

TO: Joyce Phillips, Principle Planner, City of Olympia
CC: Jackie Chandler, Shoreline Administrator, WA Department of Ecology
FROM: Kim Van Zwalenburg, Senior Shoreline Planner, WA Department of Ecology
Date: March 19, 2021
Subject: **SMP Periodic Review** - Initial Determination of Consistency
Sent via email to: jphillip@ci.olympia.wa.us

Use of this Document

Ecology's *Determination of Initial Concurrence* provides Ecology's review of the proposed amendment to the City of Olympia (City) Shoreline Master Program (SMP). This document is divided into two sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process and **Initial Determination** of the proposed amendment with next steps.

Attachment 1 itemizes issues that can be addressed prior to Ecology's final approval of the proposed amendment.

Brief Description of Proposed Amendment

The City of Olympia is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted their draft SMP amendment to Ecology for an initial determination as required by the joint review process and consistent with WAC 173-26-104(3). The SMP regulates shoreline uses and activities along Grass Lake, Capitol Lake, Ward Lake, Ken Lake, Percival Creek and the marine shorelines of lower Budd Inlet within city limits.

FINDINGS OF FACT

Need for amendment

Olympia comprehensively updated their master program in October 2015 and amended their SMP in 2018 to incorporate updated critical area regulations. This current amendment is needed to comply with the statutory deadline for a periodic review of the SMP 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 documenting the proposed amendment. The amendment will bring the SMP into compliance with requirements of the Shoreline Management 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 revisions deemed necessary to reflect changed circumstances, new information, or improved data. Locally initiated changes include provisions incorporating the City's Sea Level Rise Response Plan in to the SMP, addressing waterfront recreation and the Vegetation Conservation Area on West Bay, more specifically addressing live-aboards in marinas, and allowing for recreational camping in the Marine Recreation environment on the east side of the Port Peninsula.

In addition to overarching organizational changes, general edits to correct and update syntax, and formatting and citation corrections, the following amendments to the SMP are proposed:

A. Section I. General Provisions

1. The summary table of Regulatory and Policy Tools is updated to note the inclusion of Seal Level Rise into the SMP. An update to the adoption date of the referenced Critical Areas Ordinance is added to 1.6.

B. Section 2. Goals and Policies

1. Consideration of sea level rise is added to the following policy sections: 2.1 Shoreline Master Program Goals and Policies, 2.4 Shoreline Use and Development Policies, 2.16 Scientific and Educational Activity Policies, 2.27 Residential Policies, 2.28 Transportation Policies, 2.29 Utility Policies, 2.32 Fill Policies, and 2.35 Shoreline Stabilization Policies are revised to include sea level rise considerations [2.1 H, 2.4 F, 2.16 A, 2.27 C, 2.28 A, 2.29 A, 2.32 C, 2.35 B, 2.35 E]
2. Reference to the West Bay Environmental Restoration Assessment Report¹ is added to the following policy sections: 2.3. Shoreline Ecological Protection and Mitigation Policies, 2.5 Aquatic Environment Management Policies, 2.34 Restoration and Enhancement Policies, and 2.35 Shoreline Stabilization Policies. [2.3 I, 2.5 H, 2.34 M, 2.35 E]
3. 2.4 Shoreline Use and Development Policies adds new policy G, relocated from section 2.5, establishing the need to reserve space for preferred shoreline uses.
4. 2.5 Aquatic Environment Management Policies has a number of edits for improved clarity [B, D, E] and adds a new policy [H] encouraging soft shore stabilization or habitat restoration to improve ecological functions.
5. 2.6 Natural Environment Management Policies has a clarifying edit. [A.2]
6. 2.9 Marine Recreation Environment Management Policies includes two edits for clarity. [A, E]
7. 2.10 Shoreline Residential Environment Management Policies has one clarifying edit. [G]
8. 2.11 Urban Intensity Environment Management Policies has a number of clarifying edits. [E, F, G, H, J]
9. 2.14 Parking Policies has one clarifying edit. [C]
10. 2.15 Public Access Policies adds a new policy to clarify when on-site public access may not be required. [K]
11. 2.18 Vegetation Conservation Area Policies is revised encouraging education addressing proper use of fertilizers and pesticides in the shoreline. [F]
12. 2.23 Boating Facilities Policies is revised adding new language listing preferred design elements to lessen impacts from overwater structures and clarifying covered boathouses should be prohibited. [F]
13. 2.31 Dredging Policies is revised for improved clarity [C, F] and adds a statement clarifying the need to avoid and minimize impacts from dredge disposal [G].
14. 2.32 Fill Policies adds ecological restoration to the list of allowable activities which may require fill waterward of the ordinary high water mark. [E]

¹ Coast & Harbor Engineering. *West Bay Environmental Restoration Assessment, Final Report*. City of Olympia, 2016. <https://olympiawa.gov/~media/Files/PublicWorks/Water-Resources/WestBay-Environmental-Restoration-Assessment.pdf?la=en> This report provides an assessment of environmental restoration opportunities for the West Bay shoreline of Olympia.

