

## Kittitas County Regional Shoreline Master Program Update Master Comment Response Matrix

Com. #	Page Number	Section or Line Number	Comment/Concern	Recommended Change	Commenter Name, date	Resolution/Response
1.		1.7 Applicability	The jurisdictional reach of the Shoreline Management Act onto the extensive federal lands within Kittitas County needs to be clarified.	<p>Federal consent is one possibility. But I did not see this in any of the materials provided or in the legal research I did on my own time. I suppose there could be voluntary submission to state and local input on federal lands if the affected departments have provided a written formal waiver of federal sovereign immunity or agreed to not assert federal preemption. I would like to review relevant documentation or legal support for this expansive jurisdiction.</p> <p>The only reference I could find in the SMA to any reach into federally controlled property is WAC 173-27-060(3) but there does not appear to be any substantiation for this position by the Department of Ecology in any case or statute that I could locate. I feel uncomfortable relying on this WAC to resolve the question I submit.</p>	John Ufkes, 10/25/12	<p>While the Federal Lands will be mapped, only non-federal development or use on federally owned land is subject to the SMP (e.g. lease of federal lands for a cabin).</p> <p>The jurisdictions will continue to work with the Department of Ecology to clarify this issue.</p> <p>Revisions may be made to the Applicability language in future drafts to clarify this issue.</p>
2.		1.7 Applicability	<p>The representatives of the Kittitas County Cattlemen's Association make a good point that the old inventory did not include any shorelines within the federal lands and by this statement infer that there should be a good reason for their inclusion now. This is I am sure related to the fact that usages of those properties by private parties are already regulated by the relevant federal agencies. I am unclear as to how inclusion now in the inventory of the Kittitas County Shoreline Master Plan, or Critical Areas Ordinance for that matter, would provide any additional protections to these environments. And then this should be balanced with the added complexity of dealing with multiple governmental agencies in the event the SMA applies on these federal lands.</p> <p>Language included in the Washington Administrative Code 173-27-060(3) is insufficient in my opinion and does not resolve these questions.</p>	<p>Some clarity of why or how one federal analysis would be possibly insufficient to protect these waterways and shoreline areas would be helpful. There should be a good reason to involve the county and DOE in an additional permitting-authorization process.</p> <p>The only case I could locate on this issue was <u>Friends of the Earth v. US Navy</u>, 841 F.2d 927 (9<sup>th</sup> Cir. 1988) but that involved coastal areas. These are subject to very particular statutes which are very different from inland creeks within federal properties and the analysis did not appear to be relevant to my question. I did not have time to look further so it is very possible I am missing relevant legal authorities.</p> <p>If there is no jurisdiction, then the waterways within the federal lands should be withdrawn from the inventory. I suppose another approach would be a statement somewhere in the plan that compliance with affected federal authorities is adequate proof of compliance with any and all Shoreline Management Act</p>	John Ufkes, 10/25/12	This topic requires further discussion with the Department of Ecology. Revisions may be made in future SMP drafts.

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				and Critical Area Ordinance requirements within Kittitas County. The first appears to be simpler.		
3.		SED map Ellensburg	Tinting w/in the City makes it look like "Extended Shoreline Designation"	Remove tinting	Nancy Lillquist, 10/25/12	The shading will be corrected in the final maps.
4.	14	1.11	Numbering starts with 4	renumber	Nancy Lillquist, 10/25/12	This change will be reflected in the December 2012 draft.
5.	16	1.11-10e	Make it easier to find vegetation conservation standards	Cross-reference page or section number when referring to other parts of the SMP	Nancy Lillquist, 10/25/12	This change will be reflected in the December 2012 draft.
6.	17	1.11-14	"Alluvial fan hazard areas", and "riverine erosion hazard areas" are not defined in City code	Will these be defined in SMP? Will City need to define and regulate these areas within its CAO? Provide the reference for each city.	Nancy Lillquist, 10/25/12	These terms are not currently defined in the SMP; however, definitions can be added in the December 2012 draft. Regulation of critical areas in shorelines will be discussed at November 14 CAC meeting.
7.	19	2.1	Goal statement includes 2 sentences of preamble that is not a goal statement; it is not necessary	Make goal statements active and succinct.	Nancy Lillquist, 10/25/12	Comment noted. We will consider revising this section for December 2012 draft.
8.	21	2.3 - 6	At the public workshop I heard concerns about trespass and visitor abuse of access; here is an opportunity to address those concerns in how access is managed on public property	Add to end of sentence: "and limits/reduces negative impacts (trespass, litter) to surrounding properties.	Nancy Lillquist, 10/25/12	Comment noted. We will consider revising this section for December 2012 draft. It also may be appropriate to address trespass and visitor abuse in Section 4.4 Public Access (December 2012 draft).
9.	21	2.3	The SMP seems to use "circulation" system in the same way Ellensburg's Comp Plan uses "transportation" system; this could create confusion	Use the term "transportation" for the Ellensburg document, or cross-reference or define the term "circulation system"	Nancy Lillquist, 10/25/12	Comment noted. This change will be incorporated into Ellensburg-specific SMP.
10.	22	2.3 or 2.4	An objective that would allow/encourage taking advantage of the linear and scenic nature of rivers to provide a trail network for bikers/walkers/trail riders would be helpful in developing this aspect of our tourism industry and providing these assets to citizens. Generally, paved trails could be located outside the riparian zone.	Add objective: "Encourage development of non-motorized multi-use trails that provide recreation and transportation opportunities where compatible with shoreline ecological functions."	Nancy Lillquist, 10/25/12	Comment noted. We will consider revising this section for December 2012 draft. Additional policies regarding public access will be included in Section 4.4 Public Access and throughout Chapter 5.

