

ATTACHMENT A: FINDINGS AND CONCLUSIONS

CITY OF SHELTON SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted September 13, 2021, Ordinance No. 1971-0621
Prepared by Department of Ecology on October 28, 2021

Use of this Document

Ecology's *Findings and Conclusions* (presented here in Attachment A), including reference to *Recommended Changes* (Attachment B), provides the factual basis for the Department of Ecology's (Ecology) decision on the City of Shelton's (City) proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. This document is divided 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. Attachment B outlines Ecology's identified recommended changes to the SMP amendment.

Brief Description of Proposed Amendment

The City of Shelton is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The City opted to use the standard review process in WAC 173-26-100 for this periodic review and associated amendment.

FINDINGS OF FACT

Need for amendment

Shelton comprehensively updated their master program in April 2015 and amended it in September 2017 to revise and update the Shoreline Environment Designation map to add a newly annexed area. The proposed 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. Shelton's SMP is a standalone document containing goals, policies and regulations. The SMP goals and policies are considered an element of the City's Comprehensive Plan. All other portions of the SMP are part of the City's development regulations. The Official Shoreline Designation Map is located in SMP Chapter 4, Figure 4-1. Critical area regulations found in Shelton Municipal Code (SMC) Chapter 21.64 Critical Area Protection are adopted by reference in SMP 5.5.2.1 and a copy is located in SMP Appendix A.

The SMP regulates new shoreline uses and development along segments of Hammersley Inlet, Oakland Bay, Goldsborough Creek and Goose Lake.

City of Shelton Shoreline Master Program

The following SMP sections are proposed to be amended:

Chapter 2 Applicability, Shoreline Permits, and Exemptions

2.3.2 List of Exemptions.

- Monetary threshold values are updated for substantial developments and freshwater docks. [1.a, 1.h]
- Adds a new provision to the fish and wildlife exemption allowing for restoration of native kelp, eelgrass beds and native oysters. [1.p]
- Adds a new provision listing those developments not required to obtain shoreline permits or local reviews. [1.q]
- Adds a new exemption addressing the retrofitting of existing structures for compliance with the Americans with Disabilities Act. [1.r]

Chapter 5 General Shoreline Use and Development Regulations

5.5 Critical Areas Protection

- Revisions remove the referenced critical areas ordinance number and date. [5.5.2.1]
- Revisions remove provisions now in the updated CAO including reference to the federal delineation manual and regulations that directed use of the 2014 Wetlands Rating System. [1.c, 1.e, 1.f, 1.g]

Chapter 6 Specific Shoreline Use and Modification Regulations

6.2 Shoreline Use and Modification Table. Adds Floating, on-water residences to Table 6-1 Shoreline Use Matrix and prohibits them in all environment designations consistent with the text in Section 6.14 Residential development.

Chapter 7 Administration

- Adds a new provision addressing special procedures for WSDOT projects. [7.1.8]
- Adds a new provision addressing relief procedures when shoreline restoration projects result in new areas being subject to the SMP. [7.1.9]
- Updates the name 'City Commission' to 'City Council'. [7.2.2]
- Adds the requirement for return receipt mail when filing permits with Ecology. [7.5.1]
- Rewrites 7.6 Ecology Review consistent with RCW 90.58.140(6) and the definition of the date of filing.

Chapter 8 Definitions

The definitions for "development" and "substantial development" are revised.

SMC Chapter 21.64 Critical Area Protection (CAO):

The following revisions are proposed to the CAO also included in SMP Appendix A:

- The term 'permit approval authority' is updated to 'Director'.
- The CAO is revised to reference the federal wetland delineation manual in the definition of 'wetland delineation' and the provision for wetland designation [21.64.030 and 21.64.100.B]
- SMC 21.64.030 Definitions – The term 'Wetland delineation' is updated to reference the federal wetland delineation manual.
- SMC 21.64.100 Wetland designation. Revisions reference the federal wetland delineation manual [B], and update the code to reference the 2014 Wetland Rating System and revise the rating system scores. [D]
- 21.64.130 Wetland buffers. Revisions throughout this section update the CAO consistent with Ecology's 2014 Wetlands Ratings System, including deletion of the existing tables and the addition of new tables including Table 1, Wetland buffer requirements, Table 2 listing impact minimization measures and Table 3 Buffer requirements when applicants choose not to provide a corridor or implement the minimization measures in Table 2.

