

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE AND PERIODIC REVIEW TO THE
MAPLE VALLEY SHORELINE MASTER PROGRAM**

SMP Submittal accepted November 13, 2019, Ordinance No.O-19-677
Prepared by Maria Sandercock on March 25, 2020

INTRODUCTION

Brief Description of Proposed Amendment

The City of Maple Valley has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program will regulate approximately 3 miles of freshwater shoreline located within the City of Maple Valley. Shorelines within Maple Valley include Lake Wilderness, and Pipe Lake/Lake Lucerne.

The comprehensive amendment contains locally tailored shoreline management policies, regulations, environment designation maps, and administrative provisions, as well as shoreline-specific critical areas regulations in an appendix. Additional reports and supporting information and analyses noted below, are included in the submittal and have been considered by Ecology during its review.

In addition, because of delays in completing the comprehensive update, the final stages at the local level occurred close to the statutory periodic review deadline. Maple Valley is required on or before June 20, 2019, and every eight years thereafter, to review and, if necessary, revise their master program. Proposed changes have been incorporated into this decision to address this requirement.

Need for amendment

The City of Maple Valley incorporated in 1997, and at that time, adopted the 1978 King County SMP by reference. The proposed amendment is needed to comply with the statutory deadline for a comprehensive update of the City's local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This amendment is also needed for compliance with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 and 27. The update also ensures the SMP is consistent with land use management policies provided by the City's Comprehensive Plan and environmental protections provided by the City's Critical Areas Code.

The record submitted by the City to Ecology, including Ordinance No. O-19-677, staff memos, reports, and other local approval materials, provides additional details describing the need for Maple Valley's amendment.

SMP provisions to be changed by the amendment as proposed

This comprehensive SMP update is intended to entirely replace the City's existing SMP, including policies, regulations, and shoreline environmental designation maps. The updated SMP establishes four (4) designations: Shoreline Residential, Urban Conservancy, Aquatic, and Natural. Each contains purpose statements, designation criteria, and management policies. The SMP establishes shoreline setbacks,

maximum building coverage, and maximum impervious surface coverage for development. The SMP regulates critical areas within shoreline jurisdiction by establishing regulations in Appendix A to the SMP.

FINDINGS OF FACT

Amendment History

The City initiated the local planning process in 2001 by hiring a consultant and forming a Citizen Advisory Committee. The record from the April 6, 2006 SMP submittal, combined with the record from the November 13, 2019 SMP submittal informed the following timeline:

2001. City hires consultants (Makers and The Watershed Company) and forms a Citizen Advisory Committee. In October 2001 a public workshop is held.

2002. Planning commission reviews draft of SMP in March through June. In June, Planning Commission holds a public hearing and recommends approval of the draft to the City Council. City Council directs staff to submit the draft SMP to Ecology for informal review. In December, City staff submit draft SMP to Ecology for informal review.

2003. Ecology adopts new SMP Guidelines, requiring Maple Valley to revise the draft SMP.

2005. Maple Valley drafts an Inventory and Characterization Report, Restoration Plan, and SMP Checklist. The City informally shares these with Ecology.

2006. Maple Valley adopts Resolution R-06-463, approving the SMP. The City formally submits the SMP to Ecology for review and approval. Ecology sent a letter to the City on August 3, 2006 with an initial review for consistency with RCW 90.58 and WAC 173-26, but did not issue any decision. Ecology identified areas of the SMP that would need to be revised for consistency.

At this time, due to shifting priorities and staffing limitations, the City paused its work on the SMP update. Efforts resumed in 2018.

2018. The City reinitiates the local adoption process by entering into a grant agreement with Ecology (#SEASMP-1719-MaVaPW-00039). Ecology and the City agree that the statutory obligation to periodically review the SMP can be incorporated into the update process.

2019 events are described below.

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

The City used Ecology's checklist of legislative and rule amendments to review amendments to Chapter 90.58 RCW and department guidelines that have occurred since the 2006 draft amendment and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i).

Maple Valley Shoreline Master Program Comprehensive Update – Findings and Conclusions

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. The City shared a draft in April and Ecology provided comments in May.

