



## KITTITAS COUNTY COMMUNITY DEVELOPMENT SERVICES

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"Building Partnerships – Building Communities"

**TO: Kittitas County Planning Commission**

**FROM: Kittitas County Community Development Services**

**RE: Shoreline Master Program Update - July 2014 Revised Final Draft**

**DATE: August 12, 2014 Public Hearing – 6:30 p.m.**

### I. GENERAL INFORMATION

The Washington State Shoreline Management Act ([RCW 90.58](#)) and its associated rules ([WAC 173-26](#)) require local governments to adopt shoreline master programs (SMPs) with policies and regulations that apply to development near shorelines. For Kittitas County, this includes updating the County's 1975 SMP and amending Kittitas County Code Title 18, Enforcement. Pursuant to RCW 90.58.080, the timetable for local governments in Kittitas County to develop or amend a SMP is no later than December 1, 2014.

### II. BACKGROUND ON UPDATE PROCESS

The March 5, 1975 Kittitas County SMP has not been updated since its original adoption. The City of Ellensburg, City of Cle Elum, and Town of South Cle Elum (all of which have shorelines) do not have their own Shoreline Master Program (SMP). Instead, they have relied on the 1975 Kittitas County SMP. In 2011, Kittitas County, Ellensburg, Cle Elum and South Cle Elum (the participating jurisdictions) decided to work together on a regional SMP update process using [grant funding from Ecology](#) to create a separate SMP for each jurisdiction.

The participating jurisdictions entered into an [Interlocal Agreement](#) under the authority of the [Interlocal Cooperation Act](#) and agreed on a [Public Participation Program \(PPP\)](#). There have been several opportunities throughout the process to engage in review and discussion of the regional Shoreline Master Program. In the early stages of review, members of the public were invited to a [community visioning workshop](#). Two standing committees have assisted throughout the Regional SMP update: a [Technical Advisory Committee \(TAC\)](#) and a [Citizen Advisory Committee \(CAC\)](#).

### III. STAFF REVIEW AND SUMMARY OF PROPOSED AMENDMENTS

The following is a summary of the proposed amendments and the key issues for consideration.

#### A. Proposed SMP Update Amendments

In January 2014, a Final Draft SMP for each individual jurisdiction was issued for public comment. As required under the Growth Management Act (GMA), Ecology and the Department of Commerce were notified of the County's intent to adopt the SMP (i.e., 60-day notice). Comments were received on the January 2014 Final Draft SMP from the Department of Ecology and various other parties. A summary of these comments and County staff's recommended responses are attached to this report: Attachment 1 (Ecology Comments) and Attachment 2

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(Public Comments). In response to these comments and additional County staff review, a July 2014 Revised Final Draft SMP (Exhibit A) was prepared for additional public comment, review, and action by the Kittitas County Planning Commission. Following a recommendation from the Planning Commission, the Board will hold a public hearing to consider adoption of a Resolution expressing their intent to adopt the updated SMP and related amendments. Once the Department of Ecology approves the updated SMP, the Board will consider an Ordinance for adoption of the final SMP.

1. July 2014 SMP policies, regulations, and mapping appendices – Exhibits A, B, and C

The July 2014 SMP (Exhibit A) is proposed to replace the 1975 SMP and mapping. Revisions made subsequent to the January 2014 SMP are shown in strikethrough and underline text. The shoreline designation maps (SMP Appendix A – Exhibit B) have been re-dated from January 2014 to July 2014. The only mapping change is removal of an irrigation ditch near Ellensburg on Map 19.

There are options under the Shoreline Management Act (SMA) with regard to the extent of shoreline jurisdiction. The January 2014 SMP included shoreline environment designations (Appendix B - Exhibit C) for the maximum extent. The July 2014 SMP includes a replacement Appendix B (Appendix B1) which lists only the minimum jurisdiction shoreline environment designations. While the Shoreline Inventory and Characterization Report was done at the more expansive area (e.g. floodplain and adjacent lands), adoption of the minimum jurisdiction was discussed with the public throughout the update process; and the Citizen Advisory Committee reviewed and generally supported use of the minimum jurisdiction. The Cumulative Impact Analysis, Restoration Plan, and No Net Loss Analysis are all based on minimum shoreline jurisdiction. The Cumulative Impact Analysis report showed that the minimum jurisdiction and the proposed SMP regulations were adequate to protect shoreline ecological functions.

