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Shoreline Master Program Compliance Assessment

CITY OF MEDINA

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1. Project Overview

1.1 Background

In 2022, the Washington State Department of Ecology (Ecology) awarded funding to jurisdictions across the state under the Shoreline Master Program Competitive Grant Program to be used to support local government shoreline planning efforts. The City of Medina (City) elected to use awarded funds to implement a shoreline permit monitoring program to better assist the City with tracking and implementation of shoreline permits. The City contracted Facet¹ to assist with the project and determine if development within shoreline jurisdiction is being authorized consistent with regulations of the City's Shoreline Master Program (SMP) and whether completed authorized projects are compliant with issued permits.

The primary focus of the project was to ascertain whether SMP requirements are achieving no net loss of shoreline ecological functions (NNL). To determine this, shoreline authorizations issued since the Comprehensive SMP Update in 2014 were reviewed for compensatory mitigation and SMP compliance. Information gathered during permit review was compiled into a spreadsheet and analyzed to help identify compliance gaps. A permit tracking system was developed to collect important project details, assist City staff in determining if mitigation sequencing and compensatory mitigation are required, track receipt of as-built and monitoring reports (when required), and ultimately help to ensure no net loss of shoreline ecological functions.

1.2 Applicability

The current SMP is codified in the Medina Unified Development Code under Subtitle 16.6 – Shoreline Master Program, last amended in 2014 during the Comprehensive Update. The SMP applies to all uses and development occurring along Lake Washington, including areas extending landward 200 feet from the ordinary high water mark (OHWM), and wetland and stream buffer areas contained within lands extending landward 200 feet from the OHWM of Lake Washington. Shoreline environment designations within the City include Residential, Urban Conservancy, Transportation, and Aquatic.

1.3 SMP No Net Loss Standards

No net loss provisions are primarily located in Medina Municipal Code (MMC) 16.63 – General Shoreline Regulations, including the following sections:

- MMC 16.66.010 – No net loss of shoreline ecological functions analysis;
- MMC 16.66.020 – Mitigation sequencing; and
- MMC 16.66.050 – Shoreline vegetation management

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Specifically, MMC 16.66.010 defines the requirement for no net loss, specifies when a written analysis of no net loss is required, and describes what the written analysis should include. Chapter 16.67 – Critical Areas in the Shoreline also contains provisions related to no net loss of shoreline ecological functions, including the requirement for mitigation and mitigation sequencing, pursuant to MMC 16.66.020 (noted above).

2. Methodology

Shoreline permits issued since the 2014 Comprehensive Update were selected using a randomized Microsoft Excel spreadsheet, with two WSDOT Shoreline Conditional Use Permits dating back to 2011. A total of 26 issued permits were reviewed, including all permit documents provided by the City such as site plans, supplemental reports, findings of fact, and/or issued permits. The results of each permit review were compiled into a spreadsheet for consistency. Information collected included permit number, permit type, project description, if mitigation sequencing was necessary/provided, if mitigation was required/provided, if as-built documentation was provided, and no net loss observations. Upon review of the permits, information gathered was analyzed and documented in a Memo of Shoreline Permit Review Findings (Appendix A) that was further used to develop a permit tracking spreadsheet using Microsoft Excel.

3. Compliance Assessment

3.1 Permit Review Findings

Of the 26 permits reviewed, two were conditional use permits, 13 were substantial development permits, and 11 were shoreline exemption permits. Issued shoreline exemptions were found to meet the exemption criteria listed in MMC 16.70.030. MMC 16.66 – General Shoreline Regulations requires no net loss of shoreline ecological functions and mitigation sequencing. Specifically, MMC 16.66.010(C) outlines the circumstances under which a written analysis of no net loss is required. Of the permits reviewed, twenty-one required a written analysis of no net loss based on the City's requirements; however, only one No Net Loss Analysis was submitted to the City. 31% of permits reportedly included a Fish and Wildlife Habitat Assessment or Critical Areas Report that likely addressed no net loss; however, very few of these reports were available for review. Notably, the City has often reviewed permits via third-party review from various companies and has recently experienced staff turnover.

