

ATTACHMENT A: FINDINGS AND CONCLUSIONS
TOWN OF FRIDAY HARBOR SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted November 4, 2021, Ordinance No. 1731
Prepared by Department of Ecology on May 4, 2022

Use of this Document

These Findings and Conclusions (presented herein Attachment A) provide the factual basis for the Department of Ecology's (Ecology) decision on the Town of Friday Harbor's (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

Friday Harbor is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval consistent with periodic review requirements. As part of this review, the Town chose to use the joint review process set forth in WAC 173-26-104. On July 16, 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 Ecology's required and recommended changes provided as part of the initial determination.

FINDINGS OF FACT

Background

The Town of Friday Harbor is located on San Juan Island within San Juan County. The Town's SMP regulates shoreline uses and development along a portion of the marine shoreline (Friday Harbor) as well as Trout Lake, which is the Town's municipal water supply.

The Town comprehensively updated their SMP in 2015. The Town's SMP is a standalone document containing goals, policies, regulations, administration provisions and critical areas protections.

Need for amendment

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the Town Shoreline Master Program pursuant to RCW 90.58.080(4). The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the SMP was comprehensively updated, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

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SMP provisions to be changed by the amendment as proposed

The Town prepared a checklist and an analysis documenting the proposed amendment. The Town's amendment includes a collection of necessary changes identified through the periodic review. The following is a summary of the substantive changes organized by SMP section:

Section 1 - General

- A process to resolve mapping disputes related to undesignated shorelines and the identification of shoreline jurisdiction has been added, including a process for interpretation of the Official Shoreline Map and the Town's View Corridor Map.
- Clarifies the effective date of SMP amendments.

Section 2 – Applicability

- Adds a list of developments excepted from local review under the SMA.
- Applicability of the SMP to federal agencies/lands has been clarified.
- Clarifies SMP applicability to new uses and modifications in addition to development.
- The cost threshold for developments exempt from the requirement to obtain a substantial development permit has been removed and replaced with a general reference to the most current amount as adjusted by the Washington Office of Financial Management (OFM).
- Updates list of exemptions from the substantial development permit process consistent with WAC 173-27-040, captures new and previously omitted items.
- The cost threshold for docks exempt from the requirement to obtain a substantial development permit has been amended consistent with changes made by OFM in 2019.

Section 4 – Goals & General Shoreline Use & Development Policies

- Revises and clarifies unique public view protection policies.

Section 5 – Designated Shoreline Environments

- Removes common boundary descriptions for SEDs and instead relies on Official Shoreline Map to provide adequate parcel level detail to determine boundaries.
- The Town consolidated the Urban Residential 1 and Urban Residential 2 sub-SEDs into a single Urban Residential SED.

Section 6 – Use Policies & Regulations

- Developments within Special Flood Hazard Areas (SPHA) now require a floodplain habitat assessment meeting Federal Emergency Management Agency (FEMA) requirements.
- Modifies general public access regulations for consistency with the SMP Guidelines.
- Public view protection regulations have been re-written to clarify the process and specific criterion for consideration of view impacts from proposed development.
- General regulations associated with the protection of archaeological, historic and cultural resources has been re-written for consistency with the SMP Guidelines.
- Provisions addressing hazard tree removal have been updated for consistency with updated International Society of Arboriculture (ISA) recommendations.
- The SMP incorporates Critical Areas Ordinance updates adopted by the Town in June of 2021. The updated CAO includes provisions to address geologic hazard areas, updates wetland protections consistent with the most current Ecology guidance and makes numerous other changes that overall strengthen critical area protections throughout the

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Town. Applicable CAO sections are incorporated by reference and specific text within the SMP has been removed.

- The term “shallow lot” is now defined within the SMP.
- Policies and regulations associated with shoreline stabilization have been revised for greater consistency with the SMP Guidelines.
- New groins in Natural and Aquatic SEDs now requires a conditional use permit (CUP).
- Mooring buoy, pier and dock sections modified to align with Corps of Engineers standard.
- Standards for restoration projects have been added.

