

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE OF THE GRAYS HARBOR COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted October 9, 2018, Resolution No. 2018-034
Prepared by Kim Van Zwalenburg on December 4, 2019

INTRODUCTION

Ecology's Findings and Conclusions (Attachment A), including reference to Attachment B (Required Changes) and Attachment C (Recommended Changes), provide the factual basis for the Department of Ecology's (Ecology) decision on the Grays Harbor County (County) comprehensively updated Shoreline Master Program (SMP). This document is divided into three sections providing an Introduction; Findings of Fact regarding the submittal, amendment history, and local and state review; and Conclusions.

Brief Description of Proposed Amendment: Grays Harbor County (County) has submitted a comprehensive update to their Shoreline Master Program (SMP) for review and approval by the Department of Ecology (Ecology). The updated master program will regulate over 1200 miles of lake, river and marine shorelines. It contains locally tailored shoreline management policies, regulations, environment designations, designation maps, and administrative provisions. To protect critical areas, the County is adopting their Critical Areas Protection Ordinance¹ (CAPO) in Title 18.06 of the Grays Harbor Municipal County Code by reference into the SMP. Additional reports and supporting information and analyses were included in the county's submittal and, as noted below, have been considered by Ecology during its review.

Need for amendment. The proposed amendment is needed to comply with the statutory requirement for a comprehensive update of the county's SMP consistent with the SMP Guidelines in WAC 173-26². The update also ensures the SMP is consistent with the county's land use management policies and environmental protections provided by the county's Comprehensive Plan and critical areas regulations, and addresses land use changes which have taken place along the county's shorelines over the past 45 + years.

The county currently manages shorelines under an SMP originally adopted and approved by Ecology in 1975 as a regional program. There have been eleven amendments, most recently in 1991, but the county's SMP has never been comprehensively revised. The record submitted by the county to Ecology as part of this SMP update, including Resolution No. 2018-034, reports, analyses and local approval materials, provides information supporting the need for the proposed amendment.

SMP provisions to be changed by the amendment as proposed: The proposed SMP would entirely replace the county's existing master program, including policies and regulations and the shoreline environment designation maps. The updated SMP establishes shoreline buffers on all shorelines, regulates critical areas within shoreline jurisdiction by adopting the County's Critical Areas Protection Ordinance (CAPO) by reference, and includes requirements for mitigation for unavoidable impacts.

¹ Chapter 18.06 of the Grays Harbor County Code, Critical Areas Protection Ordinance.

² RCW 90.58.080 and RCW 90.58.100

In addition, in 1991 the county adopted the Grays Harbor Estuary Management Plan (GHEMP) into the SMP. Developed over a decade, in response to use conflicts and overlapping permitting authorities at the local, state and federal levels, GHEMP applies within the Grays Harbor estuary from the end of the harbor entrance jetties, upstream on the Chehalis River to the confluence with the Wynoochee River. GHEMP “attempts to meld the various authorities and concerns into unified estuary-wide guidelines for both protection and development of the area’s economic and natural resources.”³ The proposed SMP does not retain GHEMP. However, many of the underlying policies and regulations are reflected in the updated SMP in the form of environment designations, habitat protection, including mitigation sequencing, and use regulations.

The comprehensively updated SMP will apply in the unincorporated areas of the county and regulate over 1200 miles of lake, river and marine shorelines. These include, in part, the Pacific Ocean and Grays Harbor estuary, and numerous rivers and streams including the Chehalis, Satsop, Hoquiam, Wishkah and Wynoochee rivers, Decker, Deep, Cloquallum and Salmon creeks. Additionally, some or all of five lakes are listed as shoreline waterbodies.

FINDINGS OF FACT

Amendment History, Local Review Process

The record shows the proposed SMP update originated from a local planning process that began in July 2013.⁴ As part of the Public Participation Plan, the Board of Commissioners appointed a 15-member Shoreline Planning Committee (SPC).

The record shows three community visioning meetings were held in November 2014 across the county. Six topic-specific workshops were held January – March 2015⁵ and three public open houses were held in September 2016 to introduce the draft SMP. Representatives of the SPC attended all workshops and open houses.