2. June 2014 Comprehensive Plan – Exhibit D

Exhibit D deletes the current shoreline policies in Chapter 2 of the Comprehensive Plan and refers the reader to the goals and policies in the 2014 SMP. These amendments (Exhibit D) are proposed as an exhibit to the Board's SMP Resolution expressing their intent to adopt and expand on this Chapter 2 amendment to add all of the updated goals and polies of the 2014 SMP once Ecology approves the updated SMP. Following Ecology's approval of the 2014 SMP, this exhibit will be modified to list all of the goals and policies of the SMP and will be included in the Board SMP Ordinance enabling documents.

3. KCC Title 15A, Project Permit Application Process

The 2014 SMP contains a chapter for Administration and Procedures (Chapter 6). Following Ecology's approval of the 2014 SMP, an exhibit will be prepared for consistency amendments to Title 15A and included in the Board SMP Ordinance enabling documents. Note that one of the consistency amendments would be to revise KCC Title 15A so the CDS Administrator would make decisions on shoreline substantial development permits and the Hearing Examiner would make the County permit decision on shoreline variances and shoreline conditional uses.

4. KCC Title 17, Zoning - Shoreline setbacks in various chapters – Exhibit E

There are several zones in the existing zoning code (Title 17) that contain shoreline setbacks (e.g., KCC 17.30A.080). For consistency with the 2014 SMP, these setbacks are proposed for deletion.

5. New KCC Title 17B, Shorelines – Exhibit F

Exhibit F adds a new title to the Kittitas County Code to refer the reader to the development regulations in the 2014 SMP. This exhibit (Exhibit F) is proposed as an exhibit to the Board's SMP Resolution expressing their intent to adopt and add and expand on this new title (Title 17B) to add all of the development regulations of the 2014 SMP once Ecology approves the updated SMP. Following Ecology's approval of the 2014 SMP, this exhibit will be modified to list all of the development regulations of the SMP and will be included in the Board SMP Ordinance enabling documents.

6. KCC Title 18, Enforcement - Exhibit G

Exhibit G amends KCC Title 18 and provides for implementation of enforcement actions consistent with Section 6.12 of the July 2014 SMP.

**B. Key Issues**

Some key issues that were raised during the Citizen Advisory Committee meetings and in subsequent public comments are summarized below.

1. Substantive

a. Agricultural activities on agricultural lands. Nothing in this Draft SMP requires modification of or limits agricultural activities occurring on agricultural lands. However, new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities is subject to the provisions of this Draft SMP (Section 6.2.B).

b. Shoreline Jurisdiction. The Draft SMP text (Section 1.2) and Appendix B describes the minimum shoreline jurisdiction required by the Shoreline Management Act. During the public process some stakeholders recommended that the SMP jurisdiction be extended to include the entire 100-year floodplain. Adoption of an extended shoreline jurisdiction is optional. The current shoreline environment designation map (SMP Appendix A – Exhibit B) depicts both the minimum and extended jurisdiction options so that reviewers can compare lands regulated by the SMP under the two scenarios. The Final SMP maps will need to be revised to reflect the final decision regarding the minimum jurisdiction.

c. Critical Areas. The Draft SMP includes critical area regulations that govern wetlands, aquatic and wildlife habitat conservation areas (e.g. streams, lakes, priority habitats for listed species), geologically hazardous areas (e.g. steep slopes, channel migration zones), frequently flooded areas and critical aquifer recharge areas. Those regulations are specific to critical areas within shoreline jurisdiction. The Kittitas County Code Title 17A will continue to apply to critical areas outside of shoreline jurisdiction. While this can be a bit cumbersome, it

was seen as necessary to ensure that critical area protections with the shoreline jurisdiction complied with the regulatory standards for no net loss of ecological function.

