

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

SMP Submittal accepted September 22, 2014, Resolution No.2013-26

Brief Description of Proposed Amendment:

The City of Bellingham has submitted to Ecology for approval, a limited amendment to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The purpose of the amendments is to make the City's SMP consistent with the recently adopted Waterfront District Master Plan, Development Regulations and planned changes to the Comprehensive Plan (WDP).

FINDINGS OF FACT

SMP provisions to be changed by the amendment as proposed:

Amendment #1 – The City is proposing to change one of the environment sub-designations within the Waterfront District in order to make the SMP consistent with the recently-adopted WDP. In addition, a “use exception area” has been added to a specific portion of this reach referred to as the Log Pond. Within this area, standalone non-water-oriented uses would be permissible. The following are proposed to facilitate this change:

BMC 22.11.030.F – Add language and a new table to the Development Regulation Matrix for the Waterfront District for the use exception area between “Myrtle Avenue (extended) and the southern corner of the “Log Pond”. The table includes the following information:

- Permitted Uses – Water-oriented, Shoreline mixed use structures and Stand-alone non-water-oriented uses,
- Setback from the ordinary high water mark (OHWM) – 75-feet,
- Buffer from OHWM – 50-feet,
- Height Limits – Up to 35-feet = Allowed, >35-feet to 50-feet = Allowed with view analysis, >50-feet = Variance required,
- Public Access Required – Subject to 22.03.030.F.6.h and 22.08.90, and
- Habitat Restoration Required – Yes, pursuant to 22.03.30.F.6.h and 22.09.100.

BMC 22.03.30.F.4 – Add the following to the Permitted Uses Within the Waterfront District Shoreline Mixed-Use Sub-Areas:

iv. Stand-alone non-water-oriented uses are only permitted within the “Use Exception Area” specified in 22.11.030.F

BMC 22.03.30.F.2 – Add the following to the Management Polices associated with the Waterfront District environment designation:

g. The waterfront district site should be redeveloped with a mix of uses including administrative, professional, institutional, housing, retail and water enjoyment development, services, educational and cultural facilities and water-dependent and water-related industrial uses. Certain areas may be utilized for stand-alone non-water-oriented uses where appropriate.

BMC 22.03.30.F.6 – Add the following language to the waterfront district mixed-use sub-area regulations:

m. Non-water-oriented uses shall not occupy the portion of the ground floor of a mixed-use structure that fronts on or is adjacent to the shoreline except within the “Use Exception Area” identified in 22.11.030.F. (Only parking in the rear of the ground floor of a shoreline mixed-use structure is permitted.)

o. Height of a stand-alone non-water-oriented uses shall be subject to the requirements in section 22.03.30.F.6.g and the table in 22.11.30.F.

p. Non-water oriented uses within the “Use Exception Area” shall provide public access and habitat restoration between the subject development and the adjacent shoreline subject to the requirements in subsections (F)(6)(i) through (l) of this section.

BMC 22.11.10 – Change the sub-designation from WD – Recreational Uses to WD – Shoreline Mixed Use, and delineate the “Use Exception Area” on the Marine Shoreline Reaches 1-8 map.

Amendment #2 – The City is proposing a change to clarify the allowance of residential uses within the WD- Shoreline Mixed Use environment sub-designation. The SMP currently specifies that residential uses are allowed in the “Marine Trades” subarea of the Waterfront District, however the underlying zoning does not allow residential use. The following change is proposed to correct this inconsistency:

BMC 22.03.30.F.4.b – Strike the reference to residential uses within the Permitted Uses Within the Waterfront District Shoreline Mixed-Use Sub-Areas:

ii. Non-water-oriented uses ~~including residential uses~~ within a shoreline mixed-use structure subject to the requirements in subsection (F)(6) of this section.

Amendment History, Review Process:

The City indicates that the proposed SMP amendments originated from a local planning process that began in June 2013 following the Planning and Development Commission’s recommendation of approval of the City’s WDP. The WDP process originated in 2005 when the Port of Bellingham (Port) acquired the site of the former Georgia Pacific pulp and tissue mill, consisting of 137-acres of waterfront property and tidelands adjacent to Bellingham Bay. Combined with other City and Port holdings in the area, the WDP establishes a redevelopment framework for 237-acres on Bellingham Bay.

A comprehensive update to the City’s SMP was completed in February 2013 while the WDP planning process was still underway. The current Waterfront District environment sub-designations in the SMP were based on a previous concept that envisioned the area of the “Log Pond” as a large public park. In

late 2012, the Port altered the WDP preferred alternative to shrink the park acreage in this area and retain a majority of the land area for industrial use. According to the City, the amendments now being proposed were discussed with Ecology prior to final approval of the comprehensive SMP update. The City and Ecology reached an understanding that a limited amendment would likely be sought following the WDP planning process in order to increase consistency between the two documents.

The City issued a non-project State Environmental Policy Act (SEPA) Determination of Non-Significance on June 7, 2013 related to the SMP amendments. The comment period expired on June 21, 2013, but was extended to July 3, 2013 based on a request from a concerned citizen.

The record shows that the City's Planning Commission issued a Notice of Public Hearing on June 9, 2013. The notice was published in the Bellingham Herald and posted on the City's website in addition to being circulated to agencies with jurisdiction as well as other interested parties including the Waterfront Advisory Group and the Bellingham Bay Action Team. The Commission held the public hearing on the proposed amendments on July 11, 2013. At the conclusion of the meeting, the Commission issued a recommendation of approval to the City Council which was formally issued on October 11, 2013.

