

MEMORANDUM

TO: Tim Woolett, Senior Planner, City of Sequim
Barry Berezowsky, Community Development Director, City of Sequim
CC: Jackie Chandler, Shoreline Administrator, WA Department of Ecology
FROM: Michelle McConnell, Regional Shoreline Planner, WA Department of Ecology
Date: July 8, 2021
Subject: Sequim SMP Periodic Review Amendment - Initial Determination of Consistency
Sent via email to: twoolett@sequimwa.gov; bberezowsky@sequimwa.gov; jcha461@ECY.WA.GOV;

Use of this Document

Ecology's *Determination of Initial Concurrence* provides Ecology's review of the proposed amendment to the City of Sequim (City) Shoreline Master Program (SMP). This document is divided into two sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process; and **Initial Determination** of the proposed amendment with next steps.

Attachment 1 itemizes issues the City needs to and/or can opt to address prior to local approval and Ecology's final approval of the proposed amendment.

Brief Description of Proposed Amendment

The City of Sequim (City) is conducting a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted their draft SMP amendment to Ecology for an initial determination as required by the joint review process and consistent with WAC 173-26-104(3). The SMP regulates shoreline uses and activities along approximately 1 mile of shorelines within city limits on Sequim Bay.

FINDINGS OF FACT

Need for amendment

Sequim comprehensively updated their master program in November 2013. 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 City has also proposed revisions to address changes to statute, rule, local circumstances, new information and 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 local circumstances, new information, or improved data.

The Sequim SMP is a standalone document containing goals, policies and regulations, and the official shoreline map. The goals and policies set forth in Chapter 4 are considered an element of the City's comprehensive plan. The SMP is referenced by the City's development regulations at Sequim Municipal Code (SMC) Chapter 19.05

Shoreline Master Program that codifies and implements the SMP Adoption Ordinance. Critical area regulations are established in the SMP at Chapter 6.1.4 and Appendix A. The boundaries of the Shoreline Management Area and Shoreline Designations are established in the SMP at Chapter 1.3, the Figure 1-1 jurisdiction map, and Chapter 5, including Figure 5-1 Environmental Designations map and Table 5-1 Shoreline Environmental Designation (SED) area descriptions.

In addition to document construct/organizational changes, general edits to correct and update syntax, and formatting and citation corrections, the following sections of the SMP are proposed to be amended:

Chapter 1. INTRODUCTION

- 1.1 Purpose – Clarify language regarding SMP effective date; and shoreline critical area regulations;
- 1.3 Shoreline Jurisdiction – Clarify language to include in-water areas as part of jurisdiction;
- 1.4 Critical Areas in Shoreline Jurisdiction – Clarify language about SMA – GMA intersect, and the shoreline critical area provisions of the SMP;
- 1.6 Public Outreach – Clarify language to specify the previous comprehensive update public process, SMP adoption, and ongoing commitment to public outreach and stakeholder engagement for all future SMP amendments.

Chapter 2. INVENTORY AND CHARACTERIZATION SUMMARY

- 2.5 Conclusions – Clarify language about physical configuration of a culverted stream.

Chapter 3. DEFINITIONS

- *Critical saltwater habitats* – Term added for consistency with WAC 173-26-221(2.c.iii);
- *Development* – Add clause to clarify actions not considered development per WAC 173-27-030(6);
- *Nonconforming lot*; and *Nonconforming development or structure* – Terms added for consistency with WAC 173-27-080;
- *Nonconforming use* – Revise to clarify term as separate from other related terms, consistent with WAC 173-27-080;
- *Substantial development* – Revise to reflect the current fair market value dollar threshold, and to simplify the text for reliance on WAC 173-27-040 and the OFM-established amount.

Chapter 4. MASTER PROGRAM GOALS AND POLICIES

- 4.2 General Goals and Policies for Master Program Elements – Remove text that is duplicative;
- 4.2.8 Critical Areas Element – Clarify language about direct incorporation of shoreline critical area provisions as Appendix A, and the requirement for using the most current, accurate scientific and technical information;

Chapter 5. SHORELINE ENVIRONMENTAL DESIGNATIONS (SEDs)

- Clarifying language added to differentiate shorelines in City limits and those in the UGA, and to establish helpful and required disclaimers about approximate mapping, site-specific details, and boundary interpretations of shoreline jurisdiction and SEDs;
- Urban Conservancy Purpose – Addition of example allowance for research activities that ensure>NNL.

