

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED CITY OF SPOKANESHORELINE MASTER PROGRAM
PERIODIC REVIEW AMENDMENT**

SMP Submittal accepted June 2, 2021, Ordinance No. C36034
Prepared by Department of Ecology on April 21, 2022.

Brief Description of Proposed Amendment

The City of Spokane (City) 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 City chose to utilize the joint review process set forth in WAC 173-26-104.

FINDINGS OF FACT

Need for amendment

The City of Spokane comprehensively updated their master program in 2010. The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City of Spokane Shoreline Master Program pursuant to RCW 90.58.080(4).

The amendments bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the last SMP amendment. The periodic review is also intended to ensure 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

Spokane's SMP is an integrated document with shoreline policies in the City's Comprehensive Plan and shoreline regulations within the City's Unified Development Code. The specific locations include:

- Comprehensive Plan Chapter 14;
- Spokane Municipal Code (SMC) Chapter 17E.060, Shoreline Regulations;
- SMC 17G.060 Land Use Application Procedures;
- SMC Chapter 17A.020 Definitions, including shoreline definitions;

The SMP regulates shoreline uses and developments along portions of the Spokane River and Latah Creek located within the City of Spokane. The City prepared a checklist and an analysis documenting the proposed amendment. The following specific SMP sections are proposed to be amended:

Section 17A.020 Administration; Definitions

Add a definition for *shoreline development*

Replace the term "design guidelines" with "design criteria"

Revise *Floodway* definition

Section 17E.060 Environmental Standards; Shoreline Regulations

- Update WAC 173-26 reference,
- Update the shoreline substantial development permit cost threshold amount and fresh water dock costs consistent with the current OFM amounts,
- Add new language concerning exceptions per RCW 90.58.355 and 90.58.356.
- Delete Section 17E.060.340, Shoreline Design Review board process and administration.
- Update Table 17E.060-04 Shoreline Primary Uses, to allow water enjoyment recreation a conditional use in the Wastewater Treatment Plant Environment SED.

Amendment History, Review Process

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. An important element of the public participation plan is the City's SMP periodic review project [website](#)¹. In addition public notices were published in the *Spokesman Review* newspaper and in the *City Gazette*, and emailed to a list of interested parties. The City also held committee and community briefings and virtual open houses via WebEx in 2020.

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 comprehensively updated, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The City 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 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. Ecology reviewed draft materials and provided the City with written comments in October 2020. The City's public comment draft and adopted ordinance incorporated all our recommended changes provided as part of the Ecology review.

The record indicates the City provided their Notice of Intent to adopt to the Department of Commerce in November 2020 and completed a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendment on December 21, 2020.

The City provided notice to local parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Ecology distributed notice of the joint comment period to state interested parties on December 23, 2020. A separate notice and an invitation to consult was also sent to the Spokane Tribe of Indians on December 23, 2020.

The City and Ecology held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The joint public comment period began on January 5, 2021 and continued through February 5, 2021. The public hearing was originally scheduled for February 10th but was rescheduled and actually took place on February 24th at the City Planning Commission meeting. Affidavits of publication provided by the City indicate notice of the hearing was published on February 10 and 17, 2021 in the *Spokesman Review*.

The City accepted comments on the proposed SMP amendments during the 30-day public comment period and during the public hearing. Four (4) comments were submitted on the proposed amendment. Comments were provided by the Washington Department of Fish and Wildlife (WDFW), Avista Utilities, and both the Spokane Tribe of Indians and the Upper Columbia United Tribes. The City summarized and

¹ <https://my.spokanecity.org/projects/shoreline-master-program-periodic-update/#:~:text=Per%20state%20mandate%2C%20the%20City%20of%20Spokane%20is,this%20latest%20Periodic%20Review%20by%20June%2030%2C%202021.>

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responded to issues raised during the comment period in a comment matrix. This matrix also included previous comments received, during the earlier associated SEPA comment period, by the Spokane Tribe of Indians and the Washington State Department of Ecology Water Quality Program. In all the City identified six (6) comments each containing a few topic areas, many of which were informational or inquisitive in nature, and did not warrant changes to the SMP text.

