

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

SMP Submittal accepted August 30, 2021, Ordinance No. 1634
Prepared by Department of Ecology, February 23, 2022

Use of this Document

These *Findings and Conclusions* (presented herein Attachment A) provide the factual basis for the Department of Ecology's (Ecology) decision on the City of Leavenworth's (City) 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 City'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

Leavenworth is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The City began this periodic review process using the optional joint review process pursuant to WAC 173-26-104, but ultimately opted to use the standard review process in WAC 173-26-100 to complete this periodic review and associated amendment.

FINDINGS OF FACT

Need for Amendment

The City's comprehensive update to their SMP went into effect in 2014 and applies to two water bodies that fall under shoreline jurisdiction: the Wenatchee River and Chumstick Creek. There have been no locally initiated amendments since 2014. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City's SMP pursuant to RCW 90.58.080(4).

The City prepared a checklist documenting proposed SMP amendments. The amendments are intended to bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the SMP comprehensive update in 2014. The amendment is also intended to ensure that the SMP remains consistent with amended comprehensive plans or regulations and incorporate changes deemed necessary to reflect changed circumstances, new information, or improved data.

SMP Provisions to be Changed by the Amendment as Proposed

The City of Leavenworth Shoreline Master Program is a standalone document which includes provisions for protecting critical areas as an appendix. The SMP goals and objectives have been included in the City of Leavenworth Comprehensive Plan.

Attachment A: Findings and Conclusions

City of Leavenworth SMP Periodic Review Amendment, Ord. No. 1634-2021

In addition to general edits to correct typographical or grammatical error and update incorrect or obsolete citations and references, the following is a list of changes proposed. This list includes changes required by the periodic review checklist.

- Outdated or unnecessary references to WAC, RCW and the pre-2014 SMP (County document) were removed.
- Housekeeping changes included: replacing the “City of Leavenworth” references to “Shoreline Administrator” as appropriate; grammar corrections, updating of text for readability and simplification of text; moved application requirements to Section 7; and, removal of references that did not apply to the City.
- Added reference to best available science.
- Updated Appendix B, Critical Areas, to match amendments made to the City regulations by Ordinance 1597, approved by the City Council in 2019.
- Removed or combined redundant regulations.
- Updated Shoreline Use and Modification Matrix (Use/Permit Chart) to reflect definitions, designations and community needs for permitting; including removal of mining and forest practices as a permitted use.
- Removed the requirement for written exemption letters for exempt activities.
- Removed several buffer reductions, to better fit the City shoreline conditions; also moved buffer and reduction tables to new location (SMP Section 3.4) to improve flow/use of the SMP.
- Prohibited new subdivisions within the channel migration zone.
- Required all new development to connect to City sewer – except recreational facilities.
- Simplified recreational development requirements.
- Simplified shoreline stabilization – new and repair, which includes maintenance; removed requirements for enlargement and replacement which will be reviewed as new.
- Removal of Section 5.21, Redevelopment, Repair and Maintenance which is covered within the SMP, including the non-conforming section.
- Added “pre-existing residential structures” to the non-conforming section to clarify how these may be maintained/repared, replaced and/or enlarged.
- Streamlined other non-conforming regulations.
- Updated the duration/expiration of permit timelines for clarity.
- Updated definitions, removing terms that were unnecessary and modifying others to improve clarity or consistency with the SMP.

Amendment History, Review Process

The proposed amendment originated in a local planning process that began in December 2020. 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. The City maintained a list of interested parties that have requested to be notified as part of this periodic amendment. An important element of the public participation plan is the City's SMP Periodic Review project [website](#)¹ where amendment process information and documents were available for review. City staff held meetings with City Planning Commission and provided multiple opportunities for public comment.

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 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 throughout the review process.

SEPA determination and comment period

The City issued notice of Determination of Non-significance (DNS) on June 15, 2021 under WAC 197-11-340(2) in accordance with the requirements of Chapter 43.21C RCW, the State Environmental Policy Act (SEPA). The City solicited comments on the SEPA DNS through June 29, 2021. Ecology did not comment on the DNS.

Local and State Joint comment period under WAC 173-26-104

The City and Ecology held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on May 12, 2021 and continued through June 12, 2021. A joint public hearing before the Planning Commission was held virtually using Zoom on June 2, 2021 starting at 5:00 p.m.

The City provided notice to local parties as part of the joint public comment period, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The record submitted by the City indicates notice of the joint hearing was published on May 12, 2021 in the *Leavenworth Echo* for the comment period and joint public hearing.

¹ <https://cityofleavenworth.com/your-city-hall/departments/development-services/shoreline-master-program-update/>

Ecology distributed notice of the state comment period to state interested parties on May 11, 2021. The Confederated Tribes of the Yakama Nation were invited to comment on May 11, 2021 by email and letter. No comments were received during this process.

Subsequent to the joint public comment period and public hearing, the City's Planning Commission reviewed the proposed SMP revisions and recommended approval of the proposed amendment and forwarded it to the City Council for review and adoption on July 7, 2021.

A City Council Public Hearing Notice was posted in the *Leavenworth Echo* on July 28, 2021 and said notice was emailed to interested parties. After considering the record, the Council determined that the proposed amendments comply with all applicable laws and rules, with the passage of Ord. 1634-2021 directed the planning director to submit the SMP and associated documents to the Department of Ecology for review and approval.

In accordance with the joint review process outlined in WAC 173-26-104, prior to approving the final adopting ordinance the City must provide an initial submittal to Ecology and receive an initial determination of consistency with the SMA and implementing rules. The City overlooked the required step of the optional joint review process to submit the proposed SMP amendments to Ecology for an initial determination of consistency.

After consideration of their options and discussions with Ecology staff, the City decided that it would be best to continue the SMP amendment by following the standard two-step approval process as provided under WAC 173-26-100, which includes a separate state comment period after local adoption.

Ecology SMP Amendment Review and Approval Process Completed using WAC 173-26-100

As described above, as part of this review, the City chose to utilize the standard review process set forth in WAC 173-26-100. After the City completed the SMP periodic review process and locally adopted the associated SMP amendment, the City submitted the amendment and its adoption record to Ecology for final agency approval as outlined in WAC 173-26-110.

The proposed SMP amendments were received by Ecology for state review and verified as complete on September 13, 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. In compliance with the requirements of WAC 173-26-120, the state comment period began on November 1, 2021 and continued through December 1, 2021.

Notice of the state comment period was distributed via email to state and local interested parties identified by the City on October 27, 2021, in compliance with the requirements of WAC 173-26-120. Ecology sent invitations to comment and consult Government to Government, as necessary, to local tribal governments including the Confederated Tribes of the Colville Reservation and the Confederated Tribes and Bands of the Yakama Nation. The Tribes did not provide comment on the proposed amendment.

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 notices. 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 if no alternation of the proposal appear likely to result in consistency with the SMA. Ecology finds the amendment proposal, as submitted, consistent with the policy and standards of the SMA and implementing 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 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 amendments have 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 SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendment.

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 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

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

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 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 173-26-100, regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, providing 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, 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 SMP 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 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 amendments are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the City has completed the requirements for an SMP periodic review under RCW 90.58.080(4). Ecology approval of the proposed amendment will be effective 14 days from Ecology's final action letter approving the amendment.