



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

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January 31, 2020

Dow Constantine
King County Executive
401 Fifth Avenue, Suite 800
Seattle, WA 98104

Re: Final Ecology Approval of the King County Shoreline Master Program – Locally Initiated and Periodic Review Amendment – Ordinances 19034, 18767, and 18791

Dear Executive Constantine:

The Department of Ecology (Ecology) is pleased to announce final approval of King County's (County) Shoreline Master Program (SMP) periodic review amendment. Ecology finds the County's program amendment consistent with the policy and procedural requirements of the Shoreline Management Act (RCW 90.58) and its implementing rules.

Ecology approves the County's SMP amendment as submitted.

The enclosed Attachment A, Findings and Conclusions document, provides more information about our decision. This is Ecology's final action and there will be no further modifications to the proposal.

The amendments adopted by this action conclude the County's periodic review under RCW 90.58.080(4). Ecology's approval affirms the amendments are consistent with the applicable provisions of the SMA and its implementing rules, including periodic review requirements of WAC 173-26-090.

The amended SMP is effective 14 days from the date of this letter. This time period was established by the state legislature and is intended to provide lead time for the County to prepare to implement the amended SMP.

Ecology is required to publish a newspaper notice that the County's SMP has received final approval. The publication of this notice, in the form of a legal ad, will begin a 60-day appeal period. We will provide a copy of the legal ad to the County for its records.



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If you have any questions, please contact our SMA Policy Lead, Misty Blair, at Misty.Blair@ecy.wa.gov or (425) 649-4309.

Sincerely,



Laura Watson
Director

Enclosure

By Certified Mail [9489 0090 0027 6081 4499 25]

cc: Christine Jensen, King County
Jenny Ngo, King County
Misty Blair, Ecology
Joe Burcar, Ecology

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF THE KING COUNTY SHORELINE MASTER PROGRAM

SMP Submittal accepted December 20, 2019, Ordinance No. 19034; and
Ordinances 18767 and 18791 previously determined complete October 24, 2018
Prepared by Department of Ecology on January 6, 2020

Brief Description of Proposed Amendment

Ordinances 18767 and 18791

King County has submitted to Ecology for review an amendment to its Shoreline Master Program (SMP). The County's amendment proposes several changes to their existing shoreline program. The changes include modifications to sections of their Critical Areas regulations (King County Code 21A.24) incorporated into the SMP and to the County's Shoreline Master Program regulations (King County Code 21A.25). Ordinance 17539 was adopted to provide clarification and make minor non-substantive changes to improve implementation. Ordinance 18791 was adopted for the stated purpose of reorganizing the county executive departments. This ordinance creates a new Department of Local Services (DLS) which includes the Department of Permitting and Environmental Review (DPER), Road Services, and the Community Service Area Program; therefore all references to DPER are replaced with a reference with DLS. No policy or regulatory changes were included with this ordinance; it only amends King County development regulations to reflect the creation of this new department and associated title changes. Ecology comments provided to County staff in early 2018 were incorporated into the final locally adopted ordinances, with one exception which was addressed through ordinance 19034.

Ordinance 19034

King County (County) has submitted Shoreline Master Program (SMP) amendments to Ecology for approval to comply with periodic review requirements of RCW 90.58.080(4). The County elected to utilize the optional joint review process for SMP amendments available per WAC 173-26-104; therefore as required under WAC 173-26-104(3)(b) Ecology previously provided the County with an initial determination of consistency with applicable laws and rules. The County proposes amendments to bring the SMP into compliance with requirements of the Act or State Rules that have been added or changed since the County's comprehensive SMP update, fix miscellaneous errors and references, update the critical areas regulations that are incorporated by reference into the SMP, and address different types of aquaculture with specific development standards and use regulations.

FINDINGS OF FACT

Need for amendment

The County's comprehensive update to their SMP was completed in 2010. The County subsequently amended the SMP with the adoption of Ordinance Nos 17539, 17841, and 17878 updating the County's flood management provisions and establishing an allowance for up to five (5) alluvial fan management pilot projects within the Snoqualmie River watershed basin, which became effective on April 19, 2017 after Ecology's final action. The County also has an outstanding SMP amendment (Ordinances 18767

and 18791), which was submitted to Ecology on October 24, 2018 and will be finalized along with this SMP Periodic Review amendment.

King County has nearly 2,000 miles of shoreline along major lakes, rivers and marine waters surrounding Vashon-Maury Island. These shorelines provide habitat for fish and wildlife, places for public enjoyment and space for wide-ranging waterfront land uses.

The proposed amendments are needed to comply with the statutory deadline for a periodic review of the County's Shoreline Master Program pursuant to RCW 90.58.080(4). The County has identified that this periodic review will result in amendments to the SMP to address updates to the Act or implementing State Rules, changed local circumstances, new information and improved data.

