

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF THE CITY OF MOUNT VERNON SHORELINE MASTER PROGRAM

SMP Submittal accepted January 11, 2022, Ordinance No. 3842
Prepared by Department of Ecology on June 27, 2022

Use of this Document

Ecology's Findings and Conclusions (presented herein as Attachment A), including references to Attachment B and Attachment C, provide the factual basis for the Department of Ecology's (Ecology) decision on the City of Mount Vernon's (City) proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. Attachment B outlines Ecology's identified required and recommended changes to the SMP amendment.

We divided this document into three sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process, **Conclusions of Law**, and Ecology's **Decision and Effective Date** of the amendment.

Brief Description of Proposed Amendment

The City of Mount Vernon is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for review and approval. As part of this review, the City chose to use the joint review process set forth in WAC 173-26-104. On November 9, 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 its applicable rules. The City's final adopted ordinance incorporated all of Ecology's required and recommended changes provided as part of the initial determination. However, because of changes made in response to comments received after the joint comment period and after issuing our initial determination, Ecology's final review identified additional consistency issues. We assess these in this document and Attachment B.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2011. The City initiated the current review and amendment to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The City's SMP is a standalone document that outlines goals and policies for shoreline jurisdictional areas within the City of Mount Vernon and establishes regulations for new uses and developments occurring within these areas. The SMP regulates shoreline uses and development along portions of Skagit River and its associated wetlands, as well as wetlands associated with Barney Lake.

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The City prepared a checklist that documents their SMP review and identified proposed revisions. The amendment brings the SMP into compliance with current requirements of the SMA and changed or added state rules since the City completed their SMP comprehensive update. The amendment ensures the SMP remains consistent with the City's comprehensive plan, other local regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

Throughout the SMP, the City proposes non-substantive changes to improve clarity and readability of a number of different SMP provisions. For example, the proposed amendment updates existing references to "the Community and Economic Development Department or Director", to "the Development Services Department or Director".

In addition, the City made the following specific changes:

I – Introduction

- Clarifies that reference to other State & City codes are included as written and amended.
- Creates an abbreviations and meanings table for acronyms used throughout the document.
- Clarifies that Appendices A through F included as part of the SMP through adoption by reference.

III - SMP Administrative Provisions:

- Adds a statements, consistent with WAC 173-26-191(2)(a)(iii)(D), regarding review of cumulative effects of authorized development within shoreline jurisdiction in preparation for future periodic updates of the SMP.
- Consolidates location of procedural requirements for all shoreline permits.
- Adds language about simultaneous permit filing and corrects language about "date of filing" of final decisions in accordance with WAC 173-27.
- Inserts reference to WAC 173-27-090 related to shoreline permit time requirements.
- Removes redundant WAC language from the SMP.
- Inserts reference to WAC 173-27-040(2) for developments not requiring an SSDP, and WAC 173-23-044 and 173-27-045 for the type of development not requiring a shoreline permit.
- States SMP amendments become effective 14-days from Ecology's written final action.

IV - Shoreline Jurisdiction, Mapping, & Environmental Designations

Clarifies that the City's shoreline maps do not depict the precise location of Ordinary High Water Mark, Floodway/Floodplain and shoreline-associated wetlands, and that the City requires a site-specific determination of these variables at the time of development review to identify the full extent of shoreline jurisdiction.

- Updates Figure 1, illustrating how to determine the aerial extent of shoreline jurisdiction.
- Lists specific parcels located within each SED to assist the user in identifying the appropriate classification for a given property.
- Revises Figures 2 and 3 to display a cartographically distinct hatching pattern at the locations where shoreline associated-wetlands may exist. The Figures also assign the appropriate SED if such wetlands are determined to be present at the time of development review.

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V – Shoreline Use, Modification, and Development Standards Tables

Updates the Residential Standards footnote in the Development Standards table, allowing deviation from the listed densities for affordable housing.

VI – General Provisions

- Updates text to include reference to applicable Mount Vernon Municipal Code, cited as “MVMC” within the revised SMP.
- Amends a Water Quality policy to better define specific functions the City aims to protect from alteration.

VII - Shoreline Use Policies and Regulations

- Allows stormwater management facilities (i.e. floodgates) as In-Stream Structures in cases where the City finds the facilities necessary and essential, and where no other less impactful alternatives exist.
- Within the Agricultural policies, adds reference to applicable provisions of the City’s Critical Area Regulations related to restoration of degraded areas because of new development.
- Adds reference to applicable critical area provisions that establish minimum buffer requirements for new agricultural developments.

