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- The public is encouraged to comment via email to pced@cityofanacortes.org, via written comment addressed to PCED, P.O. Box 547, Anacortes, WA 98221, or via e-comment (<https://www.anacorteswa.gov/700/Watch-Meetings> - click on meeting you wish to provide comment and in upper right corner is an option to include Public Comment). Public comments received prior to 3:00 p.m. the day of the meeting will become part of the record for the meeting, just as if presented in person.
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ANACORTES PLANNING COMMISSION

February 9, 2022

**Municipal Building Council Chambers
6th Street and "Q" Avenue**

**** This meeting will be held electronically only ****

AGENDA

6:00 PM

[VIEW PACKET MATERIALS HERE](#)

- A. Roll Call**
- B. Minutes**
 - 1) Draft Minutes of 12/08/2021
- C. Correspondence**
- D. New Business**
- E. Old Business**
 - 1) Shoreline Master Program Periodic Update

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Planning Commission Public Hearing Minutes for December 8, 2021

This is not a verbatim transcript of the meeting and is written to capture the general spirit of the discussion based upon notes and video observation by the author. To view the video recording of this meeting, click [here](#), or go to <https://www.anacorteswa.gov/700/Watch-Meetings>.

Commission Chair MacKenzie called the Public Hearing of December 8, 2021, to order at 6 pm.

Roll Call:

Members Present: Commissioners Gary Molyneaux, Frank Jeretzky, Linda Martin, Ward MacKenzie, Jack Curtis

Members Absent: Sarah Ruether, Jeff Graf

Staff Present: Don Measamer, Emily Morgan, Dave Oicles

Minutes: The minutes from November 24, 2021, were accepted as submitted.

Correspondence: Don Measamer, PCED Director, mentioned that due to the holiday, the Planning Commission meeting scheduled for December 22, 2021, has been canceled.

Old Business: None

New Business:

- 1) **Public Hearing: SDP-2021-0010 – Flounders Bay Joint-Use Docks Project**
- 2) **Public Hearing: SDP-2021-0011 – Smith Dock Project**

Emily Morgan, Senior Planner, gave a presentation on SDP-2021-0010, providing detail on the dock replacement plans, project history, key points, and recommendations by Staff for approval with conditions. Morgan answered questions by Commissioners concerning project, as the applicant for the project was not present. Chair MacKenzie opened the public hearing at 6:13pm. With no public comments, the public hearing was closed at 6:13pm. Commissioner Molyneaux made a motion to "Approve SDP-2021-0010 subject to the Staff recommended conditions of approval contained within the Staff report". Commissioner Jeretzky seconded the motion. All Commissioners voted yes 5-0 to approve the motion at 6:26pm, with two Commissioners absent.

Ms. Morgan then gave a presentation on SDP-2021-0011, the Smith dock project, providing timeline, history, and detailed plans of the project, along with Staff recommendations for approval with conditions. Chair Mackenzie opened the public hearing at 6:33pm. With no public comments, the hearing was closed at 6:33pm. Chair Mackenzie made a motion to "Approve SDP-2021-0011 subject to the Staff recommended conditions of approval contained within the Staff report." Commissioner Molyneaux seconded the motion. All Commissioners voted yes 5-0 to approve the motion, with two Commissioners absent.

With no further discussion, Chair MacKenzie concluded the meeting at 6:35pm.



Planning Commission Agenda Bill

Meeting Date: February 9, 2022 **Agenda Item:** E.1.

Subject: Shoreline Master Program Periodic Update

Staff Contact: LIBBY GRAGE

Approved for Submittal to Commission by

LIBBY GRAGE
DON MEASAMER

Action Type

Discussion

Summary Statement: The City of Anacortes is in the process of conducting a periodic review and update of its Shoreline Master Program (SMP) as required by RCW 90.58.080. At the 2/9/22 Planning Commission meeting, staff will present a refresher on the Shoreline Master Program and periodic update requirements, as well as review the proposed amendments and next steps.

Draft 2 of the proposed amendments is being finalized and will be available for public review and comment soon. Draft 2 will incorporate revisions based on public comments on Draft 1 and the Washington Department of Ecology's initial determination.

Background: Please see the [Project Website](#) for background details and project documents.

Previous Action: The [Project Website](#) contains background information, including a project timeline and links to associated Planning Commission meetings.

Competing Viewpoints Considered: Public comments have been solicited and received throughout the update process. Public comments and city responses can be viewed on the project website.

Recommended Motion: None. No action is requested at this time.

Alternative Actions: N/A

Attachments (listed in order presented):

1. Ecology Initial Determination
2. Ecology Initial Determination Att. 1
3. Shoreline MP Presentation

TO: Libby Grage, Planning Manager, City of Anacortes
CC: Jackie Chandler, Shoreline Administrator, WA Department of Ecology
FROM: Maria Sandercock, Shoreline Planner, WA Department of Ecology
Date: October 1, 2021
Subject: Initial Determination of Consistency
Sent via email to: libbyb@cityofanacortes.org

Use of this Document

Ecology's *Initial Determination of Consistency* provides Ecology's review of the proposed amendment to the City of Anacortes (City) Shoreline Master Program (SMP) for consistency with the Shoreline Management Act and the SMP Guidelines. This document is divided into two sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process and **Initial Determination** of the proposed amendment with next steps.

Attachment 1 itemizes issues that must be addressed for Ecology's final approval of the proposed amendment.

Brief Description of Proposed Amendment

The City has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence to comply with periodic review requirements. Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2010. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the Anacortes Shoreline Master Program pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis that documents proposed amendments. The amendments bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

Anacortes' SMP is a standalone document containing goals, policies, and regulations, although administrative procedures are located in Chapter 18.16 of the Anacortes Municipal Code (AMC). The official Shoreline Designation Map is located in Figure 5.1 of the SMP. Relevant portions of the City's critical areas ordinance are incorporated into the SMP and included in Appendix A. According to the Gap Analysis (prepared by The Watershed Company, dated February 2021), the City intends to codify all regulatory sections of the SMP in Chapter 19.72 AMC as part of this periodic review. The City also proposes to remove Appendix A and incorporate the Critical Areas Ordinance (CAO) by reference only. The City is amending the CAO concurrently with the SMP.

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In addition to changes identified on the periodic review checklist, the City has proposed the following revisions:

Chapter 1 – Introduction

- Minor text changes to update references and global change of “shall” to “must.”

Chapter 2 – Scope, Jurisdiction, and Exemptions

- 2.3 – a list of waterbodies included in shoreline jurisdiction is added.
- 2.4 – Clarification is added that activities that are exempt from critical areas review may still require a shoreline exemption or SDP. Cost thresholds to shoreline exemptions are updated.
- 2.5 – New section added: “Developments Not Required to Obtain Shoreline Permits or Local Reviews”
- 2.7 – New section added: “Moratoria Authority”

Chapter 3 – Administrative Provisions

- 3.7 – New section added: “Permit Filing Procedures”
- 3.8 – New section added: “WSDOT Project Procedures”

Chapter 4 – Master Program Elements: Goals & Policies for the Anacortes Shoreline Master Program

- No changes proposed

Chapter 5 – Shoreline Environments & Associated Policies and Regulations

- 5.6 Aquatic – Development regulations updated to include conditionally permitted uses.
 - DR-5.6.1.b revised as follows: Water-oriented recreational uses must be low to moderate in intensity.
 - Reuse of historic over-water structures expanded to include water-oriented uses
 - The following development regulation is added: “DR-5.6.5 Re-use of historic structures for aquaculture purposes shall be consistent with provisions under SMP Section 8.4, Aquaculture, and WAC 173-26-241(3)(b) Aquaculture Standards, which minimizes overall visual impact to the greatest extent possible.”
- 5.8 Conservancy – Development regulations updated to clarify how lot calculations should be made. Legal description of location of Conservancy SED is updated as follows:
 - revised for Guemes Channel – West of Lovrics to reflect a redesignation from the Urban SED to the Conservancy SED.
 - Lake Erie is added, which a legal description for small area of shorelands previously undesignated.
- 5.9 Shoreline Residential - Development regulations updated to clarify how lot calculations should be made. Legal description of location of Shoreline Residential SED is updated as follows:
 - Guemes Channel – West of Lovrics revised to reflect redesignation from Urban to Shoreline Residential
 - Guemes Channel – East of Lovrics revised to reflect redesignation of Urban to Shoreline Residential
- 5.10 Urban – DR-5.10.4 revised to require that ground floor residential uses meet zoning code requirements instead of prohibiting them. Legal description of location of the Urban SED is updated as follows:
 - Ferry Terminal description is deleted to reflect redesignation from Urban to Conservancy and Shoreline Residential

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- Guemes Channel – B – H Ave description is deleted to reflect redesignation from Urban to Shoreline Residential
- New legal description for Padilla Bay – South March’s Point Road is added to reflect existing designation.
- 5.12 Shoreline Use and Modification Matrix and Development Standards
 - Exception for re-use of historic overwater structures is added to the requirement that uses in the Aquatic environment be subject to more restrictive permitting processes of upland SEDs.
 - Shoreline Use and Modification Table (Table 5.1) is revised as follows:
 - Within the Aquatic SED, some above-water aquaculture projects may be allowed as a conditional use in limited circumstances per SMP Section 8.4.
 - Within the Shoreline Residential SED, a requirement to provide a public access easement for accessory parking is added as a footnote.
 - Clarifications on how to calculate building height are added.
 - Table 5.2 Shoreline Development Standards Matrix is revised as follows:
 - Footnote for shoreline residential lot coverage updated to exclude parking lots adjacent to pre-developed Aquatic Designations containing overwater structures.
 - Footnote added to maximum height allowances clarifying that heights over 35 feet cannot be approved if they would obstruct the view of a substantial number of residences.

Chapter 6 Environmental Protection General Regulations

- 6.1 A duplicate incorporation of the CAO is removed and a reference to 6.6 is included instead.
- 6.2 References to the CAO are added.
- 6.3 References to the CAO are added.
- 6.4 References to the City’s stormwater and clearing and grading regulations are added.
- 6.5 – Vegetation Conservation
 - Tree replacement requirements are revised from requiring conifer be at least 5 feet tall to requiring that they be up to 8 feet tall.
 - A requirement that subdivision of land not require significant vegetation removal is added to shoreline planting plan requirements.
 - Allowances for tree and vegetation trimming within the shoreline set back are clarified and restrictions are added.
- 6.6 Critical Areas
 - The City proposes to incorporate the City’s CAO by reference instead of continuing to use shoreline-specific critical area regulations. The City is revising the CAO concurrently with the SMP and will insert the Ordinance number and date after adoption. The City will also maintain some shoreline-specific policies and regulations in sections 6.7-6.10.
- 6.7 Fish and Wildlife Habitat Conservation Areas
 - A reference to report requirements in the Frequently Flooded Areas regulations is added.
 - Provisions for determining the necessary buffer for Fish and Wildlife Habitat Conservation Areas are added.
- 6.8 Frequently Flooded Areas and Tsunami Inundation Areas
 - References to the critical area regulations, and floodplain regulations are updated.

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- 6.9 Geologically Hazardous Areas
 - References to the critical area regulations are updated.
 - Development standards are added that allow specific activities in certain geological hazard areas without a critical area report.
- 6.10 Wetlands
 - References to the critical area regulations are updated.
 - The first two shoreline-specific wetland development regulations, which are rendered unnecessary by the CAO incorporation, are deleted.
 - The third regulation is revised to only allow wetland alterations if they are for water-oriented uses.

Chapter 7 – Shoreline Public Access

- No changes proposed other than global replacement of “shall” with “must.”

Chapter 8 – Specific Use Policies and Development Regulations

- 8.4 Aquaculture
 - Policy 8.4.2 revised as follows: “Limit all other aquaculture uses to the Urban ~~and~~ Urban Maritime, ~~environments and adjacent Aquatic environments~~ as a Conditional Use.”
 - DR-8.4.1 revised as follows: “Shellfish seeding/culturing may be permitted when conducted for native population recovery in accordance with a government/Tribal approved plan. All other aquaculture developments and activities, including ~~fish pens and~~ commercial shellfish seeding/culturing, are limited to the Urban, Urban Maritime, shoreline environment and those adjacent Aquatic designated areas over water only.
 - Clarification added to DR-8.4.2 that aquaculture must avoid impacts to native eelgrass and macroalgae.
 - Standards for fish pens are deleted. Standards for overwater aquaculture and non-commercial in-water aquaculture are added. A requirement that geoduck aquaculture adhere to WAC 173-26-241(3)(b) is added.
- References to other codes are updated.

Chapter 9 – Specific Shoreline Modification Policies and Development Regulations

- 9.5 Docks, Piers and Floats:
 - An allowance for piers widths up to 8 feet for joint use piers is added.
 - Clarifying revisions are made to pile repair regulations.
- 9.9 Mooring Buoys
 - Reference to WDFW as an agency with knowledge on mooring buoys is added.
- 9.11 Shoreline Stabilization Measures & Flood Protection Works
 - “dynamic revetment” is added to the list of soft stabilization measures.

Chapter 10 Enforcement and Penalties – no changes proposed

Chapter 11 Master Program – Review, Amendments and Adoption – no changes proposed

Chapter 12 Definitions

- 12.1 General Information. References to municipal code chapters are added.
- 12.2 Definitions.
 - Definitions are added for the following words: Average Grade Level, Impervious Surface, Nonconforming development or nonconforming structure, nonconforming lot, nonconforming use, Substructure pier

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- Definitions are revised for the following words: Act, Aquaculture, Building Height, Development, Height, Significant vegetation removal, Substantial development
- Definitions for the following words are deleted: Accessory Building, Accessory Dwelling Unit, Accessory Use, AKART, Best Management Practices, Building, City, Comprehensive Plan, Dwelling multifamily, Dwelling single family, Grading, Landscaping, LID Low Impact Development, Non-conforming use or development, Open Space, Parking Space or Parking Stall, Person, Shall, Sign

Appendix A Shoreline Critical Area Regulations – this entire Appendix is deleted. The City is incorporating critical area regulations from the CAO instead.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines.

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process.

The City held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on November 18, 2020 and continued through December 18, 2020. A virtual public hearing before the Planning Commission was held on December 9, 2020.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period to state interested parties on November 16, 2020. Ecology sent invitations to comment and consult Government to Government, as necessary, to local tribal governments including the Samish Indian Nation, the Sauk-Suiattle Indian Tribe, the Swinomish Indian Tribal Community, and the Upper Skagit Indian Tribe.

The City received thirty-eight (38) written comments and nine (9) oral comments on the proposed amendments. Of these 47 comments, 36 were from members of the public. Additional comments were received from the Washington Department of Natural Resources (DNR), Washington Department of Fish and Wildlife (WDFW), the Port of Anacortes, two environmental groups, a seafood company, and a developer.

WDNR requested that the City not change the shoreline designation in the canneries area from Urban to Shoreline Residential. Immediately abutting this reach is the Anacortes Harbor Area, which the City is

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required to “forever reserve[] for landings, wharves, streets, and other conveniences of navigation and commerce” [Article XV of the Washington State Constitution]. This requirement is incorporated into the SMP Guidelines in WAC 173-26-201(2)(d)(ii). WDNR expressed concern that this change in shoreline designation would be inconsistent WAC 173-26-201(2)(d)(ii). City staff met with WDNR staff to discuss this concern. The City proposed to revise the amendment to add an exception to the impervious surface limit in the Shoreline Residential designation for structures that are accessory to the existing overwater structures in the Canneries shoreline reach. WDNR sent a follow up comment letter, cc’ing Ecology, confirming that they are okay with this response to their concerns. Ecology then expressed concerns that the proposed revisions were sufficient to keep the SMP consistent with WAC 173-26-201(2)(d)(ii). The City then submitted a technical memorandum supporting the re-designation of this reach [“Canneries SED Analysis,” prepared by the Watershed Company on November 6, 2020 and updated on June 24, 2021]. Ecology reviewed this document and then met with WDNR staff to further discuss the potential re-designation. WDNR advised that the re-designation would not impact water-dependent commerce at these areas, provided that there are allowances to continue use of the existing overwater structures. Ecology staff then met with City staff to identify potential barriers to use of those structures, which themselves are in the Aquatic SED, but which have accessory and appurtenant structures on the adjoining shorelands. The City proposed revisions to the amendment to ensure these existing overwater structures are able to continue to operate, be repaired and maintained, and be redeveloped to support water-dependent uses. These revisions are reflected in Attachment 1, items Req-1 and Req-2.

