

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF MERCER ISLAND SHORELINE MASTER PROGRAM

SMP Submittal accepted July 12, 2019, Ordinance No. 19C-06
Prepared by Department of Ecology on April 16, 2020

Brief Description of Proposed Amendment

The City of Mercer Island (City) has submitted Shoreline Master Program (SMP) amendments to Ecology for approval to comply with periodic review requirements.

FINDINGS OF FACT

Need for amendment

The City's comprehensive update of their SMP went into effect in 2015. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City 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 proposed amendments. The amendments 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 incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

The City currently has split the SMP policies and the regulations: the SMP policies are located in the shoreline element of the City's comprehensive plan and the SMP regulations are codified into Chapter 19.07.110 of the Mercer Island Municipal Code (MICC). Shoreline permitting procedures are located in Chapter 19.15.010 – 020, and definitions are located in Chapter 19.16.010. Critical areas regulations from the City's Critical Areas Ordinance (Chapter 19.07.010 – 090 as in effect on January 1, 2011) are incorporated by reference.

The City is proposing some reorganization of the municipal code that will result in renumbering of sections of the SMP regulations. The City proposes to renumber the regulations to Chapter 19.13.010 – 19.13.050.

The following sections of the City's SMP are proposed to be amended:

1. Changes from Ecology's Periodic Review Checklist:
 - a. Add a section clarifying activities that are not required to obtain shoreline permits or local reviews.
 - b. Amend text regarding date of filing of shoreline permits with Ecology.
 - c. 19.07.190 Wetlands. Update wetland delineation requirements. Update approved wetland rating system to Ecology's 2014 Rating Systems for Western Washington, or

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most current update. Increase required buffers on wetlands to be consistent with Ecology guidance.

2. Changes to remain consistent with updated development regulations:
 - a. Update Critical Areas Ordinance (CAO) incorporation to incorporate 2019 CAO. The 2019 CAO includes new and amended provisions for Geologically Hazardous Areas, Fish and Wildlife Habitat Conservation Areas, Watercourses, and Wetlands.
3. Changes to reflect changed circumstances, new information, and improved data:
 - a. 19.13.050(A) Table C: amend structure setback requirements to allow shore access structures less than 30 inches in height within shoreline setbacks.
 - b. 19.13.050(F), Moorage Facilities standards. Amend text to exclude public access piers and boardwalks from these provisions.
 - c. 19.13.050(F)(2)(i). Amend text regarding the threshold for when repair and replacement activities trigger the need to conform to certain dock standards. See Table 1 for specific changes.
 - d. 19.13.050(H). Amend text to add section with standards for public access piers, docks and boardwalks.
 - e. 19.16.010 Definitions.
 - i. Amend text to add definitions for the following terms: Biodiversity Areas; Critical Area Review; Critical Area; Dock; Landslide Hazard Area, Shallow; Landslide Hazard Area, Deep-seated; Pier; Public Access Pier or Boardwalk; Setback
 - ii. Amend text of existing definitions for the follow terms: Alteration; Buffer; Clearing; Fish and Wildlife Habitat Conservation Areas; Geologically Hazardous Areas; Noxious Weed; Qualified Professional; Watercourses; Wetland Classification System; Wetland Manual
 - iii. Amend text to remove the following terms: Fish Use or Used by Fish
 - f. The following additional edits were made throughout the SMP:
 - i. References to “moorage facilities” are changed to “docks.” “Lift stations” are changed to “boatlifts.” “Impervious surface” is changes to “hardscape and lot coverage.”
 - ii. References to code sections are updated to reflect reorganization of SMP and other code chapters.
 - iii. Text regarding adjoining lots is updated for clarification.

Table 1 - Proposed changes to MICC 19.07.110.E.6.b

2015 SMP	2019 Amendment – Initial Submittal	2019 Amendment – Final Submittal
<p>ix. If more than 50 percent of the structure's exterior surface (including decking) or structural elements (including pilings) are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:</p> <p>(A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;</p> <p>(B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and</p> <p>(C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D).</p>	<p>i) ix. <u>If The repair, replacement, or reconstruction of moorage facilities that results in the repair, replacement, or reconstruction of more than 50 percent of either the structure's exterior surface (including decking), or the structure's structural elements (including pilings) within a five year period shall comply with the following standards: are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:</u></p> <p>(1) (A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;</p> <p>(2) (B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and</p> <p>(3) (C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section (Table D).</p>	<p>i) ix. <u>If The repair, replacement, or reconstruction of moorage facilities that results in the repair, replacement, or reconstruction of more than 50 percent of the structure's exterior surface (including decking) or the structure's structural elements (including pilings) within a five year period shall comply with the following standards: are replaced or reconstructed during the five years immediately prior to any demolition for the replacement or reconstruction, the replaced or reconstructed area of the structure must also comply with the following standards:</u></p> <p>(1) (A) Piers, docks, and platform lifts must be fully grated with materials that allow a minimum of 40 percent light transmittance;</p> <p>(2) (B) The height above the OHWM for moorage facilities, except floats, shall be a minimum of one and one-half feet and a maximum of five feet; and</p> <p>(3) (C) An existing moorage facility that is five feet wide or more within 30 feet waterward from the OHWM shall be replaced or repaired with a moorage facility that complies with the width of moorage facilities standards specified in subsection (E)(4) of this section {Table D} <u>of section 19.13.050.</u></p> <p><u>j) The repair, replacement, or reconstruction of moorage facilities that results in the</u></p>