VIII - Shoreline Use Policies and Regulations

- Makes revisions to aid the users’ interpretation, resulting in no substantial changes.
- Some changes aim to ensure consistency with Federal & State regulations, and Appendix C.
- Adopts by reference the relief for shoreline restoration projects from WAC 173-27-215.

IX – Definitions

Removes unnecessary definitions, adds new definitions, and revises some definitions.

Substantive changes include:

- Modifies the definition of *associated wetlands* consistent with WAC 173-22-040.
- Defines *hydraulic continuity* as defined in WAC 173-545-030(9).
- Revises the definition of *development* consistent with WAC 173-27-030(6) and adds definition for *substantial development*.
- Removed reference to Federal Emergency Management Agency (FEMA) Flood Insurance Rate Maps (FIRM) in the definition of *floodway*. The City adds clarification that they will defer to FEMA floodway mapping for portions of the Skagit River in the event FEMA completes the mapping.

Appendix A: Shoreline Inventory, Characterization, & Cumulative Impacts Report

Revises this appendix to support the refinement of SEDs and associated mapping protocols within the amended SMP and to support interpretation of the term associated wetlands.

Appendix C: Shoreline Critical Area Regulations

Adopts the current version of the Critical Area Ordinance (CAO). Excludes all provisions determined to be non-compliant with the SMA and its associated rules.

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- Clarifies the administrative process for shoreline permits within critical areas, including exemptions, review for consistency with the SMP, and resolution of conflicts between the SMP and Appendix C.
- Requires delineation of wetlands in accordance with the approved federal wetland delineation manual.
- Corrects the outdated reference to Ecology’s Wetland Rating System.
- Reinserts a proposed deletion, allowing public agency and utility exception activities, and those authorized through the variance sections of the MVMC, in Category I wetlands.
- Adds “lakes 20 acres and greater” and “lakes less than 20 acres” to the categories listed for classification and designation of fish and wildlife habitat conservation areas.
- Removes reference to the Washington State Bald Eagle Protection Rules, WAC 232-12-292.
- Removes proposed text referencing the “shoreline buffer edge” under the minimum building setback provision.

Appendix E: Official Shoreline Master Program Map

Revised to reflect changes outlined in Chapter IV and shown in Figures 2 and 3.

Appendix F: Shoreline Environmental Designation Location Maps

Updates with newly added parcel numbers listed in Chapter IV.

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](#)¹.

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 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 necessary 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.

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

The City and Ecology held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on August 1,

¹ <https://www.mountvernonwa.gov/1059/Shoreline-Master-Program-SMP-Update?msclid=79d02f9bd09c11ec99f8b651555bb926>

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2021 and continued through August 30, 2021. A public hearing held in-person before the City's Planning Commission occurred on August 17, 2021.

The City provided notice to local parties, including a statement that the hearings would address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). According to the affidavit of publication provided by the City, notice of the hearing was published on July 30, 2021.

Ecology distributed notice of the joint comment period to state interested parties on July 29, 2021. The Samish, Sauk-Suiattle, Swinomish, and Upper Skagit Tribes were invited, via email on July 29, 2021, to provide comment and to consult government to government, if needed.

The City accepted comments on the proposed SMP amendment during the 30-day comment period. There were no comments submitted on the proposed amendments.

Initial Determination of Consistency

As part of this review, the City chose to use the joint review process set forth in WAC 173-26-104. After the joint local and state comment period and hearing, the City submitted the proposed amendment to Ecology for initial review. Under WAC 173-26-104(3)(b), Ecology must provide the City with an initial determination of consistency with the policy of the SMA and applicable rules.

Ecology received the proposed SMP amendment for initial state review and verified it as complete on September 2, 2021. This began Ecology's review and initial determination.

Ecology is required to review all SMPs to ensure consistency with the SMA and implementing rules of WAC 173-26 and WAC 173-27, including the SMP approval/amendment procedures pursuant to WAC 173-26-090 and WAC 173-26-201. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Upon initial review of the proposed amendment, Ecology concluded that portions of the City's amendment were not consistent with applicable laws and rules. On November 9, 2021, we provided a written statement to the City describing the specific areas of concern and changes necessary to ensure consistency with state requirements. We identified nine (9) required changes to the draft amendment necessary for consistency with the SMA and the implementing rules. The issues identified relate to:

- Section III Administrative Provisions
 - for permit filing;
 - development not subject to local review;
 - authorized development tracking in preparation for future SMP periodic reviews;
- Appendix C - Wetland identification and delineation using the federal manual;
- Internal consistency between Section IV Shoreline Jurisdiction, Mapping, & Environment and Section IX Definitions related to the use of the term Shoreline Management Zone (SMZ) and its definition;

- Section IX Definitions revisions to the definition of *date of filing* per WAC 173-27-130.

