



STAFF REPORT

TO: Kittitas County Planning Commission

FROM: Bridget Pechtel, Long Range Planner

HEARING DATE: April 13, 2021

SUBJECT: Shoreline Master Program Update
Planning Commission Public Hearing

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 2018 SMP. Pursuant to RCW 90.58.080, the timetable for local governments in Kittitas County to develop or amend a SMP is no later than June 30, 2021.

II. BACKGROUND ON UPDATE PROCESS

The original Kittitas County SMP was adopted in 1975. At that time, the City of Ellensburg, City of Cle Elum, and Town of South Cle Elum (all of which have shorelines), did not adopt their own master programs, and instead utilized the Kittitas County SMP. In 2011, an interlocal agreement was entered into by Kittitas County, the City of Ellensburg, City of Cle Elum, and the Town of South Cle Elum, to update the existing regional SMP, and create separate master shoreline programs for each jurisdiction. The updated Kittitas County Shoreline Master Program was approved by the Department of Ecology in 2016. The updated SMP was challenged by Yakama Nation, and after negotiations concerning provisions related to cultural, historical, and archaeological resources, the SMP was approved by Ecology, and adopted in 2018. In 2020, Kittitas County applied for, and received, grant funding from Ecology to update the existing SMP as part of the required periodic review.

III. STAFF REVIEW AND SUMMARY OF PROPOSED AMENDMENTS

The following is a summary of the proposed amendments. The Department of Ecology provides local jurisdictions with guidance on current amendments to state laws or rules, changes to local plans and regulations, changes to local circumstances, and new information

or improved data. Ecology provides local jurisdictions with a Periodic Review Checklist that summarizes amendments to state law, rules and applicable guidance adopted between 2007 and 2019 that may trigger the need for local SMP amendments during the periodic review. Kittitas County reviewed the Periodic Review Checklist and worked with Ecology to determine what amendments were necessary for the County to maintain compliance. Kittitas County and Ecology identified nine (9) amendments that are necessary to maintain compliance. Detailed descriptions for each amendment are in Appendix A.

1. Periodic Review Checklist Item 2019-a: This amendment proposes to add the cost threshold for building freshwater docks to developments exempt from shoreline substantial development permitting process, located in KCC 17B.07.030(2)(h).
2. Periodic Review Checklist Item 2019-c: This amendment proposes to update KCC 17B.07.030(2)(p)(iv) to list all fish habitat enhancement project criteria, as found in RCW 77.55.181(1)(a)(i-iv).
3. Periodic Review Checklist Item 2017-a: This amendment proposes to update the cost threshold for substantial development from \$6,416 to \$7,047, as adjusted by the Office of Financial Management.
4. Periodic Review Checklist Item 2017-b: This amendment proposes to update the definition of "development" as found in KCC 17B.02.180. The Department of Ecology's permit rules clarifies that "development" does not include dismantling or removing structures. The updated definition of "development" would add the following sentence: "'Development' does not include dismantling or removing structures if there is no other associated development or re-development."
5. Periodic Review Checklist Item 2017-c: This amendment proposes to add clarifying exemption language to KCC 17B.07.030, for compliance with Ecology's exemption rules. The amendment proposes to add exemptions for remedial actions pursuant to RCW 90.58.355; boatyard improvements necessary to meet NPDES permit requirements; WSDOT facility maintenance and safety improvements; projects consistent with RCW 90.58.045; and projects authorized via the Energy Facility Site Evaluation Council process.
6. Periodic Review Checklist Item 2017-d: This amendment proposes to add Ecology's permit filing procedures to KCC 17B.07.070.
7. Periodic Review Checklist Item 2017-h: This amendment proposes to update KCC 17B.01.050 to add language clarifying the scope and process for conducting periodic reviews. Ecology recommends adding the following sentence: "Kittitas County conducted the periodic review process consistent with the requirements of RCW 90.58.080 and WAC 173-26-090."

8. Periodic Review Checklist Item 2016-a: This amendment proposes to add exemption language to KCC 17B.07.030(2) for retrofitting existing structures to comply with the Americans with Disabilities Act.
9. Periodic Review Checklist Item 2007-c: This amendment proposes to add all fish habitat enhancement project criteria as found in RCW 77.55.181(1)(a)(i-iv) to KCC 17B.07.030(2)(p)(iv).
10. Miscellaneous proposed amendments:
 - a. Update public information and outreach (public participation plan information) in KCC 17B.01.050(1-7) to reflect current public participation plan.
 - b. Remove mentions of "regional update" from entire SMP.
 - c. Update date from "2016" to "2021."
 - d. Update items detailed in Appendix B, Comment Matrix.

IV. ENVIRONMENTAL REVIEW

A SEPA environmental review has been completed for the proposed SMP amendments. A SEPA environmental checklist was prepared by County staff, and on December 18, 2020, 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 January 5, 2021. Comments were received from the Confederated Tribes of the Colville Reservation and Washington State Department of Fish and Wildlife on January 5, 2021. 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 Appendix B.

V. AGENCY AND PUBLIC COMMENTS

On January 12, 2021, a Notice of Joint Public Hearing, was sent to agencies, stakeholders, and members of the public subscribed to RSS feeds for the SMP and Comprehensive Plan updates. The Notice of Joint Public Hearing was advertised in the Daily Record on January 12, 2021 and January 19, 2021. It was also advertised in the Northern Kittitas County Tribune on January 14, 2021. Written comments for the Joint Public Hearing were accepted from January 12, 2021 to February 12, 2021. Kittitas County did not receive any agency or public comments for the Joint Public Hearing.

On March 30, 2021, a Planning Commission Notice of Public Hearing was sent to agencies, stakeholders, and members of the public subscribed to RSS feeds for the SMP and Comprehensive Plan updates. The Planning Commission Notice of Public Hearing was advertised in the Daily Record on March 30, 2021 and April 6, 2021. It was also advertised in

the Northern Kittitas County Tribune on April 1, 2021. Written comments for the Planning Commission Public Hearing were accepted from March 30, 2021 to April 13, 2021.

As comment letters were received, they were added to the comment matrix, as shown in Appendix B. This comment matrix is a summary of all comments received during the SEPA comment period, the 30-day Joint Public Hearing comment period, and the 14-day Public Hearing comment period. All comments received will be shared with Ecology, as well as staff responses.

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?*

The proposed SMP update is mandated by state law, therefore, 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. DEPARTMENT OF ECOLOGY INITIAL DETERMINATION

1. On February 26, 2021, Kittitas County submitted an initial draft of amendments to the Department of Ecology. The initial draft of the SMP included all amendments proposed by the County as deemed required by the Periodic Review Checklist. The County also considered all comment letters received during the SEPA Environmental Review comment period and the Joint Public Hearing comment period. Proposed amendments from the comment period are discussed in detail in the comment matrix in Appendix B. Proposed amendments in the comment letters that were deemed to be within the scope of work for this periodic review checklist were considered, and added to the initial draft submitted to Ecology.
2. On March 23, 2021, in accordance with WAC 173-26-104(3)(b), Kittitas County received the Department of Ecology's Determination of Initial Concurrence (Appendix C).

VIII. RECOMMENDATION

Staff recommends that the Planning Commission recommend approval of the proposed SMP update amendments.

Staff Conclusions:

1. Pursuant to RCW 90.58.080, Kittitas County is required to amend its current Master Shoreline Program no later than June 30, 2021.
2. The proposed amendments are consistent with the Washington State Shoreline Management Act (RCW 90.58), and its associated rules (WAC 173-26), which requires local governments to adopt shoreline master programs with policies and regulations that apply to development near shorelines.
3. Kittitas County has taken agency and public comment on shoreline issues and incorporated many of the comments into revisions to the proposed amendments.
4. 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 regulation.

5. Kittitas County has received an Initial Determination of Concurrence from the Department of Ecology.

Periodic Review Checklist Item	Summary of Change	Review	Action
2017-h	Ecology adopted rule amendments to clarify the scope and process for conducting periodic reviews.	2016 SMP does not mention periodic reviews. Update 17B.01.050 in regards to public participation, multi-jurisdictional coordination, technical advisory committee, citizen advisory committee. Add language regarding DOE's periodic review procedures, as outlined in the checklist guideline 2017(H).	Updated.

