

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED LIMITED AMENDMENT TO THE CLARK COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted February 23, 2016, Ordinances No. 2014-12-10 and 2015-12-12
Prepared by Kim Van Zwalenburg on April 29, 2016

Brief Description of Proposed Amendment: Clark County has submitted a limited amendment of their Shoreline Master Program (SMP) to Ecology for approval to add Carty Lake to the list of shoreline waterbodies, incorporate recent critical area amendments into the SMP including the 2014 wetlands rating system, revise language addressing existing residential structures, revise language addressing maintenance and repair, and to correct numerous scrivener's errors.

FINDINGS OF FACT

Need for amendment. The proposed amendments are needed to address the inadvertent omission of Carty Lake from the list of shoreline waterbodies and to update the critical area regulations within shoreline jurisdiction consistent with the county's most recent updates. To improve clarity, the county has also revised language they have found problematic related to residential structures as well as maintenance and repair.

SMP provisions to be changed by the amendments as proposed: The following sections of the existing Clark County SMP, codified in Chapter 40.460 of the Clark County Code, are proposed for change (underline for new language; ~~strikeout~~ for deleted language):

Section 40.460.170 Relationship to other plans and regulations - *The amendment adds the following provision to clarify the relationship of the SMP and the critical area ordinance:*

F. The Clark County Critical Area Ordinances (CAO) are adopted into the master program by reference, except that those provisions inconsistent with the Shoreline Management Act and implementing Washington Administrative Code chapters shall not apply in shoreline jurisdiction. The applicable CAO is the version listed in CCC 40.460.530. Any amendments to the CAO shall be incorporated through an amendment to the master program that is approved by the Department of Ecology pursuant to WAC 173-26-191(2)(b).

Section 40.460.210 Applicability, Section C - *add Carty Lake to the list of lakes*

Section 40.460.230 Exemptions from a Shoreline Substantial Development Permit - *Revisions to B.2 include a citation to the section on nonconforming uses and development and make clear replacement of a demolished home is not normal maintenance and repair. The revisions to B.16 and C.1 improve consistency with RCW 77.55.181 (4) which does not allow local government to require permits or charge fees for fish habitat enhancement projects that are consistent with provisions of that chapter.*

B. List of Exemptions

2. Subject to the provisions of CCC 40.460.250, Normal maintenance or repair of existing legally-established structures or developments, including those that have been damaged by accident, fire, or elements. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the features of the repaired replacement

structure or development, including but not limited to its size, shape, configuration, location, and external appearance, must be is-comparable to the original structure or development, including but not limited to its size, shape, configuration, location, and external appearance—and the repair must replacement does—not cause substantial adverse effects to shoreline resources or environment. The replacement of demolished existing single-family residences and their appurtenances is not considered normal maintenance and repair.

16. a. A public or private project that is designed to improve fish or wildlife habitat or fish passage when all of the following apply:

- 1 a. The project has been approved by DFW;
- 2 b. The project has received hydraulic project approval (HPA) by WDFW pursuant to Chapter 77.55 RCW; and
- 3 c. Clark County has determined that the project is substantially consistent with the local Shoreline Master Program. Clark County shall make such determination in a timely manner and provide it by letter to the applicant.

b. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline master programs and do not require a statement of exemption.

C. Statements of Exemption.

1. Any person claiming exemption from the substantial development permit requirements shall make an application to the Shoreline Administrator for such an exemption in the manner prescribed by the Shoreline Administrator, except that no written statement of exemption is required either for a project designed to improve fish or wildlife habitat or fish passage pursuant to WAC 173-27-040(2)(p)(iii)(A), or for emergency development pursuant to WAC 173-27-040(2)(d).

Section 40.460.250 Nonconforming uses and development - *Revisions to B.5 and C.2 increase the damage threshold from 60% to 75%.*

Section 40.460.520 Archaeological, cultural and historic resources - *Language is revised in regulation A to reference to the state's (rather than Clark County) predictive model for archaeological artifacts and data. A minor edit is made in regulation B.*

A. When a shoreline use or development is in an area known or likely to contain archaeological artifacts and data based on the state's~~Clark County's~~ predictive model, the applicant shall provide for a site inspection and evaluation by a professional archaeologist prior to issuance of any shoreline permit or approval. Work may not begin until the inspection and evaluation have been completed and the county has issued its permit or approval.

