

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED AMENDMENT TO THE CITY OF LA CENTER SHORELINE MASTER PROGRAM

SMP Submittal accepted April 28, 2021, Ordinance No. 2021-08
Prepared by Department of Ecology on June 4, 2021

Brief Description of Proposed Amendment

The City of La Center (City) 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 City chose to utilize the joint review process set forth in WAC 173-26-104. On March 26, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The City's final adopted ordinance incorporated Ecology's recommended changes provided as part of the initial determination.

FINDINGS OF FACT

Need for amendment

La Center comprehensively updated their master program in April 2013. The 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 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.

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis documenting the proposed amendment. La Center's SMP is a standalone document containing goals, policies and regulations. The SMP goals and policies are considered a chapter of the City's Comprehensive Plan. All other portions of the SMP are part of the City's development regulations. The Official Shoreline Designation Map is located in Appendix A. Critical area regulations are currently in SMP Appendix B and a copy of the Administrative Code is contained in Appendix C. The SMP regulates shoreline uses and development along a segment of the East Fork Lewis River within city limits.

La Center Municipal Code (LCMC) Chapter 18.55.330 Shoreline Master Program Permits adopts the SMP by reference.

In addition to the overall organizational changes, general edits to correct and update syntax, formatting and citations throughout the SMP, the following specific SMP sections are proposed to be amended:

Shoreline Master Program

- A. Chapter II. APPLICABILITY, SHORELINE PERMITS, EXEMPTIONS, AND EXCEPTIONS
 - 1. B. Shoreline Substantial Development Permit Required

- a. B.3 is revised linking the underlying rule criteria in WAC 173-27-215 to an exception to permit requirements within the urban growth area on land brought into shoreline jurisdiction due to a restoration project.
 2. C. Exemptions from a Shoreline Substantial Development Permit
 - a. C.1 General Requirements is revised to add “as amended” after reference to WAC 173-27-040. [C.1.d]
 - b. C.2. List of Exemptions is revised to clearly reference WAC 173-27-040, update monetary thresholds for substantial development and freshwater docks [C.2.a; C.2.g], add a new exemption addressing ADA retrofits [C.2.o], and remove references to projects certified by the Governor under RCW 80.50 and remedial actions under RCW 70.105D both of which are now addressed in new section II.D.
 3. D. Exceptions to Shoreline Permits or Local Review is a new section added consistent with Ecology recommendations addressing WAC 173-27-044 and WAC 173-27-045. The remainder of the subsections in the chapter are re-lettered.
 4. F¹. Non-Conforming Uses and Development is significantly rewritten for clarity, to distinguish between non-conforming uses and structures, to identify legally established residential structures as conforming, to allow for reconstruction when a structure is damaged and to add provisions addressing enlargement/expansion.
 5. G. Shoreline Variance
 - a. The criteria for hardship is revised for improved consistency with state rule. [G.3.b]
- B. Chapter III. SHORELINE MASTER PROGRAM GOALS & POLICIES
1. New section E. Critical Areas is added containing one goal and two policies related to the protection of critical areas. The remainder of the subsections in the chapter are re-lettered.
- C. Chapter IV. SHORELINE DESIGNATIONS
1. Official Shoreline Map – Revisions add language clarifying the shoreline map only approximates the lateral extent of shoreline jurisdiction. Site-specific reviews, including the location of the Ordinary High Water Mark (OHWM), floodway, floodplain and presence of associated wetlands, are necessary to determine the extent of shoreline jurisdiction. [D.1.a]
- D. Chapter V. GENERAL SHORELINE USE & DEVELOPMENT REGULATIONS
1. A. General Shoreline Use and Development Regulations. Edits clarify the requirements for mitigation sequencing and removes unneeded language which directs master program development on incorporating the mitigation sequence into SMPs. [A.2]
 2. C. Critical Areas Protection. The section is rewritten entirely, removing language redundant with the critical area provisions in Appendix C of the SMP. Additional changes revise and update the application of the critical area regulations in shoreline jurisdiction and identify those CAO provisions which are either modified for the SMP or are excluded from the SMP.
 3. D. Flood Prevention and Flood Damage Minimization is revised to clarify the need for a floodplain permit as required by the NFIP. Additional language is added identifying allowable uses within the channel migration zone and floodway, clarifying the placement of structural

¹ References are to the new subsection letters for the remainder of the chapter.