WDNR also requested that the City amend the definition of “aquaculture,” add allowances for low-impact aquaculture uses (such as Floating Upweller Systems or FLUPSYs), and change the “extended moorage” time limit from 5 days to 30 days. The City chose not to make changes to the “aquaculture” definition because provisions for aquaculture uses in Chapter 8.4 include the necessary clarification that aquaculture does not include the harvest of wild geoduck. The City chose not to allow FLUPSYs. The City did revise the extended moorage limit to 30 days.

WDFW submitted comments requesting that a reference to the Marine Shoreline Design Guidelines be added to the SMP; that clarifying language be added to the overwater structures regulations that defines what joint-use structures are; that required buoy labels include WDFW permit number; and that “dynamic revetment” be included under the definition of “soft” stabilization techniques in the shoreline stabilization section. The City added a reference to the Marine Shoreline Design Guidelines, added a width standard for joint use docks, added a reference to WDFW in the mooring buoy regulation section, and added “dynamic revetment” to soft shoreline stabilization measures.

The Port of Anacortes submitted comments requesting that the City not change the shoreline designation in the canneries area from Urban to Shoreline Residential; that requirements related to view impact assessments be clearer and that water-dependent uses have priority for increased height; that fixed conveyors be added to the list of structures exempt from the height calculation; that the 2010 Restoration Plan be amended to reflect updated information on two potential Port projects; that the City add additional requirements regarding the City’s moratorium authority; that commercial and non-commercial aquaculture be treated the same; that Port facilities be added as allowed maintenance in a geological hazard area without preparation of a critical areas report; and that the City not change every single instance of “shall” to “must” as it is not grammatically correct in every instance. In response to these comments, the City made some revisions to address the first concern, added clarity on height requirements, and made updates to the Restoration Plan.

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Other commenters raised the following issues:

- Support for the redesignation of the “canneries” areas (5 commenters)
- Opposition to the redesignation of the “canneries” area (2 commenters in addition to WDNR and the Port)
- Concern about the environmental impacts of the City’s proposed expansion of the Guemes Channel Trail (5 commenters). The SMP amendment does not contain any revisions relevant to this trail.
- Concern about whether the City is sufficiently monitoring compliance with the SMP and with permit conditions (3 commenters).
- Various concerns regarding the shoreline permitting process, including whether application requirements are sufficient, whether the public is receiving sufficient notice on proposed shoreline actions, and who at the City makes decisions on shoreline actions (6 commenters).
- Concerns about the SMP’s leniency toward historic structures and the allowed redevelopment of such structures (3 commenters)
- Concern about the future use of a site at 1502 5th Street (16 commenters). Nothing in the amendment appears to affect the future use of this site.
- Question if the shoreline inventory should be revisited (2 commenters)
- Request that Habitat Assessment Reports be required for shoreline projects (2 commenters)
- Request for clarification for various SMP provisions that are confusing.
- Concern about new limit on height of trees planted as mitigation.
- Concern about the high number of conditionally allowed uses in the SMP.
- Concern about a waiver to the requirement for a performance bond for City projects.
- Requests for opportunity for the public to review mitigation plans.

The City submitted the proposed amendment to Ecology for initial state review on April 22, 2021. Ecology verified that submittal was complete on the same day.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology’s final decision on the proposed amendments to the City’s SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Map Amendments

The City proposes to amend the Official Shoreline Designation Map in three locations. This includes changing the designation of the uplands in the Canneries shoreline reach along the Guemes Channel

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from Urban to Shoreline Residential. The City proposes to make this change for consistency with the Comprehensive Plan, which designates this area as residential.

Finding. *The shoreline of Anacortes contains a state harbor area, designated by the Department of Natural Resources. Article XV of the Washington State Constitution states that harbor areas are to be “forever reserved for landings, wharves, streets, and other conveniences of navigation and commerce.”*

Finding. *WAC 173-26-201(2)(d) establishes water-dependent and water-related uses as a higher priority than single-family residential uses. Sub-section (ii) states “Harbor areas, established pursuant to Article XV of the state Constitution ... should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses.”*

Finding. *Ecology finds that changing the designation of the shorelands of the Canneries shoreline reach from Urban to Shoreline Residential would be inconsistent with the requirement to reserve this area for water-dependent and water-related uses. Water-dependent and water-related commercial and industrial uses are prohibited in the Shoreline Residential designations (Table 5.1). The Shoreline Residential designation contains stricter shoreline buffers and impervious surface coverage requirements than the Urban designation (Table 5.2).*

Finding. *Ecology consulted with the Washington Department of Natural Resources (WDNR), which manages Harbor Areas. WDNR submitted a follow-up comment letter in support of the map amendment if regulations are updated to accommodate the existing overwater commercial/industrial uses.*

Finding. *Ecology finds that if revisions are made to the use and development regulations for Shoreline Residential, then the change in designation can be considered consistent with WAC 173-26-201(2)(d)(ii). Ecology has identified changes necessary for consistency with WAC 173-26-201(2)(d)(ii) [Attachment 1, Req-1 and Req-2].*

Critical Area Incorporation

As part of this Amendment, the City is updating the incorporation of critical area regulations from the 2006 CAO to the 2021 CAO, which is codified in AMC 19.70. The incorporation is located in Chapter 6.6 of the SMP.

Finding. *Ecology reviewed a draft copy of the referenced critical area provisions from AMC 19.70, dated June 2021 for consistency with the SMA and Guidelines. Ecology reviewed documents associated with the critical area ordinance update available on the City’s website.*

Finding. *RCW 90.58.610 and RCW 36.70A.480 govern the relationship between SMPs and development regulations to protect critical areas. Specifically, RCW 36.70A.480 provides that upon Ecology approval of a jurisdiction’s comprehensive update, critical areas in shoreline jurisdiction are protected solely by the SMA and SMP, and that the procedural and substantive requirements of the Growth Management Act do not apply to these critical areas [RCW 36.70A.480(3)(d)].*

Finding. *Local governments may incorporate regulations from other documents by referencing a specific, dated edition [WAC 173-26-191(2)(b)].*

Finding. *The SMP contains a number of references to the critical area regulations, but refers directly to AMC 19.70, instead of the SMP section where these regulations are incorporated. Ecology finds that*

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these references are internally inconsistent with Chapter 6.6, which contains the incorporation of portions, but not all of AMC 19.70. **Ecology has identified changes necessary for internal consistency [Attachment 1, Items No. Req-3 and Req-4].**

Finding. The critical area regulations require 50 foot buffers for all streams in the City and the City proposes to maintain these buffer requirements (Table 19.70.300). Scientific support is minimal for buffers as small as 50 feet being large enough to protect ecological functions of riparian habitats, especially on Type F streams. The City proposes to add a new allowance for reducing stream buffers below 50 feet in AMC 19.70.330.C. Allowing stream buffers to be as small as either 25 or 35 feet is not supported by the most current, accurate, and complete scientific and technical information.

Finding. Ecology finds that the proposed stream buffer reduction allowance in AMC 19.70.330.C is inconsistent with the requirement to assure no net loss of shoreline ecological function [WAC 173-26-186(8)(b)] or the requirement to base master program provisions in the most current, accurate, and complete scientific and technical information [WAC 173-26-201(2)(a)]. **Ecology has identified a change necessary to ensure consistency with these SMP Guidelines [Attachment 1, Item No. Req-5].**

Finding. The SMP contains additional critical area policies and regulations in Chapter 6.7-6.10. Chapter 6.10 contains wetland policies and regulations. The City proposes to delete two of the regulations and revise the other. The third regulation prohibits alteration of wetlands and their buffers unless doing so would constitute a violation of constitutionally-protected property rights. Clarifications are added to this provision that developments that cannot meet this regulation must apply for a shoreline variance.

Finding. Ecology finds that allowing alteration of a wetland or its buffer without a variance when avoiding the wetland and its buffer would violate constitutionally-protected private property rights is inconsistent with the purpose of a variance. This allowance would circumvent the variance process, which is intended to provide relief when SMP regulations would significantly interfere with use of a property. The variance process is meant to be the process by which a local government verifies that an SMP regulation is interfering with constitutionally-protected property rights, specifically, reasonable use of a property. **Ecology has identified a change necessary to ensure consistency with the permitting framework of the SMA in RCW 90.58.100 and WAC 173-27 [Attachment 1, Item No. Req-6].**

Recommended changes

In addition to the issues identified above as required changes to ensure consistency with the SMA and its implementing guidelines, Ecology has identified recommended changes to provide clarity and improve implementation. These can be found in Attachment 1, Item No. Rec-1 through Rec-8.

INITIAL DETERMINATION

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City proposed amendments, subject to and including Ecology's required changes (itemized in Attachment 1), are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

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Next Steps

- Consider the changes Ecology has identified in Attachment 1 to resolve the issues identified above. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.
- If these issues are resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment promptly after formal submittal is provided consistent with WAC 173-26-110.

Attachment 1:
City of Anacortes - Ecology Required and Recommended Changes

The changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III)

ITEM	SMP Submittal PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Req-1	5.9 - Shoreline Residential	<u>Policy 5.9.3 Allow other accessory uses subordinate and incidental to water-oriented uses when adjacent to existing overwater structures between H Avenue and B Avenue.</u> [ReNUMBER subsequent policies] ... <u>Accessory Uses Supporting Existing Overwater Structures</u> <u>DR-5.9.11 Guemes Channel, between H Avenue and B Avenue, contains two existing overwater structures within the adjacent Aquatic designation. Accessory uses necessary to support water-oriented use of these existing over-water structures may be located in the adjacent Shoreline Residential environment, subject to the following standards, in addition to conformance with all other applicable SMP goals, policies and regulations:</u> <u>The accessory use and associated improvements must:</u> a. <u>Be demonstrably subordinate and incidental to the permitted primary water-oriented use of the over-water structure and functionally support its activity;</u> b. <u>Be located on land under the same ownership or leasehold as the over-water structure the accessory use is supporting;</u> c. <u>Conform to the applicable standards in Table 5.2 Shoreline Development Standards Matrix, EXCEPT that accessory uses are not subject to maximum impervious surface limits, and the minimum setback for non-water-dependent accessory uses is 25’;</u> d. <u>For accessory parking, the applicant must provide a public access easement in a form acceptable to the Shoreline Administrator;</u>	Required Change 1: Reserve harbor areas for water-dependent and water-related uses. A change is necessary for consistency with WAC 173-26-201(2)(d)(ii), which requires SMPs to reserve harbor areas for “for water-dependent and water-related uses that are associated with commercial navigation.” The City proposes to amend the official shoreline designation map to change the designation along the shorelands of the Canneries reach of the Guemes Channel from Urban to Shoreline Residential. This area along the Guemes Channel has been identified by the Department of Natural Resources as a Harbor Areas under the state constitution. Accordingly, this area must be reserved for water-dependent and water-related uses. However, commercial and industrial uses that are not accessory to single family residential uses are prohibited in the Shoreline Residential environment. Impervious surface and setback requirements would further inhibit redevelopment and re-use of the existing overwater canneries. To ensure that this map amendment is consistent WAC 173-26-201(2)(d)(ii), changes to the Shoreline Residential designation policies and regulations are necessary. To address this issue, the City has proposed adding a new policy and new regulation to the Shoreline Residential designation in Chapter 5.9. We have incorporated this proposal from the City here. In the Initial Determination, we have included findings that this change will bring the amendment into consistency with WAC 173-27-201(2)(d)(ii).

		<u>e. The shoreline permit process for the accessory use must follow that as shown in Table 5.1 Shoreline Use and Modification Matrix for the primary water-dependent or water-oriented use within the Aquatic shoreline environment designation.</u>	
Rec-1 & 2	5.12.B.2 Building Height.	g. Exceptions: The following structures may be erected above the height limits established in Table 5.2 below: i. Cranes, gantries, mobile <u>and fixed</u> conveyors and similar equipment necessary for the functions of marinas, marine manufacturing, permitted commercial, industrial or port activities and servicing vehicles. ii. Flagpoles or masts, transmission towers, chimneys, smokestacks, aerials or stairwells, when part of a permitted use. iii. Belfries, monuments, spires or steeples, transmission towers, provided such structures must be designed to minimize obstruction of views. iv. In mixed use and industrial zones, covers for elevator and other mechanical equipment and monitors for light and ventilation are permitted when occupying less than 15% of the total roof area and less than 5% of lot coverage and extending not more than 10 feet above roof level. h. When considering allowance of the structures (listed in this subsection (g)) to exceed the height limitations, the decision-maker must consider: i. View obstruction; ii. Alternate siting outside shoreline areas; iii. Significance of alteration of existing skyline profile. iv. The Shoreline Variance criteria in Section 3.2(C) of this SMP.	<u>Recommended change 1: Include fixed conveyors in height exceptions</u> This change was requested by the Port of Anacortes in their comment letter. According to the Port's letter, "As an example of water dependent uses frequently requiring increased height, take the instance of mobile conveyors and loaders; it is noted that a height exception is provided for mobile conveyors. A height exception should be allowed without a variance for a fixed conveyor. There may be many reasons for the height of a fixed conveyor in an Urban SED to exceed a 35' or 50' height limit. Truck clearance, fire prevention, spill and dust prevention facilities, physical and tidal limitations of loading high sided vessels to name a few-- all dependent on design and/or physical location." Ecology agrees that allowing fixed conveyors would be consistent with the use preferences of the SMA and the other height exceptions listed here. Applications for new fixed conveyors would still need to demonstrate consistency with sub-section (h). Ecology recommends the City consider this change. <u>Recommended change 2: Do not require consistency with the shoreline variance criteria for height exceptions.</u> If the exceptions in subsection (g) require consistency with the shoreline variance criteria, then they are not really exceptions. A property owner can already request a variance for height limits for any proposed structure, not just the structures in subsection (g), if the proposal is consistent with the shoreline variance criteria. The purpose of a shoreline variance is strictly limited to granting relief where the application of the SMP would, in combination with unique physical characteristics of the property, significantly interfere with reasonable use of a property or thwart the policies of the SMA [see WAC 173-27-170]. However, the intent of the exceptions in (g) appears to be to recognize that some structures are either minimal in their likely impact to views or are necessary to support water-dependent uses and so should be allowed to exceed height limits, regardless of unique property conditions. If this is the City's intent with subsection (g), then Ecology recommends striking the requirement to be consistent with the shoreline variance criteria, or only referring to some of the criteria (such as the minimum necessary criterion).

Req-2	Table 5.2 Shoreline Development Standards Matrix		Min. Resid. Lot Size (sq.ft.)	Lot Coverage % of Area ¹	Max. Height	Setback ²	
		Environment Designation				Water- Dependent	Non- Water- Dependent
		Shoreline Residential					
		Burrows Bay (between east end of Croatian Way and Skyline Way)	7,500	35% ³	35'	0'	25'
		All other remaining areas	6,000 or 7,500	35% ³	35'	0'	60' ⁵
		Urban					
		Burrows Bay (Skyline Marina to Washington Park)	Per Zoning	50%	35'	0'	25'
		All other remaining areas	Per Zoning	50%	50' ⁶	0'	25'
		Urban Maritime	NA	50%	50' ⁶	0'	25'
		³ The impervious surface limits on residential development located in Chapter 5, Sections 5.8 and 5.9, supersede general lot coverage standards in this table. Parking lots, if permitted under Table 5.1 and DR 5.9.11 as accessory to legally existing adjacent to pre-developed Aquatic Designations containing overwater structures <u>or uses in the Aquatic Designation</u> , are exempt from this requirement.					
		⁶ Structures over 35 feet must demonstrate that they will not No permit shall be issued pursuant to Table 5.2 for any new or expanded building or structure of more than thirty five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served, per, consistent with RCW 90.58.320 and View Protection/Aesthetics regulation DR-6.4.18.					

