

ATTACHMENT A: FINDINGS AND CONCLUSIONS TOWN OF COUPEVILLE SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

Shoreline Master Program Submittal accepted March 25, 2022, Ordinance No. 773
Prepared by Department of Ecology on June 13, 2022

INTRODUCTION

The Department of Ecology (Ecology) Findings and Conclusions (presented herein as Attachment A), provide the factual basis for our decision on the Town of Coupeville (Town) Shoreline Master Program (SMP) periodic review and associated amendment. This document is divided into three sections providing an **Introduction**; the **Findings of Fact** regarding the amendment history, the initial determination of consistency, local and state review and the final submittal summary; **and Conclusions**. A summary of comments received during the joint public comment period is provided in the Amendment History and Review Process section.

Brief Description of Proposed Amendment

The Town is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to Ecology for approval. As part of this review, the Town chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process, Ecology provided the Town with an initial determination, evaluating amended sections of the SMP for consistency with the policy of the Shoreline Management Act (SMA) and applicable rules per WAC 173-26-104(3)(b). The Town's final adopted ordinance incorporated all of Ecology's required and recommended changes provided to the Town, as part of the initial determination.

FINDINGS OF FACT

Need for amendment

The Town's comprehensive update to their SMP went into effect in 2009. The proposed amendment is the result of the Town's periodic review of their SMP complete pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The Town prepared a checklist documenting their periodic review and the proposed amendment. The amendment is intended to:

- Bring the SMP into compliance with requirements of the Shoreline Management Act or state rules that have been added or changed since the Town completed their SMP comprehensive update;
- Ensure the SMP remains consistent with local amended comprehensive plans and regulations; and
- Incorporate amendments deemed necessary to reflect changed circumstances, new information, or improved data.

The Town's SMP regulates shoreline uses and development along approximately 2.46 linear miles of marine shoreline along Penn Cove within the Town limits. Coupeville's SMP is fully incorporated and codified into the Town's municipal code, including shoreline management specific goals, policies, and development regulations applicable to designated shorelands and shorelines of the state within the

Town's jurisdictional area. Some critical areas protection standards from the Town's Critical Areas Ordinance have also been incorporated into the Town's SMP by reference.

The SMP is divided into eleven (11) articles or sections, as listed below:

1. General Provisions
2. Definitions
3. Shorelines of Statewide Significance
4. Goals and General Shoreline Use and Development Policies
5. Designated Shoreline Environments
6. Use Policies and Regulations
7. Variances
8. Conditional Uses
9. Revisions to Permits
10. Nonconforming Uses and Developments
11. Administration

In addition to editorial changes modifying terms used and general edits to correct or update syntax, formatting, citations, and references throughout the SMP, the Town identified the following substantive amendments to the Coupeville SMP:

16.30.040 Mandate, Plan Development, Purpose, General applicability, Background and Analysis/Inventory, and Restoration

In response to a stakeholder comment, the Town revised existing references to "National Historic Landmarks" to "National Register listed properties".

16.30.060 Applicability to federal agencies

A reference is added to: "Ebey's Landing National Historical Reserve Design Review and Community Design Standards under CTC 16.13."

16.30.090 Exemptions from substantial development

Added an exemption to allow retrofitting structures for ADA compliance (checklist 2016a), and for restoration projects (Periodic checklist 2007c), consistent with recent amendments to the SMA.

16.30.100 Exceptions to Local Review

This section was added to cover exceptions listed under WAC 173-27-044 and -045 (checklist 2017c) and to ensure consistency with state requirements.

16.30.120 Definitions

A statement is added that cross references definitions under CTC 16.04 (General Provisions and Definitions), when they are not provided under the SMP. New definitions are added to the SMP for the following terms: aquaculture, nonconforming lot, accessory utility, major utility, and minor utility. Definitions of the following terms are revised to be consistent with the SMA, SMP-Guidelines or Shoreline Permit Administrative WAC: development, live-aboard vessel, nonconforming, structure, nonconforming use, priority use, substantial development, and vessel.

16.30.260 Frequently Flooded Areas

Revised language to include a soft reference to the Town's flood hazard regulations (not part of the SMP), instead of incorporating the flood hazard regulations into the SMP.

16.30.270 Critical areas

Updated Critical Areas Ordinance (CAO) references to newer version of the Town's CAO and inserted clarifications that the CAO's reasonable use and public agency/utility exceptions are not incorporated into the SMP and will not apply within shoreline jurisdiction.

16.30.340 General Regulations

Added new language to allow mitigation banking for unavoidable impacts and to clarify Washington State Department of Natural Resources (DNR) reporting process and regulations applicable to derelict vessels.

16.30.350 Aquaculture

Added a reference to WAC 173-26-241(3)(b) for aquaculture uses (checklist 2011b).

16.30.360 Shoreline Modification Policies and Development Regulations

Vegetation management regulations were relocated to SMP 16.30.490 and a new reference was added.

16.30.370 Commercial development

Revised language regarding first floor retail requirements to exclude existing historic homes, which is in line with an interpretation the Town had previously established.

16.30.380 Industry

Non-substantive revisions to language used in provisions stating that industrial uses are generally not appropriate in the Town's shoreline jurisdiction, due to the historic designation of Ebey's Landing.

16.30.390 Forest management practices

Revised language to clarify that commercial forestry is prohibited and add that a clearing and grading permit is required for clearing activities associated with proposed development.

