

City of Tukwila Shoreline Master Program

Gap Analysis Report

Prepared on behalf of:



The City of Tukwila
Department of Community Development
6300 Southcenter Blvd #100
Tukwila, WA 98188

Prepared by:



750 Sixth Street South
Kirkland . WA 98033

p 425.822.5242

f 425.827.8136

watershedco.com

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1. Introduction

In accordance with the Washington State Shoreline Management Act (SMA), local jurisdictions with shorelines of the state are required to conduct a periodic review of their Shoreline Master Programs (SMPs) (WAC 173-26-090). This review is intended to keep SMPs current with amendments to state laws or rules, changes to local plans and regulations, changes in local circumstances, and new or improved data and information.

The City of Tukwila (City) adopted its current SMP in 2011 (Ordinance No. 2344). Shorelines of the State in Tukwila include the Green/Duwamish River and a small portion of the Black River. The Tukwila SMP includes goals and policies, shoreline environment designations, and development regulations that guide the development and protection of these shorelines.

As a first step in the periodic review process, The Watershed Company (Watershed) reviewed the current SMP for consistency with legislative amendments made since its adoption. Watershed staff also reviewed the current SMP for consistency with the policies in the City's Comprehensive Plan, adopted in 2015, and with the implementing development regulations in the Tukwila Municipal Code (TMC). Finally, as the periodic review process represents an opportunity to revise and improve the SMP, both City and Watershed staff reviewed the current SMP for overall usability.

The purpose of this gap analysis report is to provide a summary of the review and inform updates to the SMP. The report is organized into the following sections according to the content of the review:

- **Section 2** identifies gaps in consistency with legislative amendments. This analysis is based on a list of amendments between 2007 and 2017, as summarized by the Washington State Department of Ecology (Ecology) and provided to the City as a Periodic Review Checklist.
- **Section 3** identifies gaps in consistency with the City's Sensitive Areas Ordinance (SAO) (Chapter 18.45 TMC). The SAO was most recently updated in 2010, and applies to critical areas outside of shoreline jurisdiction, while the SMP contains in Chapter 10 its own separate set of regulations that apply to critical areas within shoreline jurisdiction.
- **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 SAO. Specifically, the review includes Title 18 (excluding Chapters 18.44 and 18.45) of the TMC.
- **Section 5** identifies issues of usability by both City staff and residents.

For each section, the report presents the topic, relevant section(s) in the SMP, a summary of the analysis (consistency or usability), and a recommendation for revisions to the SMP.

2. Consistency with Legislative Amendments

Table 1 summarizes mandatory and recommended revisions to the Tukwila SMP regulations based on the review of consistency with legislative amendments made since SMP adoption. Topics are organized broadly by SMP subject area. In general, mandatory changes to the SMP are minor in nature. The majority of them address revised rules with regard to SMP applicability, including updated exemption thresholds and definitions. Ecology has also developed new guidance on regulating nonconforming uses, structures, and development that could be of use to the City in clarifying the nonconformance regulations in its SMP, as well as recent modifications to wetland buffer guidance that could be applied to both shoreline and non-shoreline wetland regulations.

Table 1. Summary of gaps in consistency with legislative amendments, and associated mandatory and recommended SMP revisions.

No.	Topic (Amendment Year)	Relevant Section(s) in 2011 SMP	Consistency Review	Recommendation
Applicability				
1	Cost threshold for non-exempt substantial development updated (2017)	Chapter 3, Definitions	The SMP includes a definition with reference to an outdated dollar threshold.	Mandatory: Revise definition of “substantial development” to refer to the updated dollar threshold and/or WAC definition, as adjusted by OFM every 5 years.
2	Definition of “development” updated to exclude dismantling or removing structures (2017)	Chapter 3, Definitions	The SMP does not clarify that removing structures does not constitute development.	Recommended: Revise definition of “development” to clarify this exclusion. Example language from Ecology is available.
3	New rules clarify exceptions to local review under the SMA (2017)	Chapter 14, Administration, section 14.2(B) and Chapter 3, Definitions	The SMP addresses exemptions in WAC 173-27-040. Individual exemptions under that section are addressed elsewhere throughout the SMP. The SMP does not refer to WAC 173-27-044 or -045.	Mandatory: Add reference to statutory exceptions. Recommended: Revise Chapter 14 to more comprehensively address exemptions and exceptions from all three relevant sections of the WAC, as amended.

