ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED PERIODIC REVIEW OF CITY OF TUMWATER
SHORELINE MASTER PROGRAM

SMP Submittal accepted January 17, 2019, Resolution No. R2018-021
Prepared by Department of Ecology on October 2, 2019

Brief Description of Proposed Amendment
The City of Tumwater (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 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).

SMP provisions to be changed by the amendment as proposed
The City prepared a checklist that documents proposed amendments. The amendments bring the SMP into compliance with requirements of the Act and state rules that have been added or changed since the last SMP amendment, to ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

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

1. Adjust the cost threshold for substantial development to $7,047;
2. Amend the definition of development to clarify the definition does not include dismantling or removing structures;
3. Add clarifications to exceptions to local review under the SMA;
4. Update shoreline exemptions to include retrofits to structures to comply with the Americans with Disabilities Act.
5. Adjust the cost threshold for requiring a substantial development permit for replacement docks on lakes and rivers to $20,000;
6. Increase the maximum ramp widths for docks from 3 feet to 4 feet in 6.9(B)(9)(d);
7. Amend the definition of “dredging” in SMP Chapter 9.46 to remove the phrase “…associated shorelines and wetlands;”
8. Incorporate updates to the Critical Areas Code, contained in Tumwater Municipal Code (TMC) 16.24, 16.28, 16.32 and 18.38, in SMP 5.2 by adopting the following Ordinances by reference:
   - Wetland Protection Standards Update (O2017-018);
   - Floodplain Overlay map and standards (O2016-009); and
   - Fish and Wildlife Habitat Protection (O2016-024).

9. Modify Table 3.16 to change buoys and recreational floats to “N/A” in the environment designations landward of the ordinary high water mark and add a related footnote to the table.

10. Change the use of the word “shorelines” in the SMP to “shorelines areas” or “shoreline jurisdiction.”

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. The City utilized its website to post documents and make them available to interested parties during the update. To encourage citizen involvement, the City advertised the periodic review by writing an article in the May 29, 2018 edition of Inside the City of Tumwater and held an Open House on June 26, 2018 that provided the public the opportunity to speak directly with Tumwater planning staff.

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 from the public throughout the local amendment process. A public hearing before the Planning Commission was held on July 24, 2018. 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). Affidavits of publication provided by the City indicate notice of the hearing was published on July 13, 2018 in the Daily Olympian Newspaper.

No individuals or organizations submitted comments to the City on the proposed amendment. The City created a statement to that effect in compliance with WAC 173-26-110(7).
With passage of Resolution R2018-021 on September 18, 2018, the City authorized staff to forward the proposed amendments to Ecology for formal approval.

The proposed SMP amendments were received by Ecology for review and verified as complete on January 17, 2019.

Ecology distributed notice of the state comment period to state interested parties on February 7, 2019. The 30-day state public comment period was held from February 12, 2019 to March 14, 2019. On February 20, 2019, the state public comment period was extended to March 18, 2019 because Ecology offices were closed due to inclement weather.

Ecology received a comment from the Squaxin Island Tribe asking if we were planning to engage in a government to government meeting. In response, Ecology offered to have a meeting, but no response was received. As a result, no further consultation with the Squaxin Island Tribe occurred.

After the close of the state comment period, the City requested a number of additional changes be incorporated into the SMP including recent City updates to the Tumwater aquifer protection code and allowances in the flood hazard area. These are outlined and discussed below.

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).

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) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update
Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, a periodic review checklist, a July 24, 2018 staff report, and documentation of the public participation process associated with the adoption of Critical Areas Code incorporated by reference into the master program.
Summary of Issues Identified by Ecology as Relevant to its Decision

Wetland Standards:
Ecology has identified a change necessary for consistency with WAC 173-26-221(2)(c)(i)(C) Alterations to wetlands, see Attachment B. The Tumwater SMP in 5.2.B.2 adopts by reference TMC 16.28 for compliance with RCW 90.58.610 and RCW 36.70A.480(3) which establish the authority to regulate critical areas within shoreline jurisdiction solely under the SMA. In addition to the exclusions from the TMC already found in Tumwater SMP 5.2.B.2, the allowances exempting small wetlands from mitigation sequencing and compensatory mitigation requirements found in TMC 16.28.095 should not apply within shoreline jurisdiction to ensure no net loss of ecological function.

FINDING: Ecology finds TMC 16.28.095 allows for the direct impact to wetlands, exempting small wetlands from mitigation sequencing and compensatory mitigation requirements inconsistent with the requirement to ensure no net loss of ecological function. Ecology finds that TMC 16.28.095 should be excluded from applying in shoreline jurisdiction for compliance with WAC 173-26-221(2)(c)(i)(C).

