

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED PERIODIC REVIEW OF CITY of LAKEWOOD SHORELINE MASTER PROGRAM

SMP Submittal accepted May 28, 2019, Ordinance No. 711
Prepared by Department of Ecology on September 20, 2019

Brief Description of Proposed Amendment

The City of Lakewood has submitted a Shoreline Master Program (SMP) amendment to Ecology for approval to comply with periodic review requirements.

FINDINGS OF FACT

Need for amendment

The proposed amendment is needed to comply with the statutory deadline for a periodic review of the City of Lakewood (City) Shoreline Master Program pursuant to RCW 90.58.080(4). The City prepared a checklist that documents proposed revisions. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act (Act) or state rules that have been added or changed since the last SMP amendment, ensures the SMP remains consistent with amended comprehensive plans and regulations, and incorporates revisions deemed necessary to reflect changed circumstances, new information, or improved data.

SMP provisions to be changed by the amendment as proposed

The following sections/provisions of the City SMP are proposed for change:

- **Chapter 1 Introduction:** 1.D Shoreline Master Program Basics - establish order of preference for activities on American Lake as a shoreline of statewide significance.
- **Chapter 2 Shoreline Environment:** 2.C City of Lakewood Shoreline Jurisdiction – clarify how the exact location of environment designation boundaries are to be interpreted based on official shoreline map depiction.
- **Chapter 3 General Shoreline Provisions:**
 - 3.B.3 Critical Areas – revise the ‘incorporation by reference’ to reflect City’s updated 2015 Critical Areas Ordinance, including wetland provisions consistent with the most current technical guidance for delineation, ratings, and mitigation;
 - 3.B.5.c.4 Public Access - remove the reference to a public access fee in lieu program that does not exist;
 - 3.B.6.b.5 - emphasize the importance of public education and outreach partnerships for shoreline restoration efforts; and
 - 3.B.6.c.15 Restoration - add a reference to the WAC citation for relief from OHWM relocation resulting from restoration actions.
- **Chapter 4 Shoreline Use Provisions:**
 - 4.D.7 Signs – revise the sign provisions to rely primarily on City’s sign code for application within shoreline jurisdiction.
- **Chapter 5 Shoreline Modification Provisions:** 5.C.5 Overwater Structures & Launching Facilities – replace the detailed dock exemption language that includes outdated cost threshold values with a reference to WAC 173-27-040.

- **Chapter 6 Administration:**
 - 6.C.2 Substantial Development – Permit Process – add a reference to the special procedures and statute citation for expedited review of WSDOT highway projects;
 - 6.F Standards for Nonconforming Structures, Use & Lots – revise the provisions for nonconforming use, development, structures, and lots to improve clarity, internal consistency with revised definitions and to reflect the most current guidance; and
 - 6.H SMP Review – clarify the SMP periodic review provisions to reflect current requirements.
- **Chapter 7 Definitions:** Add or revise the definition for terms: buffer, development, floodway, nonconforming, setback, shorelines of statewide significance, and substantial development for clarity, accuracy, consistency, to clarify deconstruction is excluded, and to update the fair market value cost threshold.
- **Overall** – Additional minor revisions to wording and WAC citations for improved clarity and accuracy throughout the document to aid implementation.

The City also made minor revisions to the 2014 Shoreline Restoration Plan to reflect current project status and community partner groups, to add a glossary of terms, and to establish an annual review process with Planning Commission, community members and stakeholder organizations.

Amendment History, Review Process

The City prepared a public participation plan 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 City’s public engagement efforts included direct mailings to residents, a feature article in the City’s magazine, project flyers posted at public locations, City webpage notices and a project-specific website, public open house events, and open public meetings/study sessions with Planning Commission and City Council, including public comment opportunities and two public hearings.

The City 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 City 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.

The City held two local comment periods on the proposed amendment following procedures outlined in WAC 173-26-104. The first comment period started on February 20, 2019 and closed at the end of the Planning Commission public hearing held on March 6, 2019. The City Council comment period began on April 1, 2019 and continued through April 15, 2019. A public hearing before the City Council was held on April 15, 2019.

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). An affidavit of publication provided by the City indicates notice of the hearing was published in *The News Tribune* on April 1, 2019.

With the passage of Ordinance #711 on May 6, 2019, City council adopted the SMP amendment and revised Restoration Plan to be effective fourteen days after final approval by the department.

The proposed SMP amendment was received by Ecology for state review and verified as complete on May 28, 2019. On June 4, 2019, notice of the public comment period was posted on Ecology's website. On June 5, 2019, notice of the state comment period was distributed via email to state task force members and interested parties identified by the City, in compliance with the requirements of WAC 173-26-120. The state comment period began on June 17, 2019 and continued through July 18, 2019. No individuals nor organizations submitted comments on the proposed amendment during the comment period, one comment letter was received after the comment period closed.

On July 30, 2019 Ecology provided the City a summary of the comments received, regarding issues of salmonid habitat and local land use practices. On July 31, 2019 the City submitted its responses to issues raised during the state comment period. Ecology finds the county's responses are consistent with the statutory obligations for conducting periodic reviews.

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 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 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) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed supporting documents prepared for the City in support of the SMP amendment. These documents include a public participation plan, a periodic review checklist, and a revised Shoreline Restoration Plan (2019).

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes 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 also concludes that a set of recommended changes to the submittal (identified during the review process and itemized in **Attachment B**) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the City, be included in Ecology's approved SMP amendment.

The Ecology recommended changes include the following:

- **Chapter 2 Shoreline Environments**
 - C. Shoreline Jurisdiction – relocate the environment designation boundary interpretation provisions to subsequent section D. Shoreline Environment Designations;
 - D. Shoreline Environment Designations – clarify the location of Figure 1 environment designation map.
- **Chapter 3 General Shoreline Provisions**
 - A. Introduction – remove confounding WAC citation;
 - B.6 Restoration – remove status update on local efforts that is not a policy, and establish intent to partner with stakeholder groups.
- **Chapter 4 Shoreline Use Provisions**
 - C. Shoreline Use & Development Standards – remove confounding WAC citations;
 - D.7 Signs - clarify provisions to keep those that implement SMA policy goals, and to reference to local sign code regulations;
- **Chapter 5 Shoreline Modifications**
 - C.1 General Policies & Regulations – remove confounding WAC citation;
 - C.5.b. Overwater Structures & Launching Facilities – Exemptions - clarify the freshwater dock exemption language to eliminate saltwater provision and correct the cost threshold values.
- **Chapter 6 Administration**
 - A. Purpose & Applicability - establish certain developments as not subject to local review and permitting under SMA as distinct from activities exempt from substantial development permit; and
 - C.1. Substantial Development – Exemptions – correct the WAC citation.

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 requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update and amendment process.

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)).

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 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, 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, WAC 173-26-110, and WAC 173-26-120.

Ecology concludes that with this action the City of Lakewood 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 amendments are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. The City may choose to adopt the recommended changes in **Attachment B**. Pursuant to RCW 90.58.090(2)(e), the City must notify Ecology which of the recommended changes the City will adopt.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit an alternative to all or part of the changes recommended by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action. Ecology approval of the proposed amendment will be effective 14 days from Ecology's final action approving the amendment.