

City of Bremerton Shoreline Master Program

Gap Analysis Report

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1. Introduction

In accordance with the Washington State Shoreline Management Act, local jurisdictions with “Shorelines of the State” are required to conduct a periodic review of their Shoreline Master Programs (SMPs) (Washington Administrative Code [WAC] 173-26-090). The periodic review is 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.

The Shorelines of the State in the City of Bremerton (City) include all marine shoreline, the lower portion of Gorst Creek (approximately one mile), Lake Kitsap, Lake Union Reservoir and Union River between McKenna Falls and the reservoir, and Twin Lakes.

The City most recently updated its SMP with a limited amendment adopted fall 2017 in conjunction with the Major Comprehensive Plan update. A more substantial, comprehensive SMP update took place in 2012. City of Bremerton Shoreline Master Program (BSMP), is a separate document from the Comprehensive Plan and Bremerton Municipal Code (BMC), outlining goals and policies for the shorelines of the City and establishes regulations for development occurring within shoreline jurisdiction. Several regulatory requirements of the BSMP are codified or cross-referenced under the BMC and herein are incorporated as the applicable development regulations the City's shoreline jurisdiction. The City's current SMP incorporates by reference the 2016 city-wide critical areas regulation update which are codified under BMC 20.14, with certain exceptions.

As a first step in the periodic review process, the City's current SMP was reviewed by City staff and consultants. The purpose of this Gap Analysis Report is to provide a summary of the review and inform updates to the SMP. This report is organized into the following sections:

- **Section 2** identifies gaps the SMP has in consistency with state laws. This analysis is based on a list of amendments between 2007 and 2019 as summarized by the Washington State Department of Ecology (Ecology) Periodic Review Checklist.
- **Section 3** identifies gaps in consistency the City's critical areas regulations (BMC 20.14) have with current guidance. Critical area regulations are incorporated by reference into the current SMP.
- **Section 4** identifies gaps in consistency with the City's Comprehensive Plan, and with implementing sections of the City's development regulations other than the critical areas regulations.
- **Section 5** identifies other issues to consider as part of the periodic update process to produce a more effective SMP, including those issues identified by staff during the implementation of the last SMP update.

This report includes several tables that identify potential revision actions. Where potential revision actions are identified, they are classified as follows:

- **“Mandatory”** indicates revisions that are required for consistency with state laws.
- **“Recommended”** indicates revisions that would improve consistency with state laws but are not strictly required.
- **“Optional”** indicates legislative amendments or updated Ecology guidance can be adopted at the City’s preference but are not required.
- **“No action necessary”** indicates the current SMP meets the intent of or already contains listed legislative updates, changes to critical areas, comprehensive plan or zoning code.

This document attempts to minimize the use of abbreviations; however, a select few are used to keep the document concise. These abbreviations are found below in Table 1-1.

Table 1-1. Abbreviations used in this document.

Abbreviation	Meaning
BAS	Best Available Science
CAO	Critical Areas Ordinance
City	City of Bremerton
Ecology	Washington State Department of Ecology
BMC	Bremerton Municipal Code
RCW	Revised Code of Washington
BSMP	Bremerton Shoreline Master Program
SED	Shoreline Designations
SDP	Shoreline Substantial Development Permit
WAC	Washington Administrative Code

2. Consistency with State Laws

Table 2-1 summarizes potential revisions to the City’s SMP based on a review of consistency with amendments to state laws identified in the Periodic Review Checklist provided by Ecology. Topics are organized chronologically by year.

Table 2-1. Summary of consistency with amendments to state laws and potential revisions.

Row	Summary of change	Review	Action
2019			
a.	Washington State Office of Financial Management (OFM) adjusted the cost	In addition to the general Shoreline Substantial Development Permit (SDP) cost threshold (see item 2017a	Mandatory: The City will update the cost threshold dollar figure for when a SDP is triggered

Row	Summary of change	Review	Action
	<p>threshold for building freshwater docks</p>	<p>below), the SMA includes a separate dollar threshold for when construction of a freshwater dock triggers an SDP.</p> <p>BSMP 5.010(h)(8), Exemptions, references the out of date dollar figure of \$10,000.</p>	<p>on single-family freshwater dock replacement projects as follows:</p> <p>5.010(h)(8)</p> <p><u>(ii) In fresh waters the fair market value of the dock does not exceed:</u></p> <p>(A) <u>twenty-two thousand five hundred dollars (\$22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced; or</u></p> <p>(B) <u>Eleven thousand two hundred (\$11,200) dollars for all other docks constructed in fresh waters.</u></p> <p><u>However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purpose of this chapter.</u></p> <p>Recommended: Alternately, the BSMP could refer directly to the RCW and eliminate reference to a specific cost threshold for greater flexibility with future threshold changes.</p>
<p>b.</p>	<p>The Legislature removed the requirement for a shoreline permit for disposal of dredged materials at Dredged Material Management</p>	<p>There is not a Dredged Material Management Program site within the City’s Shoreline Jurisdiction. Therefore, this legislative amendment does not apply.</p>	<p>No action necessary.</p>