- 21.64.135 Provisions for small isolated wetlands. These provisions relax some of the avoidance standards for small wetlands. The section is revised, adding an additional criterion specifying that a wetland may not be associated with a shoreline of the state or associated buffers for the allowance to apply. Additional revisions throughout this section update habitat point scores and rating system citations.
- 21.64.143 Wetland mitigation. Table 21.63.143 is revised to update ratios for Category 1 wetlands along with all ratios listed for rehabilitation and enhancement only. [B]

Amendment History, Review Process

Local SMP Amendment 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 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 program was comprehensively updated, 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.

Due to the COVID-19 pandemic, the City's public meetings were held virtually using Zoom. The City has no Planning Commission so all meetings addressing this topic were held with the City Council. A public hearing was held June 15, 2021. Notice of the hearing was published in the Shelton-Mason County Journal on June 3 and 10, 2021.

The record indicates the City completed a SEPA checklist and issued notice of an optional Determination of Non-Significance (DNS) on April 5, 2021. Notice of the optional DNS was published in the Shelton-Mason Journal. The City issued a Mitigated DNS on June 7, 2021 for the proposed SMP amendment. Ecology did not comment on the DNS. The Department of Commerce was notified of the City's intent to adopt on March 30, 2021.

With passage of Ordinance No. 1971-0621 on July 6, 2021, the City Council authorized staff to forward the proposed amendments to Ecology for formal review.

Ecology SMP Amendment Review and Approval Process

The proposed SMP amendments were received by Ecology for state review and verified as complete on September 13, 2021, satisfying the submittal requirements of WAC 173-26-110.

In compliance with the requirements of WAC 173-26-120, the state comment period began on September 20, 2021 and continued through October 20, 2021.

¹ https://www.sheltonwa.gov/departments/community_and_economic_development/shoreline_master_program.php

Notice of the state comment period was distributed via email to state and local interested parties identified by the City on September 16, 2021, in compliance with the requirements of WAC 173-26-120. The Skokomish, Squaxin and Port Gamble-S'Klallam tribes were individually notified and specifically notified and invited to comment. Notice of the comment period, including a description of the proposed amendments and the authority under which the action is proposed along with the manner in which interested persons may obtain copies and present their views was provided on Ecology's [website](#)² and as part of the written notice. No comments were submitted on the proposed amendment.

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.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology has identified six (6) changes (see Attachment B – *Recommended Changes*) related to critical areas protection standards, cost threshold updates, and definitions for consideration by the City. These changes would improve clarity and implementation of the SMP and are consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

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 City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of 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) June 7, 2021 for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed 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 staff reports.

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

² <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Shelton>

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 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-100, and WAC 173-26-110.

Ecology concludes that we have complied with the state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-100, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed periodic review amendments to the SMP are consistent with Shoreline Management Act policy, the applicable guidelines and the implementing rules.

Ecology has also determined that SMP would benefit from incorporation of the recommended changes identified in Attachment B. Ecology recommends these modifications, but they are not necessary for consistency with the SMA or applicable guidelines. The City may choose to adopt the recommended changes included in Attachment B – *Recommended Changes*. Pursuant RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of the proposed recommended changes before Ecology can take final action of this periodic review amendment.

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 recommended by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final.

Upon written receipt of the City's decision to include, propose alternative language, or reject Ecology's recommended changes, Ecology will take final action on this SMP periodic review amendment. The updated SMP will be effective 14 days from Ecology's final action approving the amendment.