The City held a public comment period from April 19, 2019 to May 20, 2019. The City held a public hearing on May 1, 2019 in accordance with WAC 173-26-100(1). The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Affidavits of publication provided by the City indicate that notice of the hearing was published on April 19, 2019 in the Covington/Maple Valley Reporter.

On October 28, 2019, the City Council adopted Ordinance No. O-19-677 and authorized staff to forward the proposed amendments to Ecology for formal approval.

Department of Ecology Review Process

The proposed SMP amendment was received by Ecology for state review and verified as complete on November 13, 2019. Ecology held a comment period from December 16, 2019 to January 17, 2020. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on December 13, 2019, in compliance with the requirements of WAC 173-26-120(2). The notice identified that the SMP amendment is intended to satisfy the state statutory requirements of RCW 90.58.080 to comprehensively update the city's SMP and take action to review and, if necessary, revise the City's SMP on or before June 30, 2019.

One individual submitted comments on the proposed amendments. Ecology sent all comments received to the City on January 23, 2020. On February 6, 2020 the City submitted to Ecology its responses to issues raised during the state comment period. The City did not make any changes to the amendment in response to comments. The complete record of Ecology's comment summary and the City's response are provided in Attachment B.

Consistency Review

Ecology reviewed the proposed SMP amendment for consistency with the Shoreline Management Act and applicable guidelines.

Inventory and Characterization

Documentation of current shoreline conditions is a key part of the SMP development process and meeting the requirement to address the no net loss standard of the SMP Guidelines (WAC 173-26-186). The City submitted a draft Characterization Report with its 2006 submittal to satisfy this requirement. The report was finalized in 2019. The report documents existing shoreline conditions and helped inform development of the City's SMP, including environment designations, policies and use regulations.

Existing conditions identified in the 2019 Inventory and Characterization Report in the City's shorelines are summarized in the table below.

| | Lake Wilderness | Pipe Lake/Lake Lucerne |
|--|--|---|
| Zoning | Low density residential (R-4), Parks, Recreation, Open Space (PRO). | Low density residential (R-6), small section of Parks, Recreation, Open Space (PRO). |
| Water Quality | Phosphorus: elevated Temperature: too warm for salmonids Water clarity: excellent Chlorophyll-a: low | Phosphorus: slightly elevated Temperature: too warm for salmonids Water clarity: excellent Chlorophyll-a: low |
| Habitat | Non-native species present: bass, sunfish, perch, bullfrogs. Efforts to eradicate hydrilla, a noxious weed, have resulted in a lack of emergent vegetation. | Non-native species present: bass, sunfish, perch, bullfrogs. Efforts to eradicate hydrilla, a noxious weed, have resulted in a lack of emergent vegetation. |
| Shoreline conditions | The eastern shoreline from the private beach owned by Lake Forest Estates Homeowner’s Association north to the track owned by King County is rated “properly functioning.” However, the shoreline that consists of individual private parcels is rated “not properly functioning” and the shoreline along the Lake Wilderness Park is “at risk.” Majority of residential parcels are bulkheaded. | Entire shoreline lacks appropriate shoreline vegetation and is “not properly functioning.” 58% of Pipe Lake and 63% of Lake Lucerne is armored. |
| Public Access | Lake Wilderness Park, King County trail at the Lake Wilderness Arboretum. | None. Private beaches associated with homeowner’s associations. |
| Stormwater, wastewater, utilities | Properties are connected to public water and sewer. Utilities are buried underground. | Properties are connected to public water and sewer. Utilities are buried underground. Lake Lucerne has 3 stormwater outfalls and Pipe Lake has 1. |
| Over-water structures | 45 out of 70 lots have overwater structures. | 45 out of 58 lots on Pipe Lake have overwater structures. 39 out of 52 residential lots on Lake Lucerne have overwater structures. ¹ |

1. Determined by Ecology staff reviewing 2007 aerial imagery on King County iMap

Finding: Ecology finds that the Inventory and Characterization Report adequately inventoried and analyzed the current conditions of the shorelines located in the City of Maple Valley. The report synthesized existing information and was used to inform the master program update as well as provide a basis for future protection and resotation opprtunities in city shoreline jurisdiction. Ecology finds the report is consistent with the requirements of WAC 173-26-201(3)(c).

