

**ATTACHMENT A: FINDINGS AND CONCLUSIONS  
FOR PROPOSED LIMITED AMENDMENT TO THE CITY OF SEATTLE  
SHORELINE MASTER PROGRAM**

SMP Submittal accepted November 27, 2012, Ordinance No.124023

Prepared by Joe Burcar on January 22<sup>nd</sup>, 2013

**Brief Description of Proposed Amendment:**

The City of Seattle submitted to Ecology for approval, a limited amendment to their Shoreline Master Program (SMP) to allow certain utility uses for treatment and storing stormwater and/or combined sewage within the Conservancy Recreation (CR) shoreline environment designation.

**FINDINGS OF FACT**

**Need for amendment.** The proposed amendment is needed to comply with the City's Combined Sewer Overflow (CSO) National Pollution Discharge Elimination System (NPDES) Permit No. WA0031682, which requires construction of multiple facility upgrades to the City's municipal stormwater/combined sewage system within the southeast (drainage to Lake Washington) area of the City. Under the City's current SMP, "*utility services*" such as underground sewage and stormwater storage tanks are prohibited within the Conservancy Recreation (CR) shoreline environment. However, the City demonstrated that these types of facilities will be required within at least two areas of the CR shoreline near Seward Park. The City considered all possible administrative paths to deal with this issue, as well as potential alternative locations to site the utilities services (underground storage tanks) and have determined that because of the gravity flow nature of the City's stormwater system, no other locations are feasible to site the required facility upgrades. Therefore, the City locally adopted a limited amendment to their SMP, to allow a "*utility service use*" for the treating and storing stormwater and/or combined sewage within the CR shoreline environment, subject to approval of a shoreline conditional use permit.

**SMP provisions to be changed by the amendment as proposed:** The following sections of the existing City's SMP are proposed for change:

Section 23.60.365 from "A. 2." to "D. 2." addressing (Administrative CUP in CR).

Section 23.60.368, from "A." to "H." addressing (Prohibited uses in CR).

The City's current SMP prohibit "*utility serves uses*" from being constructed within the CR environment. According to the City, a condition of their approved NPDES permit requires that the City construct new water quality facilities to further control urban stormwater/combined sewage flows. Further, the nature of the City's gravity flow stormwater system, limit the number of feasible locations to construct the required water quality management facilities, for which the City considered a number of alternative locations and conclude that the only two feasible sites are located within the CR environment.

Therefore, the amendment provides a new section "D" to the existing provisions in section 23.60.365 (Administrative conditional uses in the CR Environment). The new section allows for consideration of

**“Utility Service Uses** for treating and storing stormwater and or combined sewage...” through review and approval of a shoreline conditional use permit. The amendment also includes a number of non-substantive changes to the numbering within the code and clarifies that **“Utility Service Uses associated with treating and storing stormwater and/or combined sewage...”** are not prohibited within section 23.60.368 (Prohibited uses in the CR Environment).

**Amendment History, Review Process:** The City indicates the proposed SMP limited amendment originated from requirements within the City’s CSO NPDES permit. The record shows that the City provided notice within *The Daily Journal of Commerce*, the *City’s Land Use Information Bulletin* and mailing to local interested parties of an opportunity to provide public comment on the proposed amendment between June 14<sup>th</sup> and June 28<sup>th</sup>, 2012. Additional opportunities to provide public input on the proposal were provided at a public hearing held before the City’s Planning, Land Use, and Sustainability Committee on October 15<sup>th</sup>, 2012 (C. B. #117577) and at a public-hearing/City-Council meeting held on October 29<sup>th</sup>, 2012 (C.B. #117577).

With passage of C.B. #117577/Ordinance #124023, on October 29, 2012, the City authorized staff to forward the proposed amendments to Ecology for review and approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on November 27, 2012. Notice of the state comment period was distributed to state and local interested parties identified by the City on December 3<sup>rd</sup>, 2012, in compliance with the requirements of WAC 173-26-120 (2) and as follows: The state comment period began on December 7<sup>th</sup>, 2012 and continued through January 7<sup>th</sup>, 2013. Notice of the comment period, including a description of the proposed amendment and the authority under which the action is proposed including the manner in which interested persons may obtain copies and present their views was provided on Ecology’s website<sup>1</sup> and as part of the written notice mailed to 66 interested parties. Ecology did not receive any written comments on the proposal during the 30-day comment period.

