

**ATTACHMENT A: FINDINGS AND CONCLUSIONS**  
**PIERCE COUNTY SHORELINE MASTER PROGRAM LOCALLY INITIATED AMENDMENT**

SMP submittal accepted December 21, 2021, Ordinance No. 2021-90s

Prepared by Department of Ecology January 21, 2022

### Brief Description of Proposed Amendment

Pierce County (County) has submitted a locally initiated amendment of their Shoreline Master Program (SMP) to the Washington State Department of Ecology (Ecology) for final review and approval pursuant to RCW 90.58.090 and WAC 173-26-120. The locally initiated SMP amendment is part of a broader proposal to address issues centered on the County's flood regulations. The County elected to use the optional joint review process pursuant to WAC 173-26-104. As part of this process on October 28, 2021, per WAC 173-26-104(3)(b), we provided the County with an initial determination of consistency, ensuring the County's proposed SMP amendment aligns with the policy of the Shoreline Management Act (SMA) and applicable rules. The County accepted all required and recommended changes included in Ecology's initial determination and incorporated them into the proposed SMP amendment prior to local adoption.

## FINDINGS OF FACT

### Need for amendment

Pierce County completed their SMP comprehensive update and periodic review in October 2018. This was followed by two SMP amendments, in 2019 and 2020, processed to achieve compliance with an associated Growth Management Hearings Board (GMHB) Final Decision and Order.<sup>1</sup>

In February 2021, the Federal Emergency Management Agency (FEMA) notified Pierce County that changes were needed to the County's development regulations if the County wished to continue participating in the National Flood Insurance Program (NFIP). Ecology SEA Program staff were notified in late March that there was an emergent need to revise the County's flood regulations and Ecology noted this would also require an SMP amendment. In subsequent discussions, Ecology staff recommended the County remove the flood code from direct incorporation by reference into the SMP.

The proposed amendment to the SMP includes revisions to two sections of Pierce County Code (PCC):

1. Title 18E, Development Regulations – Critical Areas
2. Title 18S, Development Policies and Regulations – Shorelines

The broader proposal also includes revisions to Chapter 18.25 PCC, Definitions; revisions to Chapter 18E.70 PCC, Flood Hazard Areas; and adoption of channel migration zone studies for the Lower Greenwater and Upper White rivers.

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

The SMP regulates shoreline uses and activities along approximately 881 miles of freshwater shorelines and 224 miles of marine shoreline. Pierce County's SMP contains policies and regulations adopted into the County municipal code as Title 18S, Development Policies and Regulations - Shorelines. The SMP

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<sup>1</sup> GMHB Case No. 18-3-0013c

adopts by reference the County's Critical Areas Ordinance, codified in Title 18E PCC, including the County's flood regulations in Chapter 18E.70, Flood Hazard Areas. The proposed SMP amendment removes this chapter from the SMP while updating Chapters 18E.10 and 18E.20.

Approval of the County's locally initiated SMP amendment will decouple the SMP and the County's flood code. This will allow the County to undergo future amendments to the flood code, when required by FEMA through the National Flood Insurance Program, without needing to amend the SMP at the same time. Facilitating the County's continued enrollment in and compliance with the NFIP will ensure that those communities in areas vulnerable to flooding will remain eligible for flood insurance and federal relief in the event of such flooding.

Specific revisions are summarized below by PCC section:

#### *Chapter 18S.10 Introduction*

1. 18S.10.010 Title. The proposed revision explicitly states that Chapter 18E.70 PCC, Flood Hazard Areas, is not incorporated by reference into the SMP and does not constitute part of the SMP.
2. 18S.10.060 Coordination with other Titles. A new provision addressing Chapter 18E.70 PCC clarifies that the chapter is not included in the SMP and that development within flood hazard areas will continue to be administered through the administrative processes in Title 18E.
3. 18S.10.065 Procedural Guidance. In this provision, the SMP adopts by reference the specific, dated version of the Critical Areas Ordinance. A new ordinance and effective date is added reflecting the proposed revisions to 18E.10, 18E.20, and 18E.120 in this amendment.
4. 18S.10.070 Compliance. A revision clarifies that 18E.70 PCC is not incorporated by reference.

#### *Chapter 18S.30 General Policies and Regulations*

An update to 18S.30.030 Ecological Protection clarifies that 18E.70 PCC is not incorporated by reference [18S.30.030.D].

#### *Chapter 18E.10 General Provisions*

Updates are made to 18E.10.140 Appendix A Mapping Sources, adding "mapped watercourse" to the list of data types that may be used in identifying flood hazard areas [H.3]. Additionally, two channel migration zone studies are added as sources that identify flood hazard areas: the Channel Migration Zone Delineation, Lower Greenwater River, dated November 9, 2017 and the Channel Migration Zone Delineation, Upper White River, dated June 10, 2020 [H.4(f) and (g)].

#### *Chapter 18E.20 Use and Activity Regulations*

18E.20.030 Exemptions.

