

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF BREMERTON SHORELINE MASTER PROGRAM

SMP Submittal accepted May 10, 2021, Ordinance No. 5417 & 5418
Prepared by Department of Ecology on May 20, 2021

Brief Description of Proposed Amendment

The City of Bremerton (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for approval to comply with periodic review requirements.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2013. The City subsequently completed a limited amendment to incorporate updated critical areas regulations; this amendment was approved by Ecology in 2017. Now, the proposed amendment is needed to comply with the statutory deadline for a periodic review of the Bremerton SMP pursuant to RCW 90.58.080(4).

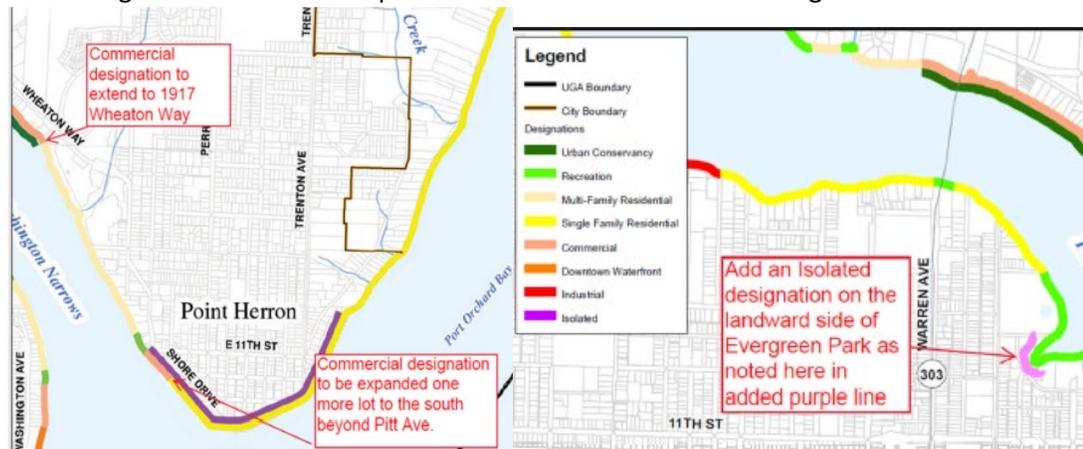
SMP provisions to be changed by the amendment as proposed

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

1. An updated critical area ordinance is incorporated by reference into the SMP. Revisions to critical area regulations include:
 - i. Revisions to requirements for tree replacement ratios and sizes (20.14.190)
 - ii. Amendments to wetland regulations (20.14.320, 330 & 340). Standard wetland buffers are revised, resulting in smaller required buffers for wetlands with a medium habitat score. Wetlands with a habitat score of 5 will be considered "low habitat." Clarifications on reducing the standard wetland buffer are added.
 - iii. Clarifications on stream buffer enhancements and an allowance to reduce enhancement requirements on a case-by-case basis.
2. Goals and policies are updated as follows:
 - a. Add "address climate change adaptation/resiliency" to Master Goal of SMP (2.020)
 - b. Add policies for addressing climate change to the Conservation and Restoration Goal (2.030(b)). A new policy to avoid, retreat, protect, and accommodate in that order is added. New policies to establish a climate change strategic plan, to consider changes to shorelines in future SMP updates, and to consider sea level rise impacts as the City plans for new development are also added.