Shoreline Jurisdiction and Shoreline Environmental Designations

The extent of shoreline jurisdiction is defined in RCW 90.58.030(2). In Maple Valley, the designated shorelines of the states are the portions of Pipe Lake / Lake Lucerne that fall within the Maple Valley city limits and the entirety of Lake Wilderness. Pipe Lake / Lake Lucerne have one continuous ordinary high water mark (OHWM).

Maple Valley Shoreline Master Program
 Comprehensive Update – Findings and Conclusions

Maple Valley has opted to use the minimum jurisdiction allowed by statute, including the bedlands and water areas of all shoreline waterbodies, shorelands located within 200 feet of the OHWM, the designated floodway and contiguous floodplain landward 200 feet from such floodways, and all associated wetlands and river deltas. According to the FEMA Preliminary Flood Insurance Rate Map, no floodway or floodplain is mapped in Maple Valley.

Shoreline jurisdiction is not extended to include buffers necessary to protect critical areas.

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 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 updated SMP proposes four (4) designations: Shoreline Residential, Urban Conservancy, Aquatic, and Natural. The City has opted to use the designation criteria in WAC 173-26-211, and has added some additional criteria to the Natural Environment.

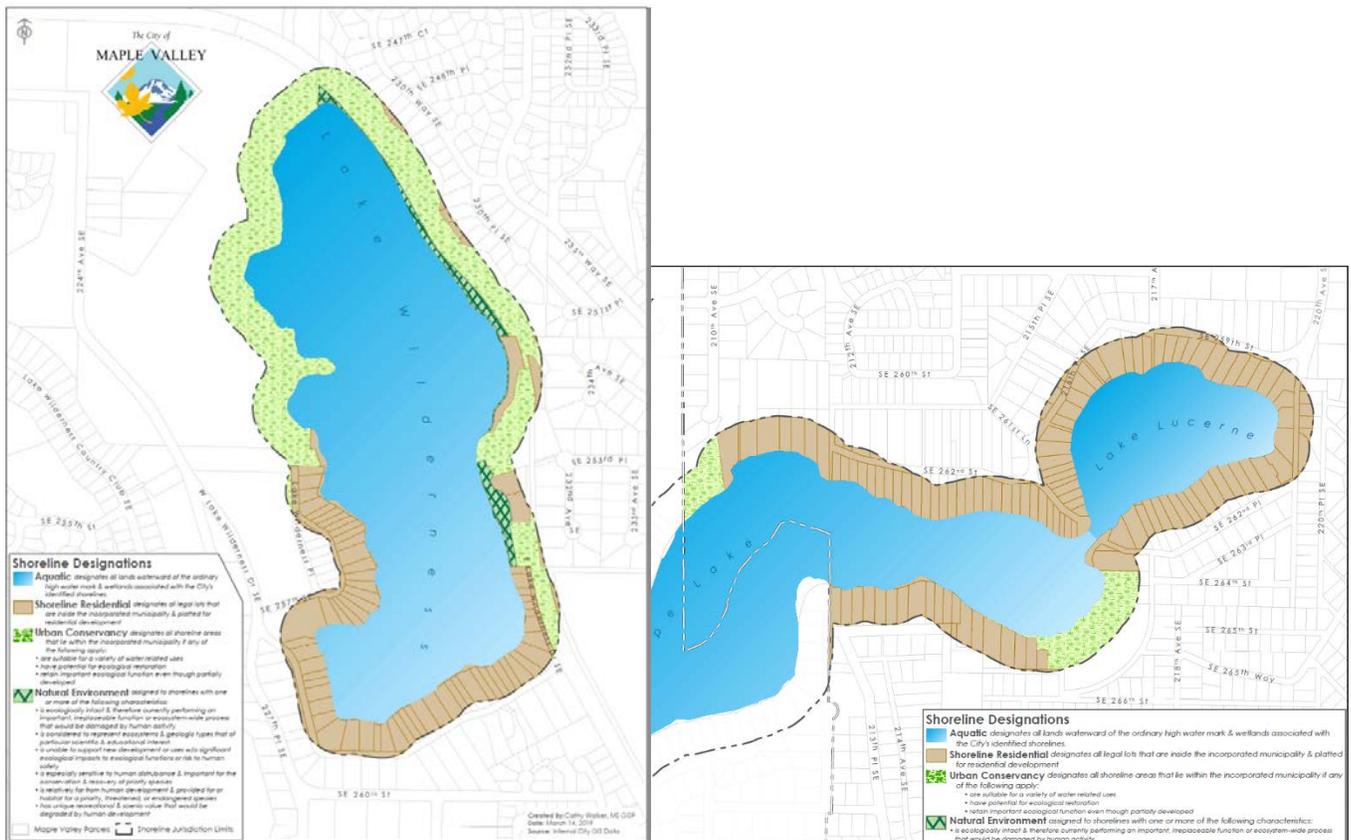


Figure 1 Shoreline Designation maps

The SMP includes a purpose, designation criteria, areas designated, and management policies for each designation (3.2 – Shoreline Residential, 3.3 - Urban Conservancy, 3.4 – Aquatic Environment, and 3.5 – Natural Environment. Consistent with WAC 173-26-211(4)(iv), the City’s SMP Section 3.6 contains a table that identifies shoreline uses that are permitted, conditionally permitted, and prohibited in each shoreline environment. Section 3.7 contains a table that identifies height and bulk limits and setbacks for development in each shoreline environment.

Finding: Ecology finds that the City’s SMP defines shoreline jurisdiction consistent with the Act and the record sufficiently documents the basis for assinging shoreline environment designations. The City’s shorelines are adequately identified and mapped in the SMP. Ecology finds that for each environment designation, the SMP includes a purpose statement, designation criteria, and management policies as required by WAC 173-26-211(4)(a).

General Master Program Provisions

The SMP Guidelines in WAC 173-26-221 list general provisions that are intended to apply broadly to all types of shoreline development regulated by master programs. WAC 173-26-221 includes the following subsections: (1) Archaeological and Historic Resources; (2) Critical Areas; (3) Flood Hazard Reduction; (4) Public Access; (5) Shoreline Vegetation Conservation; and (6) Water Quality, Stormwater and Nonpoint Pollution.

