

## **ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED AMENDMENT TO THE CITY OF VANCOUVER SHORELINE MASTER PROGRAM**

SMP Submittal accepted April 28, 2021, Ordinance No. M-4334  
Prepared by Department of Ecology on May 7, 2021

### Brief Description of Proposed Amendment

The City of Vancouver (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process, on March 5, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated Ecology's recommended changes provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Vancouver comprehensively updated their master program in September 2012 and amended their SMP twice, in 2017 and 2018. 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. 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.

Vancouver's SMP is a standalone document containing goals, policies and regulations, and the Official Shoreline Map (which sets forth Shoreline Designations). The goals and policies set forth in chapters 3 and 4 are considered an element of the City's comprehensive plan. All other portions of the SMP are part of the City's development regulations. Critical area regulations are embedded in the SMP in Chapter 5A. The SMP regulates shoreline uses and activities along shorelines within city limits including portions of the Columbia River, Vancouver Lake, Burnt Bridge Creek, Lacamas Creek, Salmon Creek, Mill Creek, Curtin Creek and Lake River.

Vancouver Municipal Code (VMC) Chapter 20.760 Shoreline Management Area establishes the boundaries of the Shoreline Management Area and references and implements the Shoreline Master Program (Ord. M-3231, as amended).

In addition to the overall organizational changes, general edits to correct and update syntax, formatting and citations throughout the SMP, the following specific SMP sections<sup>1</sup> are proposed to be amended:

*Shoreline Master Program*

**1. Chapter 2. Applicability, Shoreline Permits and Exemptions**

- a. 2.1 Applicability is revised, reducing the extent of shoreline jurisdiction from the entire 100-year floodplain to the minimum allowed by the Shoreline Management Act. These revisions affect shorelines along portions of Burnt Bridge Creek, areas south and southeast of Vancouver Lake on the outer edge of the floodplain, and segments along the Columbia River from the eastern city limits downstream to Wintler Park, and portions of Port Parcel 3. Shoreline jurisdiction for all other shoreline areas in the City remain the full extent of the 100-year floodplain. Related changes are made to the Shoreline Map in Appendix A.
- b. Language is relocated from 2.1.1 clarifying the applicability of the SMP to Tribes and Tribal activities.
- c. 2.1.1 is revised consistent with WAC 173-27-044 and 173-27-045 to address those developments not subject to shoreline permits or local review.
- d. 2.3.2 List of Exemptions is updated to include new monetary thresholds for substantial development and docks; two provisions (nos. 17 and 19) now listed in 2.1.1 are deleted; an exemption addressing ADA retrofits is added; and two provisions which are not exemptions (nos. 15 and 16) are removed.
- e. 2.3.3 Statements of Exemption is revised to clarify when an exemption letter is sent.

**2. Chapter 4. Shoreline Designations**

- a. 4.3.4 Medium Intensity Shoreline Designation. Management policies in 4.3.4.4 are revised. Preference for water-oriented uses is retained while the policy related to allowances for non-water-oriented commercial uses is expanded consistent with WAC 173-26-241(3)(d). Related changes are in 6.2 Shoreline Use, Modification and Standards, Table 6-1 Commercial Uses, and in 6.3.4 Commercial Development.

**3. Chapter 5. General Shoreline Use and Development Regulations**

- a. 5.1 Provisions in this section are reorganized into two subsections. Additional revisions clarify relief procedures allowed in urban growth areas due to shoreline restoration projects, and expand mitigation options for developments on the Columbia River requiring work within the Aquatic Shoreline Designation.
- b. 5.3 Critical Areas Protection. This section is reorganized, removing the one subsection (5.3.1 General Provisions) and deleting the existing regulations. These are replaced with language clarifying how critical areas regulations, contained in Chapter 5A of the SMP, are implemented in shoreline jurisdiction.
- c. 5.6 Site Planning and Development. Regulation 5.6.1(1) duplicates the first regulation in 5.6.2 and is deleted. Regulation 5.6.2(12) is revised to expand mitigation options for fill in the Columbia River consistent with the revision in 5.1.2(6).
- d. New subsection 5.10 Septic Systems is added, and existing regulation 5.9(8) is relocated into this subsection.

**4. Chapter 5A Critical Areas Regulations**

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<sup>1</sup> All references are to the new section numbering in the reorganized draft SMP amendment.

