



CITY OF FEDERAL WAY MEMORANDUM

DATE: May 23, 2019

TO: Federal Way City Council

VIA: Jim Ferrell, Mayor

FROM: Brian Davis, Community Development Director
Robert "Doc" Hansen, Planning Manager
Margaret Clark, AICP, Principal Planner

SUBJECT: 2019 Periodic Update of the Shoreline Master Program (Non-Project Action)
Files: 17-105423-UP & 19-101677-SE

MEETING DATE: June 3, 2019

I. FINANCIAL IMPACT

The approval of the proposed Update of the Shoreline Master Program will not cost the City any additional funds, and will require no transfer of general funds for the action.

II. BACKGROUND

The City of Federal Way is undertaking a periodic review of its Shoreline Master Program (SMP), as required by the Washington State Shoreline Management Act (SMA). The city adopted its current SMP in 2011. The focus of this periodic review is on consistency with changes to state law made since its adoption in 2011. The review will also address consistency with the city's comprehensive plan and development regulations. The goal is to adopt the updated SMP by June 30, 2019.

After review of the SMP and shoreline regulations, it was determined that no amendments were necessary to be made to the comprehensive plan to meet state requirements. However, it was determined that several amendments were needed to the *Federal Way Revised Code* (FWRC) Title 15 and Title 19 to meet state law and the intent of the SMA.

III. REASON FOR CITY COUNCIL ACTION

FWRC Chapter 19.80, "Council Rezones," establishes a process and criteria for code amendments. Consistent with Process VI review, the role of the City Council is as follows:

1. To review and evaluate the proposed code amendments;
2. To determine whether the proposed code amendments meet the criteria in FWRC 19.80.130.

IV. PROCEDURAL SUMMARY

Steps	Date
Open House	January 30, 2019
Planning Commission Study Session	April 3, 2019
Issuance of Determination of Nonsignificance (DNS) pursuant to the State Environmental Policy Act (SEPA)	April 12, 2019
Planning Commission Study Session	April 17, 2019
Public Hearing before the Planning Commission	May 1, 2019
LUTC Meeting	June 3, 2019
City Council 1st Reading	June 18, 2019
City Council 2nd Reading	July 2, 2019

V. PUBLIC COMMENTS RECEIVED

The following public comments were received:

Date	Name	Comment	Staff Responses/Comments	Recommendation
1/25/19	Futurewise	Strongly supports the Update; recent scientific data shows that Puget Sound continues to be under stress.	Noted.	No change.
1/25/19	Futurewise	There is evidence that shoreline master programs are not achieving “No net loss.”	Re-evaluation of the no net loss assessment originally conducted as part of the previous comprehensive SMP update is not part of this Periodic Update.	No change.
1/25/19	Futurewise	Recent scientific studies indicate that reduced Chinook salmon runs undermine the potential for the southern resident orca population to successfully reproduce and recover. The Puget Sound Chinook runs are below their recovery goal and getting worse.	Noted.	No change.
1/25/19	Futurewise	They recommend that Federal Way evaluate its SMP to ensure that it is achieving no net loss of ecological functions including protecting shorelines and water quality. The Washington State Department of Ecology has recently published a method of evaluating the adequacy of wetland buffers and local government buffer requirements. This method could be adapted to evaluate marine and riparian buffers required by the Federal Way Shoreline Master Program, in addition to its wetland buffers.	Re-evaluation of the no net loss assessment originally conducted as part of the previous comprehensive SMP update is not part of this Periodic Update.	No change.
1/31/19	Larry Flesher, Citizen	Does the watershed boundary, see attached picture from King County Gov., also extend the 200 foot buffer boundary around bodies of water shorelines?	For Hylebos Creek, there was limited USGS stream gage data from what I could find, but the average measurement over the course of 2015 was 9.77 cubic feet per second. The threshold to	No change.

