

# CHAPTER 7. REGULATORY PROGRAMS THAT COMPLEMENT THE SHORELINE MASTER PROGRAM

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Shoreline Master Programs (SMPs) are one of several regulatory programs that determine, influence, and affect the type, intensity, and impact of development along and adjacent to shoreline environments. The adopted codes of Kittitas County (the Kittitas County Code [KCC]), Cle Elum (the Cle Elum Municipal Code [CEMC]), Ellensburg (the Ellensburg Municipal Code [EMC]), and South Cle Elum (the South Cle Elum Municipal Code [SCEMC]) include several additional provisions that work along with the respective SMPs, as well as state and federal programs, to protect shorelines and accommodate appropriate shoreline use and development. This Chapter e summarizes some of the key regulatory programs for the County and the three partnering municipalities that support the overall goals and policies of the respective SMPs.

## 7.1 Local Regulations and Plans

### 7.1.1 Existing Shoreline Plans, Comprehensive Plans, and Zoning

#### *7.1.1.1 Kittitas County (KCC Title 17: Zoning)*

The County's SMP has not been comprehensively updated since 1975. The current shoreline master program is being updated to address current conditions, consider new science, and become better aligned with state laws pertinent local laws.

The County adopted its first comprehensive plan in 1996 and has made several updates to the plan to identify long-range planning goals and policies that address countywide issues. The most recently adopted comprehensive plan is dated December 2011(Kittitas County 2011); this version of the plan is updated from the County's 2006 comprehensive plan<sup>1</sup>. The comprehensive plan sets a series of goals

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<sup>1</sup> The County is currently underway on the Kittitas County Comprehensive Plan Compliance 2012 project, an effort to revise its comprehensive plan to meet state Growth Management Act requirements. After the plan update occurred in 2006, some aspects of the plan were rejected by the Eastern Washington Growth Hearings Board. Since that time, the County has been working to address consistency issues. See the

1 and policies to manage all unincorporated lands throughout Kittitas County, totaling  
2 almost 1.5 million acres (and including all areas of the County's shoreline  
3 jurisdiction).

4 Management areas addressed by the 2011 comprehensive plan include housing,  
5 transportation, capital facilities, utilities, economic development, and recreation and  
6 parks (Kittitas County 2011). The comprehensive plan also includes elements to  
7 manage land use, including broad land use goals and policies, and specific criteria  
8 for managing master planned resorts, major industrial developments, and rural  
9 lands. The plan fulfills the County's responsibilities to manage growth as mandated  
10 by the Growth Management Act (GMA).

11 Collectively, the plan's goals and policies provide guidance for development within  
12 the unincorporated areas of Kittitas County, including areas subject to the shoreline  
13 master program, as well as those lands held by the state.

14 KCC Title 17 establishes zoning districts in the county. These districts, which  
15 generally follow land use designations established in the comprehensive plan,  
16 include the zones shown in Table 7-1 and depicted on Map 5 in Appendix A  
17 (Zoning). Zoning designations are in addition to any shoreline environment  
18 designations established via the SMP. The SMP environment designations and  
19 zoning designations must be consistent with one another.

#### 20 *7.1.1.2 Cle Elum (CEMC Title 17: Zoning)*

21 Cle Elum currently does not have a separate SMP; the City relies on the Kittitas  
22 County SMP adopted in 1975 for shoreline regulations. The SMP update provides  
23 the City with an opportunity to develop a set of policies and regulations for  
24 shorelines that are tailored to the City's needs.

25 The Cle Elum comprehensive plan, adopted in 2007, includes references to planning  
26 policies established by the County. Title 17 of the Cle Elum Municipal Code details  
27 zoning requirements that apply throughout the city, including areas within the  
28 jurisdictional shorelines of the City (Map 5, Appendix A).

#### 29 *7.1.1.3 Ellensburg (EMC Title 13: Zoning)*

30 Ellensburg currently does not have a separate SMP; the City relies on the 1975  
31 Kittitas County SMP for shoreline regulations. The SMP update provides the City

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Compliance 2012 project webpage for more information: <http://www.co.kittitas.wa.us/cds/compliance-2012/>.

1 with an opportunity to develop a set of policies and regulations for shorelines that  
2 are tailored to the City's needs.

