

TO: Sarah Fox, Senior Planner, City of Camas

CC: Jackie Chandler, Shoreline Administrator, WA Department of Ecology

FROM: Kim Van Zwalenburg, Senior Shoreline Planner, WA Department of Ecology

Date: October 23, 2020

Subject: **SMP Periodic Review** - Initial Determination of Consistency

Sent via email to: SFox@cityofcamas.us; Jackie.chandler@ecy.wa.gov

Brief Description of Proposed Amendment

The City of Camas (City) is undergoing a statutorily required periodic review of their Shoreline Master Program. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint City-State comment period and hearing, and consideration of the comments received, the City has submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update to their SMP went into effect in 2012 and applies to approximately 26 miles of shoreline along Lacamas and Round lakes and Lacamas Creek and the Columbia and Washougal Rivers. There has been one locally initiated amendment in 2015 to incorporate the 2014 update to the Washington State Wetland Ratings System.

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the Camas 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 and an analysis that documents the proposed amendment. The amendment will bring the SMP into compliance with requirements of the 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 incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

The City SMP is a standalone document containing policies and regulations, a Shoreline Designation Map in Appendix A, administrative provisions in Appendix B and SMP-specific critical area regulations in Appendix C.

In addition to general edits to correct syntax, formatting and update citations, the following sections are proposed to be amended:

Shoreline Master Program

- Revisions are made throughout the document reflecting a city-initiated proposal to end the use of a Shoreline Management Review Committee. Instead, the city proposes to have the Shoreline Administrator issue Substantial Development Permits and use a Hearings Examiner for shoreline Conditional Use and Variance permits. Related changes are found in Sections 2.2 Shoreline Substantial Development Permit Required; 2.3 Shoreline Exemptions; 2.6 Shoreline Variance; 2.7 Shoreline Conditional Use Permit; and Appendix B - Administration and Enforcement.
- 1.3 Background. Revisions are made for clarity and to bring the section up to date.
- 1.10 Effective Date. Revisions update the Ordinance citation and the effective date of the SMP.
- 2.3 Exemptions from a Shoreline Substantial Development Permit. Revisions update cost thresholds for substantial development and freshwater docks; add invasive plant control to the aquatic weed exemption; and add an exemption addressing ADA-related external or internal retrofitting of an existing structure.
- 2.3 Statements of Exemption. Revisions when the city needs to send exemptions to Ecology for a limited list of activities.
- 3.9 Shoreline Modification and Stabilization. Adds a provision addressing relief provisions consistent with WAC 173-27-215 when shoreline restoration projects result in a shift in shoreline jurisdiction.
- 4.4 Official Shoreline Map.
 - File Copies. Minor text revisions.
 - Boundary Interpretation. Adds a provision addressing Mill Pond.
- 7.2 Shoreline Use, Modification, and Standards Tables. Table 6-1 is revised, adding a line for Houseboat or Live-aboard vessel (prohibited); allows for commercial uses in the Urban Conservancy with a Conditional Use Permit and revises building setbacks for water-oriented commercial uses; revises setbacks for recreational water-oriented uses; 40.460.530(B) and (C) CAO adoption. Revisions update the Critical Areas Ordinance reference dates, removing the list of ordinances and including only the most recent ordinance and date.
- 7.3.3.3 Marinas. Prohibits live-aboard watercraft in the city (there is no marina).
- 7.3.3.4 Moorage Facilities: Docks, Piers, and Mooring Buoys. Clarifies when a private recreational moorage facility is allowed and revises dock dimensional standards.
- 7.3.14 Transportation Uses. Revisions clarify that new roads must be set back from waterbodies and adds special procedures for WSDOT projects.
- 7.3.15 Utilities Uses. Adds language allowing for utility distribution and transmission lines to be placed within the footprint of an existing roadway.
- Definitions. Revisions are made to “development” to clarify that dismantling of structures is not included; “Houseboat or Live-aboard Vessel” is not allowed; “Qualified Professional” is revised to clarify the expertise needed for wetland work; “Substantial Development” is revised to update the monetary threshold;

Appendix A - Shoreline Map

- Label Mill Pond.
- Revise the map to incorporate two areas newly annexed by the city. The city limits have changed in the SE corner of Lacamas Lake and the SW corner of the city along Highway 14 bordering the Columbia River.

Appendix B – Administration and Enforcement

- II. Administrative Authority and Responsibility, III. Review and decision process, IV. Hearing examiner decision process, XIII. Permit revision, XIV. Permit rescission, IV. Permit appeal. Revisions remove the Shoreline Management Review Committee and clarify the roles of the Shoreline Administrator and the Hearings Examiner in permit decisions.
- VII. Notice of application. Edits clarify notification requirements.
- VIII. Variances and IX. Conditional use. Revisions ensure both sections are consistent with the review criteria in WAC 173-27-170 and WAC 173-27-160 respectively.
- X. Exemptions. Revisions clarify when a written exemption is required.
- XI. Filing permits with the Department of Ecology. The section is retitled to reflect the content of the section. Additional revisions clarify notification to parties of record.
- XII. Permit validity and expiration. Revisions clarify the “date of filing” and the start of construction.

