

ATTACHMENT A: FINDINGS AND CONCLUSIONS

CITY OF SPOKANE VALLEY SHORELINE MASTER PROGRAM PERIODIC REVIEW AMENDMENT

SMP Submittal accepted June 10, 2021, Resolution No. 21-007
Prepared by Department of Ecology on December 7, 2021

Use of this Document

Ecology's *Findings and Conclusions* (presented herein Attachment A), including references to Required Changes (Attachment B), provide the factual basis for the Department of Ecology's (Ecology) decision on the City of Spokane Valley'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. Attachment B outlines Ecology's identified required change to the SMP amendment.

FINDINGS OF FACT

Brief Description of Proposed Amendment

The City of Spokane Valley is undergoing a statutorily required periodic review of their SMP and has submitted an amendment to Ecology for review and approval. The City opted to use the standard review process in WAC 173-26-100 for this periodic review and associated amendment.

Need for amendment

The comprehensive update to the City's SMP went into effect in September 2015.

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, for improved data.

SMP provisions to be changed by the amendment as proposed

The City prepared a checklist and an analysis documenting the proposed amendment. Spokane Valley's SMP is a standalone document containing goals and policies. SMP goals and policies are adopted by reference in the City's comprehensive plan. City regulations can be found in the Spokane Valley Municipal Code (SVMC) Chapter 21.50. The Official Shoreline Designation Map can also be viewed in the City's online [mapping program tool](#)¹. The SMP regulates shoreline uses and development along segments of the Spokane River and Shelly Lake.

¹ <https://www.spokanevalley.org/content/6836/6896/7074/default.aspx>

The following SMP sections are proposed to be amended:

Spokane Valley Municipal Code (SVMC) Chapter 21.50 Shoreline Regulations

21.50.020.D Applicability

Referenced the exceptions changes in this chapter to clarify this section on remedial actions.

21.50.050 Development Authorization Review Procedure

Specific developments identified in WAC 173-27-044 and -045 are not required to obtain shoreline permits or local reviews. A new sub-section (B9) was added to this chapter to outline specific guidance on permit filing procedures consistent with the language from the 2011 statute.

21.50.110 Exemptions from Shoreline Substantial Development Permit

Added clarifying language for filing an appeal with the Shorelines Hearings Board. New language was also added to reference the WAC 173-27-040 and RCW 90.58.030(3) to ensure that the SMP reflects the most current exemption language including the new text, which allows for retrofitting existing structures to comply with Americans with Disabilities Act.

(A) Reference current cost threshold under SVMC 21.50.110.A.

(G) Adjusted language to reflect the current cost threshold for freshwater docks, in addition to WAC 173-27-040 to ensure the SMP always reflects the most current exemption language.

21.50.200 Shoreline Modification Activities Table

Change to Table 21.50-1: Shoreline Uses – the table was updated to reflect the change from “Accessory Dwelling Units – Permitted” to “Allowed”.

21.50.520 Wetlands – Shoreline Critical Area Regulations

Updated the chapter to reference the 2014 wetland rating system.

21.50.460 & 560 General/Frequently Flooded Areas – Shoreline Critical Area Regulations - Applicability

The SMP was updated to reflect the current GMA- SMA clarifications.

Appendix A-1 Shoreline Master Program Definitions

Added definitions such as “Development” and Non-Conforming Lot.

Amendment History, Review Process

Local SMP Amendment 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](https://www.spokanevalley.org/SMP)². The City hired the consulting firm Watershed Company to developed draft documents.

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

² <https://www.spokanevalley.org/SMP>

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.

The City opted to follow the standard adoption process in WAC 173-26-100. The record indicates that on February 12, 2021 the City issued a notice of the public hearing including a statement that the City was accepting comments for 30 days, from February 12th to March 12th. Notice of the hearing was published in the Spokane Exchange from February 16 thru February 24, 2021. Due to the COVID-19 pandemic, the City's public hearing was held by teleconference on March 11, 2021.

The record indicates the City completed a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendment on February 12, 2021. Ecology did not comment on the DNS. Department of Commerce was notified of the City's intent to adopt on March 24, 2021 with the 60-day notice period ending May 23, 2021.

The City Planning Commission reviewed comments and deliberated on the proposed amendment during their March 25, 2021 meeting. After further deliberation, on May 13, 2021 the Planning Commission unanimously voted to adopt findings passing the amendment onto the City Council with a recommendation for adoption. With the passage of Ordinance No. 21-007 on June 8, 2021, the City Council adopted the SMP periodic review amendment and authorized staff to forward the proposed amendment to Ecology for formal review and approval.

Ecology SMP Amendment Review and Approval Process

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 June 18, 2021.

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 (identified by the City) interested parties on July 15, 2021. The Spokane Tribe of Indians was individually notified and invited to comment. The state comment period began on July 26, 2021 and continued through August 26, 2021.

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](#)³ and as part of the written notice.