Maple Valley’s SMP includes Archaeological and Historic resources policies and regulations in Section 4.2.

The SMP contains shoreline-specific critical area regulations that are located in Appendix A to the SMP. The City regulates the following critical areas in shoreline jurisdiction: wetlands, streams, critical aquifer recharge areas, and geologically hazardous areas. The critical area regulations contain wetland protections that are consistent with Ecology’s wetland guidance. For streams, the regulations establish a 100-foot buffer for Type F streams, and 50-foot buffers for other streams. Shorelines of the state have shoreline setbacks established in Section 3.7, 5.2, and 5.3.

Section 4.6 contains policies and regulations for public access. Section 4.5 contains policies and regulations for shoreline vegetation conservation. Section 4.7 contains policies and regulations for water quality.

Finding: Ecology finds that the general policies and regulations are consistent with WAC 173-26-221.

Shoreline Modifications

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).

Chapter 6 of Maple Valley’s SMP contains policies and regulations for Shoreline Stabilization; Docks, Piers, and Floats; Shoreline Restoration; Dredging and Dredge Material Disposal; and Fill and Excavation.

Finding: Ecology finds that the shoreline modification policies and regulations are consistent with WAC 173-26-221.

Shoreline Uses

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. 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.

Consistent with WAC 173-26-186(5), the City 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. This is based on the inventory and characterization, existing land use patterns, and use preferences.

Chapter 5 of the SMP contains policies and regulations for Boating Facilities, Recreational Development, Residential Development, Transportation Facilities, and Utilities. A shoreline use table and a table of dimensional standards is located in Chapter 3.6. The SMP establishes a 65-foot shoreline setback for primary and accessory residential structures, a 50-foot setback for patios and decks, and a 25-foot setback for fences. Maximum building coverage is 25 percent of the lot area and maximum impervious surface coverage is 35 percent of the lot area.

Finding: Ecology finds that the City has established a system of use regulations consistent with WAC 173-26-241 along with related environmental 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.

Cumulative Impacts Analysis

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.” A cumulative impacts analysis (CIA) documents how an SMP update addresses no net loss of ecological functions. The Maple Valley Cumulative Impacts Analysis, prepared by The Watershed Company in July 2019, includes review and analysis of existing shoreline characteristics and reasonably foreseeable future shoreline uses and development under the new shoreline environment designations.

