

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE CITY OF MOSES LAKE
SHORELINE MASTER PROGRAM**

SMP Submittal accepted December 15, 2014, Ordinance Number 2732
Prepared by Jeremy Sikes on XXXX

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COMMUNITY DEVELOPMENT

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PLANNING AND BUILDING

Brief Description of Proposed Amendment:

The City of Moses Lake (City) 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, environment designation maps, administrative provisions as well as local municipal code 18.53 Flood Hazard. No parts of the local ordinances are adopted by reference as part of the SMP, as the City has elected to incorporate Critical Areas language into the updated Master Program. The critical areas provisions provide a level of protection that assures no net loss of shoreline ecological function pursuant to *RCW 36.70A.480(4)*. 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 City'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. This SMP update is needed to address land use changes that have occurred along the City's shorelines since 1988 when the City reviewed the SMP, adopted in 1975. This update also provides consistency between the updated SMP Guidelines, current science regarding protection of shoreline resources, the City's Comprehensive and Flood Management Plans, and the shoreline protection provisions of neighboring jurisdictions.

SMP provisions to be changed by the amendment as proposed:

This comprehensive SMP update is intended to entirely replace the City's existing SMP which was last reviewed on 1988. This updated SMP does not increase the linear extent of shorelines to be covered and regulated by the City. The City did not elect to extend shoreline jurisdiction to include critical area buffers as allowed under RCW 90.58.020(2)(d)(ii).

Amendment History, Review Process:

The City's efforts to update the SMP originally began in 1998. The City formed a Citizen Advisory Committee of volunteers to review draft language for the Shoreline Master Program (SMP) update. The draft language was based on a model SMP developed by the Department of Ecology. The Committee met monthly starting through 2001, when it was determined that a shoreline inventory was needed before further work on the SMP update. Minutes of the Committee meetings and the draft language discussed by the Committee formed a basis for the goals, policies, and regulations that eventually lead to the locally adopted SMP.

The city revived the local planning process again in 2004 with help from a Department of Ecology grant.

Part of the grant money was used for a shoreline inventory by Geo-Ecology Research Group of Central Washington University. The inventory consisted of compiling, mapping, and analyzing information including zoning, land use, docks, bulkheads, wetlands, soil permeability, etc. The remainder of the grant money was used for Highlands Associates of Okanogan to take the shoreline inventory and analysis, state Shoreline Master Program guidelines, work by Moses Lake's Shoreline Citizen Advisory Committee, and Planning Commission input to create drafts of the regulatory chapters of the SMP update. At the end of that process, the draft SMP was not yet acceptable to either the state or the local citizens and Planning Commission, so staff continued to refine the draft SMP as workload allowed.

The City has engaged extensively with the public throughout the lengthy update process. Through more than 50 public sessions (*hearings, open houses, work sessions, open regular meetings, and comment periods*) the citizens of Moses Lake have had many opportunities to provide input on the draft SMP. In its latest iteration, the SMP was intensively reviewed by the Planning Commission through twenty-three study sessions, and two open houses, before the GMA 60-day comment period. The 60-day review garnered several substantive comments from state agencies, including Ecology.

With passage of Resolution #2732, on October 24, 2014, the City authorized staff to forward the proposed amendments, including responses to comments received, to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on December 15, 2014. Notice of the state comment period was distributed to interested parties identified by the City on January 15, 2015, in compliance with the requirements of WAC 173-26-120, and as follows:

The state comment period began on February 2, 2015 and continued through March 4, 2015.

Ecology also issued a news release and internet notices to encourage public participation and comment. Ecology received five written comments, focused primarily on buffers established in the locally adopted SMP draft, and cultural resources issues. Ecology prepared a summary of public comments and sent this to the City of Moses Lake on March 23, 2015. Due to extenuating circumstances with City staff, the City requested, and was granted, two subsequent 45-day extensions to their required response timeline. Extensions were requested in writing on April 22 and June 19, 2015.

On July 29 2015, the City submitted to Ecology its responses to issues raised during the state comment period.

Ecology found that the locally adopted draft, while complete, contained some outdated references, and contained provisions that Ecology had previously indicated were not compliant with applicable laws and rules. With these required and recommended changes, Ecology proposes replacement language to ensure compliance with applicable statutes, and provides detailed rationale for each required and recommended change.

Among other smaller edits, required changes include deletion of one environment designation that would be inappropriate based on the Cumulative Impacts Analysis and underlying Grant County designation, and clarification of a provision addressing buffers established during preliminary platting to ensure consistency with state subdivision laws. Ecology also incorporated text edits the City

proposed to address comments received during the state public comment period, as presented in the responses received July 2015 (Attachment C).