The Planning Commission held a public hearing on April 4, 2017 at which time, the draft SMP was recommended for adoption to the Board of County Commissioners. Notice of the hearing was published in the Vidette on March 23, 2017.

Adoption of Resolution #2018-034 on April 9, 2018 authorized staff to forward the proposed amendments to Ecology for approval.

Inventory and Characterization (WAC 173-26-201)

Documentation of current shoreline conditions informs the development of the SMP, including environment designations, policies and regulations, to ensure the SMP can meet the requirement for no net loss of shoreline ecological functions in the SMP Guidelines. The county hired a consultant who produced the Shoreline Analysis Report (2015). The report documents existing shoreline conditions and helped inform development of the County’s SMP, including environment designations, policies and use regulations.

³ Grays Harbor Estuary Management Plan, pp. 1-2.

⁴ Ecology SMA Grant Agreement No. G1200448.

⁵ The following topics were covered: marine resources, shoreline conservation, residential development, public access and recreation, agriculture, flood hazards.

Grays Harbor County stretches from the Pacific Ocean east to the borders with Mason, Lewis and Thurston counties. Portions of three major watersheds are within county boundaries: the Queets/Quinault (WRIA 21), the Chehalis (WRIA 22/23), and the Willapa (WRIA 24).⁶ The Analysis report information is organized around these watersheds along with the marine and estuarine shorelines. The report further divided the county into 14 assessment units and then into reaches to assess existing conditions.

Queets/Quinault Watershed: Located in the northwestern portion of the county, much of this WRIA is in federal, state, or tribal ownership and the rivers and streams drain off the Olympic Mountains. All of this WRIA is in the Usual and Accustomed Fishing and Hunting Area for the Quinault Indian Nation (QIN) and includes the QIN reservation. Much of the WRIA has been impacted by historic logging activities with a few areas impacted by residential and recreational development focused around portions of Lake Quinault and Taholah. There are no dams or reservoirs but numerous logging roads in the upper watershed and road crossings in the lower portions of the watershed have contributed to increased sedimentation and disconnection from floodplains. Water quality throughout the watershed is generally good.

Chehalis Watershed: One of the largest watersheds in the state, this WRIA covers the largest portion of the county. The watershed includes rivers and streams draining into Grays Harbor including the Chehalis, Satsop, Wynoochee and Humptulips rivers. The Chehalis River is unconfined and flows through a wide glacially-formed valley. Historic logging practices, including the use of splash dams to transport wood has had lasting impacts including channel incision, disconnected floodplains and high sediment loads. The majority of the basin is in forestry but most of the river valleys are developed in agricultural, urban or industrial uses. Gravel mining from river bars or floodplains was common through the 1990's along numerous rivers, affecting sediment transport and substrate. Major dams and diversion structures include four dams and two water supply diversions.

Between Aberdeen and Montesano is the Chehalis River Surge Plain Natural Area Preserve. Upstream are extensive agricultural lands and historic gravel mining areas with low levels of forested riparian vegetation. Water quality impairments include temperature, dissolved oxygen levels and fecal coliform concentrations. Overwater structures are uncommon along the Chehalis.

Willapa Watershed: The North River portion of this watershed extends into the southern portion of the county and is primarily in commercial forestry. It has been impacted by historic logging practices and has a low level of large woody debris, poor riparian conditions and excess sediment. The water quality of number of the streams in the watershed is impaired by high temperature conditions.

Marine and Estuarine shorelines: Along the Pacific Coast, land use is dominated by residential and recreation uses with pockets of higher intensity development including commercial uses. There are numerous public parks and shoreline access points. Much of the vacant land is located along the northern coast and within the QIN reservation. The remainder is zoned for residential development, though most of it occurs outside shoreline jurisdiction.

The Pacific Coast is part of the Columbia River Littoral Drift cell, with the majority of the sediment coming from the Columbia. North of Point Grenville, the County's shorelines are characterized by narrow beaches with rocky outcrops and bluffs.

⁶ Washington State identifies watersheds as Water Resource Inventory Areas (WRIAs).

Despite evidence that around 30% of estuary may have been lost through historic fill and diking, Grays Harbor estuary supports extensive tidal marshes and mudflats with areas of high quality habitat in conservation or public ownership including Beardsley Slough, Damon Point and North Bay Natural Area Preserve.

