regulations. While the SMP does not include this rule, Appendix A Section IV(A)(1) does.  The City's Critical Area Regulations (Ordinance No. 1853) captures this rule in 14.15.180(A).	No action necessary.[DM2]
b.	Ecology adopted rules for new commercial <b>geoduck aquaculture</b> .	The City only contains freshwater shorelines, therefore, this rule does not apply.	No action necessary.
c.	The Legislature created a new definition and policy for <b>floating homes</b> permitted or legally established prior to January 1, 2011.	The SMP prohibits floating homes, houseboats, and live-aboard vessels. There are no existing floating homes, houseboats, and live-aboard vessels in Burlington.	No action necessary.
d.	The Legislature authorized a new <b>option to classify existing residential structures as conforming</b> .	This law is optional. SMP Chapter 18.09.040 contains the City's provisions for nonconforming uses and structures.	No action necessary.
2010			
a.	The Legislature adopted <b>Growth Management Act – Shoreline Management Act clarifications</b> .	The current SMP and CAO were adopted in 2013. Applicable sections of the Critical Areas Ordinance (CAO) have been incorporated into the SMP and have been included as Appendix A, Shoreline Wetland, Fish and Wildlife Habitat, and General Critical Areas Regulations. The SMP includes no net loss provisions. The SMP does not describe the "effective date" of SMP amendments, nor is it required to.	No action necessary.
2009			
a.	The Legislature created new "relief" procedures for instances in which a <b>shoreline restoration</b>	The SMP does not address this relief procedure, nor is it required to. The process can be	No action necessary.

	<b>project within a UGA</b> creates a shift in Ordinary High Water Mark.	used even if the provision is not included in the SMP.	
--	--	--	--

b.	Ecology adopted a rule for <b>certifying wetland mitigation banks</b> .	The SMP does not include authorization of certified mitigation banks. Appendix A Section IV (E) describes wetland mitigation standards, but does not include this rule. The City's Critical Area Regulations (Ordinance No. 1853) includes a section on wetland mitigation banks (14.15.220(M)).	<b>Recommended:</b> Consider using Ecology's recommended language to include the rule for certifying wetland mitigation banks in Appendix A Section IV(E)(8): [DM3]  Suggested language: <i>Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.</i>
c.	The Legislature added <b>moratoria authority</b> and procedures to the SMA.	The SMP does not address moratoria authority, nor is it required to.	No action necessary.

**2007**

a.	The Legislature clarified options for defining " <b>floodway</b> " as either the area that has been established in FEMA maps, or the floodway criteria set in the SMA.	Floodway is defined in Chapter 18.03.050 as either the area that has been established in FEMA maps or the floodway criteria set forth in the SMA.	No action necessary.
b.	Ecology amended rules to clarify that comprehensively updated SMPs shall include a <b>list and map of streams and lakes</b> that are in shoreline jurisdiction.	No new shoreline waterbodies have been inventoried since the comprehensive update in 2013. Under the existing SMP, Burlington's shorelines are limited to Gage's Slough and a portion of the Skagit River, as stated in 18.06.020(B) and other locations throughout the SMP. The SMP also states that maps of shoreline designations are maintained by the Planning and Community Development Department.	No action necessary.
c.	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include <b>fish habitat enhancement projects</b> that conform to the provisions of RCW 77.55.181.	SMP Chapter 18.09.020(A)(1)(o) includes the rule exempting public or private projects designed to improve fish or wildlife habitat or fish passage projects, but does not specify projects must conform to the provisions of RCW 77.55.181.	<b>Recommended:</b> Consider adding a reference to include <i>fish habitat enhancement projects that conform to the provisions of RCW 77.55.181</i> ; see Ecology's recommended language for consistency.



## Additional amendments

Modify this section, as needed, to reflect additional review issues and related amendments. The summary of change could be about Comprehensive Plan and Development regulations, changes to local circumstance, new information, or improved data.

Checklist Item #	SMP Section	Summary of change	Discussion
1	BMC 18.09.020.A.4	Added reference to appeal procedures found in BMC 14A.05.190.	Per City.
2	Throughout SMP	Updated titles in Appendix A to reflect current critical area ordinances.	
3	Appendix A	Add note to reviewer that text within Appendix A is taken directly from CAO (BMC Chapter 14.15).	
4	Appendix A, Section I	Added paragraph clarifying adoption of CAO (BMC Chapter 14.15) into Appendix A.	
5	Appendix A, 14.15.220.M.4	Added paragraph clarifying allowance of wetland mitigation banks.	Per City.
6	Appendix A, 14.15.380.B.2.e	Added No Net Loss demonstration requirement for decreasing buffer widths.	
7	Throughout Appendix A	Removed CAO sections that are not applicable within shoreline jurisdiction, and deleted references to BMC 14.15.120.	Deletions are shown as <del>strikethrough</del> .