

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

SMP Submittal accepted October 11, 2021, Ordinance No. 1329  
Prepared by Department of Ecology on October 20, 2021

### Brief Description of Proposed Amendment

Lewis County (County) 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 County chose to use the joint review process set forth in WAC 173-26-104. As part of this process, on July 28, 2021, per WAC 173-26-104(3)(b), Ecology provided the County with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and applicable rules. The County's adopted SMP incorporates Ecology's required and recommended changes provided as part of the initial determination.

## FINDINGS OF FACT

### Need for amendment

Lewis County comprehensively updated their master program in October 2017. The proposed amendment is needed to comply with the statutory deadline for a periodic review of the County's SMP pursuant to RCW 90.58.080(4). The County has also proposed revisions to address changed local circumstances, new information and improved data.

Lewis County's SMP is a standalone document containing goals, policies and regulations. Chapter 2, Shoreline Management Goals along with the policies found in chapters 3, 4, 5 and 6, are considered an element of the County's Comprehensive Plan. The SMP regulations set development standards within shoreline jurisdiction and are part of the County's development regulations. The Shoreline Designation Maps are located in Appendix 1, and a list of shoreline waterbodies subject to the SMP are found in Appendix 2. Lewis County Code (LCC) Chapter 17.25 Shoreline Management adopts the SMP by reference.

Lewis County's SMP regulates shoreline uses and development along approximately 992 miles of stream and river shorelines and over 17,000 acres of lakes and reservoirs.

### SMP provisions to be changed by the amendment as proposed

The County prepared a checklist and an analysis documenting the proposed amendment. The amendment brings the SMP into compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the County completed their SMP comprehensive update, 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.

In addition to general edits to correct and update syntax, formatting and citation corrections, and replacement of all references to LCC 17.35 and LCC 17.35A with the County's new critical areas ordinance in LCC 17.38<sup>1</sup>, the following amendments to the SMP are proposed:

#### *Section 1 Introduction*

- 1.06.02.B.6 A correction to the waterbody name replacing "Mossyrock Reservoir" with "Riffe Lake".
- 1.12 An update to the date of the SMP adoption is proposed.

#### *Section 4. General Policies and Regulations*

##### 4.04.02 A. Critical Areas Ordinance Adopted and Modified.

- An update to the date of the adopted CAO is proposed. [A.2]
- A new provision is added to clarify the County's Flood Damage Prevention regulations, found in LCC 15.35, apply within shoreline jurisdiction but are not incorporated as specific regulations of the SMP. [A.3]
- Changes are made throughout regulation A.5 resulting from the update of the County's CAO, removing outdated language and adding new provisions specific to the new code clarifying which provisions apply and how the CAO is implemented in shoreline jurisdiction. [A.5.a – 5.l]

##### 4.04.02 B. Shoreline Buffers

- A new provision is added clarifying the required aquatic habitat area buffer for lakes is equivalent to the shoreline buffers established in Table 4-1. [B.1]
- Minor edits are made in the table for clarity. [Table 4-1]

##### 4.04.02 C. Buffer Width Reduction Options

- A cross-reference LCC 17.38.280 is added for wetland buffer reduction provisions. [C.2]

#### *Section 5. Specific Shoreline Use Policies & Regulations*

##### 5.03 Allowed Shoreline Uses

- A revision allows for bridges as a permitted use in the High Intensity, Shoreline Residential and Conservancy designations rather than as a Conditional Use. [Table 5-1]
- The term 'home occupations' is revised to 'home-based businesses'. [Table 5-1, Note 13]

##### 5.05 Agriculture.

- 5.05.01 Policies. A policy directing development of Voluntary Stewardship Programs is deleted<sup>2</sup>. [5.05.01 D]
- 5.05.02 Regulations. A new chart illustrating the application of the SMP to agricultural activities replaces the previous chart. [5.05.02 A].
- A new provision is added establishing the date of existing agricultural activity. [5.05.02 A.2]

