

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

SMP Submittal accepted December 10, 2021, Ordinance No. 5927 & 5953  
Prepared by Department of Ecology on February 11, 2022

### Brief Description of Proposed Amendment

The City of Kennewick (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 August 18, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with applicable laws and rules. The City's final adopted ordinance amending the SMP incorporates all our required and recommended changes provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Kennewick comprehensively updated their master program in 2009. 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. It will ensure that 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 codified as Kennewick Municipal Code (KMC) Chapter 18.68 with appendices and includes the City's shoreline management policies, regulations, and administrative procedures. The SMP regulates shoreline uses and activities along the Columbia River within city limits.

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

*18.68.040: Definitions* The following definitions have been added or revised in this section:

Archaeological and Historic Resources, Channel Migration Zone (CMZ), Critical Area, Development, Fill or Landfill, Fish and Wildlife Habitat Conservation Area (FWHCA), Hydraulic Project Approval (HPA), Riparian, Riparian Management Zone (RMZ), and Site-Potential Tree Height.

*18.68.060: Goals—Shoreline Development Elements* Language added to the Conservation Element goals that specifically identify protecting and preserving biodiverse habitats found in shorelines.

*18.68.110: General Shoreline Master Program Provisions, (2) General Provisions*

(a) Archaeological and Historic Resources: Addition of requirement to complete DAHP permits and site inspection or evaluation prior to conducting the public hearing or issuing a substantial development permit, shoreline conditional use permit or shoreline variance.

(d) Flood Hazard Reduction: Language added allowing the director to use additional flood information that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency (FEMA) to designate frequently flooded areas

(f) Shoreline Vegetation Conservation, Restoration, and Enhancement: “wildlife value” added to consideration of vegetation conservation. Language added to require mitigation which ensures no net loss of the functions and values of the vegetation removed when avoiding removal is not feasible. Added language emphasizing the preservation and creation of standing snags.

*18.68.120: Shoreline Modifications, (3) Standards for Specific Shoreline Modifications* Language added to clarify that biotechnical and soft methods of shoreline stabilization shall be prioritized as preferred method of bank stabilization.

*18.68.130: Shoreline Uses, (2) General Use Provisions* Language updated to reflect changes to the nonconforming development, uses and lots provisions in WAC 173-27-080.

*18.68.130: Shoreline Uses, (3) Standards for Specific Shoreline Uses* Suggestive language about maintaining natural in-stream features has been changed to required, to read as follows: Natural in-stream features such as snags, uprooted trees or stumps shall be left in place unless it can be demonstrated that they are actually causing deleterious bank erosion of higher flood stages which directly threaten human life, property, or infrastructure.

*18.68.230: Application for Substantial Development Permits* Methods for notification are added.

*18.68.240: Application for Conditional Use Permits* Added reference to WAC 173-27-130 “filing with the department.”

*18.68.250: Application for Variance* Added reference to WAC 173-27-130 “filing with the department.”

*18.68.255: Special Procedures for WSDOT Projects* This section was added to clarify specific permit timelines for WSDOT projects.

*18.68.280: Shoreline Exemptions*

- Three items were removed from this list and moved to the new exception section.
- Cost thresholds and requirements for dock exemptions were updated.
- Language added to the exemption for removing or controlling aquatic noxious weeds, to require that control methods comply with the WDFW HPA pamphlet permit.
- Addition of exemption for retrofitting existing structures for the purpose of compliance with the Americans with Disabilities Act.

*18.68.285: Developments Not Required to Obtain Shoreline Permits or Local Reviews* New section added to identify exceptions.

*Appendix A-2 Critical Areas - 18.59.010: Designation, Rating and Mapping Wetlands* Wetland standards were updated to reference and reflect the most current wetland guidance in accordance with the Ecology periodic review checklist.

*Appendix A-7 through A-11* Were updated to reflect changes approved in City of Kennewick Municipal Code since 2009 when the appendices were originally approved as part of the SMP comprehensive update.

### 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](#)<sup>1</sup>. The City developed draft documents in collaboration with Ecology. Due to the COVID-19 pandemic, the City held public meetings in a virtual format, including a public Open House held December 21, 2020 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 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 that on January 13, 2021, the City adopted the SEPA checklist and Determination of Non-Significance (DNS) with the Adoption of Existing Documents from the SMP comprehensive update pursuant to WAC 197-11-340(2). Notice of adoption was sent on January 13, 2021. The City accepted comments on the DNS adoption through January 28, 2021. During this comment period the City received three comments from: the Washington Department of Fish and Wildlife (WDFW), the Port of Kennewick, and the Department of Archeological and Historical Preservation (DAHP).