C. Section 3 Regulations

1. 3.3 18.20.120² - Interpretation and Definitions - Definitions for the following terms are added: camping facilities, functional disconnect, live-aboard vessel, nonconforming development or nonconforming structure, nonconforming lot, nonconforming use.
2. 3.6 18.20.215 – Exceptions to Local Review is a new subsection added consistent with Ecology recommendations addressing WAC 173-26-044 and WAC 173-26-045.
3. 3.13³ 18.20.280 – Shoreline Permit Procedures is revised to clarify the roles of the Administrator and the Hearings Examiner [C], clarify the appeals process [E, F] and add language directing submittal of permit revisions to Ecology. [F] Other minor edits are made. [D, G]
4. 3.14 18.20.285 - Amendments is revised adding the optional joint review process for SMP amendments. [D]
5. 3.17 18.20.300 – Shoreline Jurisdiction is revised adding language to clarify how to regulate parcels and structures that may be partially in and partially out of shoreline jurisdiction. [C]
6. 3.21 18.20.400 – General Regulations – Intent is revised to better clarify which regulations apply to all uses and activities in all shoreline environments.
7. 3.23 18.20.420 – Critical Areas is revised to reference the updated critical area regulations ordinance number and date. [A]
8. 3.24 18.20.430 – Archaeological, Historic, and Cultural Resources is revised adding cross-references to the City’s Historic Preservation Code and to Ecology’s rule provisions on archaeological and historic references in WAC 173-26-221. [D]
9. 3.26 18.20.450 - Public Access – Two new conditions are added to the list allowing the Administrator to waive the public access requirement for privately-funded projects. A waiver could be allowed for sites functionally disconnected from the shoreline by a legally established road or other substantial developed surface, or when public access already exists in the immediate vicinity or is already adequate and documented at the property. “Immediate vicinity” means there are public access areas within 1/8 mile of the development, increased to ¼ mile with seating along the route and safe pedestrian access between the development and the public access areas. [C.5, C.6]
10. 3.27 18.20.460 – Design of Public Access – A companion change (to the immediately preceding revision in 3.26) is made, allowing for a waiver to the requirement for a public viewing area when all conditions are met: the site is disconnected from the shoreline, public access areas are within a short distance of the site and there is safe pedestrian access to the public access areas. [A.5]
11. 3.32 18.20.493 – Permitted Uses and Activities within Vegetation Conservation Areas is revised to allow for restrooms within the VCA when no suitable location exists elsewhere at public parks and water related recreation areas only. [A.10]
12. 3.37 18.20.504 – View Protection Regulations is revised to clarify that fences in the VCA are limited to a height of 4 feet between the OHWM and primary structures. Outside the VCA, the fencing provisions forth in OMC 18.40 apply. [I]

² The SMP includes cross references between the stand-alone document and codified elements. In this instance, subsection 3.3 is cross-referenced to Olympia Municipal Code (OMC) 18.20.120.

³ Subsection numbers in Section 3 reflect updated numbering resulting from the addition of the new 3.6.