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		<u>repair, replacement, or reconstruction of more than 50 percent of the structure’s exterior surface (including decking) within a five year period shall be required to utilize fully grated piers, docks, and platform lifts with materials that allow a minimum of 40 percent light transmittance.</u>

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.

The City used Ecology’s 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 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.

The City held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on February 4, 2019 and continued through March 6, 2019. A public hearing before the Planning Commission was held on March 6, 2019

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Affidavits of publication provided by the City indicate notice of the hearing was published on January 20, 2019. Ecology distributed notice of the joint comment period to state interested parties on February 1, 2019.

Sixteen (16) individuals or organizations submitted comments on the proposed amendments. Several citizen comments requested that the City reconsider dock standards; however the City has opted not to make substantive changes to these standards. The Snoqualmie Indian Tribe submitted comments recommending that the City undertake a new effort to map streams and stream types and that the City update the definition of “fish use or used by fish” and “fish habitat.” The City amended these definitions

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and has initiated a new project to update mapped wetlands and watercourses. The Muckleshoot Indian Tribe submitted comments recommending that the City include culvert data from the Washington Department of Fish and Wildlife in its Best Available Science Report (ESA 2018). The City plans to utilize culvert data from WDFW, consistent with this suggestion. A group, the Citizens for Reasonable Shoreline Policies, commented that the City should consider revising requirements that applicants bring docks into compliance with dock standards when greater than 50 percent of decking or structural elements are replaced. The City opted not to change this requirement. The King County Noxious Weed Control Program commented with recommendations for text amendments related to noxious weed sections of the critical areas regulations. The City incorporated the recommended amendments.

Ecology commented on the critical areas regulations with several recommendations for amendments to wetland regulations based on Ecology's review of the most current, accurate, and complete scientific and technical information available. Ecology's comments included: (1) expansions of legally established structures within a wetland or watercourse buffer be on the upland side of the existing structure; (2) clarification between wetland delineations and ratings be added; (3) wetland buffers for wetlands with high habitat scores should be listed; (4) wetland averaging should be limited to situations where the wetland has significant differences in characteristics that affect its habitat functions; (5) allowing wetland buffer reductions is inconsistent with the most current, accurate, and complete scientific and technical information available; (6) provisions allowing alterations in certain wetlands are inconsistent with Ecology's latest guidance; (7) the measures to minimize impacts to wetlands must be implemented to protect wetlands when using the wetland buffers the City is proposing and if these are not implemented, wetland buffers should be 33 percent larger; (8) proposed mitigation ratios are inconsistent with Ecology's wetland mitigation guidance; and (9) temporary wetland mitigation ratios are reasonable. The City amended text to incorporate Ecology comments (1), (2), (6), and (8). The City submitted to Ecology its responses to issues raised during the comment period on April 12, 2019.

The proposed SMP amendment was received by Ecology on April 12, 2019 for initial state review and verified as complete on April 18, 2019. Ecology concluded that portions of the proposal were not consistent with applicable laws and rules, and provided a written statement describing the specific areas of concern and changes necessary. Ecology identified two (2) required changes necessary for consistency with the SMA and the implementing guidelines. Issues were related to incorporation of the critical areas ordinance and allowances in the 25-foot shoreline setback. Ecology also identified two recommended changes. The City incorporated the changes Ecology identified into their SMP amendment.

When the SMP Amendment was presented to the City Council, the City Council opted to make additional changes to the amendment in response to comments received during the comment period (See Table 1). For the initial submittal to Ecology, the City proposed to codify an interpretation made in 2018. This requires nonconforming overwater structures to come into compliance with certain dock standards when more than 50 percent of either the surface or structural elements are replaced or reconstructed. When the amendment came before the City Council, a citizen group commented on this section, stating that this requirement should only apply when more than 50 percent of the structural elements are replaced or reconstructed, and not apply to surface elements. They argued that the requirement to reduce a dock's width when an applicant is just replacing surface elements (i.e. decking) is causing property owners to put off repair/replacement of decking. They further argued that this is delaying the conversion of opaque decking to light transmitting decking. The City Council directed City

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staff to study this. The City conducted a supplemental cumulative impacts analysis on new proposed language and found that the new proposed provisions would not result in a net loss of shoreline ecological function. The SMP amendment was changed to include this new provision.