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.

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 amendments on April 28, 2014. Notice of the SEPA determination was published in the Columbia Basin Herald on May 1, 2014. 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 City in support of the SMP amendment:

These supporting documents include:

- *Shoreline Inventory and Characterization dated June, 2005*
- *Moses Lake Cumulative Impacts Analysis (MLCIA) dated July 8, 2013*
- **Technical Memo; Recommendations to Meet No Net Loss of Ecological Function in the City’s Shoreline Master Program dated July 8, 2013*
- **Technical Memo (edited by City of Moses Lake); Recommendations to Meet No Net Loss of Ecological Function in the City’s Shoreline Master Program dated October 15, 2013*
- *Shoreline Restoration Plan (Moses Lake SMP Chapter 11)*
- *MLMC 18.53 Flood Hazard Code*
- *MLMC Chapter 18.67 Planned Development District Zone Code*
- *City of Moses Lake SMP City Council Public Hearing and Comments Responsiveness Summary (undated)*
- *Shoreline Jurisdiction Map Portfolio dated January, 2014*
- *Shoreline Master Plan Comment Submittal dated December, 2014*
- *City of Moses Lake Response Matrix for State Public Comment Period, and City proposed text edits; July 20, 2015*

* Both the original and edited versions of this document were submitted by the City of Moses Lake as a part of the formal submittal package.

Summary of Issues Raised During The Public Review Process:

Issues raised during the public comment period were substantive and wide ranging. Some of the issues raised were similar to those raised during the many City-sponsored public comment periods, while

others were raised for the first time during the state comment period. Ecology commented extensively on the GMA 60-day review draft prior to final adoption. The City elected not to address several of those comments in the locally adopted draft. Ecology included these unaddressed comments in the response matrix (Attachment C – Combined State_Local Comment Responses) developed for the state comment period for clarity.

The City of Moses Lake SMP update process was unique and lengthy. The update process began in 1998, and proceeded in bursts of activity and periods of dormancy until roughly 2013. Both the City and Ecology had staff turn-over during the nearly twelve years update process. As a result, the locally adopted draft was authored and revised by different planning staff, planning commission members, and City councils. Ecology had a more limited role in reviewing draft products than with other comprehensive updates, and provided feedback primarily during the many formal public comment periods held by the City. As noted, some of Ecology's earlier comments, including many direct requirements of either the SMA or Ecology rules, were not incorporated into the locally adopted draft.

Issues raised previously by Ecology dealt primarily with wetland buffers and mitigation ratios, joint use docks, and trail setbacks.

Wetlands buffers

Ecology found the city did not provide adequate rationale for proposed wetland buffers for Category 3 and 4 wetlands. Ecology's science-based recommended Category 3 and 4 wetlands buffers are 60 feet and 40 feet respectively, with additional buffers of 30' and 60' for wetlands with high quality habitat.¹ The City's proposed buffers are 25 feet for both categories with no additional area for higher functioning scores.

The city based its buffers in part on a Cumulative Impacts Recommendations report prepared by Watershed Co., which recommended that Category 3 wetlands should be provided a 25-foot buffer. The report held that *"...proposed buffers should either be: 1) consistent with existing conditions, or 2) consistent with recommendations of the "most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern" (WAC 173-26-201(2)(a))."* This is an incorrect interpretation of the WAC, which does not indicate that wetland buffers should be consistent with existing conditions where they would conflict with science-based recommended buffers.

While Ecology agrees an analysis of existing conditions is informative and should be considered, those conditions must be analyzed consistent with the requirement under WAC 173-26-201(2)(a). The analysis performed regarding category 3 wetland buffers presented does not meet the definition of *"most current, accurate, and complete scientific and technical information."* The analysis included only one unverified category 3 wetland, along with subjective conclusions about function based on aerial photo interpretation. In addition, the proposed buffer regulations the proposed buffers do not reflect the totality of the recommendation in the MLCIA because they do not require additional buffer width for higher habitat scores or for non SR-R designations.² Ecology's required changes include amendments to buffer provisions that align with current scientifically supported guidance.

¹ Wetlands & CAO Updates: Guidance for Small Cities, Eastern Washington Version, Pub #10-06-001; Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands, Pub 05-06-008.