Section 7 – Variances & Section 8 – Conditional Uses

- Adds clarity for consideration of cumulative impacts associated with variances and CUPs.

Section 13 - Definitions

- Adds the following terms: Boating Facility, Ecological Function, Ecosystem-Wide Processes, Project Permit, Qualified Professional, Shorelines of the State
- Amends the following terms: Marina, Critical Saltwater Habitat, Diameter at Breast Height, No Net Loss, Nonconforming Structure, Nonconforming Use, Significant Tree
- Removes the following terms: Local Shoreline and Substantial Development (it is addressed within the main text of the SMP).

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 City’s SMP Periodic Review project [website](#)¹.

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 determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The Town 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 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. The record also indicates that the Town submitted the required 60-day notice of intent to adopt amendments and notice of final adoption to the Washington State Department of Commerce. The Town prepared a State Environmental Policy Act (SEPA) checklist and issued a

¹ <http://www.fridayharbor.org/2190/Shoreline-Master-Program>

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Determination of Non-Significance (DNS) on May 12, 2021 and was published in the *Journal of the San Juan Islands* on the same day. No comments were received on the DNS.

Joint local/state comment period under WAC 173-26-104

The Town and Ecology held a joint local/state comment period on the SMP periodic review and proposed SMP amendment following procedures outlined in WAC 173-26-104. The comment period began on April 21, 2021 and continued through May 21, 2021. A public hearing before the Planning Commission was held virtually on May 27, 2021.

The Town 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 April 20, 2021. The Lummi Nation, Samish Nation, Swinomish Tribe and Tulalip Tribes were separately invited on April 20, 2021 to comment and consult on the Town's SMP periodic review amendment.

No individuals, organizations, or tribal governments submitted comments on the SMP periodic review or associated proposed amendment.

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, 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 Shoreline Management Act (SMA) and the applicable rules.

The proposed SMP amendment was received by Ecology for initial state review and verified as complete on June 23, 2021.

The intent of this initial review is to provide local elected officials an opportunity to consider Ecology's concerns and proposed changes before local adoption. Upon review of the draft amendment, Ecology determined that the amendment was largely consistent but identified elements that appeared inconsistent with applicable laws and rules. As part of this process, the Town also brought forward some additional changes for our consideration as required or recommended changes. We concluded that select elements of the proposal were not consistent with applicable laws and rules, and provided a written initial determination to the Town, describing specific areas of concern and changes necessary to ensure compliance with state requirements. Ecology's initial determination was provided to the Town on July 16, 2021 and listed a total of nine required changes and one recommended change including:

- re-inserting language inadvertently deleted during the drafting process,
- modifications to undesignated shorelines for consistency with WAC 173-26-211(2)(e),
- correcting references,
- removing proposed provisions that are not necessary or are internally conflicting,
- clarification around the CAO incorporation and references to CAO provisions,

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- adding definitions for Hard & Soft Shoreline Stabilization Measures and Non-Structural Shoreline Stabilization per the Town's request, and
- adding a missing component to the official shoreline map.

The Town incorporated all of Ecology's required and recommended changes prior to local adoption of the SMP amendment.

Final Submittal

With passage of Ordinance #1731, on August 19, 2021 the Town authorized staff to forward the locally adopted SMP amendment to Ecology for formal state review and approval. Ecology received the Town's submittal and determined it complete on November 4th, 2021, thus initiating state review of the SMP amendment. The complete submittal included all required and recommended changes identified by Ecology in the July 16, 2021 initial determination document.

At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with required changes and/or recommended changes, or deny approval.

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 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 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) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the Town 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, we conclude that the Town's 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 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 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 purpose and intent of the amendment process 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 work sessions and 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's 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 and 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 Town's SMP is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the City has completed the requirement for a periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.