

ATTACHMENT A: FINDINGS AND CONCLUSIONS

TOWN OF SOUTH CLE ELUM SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted April 26, 2022, Ordinance No. 620
Prepared by Department of Ecology on June 3, 2022

Brief Description of Proposed Amendment

The Town of South Cle Elum (Town) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to the Department of Ecology (Ecology) for approval. The Town chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on March 3, 2022, per WAC 173-26-104(3)(b), Ecology provided the Town with an initial determination of consistency with applicable laws and rules.

FINDINGS OF FACT

Need for amendment

South Cle Elum comprehensively updated their master program in 2014. This current amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

SMP provisions to be changed by the amendment as proposed

The Town's SMP is a standalone document with appendices and includes the Town's shoreline management policies, regulations, and administrative procedures. The SMP regulates shoreline uses and activities along the Yakima River within town limits.

The Town prepared a checklist and an analysis documenting the proposed amendment. 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 SMP was comprehensively updated, 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. Locally initiated changes include provisions incorporating comments received throughout the public participation process. In addition to needed general formatting and citation corrections, the following amendments to the SMP are proposed:

1.5 Public involvement process, advisory committee, and agency coordination

Language added explaining the periodic review process with RCW and WAC references.

1.7 Applicability

Language added clarifying the applicability of SMA to federal lands.

Table 3.7-1: Shoreline Use and Modification Table

The legend has been edited to clarify "S": denotes that the uses in this Aquatic SED is to be review consistent with the immediately upland SED.

5.5 Boating facilities, marinas, piers, and docks

Language has been modified to reference Table 3.7-1: Shoreline Use and Modification Table for Piers, ramps, and docks standards.

5.9 Forest practices

Regulation added, consistent with checklist item 2017e, clarifying that a forest practice that only involves timber cutting is not a development under the act and does not require a shoreline Substantial Development Permit or a shoreline exemption. A forest practice that includes activities other than timber cutting may be a development under the act and may require a Substantial Development Permit, as required by WAC 222-50-020.

6.3 Exceptions to local review

New section added that lists exceptions to local review consistent with checklist item 2017c.

6.4 Permit Exemptions

Threshold value for substantial development and construction of docks were updated and new allowance for retrofitting existing structure in compliance with the Americans with Disabilities Act was added consistent with checklist items 2019a, 2017a, and 2016a.

7 Definitions

Definitions for Development & Transmit were revised consistent with checklist item 2017b & d.

Amendment History, Review Process

The Town 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 Town developed draft documents in collaboration with Ecology. The Town held public meetings, including a public open house week where draft materials and documents were available for viewing and staff was available for questions consistent with the Town's Public Participation Plan. The open house week was noticed in the *Northern Kittitas County Tribune* on April 8, 2021, and held April 19, 2021, through April 23, 2021.

The Town 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 Town 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 Town 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 Town consulted with Ecology and solicited comments throughout the review process.

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

Ecology and the Town held a joint state/local public comment period on the proposed SMP amendment following the procedures outlined in WAC 173-26-104. The comment period began on May 21, 2021, and continued through June 21, 2021. Ecology and the Town held a joint public hearing in-person before the Planning Commission at 7 p.m. on June 15, 2021.

The Town provided notice of the joint comment period and hearing, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Affidavits of publication provided by the Town indicate notice of the joint comment period and hearing was published on May 20, 2021, in the *Northern Kittitas County Tribune*.

The town does not have a website that could accommodate the comment period notice, so Ecology posted this information along with links to digital versions of the draft amendment and periodic review checklist on our [website](#)¹. Ecology distributed notice of the joint local/state comment period to state interested parties via email on May 20, 2021. The Confederated Tribes of the Yakama Nation were invited to comment and consult on the Town's proposed SMP periodic review amendment by email and letter.

