

ATTACHMENT A: FINDINGS AND CONCLUSIONS

TOWN OF BUCODA SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted March 24, 2022, Ordinance No. 665

Prepared by Department of Ecology on August 24, 2022

Use of this Document

Ecology's *Findings and Conclusions* (presented here in Attachment A) provide the factual basis for the Department of Ecology's (Ecology) decision on the Town of Bucoda (Town) proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. This document is divided into three sections: **Findings of Fact**, which provides findings related to the Town's proposed amendment, amendment history, and the review process, **Conclusions of Law**, and **Ecology's Decision and Effective Date** of the amendment.

Brief Description of Proposed Amendment

Town of Bucoda has submitted a Shoreline Master Program (SMP) amendment to Ecology for approval to comply with periodic review requirements. The Town opted to follow the joint review process in WAC 173-26-104 for this periodic review and amendment. As part of this process on December 23, 2021, per WAC 173-26-104(3)(b), Ecology provided the Town with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The Town's final adopted ordinance incorporated all our required and recommended changes provided as part of the initial determination.

FINDINGS OF FACT

Need for amendment

The Town of Bucoda comprehensive update of their SMP was completed in June 2012. The SMP regulates shoreline use and development activities along approximately 1.4 miles of the Skookumchuck River within town limits. The Town's SMP is a standalone document containing goals, policies and regulations. The goals and policies set forth in Chapters 5 and 6 are considered an element of the Town's comprehensive plan. Critical area regulations are established in the SMP at Chapter 6.2 with incorporation by reference of the Town's 2005 Title 18.D critical areas ordinance (Ord. 463) plus additional exceptions and modifications for compliance with the SMA and the most current technical guidance. The boundaries of the Shoreline Management Area and Shoreline Designations are established in the SMP at Chapter 2 and Appendix A Environment Designation maps.

This proposed amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4). The periodic review ensures the SMP is in compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the SMP comprehensive update; ensures the SMP remains consistent with amended comprehensive plans and regulations; and determines whether revisions are necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The Town prepared a checklist documenting the proposed amendment. In addition to minor general edits to update syntax and Council/Planning Commission membership, formatting, internal references and citation corrections, the following sections of the SMP are proposed to be amended:

Chapter 1. INTRODUCTION

- 1.8.E Add external citation to BMC 15.24 Flood Hazard Regulations as a courtesy reference;
- 1.12 Effective Date – Correct outdated language to reflect the 14-day effective date after Ecology’s final action;

Chapter 3. SHORELINE PERMITS

- 3.1. General Provisions – Add language about permit filing requirements;
- 3.5. Shoreline Exemptions – Revisions to reflect the current substantial development cost threshold, remove the single-family dock exemption since the SMP prohibits private boating facilities, add the exemptions for fish & wildlife and fish passage improvement projects, and for ADA retrofits;

Chapter 6. GENERAL POLICES & REGULATIONS

- 6.2 Critical Areas & Vegetation Conservation –
 - A.2. Revise to replace outdated ‘equal protection’ standard with protection of shoreline critical areas to assure no net loss (NNL) of ecological functions;
 - B.3. Revise the list of Exceptions to the applicability of the critical areas regulations in shoreline jurisdiction to reflect the most current technical guidance;

Chapter 8. SHORELINE MODIFICATIONS POLICIES & REGULATIONS

- 8.3 Restoration & Enhancement – Add a provision to allow relief for instances in which a shoreline restoration project within a UGA creates a shift in Ordinary High Water Mark;

Chapter 9 DEFINITIONS

- 9.D.37 Development – Add clarifying language to exclude dismantling/removing structures;
- 9.F.57 Floodway – Revise to delete FEMA definition based on FIRMs and keep SMA definition for reliance on biophysical criteria and site-specific information;
- 9.S.160 Substantial Development – Revise to include the current dollar threshold, and to delete the non-applicable (G)(2) language about private residential docks (similar to 3.5 above);

APPENDICES

- **B.** Revise to include Title 18.D Critical Area Provisions (for reference only) to aid implementation of the 6.2.B.2 incorporation by reference, since the Town’s CAO is not readily available online;
- **C.** Wetland Categories in Shoreline Jurisdiction – Add detailed wetland category provisions (A) – (D) to supplement SMP 6.2(B), consistent with the most current technical guidance; and
- **D.** Wetland Buffers in Shoreline Jurisdiction – Add detailed wetland buffer provisions (A)(1) – (4), including Tables 1, 2 and 3 to supplement SMP 6.2(B), consistent with the most current technical guidance.

Amendment History, Review Process

The Town 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. An important element of the public

participation plan is the Town's SMP Periodic Review project [website](#)¹. A project description, details about public comment and hearing opportunities, and draft documents were posted online. Due to the COVID-19 pandemic, the Town held most public meetings in a virtual format using the GoTo Meetings platform until June 30, 2021, including status briefings at Planning Commission and Council open public meetings.