Row	Summary of change	Review	Action
	Program sites (<i>applies to 9 jurisdictions</i>)		
c.	The Legislature added restoring native kelp, eelgrass beds and native oysters as fish habitat enhancement projects.	Habitat enhancement project exemptions are discussed under BSMP 5.010(h)(16) (pg. 51) and reference to RCW 77.55.181 for fish habitat enhancement projects is included under (iv). This reference captures the legislative update.	No action necessary.
2017			
a.	OFM adjusted the cost threshold for substantial development to \$7,047.	<p>Page 47, BSMP 5.010(h)(1), Exemptions, references an out of date dollar figure, but does provide an indication that the dollar threshold changes with inflation.</p> <p>The definition of Shoreline Substantial Development Permit on Page 19 also references the out of date dollar figure.</p>	<p>Mandatory:</p> <p>The City will reference the updated dollar figure in 5.010(h)(1), in addition to leaving the reference that cost thresholds are periodically amended. The definitions section should also be updated.</p> <p>Recommended:</p> <p>Alternately, the BSMP could refer directly to the RCW and eliminate reference to a specific cost threshold in both sections for greater flexibility with future threshold changes.</p>
b.	Ecology permit rules clarified the definition of “development” does not include dismantling or removing structures.	BSMP contains definitions in Chapter 3. The definition of development on page 13 does not specifically exclude dismantling or removing structures.	<p>Recommended:</p> <p>The City should consider adding to the definition of development to be consistent with Ecology’s recommended language:</p> <p><i><u>“Development” does not include dismantling or removing structures if there is no other associated development or re-development.</u></i></p>
c.	Ecology adopted rules clarifying exceptions to local review under the SMA.	There is not a section dedicated to exceptions in the BSMP.	<p>Recommended:</p> <p>The City should consider updating BSMP Chapter 5, Permit Administration, to include a section that refers directly to the exceptions in WAC 173-27-044, and -045,</p>

Row	Summary of change	Review	Action
			regarding projects that are not subject to review under the SMA.
d.	Ecology amended rules clarifying permit filing procedures consistent with a 2011 statute.	<p>BSMP 5.040(a)(3) refers to WAC 173-27-130 for filing procedures for Shoreline Substantial Development Permits.</p> <p>BSMP 5.060(a) and (b) appropriately reference filing procedures regarding the 21-day appeal period.</p>	No action necessary.
e.	Ecology amended forestry use regulations to clarify that forest practices that only involves timber cutting are not SMA “developments” and do not require SDPs.	BSMP 8.040, Forest Practices, regulation (b) states that forest practices for the sole purpose of timber harvesting are prohibited in shoreline jurisdiction. However, other types of forest practices may be allowed.	<p>Recommended:</p> <p>The City should consider adding a Ecology’s recommended language to 8.040 as follows:</p> <p><i>8.040 Forest Practices:</i></p> <p><i>Forest practices within the City along shorelines would occur as a conversion of forested areas to a certain level of urban development (Class IV – General per the Forest Practices Act, RCW 76.09).</i></p> <p><u><i>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.</i></u></p> <p><u><i>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.</i></u></p>

Row	Summary of change	Review	Action
f.	Ecology clarified the SMA does not apply to lands under exclusive federal jurisdiction	BSMP does not discuss the applicability of the SMA to federal land.	<p>Recommended: As the City does have some shoreline under exclusive federal jurisdiction, the City may consider adding clarification of the applicability of the SMP to those areas. Sub-section (I) can be added to SMP 5.010 Applicability, to address this recommendation: <u>Lands Under Exclusive Federal Jurisdiction. Areas and uses in those areas that are under exclusive Federal jurisdiction as established through federal or state statutes are not subject to Chapter 90.58 RCW. This means that in Bremerton, the SMA, and therefore the BSMP, does not apply to Federal Owned Lands including, but not limited to the Naval Base Kitsap-Bremerton, Naval Hospital and Puget Sound Naval Shipyard & Intermediate Maintenance Facility.</u></p>
g.	Ecology clarified “default” provisions for nonconforming uses and development.	SMP Chapter 6 already provides provisions for nonconforming uses and development. “Nonconforming development” is also defined and additional definitions for nonconforming lot, use and structure are provided in BSMP 6.040.	<p>Recommended: The City should re-locating the additional nonconforming definitions in BSMP 6.040 in the main definitions section for clarity.</p>
h.	Ecology adopted rule amendments to clarify the scope and process for conducting periodic reviews.	This is optional and the current SMP does not address the periodic review provision.	No action necessary.
i.	Ecology adopted a new rule creating an optional SMP amendment process that allows for a shared local/state public comment period.	The SMP does not currently address the amendment process, nor is it required to.	<p>No action necessary. The City complies with the State process.</p>