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- c. The statement “and meet current ADA requirements” is added to the Public Access Goal (2.030(e)).
 - d. General policies as well as policies for uses, shoreline modifications, and development are relocated and consolidated into Chapter 2.
 - e. The following policy is added to the Vegetation Conservation Policies: “The City should implement the Environmental Standards within the Gorst Creek Subarea Plan, include the Gorst Creek Overlay, upon future annexation.” (2.040(b)(2)).
 - f. Recognition that forest practices within the City Watershed and City Utility Lands may include timber harvest is added to Forest Practices Policies (2.055).
3. Definitions (Chapter 3) are updated as follows:
- a. Definitions are added for the following terms: covered moorage, floating on-water residence, must, nonconforming lot, nonconforming structure, nonconforming use, reach, sea level rise, tender dock.
 - b. Definitions for the following terms are revised: development, floating home, may, mooring buoy, ordinary high water mark, qualified professional, setback, shoreline jurisdiction, shoreline substantial development.
 - c. Definitions for the following terms are deleted: nonconforming development, wetlands.
4. The shoreline maps (Chapter 4) are amended as follows:
- a. A small island in Oyster Bay that was undesignated will be designated as Urban Conservancy
 - b. Redesignate a parcel at 1917 Wheaton Way from Multi-Family Residential to Commercial.
 - c. Redesignate a parcel along Shore Drive from Shoreline Residential to Commercial.
 - d. Add a designation of Isolated to parcels on the landward side of Evergreen Park.



5. Permit Administration (Chapter 5) is amended as follows:
- a. Local review exceptions are added [5.010(g)].
 - b. A statement of applicability to areas under exclusive federal jurisdiction is added [5.010(h)].
 - c. Cost thresholds are updated [5.010(j)].
 - d. Specifics on some shoreline exemptions are removed, and references to WAC 173-27-040 are added [5.010(j)].
 - e. Clarification that the shoreline exemptions are not filed with Ecology is added [5.040(a)(3)].
 - f. Minor clarifications to conditional use permit requirements [5.040(b)].
 - g. The time requirements for permits is revised [5.060(c)].

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- h. Special procedures for WSDOT projects are added [5.100].
6. Nonconforming Provisions (Chapter 6) are amended as follows:
- a. A statement is added that lawfully existing uses, lots, and structures that are rendered nonconforming by the SMP may continue and be repaired [6.020(c)].
 - b. Definitions are moved to Chapter 3 [6.040].
 - c. Minor, non-substantive revisions to provisions for discontinuation of nonconforming uses [6.060(d)].
 - d. Revisions to provisions for expansion of nonconforming structures [6.070(b)].
 - e. Revisions to provisions for repair and maintenance of nonconforming structures [6.070(c)].
 - f. A section on Unsuitable Structures for Uses is deleted.
7. General Standards and Regulations (Chapter 7) are amended as follows:
- a. The incorporation of the critical area ordinance is updated to incorporate the 2021 CAO [7.010(a)].
 - b. Revisions to the Shoreline Buffers and Setbacks table are incorporated to provide clarity of implementation, and a provision for interrupted buffers is added [7.010(b)].
 - c. Requirements for Habitat Management Plans are revised [7.010(b)(5)].
 - d. Allowances for shoreline buffer reductions are revised. A table of mitigation options to allow buffer reductions is added [7.010(b)(6)].
 - e. Allowances for fences are revised [7.010(b)(7)].
 - f. An allowance is added for up to 50 square feet of water enjoyment structures in the buffer.
 - g. Requirements for a Vegetation Management Plan are revised. Development entirely outside of shoreline buffers will no longer be required to provide a Vegetation Management Plan [7.020].
 - h. A clarification is added that proposals that are entirely addressed by specific, objective standards of the SMP are not required to demonstrate mitigation sequencing [7.030].
 - i. Provisions for the requirement of public access are revised [7.040].
 - j. Clarifications to the Height Restrictions table are added [7.090(b)].
 - k. A requirement to obtain a shoreline conditional use permit in order to increase building heights to the maximum allowed by the zoning code is removed [7.090(b)].
 - l. Exceptions to the height restrictions are added [7.090(b)(3)].
8. Shoreline Use Regulations (Chapter 8) are amended as follows:
- a. Requirements for water-dependent commercial uses are revised. (8.030)
 - b. An allowance for Forest practices for the sole purpose of timber harvesting is added for shorelands in the City Watershed and the City Utility Lands. (8.040)
 - c. Requirements for public access are revised to include an exception for areas designated by the EPA as a Superfund site. An allowance to use shoreline armoring to prevent chemicals from leaching into a waterbody is added. (8.050)
 - d. Clarification that floating on-water residences established and moored within a marina prior to July 1, 2014 are consider conforming uses is added. (8.080)
 - e. Requirements for residential subdivision are added. (8.080)
 - f. Clarification that height restrictions do not apply to bridges is added. (8.090).
 - g. Storm drainage/sewer outfall requirements are revised (8.090).
9. Shoreline Modifications (Chapter 9) provisions are amended as follows:
- a. Work window requirements for clearing, filling and grading are revised [9.020].