3 **Table 7-1. Zoning Designations in Kittitas County Established by KCC Title 17**

Residential Zones		Rural Zones	
R	Residential	R-3	Rural 3
R-2	Residential II	R-5	Rural 5
RR	Rural Residential	<b>Resource Zones</b>	
UR	Urban Residential	A-3	Agricultural 3
<b>Commercial Zones</b>		A-5	Agricultural 5
CF	Commercial Forest	A-20	Agricultural 20
C-L	Limited Commercial	CA	Commercial Agriculture
C-G	General Commercial	CF	Commercial Forest
C-H	Highway Commercial	F-R	Forest and Range
Industry Zones		Other Zones	
I-L	Light Industry	PUD	Planned Unit Development
I-G	General Industry	HT-C	Historic Trailer Court
		L-H	Liberty Historic Zone
		A	Airport Zone
		MPR	Master Planned Resort

4 The Ellensburg Comprehensive Plan was adopted in 2006. The plan establishes local  
5 goals and policies for a variety of management areas, including land use, and  
6 includes references to and integration with planning policies established by the  
7 County's comprehensive plan. Title 13 of the Ellensburg Municipal Code outlines  
8 zoning requirements that apply throughout the city, including areas within the City's  
9 jurisdictional shorelines (Map 5, Appendix A).

10 Ellensburg is currently completing a compressive update of the City's land  
11 development code regulations in order to create consistency with the  
12 comprehensive plan, make the code more user friendly, incorporate current best  
13 practices, and provide for future development that is more energy efficient and  
14 improves walkability in the community. A first draft version of the new land  
15 development code was released for public review and comment in September 2011,  
16 and the City anticipates adoption in 2012. ([http://wa-  
17 ellensburg.civicplus.com/index.aspx?nid=395](http://wa-ellensburg.civicplus.com/index.aspx?nid=395))

#### 1                    *7.1.1.4 South Cle Elum*

2     The Town of South Cle Elum currently does not have a separate SMP but relies on  
3     the Kittitas County SMP for shoreline regulations. Like the other municipalities in  
4     the County, the SMP update process gives the Town a chance to develop an SMP that  
5     is tailored to its specific needs.

6     The Town has established zoning designations that apply to all lands within South  
7     Cle Elum, including areas within shoreline jurisdiction (Map 5, Appendix A).

### 8     *7.1.2        Critical Areas Regulations*

#### 9                    *7.1.2.1 Kittitas County (KCC Title 17A)*

10    The GMA defines the following types of areas as “critical areas”: critical aquifer  
11    recharge areas, flood hazard areas, geologic hazard areas, habitat conservation  
12    areas, and wetlands. Kittitas County critical area regulations apply to all those  
13    unincorporated lands not within city, town, or national parks / forest lands.  
14    Developed in 1994, the code provides protection for critical areas through the use of  
15    buffers, land use restrictions, and building standards.

16    Concurrent with the SMP update, the County is undertaking a comprehensive  
17    review and update of critical areas regulations. As an initial step, the County is  
18    completing a review of best available science to identify necessary protections for  
19    critical areas, including streams, other waters, and wetlands. Based on the results of  
20    the best available science review, KCC Title 17A will be revised. The updated version  
21    of critical areas protections will be integrated into the updated SMP, consistent with  
22    Ecology’s guidelines.

#### 23                    *7.1.2.2 Cle Elum (CEMC Title 18)*

24    The Cle Elum critical areas regulations are adopted as CEMC Title 18. The City’s  
25    critical areas regulations were extensively updated in 2010 by Ordinance 1335. Like  
26    the County, the critical areas standards in Cle Elum were developed consistent with  
27    GMA requirements to provide protection for critical aquifer recharge areas, flood  
28    hazard areas, geologic hazard areas, habitat conservation areas, and wetlands.

29    Cle Elum’s critical areas regulations include general performance standards for all  
30    critical areas (CEMC 18.01.070.A), as well as specific performance standards  
31    pertaining to each type of critical area (CEMC 18.01.070. A through F). Wetlands are  
32    provided with protective buffers ranging in width from 40 feet (for all Category IV  
33    wetlands) to 190 feet (Category I wetlands as determined by meeting ‘bog’ or

1 'Natural Heritage Wetland' criteria). Impacts to wetlands, where allowed and where  
2 avoidance is not feasible, require mitigation. The ratios of impact area to mitigation  
3 area are established by wetland type for a variety of mitigation options.

