

**ATTACHMENT A: FINDINGS AND CONCLUSIONS**  
**BENTON COUNTY SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT**

SMP Submittal accepted October 18, 2021, Resolution 2021-684  
Prepared by Department of Ecology on January 21, 2022

### Brief Description of Proposed Amendment

Benton County (County) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to the Department of Ecology (Ecology) for approval. The County chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on September 7, 2021, per WAC 173-26-104(3)(b), Ecology provided the County with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The County's final adopted SMP amendment includes the one Ecology recommended change provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Benton County comprehensively updated their master program in 2015. This current amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

The Benton County SMP is a standalone document that contains shoreline policies, regulations, and critical area protection standards. The SMP regulates shoreline uses and developments along the Columbia and Yakima Rivers within the County.

### SMP provisions to be changed by the amendment as proposed

The County prepared a checklist and an analysis documenting the proposed amendment. The amendment will bring the SMP into compliance with requirements of the SMA and state rules that have been added or changed since the SMP comprehensive update, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate revisions deemed necessary to reflect changed circumstances, new information, or improved data. Locally initiated changes include provisions incorporating comments received throughout the public participation process.

In addition to needed general formatting and citation corrections, the following amendments to the SMP are proposed:

#### *Section 15.02 Definitions*

The following definitions have either been removed, added, or revised: Board of Adjustment, Hearings Examiner, Development, Qualified Professional, and Substantial Development.

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*Section 15.04 Shoreline Environment Designations*

Added subsection 04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews.

*Section 15.05 General Regulations and Performance Standards*

Subsection 05.030(j) modified to require replanting of treated area with native riparian vegetation.

*Section 15.06 Critical Areas in Shoreline Jurisdiction*

Subsection 06.010 (e)(2) revised to require that critical area studies performed for a project include identification of all critical areas adjacent to the proposed project area.

Subsection 06.020 (d) Definitions for categories of wetlands have been removed.

*Section 15.07 Use-Specific and Modification Regulations and Performance Standards*

Subsection 07.150 (m) modified to add a 90 day timeline for permits associated with state highway projects.

### Amendment History, Review Process

The County 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. An important element of the public participation plan is the County's SMP Periodic Review project [website](#)<sup>1</sup>. The County developed draft documents in collaboration with Ecology. Due to the COVID-19 pandemic, the County held public meetings in a virtual format, including a public Open House held December 21, 2020 and Planning Commission meetings addressing this topic.

The County used Ecology's periodic review 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 County also 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 County 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 County consulted with Ecology and solicited comments throughout the review process. The record also indicates that the County submitted the required 60-day notice of intent to adopt amendments to the Washington State Department of Commerce on February 24, 2021 and sent notice of final adoption as required under RCW 36.70A.106 on September 20, 2021.

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<sup>1</sup> <https://bentoncounty.municipalcms.com/pview.aspx?id=21077&catid=0>

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The City prepared a State Environmental Policy Act (SEPA) checklist and issued a Determination of Non-Significance and checklist on February 24, 2021. No comments were received on the DNS.

*State Local Joint comment period under WAC 173-26-104*

Ecology and the County held a joint state/local public comment period on the proposed SMP amendment following the procedures outlined in WAC 173-26-104. The comment period began on March 24, 2021 and continued through April 23, 2021. Ecology and the County held a virtual joint public hearing before the Planning Commission on April 13, 2021.

The County provided notice of the joint comment period and hearing, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The County sent out notice of comment period and hearing to an interested parties list via email on March 23, 2021. Affidavits of publication provided by the County indicates notice of the joint comment period and hearing was published on March 24, 2021 in *The Prosser Record Bulletin*.

Ecology distributed notice of the joint local/state comment period to state interested parties on March 22, 2021. The Confederated Tribes of the Yakama Nation were notified on March 22, 2021 by email and letter. No comments were received from the Confederated Tribes of the Yakama Nation during this process.

During the joint comment period, two comments were received. The first was a public comment letter was received from two individuals, Patrick Paulson and Laurie Ness. The comment letter contained concerns around existing provisions and how those provisions ensure no net loss, and consistency between the critical area ordinance and the SMP. The comment letter also provided suggestions to improve language around wetland categories and the use of critical area reports for clarity and improved protection.