<i>Row</i>	<i>Summary of change</i>	<i>Review</i>	<i>Action</i>
j.	Submittal to Ecology of proposed SMP amendments.	The SMP does not currently address the amendment process, nor is it required to.	No action necessary. The City complies with the State process.
2016			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the Americans with Disabilities Act (ADA) .	BSMP Section 5.010, Applicability includes this exemption.	Recommended: "Propvode" should be changed to "provide".
b.	Ecology updated wetlands critical areas guidance including implementation guidance for the 2014 wetlands rating system.	The City updated their critical areas ordinance (CAO) in 2016 and updated the SMP at the same time to incorporate the new CAO by reference.	No action necessary. The 2016 CAO adopts the 2014 wetland rating system. Note, Ecology has additional updated guidance on wetland buffer widths which the City may consider incorporating into their CAO and SMP. See discussion in Section 3 below.
2015			
a.	The Legislature adopted a 90-day target for local review of Washington State Department of Transportation (WSDOT) projects.	The SMP does not address the review of WSDOT projects. While this is optional, the WSDOT presence is significant with the ferry terminal and several state highways within shoreline jurisdiction.	Recommended: The City may consider adding a section on special procedures for WSDOT projects to Chapter 5: Permit Administration. Language from Ecology is available.
2014			
a.	The Legislature created a new definition and policy for floating on-water residences legally established before 7/1/2014.	SMP Section 8.080, Residential Regulation (d) prohibits over-water residences and floating homes. However, "floating on-water residences" are not defined or addressed.	Recommended: The City may consider adding a definition for "floating on-water residence" to Chapter 3- Definitions, to reduce ambiguity while prohibiting this use. <u>Floating on-water residence: Means any floating structure other than a floating home, as defined by this chapter: (a) that is designed or used primarily as a residence on the water and has detachable utilities; and (b) whose owner or primary</u>

Row	Summary of change	Review	Action
			<p><u>occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.</u></p> <p>Additionally, Page 97, regulation (d) should be amended to acknowledge how existing, legally established floating on-water residences are treated:</p> <p>(d) Over-Water Homes: Over-water residences and floating homes are <u>not a preferred use and are prohibited.</u></p> <p>(i) <u>Existing floating on-water residences legally established and moored within a marina within the City prior to July 1, 2014 are considered a conforming use and should be accommodated through reasonable permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.</u></p> <p>(ii) <u>A floating home permitted or legally established prior to January 1, 2011 is considered a conforming preferred use. "Conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable. Floating homes should be accommodated to allow improvements associated</u></p>

Row	Summary of change	Review	Action
			<p><u>with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.</u></p>
2012			
a.	<p>The Legislature amended the SMA to clarify SMP appeal procedures.</p>	<p>The current SMP does not address appeal procedures, nor is it required to.</p>	<p>No action necessary.</p> <p>The City will continue cross-reference State regulations.</p>
2011			
a.	<p>Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved federal wetland delineation manual.</p>	<p>The City incorporates by reference the 2017 city-wide critical areas regulations by ordinance which are codified under BMC 20.14 and include the requirement for delineation in accordance with the federal wetland delineation manual. The BSMP “wetlands” Chapter 3 definition includes reference to the approved federal manual.</p>	<p>No action necessary.</p> <p>However, as discussed in further detail in Section 3 below, the critical areas definitions in Chapter 3 BSMP should be reviewed for consistency with the definitions in 20.14.200. Only definitions specific to shoreline jurisdiction need to be included in the SMP.</p>
b.	<p>Ecology adopted rules for new commercial geoduck aquaculture.</p>	<p>BSMP Section 8.020 discusses policies and development regulations for all types of aquaculture. Chapter 3, Definitions, defines aquaculture and includes the clarification that it does not include wild geoduck harvest. BSMP 8.020.n requires a Shoreline Conditional Use Permit for all new commercial aquaculture. It does not ensure that planting, growing, and harvesting of farm-raised geoducks also require a Substantial Development</p>	<p>Recommended:</p> <p>The City may consider revising BSMP 8.020 to ensure an SDP is required if a project causes substantial interference with public access or passage. The City may reference the review provisions under WAC 173-26-241(3)(b) (ii-iv) directly to ensure all aspects of the new rules are noted in the SMP.</p>

Row	Summary of change	Review	Action
		<p>Permit if a specific project or practice causes substantial interference with normal public use of the surface waters, in accordance with Attorney General Opinion 2007 No. 1 and WAC 173-26-241(3)(b)(ii-iv).</p>	
c.	<p>The Legislature created a new definition and policy for floating homes permitted or legally established prior to January 1, 2011.</p>	<p>BSMP Section 8.080, Residential Regulation (d) prohibits over-water residences and floating homes. However, neither term is defined in the SMP.</p>	<p>Recommended: The City does not have any floating homes to-date. However, a definition may be added to improve administration of the code. The definition can be added to Chapter 3, consistent with the State statute as follows: <u>"Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel even though it may be capable of being towed.</u></p>
d.	<p>The Legislature authorized a new option to classify existing residential structures as conforming.</p>	<p>BSMP Chapter 6, Nonconforming Provisions, establishes criteria for when and how nonconforming structures can be continued, expanded, maintained or repaired. The legislative option to allow existing legally established non-conforming residential structures to be treated as conforming if not included.</p> <p>This legislative action does not impact future development; it merely treats existing legally permitted nonconforming development as conforming.</p>	<p>No action necessary.</p> <p>This law is optional. The City considered this option prior to the 2013 adoption and chose not to change the legal classification of nonconforming residential structures. Rather, SMP Chapter 6 clarifies the existing rights and allowances for nonconforming use and development without changing the legal status.</p>
<p>2010</p>			
a.	<p>The Legislature adopted Growth</p>	<p>BSMP 5.010, Applicability, already contains reference to</p>	<p>No action necessary.</p>