Twenty-five permits required a demonstration of mitigation sequencing based on the type of development, proposed impacts, and/or presence of critical areas; however, only two of the permits included documentation that demonstrated mitigation sequencing. Based on the SMP development regulations, mitigation for unavoidable shoreline impacts was required for 17 permits. However, compensatory mitigation was infrequently provided. When mitigation was provided, it was often the

installation of spawning gravel or a combination of tree and shrub plantings, as prescribed under the US Army Corps of Engineers Nationwide Permit authorizations and National Marine Fisheries Service Restoration and Permitting Program (RAP) to achieve programmatic Endangered Species Act Compliance for listed species within Lake Washington.

Construction plans available for review generally lacked proposed construction sequence, timing and duration information, grading and excavation details, location of critical areas and/or quantified impacts, making project-related impact assessments difficult to determine. In general, mitigation plans did not meet the requirements listed in MMC 16.67.040(D), including the requirement for a minimum three-year maintenance and monitoring program. Consequently, only one monitoring report and one as-built report were provided. While the City's SMP requires a three-year maintenance and monitoring program, there is no provision requiring an as-built report to be provided, or monitoring reports to be submitted annually. Given that the SMP requirement is present, yet as-built and monitoring reports are not being submitted or received, the City should require that as-built reports are to be submitted within six months of installation and monitoring reports are to be submitted annually for a minimum of three years as Conditions of Approval.

Per MMC 16.67.080(D), an initial fish and wildlife habitat assessment is always required for shoreline projects located adjacent to or within Lake Washington. Based on our review, it appears the city is occasionally receiving an initial fish and wildlife habitat assessment. While some staff reports reference Critical Area Reports, No Net Loss Analysis, and Fish and Wildlife Habitat Assessments, indicating they were sometimes included in permit submittals, these reports were not within the permit files at the time of permit review and could not be located by the City. Without reviewing the reports, it is inconclusive if these assessments are adequately providing an assessment of the probable cumulative impacts to critical areas or a demonstration of mitigation sequencing.

3.2 Project Tracking Spreadsheet

The permit tracking spreadsheet was designed to capture project details and specific information to help City staff consistently administer SMP standards through shoreline permit approvals and ensuring no net loss of ecological functions. As noted below in Section 3.3, the City collects sufficient information from applicants at the time of permit submittal. Completing the project tracking spreadsheet should only require minor additional work from City staff, and in the long term will help ensure the City is receiving required documentation consistent with SMP provisions and no net loss standards.

Additionally, the spreadsheet has a tab dedicated to tracking monitoring requirements. As built documentation and monitoring reports were inconsistently provided to the City. Based on the response to *Mitigation Required* in the permit database tab (yes response), the permits requiring as built and monitoring reports will populate in the Monitoring Tracking tab with additional details to be filled in, including date as-built should be submitted by applicant and corresponding monitoring reports on an annual or semi-annual basis. Should the City upgrade to a different permitting software in the future, this information could be used to send email or notification reminders to permit applicants whose projects require mitigation monitoring for up to three years.

3.3 Permit Applications

The City uses SmartGOV software to accept and process permit applications. SmartGOV allows the City to add custom fields, additional text, or drop-down options for the applicant to fill out. Medina also requires application forms for the various shoreline permit types substantial development (non-administrative and administrative), shoreline conditional use, shoreline variance, and substantial development exemption permits. These forms contain checklists of required documents, prompting the applicant to fill in specific project elements and details. The more comprehensive application, the non-administrative substantial development permit application form, requests the following information:

- Are there critical areas other than Lake Washington?
- Will work occur in Lake Washington?
- Shoreline Environment Designation
- If work will occur in Lake Washington, what type of development?
- Does the project include a shoreline variance or shoreline conditional use permit?
- Project description
- Demonstration of compliance with the Shoreline Management Act, SMP, and Comprehensive Plan

Additionally, the application form requires that the site plan accompanying a non-administrative substantial development permit must include the following:

- General description of the proposed project, including use or uses
- Identification of the shoreline waterbody
- Existing conditions
- Identification of the OHWM
- General description of vegetation on-site
- Landscaping or restoration plan
- Mitigation measures

In general, the shoreline variance and shoreline conditional use permit application forms request similar information as that outlined above. However, the substantial development exemption application requires much less information and does not include a checklist of required documents. For consistency, we recommend this application form include most of the same fields as the other permit forms, as even a letter of exemption requires the same information to demonstrate compliance with SMP regulations. Given the lack of site plans and site plan details provided in the permits reviewed, we recommend that the substantial development exemption application form also be amended to include the requirement for a site plan outlining the above information.