This amendment proposes to update KCC 17B.01.050 Public Involvement Process to add language clarifying the scope and process for conducting periodic reviews. Ecology recommends adding the following sentence: "Kittitas County conducted the periodic review process consistent with the requirements of RCW 90.58.080 and WAC 173-26-090."

Amendments to the public information and outreach processes is also being proposed to reflect the public participation plan undertaken for the 2021 periodic review. All mentions of the previous "regional update" are also being amended to reflect that the 2021 SMP update is not a regional update.

Initial SMP Draft

17B.01.050 Public involvement process, advisory committee and agency coordination.

1. Public information and outreach

Kittitas County conducted the periodic review process consistent with the requirements of RCW 90.58.080 and WAC 173-26-090. ~~This SMP was updated as part of a multi-jurisdictional update process with Kittitas County serving as project lead. The participating jurisdictions were Kittitas County, the City of Ellensburg, the City of Cle Elum, and the Town of South Cle Elum. The participating jurisdictions involved the public throughout the update effort consistent with the Shoreline Management Act (see RCW 90.58.130) and the SMP Guidelines (WAC 173-26-090). As project lead, Kittitas County prepared a public participation plan that identified specific objectives, key stakeholders, and timelines for public participation activities.~~

~~2. Multi-jurisdictional SMP update coordination~~

~~The SMP update process was closely coordinated among the participating jurisdictions. An interlocal agreement was adopted to define the responsibilities of each jurisdiction and allocate resources from a Washington State Department of Ecology grant.~~

Kittitas County provided the primary professional and clerical support and was responsible for project management and contracting. Staff assigned by the Cities and Town coordinated local efforts on shorelines within their respective municipal boundaries.

The County coordinated the SMP update process with Washington State Department of Ecology (Ecology), Washington State Department of Fish and Wildlife (WDFW), tribal governments and other state agencies as required in the SMP update guidelines. In addition, the County consulted with other entities for scientific, technical or cultural information including federal agencies, watershed planning units, conservation districts, public utility districts, and other institutions as needed.

All participating jurisdictions were responsible for reviewing and commenting on recommended shoreline environment designations and the goals, policies, and use regulations associated with those designations as well as the various supporting documents including but not limited to: inventory characterization reports, restoration plans and cumulative impact analysis. Each jurisdiction was responsible for approving the final SMP through local adoption processes.

3. Shoreline visioning process

To kick-off the process of developing the regional SMP, community-wide visioning sessions were held in Ellensburg and Cle Elum to gather input on how the shoreline areas should look five (5) to ten (10) years from now. Community visioning questionnaires were also distributed widely throughout the County to solicit feedback. Community members provided input on topics such as public access, water-related and water-dependent uses, recreation, restoration activities and more. A summary of the community visioning process can be found in the Community Visioning Report dated October 2012.

4.2. Regional Shoreline Master Program website

A web page was developed and hosted on the Kittitas County website to share information about the regional SMP update process and to provide opportunities for the public to submit comments and input.

The webpage contained a range of information and documentation related to the development of the SMP update process including:

- background materials
- public participation plan and process timeline
- frequently asked questions
- information on how to participate in the process
- community visioning questionnaire
- information on advisory committees
- meeting materials and summaries
- key contacts

The webpage was kept current and maintained throughout the duration of the update.

5. Technical Advisory Committee

Kittitas County, with input from the Cities and Town invited a group of representatives within the scientific community from statewide agencies, the Yakama Nation, the private sector, and academia to participate on the Technical Advisory Committee (TAC). The purpose of the TAC was to help focus technical discussions and identify key technical and policy issues associated with the SMP update process. The TAC provided input on data inventory and materials collection, shoreline characterization, shoreline analysis, shoreline designations, shoreline restoration, and monitoring and enforcement efforts. The TAC met monthly between April 2012 and August 2012. Meetings were open to the public.

63. Open public forums and public meeting events Public Participation Opportunities

Due to Covid-19 social distancing requirements, Kittitas County was unable to host traditional open houses and public forums. In lieu of these public participation opportunities, Kittitas County used the SMP website to distribute information regarding draft versions of the SMP, background information related to the SMP update, and comment period timelines. Kittitas County accepted comments throughout the entire SMP update process, and also provided three distinct comment periods. Kittitas County published notices out for the SEPA Environmental Determination of Non-Significance, a joint public hearing held with the Department of Ecology, and a Board of County Commissioner public hearing before final adoption. These notices were sent to all RSS registered email addresses with Kittitas County and stakeholders. Kittitas County also sent out four press releases to news media, all RSS registered email addresses with Kittitas County, and stakeholders. The notices and press releases were also added to the SMP website. Open public forums (i.e., public meetings, open houses, workshops) were used throughout the regional SMP update process. They were deployed as an early action strategy to improve public knowledge and investment in the regional SMP update process. Later in the update process, open public forums provided opportunities for the jurisdictions to present draft goals, policies, and regulations, as well as a place for citizens to provide comments and input on the draft goals, policies and regulations. Open public forums were held in July 2012 (two open houses), September 2012 (community visioning workshop), November 2012 (open house) and January 2014 (open house). Additional targeted outreach was conducted by County staff by attending a regular meeting or meeting with individuals of the following groups: Central Washington Homebuilders Association, Kiwanis of Ellensburg and Cle Elum, the Kittitas Field and Stream Club, the Kittitas County Farm Bureau, and the Washington Cattlemen's Association.

7. Citizen Advisory Committee

The Citizen Advisory Committee (CAC) was established to finalize recommendations on environment designations, goals, policies, and use regulations. Representatives were selected by each of the four participating jurisdictions. The jurisdictions coordinated their selections to achieve a diverse mix of interests including agriculture, recreation, power generation, real estate/development, environment, sporting and conservation. Invitations to participate were

~~also extended to the Washington State Departments of Ecology, Natural Resources, and Fish and Wildlife, and the Yakama Indian Nation. The committee began meeting in October 2012 and continued through December 2013. Meetings were open to the public. (Ord. 2016-006, 2016)~~

Periodic Review Checklist Item	Summary of Change	Review	Action
2017-b	Ecology permit rules clarified the definition of "development" does not include dismantling or removing structures.	KCC 17B.02.180 is almost verbatim to DOE's definition of "development." Add to the end: "'Development' does not include dismantling or removing structures if there is no other associated development or re-development."	Updated. The definition of "development" updated to include DOE's language.

This amendment proposes to update the definition of "development" as found in KCC 17B.02.180 Definitions. The Department of Ecology's permit rules clarifies that "development" does not include dismantling or removing structures. The updated definition of "development" would add the following sentence:

"'Development' does not include dismantling or removing structures if there is no other associated development or re-development."

Initial SMP Draft

17B.02.180 Development.

"Development" means a use consisting of the construction or exterior alteration of structures, dredging, drilling, dumping, filling; removal of any sand, gravel or minerals; bulkheading; driving of pilings; placing of obstructions; interior building improvements that do not change the use or occupancy; or any project of a permanent or temporary nature that interferes with the normal public use of the surface of the waters overlying lands subject to the Shoreline Management Act at any stage state of water level. Residential development includes single-family development, multi-family development, and the creation of new residential lots through subdivision.

