

ATTACHMENT A: FINDINGS AND CONCLUSIONS

CITY OF CLE ELUM SHORELINE MASTER PROGRAM

PERIODIC REVIEW AMENDMENT

SMP Submittal accepted July 13, 2021, Ordinance No. 1606
Prepared by Department of Ecology on September 30, 2021

Brief Description of Proposed Amendment

The City of Cle Elum (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 April 27, 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

Cle Elum comprehensively updated their Shoreline Master Program in 2016. Subsequently, the Yakama Nation petitioned the Growth Management Hearings Board for review of the SMP comprehensive update, challenging the adequacy of the SMP's provisions dealing with cultural, historical, and archeological resources. The City, Ecology, and the Yakama Nation engaged in a series of settlement negotiations that resulted in all parties entering into a Settlement Agreement. The City underwent the Settlement Agreement process and resulting SMP amendment process hand-in-hand with Ecology. In 2019, the City's SMP was ultimately updated consistent with the terms of this Settlement Agreement.

The proposed amendments are needed to comply with the statutory deadline for a periodic review of the City Shoreline Master Program pursuant to RCW 90.58.080(4). The City prepared a checklist documenting proposed SMP amendment. The amendment is intended to bring the SMP into compliance with requirements of the act or state rules that have been added or changed since the City completed their SMP comprehensive update in 2016. 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.

SMP provisions to be changed by the amendment as proposed

The City's Shoreline Master Program is a standalone document containing goals, policies, regulations and provisions for protecting critical areas. The SMP regulates shoreline uses and development along reaches of the Yakima and Cle Elum Rivers located within the City of Cle Elum.

In addition to updates of obsolete or incorrect citations, references, minor formatting changes, and the correction of typographical or grammatical errors, the following specific SMP sections are proposed to be amended:

Chapter 1: Framework, Purpose, Principles and Applicability

- 1.5 Language around the comprehensive update has been changed from present to past tense.
- 1.6 Language regarding the periodic review has been added.

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Chapter 4: General Policies and Regulations

- 4.2(D) Washington Department of Fish and Wildlife Priority Habitat and Species Management Recommendations publication date had been updated.
- 4.2(J) Duplicated list item was removed.
- 4.2(M) Wildlife habitat conservation areas mapping was updated to include Priority Habitat Species specifically, and the location of the maps was identified.
- 4.5(B) Language added for preference of creating standing snags vs complete tree removal of hazard trees.

Chapter 5: Shoreline Use and Modification Policies and Regulations

- 5.5(B)(4)(f) The open area of dock grating was changed from 50% to 40%.
- 5.9(A)(4) Language added to clarify that forest practices that only involve timber cutting do not qualify as development.
- 5.18(C) New section added for special procedures for WSDOT projects.

Chapter 6: Administration and Procedures

- 6.2(D) New section added for exceptions from local review.
- 6.3(2)(a) Dollar threshold amount updated for substantial development in the exemption list.
- 6.3(2)(g) Exemption list cost thresholds for docks were updated.
- 6.3(2)(p) The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act was added as an exemption.

Chapter 7: Definitions and Acronym List

The following definitions have been updated: Critical areas, Development, Mineral prospecting, Nonconforming lot, and Riparian.

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. A consultant, hired by the City, 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 held a virtual open house on November 10, 2020.

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 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 City 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. The record also indicates that the City submitted the required 60-day notice of intent to adopt amendments to the Washington State Department of Commerce on March 15, 2021.

1 <https://cityofcleelum.com/2020-2021-shoreline-master-program-critical-areas-ordinance-update/>

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The City prepared a State Environmental Policy Act (SEPA) checklist and issued a Determination of Non-Significance and checklist on February 3, 2021. Based on comments received during the SEPA comment period, a modified Determination of Non-Significance was issued on February 25, 2021 to include an environmental summary in part D of the SEPA checklist. Ecology did not comment on the DNS.

Two comments were received after the issuance of the DNS. The comments received from Gregg Dorhn on February 3, 2021 centered on SEPA process, commerce process, GMA processes, timelines, and updated FEMA maps. The second comment came from the Department of Natural Resources on February 16, 2021. The comment noted that WAC 222-30-022 sets riparian management zone (RMZ) widths for timber harvest or other projects that require a forest practices application. Neither comment proposed any changes to the draft SMP. The City responded to posed questions in the comment response matrix.