Row	Summary of change	Review	Action
	<p>Management Act – Shoreline Management Act clarifications.</p>	<p>WAC 173-26, which therein references Approval/Amendment Procedures and Master Program Guidelines. City-wide critical areas regulations are adopted by reference in BSMP 5.010.c.2 with exclusions noted where GMA requirements are not compatible with SMA requirements.</p>	
<p>2009</p>			
	<p>a. The Legislature created new “relief” procedures for instances in which a shoreline restoration project within a UGA creates a shift in Ordinary High Water Mark.</p>	<p>BSMP 5.090, Restoration Project Relocation of Ordinary High Water Mark, includes most of the language in Ecology’s rule intended to implement this relief provision. However, not all of the criteria and provisions of WAC 173-27-215 are included for example: (4) A substantial development permit is not required on land within urban growth areas as defined in RCW 36.70A.030 that is brought under shoreline jurisdiction due to a shoreline restoration project creating a landward shift in the ordinary high-water mark. (5) The definitions in this subsection apply throughout this section unless the context clearly requires otherwise. (6) "Shoreline restoration project" means a project designed to restore impaired ecological function of a shoreline.</p>	<p>Required: The City should amend 5.090 to add the additional criteria and provisions of WAC 173-21-215 which are not currently included.</p> <p>Recommended: The City may adopt the by simple reference under BSMP 5.090 or incorporate the following:</p> <p><u>In limited instances, the city may grant relief from development standards and use regulations within the SMP that result from shoreline restoration projects that cause a landward shift in the extent of the shoreline jurisdiction consistent with criteria and procedures in WAC 173-27-215. These criteria include, but are not limited to the following:</u></p> <p>a. <u>Application of regulations within this SMP would preclude or interfere with use of the affected property, where such use would otherwise be permitted by city regulations, thus presenting a hardship to the project proponent;</u></p>

Row	Summary of change	Review	Action
			<p><u>b. The proposed relief is the minimum necessary to relieve the hardship;</u></p> <p><u>c. After granting the proposed relief, there is net environmental benefit from the restoration project;</u></p> <p><u>d. Where a shoreline restoration project is created as mitigation for a development permit, the project proponent required to perform the mitigation is not eligible for relief under this section; and</u></p> <p><u>e. Application for relief must be approved by the city and must be submitted to Ecology for written approval or disapproval; Ecology submittal and decision procedures shall occur consistent with WAC 173-27-215.</u></p>
	<p>b. Ecology adopted a rule for certifying wetland mitigation banks.</p>	<p>BMC 20.14, adopted by reference into the SMP, allows the use of certified wetland mitigation banks under BMC 20.14.340.d.3(ii), Mitigation Requirements - Wetlands.</p>	<p>No action necessary.</p>
	<p>c. The Legislature added moratoria authority and procedures to the SMA.</p>	<p>Moratoria procedures are not included in the current SMP, nor are they required to be. BSMP already refers to WAC 173-27 under BSMP 5.010, Applicability, capturing WAC 173-27-085.</p>	<p>No action necessary.</p>
<p>2007</p>			
	<p>a. The Legislature clarified options for defining "floodway" as either the area that has been established in</p>	<p>Floodway is defined in Chapter 3, Definitions and covers both Ecology-prescribed options and</p>	<p>No action necessary.</p>

<i>Row</i>	<i>Summary of change</i>	<i>Review</i>	<i>Action</i>
	FEMA maps, or the floodway criteria set in the SMA.	includes reference to the law (RCW 90.58.030)	
b.	Ecology amended rules to clarify that comprehensively updated SMPs shall include a list and map of streams and lakes that are in shoreline jurisdiction.	No new shoreline waterbodies have been identified since the comprehensive update. The areas of shoreline jurisdiction are shown on the maps in BSMP Section 4.020, but not provided as a list.	Recommended: To increase usability, provide a list of shoreline waterbodies preceding the maps which identify specific designations. This could be added as a separate subsection under BSMP Chapter 4- Shoreline Maps and Designations.
c.	Ecology’s rule listing statutory exemptions from the requirement for an SDP was amended to include fish habitat enhancement projects that conform to the provisions of RCW 77.55.181.	SMP 5.010.h, Exemptions, includes reference to fish habitat enhancement projects under RCW 77.55.181 and includes the list of the specific types of projects which qualify. However, the list of types of projects which qualify under RCW 77.55.181 was recently expanded (2019) by the legislature to include “restoration of native kelp and eelgrass beds and restoring native oysters” (RCW 77.55.181.(1)(a)(iv) which is not included in the current SMP.	Recommended: Update the language in BSMP 5.010.h.16.iv.A.I to include restoration of native kelp and eelgrass beds and restoring native oysters, for consistency with the revised criteria of RCW 77.55.181.

3. Consistency with Critical Areas Regulations

Bremerton’s critical areas ordinance (CAO) was updated in 2016, at the time of the Major Comprehensive Plan update, and are codified in BMC Chapter 20.14. The BSMP was updated at the same time, through a limited amendment; adopting BMC Chapter 20.14 by reference. Therefore, the BSMP critical area regulations are mainly up to date and consistent with Ecology’s guidance.

Table 3-1 below summarizes the issues identified above which should be resolved in order to properly incorporate the latest Ecology critical areas guidance and reference the City’s critical areas regulations into the updated SMP. The table is organized by critical areas regulations subject area.

Table 3-1. Summary of consistency with the SMP and Critical Areas Ordinance and potential revisions.