Date	Name	Comment	Staff Responses/Comments	Recommendation
		Additionally, who monitors watersheds and potential misuses or change impacts?	be in shoreline jurisdiction is 20 cubic feet per second. Unfortunately, further technical review of mean annual flow for potential new streams in shoreline jurisdiction is outside the scope of this SMP Periodic Update.	
2/27/19	Larry Flesher, Citizen	I did not see, or recognize anywhere in the report that talked about the rationale to drop the shoreline buffer from 200 feet to the new 175 foot width. Can you provide me that analysis?	<p>SMP jurisdiction extends 200 feet from the Ordinary High Water Mark of “Shorelines of the State” (Lakes over 20 acres and the marine shoreline in Federal Way) and includes associated wetlands as part of jurisdiction. There is no watershed boundary per se that strictly includes SMP jurisdiction unless it is captured by the SMP jurisdiction definition.</p> <p>The potential buffer reduction under City consideration is in wetland buffers for lower functioning wetlands, based upon Ecology recent guidance. This reduction is not related to Shoreline Master Program shoreline buffers or shoreline jurisdiction. The link to the Ecology reduced buffer guidance can be found here: https://fortress.wa.gov/ecy/publications/parts/1606001part1.pdf</p> <p>In Summary, no reduction in shoreline buffers or change in shoreline jurisdiction is proposed as part of this update. No shoreline buffer is proposed to be reduced from 200 feet to 175 feet. Shoreline jurisdiction is typically 200 feet landward of the Ordinary High Water Mark of Shorelines of the State (Puget Sound, North Lake, Steel Lake, and NW portion of Lake Killarney in City limits), although associated wetlands may make this area larger. Therefore, shoreline jurisdiction will not decrease as part of this proposal.</p>	No change.

Date	Name	Comment	Staff Responses/Comments	Recommendation
4/03/19	Larry Flesher, Citizen	He is concerned with watersheds and how the proposed regulations might affect them. It is his understanding that the government awards grants for research on watersheds and the impacts on them. Does the city have any such grants?	Manager Hansen referred him to Surface Water Manager Theresa Thurlow to ask about grants.	No change.
4/03/19	Peter Townsend, Citizen	He asked if recent federal regulation changes have affected the city.	Manager Hansen replied that nothing has affected the city; most of the proposed regulations have come from the state.	No change.
4/03/19	Peter Townsend, Citizen	He asked if there is anything from the city's perspective and/or staff experience in the proposal.	Manager Hansen replied that he is reviewing a number of items in light of our perspective and experience. Staff is also considering comments from the public.	No change.
4/14/19	Hugo Flores, Department of Natural Resources	The Department of Natural Resources would like more information about under what conditions we would allow bulkheads to be higher than one foot. Is it because of rising sea levels due to climate change?	Existing bulkheads on many shoreline properties are taller than the bulkhead height maximum of one foot above mean higher high water mark. Changing bulkhead maximum height from one foot above mean higher high water mark to the minimum necessary for protection of upland structures will help avoid unnecessary variances. Minimum necessary requirements can be supported by recorded tidal events and geotechnical documentation.	No change.
5/7/19	Larry Flesher, Citizen	<p>I think there is a major issue...</p> <p>Per the SMP Inventory and Characterization Report Alex sent:</p> <p>1.1 Background and Purpose The purpose of this study is to conduct a baseline inventory and characterization of conditions relevant to the shoreline resources of the City of Federal Way (City), Washington. According to Substitute Senate Bill (SSB) 6012, passed by the 2003 Washington State Legislature, cities and counties are required to amend their local shoreline master programs (SMPs) consistent with the Shoreline</p>	Updating the City's Inventory and Characterization Report is not within the scope of this Periodic Update, per ecology guidance. For reference, WAC 173-26-090 provides a scope of the periodic update.	No change.

Date	Name	Comment	Staff Responses/Comments	Recommendation
		<p>Management Act (SMA), Revised Code of Washington (RCW) 90.58 and its implementing guidelines, Washington Administrative Code (WAC) 173-26. The City is updating its SMP with the assistance of a grant from the Washington Department of Ecology (Ecology) (Grant Agreement No. G0600119). A first step in the comprehensive update process is development of a shoreline inventory and characterization. The inventory and characterization documents current shoreline conditions and provides a basis for updating the City’s SMP goals, policies, and regulations. This characterization will help the City identify existing conditions, evaluate existing functions and values of its shoreline resources, and explore opportunities for conservation and restoration of ecological functions. This study characterizes ecosystem-wide processes and how these processes relate to shoreline functions. Processes and functions are evaluated at two different scales: a watershed or landscape scale, and a shoreline reach scale. The purpose of the watershed or landscape scale characterization is to identify ecosystem processes that shape shoreline conditions and to determine which processes have been altered or impaired. The intent of the shoreline reach scale inventory and characterization is to: 1) identify how existing conditions in or near the shoreline have responded to process alterations; and 2) determine the effects of the alteration on shoreline ecological functions.”</p> <p>I call your attention to the bold red in the report excerpt above. As this inventory is 12 years old at best... How can the Federal Way SMP be updated without first making sure the inventory is correct?</p>		

