



# PLANNING COMMISSION

## STAFF REPORT *for*

### 2021 SHORELINE PERIODIC UPDATE

**PLANNING COMMISSION MEETING DATE:** November 16, 2021  
**APPLICATION NAME & NUMBER:** PLAN21(CA)-0002 Shoreline Periodic Update  
**CITY CONTACT PERSON:** Rebecca Lowell, Principal Planner

This Staff Report is very similar to the Staff Reports the Planning Commission has reviewed and discussed on July 20, 2021, August 17, 2021, and October 5, 2021. Additions to this Staff Report have been highlighted in yellow for ease of identification.

#### A. BACKGROUND

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The Shoreline Management Act (SMA) was approved by the State Legislature in 1971 and was adopted by the public via a referendum in 1972. More than 260 Washington towns, cities, and counties have shorelines (lake, stream, and marine) that fall under the jurisdiction of the SMA .

Insight into the original SMA legislation is found in the legislative findings codified in Revised Code of Washington (RCW) 90.58.020 that states (in part) as follows:

*The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state.*

*The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest.*

*There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.*

*The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department...shall give preference to uses in the following order of preference which:*

- (1) Recognize and protect the statewide interest over local interest;*
- (2) Preserve the natural character of the shoreline;*
- (3) Result in long term over short term benefit;*
- (4) Protect the resources and ecology of the shoreline;*

- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

*Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.*

In 2003 the SMA was amended to require jurisdictions to regularly update their Shoreline Master Programs (SMPs) with the adoption a timetable for all local governments to update their SMPs. For Mount Vernon, RCW 90.58.080(2) and (4) required an update to our SMP in 2012 (the City completed this update in 2011) and then once every eight (8) years following approval by the Department of Ecology (DOE). This means the City's update to our SMP was due in 2020; however, DOE has authorized a one-year extension for the City's SMP update which is now due in 2021.

SMPs are adopted by jurisdictions as part of their Comprehensive Plans. As such, the Growth Management Act (GMA), Chapter 36.70A RCW, mandates the following requirements:

- A process must be in place to allow citizens to propose Comprehensive Plan amendments;
- An analysis of the cumulative impacts of proposed amendments is required;
- The Comprehensive Plan must be internally and externally consistent; and,
- The Comprehensive Plan must be consistent with adopted development regulations.

## **B. BASIS FOR ANALYSIS**

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This report, with its associated Exhibits, is provided as the basis for analysis for the update to the City's SMP. The purpose of this report is to:

- Prepare for legislative review of the SMP update;
- Assure consistency and conformance between the proposed amendments and the current Comprehensive Plan;
- Provide a basis for open record hearings before the Planning Commission; and,
- Provide background and analysis to the City Council for decision-making.

Consistent with RCW 90.58.080(4) the City's scope of review for the SMP update includes:

- Making sure our SMP complies with applicable laws and guidelines in effect at the time of the review.
- Ensuring our SMP is consistent with our comprehensive plan and development regulations adopted under chapter 36.70A RCW, and other local requirements.
- Bringing our SMP into compliance with the requirements of the act that have been added or changed since the last review that occurred in 2011, and for responding to changes in guidelines adopted by DOE.
- Incorporating amendments to reflect changed circumstances, new information, and improved data.

## EXHIBITS

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The below-listed Exhibits are incorporated and made part of this Staff Report:

1. Procedural Notices and Correspondence:
  - 1a. Docketing Resolution 990
  - 1b. Department of Commerce Acknowledgement
  - 1c. SEPA Determination
  - 1d. SMP Update Postcard and Mailing List
  - 1e. SMP Notification Materials for Public Meeting with DOE
  - 1f. Public Hearing Notices
  - 1g. Staff and DOE emails
2. 2021 SMP Periodic Review Public Participation Program
3. FAQ Handout
4. DOE SMP Periodic Update Checklist
5. SMP Update Materials
  - 5a. SMP Update with Changes in Tracking Format
  - 5b. SMP Appendix A Update: Shoreline Inventory and Characterization
  - 5c. SMP Appendix C Update: Critical Area Regulations
  - 5d. SMP Update Map (full size)
6. Proposed Ordinance to Codify SMP Update and to re-index the existing Goals, Objectives and Policies for the SMP within the Land Use Element of the Comprehensive Plan
7. Letter dated October 14, 2021 from Matthew J. Vivian with VanNess Feldman, LLP and a matrix of responses to the comments contained in this letter drafted by the City
8. DOE's draft SMP Initial Determination that includes responses from the City regarding the required and recommended changes DOE requested and DOE final Initial Determination of Consistency

## C. SUMMARY OF CHANGES/UPDATES

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Following is a summary of the changes/updates made in 2021 to the previously adopted 2011 SMP.