#	Issue	Relevant Location(s) ¹	Review & Action
1	July 2018 Ecology Wetland Buffer Guidance Update	<u>Location:</u> BMC 20.14.330(h)	<p><u>Review:</u> Ecology updated their wetland rating guidance in July 2018. Changes include modified habitat score ranges in wetland buffer tables. Chapter 5 BSMP adopts the wetland buffer table in BMC 20.14. Updating this table to reflect Ecology’s 2018 guidance would result in a decrease in buffer widths for lower rated wetlands. A discussion is provided below.</p> <p><u>Action</u> <i>Recommended:</i> Revise BMC 20.14.330.h to reflect the latest Ecology guidance and <i>if required</i> incorporate the updated BMC 20.14 by reference into the updated BSMP.</p>
2	Reducing wetland buffer widths with minimization measures	<u>Location:</u> BMC 20.14.330(h)(3); BSMP Section 7.010(a)	<p><u>Review:</u> BMC 20.14 allows a 25% reduction of the standard buffer widths if certain minimization measures are applied. This is generally consistent with Ecology guidance and the buffer tables presented in Ecology’s Wetland Guidance for CAO Updates except that the requirement for protection of wildlife corridor is not fully consistent with Ecology’s guidance.</p> <p>The SMP excludes incorporation of this regulation from BMC 20.14.</p>

#	Issue	Relevant Location(s) ¹	Review & Action
			<p>Action <i>Recommended:</i> Revise BMC 20.14.330.h.3 to incorporate all Ecology guidance on protection of a wildlife corridor for wetlands with a habitat score greater than 6. If this is done, this section will be consistent with BAS and will no longer need to be excluded from the BSMP.</p>
3	Critical Area Regulations excluded from BSMP	<p>Location: BSMP 5.010(c)(2); BSMP 7.010.a</p>	<p>Review: Critical area exclusion lists do not match.</p> <p>Action: Revise code and consider removing BMC 20.14.330(h)(3) if the wildlife corridor revisions to the CAO incorporated in the BMC.</p>
4	Extraneous Critical Area Regulations	<p>Location</p>	<p>Review For SMP & CAO, it would be helpful that have a 'GAP' analysis of what is in our code that is not required to be there.</p> <p>Action Conduct a general review of existing CAR and identify overly burdensome or inflexible items for applicants that are not required by state laws or Best Available science.</p>
5	Definitions	<p>Location: BSMP Chapter 3; BMC 20.14.200 'Definitions'</p>	<p>Review: The definitions for the following are inconsistent between the Chapter 3 BSMP and BMC 20.14.200 'Definitions':</p> <ul style="list-style-type: none"> • Restore, Restoration, or ecological restoration • Repair or maintenance (CAO) vs. Normal repair and maintenance (BSMP) • Qualified Professional <p>Action <i>Recommended:</i> The City will use the most up-to-date definition available that is consistent with State law and the City's use of the term in any other relevant regulations.</p>
6	Definitions	<p>Location: BSMP Chapter 3; BMC 20.14.200 'Definitions'</p>	<p>Action: Remove redundant definitions. Critical area definitions defined by BMC 20.14.200 to be removed from Chapter 3.</p>

#	Issue	Relevant Location(s) ¹	Review & Action
7	Wetland delineations valid for five (5) years: regulation in definition	Location: BMC 20.14.200	Review: Wetland delineation expiry is in an awkward code location for readers. Action: Recommended: Relocate wetland delineation expiry to administrative code within wetland delineation section (BMC 20.14.310).
8	Replacement Trees	BMC 20.14.190	Review/Action Incorporate existing CAO code or propose new code for replacement trees in critical areas. Issues include the no explicit information on replacement tree spacing, in critical areas and their buffers removal of trees greater than six inches in diameter at four ft height have a 1:3 replacement ratio.

¹ This column attempts to capture the primary relevant location(s) of content related to the item described in the Summary of Change column; however, due to length of the SMP, all relevant locations may not be listed.

Ecology Wetland Buffer Guidance

In July 2018, Ecology updated its guidance for wetland ratings. The change represents best available science (BAS) and includes modified habitat score ranges used in wetland buffer tables. The change in guidance is the result of Ecology’s continued evaluation of the 2014 wetland rating system as it relates to the 2004 wetland rating system. Ecology’s continued evaluation resulted in revised buffer guidance that is more in line with rating system reference wetland data. The recommendation assigns wetlands with a habitat score of 5 as “low” function along instead of a separate “low/medium” grouping. This reduces the buffer for wetlands with a habitat score of 5 when compared to the City’s current buffer table (see Tables 3-2 and 3-3 below). It also reduces the recommended buffer for “medium” habitat functions (scores of 6 and 7). We propose the City modify its wetland regulations to follow Ecology’s new guidance, although not required by Ecology at this time. Table 3-1 shows the existing buffer widths under BMC Chapter 20.14 and Table 3-2 shows Ecology’s most recent 2018 guidance.

