

# **ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED AMENDMENT OF THE CITY OF BAINBRIDGE ISLAND SHORELINE MASTER PROGRAM**

SMP Submittal accepted December 8, 2020, Ordinance No. 2020-17  
Prepared by Department of Ecology on January 29, 2020

## **Brief Description of Proposed Amendment**

The City of Bainbridge Island (City) has submitted locally-initiated Shoreline Master Program (SMP) amendments to Ecology for approval. The City has elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore, as part of this process on December 9, 2019 per WAC 173-26-104(3)(b) Ecology provided the City with an initial determination of consistency with applicable laws and rules. The City's final adopted ordinance incorporated all of Ecology's required and recommended changes provided as part of the initial determination. This is a locally initiated amendment intended to update critical areas regulations and improve clarity and implementation of the nonconforming provisions of the SMP. Amendments related to critical areas (SMP Section 4.1.5) focus on integrating similar updates to those completed as part of the City's critical areas ordinance (CAO, BIMC 16.20). Amendments related to nonconforming uses, structures, and lots (SMP Section 4.2.1) focus on clarification of allowed actions for all nonconforming structures and specific allowances for expansion of single-family residential primary structures. The full proposed text amendment can be found in *Ordinance No. 2020-17 – December 8, 2020*.

## **FINDINGS OF FACT**

### **Need for amendment**

The City's comprehensive update to their SMP went into effect in 2014. The City has proposed Shoreline Master Program amendments to update critical areas protection standards and non-conforming provisions to improve clarity and implementation effectiveness.

The City indicates that the amendment is necessary to updated critical areas provisions and to address nonconforming uses, structures, and lots. The amendment also improves internal consistency, corrects scriveners' errors, and provides clarity for more effective implementation.

### **SMP provisions to be changed by the amendment as proposed**

The City's proposed changes fall primarily into three categories:

- those added to update critical areas provisions;
- those modifications to the nonconforming uses, developments, and lots, to address implementation issues identified by staff or the public, to provide flexibility for reasonably foreseeable development; and
- those added to improve internal consistency, fix scriveners' errors, and update internal cross-references.

Amendments related to **critical areas (SMP Section 4.1.5)** focus on integrating regulations recently updated as part of the critical areas ordinance (CAO, see BIMC 16.20). The intent of the amendment is simply to embed recently updated critical areas regulations into the SMP consistent with procedures and policies of the Shoreline Management Act (SMA). The City’s existing SMP contains critical areas regulations in two places – Section 4.1.5 and Appendix B. Appendix B is essentially a carbon copy of BIMC 16.20, as it existed prior to the CAO update. Section 4.1.5 has some “shoreline-specific” critical areas provisions and some redundant regulations also present in Appendix B. A major housekeeping change in the amendment is to eliminate Appendix B and consolidate all critical areas regulations in Section 4.1.5. This improves readability of the document and eliminates redundancies and internal inconsistencies.

Amendments related to **nonconforming uses, structures, and lots (SMP Section 4.2.1)** are intended to improve clarity and implementation effectiveness of the SMP. The amendments focus on clarification of allowed actions (e.g., rebuilding) of all nonconforming structures and specific allowances for expansion of single-family residential primary structures. The majority of revisions are intended to improve clarity and eliminate vagueness, repetition, and/or internal conflict.

**The City’s locally initiated proposed changes modify the following SMP sections:**

**Table of Contents** – This section will be revised when the amendment is finalized to ensure page numbers and sections titles are accurate.

**\*Section 4.2.1 Nonconforming Uses, Nonconforming Lots, and Existing Development** is renamed to Nonconforming Uses, Nonconforming Structures, and Nonconforming Lots. Every reference to this section is also modified to reflect this change.

**\*\*Appendix B**, the shoreline jurisdiction critical areas provisions incorporated into the 2014 SMP is proposed for deletion. The shoreline jurisdiction critical areas provisions are now proposed to be embedded within the SMP section 4.1.5. All references to Appendix B throughout the SMP are deleted and where appropriate new cross references to Section 4.1.5 are added.

*SMP Chapter 1 Introduction*

**Section 1.3.5 Applicability of Bainbridge Island Shoreline Master Program–**

**Subsection 1.3.5.2** - Edits proposed to clarify how the SMP applies to both existing and new development, uses, lots and activities.

**Subsection 1.3.5.2.a** - The City proposes to further emphasize that legally existing development, uses, lots and activities are not required to meet the SMP requirements, unless new development or changes to a development, use, lot or structure occurs that would require review under the SMP.