Ecology received one (1) comment letter, from the Department of Archaeology & Historic Preservation (DAHP), expressing concerns with the Cultural Resources section and survey requirements in high-risk areas. The concern was that exempt projects, such as docks and bulkheads, will not require surveys, but

³ <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/State-approved-Shoreline-Master-Programs/Spokane-Valley>

can involve a significant amount of ground disturbance. Since archaeological sites tend to cluster along riverbanks (high-risk areas), even small projects can impact resources. DAHP requested a language change to require landowners to adhere to an inadvertent discovery plan even on exempt projects. The City was sent this comment letter and the summary response matrix. In response, the City noted that it utilizes the exemption list in Spokane Valley Municipal Code (SVMC) 21.50.110, which matches the exemption list in WAC 173-27-040(2). Projects that are exempt from the Shoreline Substantial Development Permit process must still comply with all the provisions of the SMP, including the Cultural Resource provisions, which include inadvertent discovery. All exempt projects require a Letter of Exemption in accordance with SVMC 21.50.120. A Letter of Exemption may include and contain conditions of approval to achieve consistency and compliance with the provisions of the SMP and the SMA, including compliance with 21.50.280. The use of exemption letter for each project provides an additional layer of process to ensure that highly sensitive areas are monitored during the life of each project. Ecology finds that the SMP already has the provisions necessary to address this concern. No additional modification are needed.

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 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 the 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 a Determination of Non-Significance (DNS) on February 12, 2021, for the proposed SMP amendments.

Other Studies or Analyses supporting the SMP amendment

Ecology also reviewed documents prepared by or for the City in support of the SMP amendments. These documents include the public participation plan, the periodic review checklist, and staff reports.

Summary of Issues Identified by Ecology as Relevant to Its Decisions

Ecology is required to review all SMPs to ensure consistency with the Shoreline Management Act (SMA) and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines. 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.” Based on review of the proposed amendments to the SMP for consistency with applicable SMP Guidelines requirements and the Shoreline Management Act, and consideration of supporting materials in the record submitted by the City, the following issues remain relevant to Ecology’s final decision on the proposed amendments to the City’s SMP, with Findings specific to each issue identifying amendments needed for compliance with the SMA and applicable guidelines:

Accessory Dwelling Units

Under Shoreline uses in *Table 21.50-1: Shoreline Uses – Accessory Dwelling Units (ADUs)* were changed from *Permitted (P)* to *Allowed (A)* under all four upland shoreline environment designations. The change indicates that ADUs would be exempt from the Shoreline Substantial Development Permit (SDP) process and would not require submittal of an SDP or Letter of Exemption application. The City also proposes to delete SVMC Section 21.50.370.B.6.c which explicitly requires that new attached or detached ADUs shall obtain an SDP. The City's rationale for these changes was that the City's Housing Element under the 2017 Comprehensive Plan encourages ADUs as affordable housing options and they believed that requiring an SDP was creating a disincentive for ADU applications.

To be eligible for an exemption from the SDP process a project must meet one of the allowances of WAC 173-27-040, which requires that exemptions from the substantial development permit process be construed narrowly based on the purpose, intent, and policies of the SMA. An additional or accessory dwelling unit is designed to be a separate or additional living unit that can be occupied separately and independent of the original single-family residence. There is no allowance in statute or rule that exempts a secondary dwelling on a parcel from the SDP process. As an additional dwelling unit designed to accommodate additional or separate families, this type of development and use can be authorized but it does not meet the narrowly construed terms and criteria for single-family residential development as provided in WAC 173-27-040(2)(g). ADU's can be encouraged as an allowed use providing for higher capacity in-fill development that may reduce harmful sprawl over time. However, the construction of a new structure to house an ADU meets the definition of development, and cannot be considered under the single-family residential exemption, and therefore should be processed as an SDP.

Finding: Ecology finds that the single-family residential development allowance under WAC 173-27-040(2)(g) does not include ADUs. Ecology further finds that the proposed changes to Table 21.50-1 and 21.50.370.B.6 are inconsistent with the allowances of WAC 173-27-040 (2)(g) for an exemption from the SDP process. Therefore, Ecology finds that we cannot approve the above identified amendments related to ADUs. [Attachment B, Item Req-1].

Consistent with WAC 173-26-120(3)(a)(iii) the *State process for approving/amending shoreline master programs*, Ecology must either approve the locally adopted draft SMP as submitted, recommend specific changes necessary to make the proposal consistent with the SMA or guidelines (WAC 173-26) or deny the proposal if no alteration of the proposal appears likely to be consistent with the SMA.

Ecology considered the record and concluded that a portion of the proposal was not consistent with applicable laws and rules. We identified one (1) required change (Appendix B) associated with the permit path for single-family residential ADUs, which is necessary for consistency with WAC 173-27-040(2)(g).

CONCLUSIONS OF LAW

After a review of the complete record submitted and all comments received, Ecology concludes that the City's proposed amendment, with incorporation of Ecology's required change as shown in Attachment B, can be considered 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, with the inclusion of required changes identified in Attachment B, 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 173-26-100 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 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 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 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 amendments will be consistent with the policy of the Shoreline Management Act and the applicable implementing rules, once the required changes set forth in Attachment B are accepted by the City.

As provided in RCW 90.58.090(2)(e)(ii) the City may choose to submit additional alternatives to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.

Ecology approval of the proposed amendment, with required changes or approved alternative language, will be effective 14 days from Ecology's final action approving the amendment. Ecology's final action will be a letter verifying the receipt of written notice that the City has agreed to the required changes identified in Attachment B.