["Development" does not include dismantling or removing structures if there is no other associated development or redevelopment.](#) (Ord. 2016-006, 2016)

Periodic Review Checklist Item	Summary of Change	Review	Action
2019-a	OFM adjusted the cost threshold for building freshwater docks	2016 SMP does not mention threshold amounts. Add threshold language to 17B.07.030(2)(h).	Updated. Example language from DOE Guidance added to 17B.07.030(2)(h).
2019-c	The Legislature added restoring native kelp, eelgrass beds and native oysters as fish habitat enhancement projects.	17B.07.030(2)(p)(iv) states that fish habitat enhancement projects must conform to RCW 7755.181, but 2016 SMP does not list all criteria found in RCW. Update KCC to reflect RCW criteria found in RCW 77.55.181(1)(a)(i-iv).	Updated. Language from RCW 77.55.181(1)(a)(i-iv) has been added to KC 17B.07.030(2)(p)(iv).
2017-a	OFM adjusted the cost threshold for substantial development to \$7,047.	2016 SMP has previous threshold of \$6,416 listed. Update 17B.07.030(2)(a) to reflect updated threshold amount (\$7,047).	Updated. New threshold amount of \$7,047 added to KCC 17B.07.030(2).
2017-c	Ecology adopted rules clarifying exceptions to local review under the SMA.	Add proposed language from Checklist Guide 2017(C) to 17B.07.030.	Updated. Clarifying exemption language added to KCC 17B.07.030.
2016-a	The Legislature created a new shoreline permit exemption for retrofitting existing structure to comply with the Americans with Disabilities Act.	2016 SMP does not have exemption language for ADA compliance. Add language to exemption language of 17B.07.030(2).	Updated.
2007-c	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include fish habitat enhancement projects that conform to the provisions of RCW 77.55.181.	17B.07.030(2)(p)(iv) states that fish habitat enhancement projects must conform to RCW 7755.181, but 2016 SMP does not list all criteria found in RCW. Update KCC to reflect RCW criteria found in RCW 77.55.181(1)(a)(i-iv).	Updated.

There are six amendments proposed to update Section 17B.07.030 Permit Exemptions:

Item 2019-a proposes to add the cost threshold for building freshwater docks to developments exempt from shoreline substantial development permitting process, located in KCC 17B.07.030(2)(h).

Item 2019-c proposes to update KCC 17B.07.030(2)(p)(iv) to list all fish habitat enhancement project criteria, as found in RCW 77.55.181(1)(a)(i-iv).

Item 2017-a proposes to update the cost threshold for substantial development from \$6,416 to \$7,047, as adjusted by the Office of Financial Management.

Item 2017-c proposes to add clarifying exemption language to KCC 17B.07.030, for compliance with Ecology's exemption rules. The amendment proposes to add exemptions for remedial actions pursuant to RCW 90.58.355; boatyard improvements necessary to meet NPDES permit requirements; WSDOT facility maintenance and safety improvements; projects consistent with RCW 90.58.045; and projects authorized via the Energy Facility Site Evaluation Council process.

Item 2016-a proposes to add exemption language to KCC 17B.07.030(2) for retrofitting existing structures to comply with the Americans with Disabilities Act.

Item 2007-c proposes to add all fish habitat enhancement project criteria as found in RCW 77.55.181(1)(a)(i-iv) to KCC 17B.07.030(2)(p)(iv).

Initial SMP Draft

17B.07.030 Permit Exemptions.

1. General provisions.
 - a. Only those uses and developments that meet the precise terms of one (1) or more of the listed exemptions may be granted exemption from the substantial development permit process.
 - b. An exemption from the substantial development permit process is not an exemption from compliance with the Act or Master Program or from any other regulatory requirements.
 - c. The burden of proof that a development or use is exempt from the permit process is on the applicant.
 - d. If any part of a proposed use or development is not eligible for exemption, then a substantial development permit is required for the entire proposal.
 - e. Conditions may be attached to the approval of exempted uses or developments as necessary to assure consistency of the project with the Act and the Master Program.
2. Developments exempt from shoreline substantial development permitting process.

Subject to the general provisions above, exempt activities include those set forth in WAC 173-27-040(2) and RCW 90.58.030, as amended:

- a. Any use or development of which the total cost or fair market value, whichever is higher, does not exceed ~~seven thousand forty seven dollars~~ ~~six thousand four hundred sixteen dollars~~ (\$6,416,047), if such use or development does not materially interfere with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection will be adjusted for inflation by the office of financial management every five (5) years, according to WAC 173-27-040(2)(a). For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030 (2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.
- b. Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition including, but not limited to, its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including, but not limited to, its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment.
- c. Construction of the normal protective bulkhead common to single-family residences. A "normal protective" bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion. A normal protective bulkhead is not exempt if constructed for the purpose of creating dry land. When a vertical or near vertical wall is being constructed or reconstructed, not more than one (1) cubic yard of fill per one (1) foot of wall may be used as backfill. When an existing bulkhead is being repaired by construction of a vertical wall fronting the existing wall, it shall be constructed no further waterward of the existing bulkhead than is necessary for construction of new footings. When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead, then the replacement bulkhead must be located at or near the actual OHWM. Bioengineered erosion control projects may be considered a normal protective bulkhead when any structural elements are consistent with the above requirements and when the project has been approved by the Washington State Department of Fish and Wildlife.
- d. Emergency construction necessary to protect property from damage by the elements. An "emergency" is an unanticipated and imminent threat to public health, safety, or the environment which requires immediate action within a time too short to allow full compliance with this chapter. Emergency construction does not include development

of new permanent protective structures where none previously existed. Where new protective structures are deemed by the Administrator to be the appropriate means to address the emergency situation, upon abatement of the emergency situation the new structure shall be removed or any permit which would have been required, absent the emergency, obtained, pursuant to RCW Chapter 90.58 and this Master Program. All emergency construction shall be consistent with the policies of RCW Chapter 90.58 and this Master Program. As a general matter, flooding or other seasonal events that can be anticipated and may occur but that are not imminent are not an emergency.

- e. Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures including, but not limited to, head gates, pumping facilities, and irrigation channels. Provided that a feedlot of any size; all processing plants; other activities of a commercial nature; alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation; shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations. See definition of "feedlot" at KCC 17B.02.235.
- f. Construction or modification of navigational aids such as channel markers and anchor buoys.
- g. Construction on shorelands by an owner, lessee or contract purchaser of a single-family residence for their own use or for the use of their family, which residence does not exceed a height of thirty-five (35) feet above average grade level and which meets all requirements of the County, other than requirements imposed pursuant to RCW Chapter 90.58. "Single-family residence" means a detached dwelling designed for and occupied by one (1) family including those structures and developments within a contiguous ownership which are a normal appurtenance. An "appurtenance" is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the OHWM and the perimeter of a wetland. Normal appurtenances include a garage, deck, driveway, utilities, fences, installation of a septic tank and drainfield, and grading which does not exceed two hundred fifty (250) cubic yards and which does not involve placement of fill in any wetland or waterward of the OHWM. Construction authorized under this exemption shall be located landward of the OHWM.
- h. Construction of a dock, including a community dock, designed for pleasure craft only for the private non-commercial use of the owner, lessee, or contract purchaser of single-family and multi-family residences. A dock is a landing and moorage facility for watercraft and does not include recreational decks, storage facilities or other appurtenances. This exception applies if either:
 - i. In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500); or
 - ii. In fresh waters, the fair market value of the dock does not exceed:

- a. Twenty-two thousand five hundred dollars (\$22,500) for docks that are constructed to replace existing docks, are of equal or lesser square footage than the existing dock being replaced, or
- b. Eleven thousand two hundred dollars (\$11,200) for all other docks constructed in fresh waters.

~~the fair market value of the dock does not exceed ten thousand dollars (\$10,000); but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five (5) years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter.~~ However, if subsequent construction occurs within five years of completion of the prior construction, and the combined fair market value of the subsequent and prior construction exceeds the amount specified above, the subsequent construction shall be considered a substantial development for the purposes of this chapter.

- ~~h.i.~~ i. Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters including return flow and artificially stored groundwater from the irrigation of lands.
- ~~h.j.~~ j. The marking of property lines or corners on state-owned lands, when such marking does not significantly interfere with normal public use of the surface of the water.
- ~~j.k.~~ k. Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system.
- ~~k.l.~~ l. Any project with a certification from the governor pursuant to RCW Chapter 80.50.
- ~~l.m.~~ m. Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under WAC 173-27-040(2), when all of the following conditions are met:
 - i. The activity does not interfere with the normal public use of the surface waters;
 - ii. The activity will have no significant adverse impact on the environment including, but not limited to, fish; wildlife; fish or wildlife habitat; water quality; and aesthetic values;
 - iii. The activity does not involve the installation of any structure, and upon completion of the activity, the vegetation and land configuration of the site are restored to conditions existing before the activity; and
 - iv. A private entity seeking development authorization under this Section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions.
- ~~m.n.~~ n. The process of removing or controlling aquatic noxious weeds, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the Washington State Department of Agriculture or the Washington State

Department of Ecology jointly with other state agencies under RCW Chapter 43.21C; recommended under RCW Chapter 43.21C.