Upon review of the permit application forms and SmartGOV fields, the City generally appears to be requiring necessary information and collecting appropriate project details from applicants at the time of submittal. However, given the lack of site plan details provided in the permits reviewed, we recommend that the City ensures site plans include the details outlined on the permit checklist upon intake. Site plans not meeting the minimum submission requirements should be deemed incomplete and returned to the applicant for correction. The more information the City requires the applicant to provide during the applicant process, the more efficient filling out the permit tracking spreadsheet will be for staff.

3.4 SMP Guide

The City has an SMP User Guide available on the city website that includes a flow chart of the shoreline application process that directs applications through key elements of the SMP, including shoreline environment designation, the use table, and permit type. The Guide also includes dimensional and design standards for allowed uses, and walks users through several permitting scenarios from a workflow perspective. The guide can be found on the City's website here: https://www.medina-wa.gov/sites/default/files/fileattachments/development_services/page/16955/smp_user_guide_7.2023.pdf.

3.5 SMP Review

According to Shoreline No Net Loss and Mitigation guidance published by Ecology (May 2023), applicants must demonstrate how mitigation sequencing will be applied to achieve no net loss. Further, unavoidable impacts within the shoreline setback generally require compensatory mitigation. Project categories that require a no net loss analysis because they do not typically avoid all impacts include:

- Use or development occurring waterward of the OHWM;
- Use or development occurring within a shoreline buffer (or setback);
- Use or development occurring on a site with a critical area or critical area buffer;
- Use or development requiring a shoreline conditional use permit or shoreline variance; and
- Use or development required by the SMP to document mitigation sequencing.

MMC 16.66 – General Shoreline Regulations sets forth the requirements for no net loss of shoreline ecological functions and mitigation sequencing. Specifically, MMC 16.66.010(C) outlines the circumstances under which a written analysis of no net loss is required and what the analysis must include. While this is a unique and beneficial provision, it is only partially consistent with Ecology guidelines, as noted above. The City should consider an amendment to the SMP for consistency with Ecology's guidance and to capture development on sites with a critical area or critical area buffer, which is applicable to all of Medina's shoreline jurisdiction along Lake Washington.

MMC 16.66.020 outlines mitigation sequencing in order of preference; however, the City is not consistently being provided documentation that includes mitigation sequencing. A demonstration of mitigation sequencing can be documented through a number of means but is most commonly provided through a combination of application materials, such as site plans, project narratives, and

SEPA checklists. The City should consider including an amendment to the SMP that clearly states a demonstration of mitigation sequencing is always required for shoreline developments to ensure each proposal meets no net loss standards.

Additionally, mitigation sequencing in MMC 16.66.020 includes monitoring, yet monitoring requirements are located elsewhere in the SMP, within MMC 16.67.040, which pertains to critical areas in the shoreline. Specifically, MMC 16.67.040.D(8) requires a mitigation plan to include a maintenance and monitoring program that outlines a schedule for site monitoring, performance standards, contingency plans, and the period of time necessary to establish that performance standards have been met, not to be less than three years. While MMC 16.67 references MMC 16.66.020 (*Mitigation Sequencing*), MMC 16.66 does not reference MMC 16.67. The lack of mitigation sequencing, mitigation plans, and monitoring reports received by the City from permit applicants indicates this is likely an unclear requirement for both applicants and City staff. For clarity, the City could consider moving mitigation plan requirements to Chapter 16.66, to follow MMC 16.66.020.

Lake Washington is the only waterbody in the City of Medina regulated by the SMP and is a shoreline of the state (WAC 222-16-031). Fish and Wildlife Habitat Conservation Areas (FWHCAs) are regulated as critical areas under MMC 16.67 and include said waters of the state. Thus, pursuant to MMC 16.67.080(D), an initial fish and wildlife habitat assessment appears to be always required for shoreline projects located adjacent to or within Lake Washington. Conversely, a critical area report is not required for every permit application. The City may consider updating MMC 16.67.050 to clarify that a critical areas report is only required for projects containing FWHCAs when an initial fish and wildlife habitat assessment is provided that identifies the presence of site specific critical fish or wildlife habitats within the project area and conclude the project may affect FWHCAs and/or their buffers.