- flood hazard reduction measures, and requiring a geotechnical analysis documenting the analysis of feasible alternatives and the need for structural measures.
4. F. Restoration includes a new provision referencing the relief mechanism in WAC 173-27-215, available for use in urban growth areas, when new areas are brought into shoreline jurisdiction as a result of shoreline restoration projects.
 5. G. Site Planning and Development has an added cross-reference to Forest Practice provisions in Chapter VI.
 6. H. Vegetation Conservation is revised removing two forestry-related provisions. Forestry is addressed in Chapter VI.
- E. Chapter VI. SPECIFIC SHORELINE USE REGULATIONS
1. Use Specific Development Regulations
 - a. Forest Practices is revised for improved clarity. [C.6]
 - b. Residential Development includes a new provision improving clarity on allowances for expansions and appurtenances when the main residential structure is located within the required setback or critical area buffer. [C.10]
 - c. Table 6-1. Shoreline Use, Modification and Development Standards is revised to distinguish between commercial forest practices and conversions.
- F. Chapter VII. ADMINISTRATION AND ENFORCEMENT
1. B. Administrative Authority and Responsibility revisions clarify the decision-making responsibilities of the Shoreline Administrator [B.1] and the City Hearing Examiner [B.4]. Provisions B.6 to B.13, addressing Ecology review, are relocated to Section D.
 2. D. Appeals and WDOE Review is retitled and revised to clarify that appeals of Hearing Examiner shoreline decisions go to the Shorelines Hearings Board, add procedures for filing permits with Ecology and identify the date of filing.
- G. Chapter VIII. DEFINITIONS
1. The following definitions are added: Critical freshwater habitat, nonconforming lot.
 2. The following definitions are revised: development, non-conforming development or structure, non-conforming use, shoreline administrator, substantial development.
- H. Appendix A: Shoreline Environment Designation Map – The map legend is revised. There are no proposed designation changes.
- I. Appendix B: Critical Areas Provisions – The entirety of the City’s 2012 Critical Areas regulations (Chapter 18.300S) are deleted and replaced with the City’s 2019 Critical Areas provisions (LCMC Chapter 18.300 Critical Areas).
- J. Appendix C: Shoreline Administration – This appendix is deleted removing all of Chapter 18.330 Shoreline Administration from the SMP. The language is duplicative of the administrative provisions in SMP Chapter VII. Administration and Enforcement.

Related amendments:

LCMC Chapter 18.330 Shoreline Administration - The City proposes to update this chapter, revising the title to: Chapter 18.330 Shorelines. The existing language in the chapter is deleted and replaced with a sentence adopting the SMP by reference into the municipal code.

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](#)². A consultant, hired by the City developed draft documents. Due to the COVID-19 pandemic, the City held public meetings in a virtual format using GoToMeeting. The Planning Commission meetings addressing this topic, beginning July 14, 2020 and continuing through January 12, 2021, were held remotely.

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 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 City also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program 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 including opportunities to comment on draft materials in September, October and November 2020.

The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on December 22, 2020 for the proposed SMP amendment. Department of Commerce was notified of the City's intent to adopt on December 22, 2020.

The City 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 January 25, 2021 and continued through February 24, 2021. A public hearing before the Planning Commission was held virtually via GoToMeeting on February 9, 2021.

The City provided notice to local parties, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City's record indicates notice of the hearing was published in *The Columbian* on January 26, 2021. Ecology distributed notice of the joint comment period to state interested parties on January 22, 2021. Invitations to comment and consult government to government, if needed, were sent separately to the Yakama Tribe, Cowlitz Indian Tribe and the Confederated Tribes of Grand Ronde.

The City accepted public comments on the proposed SMP amendments during the 30-day public comment period. No comments were submitted on the proposed amendments.

² https://www.ci.lacenter.wa.us/commissions/planning_commission.php

Initial Determination of Consistency and Final Submittal

The proposed SMP amendments were received by Ecology on February 28, 2021 for initial state review. The submittal was supplemented on March 2, 2021 and verified as complete on March 2, 2021. This began Ecology's review and initial determination.

A written statement of initial concurrence was sent to the City on March 26, 2021. Ecology considered the record and concluded the proposal was consistent with applicable laws and rules, subject to four required changes related to the integration of critical area regulations into the SMP. Ecology also proposed seven recommended changes to improve clarity. These changes were identified as not required for consistency with the SMA or SMP Guidelines, but suggested to improve the SMP. The City's locally adopted SMP incorporates all required and recommended changes.

With passage of Ordinance No. 2021-08 on May 12, 2021, the City authorized staff to forward the proposed amendments to Ecology for formal review. The City's final submittal of amendments to the City of La Center SMP were received May 25, 2021, with supplemental materials provided on June 3, 2021. The submittal was determined complete by Ecology on June 3, 2021.

Other Studies or Analyses supporting the SMP amendments

Ecology also reviewed supporting documents prepared by or for the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist, and the Staff Report on the SMP Periodic Review amendment.

Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendments have 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 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 City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) December 22, 2020 for the proposed SMP amendments. The record indicates notice of the DNS was published December 22, 2020.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City 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(2)(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(2)(c)(iv)).

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

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 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 it has complied with the procedural requirements for review and approval of shoreline master program 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

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City's proposed amendments are consistent with the Shoreline Management Act policy and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions) 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.