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11.	23	2.5 obj 1	Giving a preference to single-family development does not seem appropriate – that kind of development can locate outside of the shoreline area. How can we achieve “no net loss” if allow new residential plats/home building within the shoreline area? (Existing homes/plats are grandfathered).	Remove “and single family residential”	Nancy Lillquist, 10/25/12	The preference for single-family residential comes directly from the Shoreline Management Act. This topic will be discussed further with the CAC and any necessary revisions can be made in a future draft.
12.	28	3.2	The list of seven environments are not listed in the order in which they are presented in the document	Re-order list for clarity/ease of use	Nancy Lillquist, 10/25/12	This change was made in the October 2012 Addendum.
13.	32	3.4 desig criteria 8	Seems to contemplate a sub-designation within rural conservancy for mining, but I don’t see that in the SED’s—is this to be developed or should the language be consistent with the urban conservancy’s treatment of mining?	Clarify	Nancy Lillquist, 10/25/12	This language is intended to allow flexibility if in the future a jurisdiction wishes to redesignate an area to a new mining-specific shoreline environment.
14.	34	3.6 DC	Does a residential development need to be built or platted AS OF THE DATE OF SMP ADOPTION? Or can an area be platted the re-designated in the future? Can the SMP be amended to designate an area “shoreline residential” so that an area could be platted? If so, what criteria would be used by decision makers to decide what areas are appropriate?	Clarify that the area must be platted at the time of SMP adoption; or reference an amendment process	Nancy Lillquist, 10/25/12	Comment noted. We will consider revising this section for December 2012 draft.
15.	35	3.7 DC	Areas must “currently support high intensity uses....or are suitable and planned for....”	Clarify that “currently” means the date of SMP adoption; spell out and provide reference to what is “suitable and planned”	Nancy Lillquist, 10/25/12	Comment noted. We will consider revising this section for December 2012 draft.
16.	19-26	Ch 2	I feel like the order of the goals should be re-arranged to put the "conservation element" first because that seems to be the whole point of this expensive exercise; then the "shoreline use element" second to put the uses in context, then the others. Why put the “Economic development element” first, when this is not essentially an economic development program, but rather it is a natural resource protection program?	Re-order goals	Nancy Lillquist, 10/25/12	The order of the goals was based on the order in which they appear in WAC 173-26. However, it is not required that the goals appear this way. We will consider rearranging them.

