

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

SMP Submittal accepted July 27, 2021, Ordinance No. 21-15-45B
Prepared by Department of Ecology on December 9, 2021

Brief Description of Proposed Amendment

Douglas 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 June 7, 2021, per WAC 173-26-104(3)(b), Ecology provided the County with an initial determination of consistency with applicable laws and rules. The County's final adopted SMP amendment is the same as was reviewed by Ecology as part of the initial determination.

FINDINGS OF FACT

Need for amendment

The County's comprehensive update to their SMP went into effect in 2009. Since then the County has completed three locally initiated amendments; two were completed in 2015 and one more recently in January 2021.

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the County's Shoreline Master Program pursuant to RCW 90.58.080(4). The County prepared a checklist documenting proposed changes to the SMP. 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 last required SMP update in 2009. The amendment is also intended to ensure that the SMP remains consistent with the County's amended comprehensive plan and development regulations. The County has also considered changes to local circumstances, new information, and improved data as part of this SMP periodic review process.

The Douglas County SMP is a standalone document which includes provisions for protecting critical areas. The SMP goals and objectives are contained in the County's Comprehensive Plan.

SMP provisions to be changed by the proposed amendment

The County provided a periodic review checklist indicating changes made to the SMP based on amendments to state law, rules and applicable updated guidance. The checklist also indicates additional amendments made to the SMP based on comments received and changes made to make the SMP more consistent with other local regulations. Additional miscellaneous amendments are proposed throughout the SMP to update obsolete or incorrect citations and references, and fix typographical and grammatical errors. The following is a list of the specific SMP amendment locations:

Chapter 1.5

Language added to include the periodic update process and public participation process.

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Chapter 1.7

Applicability language has been updated, including a list of activities that are not considered development.

Chapter 1.13

Updated the SMP effective date.

Chapter 2.5

New policy added to balance wildfire safety and fuel reduction with shoreline buffer functions and values to prevent a net loss of ecological function.

Chapter 3.10

Use matrix language has been revised for clarification; language added describing conflict between different regulations and accessory uses.

Multiple changes have been made to the use matrix changing uses from conditional uses to permitted uses. The use categories under which changes have been made include commercial, essential public facilities, moorage, recreational, shoreline stabilization, and utilities.

Chapter 4.1

Addition of mitigation language which has been moved from section 4.3. Language added to expand upon the requirement for a management and mitigation plan. New language has also been added identifying the locations preferred when mitigation is required.

Chapter 4.3

Vegetation clearing requirements for fire prevention have been added.

Chapter 5.10

Moorage requirement regarding the number of slips per dock has been updated for clarity. Regulation has been added to allow for covered moorage for emergency vessels.

Chapter 5.11

New policy added aiming to increase recreational opportunities for those with disabilities. Reference to the accessibility standards for Federal Outdoor Developed Areas added.

Chapter 5.12

New policy added aiming to increase access for those with disabilities consistent with the minimum requirements of the United States Access Board's Accessibility Standards for Federal Outdoor Developed Areas that also maintain shoreline habitat functions and values.

Residential expansion was changed from 25% to 40% and included provision for functional breaks.

Chapter 5.13

Removed density and side yard setback requirements to be consistent with the County zoning requirements.

Chapter 6.5

Updated the SMP effective date.

Chapter 7.3.030

Added language that allows the administrator to elevate a permit application to quasi-judicial review due to the size and scope of the project.

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Chapter 8

The following definitions have been added or revised: accessory, buffer, cluster development, development, dock, nonconforming use, nonconforming development, nonconforming, lot, and off-site mitigation.

Changes made throughout the SMP include:

- Updates to obsolete or incorrect citations and references
- Typographical and grammatical corrections

Amendment History, Review Process

The proposed amendment originated in a local planning process that began in the fall of 2020. 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. The County held a virtual public workshop on September 23, 2020, the Planning Commission also held virtual workshops on March 10, 2021 and April 14, 2021. An important element of the public participation plan is the County's SMP Periodic Review project [website](#)¹ where amendment process information and documents were available for review. County staff briefed and/or held workshops with County Commissioners, Planning Commission and provided numerous other opportunities for public comment. The County consulted with Ecology throughout the review process.

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 SMP 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 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).

SEPA determination

The County issued notice of Determination of Non-Significance (DNS) on February 25, 2021 in accordance with the requirements of Chapter 43.21C RCW, the State Environmental Policy Act. This DNS was issued under WAC 197-11-340(2); as such the County allowed for comments on this DNS for the following 14 days. During that period the County received no comments.