Chapter 6. DEVELOPMENT STANDARDS AND USE REGULATIONS

- Opening clause revised for consistency with required statement per WAC 173-26-191(2.a.iii.A);

- Use Table 6-1 – Allowance/prohibition notations for Aquaculture revised for internal consistency with SMP 6.3.3 Aquaculture provisions;
- 6.1.1 Building height, marine buffers, and building setbacks – Clarify text to differentiate shoreline and critical area buffers and setbacks;
- 6.1.1(6) – New provision added to allow an administrative buffer reduction with criteria, for situations when the standard buffer is interrupted by a road;
- 6.1.4 Critical Areas Development and Performance Standards – Revise to clarify the shoreline critical area provisions of the SMP and reflect the direct incorporation of SMC 18.80 CAO as Appendix A;
- 6.1.4(1 – 6) – Extensive added provisions to identify specific SMC 18.80 provisions of Appendix A that are modified/excepted for application in shoreline jurisdiction;
- 6.3.6 Marinas/Boating Facilities – Revise to clarify language regarding the existing John Wayne Marina and future marinas/boating facilities, and to differentiate allowance or prohibition for public and private marinas.

Chapter 7. ADMINISTRATIVE PROCEDURES

- 7.1 Shoreline Permit Requirements – Revise to clarify language about substantial development and fair market value;
- 7.2 Exceptions to Local Review and Permit Requirements – New provision added to specify the activities that do not require SMP review or permitting per WAC 173-27-044 and -045;
- 7.3 Exemptions from Substantial Development Permit Requirements – Revise to remove the locally-abbreviated, reorganized list of SDP exemptions, to establish strict reliance on those exemptions established at WAC 173-27-040, and to provide a brief summary statement with common examples to aid the reader;
- 7.4 Permit Procedures – Revise to clarify Shoreline Administrator actions for permit review documentation and permit filing requirements per WAC 173-27-130;
- 7.4.1 Substantial Development Permits – Revise to update the fair market value dollar threshold to the current amount; and revise to clarify date of filing and appeal timelines;
- 7.4.2 Conditional Use Permits - Revise to clarify date of filing and appeal timelines.

Appendix A – Critical and Environmentally Sensitive Areas Protection – Revised to remove the outdated 2012 version of SMC 18.80 Critical and Environmentally Sensitive Areas Protection and wholly replace it with the current 2017 version Critical Areas Regulations, per the revised SMP 4.2.8 and 6.1.4 references.

Appendices B – D – Deleted from the SMP as non-regulatory components to become separate, stand-alone technical supporting documents as prepared for the 2013 comprehensive update, including:

- Appendix B Inventory and Characterization Report (November 2013)
- Appendix C Restoration Plan (November 2013)
- Appendix D Cumulative Impact Analysis (November 2013)

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](#)¹. A project description, FAQ handout, slideshow presentation, and

¹ <https://www.sequimwa.gov/371/Shoreline-Master-Program>

draft documents were posted online. Due to the COVID-19 pandemic, the City held public meetings in a virtual format using Zoom, including a Community Open House and status briefings at Planning Commission and Council meetings, 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 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 from October 2020 to May 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 *Peninsula Daily News* on March 28, 2021. Ecology distributed notice of the joint comment period to state interested parties on March 19, 2021, including separate notice to the Lower Elwha Klallam Tribe, Jamestown S'Klallam Tribe, Makah Tribe, and Quileute Nation.

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 March 28, 2021 and continued through April 27, 2021. A joint public hearing before the Planning Commission was held virtually via Zoom on April 20, 2021. One party provided verbal testimony essentially repeating the same comments already submitted in writing.

The City accepted public comments on the proposed SMP amendments during the 30-day public comment period. Written comments were submitted by three (3) organizations on the proposed amendments.

The City prepared a Comment Response Matrix and considered all comments. Comments focused on concerns about: definitions, critical areas protections, shoreline buffers and setbacks, marinas/boating facilities, mapping, general goals and policies, and research activities. The City reviewed and considered all comments and is proposing only minor additional clarifying revisions.

The proposed SMP amendments were received by Ecology on June 23, 2021 for initial state review. The submittal was verified as complete on June 24, 2021. This began Ecology's review and initial determination.

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) on March 26, 2021 for the proposed SMP amendments. The record indicates notice of the DNS was published in the *Peninsula Daily News* on March 28, 2021.

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 gap analysis and the Agenda Bill staff report on the SMP Periodic Review amendment providing findings of fact and staff analysis.