Table 3-2. Current standard wetland buffer table per BMC 20.14.330.h.1

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score			
	3-4 (Low)	5 (Medium)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands	200			
I: All others	100	140	220	300

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score			
	3-4 (Low)	5 (Medium)	6-7 (Medium)	8-9 (High)
II: Estuarine wetlands	150			
II: All	100	140	220	300
III: All	80	140	220	300
IV: All	50			

Table 3-3. Standard wetland buffer widths table per July 2018 updated Ecology guidance (when minimization measures and a wildlife corridor are NOT provided)

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3-5 (Low)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands	200		
I: All others	100	150	300
II: Estuarine wetlands	150		
II: All	100	150	300
III: All	80	150	300
IV: All	50		

Note that BMC Chapter 20.14 utilizes the un-reduced standard buffers presented in Ecology’s Wetland Guidance for CAO Updates for when minimization measures are not implemented (BMC 20.14.330.h.1). BMC Chapter 20.14 allows a 25 percent reduction in wetland buffer widths if impact minimization measures are applied (BMC 20.14.330.h.3). To be consistent with Ecology’s guidance, the use of minimization measures must also require protection of a wildlife corridor, when appropriate. A corridor requirement is currently included in the City’s minimization measures table, but the table does not include all current Ecology requirements. To better align with BAS, a wildlife corridor protection requirement is recommended for wetlands with a habitat score of 6 or more to use the reduced standard buffers of BMC 20.14.330.h.3. The wildlife corridor is only required, and may apply the city in areas owned by the county, if an existing, relatively undisturbed corridor at least 100 feet in width exists between the subject wetland and another Washington Department of Fish and Wildlife priority habitat, *and* the off-site portion of the corridor is already protected by a legal mechanism. (Legal mechanisms may include, conservation easements, public dedications or tracts etc. established in perpetuity). If so, the applicant must extend the wildlife corridor protection onto the subject parcel to connect it to the wetland. If such a wildlife corridor exists but the protection is not provided, the standard buffers must be used. If no wildlife corridor is present, the reduced standard buffers may be used with application of the minimization measures alone.

Ecology’s recommended buffer widths when minimization measures are implemented, and a wildlife corridor is provided are presented in Table 3-3 below. These correspond to the reduced buffer widths allowed by BMC 20.14.330.h.3.

Table 3-4. Reduced wetland buffer widths when minimization measures and corridor are provided

Wetland Category and Type	Buffer Width (in feet) Based on Habitat Score		
	3-5 (Low)	6-7 (Medium)	8-9 (High)
I: Estuarine wetlands		150	
I: All others	75	110	225
II: Estuarine wetlands		110	
II: All	75	110	225
III: All	60	110	225
IV: All		40	

Critical Areas Applicability in Shoreline Jurisdiction

BMC Chapter 20.14 includes some regulations that are inconsistent with the Shoreline Management Act. The inconsistent regulations have been identified and excluded from incorporation into the SMP in SMP Section 7.010, Regulation (a) and include some exemptions, reasonable use exceptions and stream buffer reductions. Included in the list of exclusions is BMC 20.14.330(h)(3) Reducing Wetland Buffer Widths. While it is true that the SMA would not allow wetland buffer reductions beyond the minimum supported by the most current, accurate, and complete scientific or technical information available, the widths offered by BMC 20.14.330(h)(3) and shown above in Table 3-4 are supported by Ecology as BAS, if the minimization measures and wildlife corridor are provided when applicable. Therefore, the City could consider including this section in the SMP if the suggested changes to the wildlife corridor provision are incorporated.

The list of critical area sections ((BMC 20.14) excluded from the BSMP is repeated in section BSMP 5.010(c)(2). The Chapter 5 list differs slightly from the Chapter 7 list (BSMP 7.010.a). These two lists should be revised to be the same.

BSMP section 5.010 excludes BMC 20.14.730(d)(8), while section 7.010 does not. Secondly, the wetland sections excluded are listed together and given the incorrect name, “standard wetland buffers widths” in 5.010 (the standard wetland buffer widths section is not listed, and it is assumed it is not actually intended to be excluded.) BMC 20.14.730 (d)(8) Habitat Conservation Area Buffers, is not inconsistent with the SMA and it is not clear why it would be excluded. The City should consider including this section in the SMP. Overall it is recommended that the list in BSMP Section 7.010 be used with the possible removal of BMC 20.14.330(h)(3) if the wildlife corridor revisions are made as discussed above.

Finally, the BMC 20.14.200, Definitions, contains several definitions which are inconsistent with the definitions in the BSMP Chapter 3. These two definitions sections should be reviewed and reconciled, however BSMP Chapter 3, Page 11 states:

'Where these definitions conflict with other definitions in the Bremerton Municipal Code, these definitions shall prevail for projects within the shoreline jurisdiction'.

In general, definitions not specific to shoreline jurisdiction do not need to be defined in the BSMP. Therefore, critical areas definitions which are appropriately defined in BMC 20.14.200 could be removed from BSMP Chapter 3.

4. Consistency with Comprehensive Plan & Other Development Regulations

Based on a review of the City's Comprehensive Plan and BMC Title 20 'Land Use', there are no major inconsistencies observed within the City's SMP. There are potential amendments, including discretionary staff requests, which are included in Section 5 of this document.

5. Other Issues to Consider

In addition to the issues discussed in the previous sections of this report, several other issues in the current SMP could be addressed as part of the periodic update process to produce a more effective SMP per City staff comments on the administration of the BSMP. These other issues are described in Table 5-1 below.

Table 5-1. Other issues that could be addressed to produce a more effective SMP.