SMP provisions to be changed by the amendment as proposed

The County's proposed changes fall primarily into two categories:

- Required changes incorporating State law (RCW 90.58) or State rule (WAC 173-26 & WAC 173-27);
- Locally initiated changes to address implementation issues or fix errors identified by staff and to more specifically address different types of aquaculture uses.

The County prepared the Ecology SMP Periodic Review checklist to address requirements of the act or state rules that have been added or changed since the last SMP amendment. Those proposed changes along with the County's locally initiated proposed changes modify the following King County Code (KCC) sections:

Ordinance 19034

King County Comprehensive Plan Chapter 6

King County Code (KCC) 20.12 Comprehensive Plan

KCC 20.20 Procedures for Land Use Permit Applications, Public Notice, Hearings and Appeals

KCC 21A.06 Technical Terms and Land Use Definitions

KCC 21A.24 Critical Areas

KCC 21A.25 Shorelines

Ordinance 18767 amending KCC sections 20.12, 21A.06, 21A.24, 21A.25, 21A.44.

Ordinance 18791 amending KCC to reflect a re-organization of County departments. The Department of Permitting and Environmental Review became the permitting division in the new Department of Local Services (the department of ~~((permitting and environmental review))~~ local services, permitting division). The County proposes changes throughout the development regulations and non-development code to reflect this organizational change, such as administrative sections housed outside the SMP. Specific SMP sections amended to reflect this change include 21A.24.045, 21A.24.051, 21A.24.055, 21A.24.061, and 21A.25.290.

Amendment History, Review Process

Locally Initiated SMP Amendments

LOCAL SMP AMENDMENT PROCESS Ordinances 18767 and 18791

The County indicates the proposed SMP amendments are a combination of two (2) ordinances passed as part of the County's annual Comprehensive Plan and related regulation update process.

Ordinance 18767

This ordinance was introduced as part of the County's annual Comprehensive Plan review and development regulations update process. The County describes substantive changes as clarifications. The amendment includes minor modifications to the following sections: definitions, permitted alterations to critical areas, alteration exceptions to critical areas/setbacks from critical areas, permitted shoreline modifications, docks and other similar structures, shoreline permit requirements, shoreline nonconformances, procedural requirements, and shoreline master program elements.

Affidavits of publication provided by the County indicate notice of the hearing was published in the Seattle Times on April 25, 2018. The record shows that a public hearing regarding this SMP Amendment before the Metropolitan King County Council was held on May 29th 2018 at 1:30pm. No comments were received. This ordinance was introduced on July 24, 2017, was passed by the Metropolitan King County Council on July 16, 2018, and approved by the County Executive on July 25, 2018.

Ordinance 18791

In the fall of 2017, the county executive created the local services initiative to explore new and better ways to serve the people of unincorporated King County and directed the executive's staff to begin the formation of a department of local services. The King County council passed Motion 15125 providing guidance for the establishment of a new department on April 16, 2018. This ordinance establishes the new department of local services - permitting division as the successor agency to the department of permitting and environmental review.

Affidavits of publication provided by the County indicate notice of the hearing was published in the Seattle Times on August 1, 2018. The record shows that a public hearing regarding this SMP Amendment before the Metropolitan King County Council was held on September 10, 2018 at 1:30 pm. No comments were received. This ordinance was introduced on July 9, 2018 and passed by the Metropolitan King County Council on September 17, 2018 and approved by the County Executive on September 26, 2018.

DEPARTMENT OF ECOLOGY REVIEW PROCESS FOR THE COMBINED ORDINANCES 18767 AND 18791

The proposed SMP amendments contained in Ordinance 18767 were received by Ecology for state review on September 5, 2018. Ordinance 18791 was received on October 5, 2018. The total submittal package was verified as complete on October 24, 2018. Notice of the state comment period was distributed to interested parties, from the state list and those identified by the County, on or before December 14, 2018, in compliance with the requirements of WAC 173-26-120.

The state comment period began on December 14, 2018 and continued through January 14, 2019. No public hearing was held during the state comment period. No comments were received during the comment period.

Summary of Issues Identified by Ecology as Relevant to its Decision:

Based on review of the proposed SMP amendments for consistency with applicable SMP-Guideline requirements and consideration of supporting materials included in the County's submittal, Ecology found that Ordinance 18767 Section 11 – modifies the shoreline jurisdictional boundary in a way that is not consistent with the minimum boundary requirements of RCW 90.58.030(2)(d).

The County elected to resolve this issue by repealing Ordinance 18767 Section 11 as part of the SMP Periodic Review amendments contained in Ordinance 19034.