Ecology consideration of comments received

Ecology has reviewed all the comments received during the joint review process along with the City's responses. 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 only minor additional amendments are warranted at this time based upon the significance of this information and the existing SMP provisions².

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology's final decision on the proposed amendments to the City's SMP, with Findings specific to each issue and both required and recommended changes identified consistent with the SMA and applicable guidelines:

Shoreline environmental designation purpose and criteria

The City's Comment Response Matrix #12 includes suggested edits to Chapter 5 Urban Conservancy – Purpose text (PNNL) to include research activities. The City primarily uses the shoreline environment designation (SED) system established by WAC 173-26-211, with the following designations established at SMP Chapter 5, including a few exceptions and local tailoring.

- **Urban** – upland areas landward of ordinary high water mark (OHWM), except also applied to the in-water area within the existing John Wayne Marina breakwater;

² WAC 173-26-090(3)(b)(iii)

- **Research District** – a locally tailored designation applied to upland areas pre-designated in the UGA where the existing Pacific Northwest National Laboratory (PNNL) is located;
- **Urban Conservancy** – upland areas landward of OHWM, except also applied to intertidal and subtidal areas of Pitship Marsh in the City and Washington Harbor in the UGA, where shoreline features otherwise qualified for Natural are bounded by existing modifications, such as public roads and hard armor bulkheads;
- **Shoreline Residential** - upland areas landward of OHWM primarily developed and/or zoned for residential use;
- **Natural** - upland areas landward of OHWM that are ecologically intact and suitable for only very low intensity use;
- **Aquatic** – areas waterward of OHWM, except for the in-water areas within the existing John Wayne Marina breakwater, and the intertidal/subtidal areas of Pitship Marsh and Washington Harbor that are otherwise designated.

The designations are depicted in the map of Figure 5-1 and described by shoreline segment 'areas' in Table 5-1, as well as the Boundary Description text for each and numerous annotated photographs of shoreline locations. Ecology found the overall system consistent with WAC 173-26-211, but the details of the marina and tidal wetland exceptions were not accurate and internally consistent, the document formatting could be improved to aid navigation, and the SED map is provided only as a small static image embedded in the document making it hard to use.

Ecology has identified a required change to ensure the Purpose and Designation Criteria accurately reflect the City's application of the Urban and Aquatic designations, included in Attachment 1. Ecology has also identified additional recommended changes to clarify the text of the Research District, Urban Conservancy, Shoreline Residential, and Natural designations for accuracy and internal consistency, and to consider future efforts to modernize the SED map using GIS, included in Attachment 1.

Marinas and Boating Facilities

The City proposes text revisions to the Marinas/Boating Facilities definition and use regulations to better clarify allowances for new or expanded facilities due to recent concerns addressed by a 2018 Administrative Interpretation about public/private marinas and Comment Response Matrix #6 (Port of Port Angeles, current owner of existing John Wayne Marina), and in response to Comment Response Matrix #8 (PNNL) regarding piers/docks for research.

Ecology finds the proposed revision to SMP Chapter 3 Definition for Boating Facilities to exclude docks for 'research applications' is not consistent with WAC 173-26-241(3.c) that only excludes 'docks serving 4 or fewer single-family residences' and that, as written, inappropriately establishes applicability standards in a definition. Ecology also finds that the proposed revisions to the 6.3.6 Marinas/Boating Facilities use regulations would benefit from additional clarity to effectively achieve the City's intent to:

- Ensure open public use of the existing marina, and any future expansions or new marinas; and
- Regulate the use of property without regard to ownership.

The SMA (RCW 90.58) and SMP Guidelines (WAC 173-26) do not give SMPs the authority to regulate property ownership. Local SMPs do have authority to regulate appropriate shoreline use and development based on current conditions and community vision, while achieving a locally-tailored balance between resource protection, public access, and use & development activities.

Ecology has identified recommended changes to clarify the Chapter 3 Definition and 6.3.6 Marinas/Boating Facilities use regulations, included in Attachment 1.

Critical areas protections and mitigation vs. restoration

The City proposes a minor edit to the SMP 4.2.8 Critical Areas Element Goal for consistency with the WAC 173-26-221(2.a.ii) requirement to to:

Provide a level of protection to shoreline critical areas that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

The City's Comment Response Matrix #3 includes a suggested alternative revision (WDFW) that the City declines with rationale that accurately differentiates between the mitigation of development impacts and the restoration of degraded shorelines. As written, the 4.2.8 Goal statement addresses both this WAC -221 'no net loss' (NNL) requirement, and the separate WAC 173-26-186(8.c) requirement to restore shorelines with impaired ecological functions. Under WAC -186(8), both NNL and restoration are part of the overall principle for protecting shoreline ecological systems, but NNL is to be addressed by:

(b)(i) Regulations and mitigation standards that ensure each permitted development will achieve NNL;
and

(b)(ii) Regulations to ensure that exempt development in the aggregate will result in NNL.