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). The City's record indicates notice of the hearing, and comment period were published in *Northern Kittitas County Tribune* on February 25, 2021.

Ecology distributed notice of the joint local/state comment period to state interested parties on February 24, 2021. Separate notice and an invitation to consult was also sent to the Yakama Nation via email and letter on February 24, 2021. No comments were received from the Yakama Nation during this process.

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 February 25, 2021 and continued through March 29, 2021. A joint public hearing before the Planning Commission was held virtually via Zoom on March 16, 2020 at 6pm.

The City accepted comments on the proposed SMP amendment during the 30-day comment period. One (1) written comment was submitted on the proposed amendments. This comment came from Washington State Department of Fish and Wildlife (WDFW). The City reviewed, considered, and responded to this comment within a Comment Response Matrix.

The comment letter from WDFW centered around multiple topic areas and included suggested changes to related sections of the SMP. These topic areas included: reference updates, Priority habitat maps, definitions, hazard trees, natural in-stream features, grating of docks, aquatic habitat buffers, additional frequently flooded areas resources, consideration of WDFW Riparian Ecosystems, Vol. 1 and 2 recent publications, and channel migration zone mapping.

WDFW suggested adding definitions for "Riparian Management Zone (RMZ)" and "Site-Potential Tree Height." However, these terms are not used in the SMP and therefore do not need to be defined within the SMP. WDFW questions if the existing buffers provided in the SMP are sufficient because WDFW would like to see riparian ecosystems recognized as critical areas independent of the stream or shoreline and would like these buffers to be measured from the edge of the Channel Migration Zone (CMZ). The City's response acknowledges the potential benefit of Kittitas County preliminary draft CMZ maps (that cover the City of Cle Elum), but also acknowledges these mapping efforts were not finalized. At this time, the draft maps are not ready for incorporation into the SMP. WDFW further suggests that the City

should review their online Site-Potential Tree Height tool to inform appropriate buffer sizes and provide riparian area protection of no less than 100 feet. As the City points out, SMP Table 4.5-1: Standard Shoreline Buffers provides a minimum 100 foot buffer for Type S streams. Ecology notes, the SMP does not solely rely on buffers for shoreline ecological function protection. It includes many mechanisms for protecting shorelines and critical areas while allowing for development, and has been determined to be compliant with the SMA requirements and guidelines; therefore the City determined no changes were necessary. WDFW also suggests that the City should include or reference “First Street Flood Factor²” resources within the frequently flooded area designation and mapping section of the SMP. The requirement for reducing flood hazard risk under the SMA is located within WAC 173-26-221(3) and does not require the use of outside informational resources within the regulatory context of the SMP. After reviewing the suggestions provided, the City ultimately made seven (7) changes in response to WDFW comments. These included:

- The Washington Department of Fish and Wildlife Priority Habitat and Species Management Recommendations publication date was updated.
- Wildlife habitat conservation areas mapping was updated to include Priority Habitat Species specifically, and the location of the maps was identified.
- Language was added for preference of creating standing snags as an alternative to complete tree removal related to hazard tree abatement.
- The open area of dock grating was changed from 50% to 40% as suggested by WDFW to facilitate ease of product availability and greater compliance.
- The definition of critical area was updated.
- The WAC reference in the mineral prospecting definition was updated.
- A definition for riparian was added.

These changes were then formally incorporated into the proposed draft SMP prior to initial submittal to Ecology.

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 Shoreline Management Act (SMA) and applicable rules.

The proposed SMP amendment was received by Ecology for initial state review on April 16, 2021 and verified as complete on April 27, 2021. This began our review and initial determination.

Ecology has reviewed all the comments received during the joint review process along with the City’s responses. Ecology finds the City 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 City in response to comments. The City 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 provisions³.

² National flood risk data produced by the non-profit First Street Foundation <https://firststreet.org/flood-factor/>

³ WAC 173-26-090(3)(b)(iii)

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We 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 April 27, 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. 1606, on May 24, 2021, the City authorized staff to forward the proposed amendment to Ecology for formal approval. The City's final submittal of the SMP amendment was received by Ecology on June 22, 2021 and verified complete on July 13, 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 25, 2021.

Other Studies or Analyses supporting the SMP amendments

Ecology also reviewed supporting documents prepared by the City 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, 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)).

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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 open houses and 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 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 the proposed amendment is consistent with Shoreline Management Act 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.