All of existing Chapter 5A is struck and replaced with language from the City's updated Critical Areas Protection Ordinance (Chapter 20.740), ensuring it is current with the code updates which have occurred since 2012.

New SMP Chapter 5A is retitled, and the language throughout is modified for application in shoreline jurisdiction and for consistency with the SMA and implementing rules<sup>2</sup>. Changes include referencing the Shoreline Administrator, removing critical area permit requirements, aligning exemptions with SMP requirements, use of shoreline variance permits in place of reasonable use provisions and minor exceptions, ensuring critical area reviews are integrated into shoreline permit decisions or review, updating mitigation sequencing language, revising wetland habitat score ranges and related revisions to the wetland buffer tables consistent with Ecology guidance, ensuring trails are located in the outer 25 % of the wetland buffer and updating the language on stormwater management facilities in wetland buffers.

The most significant revision removes the City's Frequently Flooded Areas code (VMC Chapter 20.740.210) from Chapter 5A. The SMP makes clear these flood regulations apply throughout shoreline jurisdiction but are not directly incorporated into the master program. This helps reduce potential conflicts in administration of the flood code as required by the NFIP and FEMA. In addition, this change avoids the need for SMP amendments to incorporate future flood code updates being dictated by FEMA and/or Ecology. The SMP remains consistent with the flood hazard reduction<sup>3</sup> provisions of the SMP Guidelines.

## **5. Chapter 6 Specific Shoreline Use Regulations**

- a. 6.2 Shoreline Use, Modification and Standards Table. Table 6-1
  - i. Docks – Footnote 1 is revised to clarify that commercial and industrial docks are permitted while private residential docks may only be community or joint-use.
  - ii. Commercial Uses is revised, adding reference to footnote 2 and increasing the height allowance from 25' to 35' for non-water oriented commercial uses.
  - iii. Allowance for non-water oriented institutional uses is revised from a conditional use to a permitted use in the Medium and High Intensity designations, and the restriction to mixed use developments is removed in footnote 4.
  - iv. Signs - A new footnote 16 is added to clarify sign requirements. A related change is made in 6.3.12.
  - v. Allowance for structural shoreline stabilization in the High Intensity designation is revised from a conditional use to permitted.
- b. 6.3.3 Boating Uses – Mitigation options for adverse impacts of boating facilities to shallow water habitat are expanded. (6.3.3.1(5))
- c. 6.3.4 Commercial Uses is revised. Preference for water-oriented uses is retained while the allowances for non-water-oriented commercial uses is expanded consistent with WAC 173-26-241(3)(d). Related changes are in 4.3.4 Medium Intensity Designation Management Policies and 6.2 Shoreline Use, Modification and Standards, Table 6-1 Commercial Uses.

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<sup>2</sup> RCW 90.58, WAC 173-26-221, WAC 173-22 and WAC 173-27

<sup>3</sup> WAC 173-26-221(3). See SMP 3.6 Flood Prevention and Flood Damage Minimization and 6.4.3 Flood Control Works and In-Stream Structures. Additional regulations are found in use-specific sections of the SMP including 6.3.10 Recreational Development (see 6.3.10(5)) and 6.3.11 Residential Development (see 6.3.11(6) and (8)).

- d. 6.3.5 Forest Practices is revised adding regulation 5 which clarifies timber harvest is not a development.
- e. 6.3.12 Signs is revised to allow for sign requirements as part of a Special Sign District to prevail over the SMP sign provisions.
- f. 6.4.2.2 Dredging is revised to expand mitigation options for adverse impacts to shallow water habitat.
- g. 6.4.2.3 Dredge Material Disposal is revised to encourage environmentally sound beneficial uses of dredge material and removes the preference for land disposal.
- h. 6.4.9 Revetments – language is added to clarify that revetment elements below the OHWM are not considered fill, and to expand mitigation options for adverse impacts to shallow water habitat.

## **6. Chapter 7 Administration and Enforcement**

Revisions throughout the chapter improve clarity on the City’s decision making process.

## **7. Chapter 8 Definitions**

- a. Definitions are revised for the following terms: date of filing, development, and substantial development.
- b. Definition for the following term is added: non-conforming lot.