Required Change 2: Revise footnote for clarity and accommodation of water-dependent uses

A change is necessary for consistency with WAC 173-26-191(2)(a)(ii), which requires that SMP regulations “Be sufficient in scope and detail to ensure the implementation of the SMA, statewide shoreline management policies of this chapter, and local master program policies” and with WAC 173-26-201(2)(d)(ii), which requires that “Harbor areas, established pursuant to Article XV of the state Constitution ... be reserved for water-dependent and water-related uses.” The proposed language for this footnote is unclear. For example, it’s unclear how “pre-developed Aquatic Designations” would be identified as the Aquatic Designation is generally continuous around the City. Additionally, a reference to the new proposed DR 5.9.11 is necessary for internal consistency.

Recommended Change 3: Reword footnote 6

We recommend rewording footnote 6, which is derived from RCW 90.58.320. This RCW is not intended to be a regulation within a master program, but should be used to guide planning for master program regulations. As written, it is not clear to the reader what this footnote is intended to clarify about the 50-foot height allowances. To improve clarity and implementation of this provision, we recommend rewording it.

Rec-3	Chapter 6 Environmental Protection General Regulations	6.2 Organization These regulations first present general environmental policies and regulations including analysis of impacts, mitigation, bonding, and monitoring. Second, policies and regulations protecting the broad elements that comprise the shoreline environment (e.g., earth, air, and water) are provided. Third, this chapter presents general and specific policies and regulations for “critical areas” including: wetlands, geologically hazardous areas, frequently flooded areas, and fish and wildlife habitat conservation areas, including exclusions where the AMC 19.70, Ordinance #XX, dated XX, Critical Areas Regulations do not apply within shoreline jurisdiction, as described under Section 6.6 Critical Areas - General. Regulations for the protection of critical aquifer recharge areas are dealt with by incorporating under AMC Chapter 19.70, Ordinance #XX, into the SMP in Section 6.6. Critical Areas Regulations. And finally, this chapter presents policies and regulations for conservation of vegetation in shoreline jurisdiction.	Recommended Change 4: Remove unnecessary and possibly confusing language We recommend striking portions of the proposed language in this section that is not necessary and does not contribute to understanding the organization of this chapter. Required Change 3: Refer to the SMP’s critical area regulations and not the CAO for CARAs. A change is necessary for consistency with RCW 90.58.610 and RCW 36.70A.480 which govern the relationship between the SMP and CAO. Pursuant to RCW 36.70A.480(3)(d), the CAO does not apply in shoreline jurisdiction; critical areas, including critical aquifer recharge areas, are protected solely by the SMP in shoreline jurisdiction. Accordingly, the SMP has its own critical area regulations in Section 6.6-6.10. The SMP relies on a combination of shoreline-specific policies and regulations and incorporating some of the regulations from Chapter 19.70 for critical aquifer recharge areas.
Req-4	6.3 Impacts, Mitigation, and Bonding	B. Development Regulations DR-6.3.5 In addition to the requirements for critical areas reports contained in the Critical Areas Regulations, Sections 6.6-6.10 Ordinance #XX, dated XX, found under AMC 19.70, the mitigation plan must address the following:	Required Change 4: Refer to the SMP’s critical area regulations and not the CAO A change is necessary for internal consistency with Section 6.6, which contains the critical areas regulations that are applicable within shoreline jurisdiction and for consistency with RCW 90.58.610 and RCW 36.70A.480 which govern the relationship between the SMP and CAO. Pursuant to RCW 36.70A.480(3)(d), the CAO does not apply in shoreline jurisdiction. Accordingly, the SMP has its own critical area regulations in Section 6.6. The SMP relies on a combination of shoreline-specific policies and regulations and incorporating some, but not all, regulations from the CAO into the SMP. To ensure internal consistency with these regulations, SMP references to critical area regulations should refer to Section 6.6-6.10.
Req-5	6.6. Critical Areas	DR-6.6.1 The City’s Critical Areas Regulations as adopted under Ordinance #XX, dated XX, and AMC 19.70 are hereby incorporated into this Master Program by reference with the following exclusions: a. 19.70.035, Critical Areas Review b. 19.70.040, Exempt Activities c. 19.70.045, Permitted Alterations d. 19.70.050, Reasonable use exception variance e. 19.70.225(B) Wetlands – General Development Standards, Exemptions and allowed activities f. 19.70.230 Wetlands – Specific Wetland Category Development Standards. These allowances can be utilized in instances where water-related development is proposed by the applicant. g. 19.70.325(B) Fish and wildlife habitat – General Development Standards for all FWHCAs, Exemptions. h. <u>19.70.330(C), Fish and wildlife habitat – Specific Standards for streams, Buffer Reduction Standards.</u>	Required Change 5: Exclude stream buffer reduction allowances. A change is necessary for consistency with the requirement to assure no net loss of shoreline ecological function in WAC 173-26-186(8)(b) and the requirement to “base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available” from WAC 173-26-201(2)(a). The City proposes to add an allowance to reduce stream buffers that is not currently in the SMP critical area regulations. Allowing stream buffers to be as small as either 25 or 35 feet does not appear to be sufficient to protect the functions of the stream, particularly for streams that support fish. In situations where the stream buffer contains intact native vegetation, it does not seem possible to reduce the width of this buffer without also reducing ecological function. Further, the City’s best available science analysis, available on the City’s website for the CAO update found that a 50-foot buffer on a fish bearing stream was likely the minimum supported by science, and only if the quality of the buffer is improved (GeoEngineers, 2019). If a stream buffer is significantly interfering with reasonable use of a property, the property owner can apply for relief through a shoreline variance.

		i. 19.70.330(E), Fish and wildlife habitat – Specific Standards for streams, Functionally Separated and Isolated Stream Buffers. j. 19.70.425(B) Geologically hazardous areas – General development standards, Exemptions. k. Any provision of the Critical Areas Regulations that is not consistent with the Shoreline Management Act Ch. 90.58 RCW, and supporting Washington Administrative Code chapters, does not apply in shoreline jurisdiction. Non-applicable provisions include those related to procedural/permit processes, non-conforming structures/uses, appeals, and enforcement.	
Rec-5	6.9 Geologically hazardous areas	DR-6.9.1 The following activities are allowed in geologically hazardous areas specifically mapped and designated by ordinance of the city council pursuant to allowed activities of this section and do not require submission of a critical area report, so long as they meet all applicable provisions of the SMP: a. Erosion and Landslide Hazard Areas. Only those activities approved and permitted consistent with an approved critical area report in accordance with this master program , in addition to shoreline permit provisions under AMC 19.20 , mustmay be allowed in erosion or landslide hazard areas.	Recommended Change 5: Replace “must” with “may” We recommend this provision be reworded for clarity.
Req-6	6.10 Wetlands	DR-6.10.3 Prohibit alteration of wetlands and their buffers unless: a. Doing so will constitute a violation of constitutional or statutory limitations on regulations of private property or b. The proposal is a water-oriented use and the proponent can conclusively demonstrate that impacts are unavoidable and that mitigation measures have been applied via mitigation sequencing, as defined in Chapter 12, Definitions, and WAC 173-26-201(2)(e). Other d<u>Development proposals that cannot meet requirements outlined within Section 6.6, Critical Areas – General, and/or this regulation, must apply for may seek relief through</u> a Shoreline Variance, per Section 3.2, Variances. In either case, the proponent shall provide mitigation to achieve no net loss of wetland function or value, according to an approved mitigation plan prepared consistent with this Master Program, the Critical Areas Regulations, AMC 19.70.	Required Change 6: Remove this exception to complying with wetland standards. A change is necessary for consistency with the permitting requirements of the SMA in RCW 90.58.100 and WAC 173-27. The appropriate way for the City to evaluate whether complying with the critical area regulations would constitute a violation of constitutional or statutory limitation on regulations of private property is through a shoreline variance. Sub-section (a) would circumvent the shoreline variance process entirely. If an applicant is in the situation described in (a), they should seek relief from the regulation that is interfering with their constitutionally-protected property rights through a shoreline variance. Relief from the standards of the SMP must be approved by both the City and Ecology through the shoreline variance process.
Rec-6	Global	Replacement of “shall” with “must”	Recommended Change 6: Use something other than “must” in some circumstances The City proposes to replace every instance of “shall” in the SMP with “must.” However, “must” is not the appropriate synonym for every instance where “shall” is used is. In some circumstances, “shall” was used to mean “will.” In some cases, the replacement renders

			the sentence nonsensical. We recommend the City double-check the replacements to identify situations where the replacement is either not grammatically correct or confusing and use an alternative to “must”.
Rec-7	AMC 19.40.035.C Modifications to Existing Nonconforming Structures and Uses	5. State Ferry Terminal. The existing developed footprint, except for infill between the toll booth area in the lowest parking lot, hillside walking paths, and a hillside side slope along the western side of the main terminal parking lot, and including all associated parking, at the Washington State Ferry Terminal facility. Redevelopment may occur within the existing footprint only, provided there is no net loss of ecological function and value in the adjacent buffer areas for Cannery Pond and Ship Harbor Interpretive Preserve wetlands.	Recommended Change 7: Relocate or copy this provision within the SMP The City proposes to add this to the CAO. The City proposes to incorporate some portions of the CAO into the SMP by reference. This provision is within AMC 19.40.035, which is not incorporated into the SMP. Therefore, this provision will not apply to any portion of the state ferry terminal that is within shoreline jurisdiction (pursuant to RCW 36.70A.480, the CAO does not apply within shoreline jurisdiction). Because much, if not all, of the terminal is likely in shoreline jurisdiction, Ecology recommends either relocating or duplicating this allowance within the SMP so that it will be applicable to the full ferry terminal. Section 3.5 would be an appropriate location.
Rec-8	Chapter 19.40 AMC, Definitions	“Shoreline jurisdiction” means..... those lands and waters subject to the Shoreline Management Act and the Anacortes Shoreline Master Program and which are identified in Chapter 2.3 of the Anacortes Shoreline Master Program.	Recommended Change 8: Remove placeholder or add a definition for “shoreline jurisdiction” The City’s proposed CAO has a placeholder for a definition for “shoreline jurisdiction.” We recommend the City either remove this placeholder or add a definition. We have provided recommended language if the City chooses to provide a definition.

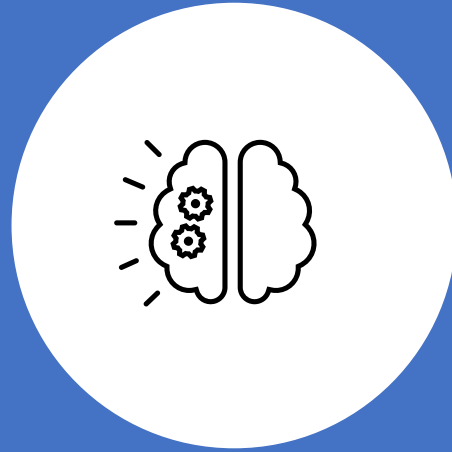
ANACORTES SHORELINE MASTER PROGRAM

PERIODIC UPDATE



Plan For Tonight

1. SMA/SMP Refresher
2. SMP Periodic Update Status
3. DOE Initial Determination
4. 1st Draft Amendments Review
5. Next Steps



1. SMA/SMP Refresher

What is the Shoreline Management Act?

- State law ratified by the voters in 1972 (RCW Ch. 90.58)
- Provides a statewide framework for managing, accessing and protecting WA shorelines
- Requires cities & counties to develop SMPs to implement the Act's policies





Basic Goals and Policies of the SMA

The overarching goal of the SMA is “to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” The SMA has three broad policies as outlined in RCW 90.58.020:

Protect the environmental resources of state shorelines. “This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...”

Promote public access and enjoyment opportunities. “This policy contemplates protecting...public rights of navigation and corollary rights incidental thereto.”
“Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.”

Give priority to uses that require a shoreline location. “...uses 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 shoreline.”

All SMP comprehensive updates and other SMP amendments must be consistent with these three basic policies.

•••• Where does the SMA apply?

Shoreline Jurisdiction

- Shorelines of the State
- Shorelands extending 200' landward from the OHWM & associated wetlands
- Shorelines of Statewide Significance

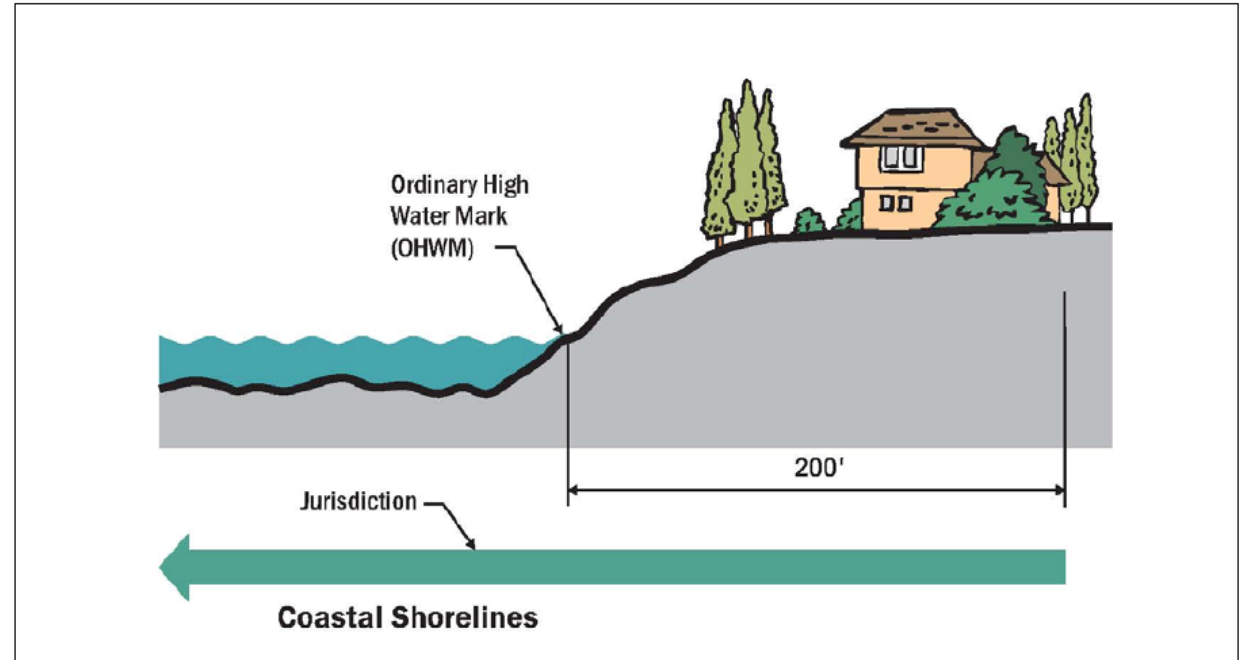
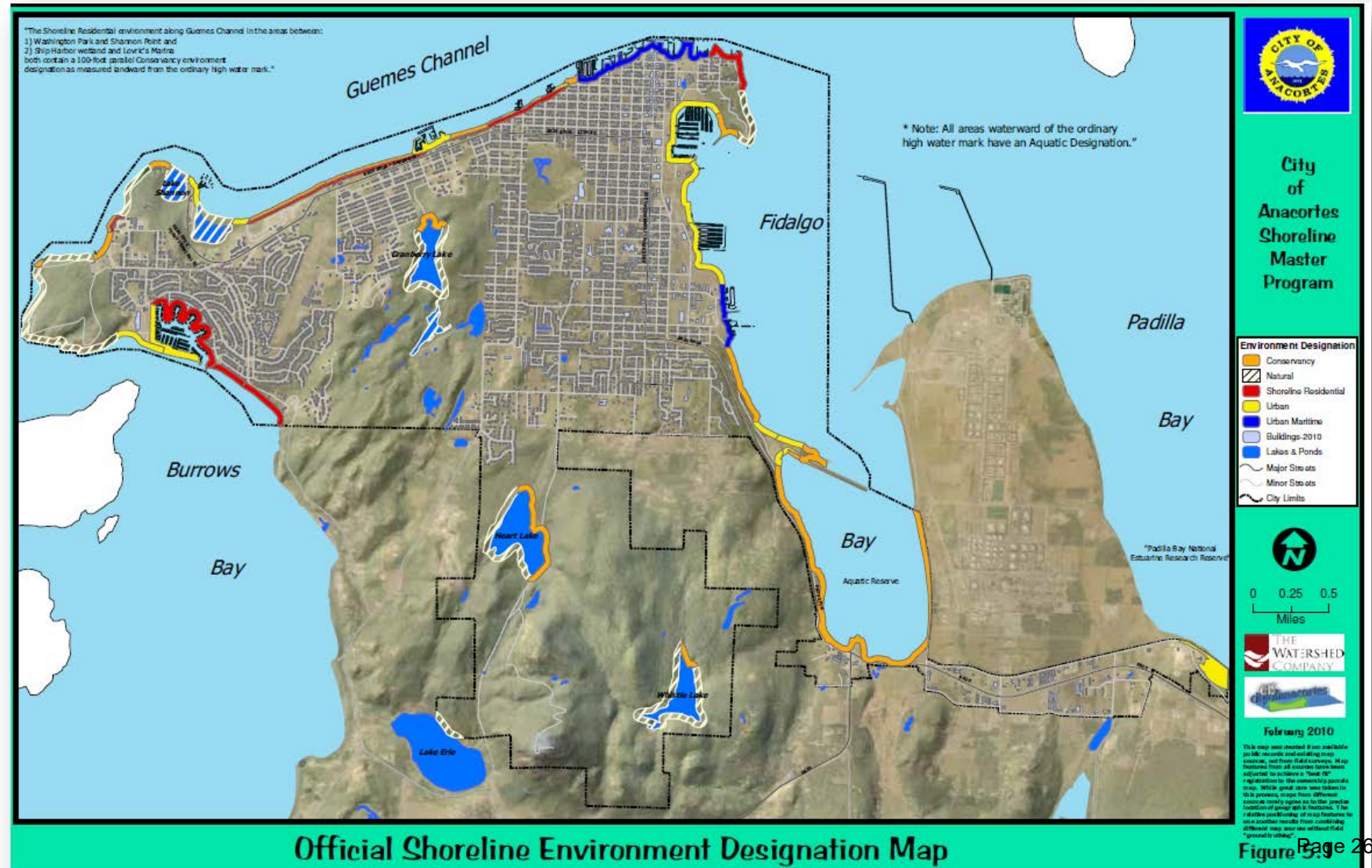


