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

SMP Submittal accepted May 2, 2024, Resolution 79-2023
Prepared by Department of Ecology November 2025

Ecology's *Findings and Conclusions* (presented herein as Attachment A) provides the factual basis for the Department of Ecology's (Ecology) decision on the Okanogan County (County) 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 County's proposed amendment, amendment history, and the review process; **Conclusions of Law**; and **Ecology's Decision and Effective Date**.

FINDINGS OF FACT

Brief Description of Proposed Amendment

Okanogan County is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The County used the standard review process in WAC 173-26-100.

Need for amendment

Okanogan County comprehensively updated their master program in 2018. 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 County prepared a checklist and an analysis documenting the proposed amendment. Okanogan County's SMP is a standalone document containing goals, policies, and regulations. The SMP regulates shoreline uses and development within the unincorporated portions of Okanogan County.

The following amendments are proposed and were identified in the periodic review checklist:

- Updating the definitions of "floodway" and "development."
- Adding an exemption from a substantial development permit process to allow access modifications to existing structures necessary for compliance with the Americans with Disabilities Act.
- Updating the cost threshold for substantial development permits.
- Updating Wetlands provisions based on Ecology's 2022 guidance for wetland protection.
- Updating reference to the current federal wetland delineation manual.

Amendment History, Review Process

Local SMP Amendment 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. The County developed draft documents in collaboration with Ecology. The County initiated a public process, including a County website and community survey, with the Planning Commission functioning as a Shoreline Advisory Committee as part of the SMP update process.

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 comprehensively updated to 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 SMP 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).

A draft of the updated SMP was released for a 30-day informal review process prior to the Planning Commission Public Hearing. No comments were received during this comment period.

The record indicates the County completed a SEPA checklist and issued a Determination of Non-Significance (DNS) on June 6, 2023, for the proposed SMP amendment. A SEPA comment period was held from June 6, 2023, to June 23, 2023. No SEPA comments were received.

Okanogan County Planning Commission held a duly advertised public hearing on June 26, 2023.

With passage of Resolution 79-2023 on July 10, 2023, the County Commissioners signed an intent to adopt the SMP.

Ecology SMP Amendment Review and Approval Process

As part of this review, the County chose to utilize the standard review process set forth in WAC 173-26-100. After the County completed the SMP periodic review process and locally adopted the associated SMP amendment, the County 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 on April 11, 2024, and verified as complete on May 2, 2024.

State Comment Period

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. Notice of the state comment period was distributed via email to state and local interested parties on July 15, 2024, in compliance with the requirements of WAC 173-26-120. The Confederated Tribes of the Colville Reservation were invited to comment and to consult government to government, as needed, on July 15, 2024. No Tribal comments or feedback was received. While we did not receive any comments from the Confederated Tribes of the Colville Reservation or other tribal nations, the County requested that we include additions resulting from a previous Court Order Stipulation that the Confederated Tribes and Bands of the Yakama Nation participated in. This Court Order Stipulation is further addressed below.

The state comment period began on July 18, 2024, and continued through August 19, 2024. 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[1] and as part of the written notice.

Summary and consideration of comments

Ecology received three comments during the state comment period. The Methow Valley Citizens Council (MVCC) and Futurewise jointly submitted a comment letter. Other comments were from the Washington State Department of Fish and Wildlife and the Okanogan Wilderness League represented by Lee Bernheisel. On August 27, 2024, per the SMP state approval process (WAC 173-26-120(2)(e)), Ecology requested the County's written response to the issues identified in the comments. Ecology received the County's responses on September 16, 2024.

Methow Valley Citizens Council / Futurewise

The MVCC/Futurewise provided four comments revolved around concerns with SMP section 14.15.110, asked that stream and lake buffers widths rely upon available information from WDFW, and requested clarification regarding the person who has authority to issue cease and desist orders.

- The four concerns with SMP section 14.15.110 pointed out inaccurate RCW references, questioned internal consistency with section 14.15.110.D.1.g., asserts that the County's critical areas ordinance is out-of-date, and contends that the proposed amendment will undercut the current SMP protections for critical areas. SMP section 14.15.110 which provides,

  Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical areas designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by Okanogan County pursuant to RCW 36.70A.060(2).

  - Ecology finds that SMP section 14.15.110 is consistent with RCW 90.58.610 and RCW 36.70A.480(5) and that the incorrect citations are the result of statutory changes that occurred in 2023 and therefore resulted in incorrect citations within the SMP.
  - The County, in their response, did propose to correct the noted citations to reflect the updates that occurred in 2023. To facilitate this amendment, Ecology is providing the County with the updated citations as recommended changes which are documented in Attachment B. Ecology has determined that this change is consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).
  - The County's critical areas ordinance has not been incorporated into this SMP and is therefore not applicable within shoreline jurisdiction.
  - The County noted that the updated SMP contains updated definitions for critical areas as well as designations. Ecology notes that the only proposed changes to OCC 14.15.110 are the addition of a reference to the wetland rating system and an update of the wetland mitigation ratios, which does not undercut any critical area protection standards.

