

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

SMP Submittal accepted April 2, 2021, Ordinance No. 1585  
Prepared by Department of Ecology on April 14, 2021

### Brief Description of Proposed Amendment

The City of Lacey (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process, on January 14, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated most Ecology's recommended changes provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Lacey comprehensively updated their master program in October 2011. A locally initiated amendment, approved in March 2015, incorporated a wetland ordinance update consistent with the 2014 Washington State Wetland Ratings System.

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the Lacey Shoreline Master Program pursuant to RCW 90.58.080(4). The amendment will bring the SMP into compliance with requirements of the Shoreline Management 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 revisions deemed necessary to reflect changed circumstances, new information, or improved data.

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

The City prepared a checklist and an analysis documenting the proposed amendment. The amendment will bring the SMP into compliance with requirements of the Shoreline Management 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 revisions deemed necessary to reflect changed circumstances, new information, or improved data.

Lacey's SMP is a standalone document<sup>1</sup> containing policies and regulations, set forth in three parts. Part Four includes appendices containing: Public Access Plan, Green Shoreline examples, Shoreline Restoration Plan, Shoreline Inventory, Cumulative Impacts Analysis, Shoreline Environmental Designations for the cities of Lacey, Olympia and Tumwater and their UGAs, and an appendix of Referenced Lacey Ordinances used in the SMP. Critical area regulations, codified in Lacey Municipal Code (LMC) Title 14 are adopted by reference into the SMP. The SMP regulates shoreline uses and

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<sup>1</sup> Chapter 14.26 adopts the SMP by reference into the Lacey Municipal Code. The city proposes to update the reference in 14.26.010 to the adopting ordinance and date for this proposed amendment.

activities along portions of Long Lake, Hicks Lake, Pattison Lake, Southwick Lake and Chambers Lake, Woodland Creek and a short segment along the Nisqually Reach.

Most proposed changes relate to a city-initiated proposal to reorganize the SMP from a four-part document to a fully integrated SMP with six articles:

Article 1. General Provisions, Definitions, Jurisdiction and Environmental Designations

Article 2. Use and Development Standards Matrix, Nonconformances, and Residential Development.

Article 3. Permits.

Article 4. Shoreline Ecology and Vegetation Management Standards.

Article 5. Remaining Development Standards.

Article 6. Goals & Policies for Uses, Activities and Modifications.

Revisions are made throughout the master program, locating the most commonly used regulations for Piers and Docks and Residential Development, to the front of the SMP. Goals and policies are relocated to the end of the SMP. All photographs and captions located throughout the body of the SMP are proposed for removal. All documents located in the existing appendices are proposed for removal. In addition to the overall organizational changes, general edits to correct and update syntax, formatting and citations, the following sections<sup>2</sup> are proposed to be amended:

#### *Shoreline Master Program*

##### *Article 1. General Provisions, Definitions, Jurisdiction and Environmental Designations*

1. 17.10. General Provisions. Regulation (4) is added clearly identifying those sections with regulations and associated policies to be reviewed for any project proposal.
2. 17.10.020 References to Plans, Regulations or Information Sources. Revisions update Critical Area Ordinance citations, and remove the Stormwater Management and Flood Hazard Prevention ordinances from incorporation into the SMP.
3. 17.10.040 Effective Date. Revisions ensure consistency with the statutory requirement setting the effective date of an SMP amendment 14 days from the date of Ecology's written notice of final action.
4. 17.15 Definitions. Revised consistent with state law or rules: aquacultural practices; development; floodway; nonconforming development or nonconforming building or structure; nonconforming use; substantial development. The following definitions are added: floating home; qualified professional.
5. 17.20 Jurisdiction, Designations and Map. Revisions are made throughout the section for improved clarity.
6. 17.22.100 Official Map. The revision places a copy of the map in Appendix 1. Two photos are deleted.

##### *Article 2. Use and Development Standards Matrix, Nonconformances, and Residential Development*

1. 17.24.010 Uses and Activities Matrix. The table title is revised. Additional edits are for clarity.
2. 17.24.015 Development Standards Matrix. The table title is revised.

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<sup>2</sup> All references are to the new section numbering in the reorganized draft SMP amendment.

3. 17.24.020 Shoreline Modifications Matrix. The table title is revised.
4. 17.25 Piers and Docks. The entire section is relocated to the front of the SMP.
5. 17.26 Residential Development. The entire section is relocated to the front of the SMP. Side yard setback standards are removed.
6. 17.27 Nonconforming Uses, Lots and Structures. Revisions improve clarity. A graphic is added illustrating where and how existing residences can expand.

