

ATTACHMENT A: FINDINGS AND CONCLUSIONS

BENTON CITY SHORELINE MASTER PROGRAM

PERIODIC REVIEW AMENDMENT

SMP Submittal accepted August 30, 2021, Ordinance No. 1022
Prepared by Department of Ecology on December 28, 2021

Brief Description of Proposed Amendment

Benton City (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to the Washington State Department of Ecology (Ecology) for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on June 9, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with applicable laws and rules. The City's final adopted ordinance is consistent with the draft amendment reviewed by Ecology as part of the initial determination.

FINDINGS OF FACT

Need for amendment

Benton City comprehensively updated their Shoreline Master Program in 2015.

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the City Shoreline Master Program pursuant to RCW 90.58.080(4). The City, along with their hired consultant, AHBL, reviewed the current SMP and prepared a checklist documenting proposed SMP amendment. The amendment is intended to bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the City completed their SMP comprehensive update in 2015. The amendments are also intended to ensure that the SMP remains consistent with amended comprehensive plans or regulations, and incorporate changes deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The City's Shoreline Master Program is a standalone document containing goals, policies, regulations and provisions for protecting critical areas. SMP shoreline regulations are also codified as Benton City Municipal Code (BCMC) Chapter 16.04. The SMP regulates shoreline uses and development along reaches of the Yakima River located within Benton City.

In addition to updates of obsolete or incorrect citations, references, minor formatting changes, and the correction of typographical or grammatical errors, the following specific SMP sections are proposed to be amended:

16.04.100 Environment Designations

(B) Updated to specify that shoreline maps may not necessarily identify or depict the lateral extent of the City's shoreline jurisdiction or all associated wetlands and to say, "The City Clerk shall keep the Official Shoreline Map."

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16.04.130 Agricultural Conservancy

Updated references to the “Agriculture Conservancy” shoreline environment to instead say “Agricultural Conservancy”

16.04.520 Critical Aquifer Recharge Areas

(F) Uses prohibited from critical aquifer recharge areas has been updated to reflect Critical Aquifer Recharge Areas Guidance Document” by Ecology, January 2005, Publication No. 05-10-028, and Chapter 173-218 WAC

16.04.610, 620 Nonconforming Uses, Structures

Updated for consistency with Ecology’s updates on nonconforming guidance.

16.04.700 Roles and Responsibilities

Replaced all references to a Hearing Examiner to say “Planning Commission (or Hearing Examiner)” as the city does not currently have a Hearing Examiner.

16.04.715 Exceptions to Local Review

Added a new section addressing Remedial hazardous substance cleanup actions, Boatyard improvements to meet NPDES requirements and certain WSDOT maintenance and safety projects and activities.

16.04.780 Exemptions from Shoreline Substantial Development Permits

Updated to match changes in WAC 173-27-040.

16.04.790 Initiation of Development

Added a section regarding the legislatures adopted 90-day target for local review of Washington State Department of Transportation (WSDOT) projects.

16.04.800 Ecology Review Process

Updated language regarding permit filing procedures to be consistent with WAC 173-27.

16.04.850 Amendments to Shoreline Master Program

Updated the text to reflect the changes Ecology made to the submittal process for SMP amendments, including language identifying the joint review process and periodic updates.

16.04.860 Definitions

The definition of “development” was updated to add: “Development does not include dismantling or removing structures if there is no other associated development or re-development.” Unused definitions have been removed and new definitions the terms emergency, landward and mining were added.

Amendment History, Review Process

The City prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. A consultant, hired by the City,

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assisted with the development of draft documents and public outreach. An important element of the public participation plan is the City's SMP Periodic Review project [website](#)¹.

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City reviewed changes to the comprehensive plan and development regulations to determine if the SMP policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The City considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The City consulted with Ecology and solicited comments throughout the review process. The record also indicates that the City submitted the required 60-day notice of intent to adopt amendments and notice of final adoption to the Washington State Department of Commerce².

The City prepared a State Environmental Policy Act (SEPA) checklist and issued a Determination of Non-Significance and checklist on March 10, 2021. No comments were received on the DNS.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City's record indicates notice of the hearing, and comment period were published in the *Tri-city Herald* on March 10, 2021.

Ecology distributed notice of the joint local/state comment period to state interested parties on March 9, 2021. Separate notice and an invitation to consult was also sent to the Yakama Nation via email and letter on March 9, 2021. No comments were received from the Yakama Nation during this process.

The City and Ecology held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on March 10, 2021 and continued through April 9, 2021. The City accepted comments on the proposed SMP amendment during the 30-day comment period. A joint public hearing before the Planning Commission was held virtually via Zoom on March 31, 2021 at 6pm.

One (1) individual provided testimony during the public hearing and one (1) written comment was submitted during the 30-day comment period on the proposed SMP amendment. Public hearing testimony centered on concern and disapproval that shoreline jurisdiction is tied to the 100-year flood plain. They also expressed concern that construction trends, property taxes, and land value have increased significantly, which is detrimental to the cost of their farming. The written comment expressed concern about how proposed changes to the SMP might impact future development of the commenter's shoreline property. The City's consultant responded directly to the commenter identifying that none of the proposed changes will impact development of a single family residence in the future.

No changes to the draft SMP were proposed in response to comments.

¹ <https://ci.benton-city.wa.us/pview.aspx?id=28918&catid=671>

² See Commerce file: City of Benton City-2021-S-2946

Initial Determination of Consistency

As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. After the joint local/state comment period and hearing, and consideration of the comments received, the City submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendment was received by Ecology for initial state review on June 3, 2021 and verified as complete on June 4, 2021. This began our review and initial determination.

Ecology has reviewed all the comments received during the joint review process along with the City's responses. Ecology finds the City considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data as provided or raised during the comment period. The City has determined, and Ecology concurs, that no additional amendments are warranted at this time based on the significance of the information provided and the existing SMP provisions³.

We provided the City a formal written statement documenting our initial determination of consistency. Ecology considered the record, including comments received and the City's responses to these comments, and concluded the proposal was consistent with applicable laws and rules. A formal written statement of initial concurrence was sent to the City on June 9, 2021. Based upon this determination, Ecology advised the City to proceed with local adoption of the proposed amendment.

Final Submittal

With passage of Ordinance No. 1022, on July 20, 2021, the City authorized staff to forward the proposed amendment to Ecology for formal approval. The City's final submittal of the SMP amendment was received by Ecology on July 26, 2021 and verified complete on August 30, 2021.

At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with required changes and/or recommended changes, or deny approval.

Consistency Review

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 for compliance with the SMP amendment criteria found in WAC 173-26-201(1)(c) along with review of the SMP Periodic Review Checklist completed by the City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued Determination of Non-Significance (DNS) for the proposed SMP amendment dated March 10, 2021.

³ WAC 173-26-090(3)(b)(iii)

Other Studies or Analyses Supporting the SMP Amendments

Ecology also reviewed supporting documents prepared by the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist, the comment summary and response, and the Staff Reports on the SMP Periodic Review amendment.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City proposed 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).

Ecology concludes that the proposed amendment satisfies the criteria for approval of amendments found in WAC 173-26-201(1)(c). This includes the conclusion that approval of the SMP amendment will not foster uncoordinated and piecemeal development of the state's shorelines (WAC 173-26-201(1)(c)(i)) and will assure no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that the City has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process, including conducting open houses and public hearings, providing notice, consulting with parties of interest and soliciting 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 has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the City SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that we have complied with our procedural requirements for review and approval of SMP amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City has completed the required process for periodic review in accordance with RCW 90.58.080(4) and applicable state guidelines (WAC 173-26).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendment 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.