

# ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF SUMNER SHORELINE MASTER PROGRAM

SMP Submittal accepted July 25, 2019 Ordinance No. 2692  
Prepared by Department of Ecology on March 1, 2020

## Use of this Document

Ecology's *Findings and Conclusions* (Attachment A), including reference to Required and Recommended Changes (Attachment B), provide the factual basis for Ecology's decision on the City of Sumner's (City) proposed amendment to their Shoreline Master Program (SMP).

## Brief Description of Proposed Amendment

The City of Sumner (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for approval to comply with periodic review requirements.

## FINDINGS OF FACT

### Need for amendment

The City's comprehensive update to their SMP went into effect in December 2014. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City Shoreline Master Program pursuant to RCW 90.58.080(4). The City 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 proposed changes are as follows:

#### Foreword *Sumner Shoreline Master Program Update Section:*

- Revisions to incorporate individuals involved in the current Shoreline Master Program amendment process and a summary of the amendment.

#### Chapter 1 *Introduction:*

- Incorporation of changes made to the definition of development in WAC 173-26-241(3)(e); and,
- Incorporation of the current substantial development cost threshold.

#### Chapter 4 *Shoreline Environment Designations:*

- Updates to the *Shoreline Environment Designation Map 4-1*, incorporating the most recent FEMA map mapping data to include the mapped floodway and floodplain;

- Changes to Table 4-8 *Bulk Dimensional and Vegetation Standards*, to allow a building height up to eighty feet within the Urban shoreline environment designation and Town Center Plan Area overlay, consistent with the Town Center Subarea Plan; and, the addition of footnote 8;
- Changes to *Maximum Building Height*, allowing exceedances to the established building height standards in Table 4-8 with a shoreline variance permit in compliance with RCW 90.58.320; and, the addition of standards for buildings built within the Urban shoreline environment and Town Center Plan area that exceed 35 feet in height.

Chapter 6 *General Shoreline Policies and Regulations:*

- Replacement of section VII. *Critical Areas Protection*, with the adoption of the critical areas code found in Sumner Municipal Code 16.46 through 16.56 with exceptions that do not apply in shoreline jurisdiction.

Chapter 7 *Specific Shoreline Development Policies and Regulations:*

- Addition of a new section XVII. *Shoreline Habitat and Ecological Enhancement Projects*, containing policies and regulations for restoration projects.
- Incorporation of special review procedures for Washington State Department of Transportation projects in section XX. *Transportation Facilities*, in compliance with RCW 90.58.140(5)(c) and RCW 47.01.485.

Chapter 8 *Shoreline Permit Requirements:*

- Additions to section I.A. *Exemptions from Substantial Development Permit*, incorporating new exemptions in compliance with WAC 173-27-040(2); and, removal of the freshwater dock exemption that is inapplicable in Sumner that prohibits all docks within shoreline jurisdiction.
- Incorporation of exemptions to local review under the Shoreline Management Act into a new section I.C. *Exemptions to Shoreline Permits* in compliance with WAC 173-27-044 and 173-27-045.
- Incorporation of shoreline restoration project relief procedures into a new section I.D. *Relief Procedures* in compliance with RCW 90.58.580;
- Changes to section II.F.16. *Permit Process*, amending the local appeal process consistent with Sumner Municipal Code 18.56;
- Changes to section II.F.16. *Permit Process*, clarifying the date of filing with Ecology consistent with RCW 90.58.140(6);
- Identification of the requirement to utilize the federal delineation manual in compliance with WAC 173-22-035 in section I. *Shoreline Permit Applications*.

Chapter 9 *Definitions:*

- The following definitions were amended: ‘development,’ ‘substantial development’ and ‘exemptions from substantial development permit requirements.’
- The following definitions were added: ‘nonconforming uses,’ nonconforming development, nonconforming structure, and nonconforming lot.