- References to the Community and Economic Development Department or Director have been changed to the Development Services Department or Director.
- The procedural requirements for the different types of shoreline permits are organized into one section (versus several) and clarified. No changes were made to the way shoreline permits are processed.
- The type of development not requiring a shoreline permit is cross-referenced to State law (WAC 173-27-044 and 173-37-045) and the text of the State law is removed from the SMP.
- The description of how shoreline jurisdiction is determined is elaborated upon to ensure jurisdictional areas are properly and consistently identified.

- Existing zoning and comprehensive plan designations were added to the list of factors that determine environmental designations.
- Figures 2 and 3 within the 2021 SMP map several areas being subject to shoreline jurisdiction that were not identified in the 2011 SMP. Importantly, these areas would have been subject to shoreline jurisdiction under the 2011 plan; however, they were not mapped as potentially being subject to the SMP. These areas are potentially subject to shoreline jurisdiction due to wetlands, that if present, could be associated with, influence, or be influenced by, either the Skagit River or Barney Lake.

In the 2021 update, the City has identified these parcels that could be subject to shoreline jurisdiction due to the presence of associated wetlands by using cartographically distinct hatching patterns on the revised maps to differentiate these areas from other mapped environmental designations.

Staff analyzed these areas and assigned environmental designations based on the following factors that are listed under sub-section III(B) of the SMP: ecosystem characteristics, environmental functions, restoration potential, existing uses, development and redevelopment potential, existing Zoning and Comprehensive Plan Designations, and public and private plans.

- There are four (4) general areas where the environmental designations were updated or changed to ensure the designations were consistent with the factors listed in sub-section III(B) of the SMP (these factors are also listed in the paragraph immediately above). Descriptions of these areas and the reasons why their designations were changed are provided below. These areas are described in much greater detail in the parcel-by-parcel SMP Mapping Update Summary that is attached to this memo.

**Area 1** (mapped on Figures 2 and 3) is located at the far north and northeast portions of the City. Following adoption of the 2011 SMP a new levee was completed along the north side of Hoag Road, east of the Burlington Northern Santa Fe railroad tracts. This new levee is identified on the SMP maps along with areas waterward of the levee, and areas 200 feet landward of the levee as subject to SMP jurisdiction. See the Mapping Update Summary attached to this memo for the justification for the shoreline environmental designations assigned in this location.

Other areas are identified on Figures 2 and 3 as potentially being subject to shoreline jurisdiction, but only if wetlands are found on these areas that influence, or are influenced by, the Skagit River or Barney Lake. These areas were identified following a site-specific review where wetlands were found on a site that were influenced by the Skagit River; and this site was not shown as being subject to shoreline jurisdiction in the City's 2011 SMP. The accompanying Technical Memorandum dated April 30, 2021 from Dr. Lyndon Lee - Mitzell, contains a detailed background and analysis of this site. Once one site was identified staff had Dr. Lee complete an exercise of all nearby properties to see whether or not wetlands on these properties could influence, or be influenced by, the Skagit River or Barney Lake. These properties are shown on Figures 2 and 3 with horizontal lines through them. The justification for the environmental designations for these properties is detailed in the accompanying Mapping Update Summary. Importantly, these areas would have been subject to shoreline jurisdiction under the City's 2011 SMP; but they would have been assigned an environmental designation of Urban Conservancy until the City could update the shoreline map. This 2021 update eliminates the potential for multiple piecemeal map amendments by completing a comprehensive review and update of these areas.

**Area 2** (mapped on Figure 5) consists of areas on the east and south side of the Skagit River. Following the adoption of the 2011 SMP the City completed additional portions of a floodwall and levee system that are updated on Figure 5. The newly constructed portions of the floodwall and levee slightly changed the areas subject to shoreline jurisdiction because this jurisdiction is identified as extending 200 feet landward from these areas. The environmental designations in these areas remained as Urban Conservancy on the properties owned by the City on and near the wastewater treatment plant and was kept as Urban Mixed Use on the landward side of the new floodwall and levee of the properties not owned by the City.

