

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

SMP Submittal accepted February 8, 2013, Ordinance No. 1530
Prepared by Rick Mraz on June 10, 2013

Brief Description of Proposed Amendment:

The City of Westport has submitted to Ecology for approval, a limited amendment to their Shoreline Master Program (SMP) consistent with Shoreline Management Act (SMA) and SMP Guidelines requirements. This limited amendment is to transfer the authority for shoreline permitting decisions from the planning commission and city council to a professional Land Use Hearing Examiner.

The City proposes amending Title 17, the Westport Municipal Code, which includes Chapter 17.32, the Shoreline Master Program (SMP). Additional reports, supporting information and analyses noted below, are included in the submittal.

Regional staff recommends approval of this limited SMP amendment as submitted.

FINDINGS OF FACT

Need for amendment. The amendment has multiple purposes and benefits. The City of Westport has been encouraged by its insurance risk pool to remove elected and appointed bodies from decision making and appeal hearing processes of applications that are quasi-judicial and to transfer these duties to a Land Use Hearing Examiner.

Hearing Examiners are required to have “substantial experience in the field of land use and planning (2.26.025 Westport Municipal Code). City Council and Planning Commission members are not required to have any such experience and, in a small city, issues related to the Appearance of fairness Doctrine are difficult to avoid.

The proposed amendment would create consistency between other existing City reviews (the City has been using a Hearing Examiner for other permitting decisions since 2001). The proposal would also eliminate confusing language in the municipal code and SMP concerning appeals of administrative and permit decisions.

SMP provisions to be changed by the amendment as proposed:

To facilitate review, following is a brief explanation of the amendment to the SMP. This should be read in concert with the attached Ordinance 1530.

Amend Sections 17.32.080 & .090 of the Westport Shoreline Master Program

Amendment History, Review Process: The city indicates the proposed SMP amendments originated from a local planning process that began on November, 2001. The record shows that the City established the Hearing Examiner position and clarified the effects of the examiner’s decisions in 2001 (Ordinance 1257) and 2003 (Ordinance 1299), respectively. These changes were to the City’s municipal code, of which the Shoreline Master Program is a part. In May of 2001, a submittal was sent to Department of Ecology of the changes for review and approval. However, for unknown reasons that submittal was never processed; nor are there any records of Ecology review.

Discussions with the City administrator in 2011 lead to the discovery of this inaction and the resulting unofficial status of the Hearing Examiner position with regard to shoreline permitting issues. After further consultation with Ecology Southwest Regional Office Shorelands and Environmental Assistance (SEA) staff, the City chose to revisit and refine the changes to its language regarding the Hearing Examiner position and authorities.

The City began its internal approval process in a series of Hearings that began in November 2012. The Westport City Council approved the amendment on November 27, 2012.

The proposed SMP amendment was received by Ecology for state review and verified as complete on February 8, 2013. Notice of the state comment period was distributed to stakeholders and interested parties identified by the City and Ecology on March 12, 2013, in compliance with the requirements of WAC 173-26-120. The state comment period began on March 20, 2013 and continued through April 19, 2013.

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 SEPA Exemption dated September 12, 2012. Per WAC 197-11-800 (19), the proposed action involves minor changes to the shoreline permit process and does not involve changes to any standards or requirements that would increase environmental impacts in any manner.

Summary of Issues Raised During The Public Review Process:

Three public comments were received during the City or Ecology comment periods. They are provided in Attachment D, the Responsiveness Summary. The City of Westport provided detailed responses to each of the comments. Ecology staff believes that each comment is adequately addressed in the City’s responses.

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

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, 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) as submitted. This includes a conclusion that approval of the proposed limited amendment contains is procedural and unrelated to the "no net loss" requirement (WAC 173-26-201(2)(c)).

Ecology concludes no additional required or recommended changes are necessary.

Ecology concludes that the proposed SMP amendments satisfy the criteria for approval of limited amendments found in WAC 173-26-201(1)(c). Analysis of consistency is as follows:

WAC 173-26-201 (1) (c) Limited master program amendments may be approved by the department provided the department concludes:

(i) The amendment is necessary to:

(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;

N/A – Use of a Hearing Examiner is discretionary. There are no state or federal laws that direct the City to use this procedure.

(B) Include a newly annexed shoreline of the state within the local government jurisdiction;

N/A

(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;

N/A

(D) Improve consistency with the act's goals and policies and its implementing rules; or

The proposed amendment will increase consistency with the existing City regulations and practices by standardizing review of shoreline permits. The amendment also reduces the potential for local shoreline permit decisions to be made based on erroneous legal conclusions or interpretations of law.

(E) Correct errors or omissions.

This is the primary purpose of the amendment. The City has been using a Hearing Examiner for land use decisions since 2001. This amendment allows the City to extend that practice to Shoreline Master Program permit decisions.

(ii) The local government is not currently conducting a comprehensive shoreline master program

update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;

The City of Westport is scheduled to begin its comprehensive update in July 2013.

(iii) The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;

(iv) The amendment is consistent with all applicable policies and standards of the act;

(v) All procedural rule requirements for public notice and consultation have been satisfied; and

(vi) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the limited amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

Provisions (iii) thru (vi) are satisfied and evidence thereof is present in the application, public record and Responsiveness Summary that the City submitted to Ecology.

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 public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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 amendment to the SMP, is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules.

Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.