##### 5.09 Forest Practices

- Language is added in the introduction clarifying timber cutting is not development, and that activities other than timber cutting may be development and require a Substantial Development Permit. [A.1.a, A.1.c]

##### 5.14 Residential Development

- An edit is made to clarify that a primary residential use must be established prior to any appurtenant structures. [5.14.02 E]

#### *Section 7. Shoreline Administration*

7.02.02 Provisions Applicable to All Shoreline Permits. A provision is added setting forth those developments or actions which do not require shoreline permits or other local review under the

---

<sup>1</sup> In 2018, Lewis County repealed two separate sets of critical area regulations found in LCC 17.35 and LCC 17.35A and adopted LCC 17.38 Critical Areas.

<sup>2</sup> The County has met this goal and is actively implementing their VSP.

Shoreline Management Act including remedial actions, boatyard improvements, WSDOT facility maintenance and safety improvements, projects under an environmental excellence program agreement, and projects authorized through the Energy Facility Site Evaluation Council. [B]

#### *Section 8. Definitions*

Definitions for the following terms are added: existing agriculture, high intensity agriculture uses, low intensity agriculture uses.

Definitions for the following terms are revised: development, residential development, substantial development.

#### *Appendix 2: Critical Areas Regulations*

The Critical Areas regulations are deleted from Appendix 2 and the SMP adopts the County's Chapter 17.38, Critical Areas by reference in SMP Section 4.04.02.A.2. Appendix 2 now lists Specific Waterbodies Subject to the SMP.

#### *Appendix 3: Specific Waterbodies Subject to the SMP*

The entirety of this appendix is relocated to Appendix 2.

#### *Critical Area Regulations, Chapter 17.38 LCC*

17.38.020 Applicability. A revision is made to clarify that critical areas within jurisdiction of the Shoreline Management Act shall be consistent with the policies and regulations of Lewis County Code(LCC) Chapter 17.25.

17.38.270 Required Wetland Buffers. The habitat function point ranges for low and moderate level function are revised consistent with Ecology's 2018 adjustment to the wetland ratings system. The range for low habitat function is revised from 3-4 points to 3-5 and the range for moderate function is revised from 5-7 to 6-7 points. [Table 17.38-3]

17.38.280 Buffer Width Reduction. Two revisions are made consistent with Ecology's adjustment to the habitat point range for low and moderate level function, replacing 'five' with 'six'. [(1)(a), (1)(b)]

#### *Related Amendments:*

Chapter 17.25 LCC Shoreline Management.

- 17.25.030 Administration – Adoption by reference. The adoption date of the SMP is updated to reflect the periodic review amendment.

Chapter 15.35 LCC Flood Damage Prevention.

- 15.35.150 Shoreline permits or exemptions. Revisions require a shoreline permit or exemption in addition to a floodplain development permit.

### **Amendment History, Review Process**

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. An important element of the public participation plan is the County's SMP Periodic Review project [website](https://lewiscountywa.gov/departments/community-development/track-planning-projects/shoreline-master-program-periodic-review/)<sup>3</sup>. Due to the Covid-19 pandemic, in-person meetings were not possible. In lieu of a public open house, the County produced an informational video about the scope of the periodic review and provided information on how interested parties could participate. This video was posted on the County webpage. Public meetings before the

---

<sup>3</sup> <https://lewiscountywa.gov/departments/community-development/track-planning-projects/shoreline-master-program-periodic-review/>

Planning Commission were held in a virtual format using Zoom and occurred on January 26, 2021, February 9, 2021 and May 11, 2021.

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 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 County 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 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). The County consulted with Ecology and solicited comments throughout the review process including opportunities to comment on draft materials in November 2020 and January 2021.

The record indicates the County completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on May 11, 2021 for the proposed SMP amendment. The Department of Commerce was notified on April 28, 2021.

