

ATTACHMENT A: FINDINGS AND CONCLUSIONS

CITY OF YAKIMA SHORELINE MASTER PROGRAM

PERIODIC REVIEW AMENDMENT

SMP Submittal accepted August 4, 2021, Ordinance No. 2021-015
Prepared by Department of Ecology October 5, 2021

Brief Description of Proposed Amendment

The City of Yakima (City) is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted an amendment to the Washington State Department of Ecology (Ecology) for approval. As part of this review, the City chose to utilize the joint review process set forth in WAC 173-26-104. As part of this process on June 22, 2021, per WAC 173-26-104(3)(b), Ecology provided the City with an initial determination of consistency with applicable laws and rules. The City's final adopted ordinance is consistent with the draft amendment reviewed by Ecology as part of the initial determination.

FINDINGS OF FACT

Need for amendment

Yakima comprehensively updated their SMP in 2014. The currently proposed amendment is needed to comply with the statutory deadline for a periodic review of the City SMP pursuant to RCW 90.58.080(4). The City prepared a checklist documenting how the proposed SMP amendment is intended to bring the SMP into compliance with requirements of the Shoreline Management Act (SMA) or state rules that have been added or changed since the City completed their comprehensive SMP update in 2014.

The amendments are also intended to ensure that the SMP remains consistent with amended comprehensive plans or regulations, and incorporate changes deemed necessary to reflect changed circumstances, new information, or improved data. As part of this effort, the City utilized the Washington Department of Commerce Critical Areas Review Checklist to evaluate their critical areas regulations under the GMA and inform updates to the critical area provisions found in this SMP.

The City's SMP goals and policies are in Chapter 11 of the City's Comprehensive Plan, and the shoreline regulations including provisions for protecting critical areas are found in Yakima Municipal Code Title 17, Shoreline Master Program Regulations. The SMP regulates shoreline uses and development along reaches of the Naches River, Yakima River, and Cowiche Creek located within the City of Yakima.

SMP provisions to be changed by the amendment as proposed

Yakima, along with their hired consultant, Shannon and Wilson, Inc., reviewed the current SMP for consistency with legislative amendments made by the state since its last adoption. The current SMP was reviewed for consistency with the policies in the City's Comprehensive Plan, which was updated in 2017. Both the current SMP and the updated Comprehensive Plan, clearly establish the goals and policies of the SMA. No gaps in consistency between the two documents were identified. Therefore, no comprehensive plan amendments are required for this SMP Periodic update.

In addition to specific SMP regulatory sections described in more detail below, other minor modifications to update or correct citations, references, and typographical or grammatical errors were made throughout the SMP.

Attachment A: Findings and Conclusions City of Yakima SMP Periodic Review Amendment

Periodic Review Checklist

The City made many changes to the SMP based on the periodic review checklist to ensure consistency with legislative amendments made since SMP adoption. In general, these changes to the SMP are minor in nature. These amendments address revised rules regarding SMP applicability, including updated exemption thresholds and definitions. The City clarified regulations in the SMP by following Ecology's guidance on regulating nonconforming uses, structures, and development.

Other changes made based on the SMP Periodic Review Checklist are summarized here:

- Permit timelines changed to be measured from the "date of filing" rather than the "date of receipt."
- Added reference to WAC 173-26-104 for the optional joint state/local review process under the Public Review Process – Minimum Requirements for SMP amendments under YMC 17.13.140.
- Updated wetland rating system references from Ecology's 2004 version to the recent 2014 system and wetland buffer width tables to have three options for each wetland category based on habitat points.
- Clarified that flood hazard regulations in Part Four of Chapter 15.27 of the Yakima Municipal Code (YMC) still apply within the shoreline jurisdiction, but are not incorporated by reference into the SMP. As a result of this clarification, the City also removed unnecessary language that was duplicative of the National Flood Insurance Program (NFIP) standards or administrative in nature from SMP Section 17.09.020 Flood hazard areas.
- A reference in the definition of the Shorelines Hearings Board was amended to omit mention of the Board as the body that would hear the appeal of an SMP; in the City of Yakima, the Growth Management Hearing Board would hear those appeals.