#	Issue	Relevant Location(s) ¹	Review & Action
Permit Administration			
1	Shoreline Permit Expiration	BSMP Section 5.060, Time Periods	<p>Review: The two-year time period to complete work one-year extension is insufficient.</p> <p>RCW 90.58.143 allows five years for substantial development permits with authorization for a single extension not to exceed one year. If no substantive changes, the city may 'authorize different time limits as part of action on a permit' ((Ecology, 2019, p. 10-1).</p> <p>Action: Revise the BSMP to either cross-reference RCW 90.58.143 or as amended, or five-years</p>

			(except variances) to substantially complete construction for the requested development activity, with an opportunity for an extension up to one-year extension under reasonable factors.
2	Shoreline permit Ecology Filing	BSMP 5.040(a)(3)	<p>Review: Shoreline CUP, shoreline variance permits and SDPs must be filed with ecology. Permits and shoreline exemptions requiring environmental checklist are submitted to DOE SEPA registry per SEPA rules/WAC 197-11.</p> <p>Action: Revise the BSMP cross-reference WAC 173-27-130.</p>
Nonconforming Provisions			
3	Conditional use Permit required for Nonconforming Use	BSMP 6.080	<p>Review This section creates administration issues for staff and is not necessary.</p> <p>Action Remove section and conditional use permit requirement.</p>
4	Re-use of vacant structures	BSMP Chapter 6, Nonconforming Provisions	<p>Review: Any use allowed in the zone may occupy a vacant structure, until such time a preferred shoreline use becomes available, if no exterior alterations to the site are proposed. Restaurants to be permitted in multifamily shoreline designation if a legal non-conforming use.</p> <p>Action The City may consider establishing a maximum time period for re-occupying existing vacant structures, subject to zoning and building code requirements.</p>
General Standards and Regulations			
5	Fence construction in the shoreline buffer area	BSMP, Chapter 7.010.6	<p>Review: Staff request the opportunity to modify fence allowances in buffer areas with provision for ADA requirements, health, life and safety.</p>

			<p><u>Action:</u> <i>Recommended:</i> Revise BSMP 7.010.6, to permit some fencing configurations in certain shoreline buffer areas.</p>
6	<p>Streamline buffer averaging requests - Fish & Wildlife Habitat Conservation Areas</p>	BSMP Section 7.010.5	<p><u>Review:</u> Regulations require that applicants analyze '60% or more of like structures along the shoreline within the same numbered block as the subject property [which] are less than the required buffer/setback required by the SMP.' The average is permitted for the current proposal.</p> <p>For staff and applicants this is difficult and cumbersome to implement. There are best practices with regulations that may be easier to implement.</p> <p><u>Action:</u> <i>Recommended:</i> Review best practices of other cities and revise BSMP Section 7.010.5 to establish an improved buffer averaging process. Add a general provision for a critical area building setback line of 5-ft. from the edge of a buffer.</p> <p><i>Recommended:</i> Replace the traditional rear yard setback with a string-line setback regulations.</p>
7	<p>Height Restrictions</p>	BSMP Section 7.090	<p><u>Review:</u> Explore opportunities to allow for height exceptions for certain types of structures (i.e. bridges). Regulations did not anticipate regulating public bridges that transverse a body of water.</p> <p><u>Action:</u> <i>Recommended:</i> Codify Director's Interpretation 18-001-SMP in BSMP Section 8.090 'Roads, Railways, and Utilities.' <i>'Height restrictions and light penetration standards do not apply to public bridges.'</i></p>

			<i>Compliance with all other code provisions shall apply'</i>
8	Isolated SED-Implementation	BSMP 4.030.f, 7.090.5 Chapter 7; SED mapping	<p><u>Review</u> An 'Isolated' designation exists and BSMP provisions exempt fish and wildlife buffer on these parcels within the shoreline. These isolated parcels are separated from the shoreline jurisdiction by another parcel, bisected by a road or improvements, etc.</p> <p><u>Action</u> Consider adding allowances to be less restrictive on other parcels which are not designated as Isolated yet are separated by a road or other significant improvement.</p>
9	Public Access	BSMP Section 7.040(b)(2) Regulations and throughout SMP	<p><u>Review</u> Consider alternatives that add flexibility for applicants and staff while still meeting WAC public access requirements</p> <p><u>Action</u></p> <ul style="list-style-type: none"> • Consider alternatives that add flexibility to current public access requirements (e.g. in-lieu, collective off-site locations, nearby access). Including, adding director discretion to remove public access requirement (7.040(h)(9)) as appropriate. • Clarify acceptable trail materials and size along with requirements for no net loss
10	Mitigation Performance and Monitoring Bonding	7.020 Regulations (a)(7)	<p><u>Review</u> Current bonding requirements do not always contribute to overall success of mitigation</p> <p><u>Action</u> Consider incremental release of bonds if the plants are installed and meeting survival retention rates. Remove bonding requirement for small residential projects.</p>
11	Advance mitigation planning	TBD	<p><u>Review</u> Public Works could benefit from use of an advanced mitigation bank to improve project implementation timeline</p>