Date	Name	Comment	Staff Responses/Comments	Recommendation
		<p>In the last few years we have become smarter about our delicate environment and recognized the dramatic impacts of neglect. Federal Way really needs to update their inventory, and make sure their watersheds are accounted in the planning. To say the scope of the SMP update does not include all the inventories (like watersheds) just has to be wrong.</p> <p>Please help me understand why the inventories are not being updated as a precursor to the SMP update.</p>		
5/13/19	Jack McCullough, McCullough Hill Leary Law Firm	<p>He was concerned about the proposal to eliminate limited office and commercial development in the Urban Conservancy Environment. They state that under the SMP, the purpose of the Urban Conservancy Designation is to “protect and restore ecological functions of open space, floodplain, and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.” In the case of the Federal Way Campus, LLC, on the west side of North Lake the zoning for this property allows commercial and industrial uses. Elimination of the limited allowance for office and commercial uses in the Urban Conservancy Environment in this location will result in an effective “split-zoning” of that portion of the site, with residential uses allowed in the shoreline environment and commercial uses allowed in the adjacent upland area.</p>	<p>During staff’s presentation to the Planning Commission at their May 1, 2019, public hearing, we recommended making no changes related to allowing office and commercial development in the Urban Conservancy Environment; therefore, the existing code language will remain unchanged.</p>	<p>The proposed change to the Urban Conservancy Environment will be removed. The existing code will remain unchanged.</p>
5/13/19	Futurewise	<p>We recommend that the City of Federal Way review and improve its Shoreline Management Program (SMP) to ensure that it is achieving no net loss of ecological functions and to support the recovery of the Chinook salmon and the Southern resident orcas.</p>	<p>A no net loss of ecological functions assessment is not required as part of this update.</p>	<p>No change.</p>

Date	Name	Comment	Staff Responses/Comments	Recommendation
5/13/19	Futurewise	We strongly support the adoption of the improved wetland buffers. See FWRC 19.145.420(2).	Staff Concur.	No change.
5/13/19	Futurewise	Amend the hard-armoring requirements in FWRC 15.05.050(1) so they are consistent with WAC 173-26-231(3)(a)(iii)(B).	Staff Concur with Futurewise’s comment and will add the underlined language under the corresponding “Recommendation” column.	FWRC 15.05.050(1) Shoreline modifications, is proposed to read as follows: (i) The applicant shall provide a geotechnical report, prepared by a qualified professional, that estimates the rate of erosion and evaluates alternative solutions; the urgency associated with the specific situation; <u>and demonstrate the project is consistent with WAC 173-26-231(3)(a)(iii)(B);</u> and
5/13/19	Futurewise	Protect people and property from sea level rise and increased coastal erosion. They recommend that the following new regulations be added to Section 15.05.040, General Development Standards, of the SMP update: i. New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100, and outside of the area in which wetlands will likely migrate during that time. ii. Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by seal level rise in 2100, and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.	While sea level rise is an important long-range planning consideration, it is not a requirement to assess as part of this periodic update. The City may include this level of assessment at a later date.	No change.

Date	Name	Comment	Staff Responses/Comments	Recommendation
5/13/19	Futurewise	The SMP should require site investigations for sites that the Washington State Department of Archeology and Historic Preservation predictive model rates as “survey recommended: moderate risk,” “survey highly advised: high risk,” and “survey highly advised: very high risk.”	Staff Concur.	FWRC 15.05.040(6), Archeological and historic resources, is proposed to be amended to encapsulate this comment: <u>(d) Archeological site investigations are required for sites as defined by Washington State Department of Archeology and Historic Preservation predictive model rates as “survey recommended: moderate risk, “survey highly advised: very high risk,” and “survey highly advised: very high risk.”</u>
5/13/19	Futurewise	We support extending the “stringline” requirement in FWRC 15.05.080(5)(i)(C) to marine shorelines	Staff Concur.	No change.
5/13/19	Futurewise	Adopt regulations to document all project review actions in shoreline jurisdiction and periodically evaluate the cumulative effects of authorized development on shoreline conditions at least as frequently as periodic reviews.	Cumulative impacts analysis of authorized development is not a requirement of this SMP periodic update.	No change.