13. 3.39 18.20.510 – Water Quality includes a new provision requiring dredging and dredge disposal use best management practices to prevent impacts to water quality or other environmental impacts. [F]
14. 3.40 18.20.600 – Shoreline Use and Development – Intent is edited for improved clarity.
15. 3.42 18.20.620 – Use and Development Standards Tables includes the following revisions:
 - a. A provision is added allowing for setbacks to be waived on areas functionally disconnected from the shoreline by a legally established road. [D.9]
 - b. Table 6.1 – Uses and Activities is edited for improved clarity and internal consistency with SMP policies and regulations (boating facilities) and a new footnote clarifying permitting of Mixed Use activities.
 - c. Table 6.3 – Setbacks and Incentives is revised adding the VCA to the column titles related to setbacks, revises the setback in Waterfront Recreation – 3B from 150’ down to 50’ and adds a line clarifying the setback for water dependent uses is 0’.
16. 3.44 18.20.640 – Aquaculture includes a new provision requiring geoduck aquaculture shall meet all minimum permit requirements [E].
17. 3.47 18.20.654 – Marinas adds clarifications and a new provision related to live-aboards in marinas, including a cap on the number of slips occupied by live-aboards at 20 percent of the total slips in a marina [B.6, B.7, B.8].
18. 3.56 18.20.700 – Transportation and Trail Facilities includes a new provision addressing special procedures for Washington Dept. of Transportation projects [F].
19. 3.59 18.20.810 – Permitted Shoreline Modifications Table 7.1 – Shoreline Modifications is revised to allow hard shoreline armoring under certain limited circumstances without a Conditional Use Permit.
20. 3.60 18.20.820 – Dredging includes edits for improved clarity and a revision to ensure all dredging and dredge material disposal activities use best management practices to prevent impacts to water quality and the environment [B.8, C, G].
21. 3.67 18.20.846 – Marine Docks and Piers includes a revision requiring grating of the dock/pier surface consistent with the Department of Fish and Wildlife (DFW) rule [B.2].
22. 3.68 18.20.847 – Fresh Water Docks and Piers includes a similar provision to grate the surface area consistent with the DFW rule [B.3].
23. 3.69 18.20.848 – Float Standards – DFW standards on orientation and functional grating is required consistent with their rule [D.1].
24. 3.70 18.20.850 – Shoreline Restoration and Enhancement – Intent includes a cross reference to the West Bay Environmental Restoration Assessment.
25. 3.75 18.20.864 – New or Expanded Shoreline Stabilization Measures includes an edit removing the phrase “waterward of the Ordinary High Water Mark” [H].
26. 3.77 18.20.868 – Design of Shoreline Stabilization Measures has a new provision added pointing to the Olympia Sea Level Rise Response Plan as a consideration when determining the minimum necessary size of shoreline stabilization structures [B.1].
27. 3.81 18.20.900 – Existing Buildings and Uses within Shorelines is revised to allow for replacement and expansions [A].
28. 3.82 18.20.910 – Alteration of Nonconforming Structures in Shoreline Jurisdiction includes an added provision to allow raising the floor elevation of a legally existing structure in response to sea level rise flooding within height limits. This provision is not extended to nonconforming

- overwater structures. [A.4]. An additional revision allows for the reconstruction within the existing footprint of unintentionally damaged or destroyed nonconforming structures [B.1].
- D. OMC Chapter 18.32 Critical Areas – Revisions are proposed for improved clarity, and for consistency with Ecology’s guidance including minor adjustments to habitat function scores (low is now 3 – 5 points, moderate is now 6-7 points), buffer width, update to the referenced Ecology Wetland Guidance, [18.32.510 A.2, 18.32.535 B. Table 32-1: Wetland Buffer Widths, 18.32.535 G.

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](#)⁴. A consultant, hired by the City developed draft documents. Due to the COVID-19 pandemic, the City held public meetings in a virtual format using Zoom, including a public Open House held December 2, 2020 and Planning Commission meetings addressing this topic, beginning in March 2020 and continuing through February 2021, were nearly all held remotely.

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 June, August and October November 2020.

The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on January 22, 2021 for the proposed SMP amendment.

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 December 4, 2020 and continued through January 11, 2021. A public hearing before the Planning Commission was held virtually via Zoom on January 11, 2021.

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). The City’s record indicates notice of the hearing was published in *The Olympian*. Ecology distributed notice of the joint comment period to state interested parties on November 30, 2020, including separate notice and an invitation for consultation to the Chehalis Tribe, Squaxin Island Tribe and the Nisqually Indian Tribe.

The City accepted public comments on the proposed SMP amendments during the 30-day public comment period. Comments were received from eighteen (18) organizations/individuals and included

⁴ <http://olympiawa.gov/smp>

concerns about the health of Puget Sound, Southern Resident Killer whales, Chinook salmon and numerous other species. Specific concerns about sediment contamination, water quality and habitat degradation, use of science, and the need to daylight the numerous small creeks⁵ tributary to Budd Inlet were expressed. A number of comments expressed a desire the City include “restoration potential” as a consideration in the SMP. Other comments focused on the proposed revisions to public access requirements, wetland buffers, Green Cove Creek, nonconforming structures, no net loss, habitat protection and restoration, RV parks in the Marine Recreation Environment, environmental justice, sea level rise, public access, and shoreline setbacks.

The City made a few changes in response to comments including revisions to language allowing soft shoreline stabilization measures above and below the OHWM, revised the proposed setback along West Bay to 50 feet rather than the proposed 30 feet, and has proposed revisions addressing “priority habitat areas”

The proposed SMP amendments were received by Ecology on March 1, 2021 for initial state review. The submittal was supplemented on March 2, 2021 and verified as complete on March 2, 2021. This began Ecology’s review and initial determination.

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 issues remain relevant to Ecology’s final decision on the proposed amendments to the City’s SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Public Access

The proposal amends the public access provisions in SMP 3.26 18.20.450 and 3.27 18.20.460, adding additional criteria to the list identifying when public access requirements can be waived. One of the waiver conditions relies on the proposed definition for “functional disconnect”. This term, as proposed in the SMP, relates to a determination that an area is functionally isolated from the shoreline and no longer provides shoreline ecological functions. In addition, the presence of intervening development may not preclude public access but may require it occur in a different manner. See a related recommended change below.