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- b. A requirement that light penetration be incorporated into private bridges is added [9.030].
- c. A provision for public pier and dock size limitations is added [9.030(k)].

Amendment History, Review Process

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

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

The City held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on October 23, 2020 and continued through November 23, 2020. A virtual public hearing before the Planning Commission was held on November 16, 2020.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period to state interested parties on October 20, 2020. Ecology sent invitations to comment and consult Government to Government, as necessary, to local tribal governments including the Suquamish Tribe, the Port Gamble S’Klallam Tribe, the Skokomish Tribe, and the Squaxin Tribe.

The City received four (4) comment letters on the proposed amendments. Comment letters were submitted by the Washington Department of Fish and Wildlife (WDFW), the Suquamish Tribe, the Department of the Navy (Naval Base Kitsap), and member of the public. The City identified 35 individual comments in these letters, as summarized in the Comment Response Matrix (Attachment B). The City made several changes to the SMP amendment in response to comments.

In response to comments from the Washington Department of Fish and Wildlife (WDFW), the City added a policy related to the Gorst Creek sub-area plan, added a shoreline buffer mitigation option, added requirements for avoidance and minimization when siting stormwater outfalls, replaced “plantings” with “vegetation” in the stream regulations, increased the mitigation ratio for stream buffer vegetation replacement to 1.5:1, and relocated tree planting requirements from the CAO to the vegetation conservation section of the SMP. In response to comments received from the Suquamish Tribe, the City updated the Historical, Cultural, and Educational Goal and added language to replacement ratio requirements for Category I wetlands that bogs and heritage wetlands cannot be created. In response to comments received from the Department of the Navy – Naval Base Kitsap, the City added “Jackson Park Housing Complex and Camp McKean” to the list of federal lands.

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Ecology appreciates the level of interest and effort put forth by all commenters in this SMP periodic review, and appreciates and acknowledges that WDFW and the Tribe brought forth a number of legitimate concerns which enhanced Ecology's consistency analysis and resulted in modifications that benefit the SMP. Ecology has reviewed the comments received along with the City's responses. Ecology finds the City's responses are generally consistent with statutory and rule obligations required of SMP amendments. Ecology finds that the City considered comments and incorporated additional amendments to address issues raised during the comment period.

Initial Determination of Consistency

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint City-State comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendments were received by Ecology on January 27, 2021 for initial state review and verified as complete on January 28, 2021.

On February 26, 2021 Ecology provided the City a formal written statement documenting our initial determination of consistency. Ecology concluded that portions of the proposal were not consistent with applicable laws and rules, and provided a written statement describing the specific areas of concern and changes necessary. Ecology identified four (4) required changes. Ecology identified issues with proposed changes to the definition of "shoreline jurisdiction," the wording of the critical area ordinance incorporation, and expiration timelines for shoreline permits. Ecology also identified two (2) recommended changes to improve clarity of the proposed amendments. After review by Ecology of the complete initial record submitted and all comments received, Ecology determined that the City's proposed amendments, subject to and including Ecology's required changes, 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).

The City considered the changes identified in Ecology's initial determination and accepted all required and recommended changes prior to local adoption.

Final Submittal

With passage of Ordinance #5417 and 5418 on April 21, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal approval. The City submitted the amendments and Ecology verified the submittal as complete on May 10, 2021.

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). This

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includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

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 on April 17, 2019. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

CONCLUSIONS OF LAW

After review 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).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv)).

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, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

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.