² *ibid*

Wetland mitigation ratios

The proposed SMP sets wetland mitigation ratios at 1:1 for unavoidable wetland losses. A 1:1 replacement ratio for lost wetlands does not reflect the most current science on wetland mitigation and, per the Cumulative Impacts Analysis (Watershed Co., 2013), will result in net loss of ecological function. Ratios should be similar to those found in *Wetland Mitigation in Washington State* (Publication #06-06-011b) or Ecology's Small Cities Guidance (Publication #10-06-001) which was the source for many of the wetland provisions in this SMP. Wetland impacts from fill also require authorization from Ecology and possibly from the US Army Corps of Engineers. Mitigation ratios presented in the documents cited above were co-developed by Ecology and the Corps, and would be required for an applicant to obtain the needed permits. Ecology's required changes include amendments to mitigation ratios that align with current scientifically supported guidance, and the requirements in WAC 173-26-221(c)(i)(F).

Other wetland provisions

Other sections of the wetland regulations have been updated to correct references to Ecology guidance documents, wetland rating metrics, and to include optional newly developed wetland mitigation approaches.

Joint use docks

Ecology previously noted that proposed SMP drafts did not include a provision that requires joint use docks, if feasible, for new developments of 2 or more dwelling units. The City elected not to include that provision. Per RCW 173-26-231(3)(b), Ecology is providing text that requires joint use docks when feasible, using language developed during the recent Grant County SMP update that is being used for the entirety of Moses Lake outside of City limits (Attachment B). Using this previously approved language ensures consistency for all residents on the lake, and complies with the provisions under RCW 90.58.100(1)(c) and WAC 173-26-100(3) to coordinate and consult with adjacent jurisdictions.

Specific environment designation standards

The Washington Department of Fish and Wildlife commented on the inadequacy of buffers and allowed uses for several different environment designations. In some cases WDFW recommended specific alternative buffers for the SR-R and SR-S, but did not provide a rationale for increasing the proposed buffers from 50 feet to 65 feet. The Cumulative Impacts Analysis properly considered the effects of the originally proposed buffer widths for these environments. Ecology concurs with those findings, and agrees with the City's decision not to change those buffers. On the other hand, Ecology does not concur with a decision by the City to reduce trail setbacks from 25 feet in earlier drafts (and as assessed in the CIA), to 10 feet in the SR-S and SR-R environments. Ecology shares WDFW's concerns about the potential adverse impact of trails within 10 feet of the ordinary high water mark in the SR-S and SR-R environments, and includes the original 25-foot setback as recommended by WDFW and the "Recommendations to Meet No Net Loss" technical memo.

Archaeology

Both the Confederated Tribes of the Colville Reservation, and the Department of Archaeology and Historic Preservation (DAHP) submitted comments seeking changes to the Archaeological and Cultural Resources regulations of the SMP found in Section 6-20. Many of the proposed text changes were subsequently adopted by the City in their response to comments, which were included as proposed edits. Those are included in Attachment B Required and Recommended Changes as recommended changes for the City to formally accept. Other changes were not accepted, primarily

relating to timing of consultation with the DAHP and Tribes on the presence of potential cultural resources, data sharing, and other smaller details of the Archaeological and Cultural Resources regulations (see Attachment C for further details and the City's responses). DAHP provided detailed model ordinance language for consideration. While Ecology appreciates the thoughtful comments, and agrees that many of the proposed revisions would be sensible, the locally adopted draft SMP, along with the proposed additions, is compliant with WAC 173-26-221(1).

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

The City and Ecology found that many of the substantive comments presented improvements to the SMP, and the City drafted text edits specific to Chapters 6 and 7. Those edits are incorporated here as either required or recommended changes (Attachment B).

In addition to those topics brought to light during the state comment period (discussed in detail above and summarized in Attachment C), Ecology identified several other issues that necessitate required changes as detailed in Attachment B. Of those, two elements in the SMP require further discussion here.

Vesting

The locally-adopted SMP includes a clause that allows buffers established at preliminary plat phase of developments to apply indefinitely. Section 7-100-030(11) states:

For lots in plats with preliminary plat approval before the adoption of this Master Program, and which had wetland or shoreline buffers set during the platting process, the buffer shall be as set during the platting process.

This provision appears to conflict with Washington State's subdivision law (RCW 58.17). Local governments are charged with processing subdivision proposals and must adopt associated ordinances and procedures in conformity with state requirements. Local governments are allowed to extend the period of time for filing a final plat once a subdivision has received preliminary approval from the local government. RCW 58.17.140 allows local government to extend the time period for filing a final plat if they adopt ordinances with procedures to do so. The proposed language does neither.

RCW 58.17.170 establishes the time period after final plat approval under which the plat approval is "vested." Approved final plats can be developed according to "the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval." (RCW 58.17.170(3)(a)). The vesting period is ten years, if the date of final plat approval was prior to January 1, 2008 and the plat is not subject to the Shoreline Management Act (SMA). Plats that are subject to the SMA are vested for seven years.