Modifications in the estuary include overwater structures and derelict piles, shoreline armoring along roads and former railroad right of ways. There is also a deep draft channel and jetties at the mouth.

Finding: Ecology finds that the Shoreline Analysis Report adequately inventoried and analyzed the current conditions of the shorelines located in Grays Harbor County. The report synthesized existing information and was used to inform the master program update as well as provide a basis for future protection and restoration opportunities in the county's shoreline jurisdiction as required by WAC 173-26-201(3)(c) and (d).

Shoreline Jurisdiction and Shoreline Environment Designations (WAC 173-26-211)

The extent of shoreline jurisdiction is defined in RCW 90.58.030(2). Grays Harbor (Section 2.1) uses the minimum jurisdiction allowed by statute, including the bedlands and water areas of all shoreline waterbodies, shorelands located within 200 feet of the Ordinary High Water Mark (OHWM), the designated floodway and contiguous floodplain landward 200 feet from such floodways, and all associated wetlands and river deltas. Shoreline jurisdiction is not being extended to include buffers necessary to protect critical areas.

The SMP, in Section 1.4.7, clarifies that it does not apply to lands within Olympic National Park (RCW 37.08.210), which has been ceded to the federal government of the United States, nor any tribal lands on the reservations or lands held in trust by the federal government on behalf of the tribes.

Based on updated streamflow data from the U.S. Geological Survey study⁷ and updated methodologies for assessing lake size, the SMP includes numerous new shoreline waterbodies. The updated SMP will include Failor Lake and an additional five lakes: Lake Quinault⁸, Wynoochee Lake, Moores Lake (near Elma), a formerly unnamed lake (now Wildcat Pond) shared with the City of McCleary, and an unnamed lake west of the Wynoochee River. Quinault and Wynoochee lakes exceed 1000 acres and are Shorelines of Statewide Significance (SSWS).

The number of streams and rivers identified as meeting the flow criteria set forth in the Shoreline Management Act (SMA) has increased from 78⁹ to over 150, with most of the added waterbodies located in the upper watersheds in state and national forest lands. Streams and rivers with a mean annual flow of 1,000 cubic feet per second or greater are defined as Shorelines of Statewide Significance. These include the Chehalis River, Humptulips River, Quinault River, East Fork and mainstem of the Satsop River, North River, Wynoochee River and Queets River.

Local governments are required to classify shoreline areas into shoreline environment designations (SED) based on the existing use pattern, biological and physical character of the shoreline, and the goals and aspirations of the community as expressed in the comprehensive plan. The Inventory and

⁷ 1998. U.S. Geological Survey. Determination of Upstream Boundaries on Western Washington Streams and Rivers Under the Requirements of the Shoreline Management Act of 1971. Water-Resources Investigations Report 96-4208.

⁸ While listed as a shoreline waterbody and a Shoreline of Statewide Significance, the SMP has no application waterward of the OHWM which is entirely under the jurisdiction of the Quinault Indian Nation.

⁹ WAC 173-18-120.

Characterization Report is used to determine the relative degree of impairment and biophysical capabilities and limitations for individual shoreline reaches. Based on this assessment, along with consideration of anticipated future development, zoning and other regulatory overlays, jurisdictions may apply the designation criteria provided in WAC 173-26-211 or develop their own tailored designation criteria.

The current SMP has four shoreline environment designations¹⁰: Urban, Rural, Conservancy, and Natural. The updated SMP has seven designations, including five upland designations: High Intensity, Coastal Community, Shoreline Residential, Rural Development, and Natural and two designations for areas waterward of the Ordinary High Water Mark: Aquatic and Pacific Ocean.

The percentage of the proposed upland designations is shown below with more than ¾ of the county’s shorelines in the Rural Development environment. This designation is similar to the Rural Conservancy designation in the SMP Guidelines.