No.	Topic (Amendment Year)	Relevant Section(s) in 2011 SMP	Consistency Review	Recommendation
4	Retrofitting existing structures for ADA compliance is now exempt from shoreline permit requirements (2016)	Chapter 14, Administration	Section 14.2(B) addresses exemptions in WAC 173-27-040. Section 14.5(B) contains provisions for non-conforming structures.	Recommended: Consider revising 14.5(B) to clarify that restrictions on modifications to existing non-conforming structures do not apply to ADA retrofits.
5	Cost threshold for exempt replacement of docks on lakes and rivers increased to \$20,000 from \$10,000 (2014)	Chapter 3, Definitions	Chapter 3 includes a definition of “substantial development” with reference to the outdated dollar threshold.	Mandatory: Revise text to refer to updated dollar threshold, and/or refer directly to WAC 173-27-040 and RCW.90.58.030(3)(e) for the list of exemptions.
Use and Development Provisions				
6	Updated wetlands critical areas guidance refers to the 2014 wetlands rating system (2016)	Chapter 10, Environmentally Sensitive Areas within the Shoreline Jurisdiction	Section 10.6(D) refers to the 2004 rating system. Ecology provided revised wetland buffer guidance in July of 2018. The revised guidance indicates that wetlands scoring 5 habitat points may use the same standard buffer width as wetlands scoring 3-4 habitat points, and standard buffers for wetlands scoring 6-7 habitat points may be set at 110 feet rather than 165 feet.	Recommended approach to mandatory change: Revise SMP to reference updated SAO, which will incorporate 2014 wetlands rating system. Recommended: Revise SAO to include July 2018 habitat score and buffer recommendations from Ecology.
7	New definition and policy for floating on-water residences legally established before July 1, 2014 (2014)	Chapter 9, Shoreline Development Standards	Section 9.12(E) contains provisions for live-aboards, which are permitted in the Aquatic environment. No definition of live-aboard is provided in Chapter 3, Definitions.	Mandatory: Revise Chapter 3 and Chapter 9 consistent with the new statutory definition and regulations for floating on-water residences.

No.	Topic (Amendment Year)	Relevant Section(s) in 2011 SMP	Consistency Review	Recommendation
8	Wetlands must be delineated in accordance with the approved federal wetland delineation manual (2011)	Chapter 10, Environmentally Sensitive Areas within the Shoreline Jurisdiction	Section 10.6(A) refers to the Washington State Wetland Identification and Delineation Manual (WDOE Publication #96-94).	Recommended approach to mandatory change: Revise SMP to reference updated SAO, which will refer to the approved federal wetland delineation manual and applicable regional supplements, per WAC 173-22-035.
9	Ecology adopted a rule for certifying wetland mitigation banks (2009)	N/A	The SMP does not address wetland mitigation banks.	Recommended: The City may wish to consider Ecology’s recommendation that SMP provisions (or referenced SAO provisions) authorize the use of mitigation banks.
10	New options for defining “floodway” as either the area that has been established in FEMA maps, or the floodway criteria set in the SMA (2007)	Chapter 3, Definitions	The definition of “floodway” in Chapter 3 is not consistent with either option provided by the statute.	Mandatory: Revise the definition of floodway to either refer to FEMA maps or use SMA criteria consistent with RCW 90.58.030(2)(b)(ii).
Nonconformance				
11	Ecology clarified default provisions for nonconforming uses and development (2017)	Chapter 14, Administration, section 14.5	The SMP includes provisions for nonconforming uses and development in section 14.5.	Recommended: The revised WAC could provide ideas for clarifications or improvements to the existing provisions in SMP.
12	SMPs may classify legally established residential structures and appurtenant structures as conforming even if they do not meet dimensional or bulk standards. Redevelopment, expansion, and replacement consistent with the SMP would be allowed (2011)	Chapter 14, Administration	Sections 14.5(B)(5) and (6) provide allowances for nonconforming residential structures.	Recommended: The City may wish to review these provisions and consider revising to more clearly classify existing structures as conforming.