			<p>Action Consider establishing a process in the SMP/CAO for mitigation banking sites in the City for city projects only.</p>
12	Climate Change Resiliency	TBD	<p>Review The City is interested in reviewing how other jurisdictions have incorporated best practices regarding sea level rise and adaptation. The City expects to receive more requests to repair or modify bulkheads as sea levels begin to rise.</p> <p>Action Where appropriate, incorporate relevant policies into City's SMP (e.g. Olympia's 2019 Sea Level Rise Plan).</p>
Shoreline Use and Modification Regulations			
13	Light penetration for public bridges	BSMP Section 9.030 Regulations (b)	<p>Review: Regulations did not anticipate regulating public bridges that transverse a body of water for conformance to light penetration standards. (see response to height restrictions above)</p> <p>Action: <i>Recommended: Codify Director's Interpretation 18-001-SMP in BSMP Section 8.090 'Roads, Railways, and Utilities.'</i> <i>'Height restrictions and light penetration standards do not apply to public bridges. Compliance with all other code provisions shall apply'</i></p>
14	Vegetation Management Plan Requirements	BSMP Section 9.080.i, BSMP Section 7.020	<p>Review: Explore opportunities to reduce unnecessary restrictions, while maintain no net loss. Add prescriptive standards or those instances where projects are exempt from VMP or enhancement; proportional to the impact proposed; particularly when development located outside of buffer.</p> <p>Action: Review and revise issues identified by City staff</p>
15	Tender Docks	9.030.i Regulations; BSMP Ch. 3 Definitions	<p>Review:</p>

			<p>No dimensional standards are currently included for a tender dock.</p> <p>Action: Add 'tender dock' definition or 'to tender' versus 'to dock'. Consider adding dimensional criteria for a tender dock, as appropriate.</p>
Shoreline Environment Designation Mapping			
16	<p>SED Designation: Commercial Designation – Extension to lots with existing commercial buildings along shore drive.</p>	<p>BSMP Section 4.020, Map D</p>	<p>Review: The City may consider expanding the 'Commercial' shoreline designation to the south on 'Multi-Family Residential' parcels along Wheaton Way. BSMP Section 6.070 states 'substantial destruction' removes all legal nonconforming use and development status. Therefore, legal non-conforming commercial uses who wish to upgrade buildings, demolish structure and remodel for economic development in the commercial node are strictly prohibited under the current land use designation.</p> <p>Commercial and multi-family development represent similar permitted uses in the BSMP in terms of their potential impact on the shoreline environment. Expanding commercial areas would increase permitted uses including hotels, general retail, restaurants, and public parking capacity.</p> <p>Further, the expansion to the commercial does not impact public access nor reduce the types of 'Recreation and Public Access' use permitted.</p> <p>Action: The City may consider changing identified 'Multi-Family Residential' lots to the 'Commercial' designation. Staff knowledge, historical aeriels, assessor data and subarea plans may determine appropriate parcels.</p> <p>The City may choose to include other shoreline designation amendments at their discretion. DOE will require a 'no net loss'</p>

			analysis if such map designation changes are proposed.
17	SED Designations #2: “Commercial” and “Downtown Waterfront” Designations	BSMP Section 4.020 – SMP Official Maps A-J	<p>Review: ‘Commercial’ and ‘Downtown Waterfront’ are difficult to differentiate due to their similarity in color.</p> <p>Action: <i>Recommended:</i> Change the SED ‘Commercial’ and “Downtown Waterfront” designation colors to clearly delineate.</p>
18	Other SED map revisions	Official Shoreline Environment Designation Maps A-M; Appendix III Designation Boundary & Resource Table	<p>Review</p> <ul style="list-style-type: none"> • SED Map D, mapping error- commercial designation to extend to 1912 Wheaton Way. • Honor Bar/Evergreen Park re-designate to Isolated SED • Oyster Bay requires SED assignment • Commercial SED to be expanded one lot beyond Pitt Avenue to the South. <p>Action Revise maps.</p>
Administrative Amendments			
19	Industrial Development	Throughout BSMP	<p>Review General evaluation of the SMP to ensure consistency with industrial development.</p> <p>Action Explore opportunities to ensure consistency with the need for industrial development in certain locations.</p>
20	Reformat/Fix SMP Errors	Throughout BSMP	<p>Review Revise text and sections for improved clarity and flow, address miscellaneous typos and formatting errors. The following are known issues. Others to be addressed during review process.</p> <p>Action Amend the following SMP items</p> <ul style="list-style-type: none"> • 7.040 Regulations(b)(7) should be (b)(5) • 7.040 Regulations(f) should be (c) • 8.040 Regulations(a) & 7.040 • 7.090(b) Regulations scriveners’ error • 7.010 (c)(g) Regulations

			<ul style="list-style-type: none"> • Correct public access requirement for lot threshold • Figure 7.090(b)(a)(1), revise order • 9.060 Regulations(a), fix typo • BSMP 7.010.6, 'Buffers & Setbacks' - The code reference for fencing is incorrect. Update reference in BSMP from BMC 20.44.020 to BMC 20.46.020
21	Employment Center Planned Action	NA	<p><u>Review</u> Land use considerations are on-going for this area and future ordinance may impact city plans for shoreline development. SMP update to be mindful and consistent with area policies.</p> <p><u>Action:</u> Implement the recommendations from the Eastside Center Subarea Plan.</p>
<p>¹ This column attempts to capture the primary relevant location(s) of content related to the item described in the Summary of Change column; however, due to length of the BSMP, all relevant locations may not be listed.</p>			

6. References

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