B. If any item of possible archaeological interest (including human skeletal remains) is discovered on site, all work shall immediately stop, and the county, State Department of

Archaeology and Historic Preservation (DAHP), and affected Native American tribe(s) shall be notified of the discovery. A stop-work order will be issued. The shoreline permit will be temporarily suspended. All applicable state and federal permits shall be ~~secured~~obtained as a condition of resumption of development activities. Development activities may resume only upon the applicant's receipt of county approval.

Section 40.460.530 Critical areas protection - *The first change clarifies how amendments to the county's CAO are incorporated into the SMP. The addition of ordinance references are corrections to scribes' errors with the exception of references to Ordinance 2014-12-05. The county's Ordinance 2014-12-05 adopted changes to the critical area ordinance for areas outside shoreline jurisdiction. These changes were updates consistent with the 2014 wetlands rating system (Chapter 40.450 Wetlands); deletion of the "Priority Habitats and Species Map" and a revision to Table 40.440.010-1 Exempt and Reviewed Activities related to residential development. These changes are now being incorporated into the SMP through this amendment.*

B. Applicable Critical Areas.

For purposes of this Program, the following critical areas will be protected under this Program. An amendment to these regulations will apply in shoreline jurisdiction only if it is adopted as an SMP limited amendment or update.

1. Critical aquifer recharge areas, defined in Chapter 40.410 as adopted by Ordinance 2005-04-15, dated April 26, 2005; Ordinance 2009-03-02;
2. Flood hazard areas, defined in Chapter 40.420 as adopted by Ordinance 2012-07-15, dated July 24, 2012;
3. Geologic hazard areas, defined in Chapter 40.430 as adopted by Ordinance 2005-04-15, dated April 26, 2005; Ordinance 2006-09-13; Ordinance 2009-01-01; Ordinance 2012-02-03; and Ordinance 2012-07-16;
4. Habitat conservation areas, defined in Chapter 40.440 as adopted by Ordinance 2006-08-03, dated August 1, 2006; Ordinance 2012-07-16; and Ordinance 2014-12-05; and
5. Wetlands, defined in Chapter 40.450 as adopted by Ordinance 2006-05-27, dated May 26, 2006; Ordinance 2012-07-03; Ordinance 2012-07-16; and Ordinance 2014-12-05.

C. Critical Aquifer Recharge Areas.

1. General Provisions. Chapter 40.410, Critical Aquifer Recharge Areas, Ordinance 2005-04-15, dated April 26, 2005; and Ordinance 2009-03-02, is hereby adopted in whole as part of this Program.

F. Habitat conservation areas - *The first change deletes the provision referencing a county map "Priority Habitats and Species Map" (F.1.b shown below) and re-numbers the provisions which follow. Additional changes update all references to the county's stormwater code from Chapter 40.385 to 40.386 (sections not shown here) and correct habitat function points consistent with the 2014 wetland ratings system update.*

1. General Provisions.

~~b. The above habitat areas are mapped on a countywide basis in the adopted “Priority Habitats and Species Map.” Maps are on file with Clark County Environmental Services, except that maps of individual locations of sensitive, threatened, or endangered wildlife species are maintained separately to protect sensitive species.~~

Section 40.450.560 Site planning and development - *Provision A.2 is revised to correct the stormwater code reference and add language on low impact development.*

2. Impervious surfaces shall be minimized to the extent feasible as specified in Chapter ~~40.385~~ 40.386. Low impact development techniques shall be utilized where feasible to minimize increases to stormwater runoff.

Section 40.460.590 Water quality and quantity - *Stormwater code references are corrected.*

Section 40.460.630 Use-specific development regulations – *Stormwater code references are corrected in F. Industrial uses 2.g (2), J. Recreational uses 11 (b) and N. Utility uses 6. Provision K. Residential is revised to include provisions on existing residential structures.*

13. Existing residential structures.

a. Legally established existing residential structures and appurtenances located landward of the OHWM and outside the floodway that do not meet the standards of this Program are considered to be conforming-, except that an application to replace an existing residential structure must meet all setback, height, and other construction requirements of the Program and the Act. A one - (1) time expansion is allowed, as follows:

1a. The expansion is no more than twenty-five percent (25%) of the habitable floor area of the existing residence;