Fill and Excavation:
Ecology has identified recommended changes to address consistency with WAC 173-26-231(1) and (2) General principles applicable to all shoreline modifications. See Attachment C, items 4, 5 and 6. Tumwater amended the definition of dredging in Tumwater SMP 9.46 removing the language “…associated shorelines and wetlands” clarifying that dredging only occurs in areas below the Ordinary High Water Mark. The City suggested that existing policies and regulations found in Tumwater SMP 6.8 Fill would address excavation in associated shorelines and wetlands. However, Tumwater SMP 6.8 Fill only regulates the placement, not the removal of earth material.

To fill the gaps left with this change in the definition, Ecology consulted with the City. In response Tumwater proposed to amend Tumwater SMP 6.8 Fill, revising it to Tumwater SMP 6.8 Fill and Excavation, adding language to the policies and regulations to address excavation, and adding the definition of excavation.

FINDING: Ecology finds the amended definition of dredging is appropriate and clarifies that dredging only occurs in water. Ecology finds the addition of the definition of excavation and the additional policies and regulations further clarify and regulate activities on shorelands in compliance with WAC 173-26-231(1) and (2).

Incorporation of Most Recent Tumwater Municipal Code:
In the correspondence with the City after the local adoption process and submittal to Ecology, Ecology found discrepancies with the most recent TMC and the Ordinances adopted by reference in Tumwater SMP 5.2.B.2. See Attachment C, item 1.
Both the Geologically Hazardous Areas codified in TMC 16.20, and Wetland Protection Standards codified in TMC 16.28 have been updated since the last adopted version incorporated into the SMP. Geologically Hazardous Areas was updated with Ordinance O2016-024 on April 22, 2017, and the Wetland Protection Standards updated in Ordinance O2018-007 on October 16, 2018. For compliance with WAC 173-26-090(3)(b)(ii) Ecology recommends integrating the most recent development regulations into the SMP.

Additional Changes Requested by the City
After local adoption and submittal to Ecology, the City identified additional changes to incorporate into the amendment. The following changes are requested by the City and are recommended changes to this amendment.

Flood Hazard Reduction:

On March 14, 2019 the City requested Ecology incorporate a change to the flood hazard code within the Tumwater SMP to allow for compensatory mitigation to be located in the flood hazard area. The City regulates frequently flooded areas consistent with state and federal authorities with TMC 18.38, adopted by reference into the Tumwater SMP in SMP 5.2.B.2. At the time, TMC 18.38.390 specifically prohibited mitigation within the protected area.

On September 5, 2019, the City passed Ordinance O2019-007 which includes striking the language from TMC 18.38.390 that prohibited mitigation in the protected area. On September 19, 2019 the City requested Ecology incorporate Ordinance O2019-007 into the SMP.

Allowing Compensatory mitigation within the protected area is consistent with standards found in WAC 173-26-221(3)(c)(i) Flood Hazard Reduction, which allows for actions that protect and restore the ecosystem-wide processes or ecological functions within the channel migration zone or floodway and also require that flood hazard protection measures do not result in a net loss of ecological functions associated with rivers and streams.

This change is also supported by the following principles found in WAC 173-26-221(2)(b):

(iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.

(v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided that impacts to ecological functions are first avoided, and any unavoidable impacts are mitigated.

FINDING: Ecology finds the proposed change to allow mitigation on lands that lie within the boundaries of the floodway, the riparian habitat zone, and the channel migration zone to be consistent with the balance of the fundamental policy of the Act of allowing for preferred uses while meeting no net loss of ecological function. Ecology further finds that the
incorporation of the most recent flood hazard protection code into the master program will create a uniform approach to apply the flood code throughout the City and simplify implementation of the SMP.

Aquifer Protection Standards:
The City has identified a change to the SMP for consistency with the Tumwater Comprehensive Plan. See Attachment C, item 1.

On April 1, 2019, the City notified Ecology they were updating provisions in TMC 16.24 Aquifer Protection Standards and wished to incorporate this update into the SMP. In order to incorporate this change, the City requested Ecology wait for the passage of Ordinance O2019-010. Ordinance O2019-010 was passed on June 23, 2019.

FINDING. Ecology finds the integration of Tumwater Ordinance O2019-010 consistent with the principles found in WAC 173-26-221(2)(b).

CONCLUSIONS OF LAW
After review by Ecology 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 amendments satisfy the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendments will not foster uncoordinated and piecemeal development of the state’s shorelines (WAC 173-26-202(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 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 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 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, 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, Ecology has determined that the City proposed amendments, subject to and including Ecology’s required changes (itemized in Attachment B), 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). The City may choose to adopt the recommended changes shown in Attachment C. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology which of the recommended changes the City will adopt.

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 required or 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 action on the amendment.

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.