

ATTACHMENT A: FINDINGS AND CONCLUSIONS
CITY OF CHELAN SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted March 22, 2022, Ordinance No. 2021-1592
Prepared by Department of Ecology on April 22, 2022

Brief Description of Proposed Amendment

The City of Chelan (City) 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 City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on October 20, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with applicable laws and rules.

FINDINGS OF FACT

Need for amendment

The City of Chelan comprehensively updated their master program in 2016. 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 City prepared a checklist and an analysis documenting the proposed amendment. The amendment will bring the SMP into compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the last SMP amendment, 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.

SMP provisions to be changed by the amendment as proposed

The City's SMP is a standalone document with appendices and includes the City's shoreline management policies, regulations, and administrative procedures. The SMP regulates new uses and development along Lake Chelan within the city limits.

In addition to rewording and reorganization of existing provisions, formatting, and citation corrections, the following amendments to the SMP are proposed:

Chapter 1 - Authority and Purpose

- Climate information has been updated in to align with Chelan Climate Resiliency Strategy (August 5, 2020 draft).
- New reference has been added for Washington State Department of Wildlife's Volume 1 & 2 Riparian Management publications.
- Periodic review dates have been added.

Chapter 2 - Goals and policies

The majority of edits in Chapter 2 are “housekeeping” in nature. The content is reworded for better clarity and brevity, without changing the intent of the policy. In some instances, intent is more explicitly defined.

Economic Development Element Goals: clarify use preferences and compatibility provisions for commercial and industrial uses. Modification made to ensure that commercial development does not infringe upon existing uses. Also clarifies that downtown redevelopment proposals should integrate mixed-use, green space, and pedestrian amenities with an emphasis on water enjoyment.

Public Access Element Goals: provisions modified to clarify that the SMP requires visual or physical public access for if development (in excess of short plats) will create demand for access or restricts current access, including views.

Recreation Element Goals: revisions reflect updates to shoreline recreational uses based on recent survey data and requires demand study for parking expansion projects.

Shoreline Use and Modification Element: modifies agricultural, boating, residential, shoreline stabilization, and utilities policies. Creates a policy to require setback of approved ADUs from the shoreline in the landward direction of the primary to structure. Requires mitigation for hardened shoreline stabilization and protects against adverse effects on neighboring or downstream properties. Creates a policy to allow for utility corridor vegetation management for wildfire mitigation.

Conservation Element: The term *native fish habitat* is replaced with *WDFW priority habitat and species*.

Chapter 3 – Shoreline Jurisdiction and Environment Designations

New allowance for overnight boat rental uses in aquatic environment. Mixed-use commercial and residential development with a CUP in the Shoreline Residential - Multi-Family SED.

Chapter 4 – General Regulations

- Reliance on Appendix C shoreline access plan is removed from public access exemption section.
- Wildfire preparedness considerations are added to the Vegetation Conservation and Shoreline Setbacks section.
- Clarifies the requirement of a view corridor plan to be submitted at development review.
- Edits simplify language and clarify that portions of water dependent or recreational access uses may be allowed in the setback with appropriate shoreline permit or exemption, as applicable.
- Edits clarify water quality concerns and reformat into a bulleted list.
- New *Safety (no wake) Buoy* section is added to direct coordination with the Sheriff's Department and WDFW Hydraulic Code requirements.

Chapter 5 - Shoreline Modifications and Uses

- Lighting language revised to protect lake waters and become more consistent with Chelan Municipal Code.
- Pool regulations added for discharge of chemically treated water.

- WDFW HPA regulations via a reference to WAC 222-660-140 is added to Table 5.5-2 related to dock limits, decking materials, and added standards.
- New regulations added for short-term overnight rentals for vessels.
- Dredging regulations rearranged and revised for clarity.
- Residential regulations modified to clarify what is included as an accessory use and where they can be located. Language also added to this section stating that over water structures permanently affixed to docks shall be prohibited unless clearly water-dependent such as boatlifts.
- Shoreline stabilization additions include reference to WDFW Integrated Streambank Protection Guidelines and requirement for water access and stairs including example photos.
- Transportation and parking section adds preference for facilities that promote pedestrian, bicycle, multi-modal, and public transportation to shoreline recreational areas and includes new parking demand studies to demonstrate need for parking areas.

Chapter 7 – Shoreline Permits, Procedures and Administration

The list of exemptions from the substantial development permit process has been updated with new cost thresholds and exemption language to match the updated list from WAC 173-27-040.

Chapter 8 - Nonconforming Structures and Uses

Minor language changes made for clarity including height as a dimensional standard, and provision stating that existing legal nonconforming structures may continue.