2b. The expansion does not exceed the allowed height limit;

3e. The expansion is no further waterward ~~of~~ than the existing structure; and

4d. The applicant demonstrates ~~through a letter of exemption~~ that the expansion will result in no net loss of shoreline ecological functions.

b. If a structure or development is damaged by fire, flood, explosion, or other natural disaster and the damage is less than seventy five ~~ixty~~ percent (75~~60~~%) of the replacement cost of the structure or development, it may be restored or reconstructed to those configurations existing at the time of such damage, provided:

1. The reconstructed or restored structure will not cause additional adverse effects to adjacent properties or to the shoreline environment;

2. The rebuilt structure or portion of structure shall not expand the original footprint or height of the damaged structure;

3. No degree of relocation shall occur, except to increase conformity or to increase ecological function, in which case the structure shall be located in the least environmentally damaging location possible;

4. The submittal of applications for permits necessary to restore the development is initiated within twelve (12) months of the damage. The Shoreline Administrator may waive this requirement in situations with extenuating circumstances;
5. The reconstruction is commenced within one (1) year of the issuance of permit;
6. The Shoreline Administrator may allow a one (1) year extension provided consistent and substantial progress is being made; and
7. Any residential structures, including multifamily structures, may be reconstructed up to the size, placement and density that existed prior to the damage, so long as other provisions of this Program are met.

c. If a structure or development is either demolished, or damaged by fire, flood, explosion, or other natural disaster and the damage is more than seventy five ~~ixty~~ percent (75~~60~~%) of the replacement cost of the structure or development, then any replacement structure has to meet the requirements of the Program and the Act.

14. New appurtenances shall meet the setback requirements of this Program.

Section 40.460.800 Definitions – *Revisions are made to “normal maintenance” and “normal repair” largely addressing demolished single-family homes.*

“Normal maintenance” means those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition (WAC 173-27-040(2)(b)), except for maintenance that would cause substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of demolished existing single-family residences and their appurtenances is not considered normal maintenance; and further provided that maintenance of nonconforming structures and developments is subject to the provisions of CCC 40.420.010 and 40.460.250. See also “normal repair.”

“Normal repair” means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where for repair that would causes substantial adverse effects to shoreline resources or environment; and, provided, that the replacement of a demolished existing single-family residence and its appurtenances is not considered normal repair; and further provided, that repair or replacement of nonconforming uses is subject to CCC 40.420.010 and 40.460.250. ~~Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment (WAC 173-27-040(2)(b)).~~ See also “normal maintenance.”

Amendment History, Review Process:

Ordinance No. 2014-12-10: The record shows the proposed Carty Lake amendment originated from a local planning process that began in 2014. This element was originally part of the county’s 2014 Limited Amendment. Concerns raised by the Port of Ridgefield resulted in the Board of County Commissioners¹ removing the addition of Carty Lake from the 2014 Limited Amendment during final

¹ In 2015, Clark County changed their form of government and the 3-member Board of County Commissioners is now a 5-member Board of County Councilors.

consideration. Issues were resolved during a multi-agency meeting held in Ridgefield in September 2014.

The record shows that a public open house was held on June 24, 2014, and a public hearing before the Planning Commission was held on August 7, 2014. Notice of the hearing was published July 23, 2014. The record also shows the Board of County Commissioners (BOCC) held hearings August 19 and November 18, 2014.

Ordinance No. 2015-12-12: The record shows this proposed amendment originated from a local planning process that began in late 2014. Proposed changes include incorporating updates to critical area regulations² including the 2014 wetland ratings system, revisions to language related to nonconforming residential structures, and maintenance and repair along with corrections to scrivener's errors. The record shows the Planning Commission held a public hearing on August 20, 2015. Notice of the hearing was published August 5, 2015 in The Columbian. The record indicates the BOCC held hearings on October 13 and 27th and December 15, 2015.

With passage of Ordinance #2014-12-10, on December 16, 2014 and Ordinance 2015-12-12 on December 15, 2015, the BOCC authorized county staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on February 23, 2016. Notice of the state comment period was distributed to state and local interested parties identified by the county on March 22, 2016, in compliance with the requirements of WAC 173-26-120 (2) and as follows: the state comment period began on April 6, 2016 and continued through April 21, 2016 for a total of 15 days.³ Ecology staff determined the proposed amendment is relatively straightforward and non-controversial and a shorter comment period is justified.