In addition, we identified eight (8) recommended changes that, if adopted, would enhance consistency with the SMA and improve or ease implementation of the associated provisions.

After review by Ecology of the complete initial record submitted, Ecology determined that the City's proposed amendments, subject to and including Ecology's required changes, was 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). We concluded that if the issues identified within our required and recommended changes were resolved prior to local adoption, we anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

After receiving Ecology's initial determination, the City revised the final draft SMP addressing specific areas of concern outlined by in our November 9, 2021 initial determination.

Comments received after the joint local/state comment period

On October 14, 2021, VanNess Feldman, LLP submitted a comment letter to the City Planning Commission on behalf of Hansell/Mitzel, LLC. The commenter requests the following changes:

1. Change footnotes in the Shoreline Modification Table (Table 2) to allow fill in critical areas if allowed in the SED;
2. Add reference the City's Regulations to Encourage Affordable Housing (MVMC 17.73) to ensure these density bonus and other incentives apply in the shoreline jurisdiction;
3. The removal of the term "hydrologic condition" from general provisions of SMP Section IV;
4. Addition of stormwater management facilities, such as tide gates and culverts, to the list of in-water structures allowed;
5. Removal of proposed language clarifying that fill in waters/wetlands and shorelines is subject to federal, state and local authorities;
6. Modifications to existing peer review provisions in the SMP Administration sections to allow the applicant to choose the consultant that completes the review;
7. Removal of reference to the hydrogeomorphic (HGM) functional assessment approach from the wetland provisions of Appendix C;
8. Removal of a reference to the City's Restoration Guidebook because it is out-of-date and doesn't include options for use of mitigation banks;
9. Update the wetland classification and designation section to reflect ECY 2014 wetland rating system numbering system rather than the older 2004 version;
10. Retain Category I wetland impact allowances related to public utilities, reasonable use and variance sections of MVMC, which the City has proposed to remove;
11. Removal of language related to building setbacks as measured from fish and wildlife habitat conservation areas (FWHCAs) or shoreline buffer edges, and instead requests that the building setback language clarify that the buffer is from the edge of the FWHCA as it is prescribed or as it is altered pursuant to Appendix C;

12. Deletion of the proposed “potential wetland connection” references on the City’s shoreline maps;
13. Revisions to the definition of “associated wetlands” to remove reference to surface and subsurface hydraulic connections language.
14. Questions the City’s approach to identifying associated wetlands and requests the removal of the City’s technical memo and figures from Appendix A to this amendment package.

The City considered these comments and created a summary and response matrix. After reviewing these comments, the City modified the SMP to address eight (8) of the fourteen (14) requests above (comments 2, 3, 4, 9, 10, 11, 12 & 13).

The City received this comment letter after submitting their draft SMP amendment to Ecology for initial determination; therefore, the City did not include it in the submittal package. The proposed modification outlined above were not reviewed by Ecology prior to local adoption. However, the City included these comments and the City’s responses in the City’s SMP amendment adoption record, provided to Ecology as part of their SMP final submittal.

Final Submittal

With passage of Ordinance #3842, on December 13, 2021, the City authorized staff to forward the proposed amendments to Ecology for final review and formal approval. Ecology received the City’s final submittal of the SMP periodic review amendment on December 16, 2021. The City’s locally adopted SMP amendment included all nine required changes and seven of the eight recommended changes from the initial determination. The City opted not to incorporate one recommended change, proceeding with a cross-reference to WAC 173-27-040(2) for developments not requiring a SSDP in lieu of inserting text from the state law into the SMP. The final submittal also includes revisions made by the City to address public comments received after the close of the joint public comment period.

On December 28, 2021, Ecology received a letter from VanNess Feldman, LLP on behalf of Hansell-Mitzel, LLC alleging the City did not provide Ecology with comments and technical analysis submitted by the public during the City’s SMP periodic review comment process. The letter took issue with the City’s updated Official Shoreline Map, and alleged a lack of coordination between the City and Skagit County during the SMP amendment process. On January 5, 2022, Ecology received a letter from the City responding to those comments.

The final submittal was deemed complete on January 11, 2022. This began our final review and formal approval process.

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

Consistency Review

Consistency with Chapter 90.58 RCW

We reviewed the proposed amendment 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)

We reviewed the proposed amendment 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 documentation of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments, issued July 16, 2021. We did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

We reviewed supporting 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

Ecology must review all SMP amendments to ensure consistency with the SMA and implementing rules, including WAC 173-26, State Master Program Approval/Amendment Procedures, and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology “shall insure that the state’s interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020.”