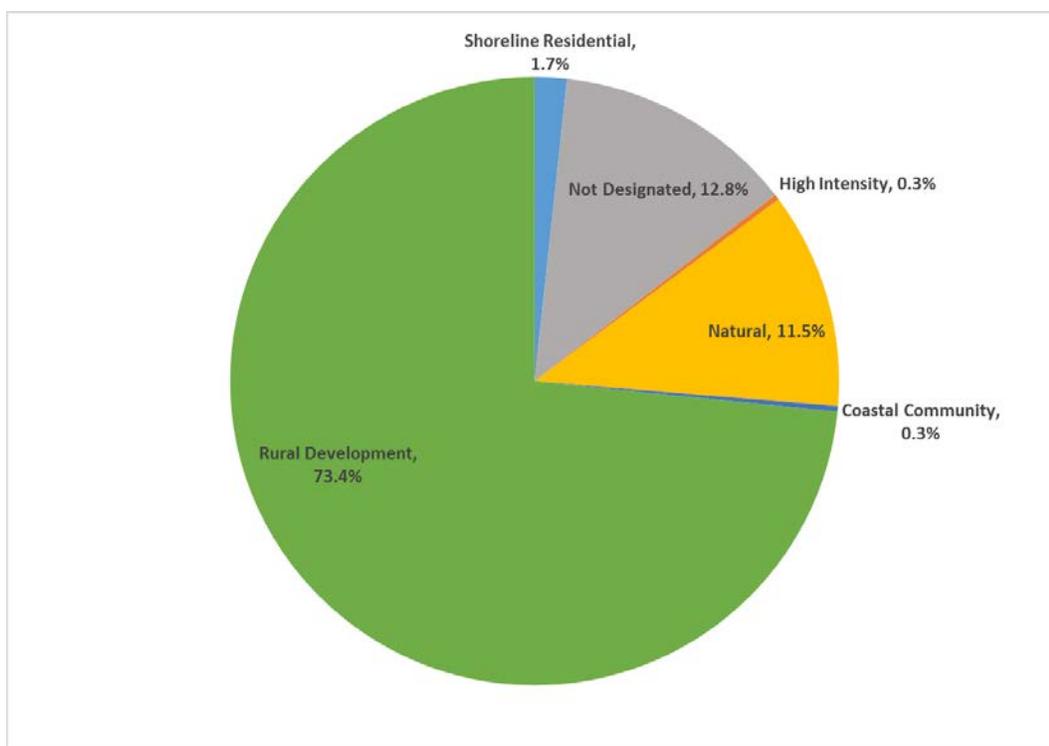


Figure 1¹¹. Distribution of proposed Shoreline Environment Designations within Grays Harbor County.

Finding: Ecology finds, subject to required changes in Attachment B, that the County SMP defines shoreline jurisdiction consistent with the Act and the record sufficiently documents the basis for assigning shoreline environment designations. For each environment designation, the SMP includes a purpose statement, designation criteria, and management policies as required by WAC 173-26-211(4)(a).

¹⁰ Excluding the GHEMP designated management units.

¹¹ Taken from Figure 4-1 in the Cumulative Impacts Analysis. (The Watershed Company and Berk, February 2017).

General Master Program Provisions (WAC 173-26-221)

The SMP Guidelines in WAC 173-26-221 list general provisions that are intended to apply broadly to all of types of shoreline development regulated by master programs. The updated SMP includes new provisions addressing archaeological, historic and cultural resources, vegetation conservation, protection of critical areas and shoreline ecological functions including the use of mitigation sequencing, water quality and specific public access requirements.

Primary changes from the existing SMP include ecological protection provisions that require all development go through mitigation sequencing and provisions to ensure shoreline vegetation is conserved or restored where feasible. Vegetation conservation provisions apply county-wide and a vegetation planting plan is required when vegetation removal exceeds defined removal allowances.

Shoreline buffers are applied by environment designation along all shorelines. When abutting the Pacific Ocean, buffers are generally at 200 feet.¹² When abutting the Aquatic designation, buffers are set at 150 feet. The Natural designation has a buffer of 200 feet and the High Intensity Designation has a buffer of 25 feet. The SMP includes regulations that allow for modified buffers in specific circumstances, consistent with mitigation sequencing.

Critical area protection regulations contained in Chapter 18.06 Grays Harbor County Code (GHCC) for all designated critical areas are adopted by reference with exceptions (Section 1.5). Where critical area buffers overlap, the more restrictive requirement applies.