d. Buffers widths, buffer averaging and buffer reduction. In some instances, the existing Kittitas County SMP has wider critical area buffer and shoreline setback buffer requirements than are proposed under the updated SMP. During the public process some stakeholders requested that the updated SMP use buffers and setbacks at least as wide as in the existing SMP and Title 17A. See Staff's responses to this topic in Attachment 2 and a justification for the wetland buffers in Attachment 3.

e. Archaeological and Historic Preservation. Comments were received recommending language that would require Kittitas County and its jurisdictions to take on more responsibility for reviewing and managing DAHP data for projects. The Draft SMP does not incorporate data sharing or expanded review requirements in the SMP. Expanding the County's responsibilities was deemed impractical from a staffing and resources standpoint. Instead, obligations to "prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the office of archaeology and historic preservation" will be met by providing notice to DAHP and affected tribes in advance of development projects. That notification (and review of comments sent in response), together with state law requirements that require stopping work if unexpected resources are uncovered, are adequate to protect archaeological and historic resources. This meets the statutory requirement.

f. Restoration. Comments were received requesting that restoration projects be exempted from the engineering requirements for in-stream structures. Commenters were concerned that the costs associated with the requirements might discourage restoration. As streams are dynamic and complex systems and some restoration projects have failed to achieve their desired goals because they were not properly designed or engineered. Requiring professional engineering is one of the best ways to ensure that restoration investments are sound and successful. Improperly engineered structures can cause inadvertent environmental degradation (e.g. bank failure) and put people and property at risk. The County could have liability if a permitted in-stream structure associated with a restoration project causes property damage. This regulation is consistent with State law (RCW 77.85.050(5)). To help with the financial costs associated with restoration, the Draft SMPs contain provisions for reducing or waiving permitting fees associated with such projects.

## 2. Administration

a. Review Authority and Procedures. Section 6.5 includes procedures for the CDS Administrator to make decisions on shoreline substantial development permits, with the Hearing Examiner as the decision maker on the County permit decision for shoreline variances and shoreline conditional uses. While this is different than Title 15A, there have been no comments received on the proposed procedures.

b. Mapping tools. The Draft SMP contains provisions to protect the functions and values of channel migration zones (CMZ). As part of the ICR and for administration of the SMP, a planning level map was prepared for channel migration zones. If the County maps indicate that a CMZ hazard is located on or adjacent to a proposed development site, the applicant must either: a) locate the proposal landward of the mapped CMZ; or b) Submit a channel migration study, prepared by a qualified professional with experience in CMZ delineation, showing that either the parcel is disconnected from channel movement by an existing structure that is maintained

by a public agency, or that the development site has minimal risk of channel migration during the next 100 years (Section 4.2.P.7).

c. Exemptions. The Department of Ecology recommends local jurisdictions require applicants to obtain documentation of exempt status for projects that are exempt from shoreline permitting requirements. This process allows local jurisdictions to keep track of shoreline development within their boundaries and puts applicants on notice that being exempt from the *permitting* requirements of the SMP does not make a project exempt from the *policies and regulations* of the SMP. The Draft SMP includes requirements for reviewing exempt activities and issuing shoreline exemption letters and programmatic exemptions (Section 6.3.4).

d. Applicability of SMP to Subdivisions. The Washington State Legislature amended the time limitation for plats in recent years. Pursuant to RCW 58.17.140, applicants are allowed the following amount of time between preliminary and final plat approval:

10 years	Preliminary plats approved on or before December 31, 2007 that are <i>not</i> subject to the Shoreline Management Act
7 years	Preliminary plats approved on or before December 31, 2014
5 years	Preliminary plats approved on or after January 1, 2015

In general, during this period, the plat application remains subject to the land use regulations in effect at the time a complete plat application was submitted (including shoreline regulations, if applicable). Pursuant to RCW 58.17.170(3), the final plat remains subject to the same land use regulations (including shoreline regulations) for these same periods of time. After the end of the applicable time frame, development on the lots in the final plats must comply with current regulations (including the updated Shoreline Master Program). RCW 57.17.140 and .170 do not refer to short plats or other land divisions. Based on case law, the applicability of the SMP regulations is different for short plats and depends on the specifics of the short plat application (i.e. disclosure of intended use and shoreline setbacks in the application information).