The second letter was received from the Washington State Department of Fish and Wildlife (WDFW). The letter provides clarification around previous conversations and testimony given during the County's critical areas code update and SMP Joint Public Hearing. Testimony given at the hearing stated that the Riparian Ecosystems guidelines Volume 1 and Volume 2 should be used to identify Riparian buffers which requires 100 foot minimum width. The comment letter goes on to identify that a WDFW biologist had recently reviewed the County's buffers and provided comment prior to the public process identifying the buffers for Type F 75', and Type N 50' to be acceptable. The current approved SMP section 06.030 Rivers and Creeks requires a buffer of 100' for Type F streams and a 50' buffer for Type N streams. WDFW ultimately requests no changes to the proposed buffers.

It is of note that after the joint comment period closed, the County received a comment letter from Futurewise dated June 21, 2021. The letter expressed concern that the type F, NP, and NS riparian buffers in the existing SMP do not adequately protect the associated critical areas. Futurewise suggests using new WDFW guidance which includes site potential tree height for determining appropriate riparian management areas.

County staff reviewed and summarized comments received, and provided responses in the form of staff recommendations. The County ultimately made the following changes in response to comments.

- 05.030(j) Addition of language requiring treated areas be replanted with native riparian vegetation.
- 06.010 (e)(2) Language has been revised to require that critical area studies performed for a project include identification of all critical areas adjacent to the proposed project area.
- 06.020 (d) Removal of definitions for categories of wetlands.

These changes were formally incorporated into the proposed draft.

As part of the comprehensive update, local governments had to weigh many considerations in balancing the policies of the SMA. To that end, the County's SMP includes appropriate use allowances and restrictions, stream buffers, vegetation management standards, and the requirement for projects to demonstrate mitigation sequencing. As a package the SMP provides for ecological protection and requires appropriate mitigation to achieve no net loss of shoreline ecological functions, while prioritizing water-oriented uses and increasing public access in the public interest as required by the SMA (RCW 90.58.020).

Ecology finds that the County's approach to protecting riparian buffers approved in 2015 as part of the comprehensive update, continues to achieve no net loss of shoreline ecological function and remain consistent with the SMA and SMP Guidelines.

#### *Initial Determination of Consistency*

The proposed SMP amendments were received by Ecology for initial state review on June 30, 2021. The initial submittal package was determined complete on July 19, 2021. This began Ecology's review and initial determination.

Ecology finds the County's responses are consistent with the statutory obligations for conducting periodic reviews<sup>2</sup>. Ecology reviewed all the comments received during the local and joint review process along with the County's responses. Ecology finds the County considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data as provided or raised during the comment period. The County determined, and Ecology concurred, that no additional amendments were warranted based on the significance of the information and the existing SMP provisions<sup>3</sup>.

Ecology issued a written statement of initial concurrence (Ecology's Initial Determination of Consistency), with no required changes, and one recommended formatting change, on September 7, 2021.

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<sup>2</sup> WAC 173-26-090(3)(b)(iii)

<sup>3</sup> WAC 173-26-090(3)(b)(iii)

### *Final Submittal*

With passage of Resolution 2021-684, on September 14, 2021, the County authorized staff to forward the proposed amendments to Ecology for formal approval. The County's final submittal of the SMP periodic review amendment was received by Ecology on September 29, 2021. The submittal was determined complete on October 18, 2021. This began our formal review of the County's proposed amendment.

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.

### Periodic Review and SMP Amendment Approval Criteria

#### *WAC 173-26-090(2) and (3) Periodic Review Requirements and Procedures*

The periodic review is distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the comprehensive update process was that all master programs needed to be revised to comply with the full suite of ecology guidelines. By contrast, the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to comprehensively revise shoreline inventory and characterization reports or restoration plans.

