

ATTACHMENT A: FINDINGS AND CONCLUSIONS

COWLITZ COUNTY SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted September 21, 2021, Resolution No. 21-045
Prepared by Department of Ecology on February 28, 2022

Use of this Document

Ecology's *Findings and Conclusions* (presented here in Attachment A) provide the factual basis for the Department of Ecology's (Ecology) decision on the Cowlitz County (County) proposed amendment to their Shoreline Master Program (SMP) as a result of their SMP periodic review. This document is divided into three sections: **Findings of Fact**, which provides findings related to the County's proposed amendment, amendment history, and the review process, **Conclusions of Law**, and **Ecology's Decision and Effective Date** of the amendment.

Brief Description of Proposed Amendment

Cowlitz County is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The County followed the standard local review process in WAC 173-26-100 for this periodic review and associated amendment.

FINDINGS OF FACT

Need for amendment

The Cowlitz County comprehensive update of their SMP was completed in 2018. This proposed amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

The periodic review ensures the SMP is in compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the SMP comprehensive update; ensures the SMP remains consistent with amended comprehensive plans and regulations; and determines whether revisions are necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The County prepared a checklist documenting the proposed amendment. Cowlitz County's SMP is a standalone document containing goals, policies and regulations. The official Shoreline Environment Designation Map is located in SMP Appendix A, presented as 13 individual break-out panels that collectively show the whole County. The critical area regulations found in Cowlitz County Code (CCC) Chapter 19.15 Critical Areas Regulations are adopted by reference in SMP 6.3.2(A).

The County's SMP regulates shoreline use and development along approximately 697 miles of lake and river shorelines. These include the Columbia, Lewis and Kalama, Cowlitz and Chehalis rivers, Mill, Abernathy and Germany creeks and Merwin, Yale and Silver lakes, among others.

The proposed changes include removing the 2016 Shoreline Restoration Plan from Appendix B, revising it to reflect current information, and presenting it separately as a stand-alone document. The following sections of the Cowlitz County SMP are proposed to be amended:

- **Table of Contents** - Deletion of the Appendix B reference.
- **4.4 Conservation and Restoration** - Revise Policy 4.4.2 to delete the 'adoption' of Appendix B, and to insert the 2016 Shoreline Restoration Plan document date and 'as amended'.

- **4.9 Transportation and Utilities** - Revise Policy 4.9.2(B)(1) to insert 'public benefit' to correct the typo/incomplete sentence.
- **8.12 Restoration Project Relocation of OHWM** - Revise provision (C) to delete the reference to Appendix B, and to insert the 2016 Shoreline Restoration Plan document date and 'as amended'.
- **Appendix B Shoreline Restoration Plan** - Deletion of the entire appendix.

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 since the comprehensive update or the last periodic review; changes for consistency with revised comprehensive plans and regulations; and 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.

As established by the Act, the purpose and scope of the periodic review is to assure that the master program complies with applicable law and guidelines in effect at the time of the review. It is also to assure 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 scoping and concludes with elected officials taking formal action after a public hearing. The procedural requirements 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, which provides 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 a Finding of Adequacy and other items required by WAC 173-26-090(3)(d)(ii) to Ecology.



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

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

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

WAC 173-26-201(1) Process to prepare or amend shoreline master programs

This section establishes the following approval criteria for all 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 are used to document the proposed amendment meets all the above criteria.

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 a master program related 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.

Amendment History, Review Process

Local SMP Amendment 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 Update project [website](#)¹. The County also conducted an SMP Update Survey to gather scoping input from interested parties; the survey was posted on the website and included questions about recreational use, public access, shoreline protection and restoration, commercial and industrial use, and more.

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 comprehensively updated, and to 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 their 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 during the review process.

Due to the COVID-19 pandemic, the County's public meetings were held both in-person and virtually using Zoom. Planning Commission consideration of the proposed amendment included two public workshops and a May 19, 2021 public hearing before recommending approval to the Board of Commissioners. The Board held a public hearing June 22, 2021. Notice of the Board's hearing was published in *The Daily News* newspaper on June 9, 2021. No public testimony was given at either public hearing.

The record indicates the County found the proposed amendment to be categorically exempt from the requirement for a Threshold Determination under SEPA, per WAC 197-11-800(19)(b). Moving the Restoration Plan from Appendix B of the SMP to a referenced standalone document is not a substantive change with respect to use or modification of the environment.

With passage of Resolution No. 21-045 on June 22, 2021, the Board of Commissioners authorized staff to forward the proposed amendments to Ecology for formal review.

Ecology SMP Amendment Review and Approval Process

The proposed SMP amendments were received by Ecology for state review and verified as complete on September 21, 2021, satisfying the submittal requirements of WAC 173-26-110.

When the local government opts to use the standard process of WAC 173-26-100, Ecology must follow the procedures of WAC 173-26-120(2) to provide reasonable notice and opportunity for written comment.

Ecology distributed notice of the state public comment period to state interested parties on October 8, 2021. Separate notice, and an invitation to consult, was sent on October 8, 2021 to interested tribal

¹ <https://www.co.cowlitz.wa.us/2826/Shoreline-Master-Program-Update-2021>

governments, including the Cowlitz, Grand Ronde, and Yakama Tribes; no tribes elected to comment or consult with Ecology. Notice of the comment period, including a description of the proposed amendments and the authority under which the action is proposed along with the manner in which interested persons may obtain copies and present their views was provided on Ecology's [website](#)² and as part of the written notice.

In compliance with the requirements of WAC 173-26-120, the state comment period began on October 18, 2021 and continued through November 18, 2021. No comments were submitted on the 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.

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 Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Periodic Review Checklist, which was completed by the County.

Consistency with SEPA Requirements

The County submitted evidence of SEPA compliance in the form of a statement of categorical exemption for the proposed SMP amendment.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed documents prepared by or for the County in support of the SMP amendment. These documents include the public participation plan, the periodic review checklist, and meeting minutes.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the County 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-

² <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Cowlitz-County>

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

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, notice, 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 173-26-100, 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 173-26-100, 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 SMP are consistent with Shoreline Management Act policy, the applicable guidelines and the implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.