VI. SUMMARY OF CODE AMENDMENTS

1. *Amendment to the Critical Areas Regulations* – The Department of Ecology issued guidance on their revised rating system in 2014. This revised rating system represents the best available science (BAS) as it is based on a better understanding of wetland functions, ways to evaluate them, and what is needed to protect them. While local governments are not required to use Ecology’s revised rating system, Ecology encourages local governments to use them.
2. *Proposed Amendments to the SMP* – These are proposed amendments to the SMP intended to address gaps in the City’s SMP, related to changes in state law between 2011 and 2017, and to address other issues as part of the periodic update process to produce a more effective SMP. The City’s periodic review proposes to:
 - Revise or add several definitions.
 - Incorporate an updated Environmentally Critical Areas Ordinance, repealing the reference to FWRC 15.10 and referencing FWRC 19.145.
 - Update language consistent with recent changes in state laws and rules.
 - Add a section on shoreline setback vegetation conservation standards.
 - Ensure consistency with other city plans and regulations.

VII. DEVELOPMENT REGULATION AMENDMENT CRITERIA

FWRC 19.80.130 provides criteria for evaluating text amendments. The following section analyzes compliance of the proposed zoning text amendments with the criteria provided by this section. The City may amend the text of the FWRC if it finds that:

- (1) The proposed amendment is consistent with the applicable provisions of the comprehensive plan;

Staff Response: The adopted *Federal Way Comprehensive Plan* (FWCP) is to be implemented by development regulations as indicated within the Growth Management Act. The proposed FWRC text amendments are consistent with the following FWCP goals and policies:

Goal

SMPG2 Residential use of shoreline areas should be continued and encouraged in areas that have not been designated as Natural environments by the SMP, allowing a variety of housing types. New development or redevelopment of residential uses should cause no net loss of shoreline ecological function as identified in the SMP’s Shoreline Inventory Characterization and Analysis.

Policies

SMPP10 Residential developments should be designed to achieve no net loss of shoreline ecological functions and minimize interference with visual and physical access. Unavoidable impacts to the shoreline environment from residential development should be mitigated to assure no net loss of shoreline ecological functions.

- a. Residential development in designated critical areas or their associated buffers should be regulated as required by the City’s SMP regulations.
- b. Residential development on piers or over water is prohibited.
- c. Landfill for residential development that reduces water surface or floodplain capacity shall not be permitted.
- d. In residential developments, the water’s edge should be kept free of buildings and fences.
- e. Development standards should require the retention of natural shoreline vegetation and other natural features of the landscape to the greatest extent possible during site development and construction.

(2) The proposed amendment bears a substantial relation to public health, safety, or welfare; and

Staff Response: The proposed amendments bear a substantial relation to public health, safety, and welfare as its implementation will prevent uncoordinated and piecemeal development, while protecting against adverse impacts to public health, the land and its vegetation, and wildlife.

(3) The proposed amendment is in the best interest of the residents of the City.

Staff Response: The proposed amendments are in the best interest of the residents of the City because they permit for development of the shorelines where appropriate, while still protecting the shoreline environment. The update process also allows the City to update its code to comply with changes in state law and with the best available science (BAS) as it evolves.

VIII. PLANNING COMMISSION ACTION

At a public hearing on May 1, 2019, the Planning Commission heard a presentation on the proposed code amendments by the Community Development staff. After deliberation, the Planning Commission voted unanimously to recommend approval of the proposed Ordinance.

IX. PROPOSED CHANGES BY STAFF AFTER PLANNING COMMISSION ACTION

After the Planning Commission’s recommendation on May 1st, staff consulted with one of the City’s wetland consultants after an internal staff discussion and proposes a change to FWRC 19.145.420(2) to increase the wetland buffers as shown on the new Table I, and retain the existing language for buffer reduction in FWRC 19.145.440(6), and buffer increases (FWRC 19.145.440[7]). The reason for this recommendation is that the existing criteria for buffer reduction and increase are straight forward and easy to administer as opposed to the minimization language recommended by the Department of Ecology.

X. CITY COUNCIL ACTION

Consistent with the provisions of FWRC 19.80.260, the City Council may take the following actions regarding the proposed code amendments:

1. Approve the code amendments as proposed;
2. Approve the code amendments with further amendments; or
3. Disapprove the proposed code amendments;
4. Refer the amendments back to the planning commission for further proceedings.

XI. MAYOR'S RECOMMENDATION

After consideration of the staff analysis and options available for action (approval, approval with modification, disapproval, or referring them back to the Planning Commission), the Mayor recommends the proposed amendments be approved.