**Subsection 1.3.5.2.b** - This section is streamlined to remove any confusion, it now states that all legally existing single-family residences and accessory structures are allowed to be maintained, repaired, remodeled or replaced. A Cross reference to the nonconforming provisions in section 4.2.1 is deleted, along with the following: *if destroyed or damaged by natural causes.*

**Subsection 1.3.5.2.c** - References to expansions of existing structures are deleted and remaining language is modified: All proposed uses and development occurring within shoreline jurisdiction must conform to be consistent with Chapter 90.58 RCW, the Shoreline Management Act and this ~~Shoreline~~ Master Program.

**Subsection 1.3.5.2.d** - This section is reorganized and reworded without substantive change to the provision.

**Section 4.0.1 Regulations - General**

**Subsection 4.0.1.7** is modified to elaborate on how the City will resolve any unforeseen conflicts between the SMP and other BIMC provisions.

**Section 4.1.2 Environmental Impacts**

**Subsection 4.1.2.5** is modified to remove the requirement that projects using the non-conforming allowances of Section 4.2.1 must plant the entire area of the Zone 1 buffer to obtain a 65% vegetation coverage within 10 years. This requirement will only apply to projects that alter or reduce the shoreline buffer using the vegetation management provisions of Section 4.1.3.

**Subsection 4.1.2.8** is modified to delete reference to Appendix B and replace with the new reference to the embedded critical areas provision.

**Section 4.1.3 Vegetation Management**

**Subsection 4.1.3.4.3.c.ii., Subsection 4.1.3.5.8.a.v., and Subsection 4.1.3.8.4.iv** requirement for a Bluff Management Plan is deleted and replaced with a requirement for compliance with the development standards of Section 4.1.5.11.

**Section 4.1.5 Critical Areas**

**Subsection 4.1.5.1 Applicability** is modified to remove the list of all other applicable SMP and BIMC Chapters. It is not necessary to list these at the beginning of each section – they are applicable whether listed here or not. The City proposes to add the following applicability statement:

*This section applies to all development, uses and activities within areas or adjacent to areas designated as critical areas. No action shall be taken by any person, company, agency, governmental body (including the city), or applicant, which results in any alteration of a critical area except as consistent with the goals, policies, purposes, intent, requirements, and development standards of this section.*

**Subsection 4.1.5.2 Goal** the City proposes to add policy goal statements regarding avoidance and minimization for the protection of the Island’s special character. An additional five (5) specific goals are listed related to biodiversity, locating development in less environmentally sensitive areas, prevention of cumulative impacts, protection of public and public resources from hazards such as landslides, erosion, seismic events, and floods, and alter owners and the public of the natural conditions that pose a hazard or otherwise limit development.

**NEW Subsection 4.1.5.3 Purpose and intent** the City proposes to add four (4) purpose and intent statements related to the designation, classification and protection of critical areas.

**NEW Subsection 4.1.5.4 Protection of Critical Areas** the City added this section identifying that all development, uses, and activities subject to this section must use mitigation sequencing and that the burden of proof that the action will not cause a net loss or harm falls on the applicant.

**Subsection 4.1.5.5 Policies** this section is renumbered to accommodate the new sections above. Additionally the City proposes to delete 3 policies, which currently lists the shoreline resource critical areas to be protected or are otherwise redundant to other SMP policies.

**NEW Subsection 4.1.5.6 Allowed Activities within Critical Areas** this new section is proposed to clarify certain repair and maintenance, forest practices, minor site investigation, improved right-of-way, low impact fencing, signs, and aquifer recharge area activities that can occur without additional critical areas review. Another section adds allowance for certain activities within an interrupted portion of a critical area buffer to be allowed without additional critical areas review.

**Subsection 4.1.5.7 Regulations – General** this section is modified to delete a reference to critical areas regulations contained within Appendix B, because the City is deleting Appendix B and replacing those provisions with regulations embedded directly within this section (SMP 4.1.5). The City proposes review criteria and other general standards similar to those contained within Appendix B. This includes additional information requirements for reports and site plans, as well as, Notice on Title requirements.

**Subsection 4.1.5.8 Regulations – Critical Saltwater Habitat** this section is modified to remove references and requirements for *Fish and Wildlife Habitat Conservation Areas* because those provisions were relocated into another section.