## 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. As part of the implementation of the public participation plan the city held an open house October 2, 2018 at the Sumner Library to gather early feedback on the scope of the amendment. The city also posted documents related to the periodic review using the city website to keep interested persons abreast of newly drafted materials related to the periodic review amendment.

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 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.

The City held a comment period on the proposed amendment following procedures outlined in WAC 173-26-100. The comment period began on November 15, 2018 and continued through November 29, 2018. A public hearing before the Planning Commission was held on May 2, 2019.

The City 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). The City published notice of the hearing on April 22, 2019 in the Pierce County Courier Herald Newspaper.

With passage of Ordinance #2692, on June 19, 2019, the City authorized staff to forward the proposed amendments to Ecology for final approval.

The proposed SMP amendment was received by Ecology for state review and verified as complete on July 25, 2019. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on August 5, 2019, in compliance with the requirements of WAC 173-26-120. The state comment period began on August 14, 2019 and continued through September 13, 2019.

The comments received focused on increasing protections on the White River in relation to rehabilitating and increasing Chinook habitat that was previously lost from the existing development pattern. The same comments were also sent to the City during their local comment period. Documentation of the City's responses for the local comment period were provided to Ecology as part of the record.

Comments received also included a request to provide documentation of changes resulting from comments sent to Ecology during the state public comment period for the comprehensive update of Sumner's SMP in 2013. In response to this request, Ecology provided the commenter the 2013 conditional approval documents of the Sumner SMP comprehensive update. These documents include required and recommended changes, many of which were incorporated from the requester's comment letter.

Ecology sent all comments it received to the City on September 25, 2019. On October 8, 2019, the City submitted to Ecology its responses to issues raised during the state comment period.

### 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 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 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 City in support of the SMP amendment. These documents include a view analysis for the Town Center Area, Adopted FEMA Firms, and Sumner Ordinance 2693 *Wetlands Protection*.

### Summary of Issues Identified by Ecology as Relevant to Its Decision

#### Building Height Allowances

The City has identified an internal inconsistency in the master program concerning the proposed allowance of buildings within the Urban Shoreline Environment Designation (SED) and the

Town Center Planning Area. The residential use and development standards found in Chapter 7.XV restrict residential structures to 35 feet in height.

FINDING: Ecology finds the restriction of all residential structures to 35 feet would preclude the City's goal to increase density in the Town Center and not meet the purpose of increasing the building height in the Urban Shoreline Environment Designation to 80 feet. Ecology recommends amending the residential use and development section for consistency with this height allowance. See Attachment B, Change 1.

In addition to the above change for internal consistency within the master program, Ecology also recommends adding footnote 8 to Table 4-8 to clarify the height allowance. See Attachment B, Change 2.

### Formatting

Ecology has identified a recommended change in review of the existing master program's alphanumeric numbering system and table of contents. See Attachment B, Change 3. Several Chapters of the master program, such as Chapters 3, 4, and 5 do not contain alphanumeric numbering or lettering for subsections creating unnecessary challenges finding subsections and providing citations for the document. Also, with the addition of sections from this amendment Ecology recommends reviewing the SMP and amending the Table of Contents to reflect the new document and adding additional sections to reflect the changes.

### Critical Areas Protections

Ecology has identified required changes necessary to incorporate the Critical Areas Ordinance by reference. As part of this amendment the City removed the embedded critical areas protections and replaced the standards with Sumner Municipal Code (SMC) 16.46 through 16.56. However, to meet several minimum requirements Ecology proposes the following changes:

FINDING: Ecology finds the removal of the entire critical areas section found in Chapter 6.VII creates gaps in conformance with the WAC 173-26-221(2) *Critical areas*. See Attachment B, Change 4. Ecology finds it necessary to retain general policies and regulations, and the purpose statement of in this section to incorporate the critical areas protections. Ecology also recommends retaining the definition for consistency with the other sections of the master program.