Figure 5-14: Shoreline jurisdiction for shorelands bordering marine waters and lakes extends 200 feet landward from the OHWM.

Anacortes Shoreline Jurisdiction

- **All marine shorelines -** Guemes Channel, Burrows Bay, Fidalgo Bay
- **Lakes –** Little Cranberry, Heart and Whistle, and a portion of Lake Erie within City Limits





What is the Shoreline Master Program?

- Local land use policies and regulations that guide use of shorelines
- Based on state law – tailored to local conditions and development
- 3 main parts of an SMP:
 - Policies
 - Regulations
 - Administrative process
- Must be periodically reviewed and revised (if needed)
- Department of Ecology has ultimate approval authority



What's in the Anacortes SMP?

Chapter 1 – Introduction

Chapter 2 – Scope, Jurisdiction, and Exemptions

Chapter 3 – Administrative Provisions

Chapter 4 – Master Program Elements: Goals & Policies for the Anacortes SMP

Chapter 5 – Shoreline Environments & Associated Policies and Regulations

Chapter 6 – Environmental Protection General Regulations

Chapter 7 – Shoreline Public Access

Chapter 8 – Specific Use Policies and Development Regulations

Chapter 9 – Specific Shoreline Modification Policies and Development Regulations

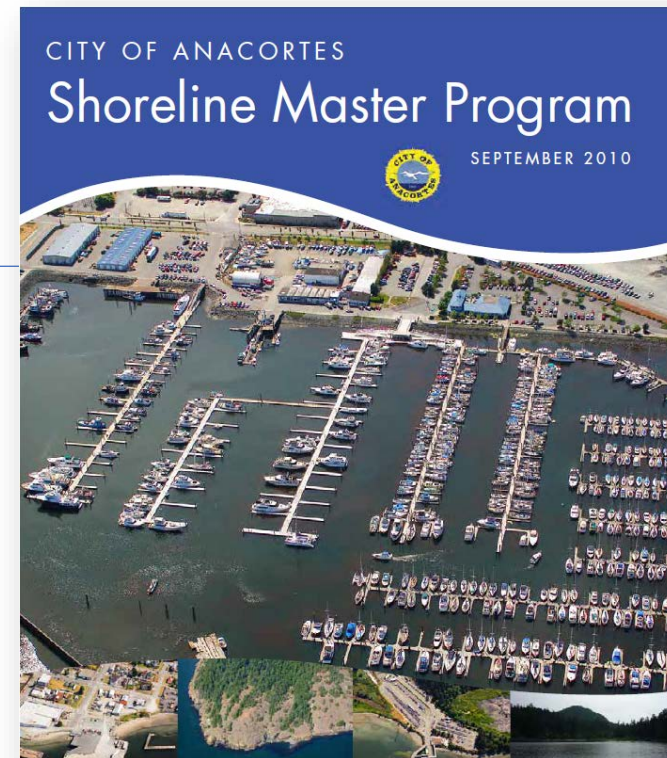
Chapter 10 – Enforcement and Penalties

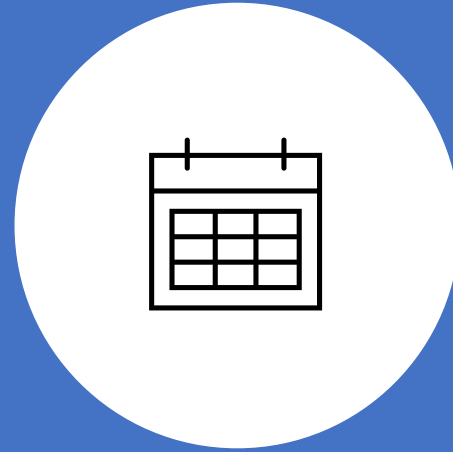
Chapter 11 – Master Program – Review, Amendments and Adoption

Chapter 12 – Definitions

Appendix A – Shoreline Critical Areas Regulations

Appendix B – Shoreline Restoration Plan





2. SMP Periodic Update Status



Why are we doing an update?

- Last update to SMP was a 'comprehensive' update, adopted in 2010
- SMA requires periodic review and update, if needed, every 8 years
- Intended to keep SMPs current with amendments to state laws, changes to local plans and regulations, changes in local circumstances, and new or improved data and information





What's included in Anacortes' update?

- Informed by a Gap Analysis
 - Mandatory & recommended changes per Ecology's Periodic Review Checklist
 - Changes for consistency with comprehensive plan and development regulations
 - 2016 Comp. Plan Update
 - 2019 Dev. Reg. Update
 - 2021 CAO update
 - Changes to address local circumstances and improve clarity and administration



Timeline - What's already been done?

Dates	Activity
September 2019	Launch webpage on city website
October 30, 2019	Open House
March 2020	Online Open House
July - October 2020	PC Meetings (Work Sessions)
November 18, 2020	Draft 1 proposed amendments published for public comment; SEPA DNS issued
December 9, 2020	Joint PC/Ecology public hearing
December 18, 2020	End of joint comment period
April 22, 2021	Draft amendment package submitted to DOE for initial determination
July 26, 2021	CAO amendments adopted by City Council
October 21, 2021	Initial determination issued by Ecology
February 9, 2022	Planning Commission Meeting



Submittal to DOE for initial determination

- Required step in the optional joint periodic review process
- Opportunity to ID issues needing to be addressed before city completes adoption process
- DOE issued a determination that the proposed amendments, subject to Ecology's required changes, are consistent with the policy and standards of the SMA and SMP guidelines
- Staff recommends incorporating all of DOE's mandatory and recommended changes

TO: Libby Grage, Planning Manager, City of Anacortes
CC: Jackie Chandler, Shoreline Administrator, WA Department of Ecology
FROM: Maria Sandercock, Shoreline Planner, WA Department of Ecology
Date: October 1, 2021
Subject: Initial Determination of Consistency
Sent via email to: libbyb@cityofanacortes.org

Use of this Document

Ecology's *Initial Determination of Consistency* provides Ecology's review of the proposed amendment to the City of Anacortes (City) Shoreline Master Program (SMP) for consistency with the Shoreline Management Act and the SMP Guidelines. This document is divided into two sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process and **Initial Determination** of the proposed amendment with next steps.

Attachment 1 itemizes issues that must be addressed for Ecology's final approval of the proposed amendment.

Brief Description of Proposed Amendment

The City has submitted Shoreline Master Program (SMP) amendments to Ecology for initial determination of concurrence to comply with periodic review requirements. Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2010. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the Anacortes Shoreline Master Program pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis that documents proposed amendments. The amendments bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

Anacortes' SMP is a standalone document containing goals, policies, and regulations, although administrative procedures are located in Chapter 18.16 of the Anacortes Municipal Code (AMC). The official Shoreline Designation Map is located in Figure 5.1 of the SMP. Relevant portions of the City's critical areas ordinance are incorporated into the SMP and included in Appendix A. According to the Gap Analysis (prepared by The Watershed Company, dated February 2021), the City intends to codify all regulatory sections of the SMP in Chapter 19.72 AMC as part of this periodic review. The City also proposes to remove Appendix A and incorporate the Critical Areas Ordinance (CAO) by reference only. The City is amending the CAO concurrently with the SMP.



Key Points in Ecology determination

Required changes for consistency with SMA policies & SMP Guidelines

1. Changes to Ch. 5 Shoreline Environments Policies and Regulations to ensure Harbor Areas are reserved for water-dependent and water-related uses
2. Changes to Ch. 6 Environment to clarify applicable critical areas provisions and appropriate procedures consistent with SMA, and exclude stream buffer averaging allowances from incorporation by reference

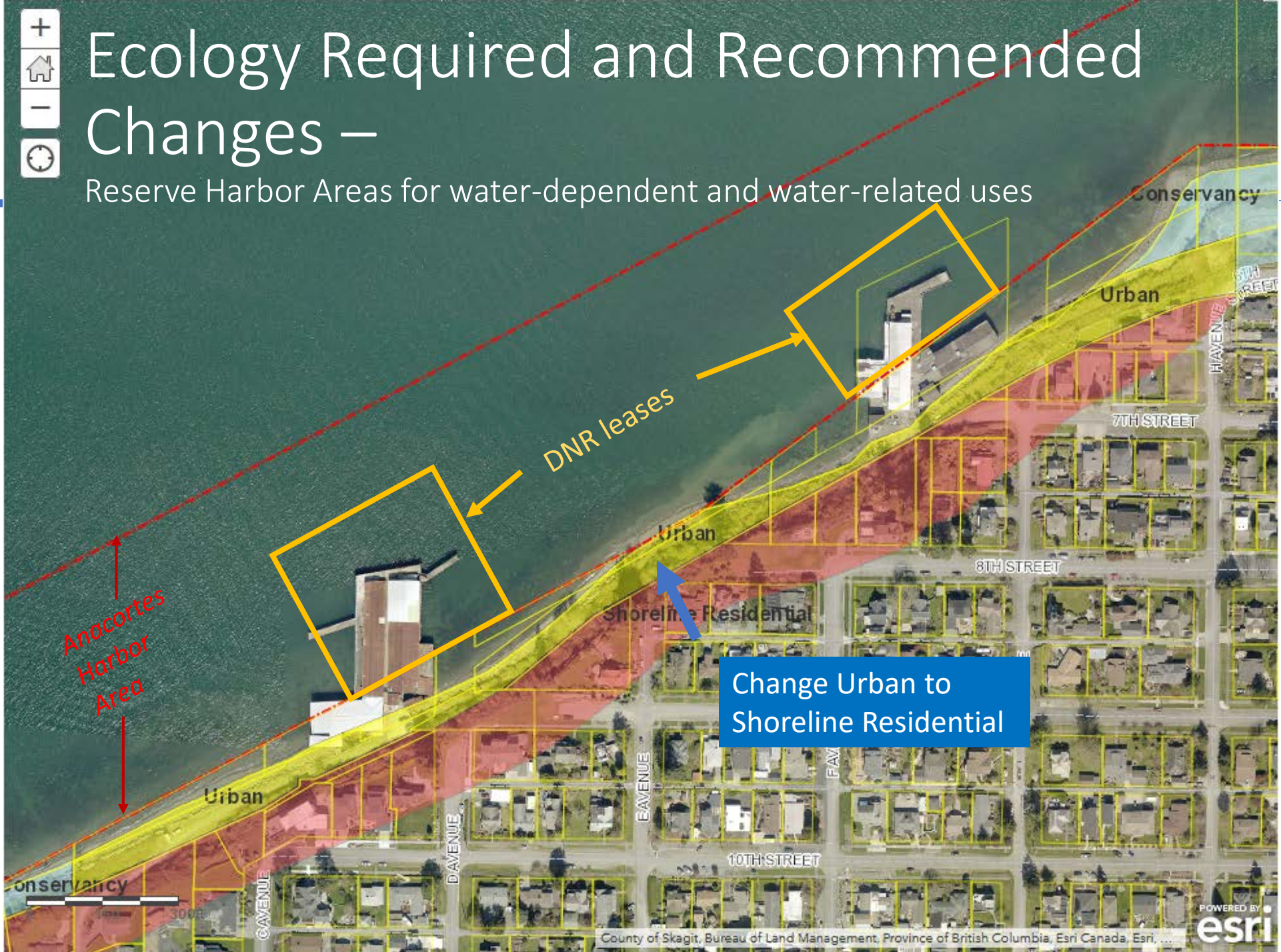
Recommended changes

1. Include fixed conveyors in height exceptions and do not require meeting variance criteria for height exceptions
2. Rewording various provisions for clarity
3. Add specific 19.70 critical areas standards directly to SMP Ch. 6 for applicability to shoreline critical areas for better integration



Ecology Required and Recommended Changes –

Reserve Harbor Areas for water-dependent and water-related uses





Ecology Required and Recommended Changes

Attachment 1:

City of Anacortes - Ecology Required and Recommended Changes

The changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III)

ITEM	SMP Submittal PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Req-1	5.9 - Shoreline Residential	<u>Policy 5.9.3 Allow other accessory uses subordinate and incidental to water-oriented uses when adjacent to existing overwater structures between H Avenue and B Avenue.</u> [Renumber subsequent policies] ... <u>Accessory Uses Supporting Existing Overwater Structures</u> <u>DR-5.9.11 Guemes Channel, between H Avenue and B Avenue, contains two existing overwater structures within the adjacent Aquatic designation. Accessory uses necessary to support water-oriented use of these existing over-water structures may be located in the adjacent Shoreline Residential environment, subject to the following standards, in addition to conformance with all other applicable SMP goals, policies and regulations:</u> <u>The accessory use and associated improvements must:</u> a. <u>Be demonstrably subordinate and incidental to the permitted primary water-oriented use of the over-water structure and functionally support its activity;</u> b. <u>Be located on land under the same ownership or leasehold as the over-water structure the accessory use is supporting;</u> c. <u>Conform to the applicable standards in Table 5.2 Shoreline Development Standards Matrix, EXCEPT that accessory uses are not subject to maximum impervious surface limits, and the minimum setback for non-water-dependent accessory uses is 25';</u> d. <u>For accessory parking, the applicant must provide a public access easement in a form acceptable to the Shoreline Administrator;</u> e. <u>The shoreline permit process for the accessory use must follow that as shown in Table 5.1 Shoreline Use and Modification Matrix for the primary water-dependent or water-oriented use within the Aquatic shoreline environment designation.</u>	<u>Required Change 1: Reserve harbor areas for water-dependent and water-related uses.</u> A change is necessary for consistency with WAC 173-26-201(2)(d)(ii), which requires SMPs to reserve harbor areas for "for water-dependent and water-related uses that are associated with commercial navigation." The City proposes to amend the official shoreline designation map to change the designation along the shorelands of the Canneries reach of the Guemes Channel from Urban to Shoreline Residential. This area along the Guemes Channel has been identified by the Department of Natural Resources as a Harbor Areas under the state constitution. Accordingly, this area must be reserved for water-dependent and water-related uses. However, commercial and industrial uses that are not accessory to single family residential uses are prohibited in the Shoreline Residential environment. Impervious surface and setback requirements would further inhibit redevelopment and re-use of the existing overwater canneries. To ensure that this map amendment is consistent WAC 173-26-201(2)(d)(ii), changes to the Shoreline Residential designation policies and regulations are necessary. To address this issue, the City has proposed adding a new policy and new regulation to the Shoreline Residential designation in Chapter 5.9. We have incorporated this proposal from the City here. In the Initial Determination, we have included findings that this change will bring the amendment into consistency with WAC 173-27-201(2)(d)(ii).