~~n.o.~~ Watershed restoration projects as defined herein. The County shall review the projects for consistency with the Shoreline Master Program in an expeditious manner and shall issue its decision along with any conditions within forty-five (45) days of receiving all materials necessary to review the request for exemption from the applicant. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this Section.

- i. "Watershed restoration project" means a public or private project authorized by the sponsor of a watershed restoration plan that implements the plan or a part of the plan and consists of one or more of the following activities:
 - a. A project that involves less than ten (10) miles of stream reach, in which less than twenty-five (25) cubic yards of sand, gravel, or soil is removed, imported, disturbed or discharged, and in which no existing vegetation is removed except as minimally necessary to facilitate additional plantings;
 - b. A project for the restoration of an eroded or unstable stream bank that employs the principles of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; or
 - c. A project primarily designed to improve fish and wildlife habitat, remove or reduce impediments to migration of fish, or enhance the fishery resource available for use by all of the citizens of the state; provided that any structure, other than a bridge or culvert or instream habitat enhancement structure associated with the project, is less than two hundred (200) square feet in floor area and is located above the OHWM of the stream.
- ii. "Watershed restoration plan" means a plan, developed or sponsored by the Washington State Departments of Fish and Wildlife, Ecology, Natural Resources, and Transportation (WSDOT); a federally recognized Indian tribe acting within and pursuant to its authority; a city; a county; or a conservation district that provides a general program and implementation measures or actions for the preservation, restoration, re-creation, or enhancement of the natural resources, character, and ecology of a stream, stream segment, drainage area, or watershed for which agency and public review has been conducted pursuant to RCW Chapter 43.21C, the state Environmental Policy Act.

[p. The external or internal retrofitting of an existing structure with the exclusive purpose of compliance with the Americans with Disabilities Act of 1990 \(42 U.S.C. Sec. 12101 et seq.\) or to otherwise provide physical access to the structure by individuals with disabilities.](#)

- ~~e.g.~~ A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply:
- i. The project has been approved in writing by the Washington State Department of Fish and Wildlife;
 - ii. The project has received hydraulic project approval by the Washington State Department of Fish and Wildlife pursuant to RCW Chapter 77.55; and

- iii. The County determines that the project is substantially consistent with the Shoreline Master Program. The County shall make such determination in a timely manner and provide it by letter to the project proponent.
- iv. Fish habitat enhancement projects that conform to the provisions of RCW 77.55.181 are determined to be consistent with local shoreline Master Programs, as follows:
 - a. In order to receive the permit review and approval process created in this Section, a fish habitat enhancement project must meet the criteria under ~~pq~~.iv(a)(1) and (2) in this subsection:
 - 1. A fish habitat enhancement project must be a project to accomplish one or more of the following tasks:
 - i. Elimination of human-made fish passage barriers, including culvert repair and replacement, and fish passage barrier removal projects that comply with the forest practices rules, as the term "forest practices rules" is defined by RCW 76.09.020; or
 - ii. Restoration of an eroded or unstable stream bank employing the principle of bioengineering, including limited use of rock as a stabilization only at the toe of the bank, and with primary emphasis on using native vegetation to control the erosive forces of flowing water; ~~or~~
 - ~~iii.~~ iii. Placement of woody debris or other instream structures that benefit naturally reproducing fish stocks; ~~or~~
 - ~~iv.~~ iv. The restoration of native kelp and eelgrass beds and restoring native oysters.
 - ~~iii.v.~~ v. The Washington State Department of Fish and Wildlife shall develop size or scale threshold tests to determine if projects accomplishing any of these tasks should be evaluated under the process created in this Section or under other project review and approval processes. A project proposal shall not be reviewed under the process created in this Section if the Washington State Department of Ecology determines that the scale of the project raises concerns regarding public health and safety; ~~and~~
 - 2. A fish habitat enhancement project must be approved in one of the following ways:
 - i. By the Washington State Department of Fish and Wildlife pursuant to RCW Chapter 77.95 or 77.100;
 - ii. By the sponsor of a watershed restoration plan as provided in RCW Chapter 89.08;
 - iii. By the Washington State Department of Ecology as a WDFW-sponsored fish habitat enhancement or restoration project;
 - iv. Through the review and approval process for the Jobs for the Environment Program;
 - v. Through the review and approval process for conservation district-sponsored projects, where the project complies with design

- standards established by the Conservation Commission through interagency agreement with the U. S. Fish and Wildlife Service and the Natural Resource Conservation Service;
- vi. Through a formal grant program established by the Legislature or the Washington State Department of Fish and Wildlife for fish habitat enhancement or restoration; and
 - vii. Through other formal review and approval processes established by the Legislature.
- b. Fish habitat enhancement projects meeting the criteria of p.iv(a) of this subsection are expected to result in beneficial impacts to the environment. Decisions pertaining to fish habitat enhancement projects meeting the criteria of p.iv(a) of this subsection and being reviewed and approved according to the provisions of this Section are not subject to the requirements of RCW 43.21C.030 (2)(c).
 - c. A hydraulic project approval (HPA) permit is required for projects that meet the criteria of p.iv(a) of this subsection and are being reviewed and approved under this Section. An applicant shall use a joint aquatic resource permit (JARPA) application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Washington State Department of Fish and Wildlife and to each appropriate local government agency. Local governments shall accept the application as notice of the proposed project. The Washington State Department of Fish and Wildlife shall provide a fifteen-(15)-day comment period during which it will receive comments regarding environmental impacts. Within forty-five (45) days, the Washington State Department of Ecology shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this Section is not appropriate for the proposed project. Ecology shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If Ecology determines that the review and approval process created by this Section is not appropriate for the proposed project, Ecology shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes. Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this Section may formally appeal the decision to the Hydraulic Appeals Board pursuant to the provisions of this chapter.
 - d. The County may not require permits or charge fees for fish habitat enhancement projects that meet the criteria of p.iv(a) of this subsection and that are reviewed and approved according to the provisions of this Section.

[3. Developments not required to obtain shoreline permits or local reviews.](#)

- a. Requirements to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption; or other review to implement the Shoreline Management Act do not apply to the following:
 - i. Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to Chapter 70.105D RCW, or to the Department of Ecology when it conducts a remedial action under Chapter 70.105D.
 - ii. Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.
 - iii. WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a Substantial Development Permit, Conditional Use Permit, Variance, letter of exemption, or other local review.
 - iv. Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.
 - v. Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to Chapter 80.50 RCW.

3.4. Letter of exemption.

- a. General. A letter of exemption is required for all requests for exemption from a shoreline substantial development permit to ensure the proposal complies with the regulations of this SMP, except for emergency development pursuant to WAC 173-27-040(2)(d) and those uses and developments specifically allowed without a letter of exemption in KCC 17B.05.050(B).
- b. Application. Any person claiming exemption from the substantial development permit requirements shall submit an application for such an exemption in the manner prescribed by the Shoreline Administrator. Applications shall include, at a minimum: a summary of the proposed development project; identification of the specific exemption provisions from WAC 173-27-040 that applies to the proposal; and a description of how the proposal will comply with the applicable policies and regulations of this Shoreline Master Program.
- c. Letter of exemption. Kittitas County shall prepare a letter of exemption, addressed to the applicant and the Washington State Department of Ecology, whenever a proposal is determined to be exempt from the substantial development permit requirements. The letter of exemption must indicate the specific exemption provision from WAC 173-27-040 that is applicable to the proposal and provide a summary of the consistency of the proposal with the regulations of this title.
- d. Watershed restoration projects. This Section applies to a letter of exemption for a watershed restoration project pursuant to WAC 173-27-040 or subject to one or more of the following federal permits: U.S. Army Corps of Engineers Section 10 permit under the Rivers and Harbors Act of 1899 (generally applicable to any project occurring on or over navigable waters); or Section 404 permit under the Federal Water Pollution

Control Act of 1972 (generally applicable to any project which may involve discharge of dredge or fill material to any water or wetland area).