Integration and Consistency of Critical Areas Ordinance

A Critical Areas Review Checklist, was developed by the Washington Department of Commerce for use in evaluating critical areas regulations under the GMA. This checklist was used by the City to inform updating critical area provisions for this SMP update. In addition, the SMP and the Critical Areas Ordinance (CAO) were compared to each other to identify substantive differences or inconsistencies between the codes. The following changes were identified during this review:

- The critical aquifer recharge areas regulations were updated for consistency and compliance with latest science.
- The fish and wildlife habitat conservation area regulations were amended to add definitions and require discussion of federal, state, or local management recommendations in critical areas reports.
- The buffer for salmonid-bearing waters was increased from 75 to 100 feet.

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. The consultant, Shannon and Wilson, Inc., assisted with the development of draft documents and public outreach. An important element of the public participation plan is the City's SMP Periodic Review project [website](#)¹.

The City used Ecology's checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines that have occurred since the SMP was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-

¹ <https://www.yakimawa.gov/services/planning/smp/>

Attachment A: Findings and Conclusions City of Yakima SMP Periodic Review Amendment

090(3)(b)(i). The City 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 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, including opportunities to comment on draft materials.

The City prepared a State Environmental Policy Act (SEPA) checklist and issued a Determination of Non-Significance on May 6, 2021. Ecology did not comment on the DNS.

The City provided notice to interested parties, including a statement that the hearings were intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). The City's record indicates notice of the hearing, comment period, and SEPA DNS were published in *The Yakima Herald Republic* on May 6, 2021.

Ecology distributed notice of the joint local/state comment period to state interested parties on May 5, 2021. A correction email was subsequently sent on May 11, 2021 to clarify the time of the public hearing. Separate notice and an invitation to consult was also sent to the Yakama Nation on April 27, 2021. The Yakama Nation did not comment.

The City and Ecology held a joint local/state comment period on the proposed amendment following procedures outlined in WAC 173-26-104. The comment period began on May 6, 2021 and continued through June 7, 2021. A joint public hearing before the Planning Commission was held virtually via Zoom on May 26, 2021 at 3:00 pm.

The City accepted comments on the proposed SMP amendment during the 30-day comment period. One (1) written comment was received on the proposed amendment. The comment came from Laine Young of the Washington State Department of Ecology Central Region TMDL program. The comment letter included three (3) questions asking:

- How the City processes new wetland delineation information and makes it available to the public?
- How are non-shoreline streams regulated under the SMP? and
- How are non-shoreline stream water types determined?

In a response email dated May 25, 2021, the City directly responded to the questions received. The City clarified the update process and adequately answered these questions. No changes to the draft SMP amendment were needed in response to the questions.

Initial Determination of Consistency

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

The proposed SMP amendment was received by Ecology for initial state review on June 10, 2021 and verified as complete on June 22, 2021. This began our review and initial determination.

Attachment A: Findings and Conclusions City of Yakima SMP Periodic Review Amendment

Ecology has reviewed the questions received during the joint review process along with the City's responses and answers to those questions. Ecology finds the City has adequately responded and answered the questions posed.

Ecology provided the City a formal written statement documenting our initial determination of consistency. Ecology considered the record, including comments received and the City'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 City on June 22, 2021. Based upon this determination, Ecology advised the City to proceed with local adoption of the proposed amendment.

Final Submittal

With passage of Ordinance No. 2021-015, on August 2, 2021, the City adopted the SMP. The City's final submittal of the SMP amendment was received by Ecology on August 4, 2021 and verified complete on August 17, 2021.

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 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 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 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) for the proposed SMP amendment on February 8, 2021.

CONCLUSIONS OF LAW

After review of the complete record submitted and all comments received, Ecology concludes that the City 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)).

Attachment A: Findings and Conclusions City of Yakima SMP Periodic Review Amendment

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, providing notice, consulting with parties of interest and soliciting 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 has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

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 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 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 amendment is consistent with SMA policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendment is effective 14 days from Ecology's final action approving the amendment.