

CITY OF SPOKANE SHORELINE MASTER PROGRAM
RESPONSE TO THE DEPARTMENT OF ECOLOGY'S
FINDINGS AND CONCLUSIONS

ATTACHMENT C: RECOMMENDED CHANGES

NOTE: ~~Strikethrough~~ implies deletion of the text
Underline implies an addition to the text

SUMMARY OF RECOMMENDED CHANGES

Section of SMP	Changes
Comprehensive Plan Chapters 14 <i>Chapter Contents</i>	14.45—ENVIRONMENTS AND MANAGEMENT POLICIES 14.56 GOALS AND POLICIES 5.15 14.6 MAPS
Chapter 17A.020.260(Z) <i>Definitions</i>	<u>N.</u> <u>Shoreline Structure</u> <u>A permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.</u>
Chapter 17E.060.650 <i>Shoreline Regulations</i>	<u>5.</u> ((4)) Intensive Urban Environment (IUE) <u>6.</u> ((5)) Wastewater Treatment Plant Environment (WTPE)
SMC 17E.060.090 <i>Shoreline Overlay and Relationship to Other Regulations</i>	B. In addition to these regulations, other Washington State statutes that may be applicable to shoreline development or use include, but are not limited to: <ol style="list-style-type: none"> 1. Camping Resorts Act, RCW 19.105; 2. Fish and Wildlife, RCW 77; 3. Flood Control Zone Act, RCW 86.16; 4. Forest Practices Act, RCW 76.09; 5. Growth Management Act, RCW 36.70A; 6. Land Subdivision Act, RCW 58.17; 7. <u>Pesticide Act, RCW 15.157</u> 8. <u>Pesticide Application Act, RCW 17.21</u> <u>9.</u> ((7-)) State Environmental Policy Act (SEPA), RCW 43.21C; <u>10.</u> ((8-)) State Hydraulic Code, RCW 77.55; <u>11.</u> ((9-)) Surface Mining Act, RCW 78.44; <u>12.</u> ((10-)) Washington Clean Air Act, RCW 70.94; <u>13.</u> ((11-)) Water Pollution Control Act, RCW 90.48; <u>14.</u> ((12-)) Water Resources Act of 1971, RCW 90.54.
SMC 17E.060.380 <i>Nonconforming Uses and Structures</i>	<i>See Page 7</i>