[1]https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Okanogan-County

- The County notes that it intends to update its critical area ordinance following the completion of this SMP periodic review and will consider stream and lake buffer widths at that time.
- In response to the question regarding authorities to administer the SMP, the County has proposed to amend the definition of administrator which makes it clear that the planning director or his/her designee is the responsible official. Ecology is providing the County with the updated definition as a recommended change which is documented in Attachment B. Ecology has determined that this change is consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

WA Department of Fish and Wildlife (WDFW)

Within this comment letter WDFW expressed regret for not collaborating during the local adoption process for this SMP periodic review and clarified that comments and recommendations provided are in support of WDFWs mission to preserve, protect, and perpetuate fish and wildlife and their habitats. WDFW also acknowledged that the comments provided are outside the scope of what was considered by the County during the local review and adoption process but requested an opportunity for further discussion. WDFW took the opportunity to highlight their completion of an update to their Priority Habitats and Species (PHS) management recommendations on riparian ecosystems, *PHS Riparian Ecosystems, Volume 2: Management Recommendations* and Volume 2 which provides recommendations on how to apply the science in Volume 1 through WDFW's lens per their agency's mandate.

- WDFW recommends seeking an opportunity for future review of buffer and setback widths to see if the SMP adheres to the most up-to-date scientific knowledge and standards.
- WDFW provides examples code from Douglas County's SMP and suggests that Okanogan County consider adding more specific quantifiable metric for habitat mitigation as a tool to ensure no net loss.

In response, the County acknowledged the need to update their critical areas ordinance and stated that they would undertake this effort as soon as appropriate funding can be secured. Additionally, Ecology notes that the recommendations WDFW provided here are also being addressed on a statewide basis within the context of Ecology's current SMA rulemaking process.

Citizen comments

A comment received from Okanogan Wilderness League, represented by Lee Bernheisel, outlined what the commenter believes to be significant results from the SMP comprehensive update which was adopted in 2018. The commenter expressed concern with boundary line adjustments to allow lot lines from previous development to extend the high-water line. The commentor suggests that this leads to environmental damage. In their response, the County points out that the comments are related to the portions of the adopted 2018 SMP that were not being modified by this amendment. The County states that the issue may be addressed in the next update.

Okanogan County's requests for additional changes

After the state comment period, Ecology received a request from Okanogan County to make an additional minor amendment to the locally adopted SMP. This amendment stems from a 2014 comprehensive plan and zone code update which was challenged by Futurewise, the Methow Valley Citizens Council, and the Yakama Nation. This challenge resulted in a 2017 Court Ordered Stipulation for

the County to implement a public facing permit tracking software program, amongst other things. In 2024, a revised zone code ordinance was adopted by the Board of County Commissioners in addition to procedural amendments to Okanogan County Code 20.08, Application Process, and 14.15, the SMP. The amendments include the requirement of entering complete permits into a new publicly available permit tracking software program and includes SMP permits. These code amendments were the final steps required under the 2017 Stipulation Order.

At Okanogan County's request, Ecology has incorporated the proposed amendment stemming from the Stipulated Order into a recommended change within Attachment B of this conditional approval. The County can then accept that change if they choose. Ecology has determined that this change is consistent with SMA policy (RCW 90.58.020) and the SMP Guidelines (WAC 173-26, Part III).

Consistent with WAC 173-26-120(3)(a)(iii) the state process for approving/amending shoreline master programs, Ecology must either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with the Shoreline Management Act (SMA) or guidelines (WAC 173-26), or deny the proposal if no alternation of the proposal appears likely to be consistent with the SMA.

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).

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 a 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 April 28, 2023, for the proposed SMP amendment.

Other Studies or Analyses supporting the SMP amendment

Ecology reviewed the periodic review checklist and staff reports prepared in support of the amendment.

CONCLUSIONS OF LAW

After a review of the complete record submitted, Ecology concludes that the County'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(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) 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 the 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 173-26-100 regarding public and agency involvement in the SMP review and amendment process, including conducting public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the County has complied with the 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 173-26-100, 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 173-26-100, 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 to the County's SMP is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology has also determined that the SMP could benefit from the incorporation of the recommended changes identified in Attachment B. Ecology recommends these modifications, but they are not necessary for consistency with the SMA or applicable implementing rules. The County may choose to: adopt the recommended changes, reject some or all of the recommended changes, or propose alternative language pursuant to RCW 90.58.090(2)(e)(ii).

Pursuant to RCW 90.58.090(2)(e), the County must notify Ecology of its decision on the recommended changes before Ecology can take final action on this SMP periodic review amendment.

Upon written receipt of the County's decision regarding the recommended changes, Ecology will take final action. Ecology approval of the proposed amendment will be effective 14 days from Ecology's final action letter approving the amendment.