**NEW Subsection 4.1.5.9 Aquifer Recharge Areas** this new section provides the applicability of aquifer recharge area regulations and includes the list of prohibited activities and uses that is currently within Appendix B-7. This section is consistent with the SMP’s existing Aquifer Recharge Areas provisions.

**NEW Subsection 4.1.5.10 Fish and Wildlife Habitat Conservation Areas** this new section in the SMP but carries over mostly existing language from Appendix B-8. Allows buffer averaging with mitigation sequencing, but no buffer reduction. New sections added for Utilities, Road/Street Repair and Construction, and Forest Practices. This section covers FWHCA classification, mapping, development standards, buffers, Stream buffers are increased from the version in Appendix B to:

Table 4-4. Stream Buffers

Stream Type	Buffer Width
F	200
Np	100
Ns (connected to F or Np)	75
Ns (not connected to F, Np)	50

**Subsection 4.1.5.11 Regulations – Geologically Hazardous Areas** this section is updated to include provisions from Appendix B-9, with minor modifications and re-organization. This section classifies geologically hazardous areas, sets review procedures, provide general standards, and specific development regulations, including setback requirements. Special Reports section was deleted, because special reports are addressed elsewhere in this section. Surface drainage section is modified to replace the term “marine bluff” with “landslide hazard area” for internal consistency of the use of this term.

**Subsection 4.1.5.12 Regulations – Wetlands** this section is amended to bring in applicability, identification, categorization, mapping, protection, buffer, and mitigation standards from Appendix B, except as necessarily modified to reference the updated information such as requiring the use of the 2014 Wetland Rating System.

**NEW Subsection 4.1.5.13 Regulations – The Winslow Ravine – Special Rules in Mixed Use Town Center** this section is new to 4.1, but is just a relocation of existing language from Appendix B-12.

**NEW Subsection 4.1.5.14 Regulations –Critical areas reports** this section is added to put all critical area report requirements in one place.

## Section 4.2 General Use

**Subsection 4.2.1. Nonconforming Uses, Nonconforming Structures, and Nonconforming Lots** this is modified to change the title from Nonconforming Uses, Nonconforming Lots, and Existing Development to Nonconforming Uses, Nonconforming Structures, and Nonconforming Lots,

**Subsection 4.2.1.1 Applicability** this is modified with minor grammar edits and additional text to provide clarity. A clarification is added providing that this section does not apply to shoreline modification or shoreline stabilization. Another addition, mimics language from **Subsection 1.3.5.2.a**, providing that nonconforming uses, lots and structures are not required to meet the SMP requirements, unless new development or changes to a use, lot or structure occurs that would require review under the SMP are proposed.

**NEW Subsection 4.2.1.2 Definitions** this new section is added to provide section specific definitions for Nonconforming Use, Nonconforming Lot, and Nonconforming Development or Structure. The definitions proposed are consistent with those Ecology provides for in WAC 173-27-080.

**Subsection 4.2.1.3 Goal** the existing language in this section is deleted and replaced with simplified language. References to having uses and structures become conforming over-time are removed. The new goal reads, *It is the purpose of this section to recognize legally established uses, lots, and structures, and to allow them to be maintained, repaired and remodeled, and, in some cases replaced and expanded, in conformance with Section 4.2.1.5 through 4.2.1.8 of this Program with due regard to unique site conditions and property rights.*

**Subsection 4.2.1.4 Policies** the existing policies in this section are deleted and replaced with simplified language. The proposed new policies are as follows:

1. *Nonconforming structures may be repaired, maintained, or remodeled and, in some cases, nonconforming structures may be replaced or expanded provided the change meets the current regulations and standards of this Program. Decreases in nonconformity should be encouraged.*
2. *Once discontinued, reestablishment of nonconforming uses and nonconforming commercial structures located in the shoreline jurisdiction should be restricted or phased out over time.*
3. *Nonconforming overwater structures may be reconstructed to the same size and modified, reoriented or altered within the same general location to be more consistent with the provisions of this Program.*
4. *Nonconforming lots of record may be developed consistent with the standards and regulations of this Program.*
5. *Redevelopment of nonconforming public rights-of-way and associated existing transportation structures may be permitted for purposes of facilitating essential public access, development of public trails and/or public shoreline access.*

**Subsection 4.2.1.5 Regulations – General** the existing language in this section is deleted and replaced with simplified language. The new proposed language is as follows:

1. *Nonconforming uses, lots, and structures may continue subject to the provisions of this section.*
2. *Any alterations to nonconforming uses or structures shall meet the no net loss standard pursuant to Section 4.1.2.4. The current condition of the shoreline, including nonconforming uses and structures, shall be the starting point or baseline for determining compliance with the no net loss standard.*

**Subsection 4.2.1.6 Regulations – Nonconforming Uses** the only change to this section is an update to a reference to reflect the new numbering of this section.