Finding: Ecology finds the proposed revisions to the public access requirements relies, in part, on the definition of “functional disconnect”. This is not an appropriate measure for determining whether public access can be waived as this is an ecological and biological determination. Revisions are required for

⁵ Moxlie Creek, Indian Creek, Schneider Creek, Ellis Creek.

internal consistency, and for consistency with WAC 173-26-211(3) and WAC 173-26-221(4)(d). [Req-1 and Rec-2]

Use and Development Standards Tables – Setback Reductions

In SMP 3.42 18.20.620, a provision is added allowing for setback reductions on areas disconnected from the shoreline by an existing road which results in a functional disconnect from the shoreline. The term “functional disconnect” is a new proposed term in the SMP (see discussion below under Definitions). A comment from Washington Department of Fish and Wildlife noted that the presence of existing infrastructure or structures does not automatically equate to the absence of all shoreline ecological functions.

Finding: Ecology finds the proposed revisions are incomplete. The SMP lacks any clear mechanism for ensuring a functional disconnect is verified. Revisions are required for internal consistency with the proposed definition of “functional disconnect”, to ensure determination of the functional disconnection is scientifically sound, and to ensure consistency with the no net loss standard in WAC 173-26-201(2)(c). [Req-3]

Ecology recommended changes

Ecology has identified eight recommended changes to the SMP amendment for consideration by the City. These can be found in Attachment 1, items Rec-1 through Rec-8.

Integration of Critical Area Regulations

1. The SMP incorporates the CAO by reference in two locations - Section 1.6 Regulations Adopted by Reference and Section 3.23 18.20.420 – Critical Areas. The SMP incorporates the CAO by reference in two different locations, requiring both to be amended whenever there is an updated ordinance. Ecology recommends changes to Section 1.6 which would more generally discuss the adoption by reference and leaving the specific citations in Section 3.23. [Attachment 1, Rec-1]
2. Section 3.23 18.20.420 lists exceptions to the incorporation of the CAO into the SMP including the need to utilize the approved federal wetland delineation manual in regulation C.7. This SMP provision is duplicative of language the CAO in OMC 18.32.580 and is unnecessary. [Attachment 1, Rec-3]

Public Access

Ecology recommends adding a provision to the list of conditions under which the public access requirement can be waived. This provision speaks to case when the costs of the public access are disproportionate to the cost of the proposed development. [Attachment 1, Rec-5]

Definitions

The SMP includes a new definition for “functional disconnect”. Ecology recommends improving the definition by more clearly describing “substantially developed surface”. Language providing examples of what is and isn’t a substantially developed surface is suggested. [Attachment 1, Rec-2]

Priority riparian areas

In response to comments received, as well as internal concerns around implementation of the “priority riparian areas” provisions and the SMP, the City proposes revisions in OMC 18.32.405, 18.32.410 and 18.32.435. OMC 18.35.405 applies the term “priority riparian areas” to certain segments along Budd

Inlet and Capitol Lake. Proposed changes remove all listed segments, revising the applicability to non-shoreline lakes, and includes removal of any reference to Type S waters⁶ in OMC 18.32.410 and 18.32.435.

Ecology is concerned the proposed revisions alter the intent and application of the “priority habitat area” provisions and recommends an alternative approach: retaining the language proposed for deletion and clarifying in 18.32.435 that the buffer for Type S waters is addressed in the SMP in 18.20.620 Table 6-3 Shoreline Setback and Vegetation Conservation Areas⁷. Ecology also recommends adding a provision in 18.20.420 C making this same clarification regarding the buffers for “priority riparian areas”. [Attachment 1, Rec-4, Rec-6, Rec-7 and Rec-8].

Findings. Ecology finds that the recommended changes, set forth in Attachment 1, Rec-1 through Rec-8, would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines if implemented.

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 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 changes identified by Ecology in Attachment 1. Please let me know if you would like to discuss alternative language or different approaches for resolving these issues.

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

⁶ Per WAC 222-16-031, a Type S water is a Type 1 water. “Type 1 Water” means all the waters, within their ordinary high-water mark, as inventoried as “shorelines of the state” under chapter 90.58 RCW and the rules promulgated pursuant to chapter 90.58 RCW, but not including those waters’ associated wetlands as defined in chapter 90.58 RCW.

⁷ These setbacks were established during the Comprehensive SMP Update informed by the information in the Shoreline Inventory and Characterization.

Changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and are consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

ITEM	SMP PROVISION	BILL FORMAT CHANGES [<u>underline</u> -additions; strike through -deletions]	ECOLOGY - DISCUSSION/RATIONALE
Rec-1	1.6 Adoption by Reference	<p>1.6 Regulations Adopted by Reference</p> <p>The Critical Areas regulations adopted by Council as of Month Day, 202X (Ordinance XXXX), contained in the Olympia Municipal Code (OMC) Chapters 18.32 and 16.70 are integral and applicable to this Shoreline Program, and are hereby adopted by reference <u>as described in Section 18.20.420 A</u>; provided that the reasonable use provisions set forth in OMC 18.66.040 shall not be available within the shoreline jurisdiction. Instead, applicants may apply for a shoreline variance when seeking relief from critical areas regulations within shorelines. Similarly, Section 18.06.100 A.2.C -- West Bay Drive Building Height and View Blockage Limits (Ordinance 6646, passed on July 14, 2009), is hereby adopted by reference to the extent that the height and use regulations identified therein are applicable to the shoreline jurisdiction area.</p>	<p>Recommended change: Remove the specific date and Ordinance number, add a reference to SMP Section 18.20.420 A and delete the language on reasonable use provisions.</p> <p>The reference to the specific ordinance and adoption date is included in OMC 18.20.420A (SMP 3.23). Deleting the specific reference here will reduce the number of changes necessary whenever an amendment is needed to update the referenced ordinance. The reasonable use language is duplicative of language in 18.20.420 C.8. and is only one of a number of critical area provisions which are not applicable in shoreline jurisdiction.</p>
Rec-2	3.3 18.20.120 ¹ Interpretation and Definitions	<p>Functional Disconnect: An existing, legally established public road or other substantially developed surface which effectively eliminates the capacity for upland areas to provide shoreline ecological functions, as defined in WAC 173-26-201(2)(c). <u>As used in this definition, "substantially developed surface" can include public infrastructure such as roads, and private improvements such as commercial structures. A "substantially developed surface" shall not include paved trails, sidewalks, private driveways or accessory buildings that do not require a building permit.</u></p>	<p>Recommended change: Define "substantially developed surface" which is vague. Additional language is suggested to better define "substantially developed surface" to aid in implementation.</p>
Rec-3 and Rec-4	3.23 18.20.420 Critical Areas	<p>C. Regardless of other provisions in Chapter 18.32, to ensure consistency with the <u>S</u>shoreline Management Act critical areas within shoreline jurisdiction shall be subject to the following:</p> <ol style="list-style-type: none"> In shoreline jurisdiction, critical area review and permit procedures will be incorporated into and conducted consistently with the associated shoreline permit or exemption review and approval. Stream and Important Riparian Area buffer reductions beyond twenty-five 	<p>Recommended changes: Edits include a typographical correction, citation corrections and deletion of C.7 addressing wetland delineations.</p> <p>The language in C.7 is duplicative of language in OMC 18.32.580 Wetlands – Wetland Boundary Delineation which has been incorporated by reference.</p>

¹ The regulatory provisions of the SMP contain both a section # (3.3) and the Olympia Municipal Code number (18.20.120).

Changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and are consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

ITEM	SMP PROVISION	BILL FORMAT CHANGES [<u>underline-additions</u> , strike-through deletions]	ECOLOGY - DISCUSSION/RATIONALE
		<p>percent (25%) within shoreline jurisdiction shall require a shoreline variance.</p> <p>3. Stormwater facilities may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(K)) and only when no other location is feasible.</p> <p>4. Utility lines may be allowed in the outer twenty-five percent (25%) of Category III and IV wetland buffers in shoreline jurisdiction (OMC 18.32.525(<u>ML</u>)).</p> <p>5. Locating stormwater facilities or utilities within wetlands or within any wetland buffer other than those specified in numbers <u>34 and 45</u> above shall require a shoreline variance (OMC 18.32.530(E) and (G)).</p> <p>6. Wetland buffer reductions beyond twenty-five percent (25%) within shoreline jurisdiction shall require a shoreline variance.</p> <p>7. Identification of wetlands and delineation of their boundaries in shoreline jurisdiction shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplements (OMC 18.32.580).</p> <p>8. Reasonable use exceptions (OMC 18.66.040) are not available for relief from critical area standards within the shoreline jurisdiction. Instead, applicants seeking relief from the critical area standards shall apply for a shoreline variance.</p> <p>9. New development or the creation of new lots that would cause foreseeable risk from geological conditions during the life of the development is prohibited.</p> <p>10. Uses and activities that may be authorized within floodways are limited to those listed in WAC 173-26-221 (3)(c)(i).</p> <p>11. <u>In shoreline jurisdiction, "priority riparian area" buffers for Type S waters are governed by Section 18.20.620 and Table 6.3 – Setbacks and Incentives which establishes setbacks and Vegetation Conservation Areas based on the Shoreline Environment.</u></p>	<p>Recommended change: A new provision is suggested to clarify implementation of "priority riparian area" buffers on Type S waters. This is a suggested alternative to the City's proposed revisions, in response to public comments, in 18.32.405, 18.32.410, 18.32.435. Related changes are shown below in Items Rec-6 to Rec-8.</p>
<p>Req-1 and Rec-5</p>	<p>3.26 18.20.450 – Public Access</p>	<p>C. 5. The development site is disconnected from the shoreline by an existing, legally established <u>public road or public space such as Percival Landing</u> other substantial developed surface which results in a functional disconnect from the shoreline; or</p>	<p>Required change: Revisions are needed for internal consistency with 3.27 18.20.460 Public Access Design as required by WAC 173-26-211(3), and for consistency with WAC 173-26-221(4)(d).</p>

Changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and are consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

ITEM	SMP PROVISION	BILL FORMAT CHANGES [<u>underline-additions</u> , strike-through deletions]	ECOLOGY - DISCUSSION/RATIONALE
		<p>6. Safe and convenient public access already exists in the immediate vicinity, and/or adequate public access is already documented at the property. The Administrator will consider the following to determine if adequate public access is provided in the immediate vicinity:</p> <ul style="list-style-type: none"> a. Public access areas occur along the shoreline within 1/8 mile of the development site or within ¼ mile when seating is provided along the route; and b. Safe pedestrian access from the site to the public access areas along or to the shoreline is provided. <p><u>7. The cost of providing the access, easement or an alternative amenity is unreasonably disproportionate to the cost of the proposed development.</u></p>	<p>As proposed in the SMP, the definition of “functional disconnect” relates to the assessment that the upland area separated from the shoreline does not provide shoreline ecological functions. This ecological and biological determination has no bearing on the decision to waive public access requirements on a site. In addition, the presence of intervening development may not preclude public access but may require it occur in a different manner.</p> <p>Recommended change: Additional language is suggested for the City’s consideration.</p>
<p>Req-2</p>	<p>3.27 18.20.460 – Design of Public Access</p>	<p>A. 5. Where physical access to the water’s edge is not feasible, a public viewing area shall be provided. This requirement may be waived by the Administrator where all of the following conditions are present:</p> <ul style="list-style-type: none"> a. The development site is disconnected from the shoreline by an existing, legally established <u>public</u> road or public space such as Percival Landing, which results in a functional disconnect from the shoreline; b. Public access areas occur along the shoreline within 1/8 mile of the development site or within ¼ mile when seating is provided along the route; and c. Safe pedestrian access from the site to the public access areas along or to the shoreline is provided. 	<p>Required change: Revisions are needed for internal consistency with 3.26 18.20.450 Public Access, as required by WAC 173-26-211(3), and for consistency with WAC 173-26-221(4)(d).</p> <p>As proposed in the SMP, the definition of “functional disconnect” relates to the assessment that the upland area separated from the shoreline does not provide shoreline ecological functions. This ecological and biological determination has no bearing on the decision to waive public access requirements on a site. In addition, the presence of intervening development may not preclude public access but may require it occur in a different manner.</p>
<p>Req-3</p>	<p>3.42 18.20.620 - Use and Development Standards Tables</p>	<p>D. Setback reductions shall be allowed as provided in Table 6.3 and subject to the following: ...</p> <p>9. Shoreline setbacks shall not apply to areas that are disconnected from the shoreline by an existing, legally established <u>public</u> road <u>or other substantially developed surface</u> which results in a functional disconnect from the shoreline. <u>The applicant shall provide a biological assessment by a qualified professional that demonstrates the area is functionally isolated. The City shall consider the hydrologic, geologic,</u></p>	<p>Required change: Revisions are made for internal consistency with the proposed definition of “functional disconnect”, to ensure determination of a functional disconnection is scientifically sound, and for consistency with the no net loss standard in WAC 173-26-201(2)(c).</p> <p>Ecology agrees with Washington Department of Fish and Wildlife that the presence of existing infrastructure or structures does not automatically equate to the absence of all shoreline ecological functions. Any claim that a “functional disconnect” exists should be demonstrated through an analysis by a qualified</p>

Changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and are consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