<p>SMC 17E.060.290 Shoreline Substantial Development Permit</p>	<p>17E.060.290 Shoreline Substantial Development Permit</p> <p>A. Purpose.</p> <p>To ensure that substantial development within the shoreline area is accomplished in a manner that protects the shoreline ecology consistent with the Comprehensive Plan and the Shoreline Management Act. This section establishes criteria for determining the process and conditions under which a shoreline substantial development permit may be acted upon by the director.</p> <p>B. A shoreline substantial development permit is subject to the specific review procedure established in chapter 17G.060 SMC, Land Use Application Procedures, and the conditions which may be imposed to assure compliance with all applicable regulations. A request for a shoreline substantial development permit use may be disapproved if the director finds the shoreline development is inconsistent with these Shoreline Regulations, the Comprehensive Plan or the Shoreline Management Act.</p> <p>C. No use, modification, or development, except for those listed in SMC 17E.060.300, Use, Modifications, and Developments Exempt from Shoreline Substantial Development Permit Requirement, shall be undertaken in the Shoreline Jurisdiction without first obtaining a shoreline substantial development permit from the Director. Substantial developments include any development with which the total cost or fair market value, whichever is higher, does exceed five thousand <u>seven hundred and eighteen dollars (5,718)</u> or the adjusted amount per WAC 173-27-040, or if such development does materially interfere with the normal public use of the water or shorelines of the state. <u>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. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect.</u> For the purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of use, modification, or development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.</p> <p>D. Where a substantial development is proposed which would be partly within and partly outside of the Shoreline Jurisdiction, a shoreline substantial development permit shall be required for the entire development.</p> <p>E. An application for a shoreline substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single-family residence and its appurtenant structures from shoreline erosion shall be subject to all of the requirements of these Shoreline Regulations and shall follow the time period for public comment in SMC 17G.060.130, Public Comment Period. For purposes of this section, a limited utility extension means the extension of a utility service that:</p> <ol style="list-style-type: none"> 1. Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer; 2. Will serve an existing use in compliance with these Shoreline Regulations; and 3. Will not extend more than two thousand five hundred linear feet within the Shoreline Jurisdiction.
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<p style="text-align: center;">17E.060.340 <i>Shoreline Design Review</i></p>	<p>17E.060.340 Shoreline Design Review</p> <p>A. Design Review Board ((Committee)) Process</p> <p>The following are subject to the Design Review Board ((Committee)) Process. Shoreline design review is subject to the procedures established in chapter 17G.030 SMC, chapter 17G.040 SMC and SMC 17G.060.060.</p> <ol style="list-style-type: none"> 1. Shoreline development by a public agency; 2. Shoreline development on public property; 3. Shoreline development requiring a shoreline conditional use permit; 4. Other types of shoreline permits may also require review by the Design Review Board ((Committee)) at the request of the Director. <p>B. Administrative Design Review</p> <p>Projects not included in subsection (A) above shall follow procedures for design standards administration in SMC 17E.060.800.</p>
<p style="text-align: center;">SMC 17E.060.410(A)(3) <i>Fill</i></p>	<p>17E.060.410 Fill</p> <p>Definition: Fill is the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high-water mark, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.</p> <p>A. Fill waterward of the ordinary high-water mark shall:</p> <ol style="list-style-type: none"> 1. Provide for no net loss of ecological functions; 2. Be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration; and 3. Be allowed only when necessary to support: <ol style="list-style-type: none"> a. Water-dependent use; b. Public access; c. Cleanup and disposal of contaminated sediments as part of an agency approved environmental clean-up plan; d. Disposal of dredged material considered suitable under, and conducted in accordance with the Dredged Material Management Program of the Department of Natural Resources; e. Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible; f. Mitigation action; g. Environmental restoration; ((and)) h. Shoreline nourishment or enhancement; <u>and</u> i. <u>Shoreline Stabilization, pursuant to SMC 17E.060, 400.</u> <p>B. Fill landward of the ordinary high-water mark shall adhere to the following:</p> <ol style="list-style-type: none"> 1. Ensure no net loss of ecological functions; 2. Solid waste, refuse, and debris shall not be placed in the shoreline; and 3. Stockpile of fill shall be allowed on-site only during the construction phase of the project.

<p>SMC 17E.060.440 <i>Jetties, Groins and Weirs</i></p>	<p>17E.060.440 Jetties, Groins and Weirs</p> <p>Definitions: Jetties are elongated artificial obstructions projecting into a stream from the bank to control shoaling or scour by deflection of current. Groins are bank of shore-protection structures in the form of a barrier oblique to primary motion of water, designed to control movement of bed material. Weirs are structures in a stream or river for measuring or regulating stream flow.</p> <p>A. Jetties, groins, and weirs located waterward of the ordinary high-water mark shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or <u>publicly owned and/or maintained projects which do not degrade natural channel morphology or river processes, or cause adverse impacts to aquatic and terrestrial wildlife ((other specific public purpose))</u>.</p> <p>B. Jetties, groins, weirs and similar structures are allowed by a shoreline conditional use permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams.</p> <p>C. Jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in SMC 17E.060.220.</p>
<p>SMC 17E.060.460 <i>Agriculture</i></p>	<p>17E.060.460 Agriculture</p> <p>Definition: Low-intensity agricultural use is defined as passive grazing and plant cultivation. High-intensity agricultural use includes such activities as feed lots, feed mills, packing plants, agricultural processing plants or warehouses for the purpose of processing, packing, and storage of agricultural products.</p> <p>A. Agricultural uses and development activities shall be located and designed to achieve no net loss of shoreline ecological functions.</p> <p>B. Agricultural uses and activities shall be limited to lands designated for agricultural use in the Comprehensive Plan.</p> <p>C. Conversion of agricultural land to non-agricultural uses shall achieve no net loss of shoreline ecological functions.</p> <p><u>D. Farm management techniques, operation, and control methods should be utilized in accordance with the guidelines and standards of the Soil Conservation Service.</u></p> <p><u>E. Agricultural use currently within the Shoreline Jurisdiction shall not extend farther waterward of existing activities.</u></p> <p>F. This section shall not be construed or applied in a manner that requires modification of and/or limits agricultural activities on land designated as agriculture in the Comprehensive Plan as of the date of the adoption of this SMP.</p> <p>G. New agricultural activities on land designated as agriculture in the Comprehensive Plan but not presently used for agricultural purposes, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities shall comply with the entire SMP.</p> <p>((D. Pesticide application, aerial spraying, manure spreading within the Shoreline Jurisdiction shall not be allowed.</p> <p>E. The disposal of inorganic farm wastes, chemicals, fertilizers, and associated containers and equipment shall not be allowed within the Shoreline Jurisdiction, except organic wastes may be used for fertilization or soil improvement.</p> <p>F. The disposal of solid waste, including junk vehicles and equipment, debris, and brush, shall not be allowed within the Shoreline Jurisdiction.))</p> <p>G. In grazed areas, fencing to protect shoreline buffers shall be required.))</p>