No.	Topic (Amendment Year)	Relevant Section(s) in 2011 SMP	Consistency Review	Recommendation
Administration				
13	New rule describing the process local governments must follow when conducting periodic reviews (2017)	Chapter 17, Master Program Review and Amendments	Chapter 17 addresses SMP review and amendments, referring to RCW 90.58 and WAC 173-26.	Recommended: The City may wish to consider more specific statutory references (e.g. RCW 90.58.080 and WAC 173-26-090) for the sake of usability.
14	New rule created an optional SMP amendment process that allows for a shared local/state public comment period (2017)	Chapter 17, Master Program Review and Amendments	Chapter 17 addresses SMP review and amendments, referring to RCW 90.58 and WAC 173-26. More specific amendment procedures may be laid out in other chapters of the TMC.	Recommended: The City may wish to consider the use of the new optional SMP amendment process, and if so should review local amendment procedures to ensure there are no impediments to using it.
15	New Growth Management Act – Shoreline Management Act clarifications (2009)	Chapter 10, Environmentally Sensitive Areas within the Shoreline Jurisdiction, and Chapter 17, Master Program Review and Amendments	Chapter 10 includes provisions for critical areas in shoreline jurisdiction. Section 17.2 refers to the effective date of SMP amendments.	Mandatory: Revise 17.2 to clarify that SMPs are effective 14 days from Ecology’s written notice of final action. Recommended: Replace Chapter 10 with an adoption by reference of the updated SAO, with exceptions/modifications as necessary.
16	The Legislature added moratoria authority and procedures to the SMA (2009)	N/A	The SMP does not address this.	Recommended: Consider adding provisions to address moratoria authority. Ecology has provided example language.

3. Consistency with Sensitive Areas Ordinance

Based on a review of consistency with the City's Sensitive Areas Ordinance (SAO), codified in Chapter 18.45 TMC and adopted in 2010, there are numerous minor inconsistencies exist between the way the SAO and SMP designate and protect critical areas. Many of these appear to be a result of the time difference between adoptions of the two documents. We recommend that the City address these inconsistencies through direct adoption by reference in the SMP of the City's SAO, which is scheduled to be amended and adopted immediately prior to SMP adoption. Specific exceptions to the SAO required by statute may be called out in Chapter 18.45 TMC.

4. Consistency with Other Development Regulations and Comprehensive Plan

Table 2 summarizes recommended revisions to the Tukwila SMP based on a review of consistency with the Comprehensive Plan and the Tukwila Municipal Code (TMC). The Comprehensive Plan was updated in 2015 and is generally consistent with the SMP; however, certain policies can be updated to better align with SMP language. Certain code chapters that apply within shoreline jurisdiction, such as the Tree Regulations (Chapter TMC 18.54), refer to outdated SMP provisions and should be updated. In general, cross-references within Title 18 – both from the SMP to other code chapters and vice versa – could be strengthened to clarify applicability of the SMP.

Table 2. Summary of recommended SMP, TMC, and Comprehensive Plan revisions to improve consistency.

No.	Topic	Relevant Section(s) in 2011 SMP, TMC, or Comprehensive Plan	Consistency Review	Recommendation
Comprehensive Plan				
1	Shoreline Goals and Policies	SMP Chapter 6	The SMP references the City's 1995 Comprehensive Plan, with proposed amendments. Many of these have since been adopted in the 2015 Comprehensive Plan.	Update Chapter 6 of the SMP to refer to the 2015 Comprehensive Plan. Incorporate small language changes to policies throughout.
2	Policies for development outside the Tukwila Urban Center or MIC	SMP Section 6.3 / Comprehensive Plan Goal 5-3	Numbering and language for policies 5.3.8, 5.3.9, and 5.3.10 differ slightly between the SMP and Comprehensive Plan.	Revise the SMP to align with more recent Comprehensive Plan language and numbering for these policies.
3	Levee profile	SMP 7.5(B), Figure 2 / Comprehensive Plan Goal 5-10, Figure 5-2	The SMP and Comprehensive Plan both reference the City's adopted minimum levee profile with a graphic of the preferred profile.	Amend the Comprehensive Plan and SMP to include a policy stating/describing the City's preferred levee profile.
Development Regulations				
4	Shoreline Design Guidelines	TMC 18.44.110 (SMP) / Title 18	Projects within shoreline jurisdiction are subject to the Shoreline Design Guidelines as	Where design review and shoreline projects are mentioned throughout Title 18 (e.g. Chapter

