

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF MONROE SHORELINE MASTER PROGRAM

SMP Submittal accepted September 4, 2019, Ordinance No. 015/2019
Prepared by Department of Ecology on September 8, 2020

Use of this Document

Ecology's *Findings and Conclusions* (Attachment A), including reference to Attachment B (Required Changes), provide the factual basis for the Department of Ecology's (Ecology) decision on the City of Monroe's (City) proposed amendment to their Shoreline Master Program (SMP) as a result of their periodic review.

Introduction

The City submitted the SMP amendment to Ecology for review to comply with periodic review requirements pursuant to RCW 90.58.80 (4)(b).

The City's SMP guides shoreline development within and adjacent to portions of the Skykomish River, Woods Creek and Lake Tye located within the City's boundary. The Skykomish River is classified as a Shoreline of Statewide Significance, adjacent to which shoreland areas extend beyond the minimum shoreland jurisdictional line 200 foot from the Ordinary High Water Mark (OHWM), due in part to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Map (FIRM) "floodway" delineated boundary. These shoreland areas are mainly undeveloped and designated Urban Conservancy or Natural under the City's SMP. Portions of Woods Creek shorelands are similarly undeveloped and designated Urban Conservancy, along with segments of shorelands designated Shoreline Residential and High Intensity on the north side of the creek adjacent to downtown and State Route 2. Lake Tye is a 40-acre waterbody that serves as a stormwater treatment pond in the northwest quadrant of City. The SMP provides a unique "Stormwater Facility" environment designation surrounding Lake Tye, with existing established industrial uses located along the eastern shoreline.

FINDINGS OF FACT

Need for amendment

The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City's Shoreline Master Program pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City prepared a periodic review checklist that documents elements of the proposed amendment. 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 City completed their comprehensive SMP update in 2008. Completion of the periodic review will ensure that the SMP remains consistent with any City amendments to their comprehensive plan or other local regulations considered for incorporation into the SMP, as necessary to reflect changed circumstances, new information, or improved data.

The proposed SMP amendments focused on following elements:

Administrative Updates: As part of the periodic review amendment; a number of changes were made to SMP Administration Provisions in Chapter 6 for both internal consistency and to satisfy

updated State shoreline laws or rules. The SMP Administration provision will be codified into the City's land use municipal code as: MMC 22.82 Shoreline Management.

Definitions: As part of the periodic review amendment; a number of definitions were updated within Chapter 8 of the SMP for consistency with updated State shoreline rules and requirements. The amended definitions will be codified into the City's land use municipal code as: MMC 22E.020.

Environment Designation Provisions: The Urban Conservancy Mining designation was removed from the SMP, and has been replaced on the SED map by Urban Conservancy at the historic Cadman gravel mining site. The Cadman operation has ended and the site is being restored in compliance with Washington State Department of Natural Resources reclamation requirements.

Critical Areas Regulations: Updates provided in the City's 2019 Critical Areas Regulations (CAR) were reviewed by Ecology staff and deemed consistent with SMP Guideline requirements based on exclusion of local listed critical areas exceptions, as detailed in MMC 22.82.040. D. The updated CAR is incorporated into the SMP amendment as "MMC 22.80 adopted by Ordinance #015/2019".

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. Outreach included an initial public meeting event held on August 7, 2018, kicking off the periodic review. Following development of the SMP amendments, the City hosted an open house and joint (state/local) public hearing on April 22, 2019. The City Council then considered the SMP amendments at two other public meetings on July 23, 2019 and August 13, 2019.

The City reviewed Ecology's checklist of legislative and rule amendments to consider recent amendments to the Shoreline Management Act in Chapter 90.58 RCW or the SMP Guidelines (WAC 173-26) that may have occurred since the City's SMP was last amended, to determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i).

The City reviewed changes to their comprehensive plan or development regulations to determine if related SMP provisions remain consistent 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 choose to delete some non-substantive introductory and outdated background information originally added as part of the comprehensive SMP update in 2008. A new section titled "Document Organization" has been added, describing the restructuring of the SMP. The City consulted with Ecology and solicited comments throughout the review process. Ecology reviewed the proposed changes and provided some input to city staff. Overall, Ecology concurs with organizational changes to the SMP, which are characterized as within the discretion of the City and are found to be non-substantive in regards to maintaining compliance with SMA or SMP-Guideline requirements.

The City held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The City and Ecology originally noticed the joint public comment period as March 8 – April 8. This was subsequently adjusted and re-noticed. The comment period began on April

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8, 2019 and continued through May 8, 2019. A public hearing before the Planning Commission was held on April 22, 2019. 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 document that notice of the hearing was published in the Everett Herald on April 8, 2019.