**IV. ENVIRONMENTAL REVIEW**

SEPA environmental review has been completed for this proposal. A SEPA environmental checklist was prepared by County staff for the January 2014 Final Draft SMP. On May 28, 2014, the County’s SEPA Responsible Official issued a SEPA Determination of Non-significance (DNS) for this proposal. The notice of the SEPA determination was provided as set forth in KCC Chapter 15.04. The last day to comment on the DNS was June 11, 2014. Timely comments were received from the Yakama Nation and Washington State Department of Fish and Wildlife on June 11, 2014. Pursuant to WAC 197-11-340(f), the County’s SEPA Responsible Official reviewed the SEPA comments. The comment letters did not provide any new environmental information that demonstrated any significant adverse environmental impacts. As such, the County retained the DNS. County staff responses to comments on the draft SMP regulations included in the SEPA comments are included Attachment 2.

## **V. AGENCY AND PUBLIC COMMENTS**

Numerous public comments were received throughout the update process. Comments written in letter or email format have been included within the record and are available upon request. A summary of comments received on the January 2014 Final Draft SMP during the 60-day and the SEPA comment periods are included in Attachment 2. This attachment also contains staff recommendations for revisions in response to these comments. These recommended revisions and the revisions based on the Department of Ecology's review are included in the July 2014 Revised Final Draft SMP.

Note that pursuant to WAC 173-26-110 and -120, following the Board's action on the updated SMP (i.e., adoption of a Resolution expressing intent to adopt the proposed SMP), the County must submit the updated SMP to Ecology for its review and formal action. Ecology is required to either approve the proposal as submitted, recommend specific changes necessary to make the proposal consistent with Chapter [90.58](#) RCW policy and its applicable guidelines, or deny the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW [90.58.020](#) and the applicable guidelines. As part of Ecology's review, Ecology is required to provide reasonable notice and opportunity for written comment to all parties of record who expressed interest regarding the local government proposal and to all persons, groups, agencies, and tribes that have requested in writing notice of proposed master programs or amendments generally or for a specific subject matter.[WAC 173-26-120(2)]

## **VI. TAKINGS IMPACT ANALYSIS**

KCC 1.24.020 requires all departments of county government to complete a private property taking impact analysis before issuing any policy, regulation, or proposed legislation likely to result in a taking of private property. The private property taking impact analysis must include:

- a. The specific purpose of the policy, regulation, proposal, recommendation, or related agency action;
- b. An assessment of the likelihood that a taking of private property will occur under such policy, regulation, proposal, recommendation, or related department action;
- c. An evaluation of whether such policy, regulation, proposal, recommendation, or related department action is likely to require compensation to private property owners;
- d. Alternatives to the policy, regulation, proposal, recommendation, or related agency action that would achieve the intended purposes of the agency action and lessen the likelihood that a taking of private property will occur;
- e. An estimate of the potential liability of county government if the county is required to compensate a private property owner; and
- f. If the policy, regulation, proposal, recommendation, or related department action is in response to a state or federal mandate, the name of the state or federal agency responsible for the policy, regulation, proposal, recommendation, or related action shall be stated.

Pursuant to KCC 1.24.020 the following private property taking impact analysis is offered for the proposed adoption of an updated Shoreline Master Program:

***a. What is the purpose of the Shoreline Master Program update?***

The purpose of the updated Kittitas County SMP is as follows:

1. To promote the public health, safety and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of shorelines within Kittitas County;
2. To manage shorelines in a positive, effective and equitable manner;
3. To assume and carry out the County's responsibilities established by the Act ; and
4. To implement RCW 90.58.020 for shorelines of the state. (Draft SMP, Section 1.3)

***b. Is it likely that a taking of private property will occur as a result of this SMP?***

KCC 1.24.010 defines "taking of private property" as:

Any action whereby private property is directly taken as to require compensation under the Fifth Amendment to the United States Constitution and the Third and Sixteenth Section of the Declaration of Rights of the Washington State Constitution or under this chapter, including by physical invasion, regulation, exaction, condition, or other means and shall not include a condemnation action filed by government in an applicable court or an action filed by government relating to criminal forfeiture.