**Area 3** (mapped on Figure 5) consists of areas waterward of the existing levee within and surrounding the City's Edgewater Park. The 2021 update modified the boundary between the Shoreline Natural and Shoreline Urban Conservancy Environmental Designations such that the Urban Conservancy designation encompasses the portions of Edgewater Park that are used by the public and actively maintained (i.e. mowed and trimmed) by the City's Park and Recreation Department. The Shoreline Urban Conservancy Environmental Designation in this area was also updated such that it extends between the Ordinary High Water Mark (OHWM) of the Skagit River to the existing levee – in the existing SMP this shoreline area is identified as extending from the OHWM but does not extend to the existing levee. See the accompanying Mapping Update Summary for additional details regarding the updates in this location.

**Area 4** (mapped on Figure 5) consists of two tax parcels owned by the Mount Vernon School District that are developed as part of Washington Elementary School. The parcel numbers are P26397 and P26391. The 2011 SMP identified the area of these parcels 200 feet landward of the existing levee designated as Shoreline Residential. Because these two parcels are developed as part of an elementary school their designation has been changed to Urban Mixed Use. See the accompanying Mapping Update Summary for additional details regarding the updates in this location.

- The following General policy has been removed from the SMP because it mirrors requirements in existing State law thereby making it unnecessary to have in the City's SMP. This policy is as follows:
  - a. The Director of the Community Development Services Department will periodically initiate review of conditions on the shoreline and conduct appropriate analyses to determine whether or not other actions are necessary to protect and restore the ecology, protect human health and safety, upgrade visual qualities, and enhance residential, commercial, and recreational uses on the City's shorelines. Specific issues to address in such evaluations include, but are not limited to:
    - i. Water quality
    - ii. Conservation of aquatic vegetation (e.g. control of noxious weeds and enhancement of vegetation that supports more desirable ecological functions and recreational conditions)
    - iii. Upland vegetation
    - iv. Changing visual character as a result of new development, including redevelopment and individual vegetation conservation practices
    - v. Shoreline stabilization and modifications
- The currently adopted version of the City's critical areas ordinance is adopted into Appendix C sans the provisions DOE requires be removed.

- The relief for shoreline restoration projects from WAC 173-27-215 is adopted by reference into the updated SMP.
- The definition of associated jurisdictional wetlands is expanded to include the definition of such found in WAC 173-22-040.
- The date of receipt of the final decision is updated to the date of filing of a final decision throughout the plan.
- A definition for Substantial Development is added to the SMP.

## D. PROCESS & NEXT STEPS

BENCHMARK:	DATE:	AUTHORITY:
City Council Docket 2020 Comprehensive Plan Amendments	March 30, 2021	RCW 36.70A130 (1)(a) and (2)(a)
Department of Commerce Notification and Acknowledgement	July 8, 2021	RCW 36.70A.106 WAC 365-196-630
DNS Issued with Appeal Period	July 16, 2021	MVMC 15.06.215 WAC 197-11-355(4)
Public Meeting before Planning Commission with DOE	August 17, 2021	WAC 173-26-104
Open Record Public Hearing before Planning Commission	November 16, 2021	14.05.080 RCW 36.70B.120
Open Record Public Hearing before City Council	TBD - Insert Date	14.05.050(A) and (C) RCW 36.70B.120

Accompanying this staff report, labeled as **Exhibit 1**, are copies of the notices, agendas, and the SEPA materials for the meetings and hearings listed above.

Below is a list of study session meetings before the City Council and Planning Commission that have held as this document has moved through its legislative process:

DATE:	ACTIONS:
05/26/2021	City Council Study Session
07/20/2021	Planning Commission Study Session
08/17/2021	Planning Commission Public Meeting with DOE
08/18/2021	City Council Study Session
09/15/2021	City Council Study Session
10/05/2021	Planning Commission Study Session
10/20/2021	City Council Study Session

## E. STAFF REQUESTS AND RECOMMENDATIONS

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Staff requests the Planning Commission review the accompanying updates to the SMP and the below-listed Findings of Fact, Conclusions of Law, and recommendations that will likely be before the Commission in the coming months as the SMP update moves through the steps required for legislative amendments.