17E.060.800(C)(2)
*Design Standards
Administration*

17E.060.800 Design Standards Administration

- A. Purpose.
To help ensure that development compliments the unique and fragile character of the shoreline through careful consideration and implementation of site development and building design concepts.
- B. The Downtown, Campus, and Great Gorge Shoreline Districts are subject to the Shoreline Design Standards and Guidelines in addition to the underlying design standards in title 17C SMC. The Downriver, Latah Creek, and Upriver Districts are subject to the underlying design standards in title 17C SMC.
- C. All projects must address pertinent design standards and guidelines. A determination of consistency with the standards and guidelines will be made by the Director following a design review process. Design standards are in the form of Requirements (R), Presumptions (P), and Considerations (C). Regardless of which term is used, an applicant must address each guideline. An applicant may seek to deviate from eligible standards and guidelines through the design departure process pursuant to chapter 17G.030 SMC, Design Departures.
 - 1. Requirements R).
Requirements are mandatory in that they contain language that is not discretionary, such as "shall," "must," and "will." Requirements must be satisfied by any plan prior to building permit approval. An applicant may seek a deviation from certain requirements through the design departure process, chapter 17G.030 SMC. Requirements are listed with an (R) after the standard.
 - 2. Presumptions (P).
Presumptions are guidelines that are meant to be applied, but with some flexibility. Presumptions indicate that the City is open to design features that are equal to, or better than, that stated - so long as the purpose is satisfied. A submitted plan is incomplete and will be rejected if it does not demonstrate that the presumptive elements have been in some way incorporated or overcome. Presumptions are listed with a (P) after the standard.
 - a. Overcoming a Presumption.
A presumption that may be unsuitable for a given project may be waived if an applicant can demonstrate to the director that there is a good reason why the presumption is inappropriate. The director may approve an alternative that achieves the intent of the presumption. At the discretion of the applicant, or in rare cases, the director may refer the permit to the Design Review Board (~~Committee~~). A referral from the director would be in those cases where the complexity of the project and/or the cumulative impacts of deviations result in the project no longer meeting the overall intent of the design standards and the comprehensive plan.
 - b. Appropriate ways to overcome a presumption include:
 - i. Demonstrating that for a specific project the underlying design principles will not be furthered by the application of the presumption;
 - ii. Showing that another design principle is enhanced by not applying the presumption;
 - iii. Demonstrating an alternative method for achieving the intent

	<p>of the presumption; and</p> <p>iv. Explaining the unique site factors that make the presumption unworkable, such as lot size and shape, slope, natural vegetation, drainage or characteristics of adjacent development, which are identified through their use of materials, colors, building mass and form, and landscaping.</p> <p>Note: Increases in the cost of development will not be an acceptable reason to waive a guideline or determine that a guideline is inappropriate.</p> <p>3. Considerations (C).</p> <p>Design guidelines listed as considerations are features and concepts that an applicant should consider in preparing a plan. Their omission is not grounds for rejecting a plan, but their inclusion or recognition is encouraged and may assist in overcoming certain presumptions and in gaining acceptance for a plan. Considerations are listed with a (C) after the standard.</p>
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Nonconforming Uses and Structures

Staff made changes to the Nonconforming Uses and Structures section for clarification purposes. The overall intent of the section was not altered.