4 Many streams are regulated by CEMC Title 18 as fish and wildlife habitat  
5 conservation areas when they support federally listed fish species or when  
6 designated as waters of the state. Standards for stream protection do not require  
7 designation of riparian buffers of specific width. Section CEMC 18.01.07.D requires  
8 protection of flora and fauna identified as "protected" within fish and wildlife  
9 habitat conservation areas, as well as use of best management practices to shelter  
10 these areas from construction activities.

### 11 *7.1.2.3 Ellensburg (EMC Title 13, Chapter 13.39)*

12 Ellensburg critical areas regulations are adopted as EMC Chapter 13.39, integrated  
13 into Title 13 (Zoning). The City's critical areas regulations were extensively updated  
14 in 2009 and 2010 by Ordinances 4545 and 4565, respectively. Like the County and  
15 other cities, the critical areas standards in Ellensburg were developed consistent  
16 with GMA requirements to provide protection for critical aquifer recharge areas,  
17 flood hazard areas, geologic hazard areas, habitat conservation areas, and wetlands.

18 Ellensburg's critical areas regulations include specific performance standards  
19 pertaining to each type of critical area (EMC Article III pertains to wetlands, Article  
20 IV frequently flooded areas, and Article VI fish and wildlife habitat conservation  
21 areas). Wetlands are provided with protective buffers ranging in width from 25 feet  
22 (for all Category IV wetlands) to 150 feet (for all Category I wetlands). Impacts to  
23 wetlands, where allowed and where avoidance is not feasible, require mitigation.  
24 The ratios of impact area to mitigation area are established by wetland type for a  
25 variety of mitigation options.

26 Streams are regulated by EMC Title 13.39 as fish and wildlife habitat conservation  
27 areas. Standards for stream protection require designation of riparian buffers of  
28 specific width, ranging from 250 feet for the Yakima River (Type 1 stream) to 50  
29 feet for Type 3 and 4 streams.

### 30 *7.1.2.4 South Cle Elum*

31 **PLACEHOLDER** |

### 7.1.2.5 Integration of Critical Areas Regulations into Shoreline Programs

State law requires that SMPs provide protection for critical areas within shoreline jurisdiction. This was clarified most recently in Engrossed House Bill 1653 (Washington State 2010), which amended the GMA to declare that shoreline master programs must provide a level of protection to critical areas located within shorelines of the state that “assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by Ecology guidelines adopted pursuant to RCW 90.58.060.” Ecology has directed local jurisdictions to incorporate their critical area ordinances into their SMPs according to one of two options:

1. Adopt by reference the critical areas ordinance, citing the ordinance number and date of adoption; or
2. Incorporate the critical areas ordinance into the SMP as either an appendix or part of the body of the SMP.

Ecology’s SMP guidelines state that local governments that plan to integrate critical area regulations into SMPs must review the existing critical area regulations to ensure they meet SMA requirements for critical area protection. Jurisdictions must use “*the most current, accurate and complete scientific and technical information available*” (WAC 173-26-201(2)(a)). For Kittitas County, the concurrent updates to critical areas regulations and review of best available science will provide an opportunity to achieve consistency with Ecology’s SMP guidelines.

### 7.1.3 Other Relevant Local Provisions

In addition to comprehensive plan policies and zoning regulations, Kittitas County and the partnering jurisdictions administer other plans and programs that influence shoreline development, and as such need to be considered and integrated into the SMP updates (Table 7-2).