No.	Topic	Relevant Section(s) in 2011 SMP, TMC, or Comprehensive Plan	Consistency Review	Recommendation
			part of required design review. The SMP refers to the design review process and non-shoreline criteria. Other chapters of the TMC refer to the need for shoreline design review, but do not mention the Shoreline Design Guidelines.	18.60, Board of Architectural Review), refer to both shoreline and non-shoreline design guidelines.
5	Tree Regulations	Chapter 18.54 TMC	Tree removal within shoreline jurisdiction is subject to the provisions of Chapter 18.54. The chapter refers to outdated shoreline environments (e.g. Low-Impact Environment, TMC 18.54.130). The SMP itself does not reference the Tree Regulations.	Update outdated shoreline code references in Chapter 18.52 and 18.54 TMC, and clarify that these standards do not apply in shoreline jurisdiction, where 18.44.080 applies.
6	Definitions	SMP Chapter 3 / Chapter 18.06 TMC	Several definitions in the SMP are similar, but not the same as, definitions found in the TMC. For example, definition inconsistencies (including missing definitions) were found for the following terms: accessory use, high-impact environment, low-impact environment, river environment, shoreline, substantial development	Amend the definitions in both documents (SMP and TMC). Where definitions differ, focus on statutory requirements.

5. Usability Recommendations

Table 3 summarizes recommended revisions to the Tukwila SMP based on a review of general usability of the document by both Watershed and City staff. Topics are organized broadly by SMP subject area. The majority of these recommendations arise from City staff experience in implementing the SMP and a desire to make the regulations clearer and more internally consistent.

Note that all revisions will need to be made consistently to both the SMP and its codified regulations in Chapter 18.44 TMC.

Table 3. Summary of recommended SMP revisions to enhance usability.

No.	Topic	Relevant Section(s) in 2011 SMP	Usability Discussion	Recommendation
Permitted Uses				
1	Internal consistency	Permitted uses by SED (TMC 18.44.040-.065 / Sections 8.4-8.7) vs. Use Matrix (Figure 18-1 / Section 3)	The City has identified several inconsistencies between the permitted use provisions listed by SED and those in the matrix (e.g. utilities and utility towers allowed as “P” or “C”)	Review both sections for consistency and determine which section shall control. Default is for written provisions to control; however, the City may wish to reinterpret some of these provisions. Alternatively, remove the written provisions and rely exclusively on the use matrix, with footnotes as necessary to provide additional conditions, as well as use-specific provisions in subsections of 18.44.070.
Dimensional Standards				
2	Shoreline buffers	18.44.040-.060	Subsection A of each upland SED “uses” section defines the required width of the shoreline buffer in that SED. These are described in more detail in Section 7.5 of the SMP, which does not have an analogous subsection within the SED use sections in Chapter 8.	Summarize shoreline buffers by SED in a table, and remove from the SED uses sections. This table could also contain other dimensional criteria currently incorporated into written provisions (e.g. height restrictions) to enhance usability.

No.	Topic	Relevant Section(s) in 2011 SMP	Usability Discussion	Recommendation
3	Truncated shoreline buffers	Section 7.4, Table 3	Table 3, Summary of Buffer Widths for Land Use Zones and Shoreline Ecological Conditions, was used to define the shoreline buffers included in TMC 18.44. The final entry in the table states that where a street or road runs parallel to the river through a shoreline buffer, the buffer should be truncated on the river side of the existing improved street or roadway.	Incorporate this provision into the shoreline buffer standards in the TMC. Should buffers be summarized in a table, as recommended above, a table footnote could include this provision.
4	Recreational structures	18.44.070 / Sections 8.4, 8.6, 8.8	The SMP limits recreational structures to a height of 15 feet and an area of 25 square feet. In the City's experience, this is too restrictive for certain structures, e.g. viewing platforms.	Revisit dimensional criteria for recreational structures.
General Use and Development Provisions				
5	Environmental Impact Mitigation - monitoring	18.44.070.H	Mitigation sequencing requires monitoring. However, specifications are not provided on monitoring duration.	Require a minimum of five years' monitoring where vegetation mitigation is required.
6	Vegetation protection and landscaping – exempt activities	18.44.080.A	The code does not specify what types of vegetation management may be allowed without a permit, focusing instead on provisions applicable to land under development.	Amend this section to include a list of vegetation management activities such as, e.g., removal of invasive vegetation or noxious weeds.
7	Vegetation protection and landscaping – maintenance and monitoring	18.44.080.D	Where vegetation is planted as part of a required mitigation or restoration, monitoring should be required. Based on City experience, the code should provide for situations in which overplanting is necessary to protect against invasive vegetation, and thinning is required following vegetation establishment.	Revise section to clarify this approach. Clarification could be placed in "exempt activities" section described in #6 of this table, above, or in 18.44.080.D.
8	Public access	18.44.100	The existing dimensional standards for trails (14' wide with two-foot shoulders) is not	Revisit trail standards and consider reducing to a minimum of 12' wide with two-foot