#### Article 3. Permits

1. 17.30 Shoreline Permits. Revisions add references to shoreline permit filing procedures in WAC 173-27-130 and to legislative exceptions to shoreline permit requirements or review under the SMA (WAC 173-27-044 and WAC 173-27-045).
2. 17.30.025 is added addressing shoreline permit timelines for certain Washington State Department of Transportation projects.
3. 17.30.035 Shoreline Exemptions Listed is revised, deleting the list of exemptions and relying on citations to the rule and statute. This avoids the need for future amendments should provisions change.
4. 17.30.040 Letter of Exemption from Substantial Development Permit Process. Revisions improve clarity and consistency with WAC 173-27-050.
5. 17.30.045 Unclassified Uses. Revisions are made for clarity.
6. 17.30.055 Penalties and Enforcement. Revisions are made to improve clarity.
7. 17.35.055 Local Permits, Approvals and Shoreline Authorizations. Revisions add those developments not required to obtain shoreline permits or reviews and add clarity to how the city integrates the SMP within the Lacey zoning code.
8. 17.35.020 Critical Areas Regulations within Shoreline Jurisdiction. Revisions remove provisions no longer relevant because of the city's updated CAO.
9. 17.35.036 Buffer Requirements for Protection of Lacey's Marine Riparian Areas and Critical Saltwater Habitat. A provision is added restricting buffer width reductions to no more than 25% without a shoreline variance.
10. 17.36 Moratoria Authority. A new section is added.

#### Article 4. Shoreline Ecology and Vegetation Management Standards

1. 17.41.021 Vegetation Management – Re-vegetation and Mitigation Schedule and Tiers. Revisions clarify planting locations and identifies when a landscape designer is not needed.
2. 17.42.020 General Development Standards for Restoration. A reference is added to relief procedures allowed within Urban Growth Areas.

#### Article 5. Remaining Development Standards

1. 17.57.010 Historical and Archeological – Development Standards. A requirement for a site alteration/excavation permit is added in areas with documented archeological resources.
2. 17.64.010 Signage – Development Standards. A provision is added prohibiting commercial signage except for home occupation signs.

#### Article 6. Goals & Policies for Uses, Activities and Modifications

All goals and policies have been relocated to this section.

#### Appendix A - Shoreline Environment Designation Map

The map has been simplified and the aerial photo of Beachcrest marina and lagoon is removed. There are no changes to shoreline environment designations.

### *Chapter 14.28 - Wetlands Protection*

14.28.280 Wetland buffers – Standard buffer zone widths. Proposed revisions incorporate wetland buffers based on the wetland category and habitat score using the 2014 Washington State Wetland Rating System for Western Washington, including Ecology’s July 2018 revision to the rating system. Language is added requiring a vegetated corridor (meeting certain criteria) when utilizing the standard buffers. Minimizing measures are also required and have been added to the draft. An additional buffer table is included, with larger required buffers when the habitat corridor is not provided or minimization measures are not implemented.

### *Related amendments*

1. LMC 14.26 Shoreline Master Program is revised, updating the referenced SMP into the City’s code.
2. LMC 16.19 Shoreline Zoning is revised, updating references to the SMP.

### *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. An important element of the public participation plan is the City’s SMP Periodic Review project [website](#)<sup>3</sup>. The City hired a consultant to assist in developing draft documents. Due to the COVID-19 pandemic, the city rescheduled in-person meetings to a virtual format using Zoom. An open house was held on April 22, 2020 via Zoom as was a Planning Commission workshop on July 21, 2020.

The City 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 last amended and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City 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 including opportunities to comment on draft materials in June and August 2020.

The City issued a SEPA Determination of Non-Significance and checklist on October 1, 2020. Notice of the proposed amendment was submitted to Department of Commerce on December 15, 2020.

The City 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). An affidavit of publication provided by the City indicates notice of the hearing was published in *The Olympian* on October 1, 2020. Ecology distributed notice of the joint comment period to state interested parties on September 28, 2020, including separate notice to the Confederated Tribes of the Chehalis Reservation, Squaxin Island Tribe and Nisqually Indian Tribe.