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17.	General		In general, this document places much to many restrictions on private land owners who have land that borders or is intersected by a qualifying stream, river or other body of water. Given the many other factors limiting development of properties within this county, it seems obvious that these restrictions should be kept to the minimum absolutely mandated by the WAC. I think further time in this committee should be dedicated to examining what the minimal approach could be, rather than simply accept the recommendations of the TAC as the basis we have to work from.		Jim Miller, 11/1/12	The County, Cities, and Town have taken the approach of applying the minimum amount of regulation while still remaining consistent with RCW 90.58 and WAC 173-26 and achieving no net loss of shoreline ecological function. The Draft SMP document reflects the jurisdictions attempts to meet the Department of Ecology's required elements, while still providing the maximum flexibility to land owners. The Draft SMP was prepared after the last TAC meeting (August 10, 2012).
18.	Chapter 1	General	Why and how was 200 feet of control area determined and why is this applicable to all included streams, rivers and water bodies regardless of their specific nature? This should be revisited with an eye toward drastically reducing the control area where not specifically warranted by a specific sensitivity.		Jim Miller, 11/1/12	The Shoreline Management Act required protection of shorelines and their shorelands. The definition of "shorelands" contains the requirement to regulate areas within 200 feet of the water:  RCW 98-.58.030(d) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.
19.		1.8 Governing Principals, Item 5	Says that property rights accrued by the citizens of the state must not be infringed upon by activities that denigrate the value of this ownership interest. I would interpret that to mean a persons' existing property rights must not be taken. This policy would increase the area and level of control over how a person may wish to develop their property and likely deny them development rights that they now have under current code		Jim Miller, 11/1/12	Shoreline development occurring after March 5, 1975 is subject to the existing Kittitas County Shoreline Master Program. Although the updated SMP may include additional requirements for new or modified development, these provisions not apply to existing development.

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20.		1.11 Prior Development, Item 11 & 12	These items effectively restrict a property owners use based on time lines. If aware of this restriction, it would force owners to take action to protect their development rights. This forces an economic hardship to stay ahead of a policy. There should be no taking of uses based on passage of time since the last use occurred.		Jim Miller, 11/1/12	The CAC may wish to discuss revisions to nonconforming use policies that are consistent with the minimum requirements of 173-27-080.
21.		1.11 Item 14b.	Given the 200 foot control area specified in the document, most existing lots would be Non-Conforming. The 2500 sq.ft. footprint allowed does not provide adequate flexibility for owners wishing to maximize the lot they've invested in or address the needs of single level home and garages sought by aging or handicapped occupants. Also, why force homeowners who have chosen to purchase a waterfront lot to build in the furthers possible location away from the water? Who determines this location and makes the judgment of whether the location is satisfactory? What criteria is used? In most cases, this "maximum setback feasible" will not satisfy owners and will result in lost value of property.		Jim Miller, 11/1/12	1.11.14b is meant to provide flexibility to owners of nonconforming lots while still protecting shoreline ecological function. The CAC may wish to discuss specific revisions to this section to provide the flexibility desired, while still achieving ecological protection requirements.
22.		3.4 Item 4.	Why restrict mining operations to areas specifically identified as Mineral Resource Lands. Recreational gold dredging should be allowed to occur wherever the mineral is found during the allowed season. Gravel and other mineral resource development should be allowed where it most economically feasible		Jim Miller, 11/1/12	This text will be revised to clarify that mining is not restricted to areas identified as Mineral Resource Lands; rather mining is allowed <u>either</u> on rural conservancy areas when consistent with WAC 173-26-241(h) <u>or</u> on designated Mineral Resource Lands.
23.	General		It is not clear in the document how private bridges to access individual home sites will be addressed and allowed.		Jim Miller, 11/1/12	The issue of private bridges was discussed by the shoreline Technical Advisory Committee (TAC). A policy addressing private bridges could be added to Section 5.20. This issue will be discussed further and incorporated into a future draft.
24.	7	1.3	Correct typo	Change "Douglas County" to "Kittitas County"	Lindsay Ozbolt, 11/1/12	This change was made in the October 2012 Addendum.

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25.	9	1.5	Correct typo	Correct spelling of "Science"	Lindsay Ozbolt, 11/1/12	This change was made in the October 2012 Addendum.
26.	10	Technical Advisory Committee	Correct typo; revise dates of TAC meetings to reflect actual dates.	Change "private section" to "private sector"	Lindsay Ozbolt, 11/1/12	These changes will be reflected in the December 2012 draft.
27.	11	Open Public Forums and Public Meeting Events	More clubs/orgs across the county should be contacted		Lindsay Ozbolt, 11/1/12	Comment noted; the planning jurisdictions will continue to reach out to existing clubs and organizations.
28.	14	1.11	Correct numbering.		Lindsay Ozbolt, 11/1/12	This change will be made in the December 2012 draft.
29.	14	1.11	Referring to use of Whatcom County as an example for nonconforming use provisions: how does west side relate to Kittitas County?		Lindsay Ozbolt, 11/1/12	The substance of the draft nonconforming use provisions are based on the provisions of the WAC. Whatcom County's SMP contained well-thought-out provisions that clearly expressed the WAC and were appropriate to the types of uses and development in Kittitas County.
30.	15	1.11.6	Limits on expansion to nonconforming structures should only apply when footprint changes.		Lindsay Ozbolt, 11/1/12	Comment noted. The CAC may wish to discuss revisions to nonconforming use policies that are consistent with the minimum requirements of 173-27-080.
31.	16	1.11.10	Correct typo.	"before approving a conditional use for a change in <u>a</u> non-conforming use may be approved..."	Lindsay Ozbolt, 11/1/12	This change will be made in the December 2012 draft.
32.	17	1.11.12	This section needs more explanation. Who would monitor discontinued use of a nonagricultural nonconforming use?		Lindsay Ozbolt, 11/1/12	It would be the property owner's responsibility to prove that a nonconforming agricultural use had been consistently maintained.
33.	17	1.11.13	Correct typo.	"such development conforms to all other requirements of <del>the</del> this Program and the Act."	Lindsay Ozbolt, 11/1/12	This change will be made in the December 2012 draft.
34.	25	2.7.2	It is my understanding that historical sites typically are preserved as is instead of restored.		Lindsay Ozbolt, 11/1/12	This policy recognizes those situations where it may be desired to restore a particular resource, such as a building or district with cultural value.