Whereas the restoration requirement is listed separately as:

(c) Goals and policies for restoration of impaired shoreline ecological function.

Restoration efforts can provide 'lift' to existing conditions separate from the mitigation of development impacts, and both types of action (required and voluntary) benefit overall shoreline ecological health. Ecology has identified a recommended change to SMP 4.2.8 for better clarity and consistency with the WAC, identified in Attachment 1.

Research & Development shoreline use and development

The City's Comment Response Matrix #11 includes a suggested mapping correction (PNNL) that the City declines as beyond the scope of the current amendment. The locally-tailored Research District Environmental Designation is only applied to shorelines located in the City's Urban Growth Area (UGA) that are pre-designated under WAC 173-26-150. These areas are under County jurisdiction until annexed by the City.

The Comment Response Matrix #12 and #13 include suggested text revisions (PNNL) about research activities, instruments and installations. The City agrees with and proposes alternative text for the Chapter 5 Urban Conservancy designation Purpose to specify allowance for research activities. The City also agrees with removal of 'Marinas' as a Research & Development (R & D) accessory use, but declines adding an outright exemption for research instruments/installations.

Comment Response Matrix #14 (PNNL) seeks clarity on the provision for vertical expansion of existing R & D buildings, and the City references height limits due to view corridor requirements established elsewhere in the SMP

Mapping - Ecology finds the Figure 5-1 Environmental Designations Map uses a range of colors to show the locations of the five upland Environmental Designations. The City is proposing extensive edits to the opening text of Chapter 5 to better describe the purpose and limitations of the map, establish that boundaries depicted are approximate and are to be interpreted on the ground based on site-specific evaluation, and that the text prevails if there's a mapping error. The last paragraph of the opening text establishes that any areas not mapped or designated are assigned a default Urban Conservancy designation, as required by WAC 173-26-211(2.e). This

default would not apply where the mapping is imprecise and an unshaded area adjacent to an Environmental Designation color meets the same Designation Criteria. There is also a distinction between what designations apply to in-water areas and to adjacent uplands, as appears to be the case at the PNNL location. The above described clarifications for upland and in-water exceptions to the application of SEDs, and future mapping improvements will help address PNNL's concerns.

Regulations – Ecology finds internal inconsistency between the Chapter 3 Definition for Research and Development (R & D) Facilities and the SMP's Chapter 5 and 6.3.5 overall approach to regulating both R & D uses/activities and structures/development, and distinguishing primary uses/structures from accessories. PNNL's specification of instruments and installations provides helpful clarity, and the provisions about vertical expansion and impervious surface limits would benefit from added clarity to aid implementation.

Ecology has identified recommended changes to Chapter 3 Definitions and 6.3.5 Research & Development improve clarity for implementation, identified in Attachment 1.

Ecology required and recommended changes

Ecology has determined the amendments are largely consistent but we have identified elements that appear inconsistent with applicable laws and rules. The intent of this initial review is to provide local government an opportunity to consider Ecology's analysis before local adoption. We have attached suggested approaches to address our concerns.

Ecology has identified 1 required change and 8 recommended changes to the SMP amendment for consideration by the City, found within Attachment 1, items REQ-1 and Rec-1 through Rec-8. The required change is needed for consistency with WAC 173-26-211 and the recommended changes would improve implementation and reduce confusion for both applicants and practitioners.

Findings. Ecology finds that Attachment 1, items REQ-1 required change is needed for consistency with WAC 173-26-211, and items Rec-1 through Rec-15 recommended changes, if implemented, would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines.

INITIAL DETERMINATION

The following constitutes Ecology's written statement of initial concurrence, consistent with WAC 173-26-104(3)(b)(ii):

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City's proposed amendment, including the required and recommended changes identified in Attachment 1, 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).

Next Steps

As described under WAC 173-26-104(4), the next step in the approval process is for your jurisdiction to consider the required and recommended changes identified by Ecology and formally adopt the amendment through resolution or ordinance, then send the final SMP submittal for formal agency approval as outlined in WAC 173-26-110. We anticipate being able to approve your SMP Periodic Review amendment after formal submittal is provided and found complete, per WAC 173-26-120(1.a).