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**Table 7-2. Other Relevant Local Plans and Programs**

Plan / Program	Description	Code Citations
State Environmental Policy Act(SEPA) / Environmental Policy Regulations	Establishes procedures and policies to implement SEPA. All non-exempt County / City actions require environmental review under SEPA.	County: KCC Title 15 Cle Elum: CEMC 15.28 Ellensburg: Chapter 1.42 South Cle Elum: XXXX
Floodplain Regulations	Establish policies, regulations, and land use controls to promote public health, safety, and general welfare; reduce the annual cost of flood insurance; and minimize public and private losses due to flood conditions in specific areas. In addition to codified floodplain regulations (typically developed to meet consistency with federal and state minimum floodplain management standards), all jurisdictions planning under GMA are required to manage floodplains as critical areas.	County: KCC Chapter 14.08 Cle Elum: CEMC 15.24 Ellensburg: EMC 13.34, Article IV (incorporated into Critical Areas Code) South Cle Elum: XXXX
Historic Preservation	The purpose of historic preservation standards is to provide for the identification, evaluation, and protection of designated historic and prehistoric resources.	County: KCC Title 15 Cle Elum: CEMC 15.22 Ellensburg: NA South Cle Elum: XXXX
Stormwater / Surface Water Management	Stormwater management plans provide for comprehensive management of surface and stormwater for land use proposals and development projects that could have impacts related to water quality, erosion, clearing and grading activities, flood hazard zones, or critical areas. The City of Ellensburg has established stormwater / surface water utilities.	Ellensburg: EMC Chapter 9.100 (establishes Utility)



## 1 7.1.4 Other Regional Plans

### 2 7.1.4.1 Yakima Basin Integrated Water Resource 3 Management Plan

4 In 2009, Ecology and the U.S. Bureau of Reclamation convened representatives from  
5 the Yakama Nation, irrigation districts, environmental organizations, and federal,  
6 state, county, and city governments to form the Yakima River Basin Water  
7 Enhancement Project to help develop a consensus-based solution to the basin's  
8 water problems. The project resulted in an Integrated Water Resource Management  
9 Plan, released in 2011, that will allow for authorization and funding (both federal  
10 and state) to begin implementing projects outlined in the integrated plan.

11 The Integrated Plan has seven elements, all framed around development and  
12 allocation of water sources to support a variety of uses and functions. The elements  
13 include reservoir fish passage; structural and operational changes to existing  
14 facilities; surface water storage; groundwater storage; habitat/watershed  
15 protection and enhancement; enhanced water conservation; and market  
16 reallocation of water. The Final Programmatic Environmental Impact Statement was  
17 recently published for the Integrated Plan. More information is available at the  
18 Ecology project site: <http://www.ecy.wa.gov/programs/wr/cwp/YBIP.html>.

### 19 7.1.4.2 Fish & Wildlife Recovery Planning

20 The Yakima Basin Fish & Wildlife Recovery Board has led development of a recovery  
21 plan for steelhead (2009) and an action plan for bull trout (2012).

22 These recovery planning efforts meet requirements specified by the Endangered  
23 Species Act for federally listed populations, identifying the causes for decline, setting  
24 specific goals for recovery, and identifying actions that will be needed to achieve  
25 goals. More information is available at the Yakima Basin Fish & Wildlife Recovery  
26 Board website (<http://www.ybfwrp.org/>).

## 27 7.2 State and Federal Regulations and Plans

28 Numerous state and federal agencies have regulatory jurisdiction over resources in  
29 the County's shoreline planning area. State and federal regulations apply throughout  
30 Kittitas County and sometimes overlap with existing County regulations and with  
31 each other. Among the most important of these regulations are the federal  
32 Endangered Species Act, the federal Clean Water Act, the federal National Flood  
33 Insurance Program, the federal Rivers and Harbors Act, the state Forest Practices



1 Act, and state Hydraulic Code. Other relevant federal laws include the National  
2 Environmental Policy Act, Anadromous Fish Conservation Act, Clean Air Act, and  
3 Migratory Bird Treaty Act. Other state laws that address shoreline issues include the  
4 State Environmental Policy Act, Salmon Recovery Act, and Water Quality Protection  
5 Act.

6 A variety of agencies (e.g., U.S. Army Corps of Engineers, National Marine Fisheries  
7 Service, U.S. Fish and Wildlife Service, Washington Department of Ecology,  
8 Washington Departments of Natural Resources and Fish and Wildlife) are involved  
9 in implementing these regulations. These agencies typically only review shoreline  
10 permits that involve in-water or overwater work, discharges of fill or pollutants into  
11 the water, or substantial land clearing. Depending on the nature of the proposed  
12 development, state and federal regulations can have a major effect on the design and  
13 implementation of a shoreline project, and on the timing and complexity of the  
14 permit review process.