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35.	28	3.2	Why is channel migration zone listed above, but not discussed as an SED?		Lindsay Ozbolt, 11/1/12	The CMZ environment is no longer being proposed. This change was made in the October 2012 Addendum.
36.	28	3.3.3	I thought commercial forestry was handled through FPA, not the County.		Lindsay Ozbolt, 11/1/12	Though FPA forestry is exempt from SMP, there are certain forest practices that are subject to review by the SMP. See Section 5.10.
37.	28	3.3.5	"Agriculture uses of a very low intensity..." What types of ag uses are considered ok?		Lindsay Ozbolt, 11/1/12	See Shoreline Use and Modification Table.
38.	30	3.3 Designation Criteria	There should be an option to re-vegetate if necessary due to development but now to create more vegetation.		Lindsay Ozbolt, 11/1/12	This comment will be considered when preparing Section 4.5 Shoreline Vegetation Conservation.
39.	31	3.4 Designation Criteria	Explain the use of "alternative shoreline environment."		Lindsay Ozbolt, 11/1/12	This is an optional designation that the WAC allows within certain areas. This SMP does not designate any alternative shoreline environments. We will consider removing this text.
40.	32	3.5 Purpose	We should be concerned with managing and protecting existing ecological functions not creating more in urban areas.		Lindsay Ozbolt, 11/1/12	This comment will be considered during discussions of no net loss of shoreline ecological function.
41.	32-33	3.5 Management Policies	What does "restoration of ecological functions" entail?  Restoration is a major focus in the management policies; this seems to be limiting.  Restoring habitat could be an issue.		Lindsay Ozbolt, 11/1/12	More details on restoration requirements will be included in the forthcoming Restoration Plan and in Section 5.18 Shoreline Habitat Enhancement.
42.	33	3.6	Regarding public access, who is responsible for maintaining and owning public access? Liability? This might be a financial issue for both private developer and local government.		Lindsay Ozbolt, 11/1/12	More details on public access requirements will be provide in Section 4.4 in the December 2012 draft.
43.	34	3.6 Designation Criteria— Shoreline Residential	These seem to fit more with urban conservancy?		Lindsay Ozbolt, 11/1/12	Though the Shoreline Residential environment is often found in urban areas existing development in rural Kittitas County meets the criteria "if they are predominately single-family or multi-family residential development or are planned and platted for residential development". We will revise the criteria to make it clearer that this environment is appropriate only in limited rural areas.

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44.	34	3.7	What would it mean for cities to require full utilization of high-intensity environment areas before further expansion is allowed?		Lindsay Ozbolt, 11/1/12	There are currently no High Intensity environment areas in the minimum shoreline jurisdiction of any of the Cities/Town. Future designation of high-intensity environment areas in the Cities/Town would require a planning process to identify the need and revise the SMP.
45.	35	3.7.5	Who would be responsible for public access?		Lindsay Ozbolt, 11/1/12	See response to #33.
46.	36	3.8	Seems like there should be more designation criteria for Aquatic Environment.		Lindsay Ozbolt, 11/1/12	The stated criteria is from WAC 173-26-211(5)(c)(iii). The jurisdictions may consider whether additional designation criteria or management policies are appropriate for the Aquatic Environment.
47.	36	General	Low intensity uses are referred to in numerous places throughout the document. This needs to be defined.  Need a clear definition for water-oriented uses as they pertain to Kittitas County.		Lindsay Ozbolt, 11/1/12	These comments will be considered for inclusion in the December 2012 draft.