ITEM	SMP PROVISION	BILL FORMAT CHANGES [<u>underline-additions</u> , strike-through deletions]	ECOLOGY - DISCUSSION/RATIONALE
		<p><u>and/or biological habitat connection potential and the extent and permanence of the physical separation.</u></p>	<p>professional.</p>
<p>Rec-6</p>	<p>18.32.405 Streams and Priority Riparian Areas - Applicability</p>	<p>B. "Priority Riparian Areas" means those lake shorelines not subject to the Shoreline Master Program, as measured from the ordinary high water mark, and encompassing its buffer.</p> <p>B. "Priority Riparian Areas" means those marine and lake shorelines, as measured from the ordinary high water mark, in the following locations:</p> <ol style="list-style-type: none"> 1. The eastern shore of Budd Inlet from the southern property line of Priest Point Park northward to the city limits; 2. The western shore of Budd Inlet (in the Port Lagoon) from 4th Avenue NW northward to the extension of Jackson Avenue NW, but not including the BNSF railroad causeway and trestle or their western or eastern shores; West Bay Drive NW; Olympic Way NW; and parcels west of the rights-of-ways of West Bay Drive NW and Olympic Way NW; 3. The western shore of Budd Inlet (north of West Bay Drive) from the extension of 24th Avenue NW northward to the city limits, being approximately six hundred and fifty (650) feet from the end of the fill to the city limits; 4. The eastern shore of Capitol Lake (in the Middle Basin) from the extension of 13th Avenue SE (Olmsted Brothers Axis) southward to the right of way of Interstate 5; 5. The eastern shore of Capitol Lake (in the South Basin) from the right of way of Interstate 5 southward to the city limits; and 6. The western shore of Capitol Lake (in Percival Cove) from the intersection of Lakeridge Drive SW and Deschutes Parkway SW westward to the mouth of Percival Creek (a point due north of the terminus of Evergreen Park Court SW). 	<p>Recommended change: Delete the proposed language and retain the existing language in 18.32.405.</p> <p>The City's proposed revision appears to entirely alter the definition of "priority riparian areas" from certain marine and lake shorelines, all of which are Type S waters, to non-shoreline lakes which necessarily means lakes less than 20 acres in size.</p>
<p>Rec-7</p>	<p>18.32.410 Streams and Priority Riparian Areas – Typing System</p>	<p>Streams are grouped into categories according to the Washington Department of Natural Resources Water Typing System. The criteria, definitions and methods for determining the water type of a stream are found in WAC 222-16-031.</p> <p>A. "Type S waters streams" are those surface waters which meet the criteria of the Washington Department of Natural Resources, WAC 222-16-031, as a Type S Water. <u>Type S waters streams</u> contain fish habitat.</p>	<p>Recommended change: Retain the existing language in 18.32.410 A. The City could also consider some minor edits (shown) replacing the term "streams" with "water" or "waters" as used in WAC 222-16-031.</p>

Changes in red are required for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in blue are recommended and are consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

ITEM	SMP PROVISION	BILL FORMAT CHANGES [<u>underline-additions</u> , strike-through deletions]	ECOLOGY - DISCUSSION/RATIONALE												
Rec-8	18.32.435 Streams and Priority Riparian Areas - Buffers	<p>C. Stream buffers shall be based on the water type classification as established by the Department of Natural Resources Stream Typing Classification System and required by OMC 18.32.410. The table below includes detail differentiating stream types based on fish habitat presence, stream widths, and mass wasting potential:</p> <table border="1" data-bbox="499 435 1585 1130"> <thead> <tr> <th data-bbox="499 435 1042 505"><u>Stream-Water</u> Type and Description</th> <th data-bbox="1042 435 1585 505">Buffer</th> </tr> </thead> <tbody> <tr> <td data-bbox="499 505 1042 711">Type S waters – Shorelines of the State</td> <td data-bbox="1042 505 1585 711">250 Refer to SMP 18.20.620, Table 6-3 for the Shoreline Setback and Vegetation Conservation Areas</td> </tr> <tr> <td data-bbox="499 711 1042 816">Type F streams greater than 5 feet wide (bankfull width) that provide habitat for fish</td> <td data-bbox="1042 711 1585 816">250</td> </tr> <tr> <td data-bbox="499 816 1042 922">Type F streams less than 5 feet wide (bankfull width) that provide habitat for fish</td> <td data-bbox="1042 816 1585 922">200</td> </tr> <tr> <td data-bbox="499 922 1042 1027">Type Np and Ns streams (no fish habitat) with high mass wasting potential</td> <td data-bbox="1042 922 1585 1027">225</td> </tr> <tr> <td data-bbox="499 1027 1042 1130">Type Np and Ns streams (no fish habitat) without high mass wasting potential</td> <td data-bbox="1042 1027 1585 1130">150</td> </tr> </tbody> </table>	<u>Stream-Water</u> Type and Description	Buffer	Type S waters – Shorelines of the State	250 Refer to SMP 18.20.620, Table 6-3 for the Shoreline Setback and Vegetation Conservation Areas	Type F streams greater than 5 feet wide (bankfull width) that provide habitat for fish	250	Type F streams less than 5 feet wide (bankfull width) that provide habitat for fish	200	Type Np and Ns streams (no fish habitat) with high mass wasting potential	225	Type Np and Ns streams (no fish habitat) without high mass wasting potential	150	<p>Recommended change: Retain the Type S water type in the table and add language referencing the SMP provision which establishes shoreline setbacks and vegetation conservation areas. The City could also consider making changes to references throughout OMC 18.32.400-435, replacing “streams” with “waters”</p>
<u>Stream-Water</u> Type and Description	Buffer														
Type S waters – Shorelines of the State	250 Refer to SMP 18.20.620, Table 6-3 for the Shoreline Setback and Vegetation Conservation Areas														
Type F streams greater than 5 feet wide (bankfull width) that provide habitat for fish	250														
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Type Np and Ns streams (no fish habitat) with high mass wasting potential	225														
Type Np and Ns streams (no fish habitat) without high mass wasting potential	150														