The CIA concludes that based on the current circumstances, reasonably foreseeable future development/use, and potential beneficial effects established regulatory programs, the regulatory provisions of the SMP will serve to maintain existing shoreline functions.

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

Restoration Plan

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 [WAC 173-26-201 (2)(c) and (f)]. It is intended that local government, through the master program, along with other regulatory and non-regulatory programs, contribute to restoration by planning for and fostering such actions. These are anticipated to occur through a combination of public and private programs and actions. The restoration planning component of the SMP is focused on voluntary mechanisms, not regulatory provisions.

The Maple Valley Restoration Plan (2007, revised by The Watershed Company September 2019) is based on information gathered in the Inventory and Characterization and identifies programmatic restoration opportunities. The City's restoration planning is focused on available funding sources, public programs, volunteer programs, and other strategies that can contribute to no net loss of ecological function.

Finding: Ecology finds that the 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).

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include:

- A Public Participation Plan (January 2019)
- A Periodic Review Checklist (April 18, 2019)

Consistency with Chapter 90.58 RCW

The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

Periodic Review

Maple Valley is required, on or before June 30, 2019 and every eight years thereafter to review “and, if necessary, revise their master program” [RCW 90.58.080(4)(b)(i)]. The purpose of this review is to ensure the SMP complies with laws and guidelines that have been added or changed since the most recent update, and for consistency with the City's comprehensive plan and development regulations.

The periodic review is also an opportunity to address changed circumstances, new information, or improved data.

Maple Valley was delayed in completing its comprehensive update, such that the deadline to periodically review the SMP coincided with the renewal of efforts to complete the comprehensive update in 2019. As such, the City intends to address the periodic review requirement concurrently with its comprehensive update. The record reflects that the City addressed this statutory obligation to keep the SMP up to date and prepared a checklist to meet the requirements of WAC 173-26-090(3)(b)(i). To address the public notification requirements of WAC 173-26-090(3)(a), the City has provided notice to the public during the 2019 adoption process that the periodic review is occurring concurrent with the comprehensive update and that the final adoption of the Maple Valley SMP will also conclude the formal periodic review requirement.

Finding: Ecology finds that, consistent with WAC 173-26-090, the City of Maple Valley is required to periodically review their SMP on or before June 30, 2019 and every eight years thereafter. Ecology finds that the City completed this review and appropriately modified its SMP to address changes in requirements of the SMA and guidelines, as well as changes for consistency with comprehensive plans, local regulations, and as deemed necessary to reflect changed local circumstances, new information, or improved data.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Based on review of the locally adopted SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology's final decision on the comprehensive update to the Maple Valley SMP

Variance Criteria

The City's SMP only lists one set of variance review criteria in Chapter 7.10.1 applicable to both over/in-water and upland located proposals. The criteria appear to be based only on WAC 173-27-170(2) for variance requests for development located landward of the OHWM. Whereas, WAC 173-27-170 sub (3) provides different review criteria for developments located waterward of OHWM in requiring a stricter demonstration of reasonable use. However, the Shoreline Management Permit and Enforcement Procedures in WAC 173-27-210 state that the criteria contained in WAC 173-27-170 "shall constitute the minimum criteria for review of these permits by local government and the department." This obligates the City to apply the variance review criteria in WAC 173-27-170 sub (3) for variance requests located waterward of the OHWM.

Finding. Ecology finds that the variance criteria in WAC 173-27-170 apply to all variance permit requests, therefore a change to the SMP amendment is not necessary.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP Guidelines (WAC 173-26-171 through 251 and .020 definitions).

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

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 SMP (WAC 173-26-201(1)(c)(iv)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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

Ecology concludes that the City’s comprehensive SMP update 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 review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-100, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that the City has reviewed applicable state laws and rules adopted during the local SMP drafting and adoption process, identified clarifications and incorporated those changes into the final locally adopted SMP. Ecology concludes the City’s final legislative action in completing the comprehensive SMP update required by RCW 90.58.080(2) will therefore also serve to meet the City’s obligation to conduct a periodic review of the SMP at RCW 90.58.090(4).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology’s final action approving the amendment.