Appendix C – Camas Critical Area Regulations and Maps

- 16.51.030 Relationship to other regulations. A new provision clarifies the applicability of the section to areas within shoreline jurisdiction. Additional edits clarify how these are implemented.
- 16.51.090 Applicability. Edits add shoreline conditional use and variance permits.
- 16.51.110 Allowed activities. Tree provisions are relocated to new section 16.51.125.
- 16.51.125 Vegetation removal permit. A new section is added consistent with the Camas Tree Ordinance. Provisions identify information needed in an application to remove vegetation and trees from a critical area or management zone (buffer) and mitigation required. Hazard trees are also addressed.
- 16.51.200 Unauthorized critical area alterations and enforcement. A provision is added clarifying monitoring report requirements and the need for corrective measures if performance measures are not being met. Enforcement provisions are expanded.
- 16.51.210 Critical area markers, signs and fencing.
- 16.53.050 Wetland permits. Revisions are made to C. Buffer Standards and Authorized Activities to clarify that buffer reductions may be allowed if applicable minimization measures are implemented. These measures are set forth in new Table 16.53.050-1.

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](https://www.cityofcamas.us/planning/planningenvironmentalshorelinemaster)¹. The City convened a Technical Advisory Committee late in 2019 to identify the scope of the periodic review. A City Council workshop was held February 18, 2020. The City planned to hold an open house in the spring but these plans were revised due to the COVID-19 pandemic. Instead, a short informative video was developed and posted on

¹ <https://www.cityofcamas.us/planning/planningenvironmentalshorelinemaster>

YouTube encouraging people to get involved. A Planning Commission workshop was held remotely, using Zoom, in July.

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 in January and May 2020.

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). An affidavit of publication provided by the City indicates notice of the hearing was published on August 13, 2020. Ecology distributed notice of the joint comment period to state interested parties on August 12, 2020, including separate notice to the Confederated Tribes of Grande Ronde, Yakama Nation and Cowlitz Indian Tribe.

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 August 13, 2020 and continued through September 14, 2020. A public hearing before the Planning Commission was held virtually via Zoom on September 15, 2020.

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

The City prepared a Comment Summary and Response and considered all comments. Comments included: management of Lacamas Lake; the condition of marinas in the county (none are located in Camas); effects, if any to tidelands; wetlands; and mapping. Revisions were made in response to comments and incorporated into the draft SMP Amendment prior to initial submittal.

Ecology commented on the critical areas regulations with a recommendation that the city revise the SMP CAO wetland provisions to include a more robust list of minimization measures consistent with our most current, accurate, and complete scientific and technical information available. Use of all applicable measures will allow for a reduction in the buffer widths required for High Intensity land use to the Moderate Intensity buffer widths. The City has proposed amended text in the SMP-specific CAO to address Ecology's comments.

The proposed SMP amendments were received by Ecology on October 1, 2020 for initial state review. The submittal was supplemented on October 15, 2020 and verified as complete on October 16, 2020. This began Ecology's review and initial determination.

Other Studies or Analyses supporting the SMP amendments

Ecology also reviewed supporting documents prepared by the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist, the comment summary and response, supporting documents for the locally initiated amendments, and the Staff Report on the SMP Periodic Review amendment.

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) August 27, 2020 for the proposed SMP amendments. Ecology did not comment on the DNS.

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 issue remains relevant to Ecology's final decision on the proposed amendment to the City's SMP with a Finding specific to the issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Shoreline exemptions

The Shoreline Management Act establishes exemptions from the requirement to obtain a substantial development permit (RCW 90.58.030(3)(e)). Only the Legislature can create exemptions under the Act and exemptions are to be construed narrowly (WAC 173-27-040(1)(a)). Ecology has identified one required change to the SMP amendment proposed by the City.

As noted in comments provided to the City earlier in the process, the statutory exemption specifically addresses the control of aquatic noxious weeds. There is no specific exemption listed in the Act for the removal of upland noxious weeds. Proposed revisions to this exemption are inconsistent with the statute and Ecology's rule. The allowance for removal of other noxious weeds listed on the State Noxious Weed List is addressed in provision 5.8(3) of the SMP and in the Critical Areas Ordinance in Appendix C. A proposal to remove upland noxious weeks may not trigger the need for an exemption or

shoreline permit, depending on the methods used, because it does not meet the definition of development.

The following revision to the proposed exemption is required:

14. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, and invasive plants is through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department of ecology jointly with other state agencies under chapter **43.21C** RCW;

***Findings.** Ecology finds that revision to the exemption is necessary for consistency with RCW 90.58.030(3)(e) and WAC 173-27-040(2)(n).*

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, subject to the required change identified above, 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

Consider the change required by Ecology. Please let me know if you would like to discuss alternative language or a different approach for resolving this issue.

If this is resolved prior to local adoption, we anticipate being able to approve your SMP Periodic Review amendment promptly after formal submittal is provided consistent with WAC 173-26-110.