

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

SMP Submittal accepted May 21, 2021, Ordinance No. 7280  
Prepared by Department of Ecology on May 27, 2021

### Brief Description of Proposed Amendment

The City of Olympia (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 March 19, 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 all Ecology's required changes and most of the recommended changes provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Olympia comprehensively updated their master program in October 2015 and amended their SMP in 2018 to incorporate updated critical area regulations. This current amendment is needed to comply with the statutory deadline for a periodic review of the SMP 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. Locally initiated changes include provisions:

- Incorporating the City's Sea Level Rise Response Plan into the SMP;
- Addressing live-aboards in marinas;
- Allowing for recreational camping in the Marine Recreation environment on the east side of the Port Peninsula;
- Including additional criteria for waiving public access requirements under certain circumstances; and
- Adjusting the width of the setback and Vegetation Conservation Area along West Bay Drive.

Olympia's SMP, which regulates shoreline uses and activities along Grass Lake, Capitol Lake, Ward Lake, Ken Lake, Percival Creek and the marine shorelines of lower Budd Inlet, contains goals, policies and regulations, and identifies Shoreline Environment Designations within the Shoreline Map. The goals and policies set forth in SMP Section 2 are an element of the City's comprehensive plan. All other portions of the SMP are part of the City's development regulations codified in Olympia Municipal Code (OMC)

Chapter 18.20 Shoreline Master Program Regulations. Critical area regulations, codified in OMC Chapter 18.32, are adopted and incorporated by reference into the SMP.

In addition to general edits to correct and update syntax, formatting and citations, the following specific SMP sections are proposed to be amended:

*Shoreline Master Program*<sup>1</sup>

A. Section I. General Provisions

1. The summary table of Regulatory and Policy Tools is updated to note the inclusion of Sea Level Rise into the SMP. An update to the adoption date of the referenced Critical Areas Ordinance is added to 1.6.

B. Section 2. Goals and Policies

1. Consideration of sea level rise is added to the following policy sections: 2.1 Shoreline Master Program Goals and Policies, 2.4 Shoreline Use and Development Policies, 2.16 Scientific and Educational Activity Policies, 2.27 Residential Policies, 2.28 Transportation Policies, 2.29 Utility Policies, 2.32 Fill Policies, and 2.35 Shoreline Stabilization Policies are revised to include sea level rise considerations [2.1 H, 2.4 F, 2.16 A, 2.27 C, 2.28 A, 2.29 A, 2.32 C, 2.35 B, 2.35 E]
2. Reference to the West Bay Environmental Restoration Assessment Report<sup>2</sup> is added to the following policy sections: 2.3. Shoreline Ecological Protection and Mitigation Policies, 2.5 Aquatic Environment Management Policies, 2.34 Restoration and Enhancement Policies, and 2.35 Shoreline Stabilization Policies. [2.3 I, 2.5 H, 2.34 M, 2.35 E]
3. 2.4 Shoreline Use and Development Policies adds new policy G, relocated from section 2.5, establishing the need to reserve space for preferred shoreline uses.
4. 2.5 Aquatic Environment Management Policies has a number of edits for improved clarity [B, D, E] and adds a new policy [H] encouraging soft shore stabilization or habitat restoration to improve ecological functions.
5. 2.6 Natural Environment Management Policies has a clarifying edit. [A.2]
6. 2.9 Marine Recreation Environment Management Policies includes two edits for clarity. [A, E]
7. 2.10 Shoreline Residential Environment Management Policies has one clarifying edit. [G]
8. 2.11 Urban Intensity Environment Management Policies has a number of clarifying edits. [E, F, G, H, J]
9. 2.14 Parking Policies has one clarifying edit. [C]
10. 2.15 Public Access Policies adds a new policy to clarify when on-site public access may not be required. [K]
11. 2.18 Vegetation Conservation Area Policies is revised encouraging education addressing proper use of fertilizers and pesticides in the shoreline. [F]
12. 2.23 Boating Facilities Policies is revised adding new language listing preferred design elements to lessen impacts from overwater structures and clarifying covered boathouses should be prohibited. [F]

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<sup>1</sup> Proposed changes are identified in the order they appear in the standalone (compiled) version of the SMP.

<sup>2</sup> Coast & Harbor Engineering. *West Bay Environmental Restoration Assessment, Final Report*. City of Olympia, 2016. <https://olympiawa.gov/~media/Files/PublicWorks/Water-Resources/WestBay-Environmental-Restoration-Assessment.pdf?la=en>. This report provides an assessment of environmental restoration opportunities for the West Bay shoreline of Olympia.