- i. The letter of exemption must indicate the specific exemption provision from WAC 173-27-040 that is applicable to the proposal and provide a summary of the consistency of the proposal with the regulations of this SMP.
- ii. Watershed restoration projects must be reviewed in an expeditious manner and an exemption decision, together with any conditions, must be issued within forty-five (45) days of receiving all materials necessary to review the request for exemption. No fee may be charged for accepting and processing requests for exemption for watershed restoration projects as used in this Section.

4.5. Programmatic statements of exemption.

- a. Applicability. Programmatic statements of exemption may be issued for activities exempt under the provisions of KCC 17B.07.030(2) above that:
 - i. Are repetitive and part of a maintenance program or other similar program;
 - ii. Have the same or similar identifiable impacts each time the activity is repeated at all sites covered by the programmatic statement of exemption; and
 - iii. Are suitable to having standard conditions that will apply to any and all sites.
- b. Conditions. A programmatic statement of exemption shall not be issued until appropriate conditions, if needed, are developed and approved. Conditions shall apply uniformly to each activity authorized and all locations covered by the programmatic statement of exemption. Conditions may include specifications for the frequency, method and contents of periodic status reports.
- c. Revisions. The programmatic statement of exemption may be modified or withdrawn if the Shoreline Administrator determines that:
 - i. The programmatic statement of exemption or activities authorized under the statement of exemption no longer comply with law;
 - ii. The programmatic statement of exemption does not provide adequate regulation of the activity;
 - iii. The conditions or the manner in which the conditions are implemented are not adequate to protect against the impacts resulting from the activity.
- d. Expiration. Programmatic exemptions shall expire five (5) years after the date of issuance if a shorter expiration period is not specified in the exemption approval.

(Ord. 2016-006, 2016)

Periodic Review Checklist Item	Summary of Change	Review	Action
2017-d	Ecology amended rules clarifying permit filing procedures consistent with a 2011 statute.	SMP does not describe permit filing procedures. Add to 17B.07.070.	Updated. Permit filing procedures added to KCC 17B.07.070(6).

This amendment proposes to amend KCC 17B.07.070 Review Procedures, to update the County's submittal process to Washington State Department of Ecology to reflect Ecology's permit filing procedures.

Initial SMP Draft

17B.07.070 Review procedures.

1. Generally. The general procedural requirements of the County shall apply to shoreline permits except where this chapter is more restrictive or specific, in which case the provision of this chapter shall apply.
2. Complete application. The Administrator shall issue a determination of completeness, upon finding that the following required information has been submitted with an application for a substantial development, conditional use, or variance permit:
 - a. A site development plan consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs and text which shall include:
 - i. The boundary of the parcel(s) of land upon which the use or development is proposed;
 - ii. The OHWM of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any use or development where a determination of consistency with the applicable regulations requires a precise location of the OHWM, the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans shall be included in the development plan. Where the OHWM is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest OHWM of a shoreline;
 - iii. Existing and proposed land contours. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the use or development. Areas within the boundary that will not be altered by the use or development may be indicated as such and contours approximated for that area;
 - iv. A delineation of all wetland areas that will be altered or used as a part of the proposal;
 - v. A general indication of the character of vegetation found on the site;
 - vi. The dimensions and locations of all existing and proposed structures and improvements including, but not limited to: buildings, paved or graveled areas;

- roads; utilities; septic tanks and drainfields; material stockpiles or surcharge; and stormwater management facilities;
 - vii. Where applicable, scaled elevation drawings of all proposed structures including location of the OWHM;
 - viii. Where applicable, a landscaping plan for the project;
 - ix. Where applicable, plans for use and development of areas on or off the site as mitigation for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this Section;
 - x. Quantity, source, and composition of any fill material that is placed on the site whether temporary or permanent;
 - xi. Quantity, composition, and destination of any excavated or dredged material;
 - xii. A vicinity map showing the relationship of the property and proposed use or development to roads, utilities, and existing uses and developments on adjacent properties;
 - xiii. Where applicable, a depiction of the impacts to views from existing residential uses and public areas; and
 - xiv. On all Variance Permit ~~applications~~[applications](#), the plans shall clearly indicate where use and/or development could occur without approval of a variance, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.
3. Concurrent submittals. When a substantial development permit and a conditional use or variance permit are required for a proposal, the submittal on the permits shall be made concurrently.
4. Notice.
- a. Required. The Administrator shall notify the public, the Washington State Department of Ecology, the Yakama Nation, other agencies with jurisdiction as well as individuals and organizations that have requested notice in writing of applications for a shoreline management substantial development, conditional use, or variance permit.
 - b. Timing. Notice of application shall be provided within fourteen (14) days after the determination of completeness.
 - c. When an open record hearing is required. If an open record pre-decision hearing is required for the requested project permits, the notice of application shall be provided at least fifteen (15) days prior to the open record hearing.
 - d. Contents. The notice shall include:
 - i. The date of application; the date of the notice of completion for the application; and the date of the notice of application;
 - ii. A description of the proposed project action and a list of the project permits included in the application and, if applicable, a list of any studies requested;
 - iii. The identification of other permits not included in the application to the extent known by the local government;
 - iv. The identification of existing environmental documents that evaluate the proposed project, and, if not otherwise stated on the document providing the notice of application, such as a land use bulletin, the location where the application and any studies can be reviewed;

- v. A statement of the public comment period, which shall be not less than thirty (30) days following the date of notice of application, and statements of the right of any person to comment on the application, receive notice of and participate in any hearings, request a copy of the decision once made, and any appeal rights. A local government may accept public comments at any time prior to the closing of the record of an open record pre-decision hearing, if any, or, if no open record pre-decision hearing is provided, prior to the decision on the project permit;
 - vi. The date, time, place, and type of hearing, if applicable and scheduled at the date of notice of the application;
 - vii. A statement of the preliminary determination, if one has been made at the time of notice, of those development regulations that will be used for project mitigation and of consistency; and
 - viii. Any other information determined appropriate by the local government.
- e. Method. The notification system shall assure that notice to the general public and property owners in the vicinity of such application is given by at least one of the following methods:
- i. Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least five hundred (500) feet of the boundary of the property upon which the use or development is proposed; or
 - ii. Posting of the notice in a conspicuous manner on the property upon which the project is to be undertaken.
5. Review and decision. The appropriate review authority identified in KCC 17B.07.050 shall review applications for compliance with review criteria in KCC 17B.07.060 and either approve, deny, or approve with conditions. In the case of shoreline conditional use and variance permits, the decision shall serve as a recommendation to the Washington State Department of Ecology, which is responsible for the final decision on shoreline conditional use permits and variances.
6. Submittal to the Washington State Department of Ecology:
- ~~a.—After all local permit administrative appeals or reconsideration periods are complete, and the permit documents amended to incorporate any resulting changes, Kittitas County will mail the permit using return receipt requested mail to the Department of Ecology regional office and the Office of the Attorney General. Projects that require both Conditional Use Permits and or Variances shall be mailed simultaneously with any Substantial Development Permits for the project.~~ Required submittal. All applications for a permit or a permit revision shall be submitted to the Washington State Department of Ecology upon a final decision by local government, pursuant to WAC 173-27-130.
 - ~~b.—Modified project. When the project has been modified in the course of the review proceeding, plans or text shall be provided to the local government that clearly indicate the final approved plan, and the local government shall reissue the permit accordingly and submit a copy of the reissued permit and supporting documents consistent with KCC 17B.07.070(6) to the Washington State Department of Ecology for completion of the file on the permit. The purpose of this provision is to assure that the local and Ecology files on the permit are complete and accurate and not to provide a new opportunity for appeal of the permit.~~