Finding: Ecology finds that, subject to required changes in Attachment B, the general policies and regulations are consistent with WAC 173-26-221.

Shoreline Modifications (WAC 173-26-231)

The SMP Guidelines in WAC 173-26-231 define “shoreline modifications” as: “...generally related to construction of physical elements such as a pier, floating structure, shoreline stabilization, dredged basin, or fill...” WAC 173-26-231(2)(b) states (as a general principle) that master programs should: “Reduce the adverse effects of shoreline modifications, and as much as possible, limit shoreline modifications in number and extent.” These shoreline modification principles and standards contained in WAC 173-26-231 are reinforced through associated requirements for mitigation sequencing (WAC 173-26-201(2)(e) and the no net loss of shoreline ecological function standard (WAC 173-26-186).

Grays Harbor County’s SMP regulates shoreline modifications in SMP Chapter 5 Shoreline Modifications including general policies along with specific policies and regulations addressing beach and dune modification, dredging and dredge disposal, fill and excavation, shoreline stabilization and habitat restoration and enhancement among others.

Finding: Ecology finds that, subject to required changes in Attachment B, the shoreline modification policies and regulations are consistent with WAC 173-26-221.

Shoreline Use Provisions (WAC 173-26-241)

The SMP Guidelines in WAC 173-26-241 are intended to both recognize existing uses and ensure that future development will be appropriately managed consistent with the underlying policies of the SMA.

¹² Specific exceptions allow for development of single family residences within the buffer abutting the Pacific Ocean when the parcel was established before June 3, 1974 or when there are residences already located within the buffer

Avoidance of use conflicts through coordinated planning and prioritization of “preferred” shoreline uses is a primary tenant of the SMA (RCW 90.58.020). Updates to local SMPs are intended to support these goals through development of appropriate master program provisions, based on the type and scale of future shoreline development anticipated within a particular jurisdiction.

Grays Harbor County regulates shoreline uses in SMP Chapter 4 Shoreline Uses and Development. Consistent with WAC 173-26-186(5), the County SMP reflects the principle that the regulation of private property needs to be consistent with all relevant constitutional and other legal limitations. The updated SMP varies the allowed uses within each SED depending on the current level of impairment of shoreline functions with greater restrictions on future uses in the Natural designation and increased allowances in the more altered SEDs such as High Intensity (see Table 1 Uses and Modifications by Environment Designation).

Finding: Ecology finds that, subject to required changes in Attachment B, the County has established a system of use regulations consistent with WAC 173-26-241 along with related environment designation provisions that accommodate preferred and priority uses, protect property rights while implementing the policies of the SMA, reduce use conflicts, and assure no net loss of shoreline ecological functions.

Shorelines of Statewide Significance (WAC 173-26-251)

RCW 90.58.020 specifically calls out Shorelines of Statewide Significance (SSWS) for special consideration, declaring that “the interest of all of the people shall be paramount in the management” of these shorelines.

The Shoreline Guidelines in WAC 173-26-251 requires that local master programs recognize the specific use preferences identified in the SMA and provide for “optimum implementation” of the statutory policy. This is done by providing SMP provisions that implement: (a) statewide interest, (b) preserve resources for future generations and (c) give preference to uses identified in RCW 90.58.020.

The SMP, in Section 3.7 sets forth policies for SSWS. Section 2.12 generally identifies SSWS within the county. The specific waterbodies (or segments) are clearly identified in SMP Appendix B: List of Rivers, Streams, and Lakes Constituting Shorelines of the State in Grays Harbor County.

Finding: Ecology finds that subject to required changes in Attachment B, the SMP has accurately identified SSWS within the County’s jurisdiction, is consistent with RCW 90.58.020 and WAC 173-26-251, and provides for optimum implementation of the statutory policy.

Ocean Management (WAC 173-26-360)

WAC 173-26-360 implements the Ocean Resources Management Act¹³ (ORMA) enacted in 1989. The Guidelines are intended to clarify state policy regarding use of coastal resources, and address evolving interest in ocean development. These guidelines augment existing requirements of the Shoreline Management Act.