13. 2.31 Dredging Policies are revised for improved clarity [C, F] and a statement clarifying the need to avoid and minimize impacts from dredge disposal is added [G].
  14. 2.32 Fill Policies adds ecological restoration to the list of allowable activities which may require fill waterward of the ordinary high water mark. [E]
- C. Section 3 Regulations
1. 3.3 18.20.120<sup>3</sup> - Interpretation and Definitions - Definitions for the following terms are added: camping facilities, functional disconnect, live-aboard vessel, nonconforming development or nonconforming structure, nonconforming lot, nonconforming use.
  2. 3.6 18.20.215 – Exceptions to Local Review is a new subsection added consistent with Ecology recommendations addressing WAC 173-26-044 and WAC 173-26-045.
  3. 3.13<sup>4</sup> 18.20.280 – Shoreline Permit Procedures is revised to clarify the roles of the Administrator and the Hearings Examiner [C], clarify the appeals process [E, F] and add language directing submittal of permit revisions to Ecology. [F] Other minor edits are made. [D, G]
  4. 3.14 18.20.285 - Amendments is revised adding the optional joint review process for SMP amendments. [D]
  5. 3.17 18.20.300 – Shoreline Jurisdiction is revised adding language to clarify how to regulate parcels and structures that may be partially in and partially out of shoreline jurisdiction. [C]
  6. 3.21 18.20.400 – General Regulations – Intent is revised to better clarify which regulations apply to all uses and activities in all shoreline environments.
  7. 3.23 18.20.420 – Critical Areas is revised to reference the updated critical area regulations ordinance number and date. [A] A provision requiring use of the federal wetland delineation manual is deleted since this is now addressed in the CAO [C.7], and a new provision is added identifying where priority riparian area buffers are established. [C.9]
  8. 3.24 18.20.430 – Archaeological, Historic, and Cultural Resources is revised adding cross-references to the City’s Historic Preservation Code and to Ecology’s rule provisions on archaeological and historic references in WAC 173-26-221. [D]
  9. 3.26 18.20.450 - Public Access – Three new conditions are added to the list allowing the Administrator to waive the public access requirement for privately-funded projects. A waiver could be allowed for sites functionally disconnected from the shoreline by a legally established road or other substantial developed surface, or when public access already exists in the immediate vicinity or is already adequate and documented at the property. “Immediate vicinity” means there are public access areas within 1/8 mile of the development, increased to ¼ mile with seating along the route and safe pedestrian access between the development and the public access areas. Lastly, a provision is added addressing the instance where the cost of providing public access is disproportional to the cost of the development. [C.5, C.6, C.7]
  10. 3.27 18.20.460 – Design of Public Access – A companion change (to the immediately preceding revision in 3.26, C.6) is made, allowing for a waiver to the requirement for a public viewing area when all conditions are met: the site is disconnected from the shoreline, public access areas are within a short distance of the site and there is safe pedestrian access to the public access areas. [A.4]

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<sup>3</sup> The SMP includes cross references between the stand-alone document and codified elements. In this instance, subsection 3.3 is cross-referenced to Olympia Municipal Code (OMC) 18.20.120.

<sup>4</sup> Subsection numbers in Section 3 reflect updated numbering resulting from the addition of the new 3.6.