- ~~a. Conditional use permits and variances. Shoreline Conditional Use Permits and Variances shall be transmitted to the Washington State Department of Ecology for final approval, denial, or approval with conditions.~~
- ~~i. The permit and documentation of the final local decision will be mailed together with the complete permit application; a findings and conclusions letter; a permit data form (cover sheet); and applicable SEPA documents.~~
- ~~ii. Consistent with RCW 90.58.140(6), the state's Shorelines Hearing Board twenty-one day appeal period starts with the date of filing, which is defined below:~~
- ~~1. For projects that only require a Substantial Development Permit: the date that Ecology receives Kittitas County's decision.~~
 - ~~2. For a Conditional Use Permit (CUP) or Variance: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and Kittitas County.~~
 - ~~3. For SDPs simultaneously mailed with a CUP or Variance to Ecology: the date that Ecology's decision on the CUP or Variance is transmitted to the applicant and Kittitas County.~~

(Ord. 2016-006, 2016)



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“Building Partnerships – Building Communities”

Summary of SMP Comments and Recommended Responses

Section	Commenter	Date Received	Comment/Recommended Change	Staff Recommendation
17B.05.010(B)(1)(a)(i)	Aren Orsen, Confederated Tribes of the Colville Reservation	1/5/2021	Section 17.B.05.010(B)(1)(a)(i) states that projects that do not create spoils piles are not ground disturbing, and are exempt from cultural resources review. We strongly object to this definition. Driving posts, poles or planting can adversely affect cultural resources.	Section 17B.05.010 Cultural, Archaeological and historical resources was part of a 2018 settlement agreement between Kittitas County, Confederated Tribes and Bands of the Yakama Nation, and Department of Ecology. As such, staff recommends no change to this section.
17.B.05.010(B)(1)(a)(i)	Aren Orsen, Confederated Tribes of the Colville Reservation	1/5/2021	Section 17.B.05.010(B)(1)(a)(i) states that a project is exempt from review if a professional archaeologist has surveyed the entire project area within ten years, and show that no cultural, archaeological, or historic resources were found. We object to the inclusion of this exemption. The onus of determining the adequacy and applicability of previous archaeological surveys should lie with consulted Tribes and DAHP, not the project applicant.	Section 17B.05.010 Cultural, Archaeological and historical resources was part of a 2018 settlement agreement between Kittitas County, Confederated Tribes and Bands of the Yakama Nation, and Department of Ecology. As such, staff recommends no change to this section.
17.B.05.010(B)(1)(c)	Aren Orsen, Confederated Tribes of the Colville Reservation	1/5/2021	Sections 17.B.05.010(B)(1)(c)(i) and 17.B.05.010(B)(1)(c)(ii) arbitrarily assign ¼ mile as the distance of sites or resources to a project area requiring further survey. We object to this arbitrary distance. The importance of cultural resources proximate to a project area should be determined	Section 17B.05.010 Cultural, Archaeological and historical resources was part of a 2018 settlement agreement between Kittitas County, Confederated Tribes and Bands of the Yakama

			through consultation with affected Tribes and DAHP.	Nation, and Department of Ecology. As such, staff recommends no change to this section.
17.B.05.010(B)(1)(c)(iii)	Aren Orsen, Confederated Tribes of the Colville Reservation	1/5/2021	Section 17.B.05.010(B)(1)(c)(iii) states that a survey will be required if "...both DAHP and the affected Native American tribe request that an archaeological survey be completed due to a professional archaeologist's determination that the project area is in an area that is at high-risk for the presence of archaeological resources..." We object to the requirement that the completion of a survey is requisite on the concurrence of DAHP and affected Tribes regarding the potential risk to cultural resources in a project area. The CCT does not require DAHP's concurrence to establish the validity of its knowledge regarding a project area's potential to contain cultural resources.	Section 17B.05.010 Cultural, Archaeological and historical resources was part of a 2018 settlement agreement between Kittitas County, Confederated Tribes and Bands of the Yakama Nation, and Department of Ecology. As such, staff recommends no change to this section.
17B.01.050	Elizabeth Torrey, WDFW	1/5/2021	WDFW would like to emphasize our interest in continued involvement regarding SMP and CAO updates. We have technical expertise and jurisdiction over certain Critical Areas, as well as jurisdiction over hydraulic projects within Shoreline environments which require a Hydraulic Projects Approval (HPA) permit. Early coordination is requested such that discussions may be held prior to updates being released for SEPA review.	Staff acknowledges WDFW's interest in the SMP and CAO updates, and will continue to coordinate with the agency on future updates.
17B.02 Definitions	Elizabeth Torrey, WDFW	1/5/2021	Add to section: Hydraulic Project Approval (HPA): A construction permit issued by the Washington Department of Fish and Wildlife for work that will use, divert, obstruct,	HPA is referenced several times through the SMP, but the existing SMP does not define what an HPA is. Therefore, staff

			or change the natural flow or bed of any of the salt or fresh waters of the state.	recommends adding the proposed definition.
17B.02 Definitions	Elizabeth Torrey, WDFW	1/5/2021	Add to section: Riparian: An adjective meaning alongside a waterbody: stream, river, lake, pond, bay, sea, and ocean. Riparian areas are sometimes referred to by different names: riparian ecosystems, riparian habitats, riparian corridors, or riparian zones.	This is not the same definition as defined by WAC 332-30-106 or RCW 79A.15.010. Therefore, staff does not recommend adding this definition of riparian.
17B.02 Definitions	Elizabeth Torrey, WDFW	1/5/2021	Add to section: Riparian Management Zone (RMZ): A delineable area defined in a land use regulation; often synonymous with riparian buffer. For the purposes of this document, we define the RMZ as the area that has the potential to provide full riparian functions. In many forested regions of the state this area occurs within one 200-year site-potential tree height measured from the edge of the stream channel. In situations where a channel migration zone is present, this occurs within one site-potential tree height measured from the edges of the channel migration zone. In non-forest zones the RMZ is defined by the greater of the outermost point of the riparian vegetative community or the pollution removal function, at 100-feet.	Riparian Management Zone (RMZ) is not referenced in the existing SMP, therefore staff does not recommend adding a definition at this time.
17B.02 Definitions	Elizabeth Torrey, WDFW	1/5/2021	Add to section: Site-Potential Tree Height: The average maximum height of the tallest dominant trees for a given age and site class.	Site-Potential Tree Height is not referenced in the existing SMP; therefore staff does not recommend adding a definition at this time.
17B.02.155	Elizabeth Torrey, WDFW	1/5/2021	Amend: "Critical areas" includes the following areas and	Staff recognizes the importance of this change, and recommends

			ecosystems: (a) Wetlands; (b) areas with a critical recharging effect on aquifers used for potable water; (c) fish and wildlife habitat conservation areas; (d) frequently flooded areas; and (e) geologically hazardous areas. "Fish and wildlife habitat conservation areas" do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. Natural watercourses such as streams and rivers that carry irrigation water are not considered to be an artificial feature. (Ord. 2016-006, 2016)	accepting the proposed change. Note: this change pertains to KCC 17B.02.155 and not KCC 17B.02.15 as indicated in WDFW's comment letter.
17B.02.240	Elizabeth Torrey, WDFW	1/5/2021	Amend: "Fill" means any solid or semi-solid material that when placed, changes the grade or elevation of the receiving site, including the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark (OHWM), in wetlands, floodplains, or shorelands in a manner that raises the bottom elevation of a waterbody or floodplain or creates dry land. (Ord. 2016-006, 2016)	"Fill" is not defined by RCW 90.58. The proposed amendment to the definition is not the same as defined in WAC 173-26-020. Kittitas County would like to maintain its definition of "fill," and therefore does not recommend approval of this proposed change.
17B.02.245	Elizabeth Torrey, WDFW	1/5/2021	Amend: "Fish and wildlife habitat conservation area" means Fish and Wildlife Habitat Conservation Areas (FWHCA) that serve a critical role in sustaining needed habitats and species for the functional integrity of the ecosystem, and which, if altered, may reduce the likelihood that the species will persist over the long term. These areas may include,	Staff recognizes the importance of this change, and recommends accepting the proposed change.