No.	Topic	Relevant Section(s) in 2011 SMP	Usability Discussion	Recommendation
			consistent with the County or City Parks standards which require a 12' wide trail with two-foot shoulders. The City has received submittal of several variance applications due to this inconsistency.	shoulders, or applying the reduced minimum where the applicant demonstrates it to be necessary due to lack of space.
Specific Use and Development Standards				
9	Minimum levee profile	18.44.070.D, Flood Hazard Reduction	In the case that a proposed levee profile improves upon the adopted minimum levee profile, a shoreline variance should not be required.	Revise subsection (10) to provide flexibility where an applicant demonstrates, and the City Engineer confirms, that the proposed levee profile will provide improved shoreline ecological functions and flood protection relative to the adopted minimum profile.
10	Permitting of over-water structures	18.44.070.K, Marinas, Boat Yards, Dry Docks, Boat Launches, Piers, Docks, and other Over-Water Structures	Subsection 1 requires that the applicant present state and federal approvals prior to issuance of an SSDP for construction of piers, docks, wharves, and other over-water structures. This approach is inconsistent with other City land use approval procedures and may be at odds with state or federal permit requirements.	Revise subsection 1 to require proof of submittal, rather than approval, of state and federal permit requirements, as applicable.
11	Classification of bridges	18.44.070.K, Marinas, Boat Yards, Dry Docks, Boat Launches, Piers, Docks, and other Over-Water Structures	City experience permitting a new pedestrian bridge raised the question of whether a bridge would be considered an over-water structure. Requirements for grated decking may pose a safety issue for non-motorized users.	Clarify how bridges are regulated, either in this section or in Chapter 18.06, Definitions.

No.	Topic	Relevant Section(s) in 2011 SMP	Usability Discussion	Recommendation
Nonconformance				
12	Amortization	18.44.130.E	During original drafting of the nonconformance regulations, the City set a goal to amortize nonconforming uses and structures.	No code revisions are recommended; however, the City should discuss and evaluate progress toward its amortization goal.
13	Parking lots	18.44.130.E(6)	City shoreline jurisdiction includes several nonconforming parking lots. Nonconforming gravel lots within shoreline jurisdiction may not be paved without losing nonconforming status, regardless of approach to stormwater control.	To provide flexibility, consider amending this section to allow for paving together with pollution controls and restoration of or other improvement to shoreline ecological functions.
Administration				
14	Purpose	18.44.010	Chapter 18.44 does not include an introduction or definition of purpose.	To improve usability and provide context, consider adding an introductory subsection that defines the purpose of the Shoreline Overlay District chapter.
15	Shoreline Environment Designation amendments	18.44.130	This section does not address the administrative procedure/requirements for a request of change in shoreline environment designation.	Consider amending this section to include a description of this process.
16	Permit revisions	18.44.130	This section does not address the administrative procedure/requirements for revisions to shoreline permits.	Consider amending this section to include a description of this process, and/or a reference to WAC 173-27-100.
17	Permit timelines	18.44.130	This section does not address time limits on shoreline permits, including period of validity, requirements for project completion, extensions, etc.	Consider amending this section to include a description of this process, and/or a reference to WAC 173-27-090.
18	SSDP approval criteria	18.44.130.B(3)	This subsection requires that a development be consistent with the SMP as a condition for approval.	Revise this subsection to require consistency with the Shoreline Management Act and applicable chapters of the WAC in addition to the SMP.