The adoption of the SMP policies and regulations does not involve a physical invasion, exaction, condition, or condemnation action. The updated SMP regulations will maintain economically viable use of private property and foster reasonable and appropriate shoreline uses. The SMP specifically states, "Regulatory or administrative actions contained herein must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property." (Section 1.8.5) There are also allowances in SMP Section 6.6.4 for variances when the strict application of the bulk, dimensional or performance standards set forth in the Master Program precludes, or significantly interferes with, reasonable use of the property.

The SMP regulations preserve the fundamental attributes of property ownership while achieving a legitimate public purpose. The SMP provides development options for cases when strict application of the regulations would preclude reasonable use of private property.

***c. Is it likely that compensation to private property owners will be required as a result of the SMP?***

Enactment of the proposed SMP will not require compensation to private property owners because adoption of the updated SMP will not result in a taking of private property. See above.

***d. Could an alternative to this plan achieve the same purpose while lessening the likelihood that a taking could occur?***

Because the proposed SMP update is mandated by state law, there is no alternative that would achieve the intended purposes stated above.

*e. What is an estimate of the potential liability of the County to compensate private property owners under this regulation?*

The County is unlikely to have any liability to compensate private property owners under the proposed regulations.

*f. Are the policies and regulations of the updated SMP in response to a state mandate?*

The Shoreline Management Act (RCW 90.58) mandates local governments adopt and periodically update a SMP to protect shorelines of the state. The Washington State Department of Ecology has final approval authority for the proposed updated SMP.

## **VII. SMP UPDATE SUPPORTING DOCUMENTS**

### **A. Community Visioning Report**

On behalf of the participating jurisdictions, the County hosted a series of Community Visioning events in the summer of 2012 and solicited feedback through a community visioning questionnaire. The purpose of this outreach was to:

- Gain an understanding of the common shorelines interests held by participants.
- Give the public an opportunity to review and understand the framework for the SMP update. This includes the shoreline conditions discussed in the Inventory and Characterization report the statewide interests expressed by the SMA, and the requirements of the SMP Guidelines, including the standard to achieve no net loss of shoreline ecological conditions.
- Identify community goals and aspirations for local shorelines within this framework.
- Help to develop shoreline environment designation criteria, policies, uses, and regulations.

Based on feedback gathered at the community visioning events and the questionnaire responses, a series of vision statements were developed to help guide development of the proposed SMP. A more thorough discussion of community visioning results can be found in the [Community Visioning Report \(October 2012\)](#).

### **B. Shoreline Inventory & Characterization Report**

The [May 2013 Regional Shoreline Inventory and Characterization Report](#) contains an assessment of the shorelines in Kittitas County, Ellensburg, Cle Elum, and South Cle Elum. The report was developed in collaboration with Central Washington University's Center for Spatial Information and Research, and was reviewed by Ecology and the SMP Technical Advisory Committee.

During the SMP update process the report has served multiple purposes, such as:

- Identifying shoreline resources and areas that provide value to shoreline stakeholders, to ensure that they are managed according to the goals of the Shoreline Management Act;

- Assessing and documenting current shoreline conditions to establish a baseline against which future conditions can be compared;
- Providing a basis of information to assign Shoreline Environment Designations; and
- Informing the development of SMP policies and regulations related to shoreline use and development, shoreline ecology, and public access.

C. Restoration Plan

The State's SMP Guidelines (WAC 173-26) require local governments to develop policies that promote restoration of impaired shoreline ecological functions and a "real and meaningful" strategy to implement restoration objectives. Restoration efforts in Kittitas County reflect decades of scientific study, community involvement, and partnerships between the County, the Yakama Nation, the Kittitas County Conservation District, state and federal agencies, and other public and private partner organizations. The [Shoreline Restoration Plan](#) builds on and complements these efforts.

