ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE TOWN OF SOUTH PRAIRIE SHORELINE MASTER PROGRAM

SMP Submittal accepted November 30, 2012, Resolution #320
Prepared by Sarah Cassal on March 27, 2015

Brief Description of Proposed Amendment:

The Town of South Prairie has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program submittal contains locally tailored shoreline management policies, regulations, an environment designation map, administrative provisions as well as the Critical Areas Ordinance that has been fully incorporated as Appendix B. Additional reports and supporting information and analyses noted below, are included in the submittal.

FINDINGS OF FACT

Need for amendment. The proposed amendment is needed to comply with the statutory deadline for a comprehensive update of the Town’s local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This amendment is also needed for compliance with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 and 27. The Town utilizes the Pierce County SMP to regulate the shoreline of South Prairie Creek adopted by reference in 1979 by the Town and approved by Ecology in 1980. The SMP has never been amended. This SMP update is also needed to address land use changes that have occurred along the City’s shorelines over the past 34 years and to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the Town’s Critical Areas Ordinance, Comprehensive Plan, and Flood Management Plan.

Amendment History, Review Process: The Town indicates the proposed SMP amendments originated from a local planning process that began on November 25, 2009. A public workshop was held on April 3, 2012 in front of the Town Council. The record shows that public hearings before the Town Council were held on July 3, 2012 and October 2, 2012. Affidavits of publication provided by the Town indicate notice of the hearing was published during the weeks of September 19, 2012 and September 26, 2012.

With passage of Resolution #320, on October 2, 2012, the Town authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP comprehensive amendment was received by Ecology for state review and verified as complete November 30, 2012. Notice of the state comment period was distributed to state task force members and interested parties identified by the Town January 2, 2013 in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on January 14, 2013 and continued through February 18, 2013. No public hearing was held by Ecology on the proposed amendment. Notice of the public comment period, including a description of where interested persons may obtain copies and submit their views, was provided in post cards and on Ecology’s website. No comments were received concerning the proposed amendment.
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 Town.

Consistency with SEPA Requirements: The Town submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on June 18, 2012. Notice of the SEPA determination was published in the Courier-Herald on June 20, 2012. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update: Ecology also reviewed the following reports, studies, map portfolios and data prepared for the Town in support of the SMP amendment:

These supporting documents include:

- a February 2010 public participation plan,
- a June 2011 shoreline inventory and characterization,
- a May 2012 cumulative impacts analysis,
- a June 2011 shoreline use analysis,
- a May 2012 no net loss report, and
- a June 2011 restoration plan

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Several changes are necessary to the SMP for consistency with the statute and associated Washington Administrative Code; these required changes are as follows:

Two clarifications of the effective date as defined in RCW 90.58.090(7) are necessary.

Corrections to the use and modification table were necessary to clarify the permit procedures found in WAC 173-27-040(1)(b).

A shoreline conditional use permit was incorrectly identified as the permit required for height exceedance above 35 feet. Two corrections identifying that a shoreline variance permit is the appropriate permit for departures in bulk and dimensional standards are necessary for consistency with the shoreline permit procedures found in WAC 173-27-170. Consistency with these standards is required in WAC 173-26-191(2)(a)(iii)(B).

Several changes are required to implement the new buffer schematic. The locally adopted SMP adopted a jurisdiction-wide shoreline buffer of 50 feet along South Prairie Creek. The Town and Ecology worked in partnership to develop an alternate buffer that fluctuates in width to reflect the existing built and natural environment. This change is needed to achieve no-net-loss of ecological
function as required in WAC 173-26-201(2)(c), and further iterated in WAC 173-26-221(c)(iii) the protection of critical freshwater habitat, and WAC 173-26-221(3) flood hazard reduction provisions.

The revised buffers in Table 3.2 are as follows: 50 feet wide North of Highway 162, and 100 feet wide South of Highway 162, except on the Left Bank South of the Foothills Trail Right-of-Way, where it varies in width by extending from the ordinary high water mark to the top of the southern slope of the creek. The buffers are site specific to existing conditions along South Prairie Creek and take into account existing and future development patterns, existing vegetation and the ecological function that provides aquatic and terrestrial habitat for organisms living in the Creek and the adjacent riparian corridor.