			but are not limited to, rare or vulnerable ecological systems; communities; and habitat or habitat elements including seasonal ranges, breeding habitat, winter range, and movement corridors; and areas with high relative population density or species richness. These areas do not include such artificial features or constructs as irrigation delivery systems, irrigation infrastructure, irrigation canals, or drainage ditches that lie within the boundaries of and are maintained by a port district or an irrigation district or company. Natural watercourses such as streams and rivers that carry irrigation water are not considered to be an artificial feature (Ord. 2016-006, 2016)	
17B.02.335	Elizabeth Torrey, WDFW	1/5/2021	Amend: "Mineral prospecting" means to excavate, process, or classify aggregate using hand-held mineral prospecting tools and mineral prospecting equipment, conducted according to the provisions of WAC 220-110-200 through 220-110-206 WAC 220-660-300 (Ord. 2016-006, 2016)	The existing SMP references an incorrect WAC, and staff recommends accepting the proposed correction.
17B.04.090.1	Elizabeth Torrey, WDFW	1/5/2021	As currently published in the draft document, this table is unreadable due to its layout. WDFW requests that you provide a readable copy so that reviewers may see which, if any, changes are proposed.	Table layout has been changed and the updated draft document is available on the SMP website. The updated draft was sent to WDFW.
17B.05.020D.3.b	Elizabeth Torrey, WDFW	1/5/2021	References in section 17B.05.020D.3.b should be changed from WDFW to U.S. Fish and Wildlife Service (USFWS), because management of bald eagles is now the primary responsibility of the USFWS under the federal Bald and Golden Eagle	Staff acknowledges that the management of bald eagles is now the primary responsibility of U.S. Fish and Wildlife Service (USFWS), and not WDFW. Staff

			Protection Act and Migratory Bird Treaty Act. To determine if a permit is needed from USFWS for a land use action that has the potential to disturb bald eagles, USFWS has created a self-certification tool which may be employed. WDFW considers the National Bald Eagle Management Guidelines to be the preferred way to protect bald eagle habitat and recommends that anyone involved with actions that may affect bald eagles, their nests, or communal roosts consult and abide by these guidelines.	recommends approval of this proposed change.
17B.05.020K	Elizabeth Torrey, WDFW	1/5/2021	<p>In December 2020, WDFW finalized a new Priority Habitats and Species (PHS) publication consisting of two volumes: Riparian Ecosystems, Vol. 1: Science Synthesis and Management Implications and Riparian Ecosystems, Vol. 2: Management Recommendations. These publications meet the criteria of being independently peer reviewed sources of Best Available Science for the protection and maintenance of fully functioning of riparian ecosystems.</p> <p>The Riparian Ecosystems publications confirm that rather than simply being "buffers" for their adjacent waterbody, riparian zones are important as ecosystems in-and-of themselves, warranting protection and management regardless of the waterbody's typing. Shoreline riparian areas function both as aquatic buffers by protecting and improving water quality, and as terrestrial habitat used by wildlife for movement, nesting, reproduction, foraging, and refugia. In particular, WDFW asserts that riparian areas of less than 100 feet will <u>not</u> adequately preserve nutrient removal functions and</p>	Staff acknowledges WDFW's latest publications as a source of Best Available Science. The periodic update is a minor update, and staff recognizes that reviewing the publications and amending the SMP to reflect the Best Available Science, would be beyond the scope of work of this periodic review. Staff does not recommend approval of this proposed change. In the future, during a more comprehensive update of the SMP, staff would work with WDFW to update the SMP in accordance with these publications.

			<p>processes to protect water quality for state waters (Vol. 1, Chapter 5.6), nor provide the necessary functions for riparian dependent terrestrial species. The table on PDF page 53 does not appear to have properly formatted and is missing information; we therefore cannot comment on the specific buffers proposed in the SMP update.</p> <p>We can, however, offer the suggestion that to best comply with the science in Riparian Ecosystems, this section should reference Site Potential Tree Height (SPTH) and the Channel Migration Zone (CMZ) as the method in which to determine the width of the Riparian Management Zone (RMZ). The RMZ exists independently of Type F, NP, or NS waters and therefore these classifications could be omitted from this section of the SMP. In locations where SPTH is not appropriate, as indicated by this web map, the science informs us that a minimum 100-foot setback is what will ensure the functions and values of the RMZ for pollutant and nutrient filtration.</p> <p>WDFW strongly suggests that Kittitas County review Riparian Ecosystems, in particular Volume 2, and uses this source of Best Available Science to inform SMP Section 17B.05.020K.</p>	
17B.05.020M	Elizabeth Torrey, WDFW	1/5/2021	<p>We request that you <u>amend</u> this section as follows: 17B.05.020M la. Areas where federal and/or state listed endangered, threatened, PHS, and/or sensitive species have a primary association.... 17B.05.020M 3b. Habitat boundary survey:Habitat surveys shall be conducted by a professional wildlife biologist who is knowledgeable of wildlife habitat within Kittitas County. Surveys and technical assistance with</p>	<p>Priority Habitat and Species (PHS) program is a WDFW program, and there are currently no state PHS regulations. Staff does not recommend approving this proposed change.</p> <p>The existing SMP requires that a</p>

			habitats within Kittitas County should include consultation with the Washington Department of Fish and Wildlife ...	habitat survey be conducted by a wildlife biologist who is knowledgeable of wildlife habitat in Kittitas County, or by WDFW. The existing language is consistent with the SMA, therefore staff does not recommend approval of this proposed change.
17B.05.020N	Elizabeth Torrey, WDFW	1/5/2021	All references to "Wildlife Habitat Conservation Areas" should be replaced with "Fish and Wildlife Habitat Conservation Areas" or "FWHCA", to be consistent with the official name of the critical area. This includes the title of this section. We request that you <u>amend</u> the following section as indicated: 17B.05.020N la. A proposed use or development is located within two hundred (200) feet of a known or suspected Fish and Wildlife Habitat Conservation Area or within the demonstrated disturbance limits of the FWHCA...	Staff acknowledges that WDFW would like Fish and Wildlife Habitat Conservation Area to be capitalized and recommends approval of this proposed change. The scope of this periodic review does not allow staff adequate time to research how adding the proposed sentence, " or within the demonstrated disturbance limits of the FWHCA..." would affect the rest of the SMP. Therefore, staff does not recommend approval of this proposed change.
17B.05.020Q	Elizabeth Torrey, WDFW	1/5/2021	WDFW suggests that this section reference the updated flood flow model which Kittitas County has previously reported on, in addition to the 1980 FEMA maps which are currently singularly referenced. Additionally, we recommend that the county investigate the First Street Flood Factor	The scope of this periodic review does not allow staff the resources to investigate the First Street Flood Factor program. Staff recommends that the County continue to use FEMA

			program and include or reference this resource in this section as well. The combination of these resources will provide landowners and county planners with a clearer picture of flood risks compared to only using the 1980 FEMA maps.	mapping. Staff does not recommend approval of this proposed change.
17B.05.020Q	Elizabeth Torrey, WDFW	1/5/2021	We request that you <u>add</u> the following language to this section: The director may use additional flood information that is more restrictive or detailed than that provided in the flood insurance study conducted by the Federal Emergency Management Agency (FEMA) to designate frequently flooded areas, including data on channel migration, historical data, high water marks, photographs of past flooding, location of restrictive floodways, maps showing future build-out conditions, maps that show riparian habitat areas, or similar information.	Kittitas County currently utilizes FEMA and will continue to do so. At this time, staff is not recommending approval of this proposed change.
17B.05.050	Elizabeth Torrey, WDFW	1/5/2021	WDFW strongly encourages Kittitas County to adopt setback widths which are consistent with the science provided by Riparian Ecosystems volumes 1 and 2, see comments above. The science tells us that the Riparian Management Zones of Type F and Type S watercourses should be managed consistent with the Site Potential Tree Height methodology. We recommend that the table in section 17B.05.050.bl be modified to reflect this.	Staff acknowledges WDFW's latest publications as a source of Best Available Science. The periodic update is a minor update, and staff recognizes that reviewing the publications and amending the SMP to reflect the Best Available Science, would be beyond the scope of work of this periodic review. Staff does not recommend approval of this proposed change. In the future, during a more comprehensive update of the SMP, staff would work with WDFW to update the