Grays Harbor County addresses ocean management in SMP Chapter 6, identifying the applicability and jurisdiction of the regulations, the relationship to Marine Spatial Planning, permit criteria and general policies and use regulations.

¹³ RCW 43.143.005 through 43.143.030)

Finding: Ecology finds that, subject to required changes in Attachment B, the SMP has adequately addressed ocean uses within the County’s jurisdiction, consistent with RCW 90.58.020, RCW 43.143.005 - 43.143.030, and WAC 173-26-360.

Cumulative Impacts Analysis (WAC 173-26-201(3)(d)(iii))

Addressing no net loss of ecological functions is a critical element in any SMP update. Ecology rules require that “Master programs shall contain policies and regulations that assure at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.”¹⁴ A cumulative impacts analysis documents how an SMP update addresses no net loss of ecological functions. The Grays Harbor County Cumulative Impact Analysis includes review and analysis of existing shoreline characteristics, reasonably foreseeable future shoreline uses and development including shoreline modifications, new shoreline environment designations and development standards such as buffers. The report concludes that while there is opportunity for shoreline development, particularly along the Pacific coast, around Grays Harbor and within the Chehalis basin, the population growth and rates of development the county are low. Significant portions of vacant land are encumbered by floodplains and wetlands.

Finding: Ecology finds that the county’s Cumulative Impact Analysis (CIA) provides an adequate examination of anticipated development and potential effects to shoreline ecological functions per WAC 173-26-201(3)(d)(iii).

Shoreline Use Analysis (WAC 173-26-201(3)(d)(ii))

Chapter 6 of the Shoreline Analysis report analyzed current and future potential land uses and trends by assessment unit, to address the SMP Guidelines requirement to project future shoreline development, identify potential use conflicts and ensure preference is given to water oriented uses, particularly uses that are unique to or dependent upon a shoreline location. Adjustments were made to the analysis because of the historic reliance on resource extraction in the County which has influenced land use patterns. Adjustments were also made in an effort to ensure undeveloped lands were not in resource uses. The results show forestry as the dominant use within shoreline jurisdiction (55% of acreage) with 15% and 14% respectively of shoreline acres identified as vacant/undeveloped or unknown. Areas of residential and agricultural development are concentrated along river valleys and the Pacific coast, which also sees significant amounts of recreational use and development. Aquacultural uses occur in Grays Harbor which has most of the county’s urban development along its shoreline.

Grays Harbor County does not fully plan under the Growth Management Act and is only partially zoned. Population growth has been low over the past 20 years with development generally occurring in areas with existing development and services. There is potential for conflict with aquaculture in Grays Harbor due to future dredging plans of the navigation channel which serves water dependent industrial uses along Hoquiam and Aberdeen’s waterfront. There is also potential for future energy development off the Pacific Coast. However, significant shoreline development along the County’s shorelines is not expected for the foreseeable future despite development capacity along some of its shorelines.

Finding: Ecology finds that the County has adequately considered SMA preferred uses and the potential for use conflicts consistent with WAC 173-26-201 (2)(d) and WAC 173-26-201 (3)(d)(ii).

¹⁴ WAC 173-26-201(2)(c)

Restoration Plan (WAC 173-26-201(2)(c) and (f))

Local governments are directed to identify restoration opportunities as part of the SMP update process and to include policies that promote restoration of impaired shoreline ecological functions. The Shoreline Restoration Plan (2015) identified county-wide programmatic restoration opportunities along with potential and existing projects and actions by subbasin including site specific restoration opportunities. Some of the watershed scale restoration priorities include: restoration of riparian areas including removal of invasive species, fish passage improvements, actions to correct water quality impairments including temperature, nutrient and sediment issues, and restoring floodplain connectivity. SMP Section 5.8 includes policies and regulations that permit and promote restoration efforts and links restoration actions to the Restoration Plan.

Finding: *Ecology finds that the county’s Shoreline Restoration Plan is based on appropriate technical information available during the SMP update and meets the requirements of WAC 173-26-201(2)(c) and (f).*

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 County 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 Submittal Checklist, which was completed by the County and submitted to Ecology.