South Prairie Creek is critical fresh water habitat (see Town of South Prairie Critical Areas Code, page 41) for several salmonids, including three federal endangered species (bull trout, Chinook salmon, and steelhead). South Prairie Creek and its tributaries are the highest priority for salmon restoration not only in Water Resource Inventory Areas (WRIA) 10, but all of Pierce County for Chinook salmon as identified in The Salmon Habitat Protection and Restoration Strategy.

The proposed fish and wildlife buffer has been a point of contention. The buffer found in the South Prairie Critical Area Code adopted by the Town September 2007, and effective until the adoption of this SMP, requires a 200 foot buffer on South Prairie Creek. A reduction in the buffer from 200 feet to 100 feet was proposed in the preliminary draft SMP based on the information contained in the Inventory and Characterization and Analysis Report (June 2011, page 38) to accommodate the existing land use patterns of the Town. The report identified the median setbacks as 163 feet and 73 feet in the two stream reaches analyzed in the report. The proposed 100 foot buffer was further reduced by the Town Council to 50 feet after public expressed concern that the 100 foot buffer would create several nonconforming residences along the Creek prior to submittal to Ecology for approval. After local adoption and the state public comment period several agencies sent comments to the Town and Ecology regarding this issue, see Attachment D for comments.

The required change to the fish and wildlife habitat buffer accommodates the existing built environment and provides distance from the creek to protect structures from high flood waters, provides natural erosion control to the dynamic stream conditions, and protects the existing mature forested vegetation along South Prairie Creek. To implement the new buffer in the SMP several changes were necessary including the following:

- A map was added to Appendix A illustrating the approximate locations of the buffer areas;
- language was edited to remove references to the 50-foot buffer;
- language was added to identify the new buffers placed in Table 3.2;
- definitions were added to the SMP for identifying the right and left banks of the Creek and defining the word slope; and,
- descriptions were added to identify how to administer the buffer.

The monetary threshold of the substantial development permit increased September 2012 by the Washington State Office of Financial Management. A correction to the monetary threshold is necessary for consistency with the new threshold.

The following definitions are inconsistent with 90.58.030 and the implementing rules for the Shoreline Management Act as required in WAC 173-26-020:

- Accessory; and,
In addition to the required changes above, the following changes are recommended for further clarity and for ease of implementation of the SMP:

The SMP prohibits in-stream structures in the residential environmental designation. In most cases if such structures are proposed they will span the ordinary high water mark and be located in both the upland and aquatic areas. A recommendation to change this prohibition to an allowed use in the Residential environment designation is included to eliminate permitting conflicts when implementing the SMP.

The SMP contains a five foot side-yard setback for residential lots. This dimensional standard conflicts with the seven foot side-yard setback in the Town building code, adds little value to the SMP, and can add a layer of complication with shoreline permitting if a reduction is needed for a proposal. Two changes are recommended to remove the side yard setback from the SMP.

The non-conforming use standards found in the SMP are not written clearly. After discussing these standards with the Town, the Town requested that the standards be edited for clarity. Changes to the non-conforming use standards were made to clearly state that all legally existing residential structures are conforming per RCW 90.58.620.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the Town’s proposed comprehensive SMP update, subject to and including Ecology’s required changes (itemized in Attachment B), 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). This includes a conclusion that approval of the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the Town, be included in Ecology’s approved SMP amendments.

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

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

Ecology concludes that the Town's comprehensive SMP update 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.

Ecology concludes that the Town has chosen not to exercise its option pursuant to RCW 90.58.030(2)(d)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the Town’s critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the Town. Ecology approval of the proposed amendments with required changes is effective 14 days from Ecology’s final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the Town may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology’s original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final. Approval of the updated SMP and proposed alternatives is effective 14 days from Ecology’s final action approving the alternatives.