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 April 8, 2021 and continued through May 8, 2021. Ecology and the County held a joint public hearing via video conference before the Planning Commission on May 12, 2021.

¹ <https://www.douglascountysmp.com/events>

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The County provided notice to local parties as part of the joint comment period. Affidavits of publication provided by the County indicate notice of the hearing was published on April 8, 2021 in *The Douglas County Empire Press* and *The Wenatchee World* for the comment period and joint public hearing. The County also sent an electronic notice to its interested parties list on April 8, 2021.

Ecology distributed notice of the joint local/state comment period to state interested parties on April 6, 2021. The Confederated Tribes of the Yakama Nation (Yakama Tribe), and The Confederated Tribes of the Colville Reservation (Colville Tribe) were notified on April 6, 2021 by email and letter. No comments were received from the Yakama Tribe during this process. On May 8, 2021 the County received a comment from the Colville Tribe requesting a ten day extension of the comment period followed by a comment letter.

The County record includes all comments received over the course of the local process, including comments submitted before and during the 30-day public comment period as well as oral comments received at the hearing. The County received six (6) written comments, and one (1) person provided oral testimony during this process. These comments came from members of the public, the Washington Department of Fish and Wildlife (WDFW), and the Confederated Tribes of the Colville Reservation.

Comment summary and response

The County prepared a Comment Matrix to summarize comments and provide the County's response. This Matrix identified fourteen (14) individual comments organized by commenter, topic, and SMP section.

Comments from members of the public identified process questions, requested a decrease in riparian buffers from 100 feet to 50 feet, and suggested language for clarification in multiple sections of the SMP. The verbal testimony given requested clarification on how new functional break language will affect an existing residence. The County responded to questions raised and included some of the suggested language changes, but declined to propose a reduction in the riparian buffers.

WDFW provided two written comment letters, one in March 2021 and the second in April 2021. In the first letter, WDFW identified concerns related to proposed changes to in-water structure standards found in SMP Chapter 5.10(7). After receiving this letter, the County worked with WDFW to re-word the proposed language to clearly identify what types and how many moorage spots are allowed per dock. The April 2021 letter referenced *WDFW PHS Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications and Volume 2: Management Recommendations*. WDFW did not identify any specific SMP language changes for this periodic review, but offered to reach out to discuss how these newer resources can best be applied to the Douglas County landscape. The County response acknowledged this comment and expressed that the County looks forward to continued collaboration with WDFW.

The first comment letter received from the Confederated Tribes of the Colville Reservation requested that the comment period be extended ten days. The County responded by granting an extension of the comment period. The second letter received from the Tribe provides the following recommendations and requests:

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1. Restrict future development in areas at risk from erosion, fires, and flood
2. Re-examine and increase buffers or protections around isolated wetland and springs
3. Develop programs for citizens to monitor impacts of climate change
4. Preserve Colville Tribal and public access to waterways,
5. Improve existing definitions for “essential public facilities” and “institutional development,” along with the following shoreline environment designations: Natural, Rural Conservancy, Urban Conservancy, Shoreline Residential, and Mixed Use.
6. Enhance inter-governmental coordination for land use planning.

After considering these comments and acknowledging appreciation for the feedback, the County found the SMP remains consistent the SMA requirements and proposed no additional modification as a result of these comments.

We understand the Tribes concerns about the ongoing health of the shorelines within Douglas County. We also understand that water resources and habitat connectivity are key issues of concern to the Tribe. In an effort to understand these concerns in the context of the SMA authorities and the SMP policies and regulations we reviewed the existing SMP provisions along with the proposed changes. As a result of this review, we find the following information relevant:

Critical Areas

The County’s SMP includes critical areas protection standards for erosion and flood hazards, in SMP Appendix H Chapter 4 & 6, which restrict new development or uses in these areas and provide for methods to reduce risks. The County added a shoreline use objective to SMP Section 2.5 and regulations to Vegetation Conservation of SMP Section 4.3 which encourages consideration of wildfire safety and fuel reduction as part of the functions and values analysis for new development. The critical areas protection standards within the shoreline jurisdiction are located in SMP Appendix H and do not include special allowances for isolated wetlands or streams/springs. These critical areas are protected by the SMP and would be subject to the buffers.