Consistency with SEPA Requirements: The County 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 February 2, 2017. Notice of the SEPA determination was published in The Vidette on February 9, 2017. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update

Ecology reviewed the following reports, studies, map portfolios and data prepared for the County in support of the SMP amendment:

- *February 2015 A Grays Harbor County Vision for Updating the Shoreline Master Program;*
- *December 2013 Public Participation Plan;*
- *January 2014 Shoreline Jurisdiction Determination Letter;*
- *January 2015 Shoreline Analysis Report and Mapfolio;*
- *June 2015 Shoreline Restoration Plan for Shorelines in Grays Harbor County;*
- *June 2016 Shoreline Environment Designation Justification memo;*
- *February 2017 Cumulative Impacts Analysis;*
- *February 2017 No Net Loss Report.*

Department of Ecology review process

The proposed SMP amendments were received by Ecology for state review and verified as complete on October 9, 2018. Notice of the state comment period was distributed to state and County-identified interested parties on October 23, 2018, in compliance with the requirements of WAC 173-26-120. The Chehalis Indian Tribe and the Quinault Indian Nation were individually notified on October 23, 2018 and invited to comment.

Notice of the comment period, including a description of the proposed SMP and the authority under which the action is proposed, along with the manner in which interested persons may obtain copies and present their views, was provided on Ecology’s website: <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Grays-Harbor-County> and on the agency’s Public Involvement Calendar. An entry was also posted on Ecology’s ECOconnect blog.

The state comment period began on October 29 and continued through December 3, 2018. Ecology received comments from five individuals or organizations. Copies of all comments received, along with a comment summary, were sent to the County on December 19, 2018. The County provided responses to these comments on February 19, 2019. The comment summary and the County’s responses are set forth in Attachment D. An addendum to the county’s responses providing previous county responses to comments from the Quinault Indian Nation is included as Attachment E.

Summary of Issues Raised During the Ecology Public Comment Period

Consistent with WAC 173-26-120, the Comment Response Summary (Attachment D) includes a summary of the comments received and Grays Harbor County’s responses to SMP topics raised in the comments. Ecology responses are included in the rationale in attachments B and C and in the section below titled “Summary of Issues Relevant to Ecology’s Decision.”

A general list of topics and concerns raised during the comment period include: failure to recognize the jurisdiction of the Quinault Indian Nation established by treaty; lack of public involvement in the decision to incorporate the County’s existing Critical Areas Protection Ordinance instead of the proposed updated CAPO; revisions that reduce or removed policies addressing climate change and sea level rise; designation criteria for the Natural environment designation; vegetation protection provisions; critical saltwater habitat, and the need for additional water quality protections including protection of aquifers from saltwater intrusion.

Summary of Issues Identified by Ecology as Relevant to its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines.¹⁵

Based on review of the locally adopted SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, consideration of supporting materials in the record submitted by the County, and issues raised during Ecology’s public comment period (Attachment D), the following issues remain relevant to Ecology’s final decision on the comprehensive update to the Grays Harbor County SMP. The specific changes and Ecology’s rationale are shown on Attachment B and briefly described below:

¹⁵ RCW 90.58.090.

INTEGRATION OF THE UPDATED CRITICAL AREAS PROTECTION ORDINANCE:

Commenters expressed concern that the County had chosen to incorporate the older CAPO (Ordinance No. 393) with no public discussion of the decision. The County response indicated an intention to adopt the updated CAPO by reference once it was adopted through an SMP amendment.

It is often difficult to coordinate significant planning processes. The County locally adopted their SMP in April 2018. During the local update process for the SMP, there was discussion of the desire to incorporate an updated CAPO by reference. Work began on CAPO revisions in the fall of 2017, to meet a Growth Management Act requirement to periodically update by June 2018. It was expected the revised CAPO would be adopted by late 2018.