The Spokane Tribe of Indians Historic Preservation Officer commented during the SEPA and SMP joint review comment period. Both comment letters emphasized the Tribes extensive use of this area prior to Euro-Americans and recommend a case by case review of each project with a potential for cultural surveys or monitoring. The City acknowledged the letter but indicated no further action was required. Ecology confirmed that the City's SMP at SMC 17E.060.160 continues to address Archaeological and Historic Resources consistent with the requirements of WAC 173-26-221. No additional SMP modifications were proposed to address this comment because the City's SMP at Section 17E.060.160 already includes requirements for:

- Cultural resources surveys (inspections or evaluation) when any use, modification, or development may impact archaeological sites;
- Coordination with affected Indian Tribes during the evaluation of site inspection or evaluations of new use, modification, or development in areas documented to contain archaeological resources.
- Consultation with affected Indian Tribes and immediate stop of work if archaeological resources are uncovered during excavation.

Ecology water quality staff also submitted SEPA comments asking about the scope of the periodic review and expressing concerns with how this amendment might impact the City's NPDES wastewater permit compliance. This comment was addressed by the City with a follow up phone call to Ecology staff. Due to the narrow scope and intent of the City's SMP periodic review amendment these concerns were resolved and no further comments were received during the joint review comment period.

The Upper Columbia United Tribes provided informal verbal comments to City staff expressing concern that the periodic review might alter or reset the ecological baseline established as part of the SMP comprehensive update and suggesting that an ecosystem approach would be more appropriate. The City followed up with a phone call to discuss the matter and confirm that the scope of the periodic review amendment does not alter any of the SMP background documents or no net loss standards of the SMP.

WDFW took this opportunity to inform the City about their new PHS Riparian Ecosystem, Vol. I Science Synthesis and Management Implications and Vol 2. Management Recommendations. WDFW made some observations about using site potential tree height (SPTH) and the importance of identifying channel migration zones (CMZ) when determining the width of riparian management zone. WDFW noted that they look forward to working with the City to ensure that future SMP updates include review of SPTH and CMZ. In response to this comment, the City reviewed provision 17E.060.150 which referenced Plans, Regulations, or Information sources, but ultimately determined that no changes were needed at this time.

Avista Utilities provided written comment asking if the dollar amount for substantial development, found in the City's code at SMC 17C.060.300(B), could be updated to reflect current OFM amounts as part of this SMP amendment. The City had made changes to SMC 17E.060.290, but had not made the same change to the section noted above. Therefore, in response to the Avista comment, the City

proposed to revise all sections of the draft SMP text to correctly reflect the current OFM amount of \$7,047.

After the public hearing, the Planning Commission gave a final recommendation in support of the amendment and passed the periodic review onto the City Council for legislative action.

Initial Determination of Consistency and Final Submittal

The proposed SMP amendments were received by Ecology for initial state review March 8, 2021. The draft SMP amendment was reviewed by Ecology and comments, including recommended changes, were provided to the City on October 16, 2020. Ecology considered the record and concluded the proposal was consistent with applicable laws and rules, subject to one clarification regarding regulatory relief provisions of RCW 90.58.580. This recommended change was provided to improve clarity and internal consistency, and not required for consistency with the SMA or SMP Guidelines. The City incorporated this recommendation into the draft SMP prior to the start of the joint local/state comment period. The City and Ecology considered comments received during the joint comment period and, as a result of comments received, updated cost thresholds related to substantial development.

Following the close of the joint comment period and public hearing, Ecology affirmed that the draft SMP remained consistent with our previous review for consistency with the SMA and implementing guidelines. The draft amendment was then provided to the City Council for consideration prior to local adoption.

With passage of Resolution No. C36034 on April 19, 2021, the City authorized staff to forward the locally adopted amendment to Ecology for formal review and approval. The City's final submittal of the SMP periodic review amendment was received on June 2, 2021, and was determined complete by Ecology on July 13, 2021. This began our formal review of the City's proposed amendment.

At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with require and/or recommended changes, or deny approval.

Consistency Review

Consistency with Chapter 90.58 RCW

The proposed amendment was reviewed for consistency with the policy of RCW 90.58.020 and 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 SMP 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 City.

Consistency with SEPA Requirements

The City submitted evidence of SEPA compliance in the form of a SEPA checklist and issued Determination of Non-Significance (DNS) for the proposed SMP periodic review amendment.

Other Studies or Analyses supporting the SMP update

Ecology also reviewed documents prepared for the City of Spokane in support of the SMP amendment. These documents include a public participation plan, final submittal report and periodic review checklist.

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(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 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 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 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, 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 and WAC 173-26-104, 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 that the City's proposed SMP periodic review amendment is consistent with the Shoreline Management Act policy and the applicable SMP guidelines (WAC 173-26-171 through 251 and 020 definitions) and implementing rules. With this approval, Ecology affirms the City 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.