4. Conclusions

Overall, the City is not consistently receiving documentation that demonstrates mitigation sequencing or addresses critical areas pursuant to the SMP. Submitted documents often lack critical information, such as quantified impacts, subsequent mitigation, and mitigation plans. Finally, few as-built and monitoring reports verifying mitigation installation, maintenance, and monitoring were included in permit materials. As a result, City compliance with no net loss standards of the SMP is inconclusive but is most likely not being achieved.

Fortunately, the City can begin implementation of the permit tracking spreadsheet and make adjustments to the permit application forms to require more specific information and project details that will ultimately assist the City in determining if a project is meeting no net loss of shoreline ecological functions. Further, the City may consider amendments to the SMP that provide clarity on when a demonstration of mitigation sequencing is required.

5. Recommendations

To ensure no net loss of shoreline ecological functions occurs during future development activities and permit authorizations, the following procedural and SMP code recommendations should be considered:

1. Require applicants to submit all required information as part of screening process prior to initiating review.
 - a. This can likely be accomplished as part of the online submittal for permitting. Items constituting a complete application can be introduced during a pre-application meeting.
 - b. Amend the non-administrative substantial development exemption application form to require information fields similar to the other permit forms and a checklist of site plan requirements.
2. Require that mitigation sequencing be clearly demonstrated for all shoreline projects.
3. Require and retain an initial fish and wildlife habitat assessment for all shoreline projects in order to assess the presences of critical species and habitat, and if applicable, require a critical area report to address impacts to species that have a primary association to the project area.
4. Consider moving mitigation plan requirements found in MMC 16.67.040 to Chapter 16.66, so that it follows MMC 16.66.020.
5. Consider an amendment to MMC 16.66.010(C) for consistency with Ecology's guidance on no net loss and shoreline mitigation.
6. Consider updating MMC 16.67.050 to clarify that a critical areas report is only required for projects containing FWHCAs when an initial fish and wildlife habitat assessment is provided that identifies the presence of site specific critical fish or wildlife habitats within the project area and conclude the project may affect FWHCAs and/or their buffers.
7. Require as-built documentation as a condition of permit to ensure mitigation was implemented according to the approved plans, including installation of native plantings.
 - a. Consider requiring performance bonds, as necessary.
8. Require annual monitoring for up to three years and annual monitoring reports to ensure success of the required mitigation.
 - a. Establish checkpoints within the permitting documentation to ensure monitoring performance standards are met prior to release of maintenance bonds, as applicable.
9. Maintain application files and other documents considered part of the record for a minimum of 10 years.

References

City of Medina Unified Development Code. Subtitle 16.6 SHORELINE MASTER PROGRAM | Code of Ordinances | Medina, WA | Municode Library. Accessed May 2024.

Washington State Department of Ecology. Shoreline No Net Loss and Mitigation Guidance for Local Governments. May 2023.

DRAFT

APPENDIX A: Memo of Permit Findings

TECHNICAL MEMORANDUM

Date: May 29, 2024

To: Jonathan Kesler, City of Medina Planning Manager

From: Alex Capron, AICP, Senior Planner, Hilary Hahn, Environmental Planner & Donna Keeler, Senior Planner

Project Name: City of Medina SMP Permit Monitoring

Project Number: 2108.0181.00

Subject: Shoreline Permit Review Findings

The City of Medina contracted with Facet (formerly DCG/Watershed) to assist with implementation of the City's Shoreline Permit Monitoring Project (funded through a grant from the Washington State Department of Ecology) to identify implementation gaps in the City's permitting system. Specifically, this work would determine if development within shoreline jurisdiction is being authorized consistent with regulations of the City's Shoreline Master Program (SMP) and whether completed authorized projects comply with the issued permits. The project primarily focuses on whether SMP requirements are likely meeting the requirement of no net loss of shoreline ecological functions (NNL). Secondly, the project will also develop a permit monitoring database for tracking future shoreline permits and any associated mitigation plan and monitoring reports. Ultimately, a final report will be developed that documents methods and results for the proposed permit tracking system, as well as adaptive management techniques to address any compliance gaps identified.

Methodology

Shoreline permits issued within the past five years were selected using a randomized Microsoft Excel spreadsheet. A review of all permit documents, including site plans, supplemental reports, findings of fact, issued permits, as-builts, and monitoring reports was completed to assess whether the issued permits have been meeting no net loss standards established in the City's 2014 SMP. The results of each review were compiled into a spreadsheet for consistency.