With passage of Ordinance #19C-006, on June 26, 2019, the City authorized staff to forward the proposed amendments to Ecology for formal approval.

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 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 includes review for compliance with the SMP amendment criteria found in WAC 173-26-201(2)(c) along with review of the SMP Periodic Review Checklist 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) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, a periodic review checklist, a gap analysis, and a supplemental cumulative impacts analysis.

Summary of Issues Identified by Ecology as Relevant to Its Decision

As discussed above, the City made changes to the amendment after Ecology issued its initial determination. These changes are specifically related to the threshold for when repair/replacement activities on existing docks trigger the need to conform to certain dock standards (specifically, dock width, dock height, and grated surfacing). The current SMP sets this threshold at 50 percent of either the surface materials or the structural materials (MICC 19.07.110.E.6.b.ix). The proposed amendment that was submitted to Ecology for initial determination contained changes to the wording of this section to provide clarity, but did not change the substantive requirements. The subsequent changes made by the City Council change the threshold to only 50 percent of structural elements (MICC 19.13.050.F.2.i). Repair or replacement of a structure's exterior surface would only trigger a requirement to use grated materials that allow light transmittance (MICC 19.13.050.F.2.j). It is unclear if only the replaced portions must use light transmitting surfaces, or if the entire dock surface must conform to this requirement.

After the final submittal of the amendment to Ecology, Ecology found that the supplemental cumulative impacts analysis did not provide enough information to support the proposed changes to the dock replacement standards. Specific concerns were that existing docks would not come into compliance with width standards as fast as was anticipated when Ecology approved the comprehensive update of the

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SMP in 2015. Because most shoreline lots in the City already have docks, ecological function was expected to improve through repairs and replacements causing docks to come into conformance with new dock standards. Ecology requested additional analysis of the effects on these previous assumptions as a result of the proposed amendment. The City submitted a revised supplemental cumulative impacts analysis (CIA), dated March 11, 2020.

The revised supplemental CIA studied shoreline permits and exemptions involving docks that have been issued since the comprehensive update went into effect in 2015. The analysis found that dock repair and replacement activity has been occurring at a much lower level than anticipated. The original 2012 Cumulative Impacts Analysis anticipated an average of 25 docks being redeveloped each year. Since the 2015 SMP went into effect, there have been 8 to 13 docks a year undergoing redevelopment of some form. Only one project involved just decking replacement, which triggered the reduction of the width of a dock's walkway. The revised supplemental CIA also compared dock replacement thresholds used by other jurisdictions along Lake Washington. The analysis found that the City's proposed changes were in line with and in some cases stricter than other jurisdictions. With regard to ecological impacts, the revised supplemental CIA found that "it is anticipated that the proposed less burdensome standards for exterior surface replacement may result in a faster conversion of light impenetrable to light-penetrable grating over time. While existing docks with replaced decking would not be required to increase height to a minimum of 1.5 feet or be required to shrink the width to 4 feet, the benefits of light penetrability alone would result in incremental benefits to aquatic habitats over time." The analysis concluded that no net loss of shoreline ecological function is expected to result from the proposed changes to the amendment.

Finding. Ecology finds that the City's revised supplemental Cumulative Impacts Analysis provides an adequate examination of the potential effects to shoreline ecological functions per WAC 173-26-201(3)(d)(iii).

Ecology has still identified issues with the proposed changes. As proposed, sections MICC 19.13.050.F.2.i and F.2.j confuse repair and replacement and lack clarity on how to determine when an applicant has exceeded the 50 percent threshold and what exactly an applicant is required to do if their project does exceed the threshold. For consistency with WAC 173-26-191(2)(a)(ii)(A), which requires master program regulations to be sufficient in scope and detail to ensure implementation of the SMA and SMP policies, a change to the amendment is needed. The City has proposed alternative language to address this inconsistency (Attachment B, Item 1).

Finding. Ecology finds that MICC 19.13.050.F.2.i and F.2.j contain provisions that are insufficient in scope and detail to ensure implementation of the policies of the SMA and the SMP. A change is necessary for consistency with WAC 173-26-191(2)(a)(ii)(A). Ecology has identified one required change (Attachment B, Item 1).

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed amendments with incorporation of required and requested changes in Attachment B, can be considered 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).

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Ecology concludes that the proposed amendment and acceptance of Ecology's required changes 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 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

Based on the preceding, Ecology has determined the proposed amendments will be consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules once changes set forth in Attachment B are accepted by the City.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal.

Ecology approval of the proposed amendments, with required changes or approved alternative language, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying the receipt of written notice that the City has agreed to the required changes in Attachment B.