### FINDINGS OF FACT:

- A. Chapter 36.70A RCW, the Growth Management Act (GMA) mandates that the City of Mount Vernon maintain a Comprehensive Plan, which is a coordinated land use policy statement of the City, including policies directed at management of the City shorelines.
- B. The GMA requires comprehensive plans and development regulations to be consistent and that Comprehensive Plans be both internally and externally consistent.
- C. The SMA requires that local jurisdictions develop master programs that constitute use regulations for shorelines of statewide significance.
- D. Chapter 36.70A RCW, the Growth Management Act (GMA) mandates the City of Mount Vernon develop a Comprehensive Plan, which is a generalized, coordinated land use policy statement of the City.
- E. The GMA requires that the Comprehensive Plan and development regulations be subject to continuing review and evaluation.
- F. The City has adopted procedures pursuant to the GMA providing for amendments to the Comprehensive Plan no more than once each year and providing for comprehensive review of the cumulative impacts of all proposed amendments.
- G. On July 8, 2021, notice of the potential adoption of the proposed amendment to the Comprehensive Plan and Municipal Code was duly transmitted to the Washington State Department of Commerce for the mandated sixty-day review, in compliance with RCW 36.70A.106(1).
- H. On August 17, 2021 a public meeting was held before the Mount Vernon Planning Commission with the Department of Ecology in attendance. This meeting satisfied a portion of the process required when using the 'optional joint review process' for SMP updates outlined in WAC 173-26-104. The notice for this meeting was issued and published on July 30, 2021, and was mailed and emailed on July 27, 2021 to all parties of record and property owners in and within 500 feet of the City identified shoreline jurisdiction.
- I. A notice of public hearings for the adoption of the updated SMP was issued on October 1, 2021 and published on October 2, 2021 advertising a Planning Commission public hearing on October 19, 2021 and a City Council public hearing on October 27, 2021. This notice of public hearing was mailed to all parties of record on September 30, 2021.
- J. The public hearings scheduled for the Planning Commission on October 2, 2021 and before the City Council on October 19, 2021 were cancelled and re-scheduled because the Department of Ecology (DOE) had not yet provided their review comments of the City's SMP. City staff contacted DOE to ascertain when DOE comments would be received, and then the previously scheduled Planning Commission and City Council hearings were rescheduled to November 16, 2021 (Planning

Commission) and December 1, 2021 (City Council). The notice of public hearings advertising the November 16, 2021 and December 1, 2021 hearings was issued and published on October 20, 2021 and was mailed/emailed to all parties of record and property owners in and within 500 feet of the City identified shoreline jurisdiction on October 18, 2021.

- K. On September 30, 2021 City staff contacted Lauren Bromley (the staff person at DOE who was managing the City's SMP update on behalf of DOE) asking when she thought DOE's initial determination (ID) would be sent to the City. Ms. Bromley's response was that DOE's ID would be out to the City the following week (this would have been the week of October 4, 2021 to October 8, 2021). Ms. Bromley also let City staff know that she would be stepping aside to work on other items and that to other staff member from DOE would be taking over for Ms. Bromley and that these new staff members were Stephanie Barney and Chad Younge.
- L. On October 11, 2021 City staff sent an email to Stephanie Barney and Chad Younge at DOE asking if the City's previously scheduled public hearings on October 19, 2021 and October 27, 2021 should be moved in light of the fact that the City had yet to receive DOE initial determination on the City's draft SMP update.
- M. On October 12, 2021 DOE staff member Stephanie Barney advised the City that "we believe it best to reschedule the hearing dates" (Mrs. Barney was referring to the October 19, 2021 and October 27, 2021 public hearings scheduled before the City's Planning Commission and City Council).
- N. The City received DOE's draft Initial Determination via email on November 2, 2021 with a message from Stephanie Barney (DOE staff) stating that she was aiming to issue DOE's final determination by November 10, 2021 at the latest. On November 3, 2021 City staff sent an email back to DOE staff Ms. Barney with attachments containing City comments on the items DOE required or recommended be changed in the City's SMP update. City staff's email also contained copies of the City draft SMP with updates from DOE's draft initial comments.
- O. On November 16, 2021 the City of Mount Vernon Planning Commission held an open-record public hearing to consider updates to the City's Shoreline Master Program (SMP). All persons present at the hearings wishing to speak were heard and all written comments were considered, along with the written staff report with its associated exhibits.
- P. On (insert date) the City of Mount Vernon City Council held an open-record public hearing to consider updates to the City's Shoreline Master Program (SMP). All persons present at the hearings wishing to speak were heard and all written comments were considered, along with the written staff report with its associated exhibits.
- Q. The Planning Commission hearing on November 16, 2021 was preceded with appropriate notice, issued on October 20, 2021 distributed via mail/email on October 18, 2021, and published on October 20, 2021.
- R. The City Council's hearing on (insert date) was preceded with appropriate notice issued on (insert date), distributed via mail/email on (insert date) and was published on (insert date).
- S. The amendments to the Comprehensive Plan and Municipal Code Chapter 15.07 with the adoption of an updated Shoreline Master Program reflects the best interests of the citizens of the City of Mount Vernon, Washington, and reflects the desires of the public.