3. Review of 1st Draft Amendments

Categories of Changes



Consistency with State Law



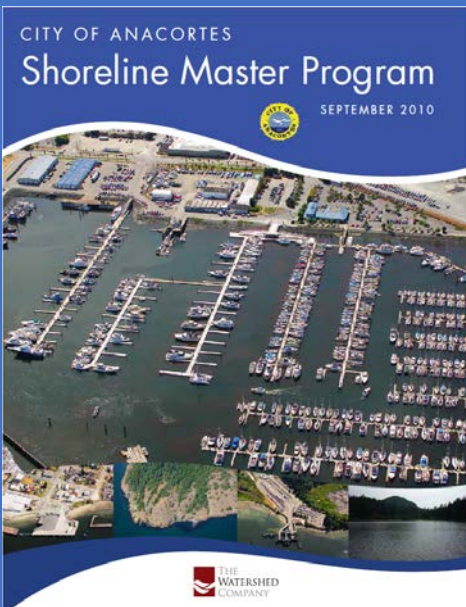
Integration of Critical Areas Regulations



Consistency with Comprehensive Plan & Other Development Regulations



Other Issues for Consideration



Chapter 1

Introduction

1.1 Requirements of the Shoreline Management Act

1.2 The City of Anacortes' Role in Implementing the Shoreline Management Act

1.3 Purposes of the Shoreline Master Program

1.4 Legislative Findings

1.5 How the Shoreline Master Program is Used



Chapter 1 Introduction



- Minor text changes to update references and global update to replace “shall” and decision-maker terms

A. Scope

The policies and regulations of this Master Program including the shoreline critical area regulations (in ~~Appendix A~~ Chapter 6 of this SMP) ~~will~~shall apply to all shorelines of the state within the corporate limits of the city of Anacortes. Development within the shorelines must also comply with the City Comprehensive Plan, the Fidalgo Bay Sub-Area Plan, and the City Development Regulations. Where conflict exists, the regulations most protective of the environment ~~will~~shall be implemented.

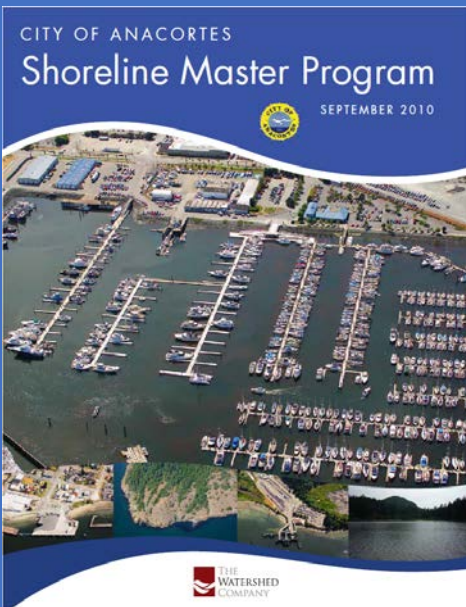
B. Planning and Regulatory Document

The Anacortes Shoreline Master Program is a planning document that outlines goals and policies for the use, development, protection, and restoration of shorelines of the City. It is also a regulatory ordinance with regulations for development intended to implement the goals and policies.

In order to preserve and enhance the shoreline of the City of Anacortes it is important that all development proposals relating to the shoreline area be evaluated in terms of the City's Shoreline Master Program, and that the City Shoreline Administrator be consulted. (In the City of Anacortes, the ~~Planning Director~~ Planning, Community & Economic Development Director serves the Shoreline Administrator function.) The Shoreline Master Program provides the regulatory parameters within which development may



Alex Capron
Gap Analysis: Table 3-1 #1



Chapter 2 Scope, Jurisdiction, and Exemptions

- 2.1 Rule of Liberal Construction
- 2.2 Applicability
- 2.3 Anacortes Shoreline Jurisdiction
- 2.4 Uses Not Constituting
“Development” and Exemptions from
Substantial Development Permit
Requirements
- 2.5 Relationship to other Plans and
Regulations



Chapter 2 Scope, Jurisdiction, and Exemptions



- 2.3 – a list of waterbodies included in shoreline jurisdiction is added

A. This Master Program ~~will~~**shall** apply to all the lands and waters in the City of Anacortes that fall under the jurisdiction of the Shoreline Management Act. Shorelines include the waters within the City limits together with the lands underlying them and all lands extending landward 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark together with any associated wetlands. Shoreline jurisdiction includes all marine waters within the City of Anacortes and the freshwaters of Little Cranberry, Heart, and Whistle Lakes, in addition to a portion of Lake Erie, see SMP Map Figure 5.1 for details.



Alex Capron
Table 2-1 2007b



- 2.4 – Clarification is added that activities that are exempt from critical areas review may still require a shoreline exemption or SDP.

A. **Applicability to uses not ~~requiring~~**constituting** development.** All uses within shoreline jurisdiction must be consistent with the regulations of this Master Program whether or not they require a Shoreline Substantial Development Permit. If an activity does not meet the definition of “Development”, it still may require a shoreline exemption. Activities in shoreline critical areas must request a letter of shoreline exemption or substantial development permit, regardless of whether they are exempt under -provisions AMC 19.70.035 Critical Areas Review or AMC 19.70.040, Permitted Alterations.~~required~~ Furthermore, Shoreline Conditional Use and/or Shoreline Variance permits may still be required of development that is not substantial development. An exemption from the



Alex Capron
Gap Analysis: Table 3-1 #4



Chapter 2 Scope, Jurisdiction, and Exemptions



• 2.4 – Cost thresholds are updated.

E. The following ~~shall~~ will not be considered substantial development for the purpose of this Master Program.

1. Any development of which the total cost or fair market value, whichever is higher, does not exceed seven thousand forty-seven (\$7,047) ~~five thousand seven hundred eighteen (\$5,718)~~ dollars or as periodically adjusted per RCW 90.58.030(3)(e), if such development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and

AC Alex Capron
Gap Analysis: Table 2-1 2017a

- b. In fresh waters the fair market value of the dock replacement does not exceed twenty two thousand five hundred (\$22,500), and are of equal

AC Alex Capron
Gap Analysis: Table 2-1 2019a

or lesser square footage than the existing dock being replaced, or

- c. New docks constructed in fresh waters do not exceed ~~teneleven~~ thousand two hundred (\$10,200) dollars, but if

- d. However, subsequent construction having a fair market value exceeding two thousand five hundred (\$2,500) dollars ~~the amount above~~ occurs within five years of completion of the prior construction, the subsequent construction ~~will~~ shall be considered a substantial development for the purpose of these regulations.



Chapter 2 Scope, Jurisdiction, and Exemptions



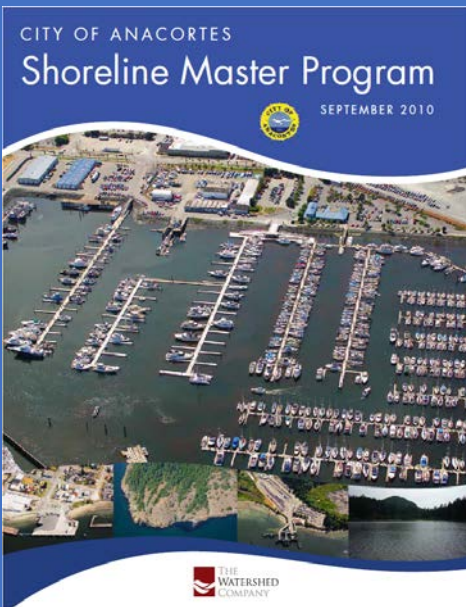
- 2.5 – New section added: “Developments Not Required to Obtain Shoreline Permits or Local Reviews”

2.5	Developments not Required to Obtain Shoreline Permits or Local Reviews	 Alex Capron Gap Analysis: Table 2-1 2
A.	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 projects listed under WAC 173-27-044 and -045, as amended, including, but not limited to the following:	
1.	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.	
2.	Boatyard improvements to meet NPDES permit requirements. Pursuant to	



- 2.7 – New section added: “Moratoria Authority”

2.7	Moratoria Authority	 Alex Capron Table 2-1 2009c
A.	The City has authority to adopt a moratorium control or other interim control on development under RCW 90.58.590.	
B.	To adopt a moratorium control or other interim control, the City must:	
1.	Hold a public hearing on the moratorium or control. The public hearing must be held within sixty days of the adoption of the moratorium or control;	
2.	Adopt detailed findings of fact that include, but are not limited to justifications for the proposed or adopted actions and explanations of the	



Chapter 3 Administrative Provisions

- 3.1 Conditional Use Permits
- 3.2 Variances
- 3.3 Nonconforming Development
- 3.4 Nonconforming Uses
- 3.5 Nonconforming Structures
- 3.6 Nonconforming Lots



Chapter 3 Administrative Provisions



- 3.7 and 3.8 - New sections for “Permit filing procedures” and “WSDOT Project Procedures”
- New sections to be added: “Application Requirements and Procedures”, “Substantial Development Permits”, “Conditions Authorized and Bonds”, “Permit Filing Procedures & Appeals”, “Permit Revisions”

Municipal Code → Title 18, Environmental Protection →

Chapter 18.16 SHORELINE MASTER PLAN



Sections:

Article I. In General

18.16.005 Adoption—Copies on file.

Article II. Administration and Permit Procedures

18.16.010 Introduction.

18.16.020 Procedures for processing shoreline permits.

18.16.030 Shoreline exemptions.

18.16.040 Shoreline substantial development permits.

18.16.050 Table of permits and procedures.

18.16.060 Permit application—Forms and contents.

18.16.070 Multiple permits.

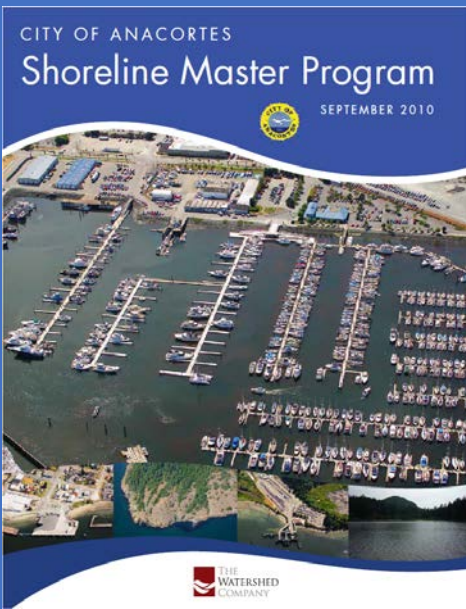
18.16.080 SEPA review.

18.16.090 Decision maker approval criteria.

18.16.100 Administrative authority and responsibility.

18.16.110 Appeals.

18.16.120 Application fees.



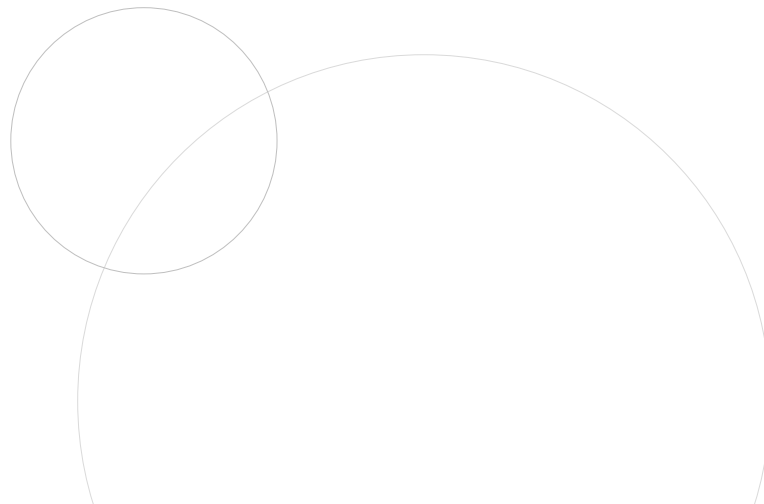
Chapter 4 Master Program Elements: Goals & Policies for the Anacortes Shoreline Master Program

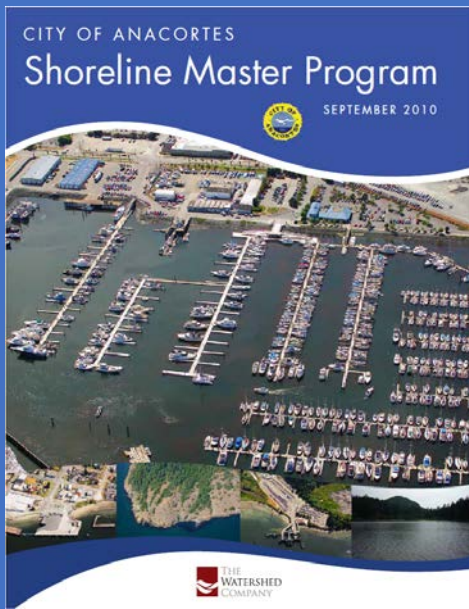
- 4.1 Introduction
- 4.2 Shoreline Use Element
- 4.3 Economic Development Element
- 4.4 Circulation Element
- 4.5 Public Access Element
- 4.6 Recreational Element
- 4.7 Conservation Element
- 4.8 Restoration and Adaptive Management Element
- 4.9 Historic, Cultural, Scientific, and Educational Element



Chapter 4 Master Program Elements: Goals & Policies for the Anacortes Shoreline Master Program

- No changes proposed





Chapter 5 Shoreline Environments & Associated Policies and Regulations

5.1 Introduction

5.2 Authority

5.3 Shoreline Environment Designations

5.4 Official Shoreline Environments Designation Map

5.5 Shorelines of Statewide Significance

5.6 Aquatic

5.7 Natural

5.8 Conservancy

5.9 Shoreline Residential

5.10 Urban

5.11 Urban Maritime

5.12 Shoreline Use and Modification Matrix and Development Standards

Table 5.1 Shoreline Use and Modification Matrix

Table 5.2 Shoreline Development Standards Matrix

Figure 5.1 City of Anacortes Shoreline Environment Designations

Chapter 5 Shoreline Environments & Associated Policies and Regulations



- 5.6 Aquatic – Development regulations updated to include conditionally permitted uses
 - DR-5.6.1.b revised as follows: Water-oriented ~~recreational~~ uses must be low to moderate intensity
 - Reuse of historic over-water structures expanded to include water-oriented uses

E. Development Regulations

Uses

DR-5.6.1

Prohibited, conditionally permitted, and allowed uses are generally identified in Table 5.1 in Section 5.12 of this Master Program. In addition:

- Water-dependent uses (e.g., water-dependent recreation and moorage) that are neither prohibited by the adjoining upland environmental designation nor associated with over-water structures are allowed. (For uses involving over-water structures see "New over-water structures" and "Historic Reuse of Over-Water Structures" above and below).
- Water-oriented ~~recreational~~ uses must be low to moderate in intensity.