**Subsection 4.2.1.7 Regulations – Nonconforming Structures** this is modified to change the title from Existing Development to Nonconforming Structures.

**Subsection 4.2.1.7.1 General Provisions – Nonconforming Structures** the existing language in this section is deleted and replaced with expanded language to provide additional clarity and improve implementation. This section provides standards and review criteria for the maintenance, repair, renovation, remodeling or replacement of nonconforming structures.

**Subsection 4.2.1.7.2 Nonconforming Structures – Residential Single-Family: Primary structures** the title is modified to use the term “nonconforming structures” instead of “existing structures.” The entire existing language in this section is deleted and replaced with expanded language to provide additional clarity and improve implementation. Standards and approval criteria for the alteration, expansion or replacement of nonconforming primary residential structures are provided in this section. Including a new limitation of 500 square feet for expansions of existing non-conforming primary residential structures.

**Subsection 4.2.1.7.3 Nonconforming Structures – Residential: Accessory** the title and subsequent subsections are modified to use the term “nonconforming structures” instead of “existing structures.” The proposed language in this section is trying to make a distinction between “accessory structures” which must meet the current SMP when reconstructed and “essential single-family residential accessory structures” which can be replaced in the same location. This term is defined within the SMP-

**Essential Single-Family Residential Accessory Structure** – *An accessory structure that contains a use or is intended for a use that is essential to a single-family residential principal use. The following structures shall be considered an*

*essential residential structure: a garage or carport, one septic system (including one tank and one on-site septic drainfield), one well house and associated well head, and existing decks attached to the primary structure.*

**Subsection 4.2.1.7.4 Nonconforming Structures – Residential and Commercial Overwater Structures**

this subsection title is added. The entire existing language in this section is deleted and replaced with simplified language to improve clarity and implementation. This includes allowances for the replacement of existing nonconforming docks, piers, floats, and buoys either within the same footprint or within a more conforming footprint provided the replacement materials and methods meet substantive SMP standards.

**Subsection 4.2.1.7.5 Nonconforming Structures – Multifamily Residential: Primary Structures &**

**Subsection 4.2.1.7.6 Nonconforming Structures – Commercial and Industrial (Primary and Accessory)**

the existing language in these sections are deleted and replaced with simplified language to improve clarity and implementation. This includes clarification that nonconforming structures can be reconstructed to the footprint and bulk dimensions existing prior to a catastrophic event and any elective reconstruction must be completed in conformance with the SMP.

**Subsection 4.2.1.7.8 Regulations – Encumbered and Nonconforming Lots** this section is re-worded and slightly re-organized to improve implementation, but substantive standards are not changed.

*SMP Chapter 8 Definitions*

**The following definitions are modified:**

Activity, Director, Fish and Wildlife Habitat Conservation Areas, Hazard Tree, Invasive Species, Landslide Hazard Areas, Low Impact Development (LID), Nonconforming Development or Nonconforming Structure, Normal Maintenance, Qualified Professional, Wetlands.

**The definitions for the following terms are added:**

Alteration, Aquifer Recharge Protection Area, Arborist, Bank Stabilization, Best Available Science, Biodiversity Areas and Corridors, Bog, Coppicing, Critical Facilities, Cutting Vegetation, Education or Scientific Activities, Engineering Geologist, Estuarine Wetland, Fish, Fish Habitat, Fisheries Biologist, Functions and Values, Habitat Management Plan (HMP), Habitat of Local Importance, Hedge, Hydrogeologist, Land Disturbing Activity, Land Divisions, Landslide Hazard Area Setback, Liquefaction, Low Impact Development Best management Practices (LID BMPs), Nonconforming Lot, Nonconforming Use, Pruning, Pruning Amount, Ravine, Redevelopment, Removal Vegetation, Shrub, Site, Species of Local Importance, Streams, Stream Type, Tree, Wetland Boundary, Wetland Category, Wetlands Specialist, Wildlife Biologist, Wildlife Habitat.

**The following terms are removed from the definitions section:**

Existing Development, Wetlands Jurisdictional.