SMP Periodic Review amendment Ordinance 19034

The County 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 County provided public notice of the SMP Periodic Review process and promoted public input as outlined in their Public Participation Plan via:

- A public comment period on early draft and scoping from November 1 to November 30, 2018. Mailed postcards to all shoreline property owners (9000 unique addresses), email messages to project stakeholders, released a series of messages on social media including Facebook, Twitter, and Nextdoor;
- The Executive set up a webpage, www.kingcounty.gov/shorelines, as a repository for all information about the 2019 Periodic Review including information about the proposal, options for comment, and important dates and deadlines. It also included a link to the King County Connects page where participants could answer survey questions and leave direct comments on the proposal;
- A public meeting at Vashon High School on November 17, 2018 from 10am to Noon;
- County's website – <https://www.kingcounty.gov/services/environment/water-and-land/shorelines.aspx> provided background information, updates on the periodic review, and a means to comment on the process; and
- Shoreline Master Plan - Online Open House – Story map <https://www.kingcounty.gov/services/environment/water-and-land/shorelines/story-map.aspx>

The County 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, to determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The County 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 County 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 County consulted with Ecology and solicited comments throughout the review process.

Ecology provided pre-public comment period feedback to County Legislative staff on May 30, 2019, in the form of a summary of issues identified by Ecology related to critical areas protection incorporation. Ecology made recommendations regarding the use of Ecology's 2014 Wetland Rating System and associated wetland buffer table modifications necessary for consistency with the most current, accurate, and complete scientific and technical information available as required per WAC 173-26-201(2)(a). The County addresses these concerns prior to the start of the joint local/state comment period.

On July 25, 2019, the County issued a SEPA Determination of Non-Significance for this proposal under WAC 197-11-340(2).

The County 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 July 17, 2019 and continued through August 23, 2019, at 5pm. A joint local/state public hearing was held on August 21, 2019, at 10:30 a.m. at the King County Council Chambers (10th floor of the courthouse). The County

provided notice to local interested parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The County published notice of the comment period and public hearing in the Seattle Times on July 17, 2019. Ecology distributed notice of the joint comment period and public hearing to state interested parties on or before July 17, 2019.

Futurewise and Washington Environmental Council provided a joint comment letter on August 19, 2019 and Futurewise provided testimony at the August 21, 2019 public hearing before County Council. Comments were in support of amended wetland regulations and new aquaculture development standards and use regulations. The commenters recommended updates to the landslide hazard regulations and riparian buffers. The commenters also requested new policies or regulations to: address wildfire danger setbacks, protect instream flows, require site investigations for archeological and historic preservation, address sea level rise, protect wells and aquifers from salt water contamination, and require more documentation of no net loss and cumulative impacts. The County summarized and provided responses to these comments as part of the initial submittal. Ecology concurs with the County's responses and did not recommend any additional changes based upon these comments.

The County provided their initial submittal of the proposed SMP amendments to Ecology pursuant to WAC 173-26-104 via email on September 5, 2019 and the submittal was determined to be complete.

Ecology prepared an initial determination that the amendment is consistent with the policy of the SMA and applicable guidelines. A written statement of initial concurrence was sent to the County on October 29, 2019.

With passage of Ordinance 19034, on December 16, 2019, the County authorized staff to forward the proposed amendments to Ecology for formal approval.

Ordinance 19034 included the repeal of Ordinance 18767 Section 11, therefore resolving the only consistency issue identified with the outstanding SMP amendment allowing Ecology to take final action approving Ordinances 18767 and 18791 (the previously submitted locally initiated SMP amendments) along with Ordinance 19034 (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 County 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 County.

Consistency with Amendment Criteria

The proposed amendments have also been reviewed for compliance with WAC 173-26-201(1)(c) of the SMP Guidelines. The proposed amendments will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i)). The amendments are consistent with all applicable

policies and standards of the Act (WAC 173-26-201(1)(c)(ii)). All procedural rule requirements for public notice have been satisfied (WAC 173-26-201(c)(iii)). The master program guidelines analytical requirements and substantive standards have been satisfied, as applicable to the amendments. The amendments will not result in a net loss of shoreline ecological functions (WAC 173-26-201(1)(c)(iv)).

Consistency with SEPA Requirements

The County submitted evidence of SEPA compliance for all three associated SEPA Determinations: in the form of an issued Determination of Non-Significance for adoption of Ordinance 18767, January 16, 2017; in the form of a determination of SEPA exemption for Ordinance 18791; and in the form of a SEPA determination of Non-significance for Ordinance 19034, July 25, 2019. Ecology did not comment on these actions.

Other Studies or Analyses supporting the SMP amendments

Ecology also reviewed supporting documents prepared for the County in support of these SMP amendments. These documents include a public participation plan, periodic review checklist, Outreach Summary, 2019 Shoreline Master Program (SMP) Proposed Net Pen Regulations Map, King County Executive's Clean Water, Healthy Habitat agenda, and staff reports prepared in preparation for local adoption.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County proposed amendments are 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 SMP amendment will assure that no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(2)(c)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 or WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process.

Ecology concludes that the County has complied with the purpose and intent of the amendment process requirements contained in WAC 173-26-104 and WAC 173-26-100, 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 County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County SMP submittals to Ecology were complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that Ecology 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 County 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 are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the County has completed the requirement for a periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.