

Department of Ecology Shorelands & Environmental Assistance Program

Guidance:

Adoption of “Critical Areas Segment” Amendments to Shoreline Master Programs

Purpose of guidance

The following guidance clarifies the procedures for proposing adoption of Critical Area Ordinance standards into a local Shoreline Master Program (SMP.) This guidance addresses stand-alone “critical areas segment” SMP amendments – amendments submitted ahead of the comprehensive SMP amendment process. This issue bridges two important land use statutes in our state – the Growth Management Act (GMA) and the Shoreline Management Act (SMA).

In particular, this guidance provides an optional path forward for cities and counties to submit “critical areas segment” SMP amendments in response to outcome of the *Anacortes* Supreme Court case. For more information on this topic, see the Departments of Ecology and Commerce updated guidance at <http://www.ecy.wa.gov/programs/sea/sma/news/reconsider.html>.

Questions and answers

- ***Can Critical Area Ordinance (CAO) standards be adopted into local Shoreline regulations?***

All cities and counties with Shorelines will be updating their Shoreline Master Programs (SMPs.) During comprehensive SMP updates, buffers and other provisions in the local CAO may be examined for adequacy in protecting Shoreline habitat functions, and where appropriate may be integrated into the comprehensive SMP update.

However, some local governments may want to adopt their Critical Area Ordinance standards into their SMP as an interim measure, *prior* to the comprehensive SMP update required by RCW 90.59.080. Under criteria specified in RCW 90.58.090(4)¹, these SMP amendments must be “consistent with RCW 90.82.020 (statement of objectives for SMA) and applicable shoreline guidelines.” This guidance is intended to ***clarify which elements of the Guidelines (WAC 173-26) are applicable to stand-alone Critical Area Segment updates*** to an SMP.

¹ Critical area segment” amendments of SMPs are addressed in RCW 90.58.090(4). The statute identifies criteria for Department of Ecology approval of such amendments (formatting added):

“90.58.090 (4) The department shall approve the **segment of a master program relating to critical areas** as defined by RCW [36.70A.030](#)(5) provided the master program segment is:

- Consistent with **RCW [90.58.020](#)** and
- **applicable shoreline guidelines**, and if
- the segment provides a level of **protection of critical areas at least equal to that provided by the local government’s critical areas ordinances** adopted and thereafter amended pursuant to RCW [36.70A.060](#)(2).”

Adoption of an SMP “segment” is also supported by RCW 90.58.110(2): “At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.”

- ***The statute requires Critical Area Segment Amendments to be “consistent with...applicable guidelines.” What does this mean?***

Critical area segment amendments are required to meet the applicable SMP Guidelines provisions related to Critical Areas (about 20 pages out of the 100 pages in the SMP Guidelines.) Ecology will not require the technical reports, update of Environment Designations, habitat restoration plan or other components required for a *comprehensive* SMP update. In general, critical area segment SMP amendments must:

- Include at least one public hearing on the proposed SMP “segment” amendment and meet other public notice requirements;
- Meet the objectives of the Critical Area and Flood Hazard Reduction sections of the SMP Guidelines (WAC 173-26); and
- Be consistent with the Shoreline Management Act (RCW 90.58), including provision for water-oriented uses and complying with SMA permit processes.

Guidelines sections that will generally apply to critical area segment updates are:

- Local Adoption Process, WAC 173-26-100(1),(2),(3) and (5)
- Consistency with Preferred Shoreline Uses, WAC 173-26-201(2)(d)
- Critical Areas, WAC 173-26-221(2)
- Flood Hazard Reduction, WAC 173-26-221(3)
- SMP Development Review Procedure: Conformance with WAC 173-27

Please see the “Checklist for Critical Area Segment Amendments” for details on which specific provisions of the Guidelines apply.

- ***Is adoption of CAOs into the local SMP required by the Supreme Court decision in the “Anacortes” case?***

The position of the Departments of Ecology and Commerce is that Critical Area Ordinances remain in effect in the Shoreline area, without adoption into the local Shoreline Master Program. (See <http://www.ecy.wa.gov/programs/sea/sma/news/reconsider.html>.) At this time, we do not see the *Anacortes* decision creating a requirement for adoption of CAO standards into SMPs. The intent of this guidance is to accommodate local governments that view a stand-alone “critical area segment” SMP amendment as significantly benefitting habitat protection.

The focus of Ecology’s Shorelines staff (and many local governments) is on the comprehensive SMP updates required by statute. We discourage limited SMP amendments, especially after funding is provided for the comprehensive SMP update. Limited SMP amendments drain staff time and attention away from the very important comprehensive SMP updates that are now underway.

- ***Will revisions to a CAO be needed prior to adopting it as a Critical Area Segment SMP amendment?***

Some revision to the locally-adopted CAO is likely prior to Ecology approval as an SMP amendment. Needed revisions may include:

- Removing CAO development review processes that are inconsistent with the permit processes established in the Shoreline Management Act. For instance, variances from SMP standards can only be approved through the Shoreline Variance process as defined in the statute.
 - Revising habitat protection standards to ensure protection of shoreline habitat. For example, if significant concerns regarding CAO standards were identified in comment letters from Ecology, Fish and Wildlife, or other entities, these may need to be resolved prior to the CAO standards receiving formal Ecology approval as an SMP amendment.
 - Clarifying that critical area buffer implementation will not obstruct priority shoreline uses identified in the local Shoreline Master Program – such as water dependent businesses or shoreline public access improvements.
- ***What is the relation between a Critical Area Segment approval and the upcoming Comprehensive SMP update?***

Approval of a stand-alone critical areas segment amendment does not substitute for the comprehensive master program update required in 90.58.080 RCW. Designation of a critical areas ordinance as an interim SMP amendment does not imply or assure that Ecology will find the interim amendment to be fully adequate during the comprehensive master program update. Consideration of scientific analysis, policies and standards to achieve no net loss of shoreline ecological function, and other requirements applicable to shoreline master programs and critical areas protection, will occur through the comprehensive master program update process.

- ***Where do we start if we want to consider a stand-alone critical area segment SMP amendment?***

Local governments are strongly encouraged to contact the regional SMP planner ***early in the process*** of developing a Critical Area Segment SMP Amendment. This is vital to ensuring that the procedural and content requirements necessary to gain Ecology approval are met, prior to local adoption of the Segment amendment.

Optimally, the city or county planning process will identify that *both* the Critical Areas Ordinance and Shoreline Master Program are being considered for amendment – from the very beginning (docket approval, public hearing notices, etc.)

- ***Can we incorporate critical areas ordinances into our SMP by reference?***

Yes. A local government may include its critical areas ordinance in the master program, provided it is consistent with Chapter 90.58 RCW and the applicable Guidelines. See WAC 173-26-191(2)(b).

See the “Checklist for Critical Area Segment Amendments” for details on which provisions of the Guidelines WAC 173-26 apply. It is available at:

http://www.ecy.wa.gov/programs/sea/sma/news/Checklist_CriticalAreaSegment.pdf.