During the joint comment period one comment was received from the Department of Fish and Wildlife (WDFW). The comment letter from WDFW expressed concerns with the piers, ramps, and docks provisions highlighting three (3) sections of the SMP that they believed would benefit from further review and revision:

1. Noting an inconsistency between the piers, ramps, and docks provisions contained in Section 3.6.B.1 and Table 3.7-1.
2. Requesting clarity around the use of the "S" for Aquatic SEDs in Table 3.7-1.
3. Requesting revisions to address a similar inconsistency regarding piers, ramps, and docks in Section 5.5.B.3

The Town ultimately made changes in response to comments as reflected in the Table 3.7-1: Shoreline Use and Modification Table and SMP Section 5.5 Boating facilities, marinas, piers, and docks amendments noted above. These changes were then formally incorporated into the proposed draft prior to submitting for initial determination review.

Initial Determination of Consistency

As part of this review, the Town chose to utilize the joint review process set forth in WAC 173-26-104. After the joint local/state comment period and hearing, the Town submitted the proposed amendment to Ecology for initial review. Ecology is required under WAC 173-26-104(3)(b) to provide the Town with an initial determination of consistency with the policy of the Shoreline Management Act (SMA) and the applicable rules.

¹ <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/South-Cle-Elum>

The proposed SMP amendments were received by Ecology on January 25, 2022, for initial state review.

It is of note that the Town originally adopted the SMP amendment by resolution prior to completing the required SEPA process. The original resolution was rescinded. The Town issued notice of Determination of Non-Significance (DNS) for this non-project action on February 17, 2022, in accordance with the requirements of RCW Chapter 43.21C, the State Environmental Policy Act. This DNS was issued under WAC 197-11-340(2); as such the Town allowed for comments on this DNS for the following 14 days. During that period the Town received no comments.

The SMP periodic review amendment initial submittal was supplemented on March 3, 2022, and verified as complete on March 3, 2022. This began Ecology's review and initial determination.

Ecology is required to review all SMPs to ensure consistency with the SMA and implementing rules of WAC 173-26 and WAC 173-27, including the SMP approval/amendment procedures pursuant to WAC 173-26-090 and WAC 173-26-201. WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Ecology finds the Town considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data as provided or raised during the comment period. We support the language added and amendments made by the Town in response to comments. The Town has determined, and Ecology concurs, that no additional amendments are warranted at this time based on the significance of the information provided and the existing SMP provisions.

We provided the Town a formal written statement documenting our initial determination of consistency. Ecology considered the record, including comments received and the Town's responses to these comments, and concluded the proposal was consistent with applicable laws and rules. A formal written statement of initial concurrence was sent to the Town on March 4, 2022. Based upon this determination, Ecology advised the Town to proceed with local adoption of the proposed amendment.

Final Submittal

With passage of Ordinance No. 620, on April 19, 2022, the Town authorized staff to forward the proposed amendments to Ecology for formal approval. The Town's final submittal of the SMP periodic review amendment was received by Ecology on April 20, 2022. The final submittal was deemed complete on April 26, 2022. This began our formal final review and approval process.

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.

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 Town 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 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 Town.

Consistency with SEPA Requirements

The Town 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.

Other Studies or Analyses supporting the SMP amendments

Ecology also reviewed supporting documents prepared by the Town in support of the SMP amendments. These documents include the Public Participation Plan, the Periodic Review Checklist, the Comment Summary and Response, and the Staff Reports on the SMP Periodic Review amendment.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, we conclude that the Town'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 functions will result from implementation of the amended SMP (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 Town has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the Town has complied with the purpose and intent of the amendment process requirements contained in RCW 90.58.130, WAC 173-26-090, and WAC 173-26-104,

including conducting public hearings, notices, consultation with parties of interest and solicitation of comments from tribes, government agencies, and Ecology.

Ecology concludes that the Town has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the Town's 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 our procedural requirements for review and approval of SMP 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 Town 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 Town's SMP is consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. With this approval, Ecology affirms the Town 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.