**Amendment History, Review Process**

The record indicates that the proposed SMP amendments originated from a local planning process related to the City's Comprehensive Plan and Critical Areas Ordinance (CAO) updates. The SMP CAO provision update process began in conjunction with the citywide CAO provision update which was completed in April 2018. The City had originally planned to eliminate SMP Appendix B, which contains the SMP CAO provisions, and replace it with the updated CAO provisions via an incorporation by reference. The City later decided to eliminate Appendix B and replace it with CAO provisions imbedded directly into SMP section 4.1.5 Critical Areas.

### *Public Process*

The Planning Commission discussed the CAO integration SMP amendment at the following meetings: October 12, 2018, November 16, 2018, April 19, 2018, and April 26, 2018. The City elected to use the optional joint review process of WAC 173-26-104 for this amendment. The City and Ecology held a joint local/state comment period on the proposed critical areas provisions SMP amendment following procedures outlined in WAC 173-26-104. The joint comment period began on May 11, 2018 and continued through June 11, 2018. A joint local/state public hearing was held on May 24, 2018 during the City Planning Commission Meeting. Affidavits of publication provided by the City indicate notice of the hearing was published in the *Bainbridge Island Review*. The City Planning Commission elected to continue the Public Hearing to the following meeting on June 7, 2018.

The City provided notice to local interested parties, created a list-serve for email notifications, and maintained a webpage dedicated to this SMP amendment. Ecology distributed notice of the joint comment period and public hearing to state interested parties, including emails and postcards sent on May 10, 2019. Tribal request for comment notifications letters were sent directly to the following potentially interested Tribes on May 7, 2018: the Port Gamble S'Klallam, Skokomish, Squaxin-Island, and Suquamish Tribes. Public comments and concerns received were focused on why this amendment was proceeding separate from another amendment the City was working on related to nonconforming structures, uses, and lots. As a result of these concerns, the City modified its proposed SMP amendment to include changes to the nonconforming provisions.

The Planning Commission decided not to send the original CAO related SMP amendment to Ecology for initial determination of consistency. Instead the City decided to combine the CAO and Nonconforming provisions amendment into one and elected to re-notice the joint local/state comment period and public hearing with the new expanded scope.

The second joint comment period began on September 10, 2018 and continued through October 10, 2018. A joint local/state public hearing was held on September 11, 2018 during the City Council Meeting. Affidavits of publication provided by the City indicate notice of the hearing was published in the *Bainbridge Island Review*. The City Council elected to extend the comment period, for an additional 30-days, until November 9, 2018 at 5:00 pm.

The City provided re-notice to local interested parties via email notifications and updated the webpage dedicated to this SMP amendment. Ecology distributed re-notice of the joint comment period and public hearing to state interested parties, including emails and postcards sent on September 10, 2018 and letters to potentially interested Tribes on September 6, 2018. Both the City and Ecology webpages were updated to reflect the public comment period extension.

The City also issued a SEPA non-project action Determination of Non-Significance (DNS) for the City of Bainbridge Island Shoreline Master Program Amendment on October 12, 2018. The DNS describes the scope of the amendments as updates to the critical areas provisions and revisions to provisions related to nonconforming structures, uses, and lots. A copy of this DNS was provided to Ecology for this SMP Amendment adoption record.

The nonconforming language was the subject of further discussion at meetings on November 27, 2018 and January 8, 2019 and City staff prepared a comparison of other jurisdictions as part of their

November 27, 2018 staff memo and prepared additional responses to City Council questions within a *Nonconforming Policy Questions* matrix, dated December 11, 2018.

The City consulted with Ecology and solicited comments throughout the review process.

The City prepared a comment summary and provided City responses to comments. According to the record, the City identified 37 individuals, organizations, groups, or Tribes that provided comment on the combined CAO/Nonconforming provisions SMP Amendment between May 8<sup>th</sup> 2018 and November 12, 2018. The City prepared a comment summary, which included responses to comments, as needed. This summary identifies 51 topics listed by commenter in chronological order. Ecology concurs with the City's responses to comments.

Several suggestions intended to improve clarity within the Nonconforming SMP Section 4.2.1, made prior to September 11<sup>th</sup>, were incorporated into the 9/11/2018 Public Comment Draft. The following additional revisions were made to the draft SMP as a result of public comments received on the 9/11/2018 draft SMP:

- The direct reference to a November 26, 1996 SMP effective date was removed and replaced with language similar to the Ecology default nonconforming language found in WAC 173-27-080.
- The term "rebuilt" is replaced with "replaced" in numerous places.
- The city-wide Aquifer Recharge Protection Area (ARPA) standards were determined to inapplicable to the shoreline jurisdiction and were removed from this proposed amendment.
- Most restrictive clause of SMP 4.0.1.7 is revised for clarity and to improve consistency with the purpose and intent of the SMA.