From: [Van Zwalenburg, Kim \(ECY\)](#)
To: [Joyce Phillips](#)
Cc: [Nicole Floyd](#)
Subject: RE: CAO 18.32 ECY Initial Determination 03292021
Date: Tuesday, March 30, 2021 10:10:21 AM

External Email Alert!

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Correction:

Finding. The changes set forth would remain consistent with the policy and standards of RCW ~~90.57~~ **90.58** and the applicable guidelines.

From: Joyce Phillips <jphillip@ci.olympia.wa.us>
Sent: Tuesday, March 30, 2021 10:05 AM
To: Van Zwalenburg, Kim (ECY) <kvan461@ECY.WA.GOV>
Cc: Nicole Floyd <nfloyd@ci.olympia.wa.us>
Subject: RE: CAO 18.32 ECY Initial Determination 03292021

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Thank you, Kim. This is very helpful.
Joyce

From: Van Zwalenburg, Kim (ECY) <kvan461@ECY.WA.GOV>
Sent: Tuesday, March 30, 2021 8:37 AM
To: Joyce Phillips <jphillip@ci.olympia.wa.us>
Cc: Nicole Floyd <nfloyd@ci.olympia.wa.us>
Subject: RE: CAO 18.32 ECY Initial Determination 03292021

External Email Alert!

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Good morning Joyce:

Thank you for the opportunity to discuss the proposed revisions to the CAO related to Priority Riparian Areas with you and Nicole. The suggested approach shown in the document provided on 3/29 accurately reflects the outcome of our discussion and addresses the concerns raised in the Initial Determination.

Please note: The Initial Determination included a related revision to 3.23 18.20.420 regarding "priority riparian area" buffers [Rec-4]:

[11. In shoreline jurisdiction, "priority riparian area" buffers for Type S waters are governed by Section 18.20.620 and Table 6.3 – Setbacks and Incentives which establishes](#)

[setbacks and Vegetation Conservation Areas based on the Shoreline Environment.](#)

This should be revised to reflect the proposed changes:

Revised recommended change Rec-4: [Priority riparian area buffers are set forth in OMC 18.32.435 Streams and Priority Riparian Areas – Buffers.](#)

My 'Finding' remains the same: The changes set forth would remain consistent with the policy and standards of RCW 90.57 and the applicable guidelines.

Don't hesitate to contact me should there be any remaining questions.

Kim

Kim Van Zwalenburg, Senior Shoreline Planner
Department of Ecology - Southwest Regional Office
PO Box 47775 Olympia, WA. 98504-7775
(360) 407-6520 voicemail forwards to email; Cell: (360) 742-2074

WA State Department of Ecology Southwest Regional Office is not accepting walk-in service from the public until further notice as we adhere to a statewide effort to slow the spread of the coronavirus (COVID-19). Regional staff are available by telephone and email, and information is also available on our [website](#). We remain committed to service, so don't hesitate to reach out to us.

From: Joyce Phillips <jphillip@ci.olympia.wa.us>
Sent: Monday, March 29, 2021 4:40 PM
To: Van Zwalenburg, Kim (ECY) <kvan461@ECY.WA.GOV>
Cc: Nicole Floyd <nfloyd@ci.olympia.wa.us>
Subject: CAO 18.32 ECY Initial Determination 03292021

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Hi, Kim.

Thank you for meeting with Nicole and me to discuss the relationship between the SMP and CAO, specifically as it relates to the Priority Riparian Areas identified in CAO. Attached please find draft amendments to the CAO that I believe will provide clarity for the implementation of both the SMP and CAO. Please let me know if you have any concerns related to the Stream Type and Description Table in 18.32.435. If not, it is what I would like to use moving forward.

Thank you!

Joyce

Joyce Phillips, AICP, Principal Planner
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360.570.3722 | olympiawa.gov

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