Notice of the comment period, including a description of the proposed amendments and the authority under which the action is proposed along with the manner in which interested persons may obtain copies and present their views was provided on Ecology's website: <http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/ClarkCountyLimitedAmendment.html> and as part of the written notice mailed to over 100 interested parties. Ecology received no comments.

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 amendments have 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

² The county adopted changes to their critical area regulations under the Growth Management Act in Ordinance No. 2014-12-05. These changes are now being incorporated into the SMP.

³ Per RCW 90.58.090 (2)(a), the comment period shall be at least 30 days unless the department determines the level of complexity or controversy involved supports a shorter period.

included review of a SMP Submittal Checklist, which was completed by the county and submitted to Ecology for review along with other amendment materials.

Consistency with Limited Amendment Criteria: The proposed amendments have also been reviewed for compliance with WAC 173-26-201(1)(c) of the SMP Guidelines.

- The amendments are necessary to improve consistency with the Act's goals, policies and implementing rules applicable to shorelines of the state within the local government (WAC 173-26-201(1)(c)(i)(D) and to correct errors and omissions (WAC 173-26-201(1)(c)(i)(E).
- Clark County is not currently conducting a comprehensive shoreline master program (WAC 173-26-201(1)(c)(ii).
- The proposed amendments will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(iii).
- The amendments are consistent with all applicable policies and standards of the Act (WAC 173-26-201(1)(c)(iv).
- All procedural rule requirements for public notice and consultation have been satisfied (WAC 173-26-201(1)(v).
- 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)(vi).

Consistency with SEPA requirements: The county submitted evidence of SEPA compliance for both ordinances:

Ordinance 2014-12-10: The County provided a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on June 20, 2014. Notice of the SEPA determination was published in both *The Reflector* and *The Columbian* on July 2, 2014. Ecology did not comment on the DNS.

Ordinance 2015-12-12: The County provided a SEPA checklist and issued a DNS on August 12, 2015 which was published August 12, 2015.

Other studies or analyses supporting the limited amendments: Ecology also reviewed the following additional documents prepared by the County in support of the SMP amendments:

Ordinance 2014-12-10:

- *SEPA Determination of Non-Significance, July 17, 2014*
- *Clark County Planning Commission minutes, August 7, 2014*
- *Planning Commission Recommendations to the Board of County Commissioners, August 19, 2014*
- *Clark County Board of Commissioners Minutes, August 19, 2014*
- *Errata – Exhibit A addition to the Inventory & Characterization of Section 5.8A regarding Carty Lake*

Ordinance 2015-12-12:

- *SEPA Determination of Non-Significance, August 4, 2015*
- *Clark County Planning Commission Public Hearing minutes, August 20, 2015*

- *Planning Commission Recommendations to the Board of County Commissioners, September 29, 2015*
- *Board of County Councilors Minutes, October 13, 2015 and October 27, 2015*

Summary of issues raised during the county’s public review process:

The issues raised during the county's public review process focused on the proposed addition of Carty Lake to the list of shoreline waterbodies in the County’s SMP. Early in the process, Ecology requested the County correct the omission of Carty Lake from the list of waterbodies. The County agreed to add this as a third element in the proposed limited amendment. The Port of Ridgefield raised objections to this listing. Port property is located entirely within the City of Ridgefield and subject to the city of Ridgefield SMP. Despite attempts to clarify this before the County Commissioners during the hearing, the Commission chose to remove the listing of Carty Lake from this limited amendment proposal to allow time for the parties to discuss their concerns.⁴

Summary of issues identified by Ecology as relevant to its decision: None

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted, Ecology concludes that the county’s proposed SMP 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).

Ecology concludes that the proposed amendments are consistent with the criteria for approving limited amendments in WAC 173-26-201(1)(c).

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 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the county has complied with the purpose and intent of the local amendment process requirements contained in 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.

⁴ Subsequent to this decision, a meeting was held in September with representatives from the Port of Ridgefield, Clark County, City of Ridgefield, Ecology, Ridgefield National Wildlife Refuge and interested citizens. Agreement was reached on how to move forward and a subsequent limited amendment is forthcoming from the County.

Ecology concludes that the county's limited amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed limited amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed limited amendment will be effective 14 days from the date of this approval.