Amend section 17E.060.380 as follows:

Part III. Nonconforming Shoreline Situations

17E.060.380 Nonconforming Uses and Structures

Definition: Nonconforming development is a shoreline use or structure that was lawfully constructed or established prior to the effective date of the Act, the SMP, or these Shoreline Regulations, or amendments thereto, but which does not conform to present regulations or standards of these Shoreline Regulations or the policies of the Act

- A. In accordance with the requirements of this section, structures ((Structures)) that were legally established prior to the SMP or these Shoreline Regulations, or amendments thereto, and are used for a conforming use but which are nonconforming with regard to setbacks, buffers or yards, area, bulk, height or density may be maintained and repaired and may be enlarged or expanded provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses.
- B. A nonconforming structure which is moved any distance must be brought into conformance with the applicable Shoreline Regulations and the Act.
- C. If a nonconforming structure is damaged to an extent not exceeding 75 percent of the replacement cost of the original structure, it may be reconstructed to those configurations existing immediately prior to the time the structure was damaged, provided that application is made for the permits necessary to restore the structure within six months of the date the damage occurred, all permits are obtained, and the restoration is completed within two years of permit issuance, except that nonconforming single-family residences, manufactured homes, and mobile homes may be reconstructed regardless of the extent of damage so long as application is made within the times required by this subsection.
- D. The replacement, expansion, or enlargement of nonconforming residential buildings (including single-family residences, manufactured homes, and mobile homes) shall achieve no net loss of shoreline ecological functions pursuant to SMC 17E.060.210 and adhere to the Mitigation Sequencing Requirements in SMC 17E.060.220.
- E. Existing nonconforming residential buildings may be replaced within the existing footprint upon approval of a shoreline substantial development permit.
- ~~((Uses and developments that were legally established and are nonconforming with regard to the use regulations of these Shoreline Regulations may continue as legal nonconforming uses. Such uses shall not be enlarged or expanded, except that:))~~
- F. For the replacement of manufactured homes and mobile homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the conversion of single-wide manufactured homes to double-wide manufactured homes, upon approval of a shoreline conditional use permit.
- G. ~~((1. Upon approval of a shoreline conditional use permit, existing))~~ Existing nonconforming single family residences ((, manufactured homes, and mobile homes)) may be enlarged((,)) or expanded((, or replaced)) in conformance with applicable bulk and dimensional standards upon approval of a shoreline conditional use permit and by conformance with the following requirements:

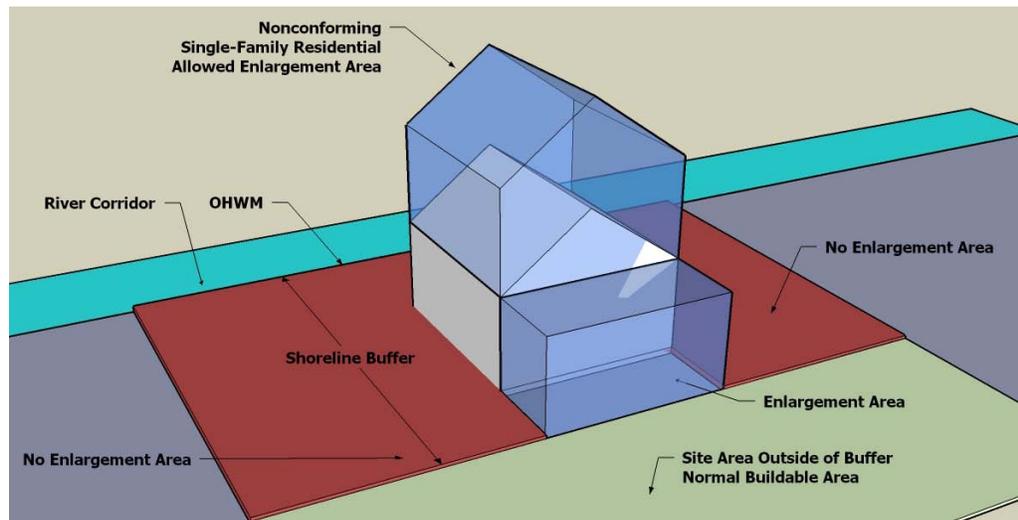
~~((a. The expansion, enlargement, or replacement shall achieve no net loss of shoreline ecological functions pursuant to SMC 17E.060.210, No Net Loss.~~