				SMP in accordance with these publications.
17B.05.050	Elizabeth Torrey, WDFW	1/5/2021	We request that you <u>amend</u> the following section as indicated: 17B.05.050 4d: ...Where the hazard is not immediately apparent to the Administrator, the Administrator may require the applicant to submit a hazard tree determination report prepared by a qualified arborist or forester. The Administrator may require the applicant to provide mitigation for loss of ecosystem function caused by tree removal. Mitigation could include dropping the tree in the shoreline area or by "topping" the tree to provide wildlife value as a standing snag.	The proposed amendment is not required under the SMA, therefore staff is not recommending approval of this proposed change.
17B.06.180	Elizabeth Torrey, WDFW	1/5/2021	We request that you <u>add</u> the following language as indicated: 17B.06.180 b.13: All water crossing structures in the shoreline environment are required to obtain a hydraulic project approval (HPA) from the Washington State Department of Fish and Wildlife and follow the 2013 Water Crossing Design Guidelines or other similar approved guidance.	An HPA permit is a WDFW permit for hydraulic projects in or near state waters. It is not a requirement under the SMA. Additionally, the scope of this periodic review does not allow staff the resources to investigate the 2013 Water Crossing Design Guidelines. Staff does not recommend approval of this proposed change.
17B.07.030	Elizabeth Torrey, WDFW	1/5/2021	We request that you <u>strike</u> the following sections as indicated: 17B.07.030 lq iv: This section should be deleted, as Kittitas County does not have any saltwater waterbodies which possess kelp or eelgrass beds.	Kittitas County does not have saltwater waterbodies. Staff recommends approval of this proposed change.
17B.07.030	Elizabeth Torrey,	1/5/2021	We request that you <u>modify</u> the following sections	Staff acknowledges WDFW's

	WDFW		as indicated: 17B.07.030 lq i. and q ii: Sections qi. and qii. should be combined.	concern that these passages be combined. However, section 17B.07.030(2)(q) clearly states that “A public or private project that is designed to improve fish or wildlife habitat or fish passage, when all of the following apply. ” Combining sections qi and qii will not change the meaning or intent of the above section. Therefore, staff does not recommend approval of this proposed change.
17B.07.030	Elizabeth Torrey, WDFW	1/5/2021	We request that you <u>modify</u> the following sections as indicated: 17B.07.030 2 q iv a 2 iii: By the Washington State Department of Ecology Fish and Wildlife as a WDFW-sponsored fish habitat enhancement or restoration project.	Staff acknowledges that the correct agency is WDFW and not Dept. of Ecology. Staff recommends approval of this proposed change.
17B.07.030	Elizabeth Torrey, WDFW	1/5/2021	We request that you <u>modify</u> the following sections as indicated: 17B.07.030 2 q iv a 2 i through 2 vii: This section is missing four other methods in which a FHEP project may be approved. These methods should be included in this section of the SMP for accuracy. The missing methods, taken directly from RCW 77.55.181, are: (vii) Through the department of transportation's environmental retrofit program as a stand alone fish passage barrier correction project; (viii) Through a local, state, or federally approved fish barrier removal grant program designed to assist	Staff recognizes that this code section does not correctly identify all FHEP project methods, and recommends approval of this proposed change.

			<p>local governments in implementing stand-alone fish passage barrier corrections;</p> <p>(ix) By a city or county for a stand-alone fish passage barrier correction project funded by the city or county;</p> <p>(x) Through the approval process established for forest practices hydraulic projects in chapter 76.09 RCW.</p>	
17B.07.030	Elizabeth Torrey, WDFW	1/5/2021	<p>We request that you <u>modify</u> the following sections as indicated:</p> <p>17B.07.030 2 q iv c: A hydraulic project approval (HPA) permit is required for projects that meet the criteria of p.iv(a) of this subsection and are being reviewed and approved under this Section. An applicant shall use a joint aquatic resource permit (JARPA) application form developed by the Office of Regulatory Assistance to apply for approval under this chapter. On the same day, the applicant shall provide copies of the completed application form to the Washington State Department of Fish and Wildlife and to each appropriate local government agency. Local governments shall accept the application as notice of the proposed project. The Washington State Department of Fish and Wildlife shall provide a fifteen-(15)-day comment period during which it will receive comments regarding environmental impacts. Within forty-five (45) days, the Washington State Department of Ecology Fish and Wildlife shall either issue a permit, with or without conditions, deny approval, or make a determination that the review and approval process created by this Section is not appropriate for the</p>	Staff acknowledges that the correct agency is WDFW and not Dept. of Ecology. Staff recommends approval of this proposed change.

			<p>proposed project. Ecology WDFW shall base this determination on identification during the comment period of adverse impacts that cannot be mitigated by the conditioning of a permit. If Ecology WDFW determines that the review and approval process created by this Section is not appropriate for the proposed project, Ecology WDFW shall notify the applicant and the appropriate local governments of its determination. The applicant may reapply for approval of the project under other review and approval processes. Any person aggrieved by the approval, denial, conditioning, or modification of a permit under this Section may formally appeal the decision to the Hydraulic Appeals Board pursuant to the provisions of this chapter.</p>	
Chapter 17B.06	Elizabeth Torrey, WDFW	1/5/2021	<p>We request that you <u>add</u> language to the following sections to indicate that these activities legally require a Hydraulic Project Approval (HPA) permit from WDFW before any work is performed:</p> <ul style="list-style-type: none"> 17B.06.050 Boating facilities, marinas, piers, and docks 17B.06.070 Dredging and dredge material disposal 17B.06.100 Industrial and port development 17B.06.120 Mining 17B.06.150 Shoreline stabilization 	An HPA permit is a WDFW permit for hydraulic projects in or near state waters. It is not a requirement under the SMA. Staff does not recommend approval of this proposed change.
Channel Migration Zone Maps	Elizabeth Torrey, WDFW	1/5/2021	<p>WDFW requests that Kittitas County formally adopt the CMZ maps which have been in draft format since 2012. These maps should also be referenced throughout the SMP document or provided in an additional Appendix and thus made available for reference by planners and the general public. These maps would provide valuable information to the</p>	Staff acknowledges WDFW's request to formally adopt the CMZ maps. However, the scope of this periodic review does not allow staff the resources that such an undertaking would incur. Therefore, staff does not

			general public about how rivers move over time, and would likely be a beneficial source of data to Kittitas County officials as they begin to regulate using the updated SMP code language.	recommend approval of this proposed change at this time.
	Elizabeth Torrey, WDFW	2/9/2021	During the public comment period at the Joint Public Hearing, Elizabeth Torrey requested to talk with Staff about the County's rationale behind decisions on what to include or exclude from her previous comment letter.	Staff advised during the Joint Public Hearing that the comment matrix provided prior to the hearing was a draft and was subject to change. This included an update to the comment matrix with Staff decision-making rationale. At time of writing this, Staff had not met with WDFW.

Bridget Pechtel

From: Benner, Chelsea <cheb461@ECY.WA.GOV>
Sent: Tuesday, March 23, 2021 12:39 PM
To: Bridget Pechtel
Cc: Chandler, Jackie (ECY); Jordan, Lennard (ECY)
Subject: Kittitas County Shoreline Master Program Amendment Initial determination

March 22, 2021

Determination of initial concurrence

Thank you for your February 26, 2021 initial submittal of amendments to the Kittitas County Shoreline Master Program (SMP). Ecology is required under WAC 173-26-104(3)(b) to make an initial determination of consistency with applicable laws and rules.

This serves as Ecology's formal written statement of initial concurrence of your proposed amendments.

As described under WAC 173-26-104(4), the next step in the approval process is for your jurisdiction to formally adopt the amendment through resolution or ordinance and send the final SMP submittal for formal agency approval as outlined in WAC [173-26-110](#).

Please let me know if you have questions or concerns.

Chelsea Benner
Shoreline Planner/ Voluntary Stewardship Program Coordinator
WA State Department of Ecology - CRO
(509) 454-3619