The purpose and scope of the periodic review as established by the act is to assure that the master program complies with applicable law and guidelines in effect at the time of the review. It also assures consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

The periodic review is a formal public process that starts with public scoping and concludes with elected officials taking formal action after a public hearing. The procedural requirements of WAC 173-26-090(3) establish that the local government must:

**Engage** the public, stakeholders, and tribes - Pursuant to RCW 90.58.130, all reasonable efforts shall be made to inform, fully involve and encourage participation of all interested persons and private entities, tribes, and agencies of the federal, state or local government having interests and responsibilities relating to shorelines of the state and the local master program. Local governments may follow the public participation procedures under either the standard local process outlined in WAC 173-26-100, or the optional joint review process outlined in WAC 173-26-104;

**Review** the SMP for consistency - This review includes filling out the periodic review checklist, intended to provide a single place for local governments to explain and document their periodic review;

**Revise** (if determined necessary) - If the local government determines an amendment is needed, they revise the SMP through the normal local adoption process;

**Take legislative action** at the local decision making body - Ecology rules clarify that local legislative action is required to complete this periodic review, even when a local government determines that no changes are needed; then

**Submit** to Ecology for final action – If the local government determines amendments are needed, the amendment must be submitted to Ecology consistent with WAC 173-26-110. If the local government determines amendments are not needed they submit the list of requirements found in WAC 173-26-090(3)(d)(ii) to Ecology as part of their Finding of Adequacy.



*WAC 173-26-090(3)(e) State process for approving period reviews*

Ecology must issue a formal approval of any SMP periodic review amendment or finding of adequacy. This approval affirmatively concludes the periodic review process by:

- Confirming that state review of the local action has occurred;
- Ensuring that Ecology followed applicable adoption procedures described in WAC 173-26-120; and,
- Establishing a definitive appeal window consistent with RCW 90.58.190.

*WAC 173-26-201(1) Process to prepare or amend SMP*

This section establishes the following approval criteria for SMP amendments:

- All master program amendments are subject to the minimum procedural rule requirements of WAC 173-26-010 through 173-26-160, and approval by Ecology as provided in RCW 90.58.090.
- Master program amendments may be approved by Ecology provided:
  - The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;
  - The amendment is consistent with all applicable policies and standards of the act;
  - All requirements for public notice and consultation have been satisfied; and
  - Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

The periodic review checklist and SMP submittal worksheet can be used to document the proposed amendment meets all the above criteria.

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#### *WAC 173-26-120 State process for approving/amending SMPs*

Ecology must first determine if the SMP amendment submittal was complete pursuant to WAC 173-26-104 and WAC 173-26-110. Ecology must then:

- Make written findings and conclusions regarding the consistency of the proposal with the policy of RCW 90.58.020 and the applicable guidelines. Ecology shall approve those parts of a master program relating to shorelines unless it determines that the submitted parts are not consistent with the policy of RCW 90.58.020 and the applicable guidelines. These written findings and conclusions must be provided to the local government and made available to all interested persons, parties, tribes, groups, and agencies of record on the proposal.
- Either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with chapter 90.58 RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW 90.58.020 and the applicable guidelines.

## 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 County 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 SMP Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This includes 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 County.

#### *Consistency with SEPA Requirements*

The County submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendment.

#### *Other Studies or Analyses supporting the SMP amendments*

Ecology also reviewed supporting documents prepared by the County 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. The County's SMP record also includes a September 30, 2020 Anchor QEA Best Available Science (BAS) Memo *Re: Proposed Riparian Buffers within the Benton County Critical Areas Code Update* and a May 2020 AC Geospatial LLC Summary Memorandum entitled *Riparian Buffer Analysis*.

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, we conclude that the County's proposed amendment is consistent with the policy and standards of RCW

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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 SMP (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

Ecology concludes that the County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that those SMP segments relating to shorelines of statewide significance continue to provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the County has complied with the purpose and intent of the amendment process requirements contained in RCW 90.58.130, WAC 173-26-090, and WAC 173-26-104, including conducting public hearings, notices, consultation with parties of interest and solicitation of comments from tribes, government agencies, and Ecology.

Ecology concludes that the County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County 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 the state's 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 County 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 periodic review amendments to the County's SMP are 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.