### 15 7.2.1 Clean Water Act Sections 401 and 404

16 The federal Clean Water Act (CWA) requires states to set standards for the  
17 protection of water quality. It also regulates excavation and dredging in waters of  
18 the U.S., including lakes, streams, and wetlands. Certain activities affecting  
19 shorelines, including all in-water work, require a permit from the U.S. Army Corps of  
20 Engineers (Corps) and/or Washington State Department of Ecology under Section  
21 404 and Section 401 of the CWA, respectively. Construction of bulkheads and other  
22 shoreline revetments, docks, launching ramps, recreational swim beaches, and  
23 shoreline restoration projects all have the potential to require permits under  
24 Section 404 and Section 401. The Corps and Ecology review all projects and require  
25 mitigation for adverse impacts.

### 26 7.2.2 Rivers and Harbors Act Section 10

27 The federal Rivers and Harbors Act requires any project that creates an obstruction  
28 or alteration in, over, or under navigable U.S. waters to obtain a permit. Permits are  
29 issued by the Corps for construction and maintenance of in-water crossings (road or  
30 utility), docks, piers, revetments, and certain other in-water and overwater  
31 structures. Corps standards for Section 10 approval will dictate construction  
32 techniques, materials, and size and bulk allowed for construction of docks, piers,  
33 shoreline armoring, and other in-water or overwater structures. The Corps also  
34 requires mitigation for adverse effects caused by these construction activities.

### 1 7.2.3 Endangered Species Act

2 The federal Endangered Species Act addresses the protection and recovery of  
3 federally listed species. Depending on the listed species, the Act is administered by  
4 either the National Oceanic and Atmospheric Administration - National Marine  
5 Fisheries Service or the U.S. Fish and Wildlife Service (collectively called “the  
6 Services”). Many of Kittitas County’s shoreline waterbodies provide critical  
7 migration, spawning, and rearing habitat for threatened salmon species. Any project  
8 that requires a federal permit, occurs on federal land, or uses federal funding must  
9 be reviewed to ensure that effects of the project will not result in a “take” of listed  
10 species. The Services require projects to implement specific conservation measures  
11 to ensure that listed species are not jeopardized.

### 12 7.2.4 State Hydraulic Code

13 The Washington Department of Fish and Wildlife regulates activities that use, divert,  
14 obstruct, or change the natural flow of the beds or banks of waters of the state and  
15 may affect fish habitat. Projects in the shoreline jurisdiction requiring construction  
16 below the ordinary high water mark could require a Hydraulic Project Approval  
17 (HPA). These projects would include construction of docks, revetments, culverts,  
18 and other in-water structures. Projects creating new impervious surfaces that could  
19 substantially increase stormwater runoff to waters of the state may also require  
20 approval.

### 21 7.2.5 Forest Practices Act

22 The Washington Forest Practices Act of 1974 (RCW 76.09) regulates activities that  
23 relate to growing, harvesting, or processing timber. The Forest Practices Board is an  
24 independent state agency that defines rules and regulations for forest practices. The  
25 rules are designed to protect public and natural resources such as water quality and  
26 fish habitat. By requiring harvesters to implement a reforestation plan, natural  
27 resources are protected while maintaining a viable timber industry. The  
28 Washington Department of Natural Resources (WDNR) administers the publication  
29 of the Forest Practices Board rules, along with guidance and other technical  
30 information. Specific rules involving water quality protection must be approved by  
31 Ecology prior to Forest Practices Board adoption.

32 Operators of lands covered under the Forest Practices Act must file a notice of intent  
33 to convert to a non-forestry use with WDNR. The notice is then forwarded to the  
34 local jurisdiction, which has the authority to approve or deny associated

1 development permits based on compliance with the provisions of the original  
2 application for forest practices.

3 The Forest Practices Act directs counties that are planning under the Growth  
4 Management Act to adopt and enforce ordinances and regulations for forest  
5 practices within their jurisdiction. The Shoreline Management Act defers  
6 management of forest lands to the Forest Practices Act in that harvest activities are  
7 not subject to SMP regulations. Regulations for forest practices within the shoreline  
8 jurisdiction may not be more restrictive than those provided by the Forest Practices  
9 Act, except for the proposed conversion to non-forest land uses (RCW  
10 90.58.030(2)(d)(ii)).

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