Ecology suggested moving the SMP forward with the existing CAPO, expecting the imminent adoption of the updated regulations. Ecology delayed its decision on the comprehensive update, anticipating the CAPO would be adopted shortly. It took longer for the County to complete adoption of its CAPO than anticipated. Ecology proposed changes would incorporate the updated CAPO, with exceptions, avoiding an immediate need for the County to amend their SMP in a separate process to achieve this end. (Attachment B, items 1 and 2)

SHORELINE ENVIRONMENT DESIGNATIONS:

During review, Ecology identified a need to more clearly define the boundary between the Aquatic and Pacific Ocean SEDs. The Aquatic and Pacific Ocean SEDs are both in water designations and their boundaries are defined in the respective designation criteria. However, changes are necessary to ensure a consistent description at the point where these designations abut. (Attachment B, items 3 and 4)

In addition, the County proposed two new policies for the Natural SED in response to comment (Line C-2, Attachment D). Ecology concurs with the proposed change and has determined it is required for consistency with the Shoreline Guidelines.¹⁶ (Attachment B, item 5)

CONSISTENCY WITH SMP GUIDELINES: A number of revisions have been identified to ensure consistency with the SMP Guidelines and/or internal consistency within the SMP. (Attachment B, items 6 -11)

CONSISTENCY WITH OCEAN MANAGEMENT GUIDELINES: Three revisions have been identified to ensure consistency with WAC 173-26, Part IV Ocean Management. (Attachment B, items 12, 13 and 14)

SMP DEFINITIONS: An outdated definition for “limited master program amendment” needs revision for consistency with the 2017 revision in WAC 173-26-020 which deleted the term “limited”. (Attachment B, item 15)

SHORELINE WATERBODIES AND SHORELINE ENVIRONMENT DESIGNATION MAPS: Ecology rules require SMPs to list all shoreline waterbodies.¹⁷ These lists in the SMP become the official lists, superseding those for Grays Harbor County in WAC 173-18 Shoreline Management Act – Streams and

¹⁶ WAC 173-26-211(5)(a)(ii).

¹⁷ WAC 173-18-040, WAC 173-20-040 and 173-22-050.

Rivers and WAC 173-20 Shoreline Management Act – Lakes. Ecology’s changes identify waterbodies that need to be added to SMP Appendix B: List of Rivers, Streams, and Lake Constituting Shorelines of the State in Grays Harbor County. (Attachment B, items 16 and 17)

TREATY RIGHTS AND EXTENT OF SHORELINE JURISDICTION:

As noted in the County’s letter to the QIN dated June 5, 2017, the County acknowledged the limitations of the County’s jurisdiction under the SMA. During the local SMP development process, the County inserted Section 1.4.7 in to the draft SMP addressing the application of the SMP in certain geographic areas. In response to comments regarding the jurisdictional extent of the SMP and ensuring treaty rights are respected, the County has proposed adding a footnote to tables 1 and 2 regarding Lake Quinault (see Attachment C, item 9). Ecology has identified an additional clarification, adding the language of Section 1.4.7 to Appendix B (Attachment B, item 17).

Ecology coordinated with County staff while identifying these revisions. In addition, Ecology has identified a number of recommended changes, set forth in Attachment C, including County-suggested revisions provided in their response to comments, revisions for clarity, citation and procedural corrections, revisions addressing recent statutory changes, and revisions to certain definitions. These and other minor edits help improve the clarity of the document and future implementation of the SMP.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County’s proposed comprehensive SMP update, subject to and including Ecology’s required changes (itemized in Attachment B), 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). This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c)).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required but can, if accepted by the County, be included in Ecology’s approved SMP amendment.

As stipulated in RCW 90.58.610, RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter 36.70A RCW. Consistent with RCW 36.70A.480(4), Ecology concludes that that the proposed SMP meets the intent of the provision for providing a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

Ecology concludes that the County has chosen *not* to exercise its option pursuant to RCW 90.58.030(2)(d)(ii) to increase shoreline jurisdiction to include buffer areas for critical areas located within shorelines of the state and their shorelands. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the County’s critical areas ordinance. In such

cases, the updated SMP shall also apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

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

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

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, 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 County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County's comprehensive SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

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

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP are consistent with the policy of the Shoreline Management Act, the applicable Guidelines and implementing rules, once required changes set forth in **Attachment B** are accepted by the County. The County may choose to adopt the recommended changes in **Attachment C**. Pursuant to RCW 90.58.090(2)(e), the County must notify Ecology of the approval or denial of the recommended changes. Ecology approval of the proposed amendments with required changes is effective 14 days from Ecology's final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the County may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action.