The comment letter from WDFW included recommended changes to seven (7) sections of the SMP. The topic areas included: definitions, shoreline development goals, additional frequently flooded areas resources, requiring mitigation for removed shoreline vegetation, preservation of snags, prioritizing soft methods of shoreline stabilization, referencing WDFW in certain permit

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<sup>1</sup> <https://www.go2kennewick.com/1349/Shoreline-Master-Program-Periodic-Update>

exemption criteria, and consideration of WDFW Riparian Ecosystems, Vol. 1 and 2 recent publications.

The Port of Kennewick requested confirmation that the proposed amendment will not affect provisions relative to Clover Island, specifically that building heights will remain the same. An additional request was related to updating critical area maps for Duffy's Pond. The City verified that the proposed SMP amendment was not related to specific Clover Island provisions and does not include updating critical area maps.

The comment letter from DAHP centered on archeological resource provisions in the SMP. The letter suggested the City add language to clearly differentiate between archaeological resources and historic built environment resources. It also questioned the situations in which surveys will be required by the City both for archaeological and built environment that are over 50 years in age, and suggested a more robust discussion be added regarding the permitting process associated with disturbing a recorded site.

These comments were reviewed by the City as part of the local SEPA determination process. City staff summarized all comments received, during the SEPA comment period, and provided responses in the form of staff recommendations.

The City ultimately made the following changes in response to these SEPA comments:

- Adding a definitions for *Channel Mitigation Zone, Fish and Wildlife Habitat Conservation Area, Hydraulic Project Approval, Riparian, Riparian Management Zone, and Site-Potential Tree Height.*
- Amending the definitions of *Critical Areas* and *Fill or Landfill.*
- Incorporated "wildlife value" into a shoreline goal for the Conservation Element.
- Added language allowing the director to use additional flood information to designate frequently flooded areas.
- "Wildlife value" added to consideration of vegetation conservation.
- Language added to require mitigation which ensures no net loss of the functions and values of the vegetation removed when avoiding removal is not feasible.
- Added language emphasizing the preservation and creation of standing snags.
- Language added to clarify that biotechnical and soft methods of shoreline stabilization shall be prioritized as preferred method of bank stabilization.
- Suggestive language about maintaining natural in-stream features has been changed to required, to read as follows: Natural in-stream features such as snags, uprooted trees or stumps shall be left in place unless it can be demonstrated that they are actually causing deleterious bank erosion of higher flood stages which directly threaten human life, property, or infrastructure.
- Language added to the exemption for removing of controlling aquatic noxious weeds exemption to require control methods comply with the WDFW HPA pamphlet permit.

These changes were then formally incorporated into the proposed draft prior to conducting the joint public process with Ecology. Ecology reviewed all the comments received during the local

SEPA process along with the City's responses. Ecology finds the City considered these comments and made changes to the proposal as appropriate based on the significance of the information and the existing SMP provisions<sup>2</sup>.

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

The City and Ecology held a joint local/state comment period on the SMP periodic review and proposed SMP amendment following the procedures outlined in WAC 173-26-104. The comment period began on April 7, 2021 and continued through May 6, 2021. Ecology and the City held a virtual joint public hearing before the Planning Commission on April 19, 2021.

The City 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). Affidavits of publication provided by the City indicate notice of the joint comment period and hearing was published on April 4, 2021 in *The Tri-City Herald*.

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 were invited to comment and consult on the City's proposed SMP periodic review amendment on April 6, 2021 by email and letter.

No comments were received during the joint comment period.

*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 May 14, 2021 for initial state review. The submittal was supplemented on June 25, 2021 and verified as complete on July 12, 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."

Upon initial review of the proposed amendments, Ecology concluded that portions of the City's amendment were not consistent with applicable laws and rules. On August 18, 2021 we provided a written statement to the City describing the specific areas of concern and changes necessary to ensure consistency with state requirements. We identified three (3) required changes to the draft amendment necessary for consistency with the SMA and the implementing rules. The issues identified were related to definitions, exemptions from the shoreline

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

substantial development permit process, and the exclusion of a critical area wetland provision from the updated Appendix A-2. We also proposed two (2) additional recommended changes to the draft SMP amendment. We recommended adding the term “as amended” to the updated reference to Ecology’s Wetland Rating System to avoid the need for revisions in the future. We also recommended removing Appendices A-7 through A-11 from the SMP because they are just copies of other sections of KMC administered and updated outside the authorities of the SMA.

#### *Final Submittal*

With passage of Ordinance No. 5927, on September 21, 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 October 6, 2021. However, Ordinance No. 5927 did not include all the changes the City intended. The submittal was supplemented on December 1, 2021 with Ordinance No. 5953 which included approval of the missing changes to the SMP. The final submittal was deemed complete on December 10, 2021. The complete submittal included all required and recommended changes identified by Ecology in the initial determination document. 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. Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.