- A proposed revision adds a requirement that any project proponent consult with Planning and Public Works to verify whether the proposal is fully or partially exempt.
- The list of exemptions to all or part of Title 18E is revised throughout, clarifying the exemption does not apply when structures or the activity are located in a flood hazard area or active landslide hazard area. [A.1, A.3, A.11, A.12, A.16, A.17, A.18]<sup>2</sup>
- Three listed exemptions are deleted. [A.14, A.20, A.22]<sup>3</sup>
- Revisions are added to the provision addressing maintenance and reconstruction of lawfully existing public facilities to include "substantial improvement of a building," and requiring that

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<sup>2</sup> Citations are to the revised code numbers.

<sup>3</sup> Citations are to the original code numbers which are being deleted.

reconstruction of linear facilities including roads, paths, trails, and bridges is allowed provided there is no change to existing grade or the conveyance capacity of a hydraulic structure. [A.20]<sup>4</sup>

18E.20.035 Review Waiver Allowances. A sentence is added to clarify this section is not applicable in flood hazard areas.

18E.20.040 Nonconforming Uses and Structures. The provisions addressing reconstruction or restoration of nonconforming structures which are damaged or destroyed is revised for improved clarity. [D]

#### *Related amendments*

As noted above, the broader proposal also includes revisions to Chapter 18.25 PCC, Definitions; revisions to Chapter 18E.70 PCC, Flood Hazard Areas; and adoption of channel migration zone studies for the Lower Greenwater and Upper White rivers. These amendments are included in the submittal package but are not part of the amendment to the SMP.

#### *Amendment History, Review Process*

The record indicates that the County began this amendment process with a public scoping meeting held on December 2, 2020. The County [website](#)<sup>5</sup> was used to post meeting information and draft documents. Due to the Covid-19 pandemic, the County held public meetings in a virtual format using Zoom. Planning Commission meetings addressing the broader proposal and the SMP amendments were held between January and June of 2021 and a Planning Commission public hearing occurred on June 22, 2021.

The County completed a State Environmental Policy Act (SEPA) checklist and issued a Preliminary Determination of Non-Significance (DNS) for the proposal on June 1, 2021. Ecology did not comment on the DNS.

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

The County 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 September 10, 2021 and continued through October 9, 2021. A joint public hearing before the Pierce County Council Economic and Infrastructure Development Committee was held virtually via Zoom on September 28, 2021.<sup>6</sup> Ecology staff was in attendance.

The County provided notice to local parties. Ecology distributed notice of the joint comment period to state interested parties on September 9, 2021, including separate notice and an invitation for consultation to the Muckleshoot Indian Tribe, Puyallup Tribe of Indians, Nisqually Indian Tribe, and the Steilacoom Tribe.

The Muckleshoot Indian Tribe submitted a comment by email on June 18, 2021 during the SEPA comment period. The email focused on the flood code revisions, and more specifically on the Upper White River Channel Migration Zone (CMZ) study. The County response indicated many of the questions had been asked previously and a response had been provided to the Tribe in April 2020. The record

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<sup>4</sup> Citation is to the revised code number.

<sup>5</sup> <https://www.piercecountywa.gov/7294/Pierce-County-Flood-Code-and-Shoreline-M>

<sup>6</sup> Meeting materials and recording:

[https://online.co.pierce.wa.us/cfapps/council/iview/committeeMeeting.cfm?meeting\\_dt=9/28/2021%209:30%20AM&committee\\_cd=eid](https://online.co.pierce.wa.us/cfapps/council/iview/committeeMeeting.cfm?meeting_dt=9/28/2021%209:30%20AM&committee_cd=eid)

includes the referenced April 9, 2020 letter documenting this earlier communication, including comments from the Muckleshoot Indian Tribe and County responses. These comments focused on CMZ delineation methodology, timeframes used for the study, need for a glossary, need for reach breaks to be included in the figures, historical details, and a few other topics. The County identified a number of proposed revisions to the draft CMZ study document in response to these comments.

The County received comments from two individuals at the joint public hearing. Both comments focused on the flood code revisions as applied to Crystal River Ranch located along the White River, and both expressed support of the flood code revisions. No revisions were proposed by the County in response to these comments.

Finally, the County received numerous phone calls and emails from residents asking whether the proposed flood code revisions would result in changes to flood insurance rates, flood insurance eligibility, floodplain designation changes, or other property impacts. No revisions were proposed by the County in response to these comments.

No comments specific to the SMP amendment were received during the SEPA comment period, 30-day joint comment period, or joint public hearing.

#### *Initial Determination of Consistency*

Under the joint review process, Ecology is required to provide the County with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules (WAC 173-26-104(3)(b)). The proposed SMP amendment was received by Ecology on October 15, 2021 for initial state review and verified as complete on October 18, 2021. This began Ecology's review and initial determination.

Ecology considered the record and concluded that portions of the proposal were not consistent with applicable laws and rules. On October 28, 2021, we provided a written statement describing the specific areas of concern and changes necessary. We identified one (1) required change related to the removal of the flood regulations from the SMP. The change was required for consistency with WAC 173-27 which sets forth the administrative provisions for issuing shoreline permits and exemptions for development within shoreline jurisdiction, and which specifies that where development is proposed in locations where both the SMP and the flood code apply, authorization under both codes must occur.