T. The Department of Ecology (DOE) issued a formal written statement of initial concurrency with the City's proposed amendments to the SMP on November 9, 2021. This initial concurrence means that DOE has determined the amendments to the City's SMP are largely consistent with applicable laws and rules, but that DOE has identified elements that appear inconsistent with applicable laws and rules. The intent of this initial review is to provide local elected officials an opportunity to consider Ecology's analysis before local adoption. The copy of the SMP before the Planning Commission and City Council include all of the required changes outlined by DOE in their statement of initial concurrency.

#### **CONCLUSIONS OF LAW:**

- A. In compliance with all the terms, conditions, and procedures of the State Environmental Policy Act (SEPA) and Chapter 15.06 Mount Vernon Municipal Code, an environmental assessment of the proposed amendment to the Comprehensive Plan was conducted and, upon determination that no probable significant, potentially adverse environmental impacts would result from the amendment, a determination of non-significance was issued and published on July 16, 2021, with no appeals having been filed prior to the close of the appeal period on August 8, 2021.
- B. The requirements for public participation in the development of this amendment as required by the GMA and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.
- C. All procedural requirements for adoption of the accompanying amendments of the Comprehensive Plan as set forth in Chapter 35A.63 RCW and Chapter 36.70A RCW, and as set forth in the State Environmental Policy Act and Chapter 15.06 of the Mount Vernon Municipal Code have been complied with, and that adequate environmental review has been given.
- D. The proposed updates to the Shoreline Master Program are found to be in compliance with both the Washington State Growth Management Act and the Shoreline Management Act.
- E. The requirements for public participation in the development of this amendment as required by the State Growth Management Act (GMA) and by the provisions of City of Mount Vernon Resolution No. 491 have all been met.

#### **STAFF RECOMMENDATIONS:**

- A. Staff recommends the Planning Commission review and make a recommendation to the City Council to adopt the accompanying updates to the City's SMP.
- B. Staff recommends the Planning Commission adopt the Findings of Fact and Conclusion of Law contained in this Staff Report as part of their recommendation to the City Council.
- C. Staff recommends approval of the accompanying updates to the City's SMP that include mapping changes.
- D. Staff recommends the Planning Commission disregard and not consider the quasi-judicial portions of comment #14 and its associated Exhibits A, B, and C that are contained in and responded to within Exhibit 7 of this Staff Report.

**SIGNATURE:**



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**Rebecca S. Bradley-Lowell,  
Principal Planner and Planning Manager**

**EXHIBIT 1:**  
**PROCEDURAL NOTICES AND CORRESPONDENCE**  
**EXHIBITS 1a to 1g**

**EXHIBIT 2:**  
**PUBLIC PARTICIPATION PROGRAM**

**EXHIBIT 3:  
FAQ HANDOUT**

**EXHIBIT 4:**  
**DOE CHECKLIST**

**EXHIBIT 5:**  
**SMP UPDATE MATERIALS**

**EXHIBIT 6:**  
**PROPOSED ORDINANCE TO CODIFY THE SMP UPDATE AND TO RE-  
INDEX THE EXISTING GOALS, OBJECTIVES AND POLICIES FOR THE  
SMP WITHIN THE LAND USE ELEMENT OF THE COMPREHENSIVE  
PLAN**

**EXHIBIT 7:**  
**COMMENT LETTER DATED OCTOBER 14, 2021 FROM MATTHEW J.**  
**VIVIAN WITH VANNESS FELDMAN, LLP**  
**AND**  
**CITY RESPONSE MATRIX TO THE COMMENTS CONTAINED IN MR.**  
**VIVIAN'S LETTER**

**EXHIBIT 8:**  
**DOE'S DRAFT SMP INITIAL DETERMINATION THAT INCLUDES  
RESPONSES FROM THE CITY REGARDING THE REQUIRED AND  
RECOMMENDED CHANGES DOE REQUESTED  
AND  
DOE'S FINAL INITIAL DETERMINATION OF CONCURRENCE**