11. 3.32 18.20.493 – Permitted Uses and Activities within Vegetation Conservation Areas is revised to allow for restrooms within the VCA when no suitable location exists elsewhere at public parks and water related recreation areas only. [A.10]
12. 3.37 18.20.504 – View Protection Regulations is revised to clarify that fences in the VCA are limited to a height of 4 feet between the OHWM and primary structures. Outside the VCA, the fencing provisions in OMC 18.40 apply. [I]
13. 3.39 18.20.510 – Water Quality includes a new provision requiring dredging and dredge disposal best management practices to prevent impacts to water quality or other environmental impacts. [F]
14. 3.40 18.20.600 – Shoreline Use and Development – Intent is edited for improved clarity.
15. 3.42 18.20.620 – Use and Development Standards Tables includes the following revisions:
  - a. A provision is added allowing for setbacks to be waived on areas functionally disconnected from the shoreline by a legally public established road. [D.9]
  - b. Table 6.1 – Uses and Activities is edited for improved clarity and internal consistency with SMP policies and regulations (boating facilities) and a new footnote (2) is added clarifying permitting of Mixed Use activities.
  - c. Table 6.3 – Setbacks and Incentives is revised adding the VCA to the column titles related to setbacks, revises the setback in Waterfront Recreation – 3B from 150’ down to 50’ and adds a line clarifying the setback for water dependent uses is 0’.
16. 3.44 18.20.640 – Aquaculture includes a revised provision requiring geoduck aquaculture shall meet all minimum permit requirements. [E]
17. 3.47 18.20.654 – Marinas is revised adding clarifications and a new provision related to live-aboards in marinas, including a cap restricting the number of slips occupied by live-aboards at 20 percent of the total slips in a marina, along with proof of seaworthiness and a requirement to comply with all other marine regulations. [B.6, B.7, B.8]
18. 3.56 18.20.700 – Transportation and Trail Facilities includes a new provision addressing special procedures for Washington Dept. of Transportation projects. [F]
19. 3.59 18.20.810 – Permitted Shoreline Modifications Table 7.1 – Shoreline Modifications is revised to allow hard shoreline armoring under certain limited circumstances without a Conditional Use Permit.
20. 3.60 18.20.820 – Dredging includes edits for improved clarity and a revision to ensure all dredging and dredge material disposal activities use best management practices to prevent impacts to water quality and the environment. [B.8, C, G]
21. 3.67 18.20.846 – Marine Docks and Piers includes a revision requiring grating of the dock/pier surface consistent with the Washington Department of Fish and Wildlife (WDFW) rule. [B.2]
22. 3.68 18.20.847 – Fresh Water Docks and Piers includes a provision to grate the surface area consistent with the WDFW rule. [B.3]
23. 3.69 18.20.848 – Float Standards – Meeting WDFW standards, consistent with their rule on orientation and functional grating, is required. [D.1]
24. 3.70 18.20.850 – Shoreline Restoration and Enhancement – Intent is revised to add a cross reference to the West Bay Environmental Restoration Assessment.
25. 3.75 18.20.864 – New or Expanded Shoreline Stabilization Measures is edited removing the phrase “waterward of the Ordinary High Water Mark”. [H]

26. 3.77 18.20.868 – Design of Shoreline Stabilization Measures includes a new provision pointing to the Olympia Sea Level Rise Response Plan as a consideration when determining the minimum necessary size of shoreline stabilization structures. [B.1]
  27. 3.81 18.20.900 – Existing Buildings and Uses within Shorelines is revised to allow for replacement and expansions. [A]
  28. 3.82 18.20.910 – Alteration of Nonconforming Structures in Shoreline Jurisdiction
    - a. A provision is added to allow raising the floor elevation of a legally existing structure in response to sea level rise flooding when within height limits. This provision is not extended to nonconforming overwater structures. [A.4]
    - b. An additional revision allows for the reconstruction within the existing footprint of unintentionally damaged or destroyed nonconforming structures. [B.1]
- D. OMC Chapter 18.32 Critical Areas
1. 18.32.400 - 445 Streams and Priority Riparian Areas is revised<sup>5</sup>.
    - a. An edit strikes mention of marine and lake shorelines [18.32.400]
    - b. “Type S streams” is edited to read “Type S waters”. [18.32.410 A]
    - c. Buffers for Type S waters<sup>6</sup> is revised deleting the 250 feet and replacing it with a reference to SMP 18.20.620, Table 6-3. [18.32.435 C]
  2. 18.32.500 - 595 Wetlands - Revisions are proposed for improved clarity, and for consistency with Ecology’s guidance.
    - a. Minor edits are made to the scoring range for Category II wetlands. [18.32.510 A.2]
    - b. The term Natural Heritage Wetlands is replaced with Wetlands of High Conservation Value and the buffer width for wetlands with a habitat score of 3 points is adjusted down from 100 feet to 80 feet. [18.32.535 B Table 32-1: Wetland Buffer Widths]
    - c. The provision for buffer averaging is revised consistent with Ecology’s adjusted habitat ranges (low: 3-4 is now 3-5 and moderate: 5-7 is now 6-7) and the referenced Ecology Wetland Guidance for minimizing measures is updated. [18.32.535 G.1, G.2]

## 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>7</sup>. A consultant, hired by the City developed draft documents. Due to the COVID-19 pandemic, the City held public meetings in a virtual format using Zoom, including a public Open House held December 2, 2020 and Planning Commission meetings addressing this topic, beginning in March 2020 and continuing through February 2021, were nearly all held remotely.