Ecology also identified two (2) recommended changes to improve clarity of the proposed amendment and internal consistency of the SMP. Both recommended changes were clarifications to ensure both the flood code and SMP would be implemented in locations where both sets of regulations apply.

Ecology finds that the County's flood hazard regulations are not necessary for consistency with RCW 90.58 or the SMP guidelines. The SMP would remain consistent with the requirements of WAC 173-26-221(3) through implementation of 18S.30.030 Ecological Protection and 18S.40.060 Flood Hazard Management. Ecology also finds the purpose of PCC Chapter 18E.70 Critical Areas-Flood Hazard Areas is to implement the National Flood Insurance Program (NFIP), not the SMA. These regulations are primarily building codes. By incorporating these regulations into the SMP, any applicant that needs to deviate from these would need to apply for a shoreline variance, which could be hard to obtain. Removing direct incorporation of the flood code into the SMP:

- Removes the challenge of coordinating amendments to the SMP every time the flood code needs revision as may be required by the NFIP, and

- Eliminates unnecessary SMA permitting and process steps that could impact the County's ability to maintain its certification under the NFIP.

After review of the complete initial record submitted, Ecology determined that the County's proposed amendment, subject to and including Ecology's required change, 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). We further 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 amendment upon formal submittal per WAC 173-26-110.

Based upon this determination, Ecology advised the County to consider the issues we identified and changes proposed prior to local adoption. The County accepted all required and recommended changes included in Ecology's initial determination and incorporated them into the proposed SMP amendment prior to local adoption.

#### *Final Submittal*

With passage of Ordinance No. 2021-90s on November 30, 2021 by the Pierce County Council, the County authorized staff to forward the proposed amendment to Ecology for formal approval. The County submitted the final amendment package on December 17 and additional materials on December 21, 2021. Ecology verified the submittal as complete on December 21, 2021.

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

### Locally Initiated SMP Amendment Process and Approval Criteria

A locally initiated SMP amendment is distinct from the comprehensive update and periodic review processes required by statute. WAC 173-26-090(1) encourages local governments to review their SMP and "make amendments deemed necessary to reflect changing local circumstances, new information or improved data." Locally initiated SMP amendments are subject to the approval criteria for all SMP amendments set forth in WAC 173-26-201 and the state review and approval process set forth in WAC 173-26-120, as summarized below.

#### *WAC 173-26-201, Process to prepare or amend shoreline master programs*

This section establishes the following approval criteria for all SMP amendments:

- All SMP amendments are subject to the minimum procedural requirements of WAC 173-26-010 through -160, and approval by Ecology as provided in RCW 90.58.090.
- SMP amendments may be approved by Ecology provided:
  - The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;
  - The amendment is consistent with all applicable policies and standards of the Shoreline Management Act;
  - All requirements for public notice and consultation have been satisfied; and
  - SMP guidelines' analytical requirements and substantive standards have been satisfied, where they reasonably apply to the amendment. All SMP amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

*WAC 173-26-120, State process for approving/amending shoreline master programs*

Ecology must first determine if the SMP amendment submittal is complete pursuant to WAC 173-26-104 and -110. Ecology must then:

- Make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines. Ecology shall approve a master program related to shorelines unless it determines that the submitted parts are not consistent with the policy of RCW 90.58.020 and the applicable guidelines. These written findings and conclusions must be provided to the local government and made available to all interested persons, parties, tribes, groups, and agencies of record on the proposal.
- Either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with chapter 90.58 RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines.

## Consistency Review

*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 County 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 SMP Guidelines (WAC 173-26-171 through -251 and -020, Definitions). This includes review specifically for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c).

*Consistency with Applicable Shoreline Permit Administration Provisions (Chapter 173-27 WAC)*

The proposed amendment has been reviewed for compliance with the requirements of WAC 173-27.

*Consistency with SEPA Requirements*

The County submitted evidence of SEPA compliance in the form of a SEPA checklist and Determination of Non-Significance issued on June 1, 2021 for the proposed SMP amendment.

*Other Studies or Analyses Supporting the SMP Amendment*

Ecology also reviewed documents prepared by the County in support of the SMP amendment. These documents include staff reports and a detailed summary of proposed code revisions and rationale.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the proposed SMP 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 that no net loss of shoreline ecological functions will result from implementation of the amended SMP (WAC 173-26-201(2)(c)(iv) and 173-26-186(8)).

Ecology concludes that those SMP segments related 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 County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting open houses and public hearings, providing notice, consulting with parties of interest, and soliciting comments from tribes, government agencies, and Ecology.

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

Ecology concludes that the County SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-104 and 173-26-110.

Ecology concludes that we have complied with our procedural requirements for review and approval of SMP amendments as set forth in RCW 90.58.090 and WAC 173-26-104, 173-26-110, and 173-26-120.

## DECISION AND EFFECTIVE DATE

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