The County 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 County's record indicates notice of the hearing was published on May 11, 2021 in *The Chronical*. Ecology distributed notice of the joint comment period to state interested parties on April 29, 2021. Separate notice, and an invitation to consult, was sent on April 29, 2021 to the Nisqually Tribe, Cowlitz Indian Tribe, Chehalis Tribe and the Quinault Indian Tribe.

The County 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 May 4, 2021 and continued through June 4, 2021. A joint public hearing before the Planning Commission took place on June 8, 2021 using Zoom.

The County accepted public comments on the proposed SMP amendments during the 30-day public comment period. There were no comments submitted on the proposed amendments.

#### *Initial Determination of Consistency*

As part of this review, the County chose to use the joint review process set forth in WAC 173-26-104. After the joint county-state comment period and hearing, 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 amendments were received by Ecology on June 2, 2021 for initial state review. Supplemental materials were received June 3 and June 8, 2021, and the submittal was verified as complete on June 8, 2021. This began Ecology's review and initial determination.

A written statement of initial concurrence was sent to the County on July 28, 2021. The record was considered, and Ecology concluded the proposal was consistent with applicable laws and rules, subject to one required change related to the integration of critical area provisions and the need to follow the administrative and permitting provisions of the SMP. Ecology also proposed ten recommended changes

to improve clarity and consistency within the SMP. These recommended changes were suggested to improve the SMP and were identified as not required for consistency with the SMA or SMP Guidelines.

Based upon this determination, Ecology advised the County to consider the issues identified and to make necessary changes prior to local adoption. We concluded that if the issues identified within our required and recommended changes were resolved prior to local adoption, we anticipated being able to approve this SMP Periodic Review amendment upon formal submittal per WAC 173-26-110.

The County considered the changes identified in Ecology's initial determination and incorporated all required and recommended changes into the SMP prior to local adoption.

#### *Final Submittal*

With passage of Ordinance No. 1329 on September 21, 2021, the County authorized staff to forward the proposed amendments to Ecology for formal review and approval. In a separate but related action, the County approved the revised Critical Areas regulations with adoption of Ordinance 1327 on September 14, 2021.

The County's final submittal of amendments to the Lewis County SMP were received September 28, 2021, with supplemental materials provided on October 6 and October 11, 2021. The submittal was determined complete by Ecology on October 11, 2021. This began our formal review of the County's 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.

### Periodic Review and SMP Amendment Approval Criteria

#### *WAC 173-26-090 Periodic review – Public involvement and approval procedures.*

##### *WAC 173-26-090(2) Periodic Review requirements*

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 since the comprehensive update or the last periodic review; changes for consistency with revised comprehensive plans and regulations; and 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.

As established by the act, the purpose and scope of the periodic review is to assure that the master program complies with applicable law and guidelines in effect at the time of the review. It is also to 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.

##### *WAC 173-26-090(3) Procedures for conducting periodic reviews*

The periodic review is a formal public process that starts with scoping and concludes with elected officials taking formal action after a public hearing. The procedural requirements 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, which provides 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
- **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 a Finding of Adequacy and other items required by WAC 173-26-090(3)(d)(ii) to Ecology.



*WAC 173-26-090(3)(e) State process for approving period reviews*

Ecology must issue a formal approval of any SMP periodic review amendment. This approval affirmatively concludes the periodic review process, confirms that state review of the local action has occurred and establishes a definitive appeal window consistent with RCW 90.58.190. Ecology must follow applicable adoption procedures in WAC 173-26-120.

*WAC 173-26-201(1) Process to prepare or amend shoreline master programs*

This section establishes the following approval criteria for all 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 a master program 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, 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 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 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 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 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) on May 11, 2021 for the proposed SMP amendments.

### *Other Studies or Analyses supporting the SMP amendment*

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

## CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the County 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 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 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 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, providing notice, consulting with parties of interest and soliciting comments from tribes, government agencies and Ecology.

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 state's procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090, 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 amendment is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the County 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.