Reuse of Historic Over-water Structures

The Shoreline Management Act allows for protection and restoration of historical buildings and the City of Anacortes Comprehensive Plan encourages adaptive reuse of historically significant structures. Several such structures exist along the City's shoreline. These structures include traditional over-water structures (e.g., Nelbro Cannery). The following regulations apply to proposals involving a new, water-enjoyment ~~use and/or~~ water-oriented use on an existing structure. (See also Sections 3.3-3.6 and 12.2 - Definitions)

DR-5.6.4

Water-enjoyment uses open to the general public may be permitted

AC Alex Capron
Table 5-1, #3

Chapter 5 Shoreline Environments & Associated Policies and Regulations



- 5.6 Aquatic – The following development regulation is added:

DR-5.6.5

Re-use of historic structures for aquaculture purposes shall be consistent with provisions under SMP Section 8.4, Aquaculture, and WAC 173-26-241(3)(b) Aquaculture Standards, which minimizes overall visual impact to the greatest extent possible.



Alex Capron
Table 5-1 #3. Port of Anacortes Comment.



Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- 5.8 Conservancy – Development regulations updated to clarify how lot calculations should be made.

Design Elements

DR-5.8.6

For all residential development within shoreline jurisdiction, the area of impervious surfaces (including parking areas, but excluding required right-of-way improvements) to be developed within shoreline jurisdiction shall be limited by the slope of the lot as specified in the following table. Preferential use of Low Impact Development (LID) in sensitive shorelines areas shall be required. The lot calculation includes the subject property within shoreline jurisdiction landward of the ordinary high water mark.

a. Table 5.8.6 – Impervious limits based upon Percent Slope

Slope	Impervious limit (expressed as a percentage of actual land area)
15% or less	30%
15-30	25%
Greater than 30%	20%

- b. Areas waterward of the ordinary high water mark and areas of marine bluffs, steep slopes, and wetlands shall not be included to calculate land area. For example, only the buildable-remaining area landward of the marine bluff edge shall be used in the calculation. Any increases beyond these percentages of impervious surfaces shall require a Shoreline Variance.

AC

Alex Capron

Table 5-1 #11



Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- 5.8, 5.9, 5.10, Legal descriptions for Conservancy, Shoreline Residential, and Urban SEDs are updated to reflect proposed SED Map changes

Ferry Terminal:

Beginning at a point West of the intersection of Parcel #31577 and Parcel #31576 thence South and East along the shoreline 1,077 feet to a point 636 feet West of the intersection of Parcel #31668 and Parcel #31667. This area is all within 200 feet of the OHWM.

Ship Harbor:

Beginning at the intersection of Parcel #31667 and Parcel #31666, thence East along the shoreline of Guemes Channel 554 feet to a point 803 feet West of the intersection of Parcel #31666 and Parcel #31669. This area is all within 200 feet of the OHWM.

Guemes Channel – Loric:

Beginning at the intersection of Parcel #31732 and Parcel #31739, thence East along the shoreline of Guemes Channel to the intersection of Parcel #31705 and Parcel #31703. This area is all within 200 feet of the OHWM except for the West 500 feet which is only 100 feet off the OHWM.

Guemes Channel – B H Ave.:

Beginning at the intersection of Parcel #31538 and Parcel #31532, thence East along the shoreline of Guemes Channel 2,644 feet to the intersection of Parcel #31537 and Parcel #31534. All within 50 feet of the OHWM.

Cap Sante Basin – Fidalgo Bay - South to 34th St.:

Beginning at the intersection of Parcel #56900 and Parcel #56897, thence North, West, and South along the shoreline 11,733 feet to a point at the intersection of Parcel #119601 and Parcel #33196. This area is all within 200 feet of the OHWM.

Fidalgo Bay - Weaverling Spit – North Side:

Beginning at the intersection of Parcel #33202 and Parcel #33203, thence South and East along the shoreline 1,770 feet to a point at the intersection of Parcel #33440 and Parcel #33439. This area is all within 200 feet of the OHWM.

Fidalgo Bay - Weaverling Spit – South Side:

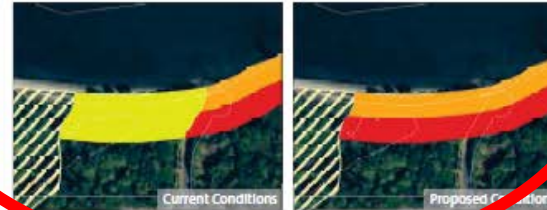
Beginning at the intersection of Parcel #33445 and Parcel #112900, thence West and South along the shoreline 670 feet to a point at the intersection of Parcel #33271 and Parcel #33268. This area is all within 200 feet of the OHWM except for the East 462 feet that are off the OHWM 150 feet and 50 feet deep.

Padilla Bay – South March's Point Road Beginning at the intersection of Parcel #19713 and March's Point Road, thence East and North approximately 1,750 feet along the shoreline to a point at the intersection of Parcel #19676 and #19761.

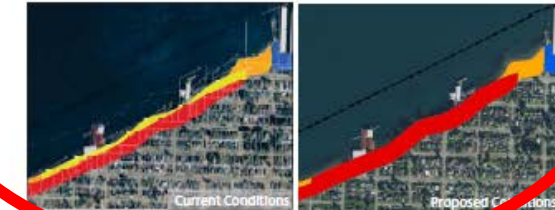
SHORELINE ENVIRONMENT DESIGN (SED) SUGGESTED CHANGES*

- ① Original Urban SED was originally anticipated per Fidalgo Bay EIS (2000). This SED segment is now zoned R2A (Residential Low Density), which is not consistent with the Urban Designation.
- ② Former canneries are currently under Urban SED. A change to Shoreline Residential SED would best match the underlying zoning.
- ③ Residential upland properties on Lake Erie — Undesignated residential properties partly in City limits were left undesignated during original Comprehensive SMP Update. A Conservancy SED is proposed.
- ④ Aquatic SED was noted but not shown on original SMP map.

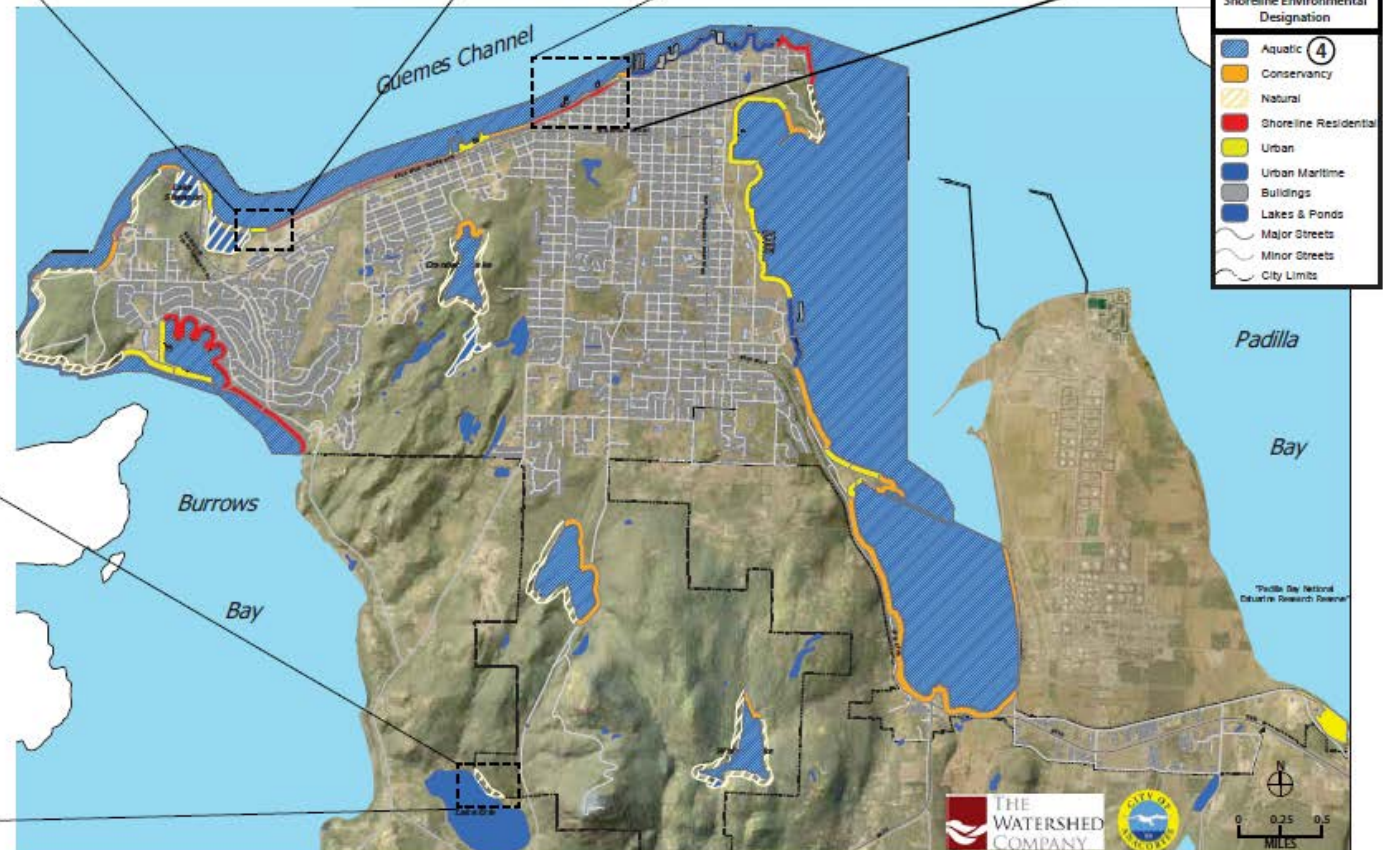
① SHIP HARBOR



② CANNERIES



③ LAKE ERIE



* Based on March 2020 Draft Gap Analysis, Section 4, Prepared by The Watershed Company

Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- 5.9 Shoreline Residential – Development regulations updated to clarify how lot calculations should be made.

Design Elements

DR-5.9.10

For all residential development within shoreline jurisdiction, the area of impervious surfaces (including parking areas, but excluding required right-of-way improvements) to be developed within shoreline jurisdiction shall be limited by the slope of the lot as specified in the following table. The lot calculation includes the subject property within shoreline jurisdiction landward of the ordinary high water mark.

a. Table 5.9.10 – Impervious limits based upon Percent Slope

Slope	Impervious limit (expressed as a percentage of actual land area)
15% or less	30%
15-30	25%
Greater than 30%	20%

- b. Areas waterward of the ordinary high water mark and areas of marine bluffs, steep slopes, and wetlands shall not be included to calculate land area. For example, only the buildable remaining area landward of the marine bluff edge shall be used in the calculation. A Shoreline Variance is required for reduction of dimensional standards.

AC

Alex Capron
Table 5-1 #11

Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- 5.10 Urban – DR-5.10.4 revised to require that ground floor residential uses meet zoning code requirements instead of prohibiting them.

transient accommodations.	
e.	Ground floor Residential uses must meet zoning code compliance under AMC 19.61, Block Frontage Standards may only be placed above a commercial ground floor.
f.	Destination/Dwell: Access: Intention: the intent is to create

AC Alex Capron
Table 4-1 #6

Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- 5.12 Shoreline Use and Modification Matrix and Development Standards
 - Exception for a re-use of historic overwater structures is added to the requirement that uses in the Aquatic environment be subject to more restrictive permitting processes of upland SEDs.

10.	Where a use or modification may occur in the Aquatic environment as indicated in Table 5.1 and in the corresponding regulations for that use, it shall <u>must</u> also be subject to any more restrictive permit processes or prohibitions on that use or modification as indicated for the adjacent shoreland environment. <u>except for the re-use of historic overwater structures.</u>	AC Alex Capron Table 5-1 #3
-----	--	--------------------------------

Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.

Shoreline Use and Modification Table (Table 5.1) is revised as follows to add footnotes for:

- Aquaculture uses in Aquatic des.
- Forest practices
- Accessory parking

structural stabilization technique						
Hard structural stabilization	X	C	C	P	P	P

¹ Home gardens associated with a single-family residence are allowed in the Shoreline Residential and Urban environment.

² Those structures installed to protect or restore ecological functions may be processed as a Substantial Development Permit.

³ Except for marinas, only commercial uses that are incidental to the primary residential use and are compatible with the residential character of the neighborhood, such as home occupations and bed and breakfast inns, may be permitted.

⁴ Private piers are only permitted in single-family residential use areas within Flounder Bay and along Cap Sante. All other residential piers are prohibited.

⁵ Some above-water aquaculture projects may be allowed as a conditional use in limited circumstances per SMP Section 8.4. isSection Section

⁶ 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.

⁷ So long as provisions within AMC Chapter 19.64, Parking are met, and a public access easement, to the satisfaction of the Shoreline Administrator, is provided.

TABLE 5.1. SHORELINE USE AND MODIFICATION MATRIX.

The chart is coded according to the following legend. P = Permitted, when meeting requirements for that use and shoreline area, may be subject to Shoreline Substantial Development Permit or shoreline exemption requirements C = Conditional Use, when approved by the City and Department of Ecology X = Prohibited; the use is not eligible for a Variance or Conditional Use Permit						
	Natural	Conservancy	Shoreline Residential	Urban	Urban Maritime	Aquatic
Shoreline Uses						
Advertising and Signs	X	P	P	P	P	P
Agriculture	X	X	X ¹	X ¹	X	X
Aquaculture						
Non-commercial aquaculture for recovery of a native population	C	C	P	P	P	P
All other aquaculture	X	X	X	C	C	X ⁵
Commercial Development						
Water-dependent	X	X	P ³	P	P	C
Water-related	X	X	P ³	P	P	C
Water-enjoyment	X	X	P ³	P	P	C
Non-water-oriented	X	X	P ³	C	C	X
Forest Practices ⁶	X	C	X	X	X	X
Industrial and Port Facilities						
Water-dependent	X	X	X	P	P	P
Water-related	X	X	X	P	P	C
Non-water-oriented	X	X	X	C	C	X
Marinas	X	X	X	P	P	P
Mining	X	X	X	X	X	X
Parking Facilities						
Primary	X	X	X ⁷	P	P	X
Accessory	X	C	P ⁷	P	P	X
Recreational Facilities						
Water-dependent (e.g., public access piers)	X	P	P	P	P	P

Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- Clarifications on how to calculate building height are added.

2. Building Height. No building or structure in shoreline jurisdiction ~~shall~~ may exceed the height limits indicated in Table 5.2, except as allowed per subsection (2)(g). In calculating the height of a building, the following measurement methods must be used:
- a. For a lot that slopes uphill from, or remains at the same elevation as, the property line at the front (street) of the building, the building height is measured to the highest point of the structure from the average of the natural or existing topography at the foundation at the front (street side) of the building.
 - b. For a lot that slopes downhill from the property line at the front (street) of the building, the building height is measured to the highest point of the building from the average grade level directly under the building.
 - e. For a lot that has frontage on two or more streets and the lot slopes downhill from the property line on either street frontage, the building height is measured to the highest point of the building from the average of the natural grade directly under the building.
 - f. For purposes of a-c above:
 - i. Calculation of the average topography is made by averaging the elevations of the center of all exterior walls of the proposed structure.
 - ii. Natural or existing topography is the topography of the land immediately prior to any site preparation, grading, excavation, or filling. Where land is regraded for purpose of a land division, the "natural or existing topography" is the grades as they exist at the time of recording of the final plat.
 - g. For over-water structures, height is measured to the highest point of the structure from the ordinary high water mark elevation.
 - h. For wireless service facilities and emergency communication facilities, structure height is measured from the lowest pre-existing ground level within the footprint of the facility to the highest point on the facility, including but not limited to the antenna or antenna array.

~~Cranes, gantries, mobile conveyors and similar equipment necessary for the~~

Chapter 5 Shoreline Environments & Associated Policies and Regulations, cont.



