

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED PERIODIC REVIEW OF THE SAN JUAN COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted November 5, 2020, Ordinance No. 08-2020
Prepared by Department of Ecology on January 5, 2021

Brief Description of Proposed Amendment

San Juan County (County) has submitted Shoreline Master Program (SMP) amendments to the Department of Ecology (Ecology) for approval to comply with periodic review requirements.

FINDINGS OF FACT

Need for amendment

The County's comprehensive update to their SMP went into effect on October 30, 2017. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the County SMP pursuant to RCW 90.58.080(4). The County prepared a checklist that documents proposed revisions. 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 last SMP amendment, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The following provisions of the County SMP are proposed for change:

SJCC 18.50 Shoreline Master Program Article I. General Provisions

Definitions:

- The definition of **“Barge landing site, temporary”** was clarified by stating that such sites cannot result in any development as defined by the SMA (SJCC 18.20.020 “B” definitions).
- The definition of **“Normal residential appurtenance, shoreline”** was modified to represent a specific list of developments by deleting the phrase “or other detached residential structures.” The new definition also clarifies that stairways to access shorelines are also considered appurtenant structures whether or not a property is developed with a single-family residence. Lastly, generators are no longer limited to those associated with wind power in order to be considered an appurtenance (SJCC 18.20.020 “N” definitions).

- The definition of “**Shoreline development**” was clarified so as to not include the dismantling or removal of structures when there is no other development or redevelopment associated with the project (SJCC 18.20.020 “S” definitions).

General

- The Director of the San Juan County Department of Community Development (DCD) is now the decision-maker on shoreline substantial development permits for public pedestrian trail proposals. In addition, the DCD Director has the authority to make decisions on residential accessory structures that constitute substantial development, with the exception of shoreline stabilization, boathouses and overwater structures (SJCC 18.50.020.E.1.a.ii).

General applicability

- Minor edits to eliminate redundancy (SJCC 18.50.030.A, 18.50.030.B & 18.50.030.D).
- The SMA’s applicability to Federal lands clause was rewritten to provide clarity (SJCC 18.50.030.C.2)
- A new section was added outlining select developments that, by statute, are not required to obtain shoreline permits. These include remedial actions, boatyard improvements, select Washington State Department of Transportation (WSDOT) maintenance projects, projects consistent with an environmental excellence program and projects authorized through the Washington Energy Site Evaluation Council (SJCC 18.50.030.E).

Exemptions from shoreline substantial development permit requirements

- The dollar threshold for developments exempt from the requirement to obtain a substantial development was updated to \$7,047.00 per the Washington Administrative Code (WAC) 173-27-040(2)(a).
- The dollar thresholds for freshwater dock developments exempt from the requirement to obtain a substantial development permit were updated to be consistent with legislative changes made in 2014 (SJCC 18.50.040.D.8.b).
- The exemption associated with habitat restoration projects was clarified to include public or private fish or wildlife habitat or fish passage improvements per Revised Code of Washington (RCW) 77.55.181.
- A new provision was added to exempt development projects associated with retrofitting existing structures for the exclusive purpose of compliance with the Americans with Disabilities Act (ADA).
- The requirement for a statement of exemption for temporary barge landing sites, not associated with an approved project, was clarified to exclude the use of existing,

nonconforming temporary barge landing sites from this requirement (Note that a nonconforming temporary barge landing site that requires development, would still need a permit or exemption from one).

- Reference was stricken to a conditional use permit (CUP) requirement for residential appurtenances that were not specifically listed in the previous SMP. The definition of normal residential appurtenance now includes a set list of developments, eliminating the former CUP requirement (SJCC 18.50.050.B.4).

SJCC 18.50 Shoreline Master Program - Article II. General Regulations

Archaeological and historic resources

- An existing provision that allowed structural shoreline stabilization for the purposes of protecting verified archaeological and historic resources, was modified to require that such proposals must come directly from affected Native American nations (SJCC 18.50.100.D).

SJCC 18.50 Shoreline Master Program - Article III. Regulations for Specific Developments, Uses, Structures and Activities

Forest Practices

- Clarifications were made to when a shoreline permit or exemption from one is required for timber cutting within shoreline jurisdiction (SJCC 18.50.450.A.2).

Residential development

- Maximum lot width development requirements were clarified to not apply to residential accessory structures less than 30-inches in height (SJCC 18.50.540.A.2).
- The section on normal residential appurtenances was rewritten to eliminate conflicting language with the definition of “normal residential appurtenance, shoreline”. In addition, the term accessory development was incorporated to clarify that other residential development that does not meet the definition of an appurtenance, can still be permitted subject to the limitations of this section (SJCC 18.50.540.D).

Transportation facilities and parking

- Regulations governing barge landing sites was clarified to exclude the use of existing nonconforming temporary barge landing sites (when no development is involved) (SJCC 18.50.550.H.1).