Ecology distributed notice of the joint comment period to state interested parties, including areas Tribes on March 13, 2019. As summarized below, three comments from two organizations were received on the proposed amendments. Snohomish PUD provided a general comment, not specifically focused on amended provisions in the SMP and requesting city notification of future projects potentially affecting District facilities.

The Snoqualmie Tribe submitted two comments, summarized as follows:

1. The first comment identified concerns related to the City's critical areas regulations, specifically requesting that water typing definitions utilize the Washington State Department of Natural Resources' (DNR) water typing system, entitled: *Interim Stream Typing Symbology*. In response to this comment, the City updated section MMC Ch. 22.80.100 (Stream Development Standards) integrating DNR's water typing system.

Note: the City incorporated the suggested water typing system into the updated SMP and CAR. One additional reference to the updated system is identified in item #4 in Ecology's Required Changes (Attachment B).

2. The second comment, requested that City code clarify that "fish habitat," per WAC 222-16-030 *"means habitat which is used by any fish at any life stage at any time of the year, including potential habitat likely to be used by fish which could be recovered by restoration or management and includes off-channel habitat."*

Note: neither the amended SMP, nor incorporated provisions from the City's critical areas regulations define Fish Habitat. See Required Change (Attachment B) item #5 for more details.

The City provided the initial submittal to Ecology on May 10, 2019. In response, Ecology provided an initial determination memo on May 31, 2019 identified some specific changes necessary to ensure consistency with state requirements. As part of this initial determination, Ecology identified one required change and two recommended changes for the City's consideration in their local approval process. The required change was inclusion of an additional administrative section added to MMC 22.82, that reflects WAC 173-27-044 (Developments not required to obtain shoreline permits or local reviews). The recommended changes included adding a new definition of "Boating Facility" and updating the substantial development definition with the correct State Office of Financial Management dollar threshold (\$7047) for requiring a shoreline substantial development permit.

City staff made the necessary changes consistent with Ecology's May 2019 recommendations to the draft SMP and incorporated them into the locally adopted SMP amendment. The final SMP amendment ordinance contains updates to the City's administrative code (MMC 22.82) and Critical Areas Regulations (CAR) including specific wetland and stream development standards (MMC 22.80). The remaining CAR sections are adopted by reference into the SMP.

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With passage of Ordinance No. 015/2019 on August 13, 2019, the City Council authorized staff to forward the proposed amendments to Ecology for formal review.

The proposed SMP amendment was received by Ecology for state review and verified as complete on September 4, 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 included 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 DNS for a non-project action and issued a determination on April 4, 2019 for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

In addition to the updated SMP, Ecology reviewed other documents prepared for the City in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Upon closer review by Ecology and the City following Ecology initial determination, additional changes to the SMP amendment were identified as necessary to insure consistency with the SMA or SMP Guidelines.

As described in detail within Attachment B (Required Changes), the following changes are required as a condition of Ecology's approval of the SMP amendment:

1. **Shoreline Jurisdiction Clarifications:** The identified changes are necessary to solidify the City's description of shoreline jurisdiction. The changes are consistent with the City's intent in defining "shorelands" in reference to the larger of: the contiguous floodplain (excluding three specific areas), 200-foot landward or ordinary high water mark, or 200-foot landward of the FEMA mapped floodway.
2. **Critical Areas Regulations reference:** The SMP amendment formal incorporates relevant section of the City's 2019 CAR into Chapter 3 of the SMP at 22.82.045.B. For which the identified reference needs to be updated to match updated reference to maintain internal consistency related to code reference and ordinance number provided.
3. **Critical Areas Regulation reference:** Same as above.

4. **Update of Water Typing reference:** The City incorporated the DNR stream typing system into the CAR and updated SMP, as recommended by the Snoqualmie Tribes comment. However, as described within Attachment B (Required Changes), one additional stream type reference needs to be updated in the City's Stream Development Standards, to consistently utilize the DNR stream typing system.
5. **Adding "Fish Habitat" definition:** As noted above, neither the amended SMP, nor incorporated provisions from the City's CAR define "Fish Habitat". Further, with incorporation of the updated water typing system, the definition will ensure internal consistency between the City's CAR and SMP provisions.

Finding. Ecology finds that the changes identified in Attachment B are necessary for internal consistency within the City's updated SMP and referenced CAR and to ensure implementation of the policies of the SMA and the SMP.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments with incorporation of required and requested changes in Attachment B, can be considered 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 and acceptance of Ecology's required changes 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 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

Based on the preceding, Ecology has determined the proposed amendments will be consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules once changes set forth in Attachment B are accepted by the City.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to 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.

Ecology approval of the proposed amendments, with required changes or approved alternative language, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying the receipt of written notice that the City has agreed to the required changes in Attachment B.