- Table 5.2 Shoreline Development Standards Matrix is revised as follows:
 - Footnote for shoreline residential lot coverage updated to exclude parking lots accessory to legally existing overwater structures or uses in the Aquatic Designation
 - Footnote added to maximum height allowances clarifying that heights over 35 feet cannot be approved if they would obstruct the view of a substantial number of residences.

TABLE 5.2. SHORELINE DEVELOPMENT STANDARDS MATRIX.

Environment Designation	Min. Resid. Lot Size (sq.ft.)	Lot Coverage % of Area ¹	Max. Height	Setback ²	
				Water-Dependent	Non-Water-Dependent
Shoreline Residential					
Burrows Bay (between east end of Croatian Way and Skyline Way)	7,500	35% ³	35'	0'	25'
All other remaining areas	6,000 or 7,500	35% ³	35'	0'	60' ⁴
Urban					
Burrows Bay (Skyline Marina to Washington Park)	Per Zoning ⁴	50%	35'	0'	25'
All other remaining areas	Per Zoning ⁴	50%	50' ⁵	0'	25'
Urban Maritime	NA	50%	50' ⁵	0'	25'
Conservancy	Per Zoning ⁴ NA	25% ³	25'	0'	100'
Natural	NA	NA	NA	0'	100'
Aquatic	NA	NA	— ⁴	NA	NA

¹ Lot Coverage: Buildings or structures in the Shoreline Area ~~shall~~must not occupy a greater percentage of a lot than indicated.

² Setback: Setback ~~shall~~must be the minimum distance measured in feet from the ordinary high water mark on a horizontal plane perpendicular to the shoreline.

³ The impervious surface limits on residential development located in Chapter 5, Sections 5.8 and 5.9, supersede general lot coverage standards in this table. Parking lots, if permitted under Table 5.1 as adjacent to pre-developed Aquatic Designations containing overwater structures, are exempt from this requirement.

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⁴ ~~See underlying zoning for minimum residential lot size within Urban environment designation~~

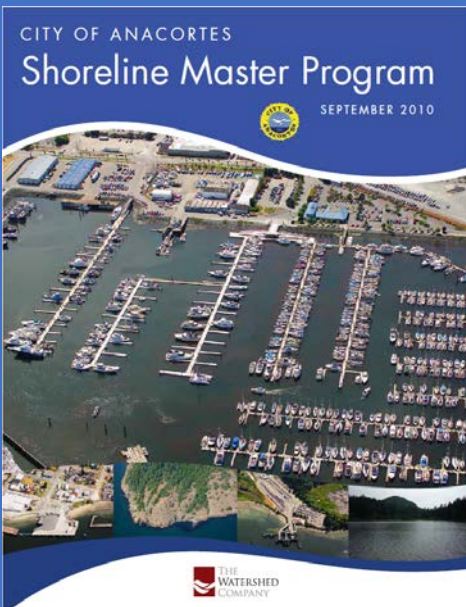
⁴ See adjacent upland designation

⁴ See DR 5.9 for setback reduction criteria, if applicable

⁴ No permit shall be issued pursuant to Table 5.2 for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served. Proposed buildings exceeding building height above 35' must provide view analysis showing proposed buildings in relation to impacted views, per RCW 90.58.320 and View Protection/Aesthetics regulation DR-8.4.18.

Commented [AC37]: Table 4-1 #4

Commented [AC38]: Table 5-1 #4



Chapter 6 Environmental Protection General Regulations

- 6.1 Introduction
- 6.2 Organization
- 6.3 Impacts, Mitigation, and Bonding
- 6.4 Environmental Elements
- 6.5 Vegetation Conservation
- 6.6 Critical Areas – General
- 6.7 Fish & Wildlife Habitat Conservation Areas
- 6.8 Frequently Flooded Areas and Tsunami Inundation Areas
- 6.9 Geologically Hazardous Areas
- 6.10 Wetlands



Chapter 6 Environmental Protection General Regulations



- 6.1 – A duplicate incorporation of the CAO is removed and a reference to 6.6 is included instead.
- 6.2 & 6.3 – References to the CAO's incorporation by reference in 6.6 is added.
- 6.4 – References to the City's stormwater and clearing and grading regulations are added.



Chapter 6 Environmental Protection General Regulations, Cont.



• 6.5 – Vegetation Conservation

- Tree replacement requirements are revised from requiring conifer be at least 5 feet tall to requiring that they be up to 8' tall.
- A requirement that subdivision of land not require significant vegetation removal is added to shoreline planting plan requirements.
- Allowances for tree and vegetation trimming within the shoreline setback via permit are clarified and restrictions are added.

DR-6.5.9

Trimming of trees and vegetation is allowed within shoreline setback areas ~~without a landscape plan, under authorization of a shoreline exemption, clearing and grading permit,~~ provided:

- a. This provision is not interpreted to allow clearing of vegetation,
- b. Trimming does not include topping, stripping or imbalances; a minimum of ~~60~~75% of the original crown ~~shall~~ must be retained to maintain tree health,
- c. Trimming impacts to the following critical areas may require evaluation and a report prepared by a qualified professional to demonstrate:
 - i. ~~does not directly~~ No direct impact on the nearshore functions and values including fish and wildlife habitat,
 - ii. ~~d. — Trimming —~~ It is not within a wetland or wetland buffer, and
 - iii. ~~e. — Trimming —~~ It does not impact soil stability -in landslide and erosion hazard areas; ~~does not impact soil stability.~~
 - df. Trimming is for view preservation, not view creation. Trimming cannot be for more than 25% of limbs in a five-year period, so long as DR-6.5.9(b) is also met, whichever is more restrictive. Photo documentation must accompany the shoreline permit application before with flagging showing limb(s) requested for removal.
 - eg. A photo of the tree is required as an as-built submittal, post permit issuance.
 - fh. Hazardous trees, or those identified as an extreme public



Chapter Regulation



- 6.6 – Critical Areas
 - The City's shoreline SMP and maintain
- 6.7 Fish and Wildlife
 - A reference
 - Provisional Areas are
- 6.8 Frequent Flooding
 - Reference
- 6.9 Geological Hazards
 - Reference
 - Develop area with

B. Regulations

DR-6.6.1 ~~Development and uses proposed within shorelines of the state shall meet the requirements of the~~ The City's shoreline-specific Critical Areas Regulations as contained in Appendix A adopted under Ordinance #XX, dated XX, and AMC 19.70 are hereby incorporated into this Master Program by reference with the following exclusions:

- 19.70.035, Critical Areas Review
- 19.70.040, Exempt Activities
- 19.70.045, Permitted Alterations
- 19.70.050, Reasonable use exception variance
- 19.70.225(B) Wetlands – General Development Standards, Exemptions and allowed activities.
- 19.70.230 Wetlands – Specific Wetland Category Development Standards. These allowances can be utilized in instances where water-related development is proposed by the applicant.
- 19.70.325(B) Fish and wildlife habitat – General Development Standards for all FWHCAs, Exemptions.
- 19.70.330(E), Fish and wildlife habitat – Specific Standards for streams, Functionally Separated and Isolated Stream Buffers.
- 19.70.425(B) Geologically hazardous areas – General development standards, Exemptions.
- ~~a-j.~~ Any provision of the Critical Areas Regulations that is not consistent with the Shoreline Management Act Ch. 90.58 RCW, and supporting Washington Administrative Code chapters, does not apply in shoreline jurisdiction. Non-applicable provisions include those related to procedural/permit processes, non-conforming structures/uses, appeals, and

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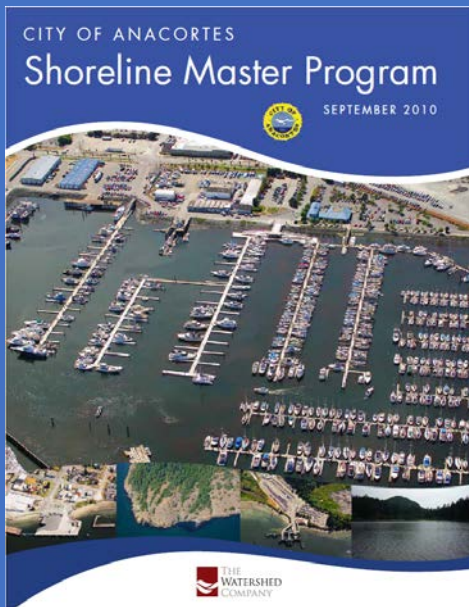
Chapter 6 Environmental Protection General Regulations, Cont.

• 6.10 Wetlands



- References to the critical areas regulations are updated (and use 2014 DOE wetland rating system)
- The first two shoreline-specific wetland development regulations, which are rendered unnecessary by the CAO incorporation, are deleted.
- The third regulation is revised to only allow wetland alterations if they are for water-oriented uses.





Chapter 7 Shoreline Public Access

7.1 Introduction

7.2 Background

7.3 Public Access Policies

7.4 Development Regulations

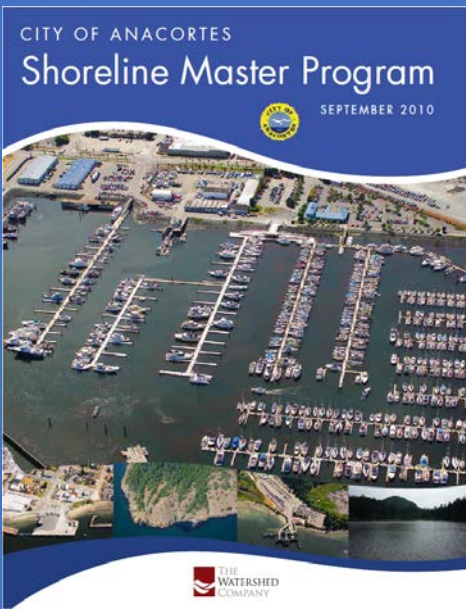




Chapter 7 Shoreline Public Access

- No changes proposed other than global replacement of “shall”.





Chapter 8 Specific Use Policies and Development Regulations

- 8.1 Introduction
- 8.2 Advertising and Signs
- 8.3 Agriculture
- 8.4 Aquaculture
- 8.5 Commercial Development
- 8.6 Industrial and Port Facilities
- 8.7 Marinas
- 8.8 Mining
- 8.9 Parking Facilities
- 8.10 Recreational Facilities
- 8.11 Residential Development
- 8.12 Scientific, Cultural, and Educational Facilities
- 8.13 Transportation Facilities
- 8.14 Utilities (Primary)



Chapter 8 Specific Use Policies and Development Regulations

• 8.4 Aquaculture

- Policy 8.4.2 revised as follows: “Limit all other aquaculture uses to the Urban ~~and~~, Urban Maritime, ~~environments and adjacent~~ Aquatic environments as a Conditional Use”.
- DR-8.4.1 revised as follows: “Shellfish seeding/culturing may be permitted when conducted for native population recovery in accordance with a government /Tribal approved plan. All other aquaculture developments and activities including ~~fish pens and commercial shellfish seeding/culturing~~, are limited to Urban, Urban Maritime, ~~shoreline environment and those adjacent~~ Aquatic destined areas over water only.
- Clarification added to DR-8.4.2 that aquaculture must avoid impacts to native eelgrass and macroalgae.
- Standards for fish pens are deleted.
- Standards for overwater aquaculture and non-commercial in-water aquaculture are added.
- A requirement that geoduck aquaculture adhere to WAC 173-26-241(3)(b) is added.

- References to other codes are updated.





Chapter 8 Specific Use Policies and Development Regulations

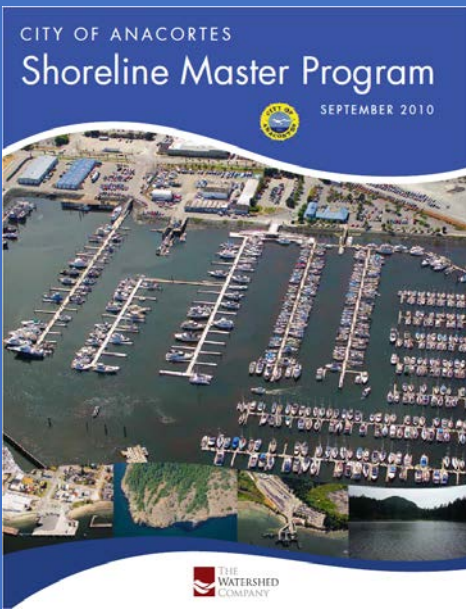
- New DRs for over-water aquaculture projects on over-water structures

DR-8.4.8

In-water aquaculture is prohibited in the Aquatic Designation, except non-commercial aquaculture for recovery of a native population. Over-water aquaculture projects using legal above-water structures may be permitted, subject to the provisions under SMP Section 5.6, Aquatic. Applicants must include a narrative of their aquaculture proposal for a shoreline permit, consistent with the following:

- Operations must maintain or improve overall water quality of the affected waterway, as applicable.
- Identify antibiotics, vaccines, growth stimulants, anti-fouling agents or other chemicals the applicant anticipates using. Such materials must not be used until approval is obtained from all appropriate state and federal agencies, including but not limited to the U.S. Food and Drug Administration, the Washington State Department of Ecology, Fisheries and Wildlife, Agriculture and Department of Health.
- Identify noise generation associated with the project, including boat or vehicle traffic that will occur during anticipated regular operation.
- Subtidal, intertidal, floating, and upland structures and apparatus associated with the aquaculture proposal must be designed and maintained to avoid adverse shoreline ecological impact.
- Aquaculture use and development must be sited so that shading and other adverse impacts to existing eelgrass, kelp, or native shellfish beds are avoided, minimized, and mitigated consistent with DR 8.4.3.
- For aquaculture projects using overwater structures, tool and other essential apparatus storage seaward of the OHWM where a pre-existing legal structure does not already exist must be limited to a container three (3) feet height, measured from the raft or adjacent pier surface.
 - Increases above three (3) feet in container height may be considered by the Shoreline Administrator without a shoreline variance, given a visual impacts analysis is provided by the applicant. A visual impact analysis can be prepared by the applicant themselves, so long as it is substantially complete, to scale and has the proper photo point of references from nearby properties.
 - Height limitations do not apply to materials and apparatus that are removed daily.
- Aquaculture equipment must be of sound construction, and contain the owners' identifying marks where feasible. Abandoned or unsafe structures and equipment must be promptly removed or

AC Alex Capron
Gap Analysis: Table 5-1 #3.



Chapter 9 Shoreline Specific Modification Policies and Development Regulations

9.1 Introduction – Applicability

9.2 General Policies and Regulations

9.3 Boat Launches

9.4 Breakwaters

9.5 Docks, Piers and Floats

9.6 Dredging and Dredge Soil Disposal

9.7 Fill

9.8 Jetties and Groins

9.9 Mooring Buoys

9.10 Shoreline Habitat and Natural
Systems Enhancement Projects

9.11 Shoreline Stabilization Measures &
Flood Protection Works



Chapter 9 Specific Shoreline Modification Policies and Development Regulations

• 9.5 Docks, Piers, and Floats

- An allowance for pier widths up to 8 feet for joint use piers is added.
- Clarifying revisions are made to pile repair regulations
- Staff have identified addl needed clarifications to SFR dock repair/maintenance/ replacement provisions
 - Clarify how much can be repaired before requiring conformance with modern dimensional standards
 - Avoid discouraging upgrades to materials and grating
 - Ensure regulations promote environmental improvements over time

DR-9.5.13

The following requirements apply to new, expansion, and replacement piers, docks and floats associated with a single-family residence.

- a. Pier width: 6 feet or less
- b. Pier grating: Grating of the full pier surface area is required on piers wider than 4 feet.
- c. Pier width (joint use): 8 feet or less
- d. Float dimensions: For a single-use residential structure, float width may not exceed 8 feet and float length may not exceed 30 feet. For a shared joint-use residential structure, float width may not exceed 8 feet and float length may not exceed 60 feet.
- e. Float grating: Floats 6 feet wide or less are required to contain at least 30% functional grating. Floats wider than 6 feet are required to contain at least 50% functional grating.
- f. Float orientation: The float must be installed in a north-south orientation to the maximum extent practicable.