Once a plat has been finalized, that plat is vested for a period of time as determined by RCW 58.17.170. There is no enabling legislation that specifically allows the local government to extend the time a final plat is vested. Ecology's understanding is that local governments are effectively preempted by state statute from extending final plat vesting timelines; that authority is reserved exclusively for the state.

After the final plat vesting period has expired, lots become "divested" - development of the plat would be subject to all applicable statutes, ordinances, and regulations that had been enacted or amended

since final plat approval. It appears the proposed SMP amendment would create an exception to this statutory scheme that exceeds the City's authority.

Ecology is including a required change that simply subjects the provision to the controlling RCW regarding vesting timelines for platting.

SR-D Environment Designation

Another important issue was the inclusion of a specific environment designation for a sensitive area of dunes (SR-D; Reach 25), but that deferred nearly all standards for development to a Planned Unit Developed code (Moses Lake Development Code 18.67.050(B)) that contains no specific limitations on how the area could be developed (SMP Chapter 9).

Without providing specific development standards for the SR-D designation, as called for in the Cumulative Impacts Analysis and Recommendations (MLCIA) to ensure no net loss of shoreline ecological function, this area inside the City UGA is more appropriately designated SR-S based on its physical ecological characteristics, underlying zoning, and the areas' current designation as Natural in the Grant County SMP.³

The MLCIA states the following:

"Given the limited standards guiding the Planned Development (PD), which is allowed in the Shoreline Residential – Dunes Area designation, it is not possible to determine whether, how, and to what extent the sensitive shoreline dunes will be protected." (MLCIA Section 5.1.2)

And

"A buffer is not specified in the Shoreline Residential - Dunes Area environment, where only planned developments are allowed. The City's Zoning Code (MLMC 18.67.050(B)) states that the planned development district shall be compatible with adjacent land uses and shall not adversely affect the character of the area in which it is located. This could be interpreted to mean that sensitive ecological functions at the site would need to be maintained, but it does not provide sufficient specificity to ensure that the development would not result in a net loss of functions." (MLCIA Section 6.1.1)

The MLCIA concludes with the following recommendation to achieve No Net Loss:

"In order to minimize adverse effects of future residential development on the unique habitat in the Shoreline Residential – Dunes Area environment designation, we recommend establishing a suite of performance standards that would accomplish the following:

1. limit the density of any new residential development (establish large minimum lot sizes and large minimum waterfront lot frontages),
2. limit site impervious surface coverage,
3. require placement of the residence in that portion of the site that has the greatest level of current alteration or has the least ecological impact,
4. prohibit clearing of all on-site native vegetation other than what may be required for construction of the residence and necessary appurtenances,
5. require native landscaping, and
6. prohibit creation of formal lawn areas." (MLCIA, Recommendations Page 10)

³ *Cumulative Impacts Analysis of City of Moses Lake's SMP and Recommendations to Meet No Net Loss*. Watershed Company, October 31 2013

The locally adopted draft did not address the recommendations provided above. Rather than attempting to craft new regulations specific to this unique environment, Ecology's Required Changes re-designate Reach 25 as Shoreline Residential - Special Resource (SR-S). As described in the Inventory and Characterization report, the area meets the SR-S designation criteria, including relatively intact condition, presence of extensive native vegetation, and overall ecological function.⁴ (Of particular note, the Inventory and Characterization Report recommends a "Natural" Environment Designation (page 129), in part because the reach provides habitat for the highest diversity of fish species (13) of any reach inventoried. The required change to SR-S reflects the conditions of the reach, while acknowledging the likelihood of planned development.

Other required changes

Other required changes are detailed in Attachment B, along with specific rationale for each. Many of the required changes are simple formatting changes that support other substantive changes, such as the addition of a wetland mitigation ratio table in Chapter 6. Other changes provide new text that was omitted from the earlier draft of the SMP, but that was required to be compliant with the SMA.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the City'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 also itemized in Attachment B) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes consist primarily of language the City crafted in response to comments received after local adoption, and some clarifying language with respect to the permitting process.

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy [RCW 90.58.090(5)].

Ecology concludes that the City has complied with the requirements of RCW 90.58.100 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 open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

⁴ City of Moses Lake Shoreline Inventory and Characterization, CWU 2005; page 129.

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 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 City has chosen to exercise its option pursuant to RCW 90.58.030(2)(d)(ii) not to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. As required by RCW 36.70A.480(6), effective upon approval of the SMP, Critical Areas within shorelines are regulated solely by the updated 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 City. 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 City 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 alternative/s is effective 14 days from Ecology's final action approving the alternative/s.