16.30.410 Mooring buoys

Revised language regarding minimizing ecological impacts, reiterating state and federal permit requirements, and other non-substantive clarifying changes. Added a new standard requiring a minimum distance of 100 feet between mooring buoys and Port or boat launch facilities. Removed conditional use permit requirement and limits related to water-dependent uses.

16.30.450 Residential development

Changes to improve clarity regarding the implementation of a common line setback.

16.30.490 Vegetation Conservation

New section to relocate language from the SMP section 16.30.360. Added a requirement for a clear and grade permit for vegetation impacts and standards for tree trimming and hazard tree removal.

16.30.510 Authority

Identifies the Town's Hearing Examiner, instead of the Council, as having the authority to review and issue shoreline variances and shoreline conditional use permits.

16.30.540 Department review

A new standard requiring all shoreline permits associated with a single development to be submitted to Ecology simultaneously (checklist 2017d). This clarification also made in section 16.30.610.

16.30.700 Nonconforming Uses and Developments - General

In response to a public comment, a new provision allows consideration of an extension to the two year timeline for restoration work on a damaged building.

16.30.740 Enforcement and penalties

A new provision requires unpermitted development(s) to be brought into compliance with the SMP.

16.30.750 Relationship to Other Plans

Added a statement regarding consistency with Comprehensive Plans, other potentially required permitting processes, and a statement regarding code conflicts and the regulations that provide the most shoreline protection will apply. Table 1 was removed which summarized all federal, state and local regulations in the shoreline jurisdiction.

Appendix B – Use Table

- Forest Practices are revised from a Conditional Use to a Prohibited Use.
- Additions made under the Historic Urban column, describing specific locations where residential uses are allowed and clarifying that current historic residences can continue as residential uses.
- Utilities were broken up into “minor” and “major”. Minor utilities remain classified as a permitted use, while Major utilities are listed as a conditional use, consistent with SMP section 16.30.480.C.6.

Amendment History, Review Process

The Town 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 Town’s Shoreline Master Program [website](#)¹, providing resources and background documents related to the review and amendment.

The Town 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 Town also reviewed changes to their comprehensive plan and development regulations to ensure that shoreline master program policies and regulations remain consistent in accordance with WAC 173-26-090(3)(b)(ii). The Town 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 Town consulted with Ecology and solicited comments throughout the review process.

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

The Town and Ecology held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on August 23, 2021 and continued through September 24, 2021. A virtual public hearing before the Planning Commission was held at 6 p.m. on September 7, 2021.

The Town 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). Ecology distributed notice of the joint comment period to state interested parties on August 20, 2021. Ecology sent invitations to comment and consult Government to Government, as necessary, to local tribal governments including the Lower Elwha Klallam Tribe, Jamestown S’Klallam Tribe, Port Gamble S’Klallam Tribe, Stillaguamish Tribe of Indians, Suquamish Tribe, Swinomish Indian Tribal Community, and Tulalip Tribes.

¹ <https://townofcoupeville.org/departments/planning/>

The Town received comments from two (2) individuals on the proposed amendments. Both commenters provided their input via email. The Town identified 13 individual points (or topics) from these commenters, as outlined in the Comment Response Matrix. The Town made five changes to the SMP amendment in response to comments; all changes were related to recognizing and protecting the Town's historic character.

Ecology has reviewed all the comments received during the joint review process along with the Town's response to issues raised and corresponding changes to the SMP amendment. Ecology finds the Town's response consistent with statutory obligations applicable to conducting a periodic review of their SMP. The Town considered whether to incorporate amendments to reflect changed circumstances, new information, or improved data, as provided or raised during the comment period. Ecology concurs, that no additional amendments related to public comments received on the amendment are warranted at this time, pursuant to the Periodic Review procedures in WAC 173-26-090(3)(b)(iii).

Initial Determination of Consistency

As part of this review, the Town 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 Town submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the Town 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 and verified as complete on November 10, 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 provided the Town a formal written statement, documenting an initial determination of consistency with state requirements. In making this determination, Ecology considered the record compiled by the Town through their update, including comments received and the Town's responses to these comments, and concluded that portions of the proposed amendment were not consistent with applicable laws and rules.

On December 30, 2021, we provided a written statement describing the specific areas of concern. Ecology identified six (6) required changes related to incorporation of critical areas provisions, incorporation of the flood damage ordinance without a date and ordinance number, inclusion of regulations in the definition section, unclear enforcement terminology, and removal of a Shoreline Conditional Use requirement for buoys without proper justification or analysis. Ecology also identified one (1) recommended change intended to improve clarity.

After review of the complete initial record submitted and all comments received, Ecology determined that the Town's proposed amendments, subject to and including Ecology's required changes, have been found to be consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). Ecology concluded that if

the issues identified as required and recommended changes in the initial determination were resolved prior to local adoption, Ecology anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

The Town considered the changes identified in Ecology's initial determination and accepted all required and recommended changes, prior to finalizing local adoption of the SMP amendment.

Final Submittal

With passage of Ordinance 773 on March 22, 2022, the Town authorized staff to forward the proposed amendment to Ecology for formal approval. The locally adopted SMP amendment was received by Ecology for final state review and verified as complete on March 25, 2022. This began Ecology's final review of the amendment for consistency with the SMA and SMP Guidelines.

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 the amendment.

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 Town 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 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 Town.

Consistency with SEPA Requirements

The Town submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on August 30, 2021.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the Town proposed amendments are 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 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 Town has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the Town 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 public hearings, providing notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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

Ecology concludes that the Town 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 shoreline master program amendments as set forth in RCW 90.58.090, WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the Town 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 Town's SMP is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the Town 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.