## **8. Appendix A - Shoreline Designation Map**

Maps are revised to reflecting the proposed change to the extent of shoreline jurisdiction along Medium Intensity and High Intensity designations, as set forth in SMP Section 2.1.1. The City proposes reducing shoreline jurisdiction from the full extent of the 100-year floodplain to the minimum allowed by the SMA. These changes affect Columbia River shorelines from the City’s eastern boundary downstream to the Vancouver Lake Flushing Channel, areas south and southeast of Vancouver Lake on the outer edges of the floodplain, and portions of Burnt Bridge Creek.

## **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. An important element of the public participation plan is the City’s SMP Periodic Review project [website](#)<sup>4</sup>. City staff developed draft documents. Due to the COVID-19 pandemic, the City held public meetings in a virtual format using GoToMeeting. The July 14, 2020 Planning Commission workshop, August 3, 2020 City Council workshop and September 16, 2020 public open house were all held remotely.

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 last amended, 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

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<sup>4</sup> <https://www.cityofvancouver.us/ced/page/shoreline-master-program-periodic-review>

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 including opportunities to comment on draft materials in September, October and November 2020.

The City issued a SEPA Determination of Non-Significance and checklist on January 8, 2021. Notice of the proposed amendment was submitted to Department of Commerce on January 14, 2021.

The City provided notice to local parties, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City's record indicates notice of the hearing was published in *The Columbian* on January 8, 2021. Ecology distributed notice of the joint comment period to state interested parties on January 5, 2021, including separate notice to the Yakama Tribe, Cowlitz Indian Tribe and the Confederated Tribes of Grand Ronde.

The City and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on January 8, 2021 and continued through February 8, 2021. A public hearing before the Planning Commission was held virtually via GoToMeeting on February 9, 2021.

The City accepted public comments on the proposed SMP amendments during the 30-day public comment period. Written comments were submitted by four individuals or organizations on the proposed amendments.

The City prepared a Comment Responsiveness Summary and considered all comments. Comments focused on concerns that protections for archaeological resources could be impaired by the proposed reduction in shoreline jurisdiction along the Columbia River; concern about long term maintenance of existing pilings which support nests for osprey and geese; and concerns about how the draft amendments may impact a proposal currently under review. The Port of Vancouver submitted a comment letter in support of the proposed amendment. The City reviewed and considered all comments and is proposing no additional revisions.

#### *Ecology consideration of comments received*

Ecology has reviewed all the comments received during the joint review process along with the City's responses.

**Finding.** Ecology finds the City's responses are consistent with the statutory obligations for conducting periodic reviews. Ecology finds the City considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data, as provided or raised during the comment period. The City determined, and Ecology concurs, that no additional amendments are warranted at this time based upon the significance of this information and the existing SMP provisions<sup>5</sup>.

#### *Initial Determination of Consistency*

The proposed SMP amendments were received by Ecology on February 19, 2021 for initial state review. The submittal was supplemented on February 22, 2021 and verified as complete on February 25, 2021. This began Ecology's review and initial determination.

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<sup>5</sup> WAC 173-26-090(3)(b)(iii)

A written statement of initial concurrence was sent to the City on March 5, 2021. Ecology considered the comments received, and the City's responses to these comments, and concluded the proposal was consistent with applicable laws and rules. Ecology proposed four recommended changes to improve clarity. These changes were identified as not required for consistency with the SMA or SMP Guidelines, but suggested to improve the SMP. The City's locally adopted SMP incorporates these changes.

#### *Other Studies or Analyses supporting the SMP amendments*

Ecology also reviewed supporting documents prepared by or for the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist, supporting documents for the locally initiated amendments including a memo providing a technical review and analysis regarding shoreline jurisdictional changes, and the Staff Report on the SMP Periodic Review amendment.

#### *Final Submittal*

With passage of Ordinance No. M-4334 on April 19, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal review. The City's final submittal of amendments to the City of Vancouver SMP were received April 27, 2021. The submittal was determined complete by Ecology on April 28, 2021.

## Consistency Review

#### *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) January 8, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in *The Columbian* on January 8, 2021.

## 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 not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(2)(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(2)(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 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 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 173-26-104, 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 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 and all comments received, Ecology has determined that the City's proposed amendments are consistent with the Shoreline Management Act policy and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions) and implementing rules. With this approval, Ecology affirms the City has completed the requirement for a periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.