- The County added a notification requirement for use of an existing nonconforming barge landing site. The operator must submit such notification to the DCD Director at least 10-days prior to use of the landing (SJCC 18.50.550.H.5).
- The County also added a requirement that DCD maintain a list of existing nonconforming barge landing sites to be updated annually (SJCC 18.50.550.H.6).

Shoreline developments, uses, structures and activities by designation

- Changes to the use table and footnotes were added to clarify that the DCD Director is now the decision-maker on public pedestrian trail proposals and select residential accessory developments (SJCC Table 18.50.600).

Chapter 18.80 – Application, Notice, Review, and Appeal Requirements

- The County’s permit procedures ordinance was also amended to clarify that the DCD Director is the decision-maker for public pedestrian trails projects and select residential accessory developments (SJCC 18.80.020.E.3, 18.80.020.G.4, 18.80.020.G.6, 18.80.020.H.2, & 18.80.020.L).
- Language was also added to clarify the date of filing for developments that require a shoreline CUP or variance (SJCC 18.80.020.G.4).

Chapter 15.12 – Flood Hazard Control Regulations

- The County updated its definition of “Floodway” to recognize those areas established by the Federal Insurance and Mitigation Administration on its Flood Insurance Rate Maps (FIRMs) (SJCC 15.12).

Amendment History, Review Process

The County prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. The public participation program included maintaining a County website specific to the amendment with a subscription service for interested parties to be notified of news flashes and/or upcoming steps associated with the review. The County also used more traditional forms of noticing including use of community bulletin boards and published newspaper notices. Local online notices were also posted on community sites/calendars.

The County 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 County 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 County 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 County consulted with Ecology and solicited comments throughout the review process.

The County held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on June 24, 2020 and continued through July 28, 2020. Joint local/state public hearings before the County Council were held on July 28, 2020 and August 11, 2020.

The County 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 County indicate notice of the hearing was published on June 24, 2020 in The Journal of the San Juan Islands and Islands Sounder newspapers.

Ecology distributed notice of the joint comment period to state interested parties on June 22, 2020. This included individual notices to affected tribal governments sent on June 18, 2020.

Six individuals or organizations submitted comments on the proposed amendments. Comments received generally focused on the following primary topics:

Non-conforming Temporary Barge Landing Sites

Several commenters opposed or questioned the County-initiated change to eliminate the need to obtain a certificate of exemption to use existing, nonconforming temporary barge landing sites consistent with the historic transport of cargo and frequency of use. Without a review process in place, commenters questioned how the county would track the proposed use of these sites and determine no net loss. In response to the comments received, the County clarified that use of temporary barge landings that involved “development” as defined by the SMP, would still need to obtain a permit or certificate of exemption as necessary. In addition, the County agreed to maintain a list of nonconforming barge landings sites to be updated annually by the Director of DCD. The County also created a notification procedure to address the tracking concerns raised and to give DCD and opportunity to review proposed use of these barge landing sites without the delay and expense associated with obtaining a certificate of exemption.

Permit Review Procedures

Some commenters raised concerns regarding the County-initiated change to no longer require a Hearing Examiner review for public pedestrian trail projects and select residential accessory developments, and that the change would erode the public’s ability to review and comment on such projects. The County clarified that while a public hearing would not be required, the amended process would still include public notice and opportunities for the public to comment on proposals being reviewed by the DCD Director.

Shoreline Stabilization to Protect Archaeological & Historic Resources

Several commenters supported the County-initiated change to consider allowing shoreline stabilization to protect archaeological resources only when the proposal is submitted by a Native American tribe. One comment in support of the change was the Swinomish Tribal Community Chairman, who suggested some edits to the proposed language to extend the provision to all affective Native American nations. The County agreed and adopted the requested change.

The County submitted to Ecology its responses to issues raised during the comment period on August 28, 2020. Ecology finds the county's responses are consistent with the statutory obligations for conducting periodic reviews. Furthermore, Ecology appreciates the County's efforts to incorporate additional changes which we find provide clear and effective resolution to the primary issues raised during the comment period, as outlined above.

The proposed SMP amendment was received by Ecology for initial state review on August 28, 2020 and verified as complete on September 22, 2020. The County solicited Ecology input throughout the periodic review process and had made suggested changes prior to the initial determination submittal. Ecology considered the issues raised during our joint comment period and collaborated with County staff to find potential solutions. Ecology had no further required or recommended changes to offer during our initial determination. Ecology prepared an initial determination that the amendment is consistent with the policy of the SMA and applicable guidelines. A written statement of initial concurrence was sent to the County on September 24, 2020.

With passage of Ordinance #08-2020, on October 27, 2020, the County authorized staff to forward the proposed amendments to Ecology for formal approval.

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 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 County.

Consistency with SEPA Requirements

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

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the County in support of the SMP amendment. These documents include a public participation plan and a periodic review checklist.

CONCLUSIONS OF LAW

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

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv)).

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

Ecology concludes that the County 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 County 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 are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.