Findings

A total of 26 issued permits were reviewed, of which, two were conditional use permits, 13 were substantial shoreline development permits and 11 were shoreline exemption permits. Issued shoreline exemptions met the exemption criteria listed in Medina Municipal Code (MMC) Chapter 16.70.030 of the SMP. There were 25 permits that required mitigation

sequencing based on the type of development, proposed impacts, and presence of critical areas. Our review found that two of the permits included documentation that demonstrated mitigation sequencing. Construction plans generally lacked proposed construction sequence, timing and duration information, grading and excavation details, location of critical areas and/or quantified impacts, making project-related impact assessments difficult to determine. However, the majority of the construction plans that were submitted did show plantings that met specified locations standards.

Based on the SMP development regulations, mitigation for adverse shoreline impacts was required for 17 permits. Mitigation was regularly included in the conditions for approval, however, project #18-011 was the only project to include a mitigation plan that met the requirements listed in MMC 16.67.040(D) and the species and density criteria outlined in MMC 16.67.040(7)(D) of the SMP. Additionally, it was the only project to include an as-built report. Further, MMC 16.67.040(8) requires all mitigation plans to include a maintenance and monitoring program for a period necessary to establish that performance standards have been met, but not to be less than three years. This requirement was not included as a condition of approval on any of the shoreline permits reviewed. The maintenance and monitoring plans should contain an outline of the schedule and monitoring, performance standards and contingency plans.

All of the projects reviewed were within 200 feet of a Fish and Wildlife Habitat Conservation Area (FWHCA). Per the Critical Areas Regulations outlined in MMC Chapter 16.67 of the SMP, a critical area report is required for projects impacting a FWHCA or its buffer. Critical area reports for projects adjacent to FWHCAs require an assessment of the probable cumulative impacts to critical areas resulting from the proposed development, and an analysis of site development alternatives, a description of reasonable efforts made to apply mitigation sequencing to avoid or compensate for impacts to shoreline ecological functions, and a mitigation plan. Based on our review, critical area reports were infrequently included in the application materials. Some permit submittals included a No Net Loss Analysis or Habitat Assessment, however these reports inconsistently provided an impact analysis and/or mitigation recommendations.

Conclusions

Overall, our review determined that there was an observable lack of documentation in some of the total reviewed permits to support the staff's findings of fact and to formulate a defensible record. However, the City has often reviewed permits via third-party review from various

companies and has recently experienced staff turnover. From documents reviewed, it is concluded that the City is not consistently receiving documentation that demonstrates mitigation sequencing or addresses critical areas pursuant to the SMP. Further, conditioning the requirements within shoreline authorizations is also inconsistently done. Submitted documents sometimes lack required information, such as quantified impacts, subsequent mitigation, and landscape or planting plans. Finally, one as-built report and one monitoring report verifying mitigation installation, maintenance, and monitoring was included in the permit materials. Therefore, it cannot be concluded that the City is meeting no net loss standards of the SMP. The framework to properly assess a no net loss analysis is outlined in the SMP and should be used as a resource for City staff to improve shoreline development authorization methods.

Recommendations

To ensure no net loss of shoreline ecological functions occurs during future development activities and permit authorizations, the following recommendations should be considered:

1. Require that mitigation sequencing be clearly demonstrated for the entire shoreline environment, or reasons why it isn't applicable.
2. Require and retain critical area reports for new project impacts adjacent to and within Fish and Wildlife Habitat Conservation Areas in order to assess impacts to species that have a primary association to the project area.
3. Require as-built documentation as a condition of permit to ensure mitigation was implemented according to the approved plans, including installation of native plantings.
 - a. Consider requiring performance bonds, as necessary.
4. Require annual monitoring for up to five years and annual monitoring reports to ensure success of the required mitigation.
 - a. Establish checkpoints within the permitting documentation to ensure monitoring performance standards are met prior to release of maintenance bonds, as applicable.
5. Require applicants to submit all required information as part of screening process prior to initiating review.
 - a. This can likely be accomplished as part of the online submittal for permitting. Items constituting a complete application can be introduced at the pre-application meeting.
6. Maintain application files and other documents considered part of the record for a minimum of 10 years.