Based on review of the proposed amendments to the 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, we identified two (2) required changes necessary for consistency with the SMA and implementing rules as well as three (3) changes recommended to improve clarity and implementation (See Attachment B). The following issues remain relevant to Ecology’s final decision on the proposed amendments to the City’s SMP, with findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Residential Density

Ecology’s review of the City’s proposed modifications to the footnote 19 to Table 3, Development Standards has been found to be incompatible with the management policies for residential shoreline environment designations and inconsistent with the residential uses guidelines.

In response to public comment, the City proposed to allow deviations from the SMP required minimum and maximum densities and lots sizes to accommodate incentives provided under Mount Vernon Municipal Code (MVMC) Chapter 17.73 Regulations to Encourage Affordable Housing. However, the City did not provide any supporting justification or analysis as to how

this will impact the foreseeable development. The SMP implementing rules require specific requirements for setbacks, buffers, density, vegetation conservation and shoreline armoring for all residential development and uses, including the subdivisions or platting, in order to assure no net loss of shoreline ecological functions and compatibility with the shoreline environment designation (SED) criteria and management policies². The City's current SMP establishes use density, lot size, and impervious surface limits as tools to accommodate single family residential development (a priority use) while protecting the shoreline ecological functions. The SMP sets the maximum densities for residential development within the Shoreline Residential and Urban Mixed Use environmental designations in Table 3 of Section V. Per SMP Section V, Table 1, the program only allows single-family detached residential development in the Shoreline Residential SED and multi-family attached residential development can only occur in the Urban Mixed-use SED.

As proposed the new standards from MVMC 17.73 include increased minimum and maximum density, zero lot line and no min lot size standards and allows ADUs, duplexes and multifamily units in all zones where residential is allowed. The cumulative impacts of these changes have not been considered and the provisions of MVMC 17.73 have not been reviewed within the policy framework of the SMA.

Finding. Ecology finds allowing deviations from the use, density, lot size, and impervious surface standards of the SMP through the application of MVM 17.73 could result in piecemeal or uncoordinated development. Ecology has identified changes necessary for consistency RCW 90.58.020, WAC 173-26-211(4)(a)(iv), WAC 173-26-211(5)(f) and WAC 173-26-241(3)(j). [See detailed rationale in Attachment B, Item Req-1].

Critical Areas Provisions

Ecology's review of the City's CAO incorporation in Appendix C has been found to be generally consistent with the SMA and applicable SMP Guidelines requirements, except for provisions in Section VII.E.

While addressing a public comment, the City reinserted proposed deleted text in provision VII.E.3 of Appendix C. This provision allows public agency and utility use projects to impact Category I wetlands and references the MVMC zoning code variance process for all other impacts to Category I wetlands. The reversal retains a reference to a stricken applicability provision of the CAO and variance sections of the MVMC. In addition, provisions within this section allow impacts to wetlands and their buffers without proper or full application of mitigation sequencing and without regard for the use preferences and policies of the SMA.

Finding. Ecology finds allowing activities and uses in Category I wetlands through variance sections of the MVMC inconsistent with the permitting framework of the SMA. Ecology further finds that the SMP critical areas provisions in VIII.E do not protect existing wetland and

² WAC 173-26-211(4)(a)(iv), WAC 173-26-211(5)(f), and WAC 173-26-241(3)(j).

shoreline functions and ecosystem-wide processes. Ecology has identified changes necessary for consistency with RCW 90.58.140, Chapter 173-27 WAC, WAC 173-26-221(2) Critical Areas, and WAC 173-26-221(2)(c)(i) Wetlands [See detailed rationale in Attachment B, Item Req-2].

Ecology identified three (3) recommended change to provide clarity and improved implementation. These recommendations are related to residential density, updating reference to Ecology's wetland guidance, and in-stream structures in support of stormwater management. *[See detailed rationale in Attachment B, Items Rec-1, Rec-2, and Rec-3].*

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment with incorporation of Ecology's required changes as shown 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 with 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(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26- 201(1)(c)(iv) and WAC 173-26-186(8)).

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

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

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 a public hearing, providing 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 SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of SMP 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, we find the proposed periodic review amendment is consistent with the policy of the SMA, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are accepted by the City. Ecology has also determined that the SMP could benefit from incorporation of the recommended changes identified in Attachment B. The City may choose to adopt some or all of the recommended changes. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of both the required and recommended changes.

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

Upon written receipt of the City's acceptance of Ecology's required changes and decision to include, propose alternative language to, or reject Ecology's recommended changes, Ecology will take final action on this SMP amendment. Ecology's approval of the proposed amendment, with required changes or approved alternatives, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying receipt of written notice that the City has agreed to the required and recommended changes identified in Attachment B or approval of proposed alternative language.