Chapter 9 – Definitions

Updated definitions for *development*, *Shoreline Management Act*, and *transportation Facilities*.

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. An important element of the public participation plan is the City's SMP Periodic Review project [website](#)¹. The City also conducted a public survey in 2020 to help guide which sections of the SMP would be further reviewed and amended as necessary. The City developed draft documents in collaboration with Ecology. The City held public meetings, including a public workshop with the city council held May 4, 2021 and Planning Commission meetings addressing this topic.

The City 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 SMP comprehensive update and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City 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 City

¹ <https://cityofchelan.us/departments/building-planning-department/shoreline/>

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.

SEPA determination and comment period

The record indicates the City issued a SEPA Checklist and Determination of Non-Significance (DNS) on April 14, 2021 for the proposed SMP amendment. Notice of DNS was published on April 14, 2021 and April 21, 2021 in the *Lake Chelan Mirror*. The City accepted comments on the DNS through April 28, 2021. No comments were received during the SEPA comment period.

Joint local/state comment period under WAC 173-26-104

Ecology and the City 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 May 12, 2021, and continued through June 11, 2021. Ecology and the City held a joint public hearing via Zoom before the Planning Commission on May 26, 2021.

The City provided notice of the Joint comment period and hearing. Affidavits of publication provided by the City indicate notice of the joint comment period and hearing was published on May 12, 19, and 28, 2021 in *The Lake Chelan Mirror*.

Ecology distributed notice of the joint local/state comment period to state interested parties on May 11, 2021. The Confederated Tribes of the Yakama Nation and The Confederated Tribes of the Colville Reservation were invited to comment and consult on the City's proposed SMP periodic review amendment on May 10, 2021 by email and letter.

One comment was received during the joint comment period from The Washington State Department of Fish and Wildlife (WDFW). The comment letter from WDFW included recommended changes to multiple sections of the SMP. The topic areas included: ecological functions and processes, regulations for buoys, consistent design standards for docks, consistent design standards for grating and deck materials, soft methods of shoreline stabilization, and consideration of WDFW Riparian Ecosystems, Vol. 1 and 2 publications.

These comments were reviewed by the City as part of the local process prior to the initial submittal to Ecology for initial determination. City staff recommended changes to address each of WDFW's concerns and provide an official response letter. The City ultimately made the following changes in response to comments:

Chapter 2.6.1 Ecological Protection and Critical Areas Policies: The term *native fish habitat* was replaced with *WDFW priority habitat and species*.

Chapter 4.6.2 Regulation: Added requirement for compliance with WDFW hydraulic code for new safety buoys.

Table 5.5-2: Added reference to WDFW HPA regulations (WAC 222-660-140) for dock limits, decking materials, and decking standards.

Chapter 5.16.2(E) Added reference to WDFW Integrated Streambank Protection Guidelines and new requirements for stairs/water access with two example photos.

These changes were then formally incorporated into the proposed draft SMP prior to initial submittal to Ecology.

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, 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 the applicable rules.

The proposed SMP amendments were received by Ecology on June 30, 2021 for initial state review. The submittal was supplemented on July 21, 2021 and verified as complete on August 5, 2021. This began Ecology's review and initial determination.

Ecology is required to review all SMPs to ensure consistency with the SMA and implementing rules of WAC 173-26 and WAC 173-27, including the SMP approval/amendment procedures pursuant to WAC 173-26-090 and WAC 173-26-201. 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."

Ecology found 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. We supported the language added and amendments made by the City in response to comments. The City has determined, and we concurred, that no additional amendments were warranted based on the significance of the information provided and the existing SMP provisions.

We provided the City a formal written statement documenting our initial determination for 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 October 20, 2021. Based upon this determination, we anticipated being able to approve the City's SMP periodic review amendment upon final submittal. Ecology advised the City to proceed with local adoption of the proposed amendment.

Final Submittal

With passage of Ordinance No. 2021-1592, on December 14, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal approval. The City's final submittal of the SMP periodic review amendment was received by Ecology on March 8, 2022 and supplemented on March 22, 2022. The final submittal was deemed complete on March 22, 2021. This began our formal final review and approval process.

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 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 City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a adopting the SEPA checklist and Determination of Non-Significance (DNS) from the SMP comprehensive update. Ecology did not comment on the DNS.

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, we conclude that the City's 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 SMP (WAC 173-26-201(1)(c)(iv) and WAC 173-26-186(8)).

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 City has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

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

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 periodic review amendment to the City's SMP is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the City has completed the requirement for a periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.