**Consistency with Chapter 90.58 RCW:** The proposed amendment has been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). The City has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

**Consistency with “applicable guidelines” (Chapter 173-26 WAC, Part III):** The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Submittal Checklist, which was completed by the City and submitted to Ecology for review along with the other amendment materials.

**Consistency with SEPA Requirements:** The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendment on June 14, 2012. Notice of the SEPA determination was published in *The Daily Journal of Commerce* and the *City’s Land Use Information Bulletin*. Ecology did not provide comments to the City on the DNS.

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<sup>1</sup> [http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/seattle\\_limitedamendment.html](http://www.ecy.wa.gov/programs/sea/shorelines/smp/mycomments/seattle_limitedamendment.html)

**Other Studies or Analyses supporting the SMP update:** Ecology also reviewed the following materials submitted by the City in support of the limited SMP amendment:

These materials include:

- *A September 13, 2012 NPDES Permit No. WA0031682;*
- *A June 7<sup>th</sup>, 2012 SEPA Checklist related to the proposed amendment;*
- *A June 14<sup>th</sup>, 2012 SEPA Analysis/Decision from the City of Seattle;*
- *A August 21<sup>st</sup>, 2012 letter from the Mayor of Seattle, supporting the amendment;*
- *A October 29<sup>th</sup>, 2012 signed copy of Ordinance 124023 approved by the City Council; and*
- *A November 8<sup>th</sup>, 2012 package of materials submitted to Ecology including the above referenced materials and Attachment 2 – Text Amendment, Attachment 3 – Summary of Proposal, and Attachment 5 – Master Program Submittal Checklist.*

**Summary of Issues Identified by Ecology as Relevant To Its Decision:** Of particular importance to Ecology in reviewing this proposal is justification for the timing of the limited amendment (i.e., need for a limited amendment ahead of the City’s comprehensive SMP amendment), and confirmation that the City first considered all available administrative options to satisfy the NPDES requirement for construction of stormwater/combined sewage treatment infrastructure.

In terms of the timing of this limited amendment, according to the City, the NPDES permit requires that one of the CSO projects within the southeast area of the City begin construction by 2013. As of January 1<sup>st</sup>, 2013, the City’s comprehensive SMP-update is close to local adoption, but still has not been locally approved, for which a 9 to 12-month Department of Ecology review will still need to be completed, before the updated SMP will go into effect. Therefore, in order to satisfy the timeline provided as part of the NPDES permit condition, review of the proposed changes through a limited amendment ahead of the City’s comprehensive amendment appears justified.

The City also provided additional justification for proceeding with review of the limited amendment through demonstration (Attachment 3) that they had explored all administrative options and alternative locations or designs to satisfy the NPDES permit requirement. As described by the City, a combination of key factors, “...including but not limited to hydraulic constraints of the sewer system, costs, environmental impacts and stakeholder/community input”, require that the CSO’s be sited within the CR environment. Therefore, the City considered alternatives in an attempt to avoid the need for the limited amendment, for which the only feasible alternative is to proceed with the proposed amendment.

## **CONCLUSIONS OF LAW**

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

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 and WAC 173-26-201 (1) regarding the SMP amendment process and contents.

Ecology concludes that the City 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 City has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the limited amendment is consistent with requirements from WAC 173-26-201 (1) (c) (i) (A) as the amendment is necessary to comply with both state and federal law as administered through the National Pollution Discharge Elimination System (NPDES) and the Federal Clean Water Act.

Ecology concludes that the City's limited amendment is consistent with WAC 173-26-201 (1) (c) (ii) as the public's interest will be further protected through the stormwater and combined sewer overflow infrastructure improvements enabled by this limited amendment

Ecology concludes that the City has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the City's limited SMP 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 SMP 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.