Citizen Climate Change Monitoring

The SMA does not require local governments to develop citizen monitoring programs and any program like this would be implemented outside the policy and regulatory framework of the local SMP. We encourage the Tribes to continue to work together with the County to explore ideas for how they might create and fund a monitoring program that could help inform future updates to the Douglas County SMP.

Colville Tribes and Public Access

Consistent with RCW 90.58.020 the County’s SMP includes policies and goals² to increase public access to publically owned shorelines. Sections 4.4 Archaeological and historical resources and 4.6 Public access provide additional policies and regulations to encourage compatible access to historic sites, requires public access as part of new developments (with the exception of single-

² Douglas County SMP Section 2.2 Public access element

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family residential) and ensure that new development and uses will not adversely impact existing access points.

Definitions

The County's definition for "essential public facilities" appears consistent with the Growth Management Act section on this topic found in RCW 36.70A.200 and the SMA has no other definition for this term. The SMA and guidelines do not include a required definition for "institutional development," but the existing definition in the SMP appears clear as it applies to public and private schools, libraries, police, fire, and community centers, excluding essential public facilities.

SMP Chapter 3 Shoreline Environment Designations (SEDs) contains the description for each SED (Natural, Urban Conservancy, Rural Conservancy, Shoreline Residential, and Mixed Use) along with SED polices and designation criteria. The commenter requests that SED definitions in Chapter 8 be improved. Ecology finds that the necessary level of detail for each SED is appropriately included in the body of the SMP within Chapter 3.

The County's SMP allows for development and ensures protection of critical areas as required by the SMA. The SMP definitions are consistent with the appropriate GMA and SMA standards as necessary for effective implementation of the SMP. At this time, Ecology finds that these comments do not implicate a need for a change to the current amendment to ensure consistency with the SMA or the SMP Guidelines.

Inter-Governmental Coordination

The County's SMP provides numerous provisions which encourage or enable inter-governmental coordination, including:

- Submitted proposals may be forwarded to other local/state/federal or tribal entities with expertise for comment or recommendations³,
- Historical/cultural element objectives that call for collaboration with appropriate tribes to ensure protection of cultural and historical sites⁴,
- Ecological protection and critical areas policies which direct the County to seek input from and coordinate with tribes on development proposals occurring within or near wetlands and other important habitats⁵,
- SMP Section 4.4 Archaeological and historic resources directs the County to work with tribal, state, federal, and other local governments to protect and preserve significant local historic, cultural, and archaeological sites.

Ecology finds the SMP already contains provisions that encourage inter-governmental coordination and provide opportunities for tribal comment or input during SMP amendments and shoreline permit reviews.

Summary

³ Douglas County SMP Appendix H Chapter 3 Critical Areas – Fish and Wildlife Habitat Conservation Areas at 3.030.

⁴ Douglas County SMP Section 2.7

⁵ Douglas County SMP Section 4.1

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Ecology appreciates the level of interest and effort put forth by all commenters in this SMP update. We especially appreciate the Colville Tribes' thorough review which enhanced Ecology's consistency analysis. Ecology has reviewed the comments received along with the County's responses. Ecology finds the County's responses are generally consistent with statutory and rule obligations required of SMP amendments. Ecology finds that the County considered whether to incorporate additional amendments to address issues raised during the comment period.

The County ultimately proposed changes to include suggested text edits, as noted above. These changes were then formally incorporated into the proposed draft SMP prior to initial submittal to Ecology. Therefore, these changes were included in the draft SMP amendment submitted to Ecology for the Initial Determination.

Initial Determination of Consistency

As part of this review, the County 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 County submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the County with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendment package was received by Ecology for initial state review on May 25, 2021. The initial submittal package was determined complete on June 4, 2021. This began Ecology's review and initial determination.

Ecology has 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 has determined, and Ecology concurs, that no additional amendments were warranted based on the significance of the information and the existing SMP provisions⁶.

Ecology issued a written statement of initial concurrence (Ecology's Initial Determination of Consistency), with no required or recommended changes, on June 7, 2021. Based upon this determination, Ecology advised the County to proceed with local adoption. We concluded that we anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

Final Submittal

With passage of Ordinance 21-15-45B, on June 29, 2021, the County authorized staff to forward the proposed amendment to Ecology for formal approval. The County's final submittal of the SMP Periodic Review Amendment was received by Ecology on July 9, 2021. The submittal was determined complete on July 27, 2021.

⁶ WAC 173-26-090(3)(b)(iii)

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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 and 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 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

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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 Ecology followed applicable 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.

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.
- 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,

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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.

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 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 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.

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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 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.