



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

Northwest Region Office

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**Initial Determination of Consistency for the
City of Bellevue Locally Initiated Limited Amendment**

Prepared by Rebekah Padgett on February 13, 2023

Use of this Document

This *Determination of Initial Concurrence* provides our review of the proposed locally initiated amendment to the City of Bellevue (City) Shoreline Master Program (SMP) prior to local adoption. We divide this document into two sections: **Findings of Fact**, which provides findings related to the City's proposed amendment, amendment history, and the review process and **Initial Determination** of the proposed amendment.

Brief Description of Proposed Amendment

The City is proposing a locally initiated amendment to its SMP, codified under Chapter 20.25E LUC, and submitted its draft amendment to Ecology for an initial determination of concurrence as required by the joint review process. The City's amendment of their SMP includes a number of locally initiated items. WAC 173-26-104(3)(b) requires Ecology to make an initial determination of consistency with applicable laws and rules.

The City's shoreline consists of:

- Lake Washington including Mercer Slough upstream to Interstate 405: lake waters, underlying lands, and the area 200 feet landward of Ordinary High Water Mark (OHWM), plus associated floodways, floodplains, and wetlands;
- Lake Sammamish: lake waters, underlying lands and the area 200 feet landward of OHWM, plus associated wetlands;
- Lower Kelsey Creek: creek waters, underlying lands, and territory between 200 feet on either side of the top of the banks, plus associated floodways, floodplains, and wetlands;
- Phantom Lake: lake waters, underlying lands and the area 200 feet landward of OHWM, plus associated floodways, floodplains, and wetlands;
- On Lakes Sammamish and Washington, waterward from OHWM or specified vertical elevation representing OHWM to the City's jurisdictional boundary.

FINDINGS OF FACT

Need for amendment

The City's SMP was adopted in 2015, and the comprehensive update and periodic review went into effect in 2018. The City amended its Land Use Code (LUC) in 2022 and is therefore reconciling provisions of the SMP (Chapter 20.25E of the LUC) with the amended LUC.

SMP provisions to be changed by the amendment as proposed

The proposed Land Use Code Amendment includes two changes—removal of references to the East Bellevue Community Council (EBCC) and removal of City Council appeal authority for Process I and III¹ land use decisions. These require the following sections be amended:

20.25E.100(B) Framework for Decisions

- Removes City Council authority to hear quasi-judicial appeals of Shoreline Process I Hearing Examiner decisions, consistent with amendments under Ordinance No. 6673

20.25E.100(C) General Procedures Applicable to All Shoreline Project Decisions

- Removes City Council from list of those making recommendations or decisions on shoreline project applications

20.25E.100(D) Notice Procedures Applicable to Shoreline Project Decisions

- Removes reference to the former EBCC from mailing list for shoreline project decision notices of application, consistent with Ordinance No. 6670, following the State Legislature's termination of community councils² in 2022

20.25E.110 Shoreline Process I – Hearing Examiner quasi-judicial decisions

- Removes references to City Council authority to hear quasi-judicial appeals of Shoreline Process I Hearing Examiner decisions and City Council appeal period and process, clarifying that these City decisions are final upon issuance of the Hearing Examiner's written decision on the application without administrative appeal

20.25E.120 Shoreline Process II

Removes references to Community Council meetings

20.25E.140 Legislative nonproject actions

Removes reference to Community Council actions and hearings

20.35.140 Hearing Examiner Decision

Removes reference to City Council appeal process

¹ Under the proposed change, appeals of Process I decisions (Shoreline Conditional Use Permits) will be directed to the Washington State Shoreline Hearings Board rather than the City Council, while Process III decisions go to City Council for a final decision that is appealable to superior court.

² The 2022 state legislation repealed the statutory authority previously granted to community councils under Chapter 35.14 RCW. Ordinance No. 6670 removed procedural gaps/ambiguities resulting from the dissolution of the EBCC.

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20.35.355 City Council decision on the application

Removes reference to LUC 20.35.365

22.02.150 Administrative appeal of decision approving a proposal, with or without conditions, or denying a proposal

Removes reference to City Council appeal process for Process I decisions

Amendment History, Review Process

As part of the SMP amendment, the City held a joint local and state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on December 22, 2022, and continued through January 23, 2023. The City held a joint public hearing both in person and virtually on January 23, 2023.

The City provided notice of the proposed amendments to the LUC to the Washington State Department of Commerce on December 9, 2022. Notice of the LUCA application was provided to local parties through the City's Weekly Permit Bulletin on December 8, 2022. A notice of public hearing was distributed on December 22, 2022 through the City's Weekly Permit Bulletin and in the Seattle Times on December 23, 2022. Ecology distributed notice of the joint comment period to state interested parties on December 20, 2022. The City did not receive any written public comments.³ One individual spoke at the public hearing in opposition to the termination of the EBCC. Ecology received the proposed SMP amendments for initial state review on January 27, 2023, and verified the submission as complete on January 30, 2023.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology is required to review all SMP amendments to ensure consistency with the SMA and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on our review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the SMA, and consideration of supporting materials in the record submitted by the City, **no issues were identified as relevant to our final decision on the City's proposed amendments to the Bellevue SMP.**

INITIAL DETERMINATION

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City's proposed amendments comply 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).

³ In its Staff Report, the City notes that comments received on the Quasi-Judicial LUCA (Ordinance No. 6673) were supportive of removing the City Council from its role in quasi-judicia matters.

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Next Steps

- We anticipate our approval of your SMP Periodic Review amendment after the City provides the formal submittal, consistent with WAC 173-26-110.

INITIAL DETERMINATION