DR-9.5.14

Repair-- Repair proposals which replace only decking or decking substructure and less than 50 percent of the existing piles ~~subsections~~ shall must be considered minor repairs and are permitted, consistent with all other applicable codes and regulations. If cumulative repairs of an existing pier or dock over three years would make a proposed repair exceed the threshold established above, the repair proposal ~~shall must~~ be reviewed as a new pier or dock.

DR-9.5.15

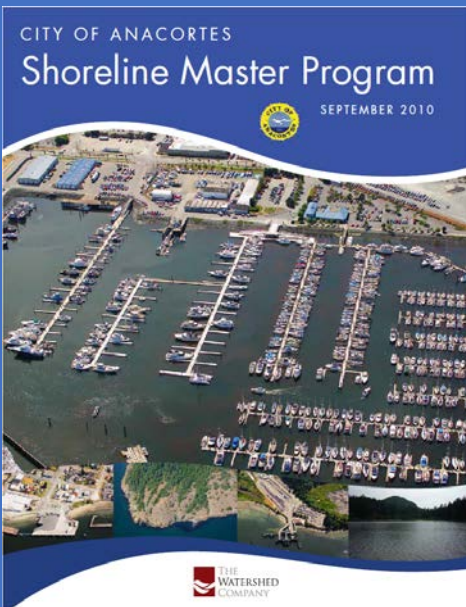
New docks, piers, and floats associated with single-family residences along Cap Sante ~~shall must~~ be encouraged to use joint-use structures serving at least two but no more than four waterfront lots.

Commented [AC70]: Table 5-1 #6



Chapter 9 Specific Shoreline Modification Policies and Development Regulations

- 9.9 Mooring Buoys
 - Reference to WDFW as an agency with knowledge on mooring buoys is added.
- 9.10 Shoreline Habitat and Natural systems Enhancement Projects
 - An allowance for the City to grant relief to certain standards and use regs
- 9.11 Shoreline Stabilization Measures & Flood Protection Works
 - “dynamic revetment” is added to the list of soft stabilization measures



Chapter 10 Enforcement & Penalties

10.1 Enforcement

10.2 Penalties

10.3 Violations – Subsequent
Development and Building Permits

10.4 Public and Private Redress

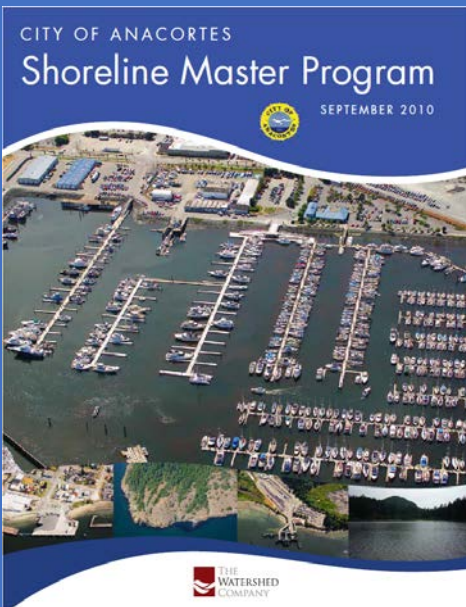
10.5 Fees for Permits Obtained After
Development



Chapter 10 Enforcement and Penalties

- No changes proposed





Chapter 11

Master Program – Review, Amendments and Adoption

11.1 Master Program Review

11.2 Amendments to Master Program

11.3 Severability

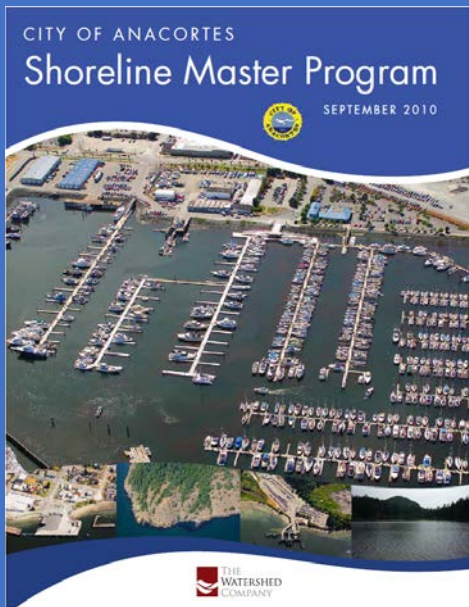
11.4 Effective Date



Chapter 11 Master Program – Review, Amendments and Adoption

- No changes proposed





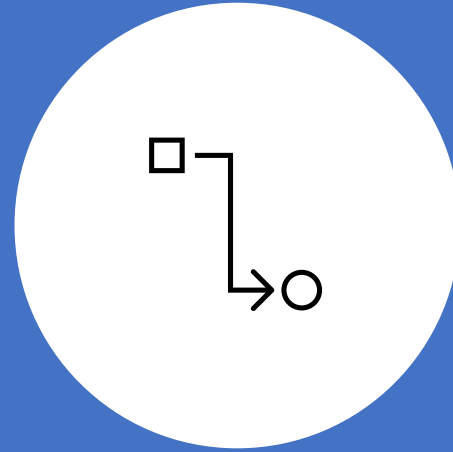
Chapter 12 Definitions

12.1 General Information 12.2 Definitions



Chapter 12 Definitions

- 12.1 General Information. References to municipal code chapters are added.
- 12.2 Definitions.
 - Definitions are added for the following words: Average Grade Level, Impervious Surface, Nonconforming development or nonconforming structure, nonconforming lot, nonconforming use, Substructure pier
 - Definitions are revised for the following words: Act, Aquaculture, Building Height, Development, Height, Significant vegetation removal, Substantial development
 - Definitions for the following words are deleted: Accessory Building, Accessory Dwelling Unit, Accessory Use, AKART, Best Management Practices, Building, City, Comprehensive Plan, Dwelling multifamily, Dwelling single family, Grading, Landscaping, LID Low Impact Development, Non-conforming use or development, Open Space, Parking Space or Parking Stall, Person, Shall, Sign



Relocation of SMP Components



Relocation of SMP Components – WHY?



SMP Handbook

Chapter 2

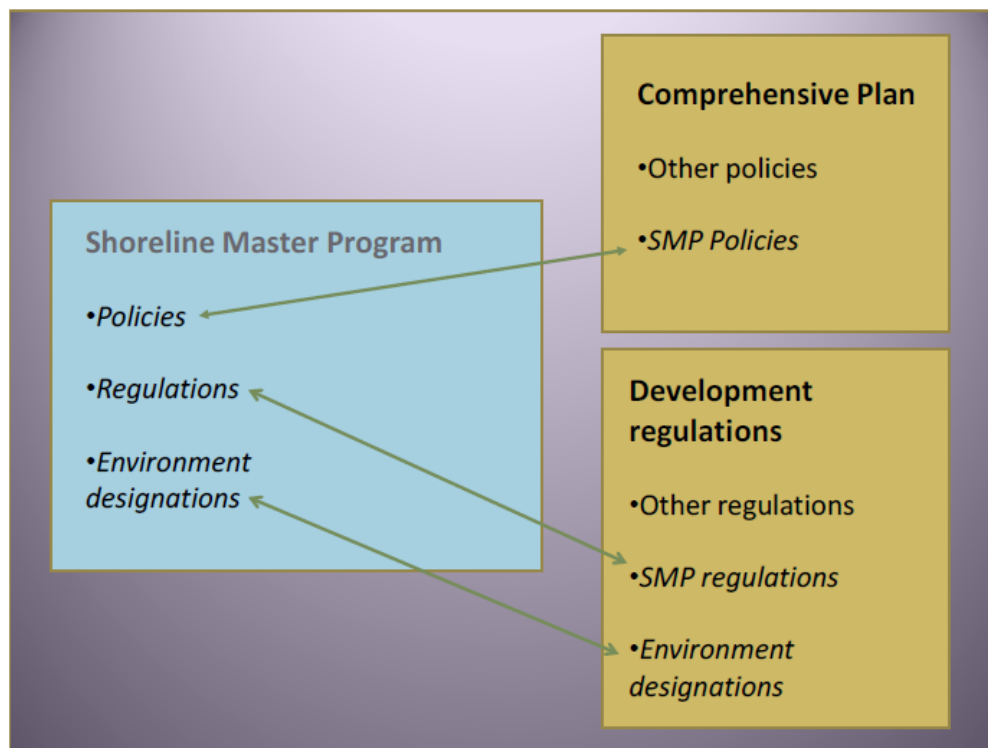
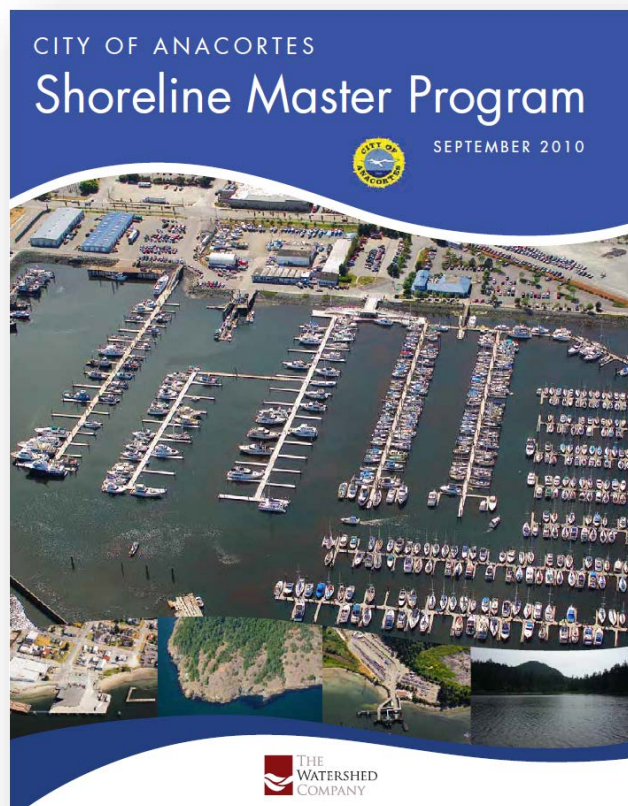


Figure 2-5: Shoreline Master Programs become part of the local comprehensive plan and development regulations. The Legislature adopted this SMA-GMA integration measure as part of regulatory reform in 1995.

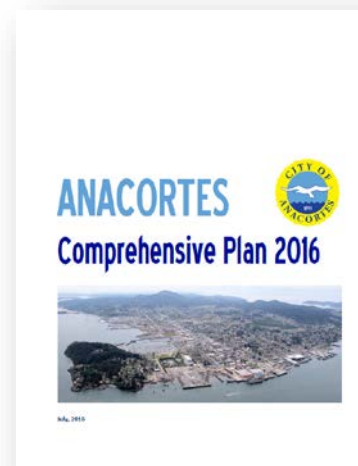
- SMA-GMA Integration
- Ease of use for property owners, the public, staff



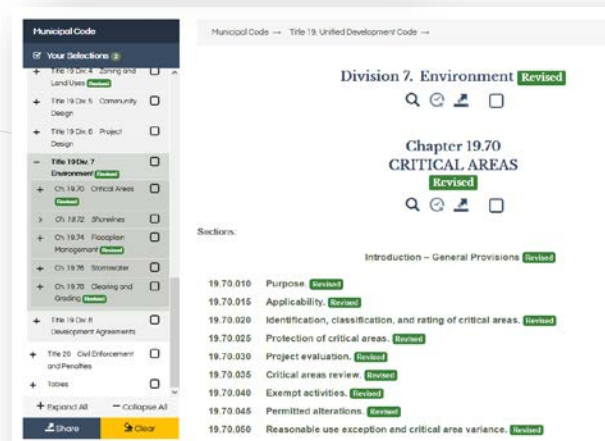
Relocation of SMP Components



Goals & Policies



Development Regulations



Environment Designations



SMP – Existing Organization	Proposed New Location /Organization	
Chapter 1 Introduction		
Requirements of the SMP	TBD	
The City of Anacortes' Role in Implementing the Shoreline Management Act	TBD	
Purposes of the SMP	AMC 19.72.015	
Legislative Findings	TBD	
How the SMP is Used	TBD	
Chapter 2 Scope, Jurisdiction and Exemptions	AMC 19.72 Article 1	
Rule of Liberal Construction	19.72.030 (B) – exemptions to be construed narrowly	
Applicability	19.72.020	
Anacortes Shoreline Jurisdiction	19.72.025	
Uses Not Constituting “Development” and Exemptions from Substantial Development Permit Requirements	19.72.030	
Developments no Required to Obtain Shoreline Permits or Local Reviews	19.72.035	
Relationship to Other Plans and Regulations	19.72.040	
Moratoria Authority (NEW)	19.72.045	
Chapter 3 Administrative Provisions	AMC 19.72 Article 2	
	Possibly insert language from 18.16.010 here	
Conditional Use Permits	19.72.210	
Variances	19.72.215	
Nonconforming Development	19.72.220	
Nonconforming Uses	19.72.225	
Nonconforming Structures	19.72.230	
Nonconforming Lots	19.72.235	
Permit Filing Procedures	19.72.240	
WSDOT Project Procedures (NEW)	19.72.245	
Chapter 4 Master Program Elements: Goals & Policies for the Anacortes Shoreline Master Program	Comp Plan – Shoreline Element	
Introduction	Comp Plan – Shoreline Element	
Shoreline Use Element	Comp Plan – Shoreline Element	
Economic Development Element	Comp Plan – Shoreline Element	
Circulation Element	Comp Plan – Shoreline Element	
Public Access Element	Comp Plan – Shoreline Element	
Recreational Element	Comp Plan – Shoreline Element	
Conservation Element	Comp Plan – Shoreline Element	
Restoration and Adaptive Management Element	Comp Plan – Shoreline Element	
Historic, Cultural, Scientific, and Educational Element	Comp Plan – Shoreline Element	



Add'l public comment period

- Changes include items that were not previously available for public comment
 - New shoreline residential policy and DR to address cannery reach SED changes
 - Other DOE required and recommended changes
 - Clarification of repair/maintenance/replacement provisions for SFR docks
- AMC 19.72 Shorelines
- Comprehensive Plan Shoreline Element

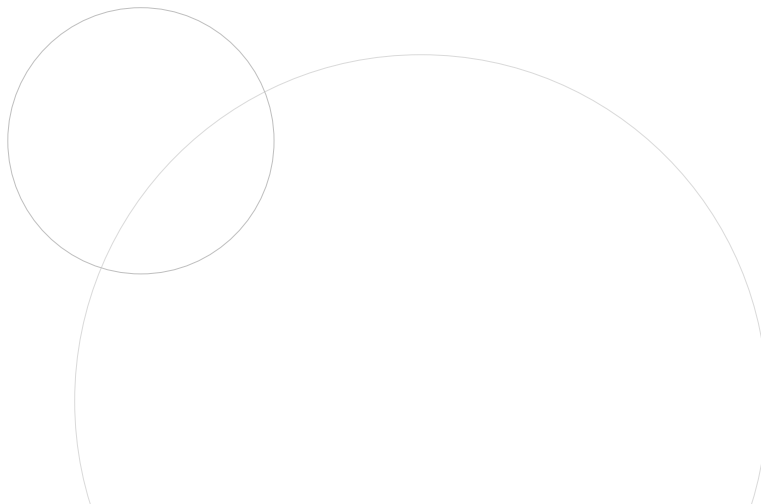


Timeline – What are the next steps?

Dates	Activity
February 2022	Release 2 nd draft SMP amendments, AMC 19.72 Shorelines, and Comp. Plan Shoreline Element for public review (including written comment period)
March 2022	PC recommendation to City Council
April/May 2022	City Council consideration and adoption; transmittal to Ecology for final approval

DOE SMP competitive grants

- Shoreline permit monitoring
- SMP users guide



QUESTIONS?



THANK YOU



libbyb@cityofanacortes.org



<https://www.anacorteswa.gov/1095/SMP-Update>