The Town used Ecology's Periodic Review 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 comprehensively updated, and to determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The Town also reviewed changes to their comprehensive plan and development regulations to determine if the SMP policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The Town 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 Town consulted with Ecology and solicited comments throughout the review process, including providing specific opportunities to comment on draft materials from June - September 2021.

The Town and Ecology held a joint local-state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on June 23, 2021 and continued through July 23, 2021. An additional comment period was held September 1 – 14, 2021 prior to a joint local-state public hearing before the Town Council, held on September 14, 2021. No one provided any verbal testimony.

The Town provided notice to local parties, including a statement that the hearing was intended to address the periodic review, in accordance with WAC 173-26-090(3)(c)(ii). The Town's notice of the hearing was published in the *Tenino Independent* newspaper on September 1 and 8, 2021. Ecology distributed notice of the joint comment period and public hearing to state interested parties on June 17, 2021 and August 20, 2021, including separate notices to the Chehalis, Nisqually, and Squaxin Tribes. Project information including a link to the Town's webpage for review materials was posted on Ecology's [website](#)² and also noted in the written noticing. Despite the COVID-19 pandemic still occurring, Ecology attended the in-person joint public hearing on September 14, 2021 as no virtual option was available.

The Town prepared a State Environmental Policy Act (SEPA) environmental checklist with a non-project action supplement based upon the Council's Joint Hearing Draft SMP, and issued a Determination of Non-Significance (DNS) on August 16, 2021 inviting comments during an extended comment period ending September 14, 2021.

The Town provided a 60-day Notice of Intent to Adopt to the Washington State Department of Commerce on September 21, 2021, inviting comment and affirming that Town Council would not take legislative action during that timeline.

¹ <https://www.bucoda.us/shoreline-master-program--periodic-review.html>

² <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Shoreline-Master-Programs-amendments#B>

The Town accepted public comments on the proposed SMP amendments during the 30-day joint public comment period, the additional 14-day joint comment period, the extended SEPA comment period, and the 60-day GMA comment period. One written comment was submitted via email from the Washington State Department of Fish and Wildlife (WDFW) habitat biologist, Noll Steinweg, on June 21, 2021.

The Town prepared a Comment Response Matrix and considered all comments. The WDFW email only expressed appreciation for the opportunity to be involved in the public review process and stated that they had no comments to offer at this time. The Town reviewed and considered the comment and did not propose any additional revisions.

Initial Determination of Consistency

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

The proposed SMP amendments were received by Ecology on September 22, 2021 for initial state review. The submittal was verified as complete on September 22, 2021. This began Ecology's review and initial determination.

Ecology considered the record, including comments received and the Town's responses to those comments, and concluded that the proposed amendment was largely consistent with the policy of the SMA and applicable guidelines, subject to and including required changes. A written statement of initial concurrence was sent to the Town on December 23, 2021, including two (2) required changes needed for consistency with statute/rules as follows:

- SMP 6.2 Critical Areas & Vegetation Conservation Policy A.1 - for protection of shoreline critical areas to ensure no net loss of ecological functions, consistent with WAC 173-26-221(2)(a)(ii); and
- SMP 9 Definition #57 Floodway – to use only one of the two options for the definition of 'floodway' consistent with RCW 90.58.030 and WAC 173-26-211(2), and avoid sole reliance on the newest FEMA FIRMs that would trigger additional technical analysis regarding expanded jurisdictional extent, SMP text and SED map revisions, and create implementation challenges.

Ecology also identified three (3) recommended changes to provide better clarity and improve the document regarding related flood hazard regulations, wetland buffer provisions, and presentation of the multiple appendices.

To support the Town's consideration of the initial determination, Ecology met with Town staff virtually (MS Teams) on January 25, 2022 to discuss the issues identified, required and recommended changes, and options for next steps. The Town 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 No. 665, on March 8, 2022 the Town accepted all five (5) of Ecology's initial determination changes, incorporated them into the locally adopted SMP, and authorized staff to forward the amendment package to Ecology for formal approval. The Town's final submittal of proposed SMP amendments was received March 17, 2022 and determined complete on March 24, 2022, as required by WAC 173-26-110. Ecology's final review was delayed beyond the 30-day target due to heavy workload and staffing constraints.

Consistency Review

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 Town 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 included review of a SMP Periodic Review Checklist, which was completed by the Town.

Consistency with SEPA Requirements

The Town submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) on September 1, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in the *Tenino Independent* on September 1 and 8, 2021.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed documents prepared by or for the Town in support of the SMP amendment. These documents include the public participation plan, the periodic review checklist, comment summary response, and meeting minutes.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the Town proposed amendment is 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) and WAC 173-26-186(8)).

Ecology concludes that the Town has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the Town 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 public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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

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

Ecology concludes that with this action the Town 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 periodic review amendment to the SMP is consistent with Shoreline Management Act policy, the applicable guidelines and the implementing rules. Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.