According to the City, on October 18, 2013 the City Council office published a Notice of Public Hearing in the Bellingham Herald. In addition, the notice was circulated to the Mayor's Neighborhood Advisory Board, Neighborhood Association Presidents and various special interest organizations. The City Council held a public hearing on November 18, 2013 and heard presentations from City staff and the public testimony on the proposed SMP amendments. With the passage of Resolution 2013-26, the City Council directed City staff to forward the proposed SMP amendments to Ecology for review.

The proposed SMP amendments were received by Ecology for state review on June 25, 2014. Upon receipt of additional information requested, Ecology verified the submittal as complete on September 22, 2014. Notice of the state comment period was distributed to state task force members and interested parties identified by the City on October 6, 2014, in compliance with the requirements of WAC 173-26-120. The state comment period began on October 15, 2014 and continued through November 17, 2014. The notice was published in the Bellingham Herald, the City's official newspaper of record. In addition, postcards and electronic mail were used to directly notify individuals and agencies/organizations identified on the City's interested parties list. Twelve individuals or organizations submitted comments on the proposed amendments. Ecology sent all written comments it received to the City on December 2, 2014. Following two requests for additional time, the City submitted to Ecology its responses to issues raised during the state comment period on October 20, 2015.

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 limited 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).

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 on June 7, 2013. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following reports, studies, map portfolios and data prepared for the City in support of the SMP amendment:

- *The Waterfront District Sub-Area Plan – Port of Bellingham/City of Bellingham,*
- *City of Bellingham Waterfront District Development Regulations (BMC 20.37.400 – 480),*
- *City of Bellingham Waterfront District Design Standards (BMC 20.25.080),*

Summary of Issues Raised During The Public Review Process:

The City's SMP limited amendment public review process was at times contentious. Considerable debate centered on the following topics:

The proposed change in the Waterfront District environment sub-designation from Shoreline Recreational to Shoreline Mixed Use.

Comments submitted held that the area of the Log Pond is best suited for public access and habitat restoration than for industrial use. Other comments stated that the change was being made in haste without the proper inventory and characterization citing how the Log Pond was for years envisioned as a public park as one of the only restorable beaches on Bellingham's waterfront. Others suggested that the buffer/setback from OHWM be widened to 150-feet to adequately protect the aquatic areas of the Log Pond, stating that such increases are necessary to offset the increased intensity of the adjacent industrial uses.

The creation of a "Use Exception Area" and the allowance of stand-alone non-water-oriented uses near the Log Pong.

Many commented that non-water-oriented uses were not allowed under the Shoreline Management Act (SMA) or its implementing rules and guidelines. One commenter stated that approving the use exception area here would set a statewide precedent for inappropriate use of the state's shorelines and that the cumulative effect to additional amendments like this one would undermine the SMA. Some stated that there was plenty of vacant industrial land adjacent to the Log Pond outside of shoreline jurisdiction where non-water-oriented uses could exist, and therefore there was no justifiable reason to allow these uses in shoreline jurisdiction.

General process and timing issues.

Comments held that the City should not have started the SMP limited amendment process until the WDP review was complete and that the amendment came too quickly since the SMP was recently updated. Some believe the WDP should be crafted to be consistent with the current SMP and not the other way around.

A detailed list of comments received during Ecology's public comment period, along with the City and Ecology responses, are included in Appendix C – Public Comment Summary.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Non-Water-Oriented Uses

The City's decision to allow stand-alone NWO uses within a limited portion of the WDP is consistent with the SMP guidelines. The Waterfront District environment designation was created under the Special Area Planning (SAP) provisions found in WAC 173-26-201(3)(d)(ix). Special Area Planning is a tool available to local governments on sites or areas that contain complex shoreline features or issues where more focused attention is required. Specifically, SAP may be used to address public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration or other issues best addressed on a comprehensive basis. The SMP Waterfront District purpose is as follows:

*To plan for, protect and implement restoration of the shoreline ecological function, reserve areas for water-dependent and water-related uses, maximize public access to the shoreline and accommodate shoreline mixed uses **and non-water-oriented uses where appropriate** (BMC 22.03.030.F.1)*

The guidelines outline a general sequence for regulating uses within a high-intensity shoreline environments such as the Waterfront District (WAC 173-26-211(5)(d)(ii)).

The area of the Log Pond was identified as an area suitable for NWO uses due to its shallow bathymetry and presence of eelgrass, making direct access for water-dependent uses infeasible or impractical. The area has also long been envisioned as a public park with an enhanced beach to improve nearshore habitats and to provide public access. The limited amendment retains the requirement of a 50-foot buffer and 75-foot setback within which the WDP establishes an area for future public access and habitat enhancements. According to the Port of Bellingham, attracting water-oriented tenants in this area remains a priority over NWO uses when demand exists. The Waterfront District Plan will retain usable portions of the existing wharf structure into the future to support water-dependent uses in the Log Pond area. In addition, the WDP establishes an easement corridor through planned park areas so the upland areas of the Log Pond can gain access to the wharf if necessary.

The Port and the City provided a detailed rationale demonstrating compliance with the above guidelines provisions (included in Appendix C – Public Comment Summary).

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City's proposed SMP 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). This includes a conclusion that approval of the proposed SMP limited amendment retains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(vi) and WAC 173-26-186(8)).

Ecology also concludes that recommended changes to the submittal (identified during the review process and itemized in Attachment B) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendments.

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 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, 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 the procedural requirements for limited amendments to their SMP contained in WAC 173-26-201(1)(c).

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 amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed limited amendments to the SMP are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.