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<sup>3</sup> [https:// www.ci.lacey.wa.us/SMP](https://www.ci.lacey.wa.us/SMP)

The City 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 October 1, 2020 and continued through October 31, 2020. A joint public hearing before the Planning Commission, and attended by Ecology staff, was held virtually via Zoom on October 20, 2020.

The City accepted public comments on the proposed SMP amendments during the 30-day public comment period. Written comments were submitted by three individuals or organizations on the proposed amendments. Topics raised during the joint review addressed archeological resources and boat wakes.

The City prepared a Comment Summary and Response and considered all comments including those raised by Ecology during the periodic review process.

#### *Initial Determination of Consistency*

The proposed SMP amendments were received by Ecology on December 21, 2020 for initial state review. The submittal was supplemented on December 28, 2020 and verified as complete on December 28, 2020. This began Ecology's review and initial determination.

A written statement of initial concurrence was sent to the City on January 14, 2021. Ecology considered the comments received, and the City's responses to these comments, and concluded the proposal was consistent with applicable laws and rules. Five (5) changes were recommended to improve clarity and naming consistency in the document. Ecology's proposed recommended changes were identified as not required for consistency with the SMA or SMP Guidelines, but suggested to improve the SMP. The City's locally adopted SMP incorporates most of these changes.

#### *Consideration of Comments*

Ecology has reviewed all the comments received during the joint review process along with the City's responses.

*Ecology finds the City's responses are consistent with the statutory obligations for conducting periodic reviews. Ecology finds the City considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data as provided or raised during the comment period. Comments resulted in further amendments to the SMP to address issues raised by Ecology and the Nisqually Indian Tribe. The City has determined, and Ecology concurs, that no additional amendments are necessary for consistency with the SMA or SMP Guidelines.*

Topics raised during the joint review addressed the following:

#### Archeological Resources

Comments from the Nisqually Tribe raised concerns about the Historical and Archeological Development provisions in the SMP, specifically noting there was no requirement for a site alteration/excavation permit. The City has included language in the SMP to address this concern. The remaining comments were in the form of questions about City implementation of the standards, training, tribal consultation and inadvertent discovery plans.

*Ecology finds the City has proposed amended text in the SMP, adding reference to the requirement for a site alteration/excavation permit in response to the Tribe's comment. The City provided responses to remainder of the Tribe's questions regarding implementation of archeological resource protections<sup>4</sup>.*

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<sup>4</sup> On a city-wide basis, Lacey addresses cultural resources and historic properties through Chapter 16.53 LMC Historic Preservation.

### Boat wakes

Concerns were raised about shoreline damage, such as erosion, resulting from large boat wakes on lakes. The City noted the SMP has no authority to regulate boats, and suggests this issue may be better addressed through a Lake Management District.

*Ecology finds the City has considered this comment and no changes to the SMP are proposed.*

### Wetland Provisions and General SMP

Ecology commented on the critical areas regulations with a recommendation the city revise the SMP CAO wetland provisions to include a more robust list of minimization measures consistent with our most current, accurate, and complete scientific and technical information available. Use of all applicable measures will allow for a reduction in the buffer widths required for High Intensity land use to the Moderate Intensity buffer widths. The City has proposed amended text in the LMC Chapter 14.28 of the CAO to address Ecology's comments.

Additional Ecology comments suggested revisions in the SMP to a couple of definitions, language to improve clarity around shoreline jurisdiction, and a recommendation to remove the flood ordinance from direct incorporation into the SMP.

*Ecology finds the City has proposed amended text in the SMP and/or the CAO in response to Ecology's suggested changes and Ecology's comments have been addressed.*

### Final Submittal

With passage of Ordinance No. 1585 on March 18, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal review. The City's final submittal of amendments to the City of Lacey SMP were received March 31, 2021 and supplemented on April 2. The submittal was determined complete by Ecology on April 2, 2021.

## Consistency Review

### Consistency with Chapter 90.58 RCW

The proposed amendments have 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 included review of a SMP Periodic Review Checklist, which was 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. Notice of the DNS was published October 1, 2020 in *The Olympian*. Ecology did not comment on the DNS.

### Other Studies or Analyses supporting the SMP amendments

Ecology also reviewed documents prepared by the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist contained within the SMP

Gap Analysis, the comment summary and response, and the Staff Report on the SMP Periodic Review amendment.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City 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(2)(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(2)(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 those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the City has complied with 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

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City's proposed amendments are consistent with the Shoreline Management Act policy and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions) 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.