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

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<sup>5</sup> Concerns regarding implementation of the provisions in this section of the CAO, while also addressing SMP requirements arose late in the process. The City proposed draft changes prior to submitting for the Initial Determination. Ecology and City staff worked together to develop mutually agreeable revisions.

<sup>6</sup> Type S waters are defined as Shorelines of the State ([WAC 222-16-030](#)).

<sup>7</sup> <http://olympiawa.gov/smp>

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 also 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, August and November 2020.

Department of Commerce was notified of the City's intent to adopt on November 18, 2020. The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on January 22, 2021 for the proposed SMP amendment.

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 December 4, 2020 and continued through January 11, 2021. A public hearing before the Planning Commission was held virtually via Zoom on January 11, 2021.

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). The City's record indicates notice of the hearing was published in *The Olympian*. Ecology distributed notice of the joint comment period to state interested parties on November 30, 2020, including separate notice and an invitation for consultation to the Chehalis Tribe, Squaxin Island Tribe and the Nisqually Indian Tribe.

The City accepted public comments on the proposed SMP amendments during the 30-day public comment period. Comments were received from eighteen (18) organizations/individuals and included concerns about the health of Puget Sound, Southern Resident Killer whales, Chinook salmon and numerous other species. Specific concerns about sediment contamination, water quality and habitat degradation, use of science, and the need to daylight the numerous small creeks<sup>8</sup> tributary to Budd Inlet were expressed. A number of comments expressed a desire the City include "restoration potential" as a consideration in the SMP. Other comments focused on the proposed revisions to public access requirements, wetland buffers, Green Cove Creek, nonconforming structures, no net loss, habitat protection and restoration, RV parks in the Marine Recreation Environment, environmental justice, sea level rise, public access, and shoreline setbacks.

The City prepared a Comment Response Matrix and considered all comments. A number of changes in response to comments were proposed including revisions to language allowing soft shoreline stabilization measures above and below the OHWM, revising the proposed setback along West Bay to 50 feet, rather than the proposed 30 feet, and proposed revisions to OMC 18.32.400 through OMC18.32.435 to address implementation issues related to "priority riparian areas".

#### *Initial Determination of Consistency and Final Submittal*

The proposed SMP amendments were received by Ecology on March 1, 2021 for initial state review. The submittal was supplemented on March 2, 2021 and verified as complete on March 2, 2021.

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<sup>8</sup> Moxlie Creek, Indian Creek, Schneider Creek, Ellis Creek.

A written statement of initial concurrence was sent to the City on March 19, 2021. Ecology considered the comments received, and the City's responses to these comments, and concluded the proposal could be consistent with applicable laws and rules provided certain changes were made. Ecology's three required changes addressed the City's use of the term "functional disconnect" in two public access regulations and one shoreline setback provision. Ecology found the use of this term confusing and inconsistent with the proposed definition. Required changes to the public access provisions clarified when certain public access requirements can be waived. The third required change clarified when a functional disconnection occurs with regard to setbacks and identifies the information necessary to make such a determination.

Ecology also identified eight recommended changes. These 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 four of these changes. City staff and Ecology worked closely to identify alternative language to address the concerns related to the relationship and implementation of shoreline setbacks, vegetation conservation areas and priority riparian areas.

The City's locally adopted SMP incorporates all three required changes, four of Ecology's recommended changes, and all the alternative changes noted above.

With passage of Ordinance No. 7280, on May 18, 2021, the City Council authorized staff to forward the proposed amendment to Ecology for formal review. The City's final submittal of the SMP amendment was received on May 20, 2021. The submittal was determined complete on May 21, 2021.

#### *Ecology consideration of comments*

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

**Finding.** 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. The City identified certain changes which have been incorporated into the SMP amendment. Ecology concurs, that no additional amendments are warranted at this time based upon the significance of this information and the existing SMP provisions<sup>9</sup>.

#### *Other Studies or Analyses supporting the SMP amendments*

Ecology also reviewed supporting documents prepared by or for the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist, and the Gap Analysis Report.

## 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).

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<sup>9</sup> WAC 173-26-090(3)(b)(iii)

*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) January 22, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in *The Olympian* on January 8, 2021.

## 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



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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.