The Shoreline Restoration Plan is a technical document intended to support the SMP update; it is not a regulatory document. The Restoration Plan includes goals, priorities, and opportunities for the purpose of guiding restoration efforts along the shorelines of Kittitas County and its municipalities. The Restoration Plan is intended to be a dynamic document that is updated regularly or adjusted in response to changing priorities, new funding mechanisms, and new potential restoration projects.

D. Cumulative Impact Analysis

As part of the SMP update effort, Kittitas County evaluated the "cumulative impacts" of reasonably foreseeable future development to verify that the policies and regulations proposed for shoreline management are adequate to ensure "no net loss of shoreline functions." The County draft Cumulative Impact Analysis (CIA) report from January 2014 was updated based on Department of Ecology comments and changes in the July 2014 Revised Final Draft SMP. The [July 2014 CIA](#) provides an analysis of the cumulative impacts that can be expected to occur if the Final Revised Draft SMP is implemented.

E. No Net Loss Report

This report provides an overall picture of how the proposed Kittitas County July 2014 SMP meets the "no net loss of shoreline functions" requirement. This report explains how information from the supporting documents listed above was applied in developing and revising policies and regulations within the proposed July 2014 SMP. This report concluded that adoption of the July 2014 Revised Final Draft SMP would, over time, achieve no net loss of County shoreline ecological functions.

## VIII. RECOMMENDATION

**Staff recommends that the Planning Commission recommend approval of the proposed SMP update amendments, including the Review Authority Procedures in Section 6.5, with the following revisions to the Exhibits to this staff report:**

- Exhibit A - Revise the text to include only the minimum shoreline jurisdictional area and delete the High Intensity designation which is located solely in the maximum jurisdictional area.
- Exhibit B – Revise the SED maps to only the minimum shoreline jurisdictional area.
- Exhibit C – Delete this exhibit, as it includes the maximum shoreline jurisdictional area. The minimum areas are included in Appendix B to Exhibit A.

### **Staff Conclusions:**

1. Pursuant to RCW 90.58.080, Kittitas County is required to amend its 1975 Shoreline Master Program no later than December 1, 2014.
2. Kittitas County and the City of Ellensburg, City of Cle Elum, and Town of South Cle Elum (Cities/Town) entered into an [Interlocal Agreement](#) under the authority of the [Interlocal Cooperation Act](#) and agreed on a [Public Participation Program \(PPP\)](#) to update the County Shoreline Master Program and develop a jurisdiction-specific Shoreline Master Program for the Cities/Town.
3. Kittitas County and the Cities/Town have developed the required supporting documents for the Shoreline Master Program update (i.e., Regional Shoreline Inventory & Characterization Report; Regional Restoration Plan; jurisdiction-specific Cumulative Impact Analysis; jurisdiction-specific No Net Loss Report).
4. The proposed amendments are consistent with the Washington State Shoreline Management Act ([RCW 90.58](#)) and its associated rules ([WAC 173-26](#)) which require local governments to adopt shoreline master programs with policies and regulations that apply to development near shorelines.
5. Kittitas County has involved citizens, land owners, and stakeholders throughout the County through public meetings and workshops, advisory committees (Technical Advisory Committee and Citizen Advisory Committee), taken public comment on shoreline issues, and incorporated many of the comments into revisions to the proposed amendments.
6. There are options under the Shoreline Management Act (SMA) with regard to the extent of shoreline jurisdiction. The July 2014 Revised Final Draft SMP includes mapping (Appendix A) and shoreline environment designations (Appendix B) for both the minimum (Appendix B(1)) and maximum extent (Appendix B(2)). Adoption of the minimum jurisdiction was discussed with the public throughout the update process. Adoption of the minimum jurisdiction and the proposed regulations are adequate to protect shoreline ecological functions.

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7. Kittitas County has informed the Planning Commission and Board of County Commissioners through public meeting study session format, informed them of comments received from the public, and provided shoreline goals, policies, and regulation proposals to amend the County Comprehensive Plan and development regulations.