~~b. The expansion, enlargement, or replacement shall adhere to the Mitigation Sequencing Requirements in SMC 17E.060.220.))~~

1. ~~((c.))~~ An expansion or enlargement to the main structure or the addition of a normal appurtenance as defined in WAC 173-27-040(2)(g) and chapter 17A.020 SMC, Definitions, to the main structure shall only be accomplished by:

a. ~~((i.))~~ Addition of space above the main structure's building footprint; and/or

b. ~~((ii.))~~ Addition of space onto or behind that side of the main structure which is the farthest away from the ordinary high-water mark.



2. ~~((Single family residences shall be replaced within the same building footprint that existed prior to replacement. If an applicant requests an expansion or enlargement of the building footprint, the requirements in SMC 17E.060.380(D)(1)(c)(i) and (ii) shall apply.))~~

If the requirements in SMC 17E.060.380(F)(3)(a) and (b) cannot be accomplished without causing significant harm to shoreline vegetation or other shoreline ecological functions, the director may require additional site analysis to determine if an alternative location for the expansion or enlargement of the structure is feasible.

~~((3. For the replacement of manufactured homes and mobile homes, a greater building footprint than existed prior to replacement may be allowed in order to accommodate the conversion of single wide manufactured homes to double wide manufactured homes.~~

4. ~~If the requirements in SMC 17E.060.380(D)(1)(c)(i) and (ii) cannot be accomplished without causing significant harm to shoreline vegetation or other shoreline ecological functions, the director may require additional site analysis to determine if an alternative location for the expansion, enlargement, or replacement of the structure is feasible.))~~

H. ~~((E. An existing))~~ Existing residential buildings have a change in use to another legal, conforming use shall conform to the buffer and structure setback requirements and all other requirements of the entire SMP and title 17C SMC, Land Use Standards.

- I. ~~((F.))~~ A use which is listed as a conditional use but which existed prior to adoption of these Shoreline Regulations or any amendment thereto, and for which a conditional use permit has not been obtained, shall be considered a nonconforming use.
- J. ~~((G.))~~ A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this section shall apply as they apply to preexisting nonconformities.
- K. ~~((H.))~~ A structure which is being or has been used for a nonconforming use shall not be used for a different nonconforming use, except as provided below, and only upon the approval of a shoreline conditional use permit:
1. No reasonable alternative conforming use is practical;
 2. The proposed use will be as consistent with the policies and provisions of the Act and these Shoreline Regulations and as compatible with the uses in the area as the preexisting use; and
 3. In addition, such conditions may be attached to the permit as are deemed necessary to assure compliance with the above findings, the requirements of these Shoreline Regulations and the policies in the Act and to assure that the use will not become a nuisance or a hazard.
- L. ~~((I.))~~ If a nonconforming use is discontinued for twelve consecutive months or for twelve months during any two-year period, the nonconforming rights shall expire and any subsequent use shall be conforming.
- M. ~~((J.))~~ An undeveloped lot, tract, parcel, site, or division of land which was established in accordance with local and state subdivision requirements prior to the effective date of the Act or the applicable Shoreline Regulations but which does not conform to the present lot size standards may be developed if permitted by other land use regulations of the City so long as such development conforms to all other requirements of the applicable Shoreline Regulations and the Act.