#### *Initial Determination*

The City provided their initial submittal of the proposed SMP amendments to Ecology pursuant to WAC 173-26-104 via regular mail on April 22, 2019 and the submittal was determined to be complete. This began Ecology's review and initial determination.

Ecology prepared an initial determination of consistency with the policy of the SMA and applicable guidelines. Ecology concluded the proposal was not entirely consistent with applicable laws and rules, and provided a written statement describing the specific areas of concern. This written statement of initial concurrence, including required and recommended changes, was sent to the City on December 9, 2019. Ecology identified the following issues as relevant to the proposed SMP amendment's consistency with the SMA and implementing rules of WAC 173-26:

##### *1. Critical Areas Protection Standards of the SMP*

The City proposes to eliminate Appendix B and relocate critical areas provisions within the SMP to address SMA required critical areas protection standards. Ecology identified two changes necessary for consistency with WAC 173-26-201(2)(a) & (c), WAC 173-26-221, and WAC 173-26-191(2)(b) & (c).

##### *2. Additional items identified as recommended changes*

In addition to the issues identified above as requiring changes to ensure consistency with the SMA and its implementing guidelines, Ecology has also identified five changes recommended to fix minor errors, provide clarity or improve implementation.

#### *Final Local Adoption Process*

In response to Ecology's Initial Determination, the City Council directed staff to prepare an ordinance for the City's Shoreline Master Program ("SMP") Amendment, incorporating Ecology's required and recommended changes, as well as edits recommended by staff to correct internal references and ensure

consistency between the amended policies and regulations. The City Council deliberated on the final Ordinance at Council meetings on June 23, 2020 and September 22, 2020. An additional public hearing occurred at the September 22, 2020 meeting. Following the public hearing, the City re-issued the October 2018 SEPA determination, to ensure all public noticing requirements were met in accordance with Chapter 16.04 BIMC. No additional SEPA comments were received, and no appeal was filed.

The City identified an additional 7 comments received between June 23, 2020 and September 24, 2020 during the final local adoption process.

These final comments were related to the concept of “grandfathered” uses and how that relates to “nonconforming” uses, a request to increase the allowances for building area on nonconforming or encumbered lots, questions about the applicability of the Aquifer Recharge Protection Area designation. A few additional comments were related to topics outside the scope of this locally initiated amendment including sea-level rise, wildfire mitigation activities, and aquaculture regulations, all of which the City identified as topics that will be considered as part of their SMP Periodic Review work plan for 2021.

With passage of Ordinance No. 2020-017, on November 24, 2020, the City authorized staff to forward the proposed amendment to Ecology for formal approval.

#### *Final Submittal*

Ecology received the City’s formal SMP Amendment final submittal via email on December 8, 2020. Ecology is required under WAC 173-26-110 to determine if SMP submittals are complete. On December 28, 2020, Ecology provided the City with an email confirmation that this submittal package was complete.

According to the record, the City identified a total of 58 written comments submitted by of individuals, organizations, groups, and Tribes between May 8, 2018 and September 24, 2020. The City prepared a comment summary, arranged by topic in chronological order and included City staff responses to comments as required by WAC 173-26-104. Ecology considered comments and the city’s response as part of the above referenced Initial Determination process and again as part of the final submittal review. As noted in the above amendment history and public process information, the City addressed substantive comments and included many of the changes suggested by commenters throughout the review and local adoption process. Ecology finds that the City adequately considered comments and appropriately incorporated changes into the draft to address comments as necessary or warranted. Ecology further finds that no additional modifications are necessary to address comments or to achieve consistency with the SMA or implementing guidelines.

Please note that the locally adopted ordinance includes the changes recommended and required by Ecology as a result of its initial determination of consistency, as well as City staff recommended edits to adjust hierarchical outline numbering/style, fix formatting, ensure internal consistency of cross references, and to correct scriveners’ errors. Some of these City staff recommended changes occurred after Ecology issued our Initial Determination of Consistency; however these changes were not substantive and did not change Ecology’s previous determination.

#### **Consistency with Chapter 90.58 RCW**

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

## Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions).

## Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

## CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the SMP amendments will assure that no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(2)(c)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents. Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process.

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

## DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.