FINDING: Ecology finds the proposed adoption language found in Chapter 6.VII does not include specific, dated editions of the critical areas protections incorporated by reference. See Attachment B, Change 5. Ecology finds that a required change is necessary to incorporate the date and Ordinance number of all applicable Chapters of SMC Title 16 for compliance with WAC 173-26-191(2)(b), *Including other documents in the master program by reference*.

FINDING: Ecology finds the exceptions to the Critical Areas Protections found in Chapter 6.VII.a through f. are excluded from applying in the master program in order to remove procedures and standards that conflict with applicable standards under the Shoreline

Management Act. See Attachment B, Change 6. For full compliance with WAC 173-26-221(2)(b) *Critical areas*, the following changes should be implemented to this section:

Ecology finds SMC 16.46.140. *Standards for review for wetlands* contain many standards equivalent to those found in WAC 173-26-221(2)(c)(i) *Wetlands*. However, SMC 16.46.140.A.3 allows for reasonable use of the property without requiring conformance with WAC 173-27-170 *Review criteria for variance permits*, which is the process created in RCW 90.58.100 to insure the implementation of the SMP will not create a hardship. Ecology finds only SMC 16.46.140.A.3 is required to be excluded from applying in shoreline jurisdiction and the remaining standards in SMC 16.46.140 *Standards for review for wetlands* should be removed from the exclusions.

Ecology finds SMC 16.56. *Wildlife Habitat Areas*, contains regulations to allow reductions to stream buffers that conflict with the buffers established in Chapter 4 of the master program. Ecology finds that SMC 16.56.100.E. and F. is a required addition to the list of exclusions.

Ecology finds SMC 16.56. *Wildlife Habitat Areas*, contains allowances for uses and development within established stream buffers that conflict with the provisions in Chapter 6.V.III *Vegetation Conservation*, which regulates buffers areas in the master program. Ecology finds that SMC 16.56.100.G. is a required addition to the list of exclusions.

FINDING: Ecology finds the Flood Hazard Reduction standards were removed from Chapter 6.10 and not replaced with alternative code in the SMP. See Attachment B, Change 7. Ecology finds that the Sumner SMP does not contain standards for new development within the floodplain to avoid the need for structural flood hazard reduction measures to meet the requirements found in WAC 173-26-221(3)(c)(i) *Flood hazard reduction*. Ecology finds a required change is necessary to incorporate standards to meet this minimum requirement.

Further, Ecology recommends providing specific citations of those standards that do apply in shoreline jurisdiction in order to create a more comprehensive schematic for implementation of the master program by the City.

### Shoreline Permit Procedures

Ecology has identified required changes necessary to clarify the permit filing procedures in Chapter 8.II.F for consistency with Sumner Municipal Code 18.56.160.G and WAC 173-27-130. In addition, Ecology recommends fixing a typographical error in this section to clarify the state appeal process. See Attachment B, Change 8.

FINDING: Ecology finds language in the permit filing procedures inconsistent with changes made to remove the local shoreline permit appeal period. Text identifying the local appeal period should be removed for consistency with the City permit process. Also Ecology finds language should be changed to identify that all decisions, not only approvals, are required for filing with Ecology and the Attorney General's Office to ensure conformance with date of filing procedures. Ecology also recommends creating a standalone procedure for the state appeal process which was inadvertently placed under a different process step.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City 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 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 90.58.130 and WAC 173-26-090 and WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting 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 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 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 173-26-100, 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 updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in items 4, 5, 6, 7 and 8 of Attachment B are accepted by the City. The City may choose to adopt the recommended

changes in items 1, 2, 3, 4, 6 and 8 in Attachment B. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology of the approval or denial of the recommended changes.

Ecology approval of the proposed amendments with required changes is 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 or approval of proposed alternative language.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to the changes required 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. Approval of the updated SMP and proposed alternatives is effective 14 days from Ecology's final action approving the alternatives.