

# 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 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 comprehensive plan utilized for this inventory and characterization study 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 and policies to manage all unincorporated lands throughout Kittitas County, totaling almost 1.5 million acres (and including all areas of the County's shoreline jurisdiction).

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

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

KCC Title 17 establishes zoning districts in the county. The zoning districts that implement the 2011 Comprehensive Plan include the zones shown in Table 7-1 and depicted on Map 5 in Appendix A (Zoning). Zoning designations are in addition to any shoreline environment designations established via the SMP. The SMP environment designations and zoning designations must be consistent with one another.

#### *7.1.1.1 Cle Elum (CEMC Title 17: Zoning)*

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

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

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

**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    |

### *7.1.1.2 Ellensburg (EMC Title 13: Zoning)*

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

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

Ellensburg is currently completing a comprehensive update of the City's land development code regulations in order to create consistency with the comprehensive plan, make the code more user friendly, incorporate current best practices, and provide for future development that is more energy efficient and

improves walkability in the community. A first draft version of the new land development code was released for public review and comment in September 2011. A second and final draft will be released in June 2013 which will begin the formal review and process. It is anticipated that formal adoption will occur in late 2013 (Mike Smith, personal communication).

### *7.1.1.3 South Cle Elum*

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

The South Cle Elum Comprehensive Plan was originally adopted in 1995 and revised in 2007 and 2011. The plan establishes goals and policies for a variety of management areas, including land use, housing, and transportation. Chapter 17 of the South Cle Elum Municipal Code outlines zoning requirements that apply throughout the city, including areas within the Town's jurisdictional shorelines (Map 5, Appendix A).

## 7.1.2 Critical Areas Regulations

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

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

Concurrent with the SMP update, the County is undertaking a comprehensive review and update of critical areas regulations. As an initial step, the County is completing a review of best available science to identify necessary protections for critical areas, including streams, other waters, and wetlands. Based on the results of the best available science review, KCC Title 17A will be revised. It is anticipated that KCC Title 17A will occur in 2014 after Ecology approval of the County's updated SMP.

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

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

Cle Elum's critical areas regulations include general performance standards for all critical areas (CEMC 18.01.070.A), as well as specific performance standards pertaining to each type of critical area (CEMC 18.01.070. A through F). Wetlands are provided with protective buffers ranging in width from 40 feet (for all Category IV wetlands) to 190 feet (Category I wetlands as determined by meeting 'bog' or 'Natural Heritage Wetland' criteria). Impacts to wetlands, where allowed and where avoidance is not feasible, require mitigation. The ratios of impact area to mitigation area are established by wetland type for a variety of mitigation options.

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

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

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

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

Streams are regulated by EMC Title 13.39 as fish and wildlife habitat conservation areas. Standards for stream protection require designation of riparian buffers of specific width, ranging from 250 feet for the Yakima River (Type 1 stream), 85 feet for Type 2 streams, and 50 feet for Type 3 and 4 streams.

#### *7.1.2.4 South Cle Elum*

The South Cle Elum critical areas regulations (SCEMC Chapter 16.10) were adopted in 1995. The critical areas regulations Cle Elum were developed consistent with GMA requirements to provide protection for critical aquifer recharge areas, flood hazard areas, geologic hazard areas, habitat conservation areas, and wetlands.

South Cle Elum's critical areas regulations include specific performance standards pertaining to each type of critical area (Section 150 pertains to wetlands, Section 250 to frequently flooded areas, Section 280 to geologically hazardous areas, Section 340 to fish and wildlife habitat conservation areas, and Section 410 to aquifer recharge areas). Wetlands require protective buffers ranging in width from 25 to 100 feet for Category IV wetlands to 100 to 200 feet for Category I wetlands, depending upon the overall intensity of the proposed use and other factors. Impacts to wetlands require mitigation. The ratios of impact area to mitigation area are established by wetland type for a variety of mitigation options.

Riparian habitats (i.e. the Yakima River) are regulated by SCEMC 16.10.350 as fish and wildlife habitat conservation areas. Riparian habitats require protective buffers ranging in width from 100 to 325 feet, depending on the overall intensity of the proposed use and other factors.

#### *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)).

### 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).

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

| <b>Plan / Program</b>   | <b>Description</b>   | <b>Code Citations</b>   |
|---|--|---|
| 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<br>Cle Elum: CEMC 15.28<br>Ellensburg: Chapter 1.42<br>South Cle Elum: SCEMC Chapter 16.05   |
| 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<br>Cle Elum: CEMC 15.24<br>Ellensburg: EMC 13.34, Article IV (incorporated into Critical Areas Code)<br>South Cle Elum: SCEMC 16.10.260 |
| 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<br>Cle Elum: CEMC 15.22<br>Ellensburg: Chapter 1.45<br>South Cle Elum: (none)  |
| 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)   |

## 7.1.4 Other Regional Plans

### *7.1.4.1 Yakima Basin Integrated Water Resource Management Plan*

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

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

### *7.1.4.2 Fish & Wildlife Recovery Planning*

The Yakima Basin Fish & Wildlife Recovery Board has led development of a recovery plan for steelhead (2009) and an action plan for bull trout (2012). The Yakima Subbasin Plan (2005) guides investment in fish and wildlife mitigation projects by the Bonneville Power Administration.

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

## 7.2 State and Federal Regulations and Plans

Numerous state and federal agencies have regulatory jurisdiction over resources in the County's shoreline planning area. State and federal regulations apply throughout Kittitas County and sometimes overlap with existing County regulations and with each other. Among the most important of these regulations are the federal

Endangered Species Act, the federal Clean Water Act, the federal National Flood Insurance Program, the federal Rivers and Harbors Act, the state Forest Practices Act, and state Hydraulic Code. Other relevant federal laws include the National Environmental Policy Act, Anadromous Fish Conservation Act, Clean Air Act, and Migratory Bird Treaty Act. Other state laws that address shoreline issues include the State Environmental Policy Act, Salmon Recovery Act, and Water Quality Protection Act.

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

## 7.2.1 Clean Water Act Sections 401 and 404

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

## 7.2.2 Rivers and Harbors Act Section 10

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

### 7.2.3 Endangered Species Act

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

### 7.2.4 State Hydraulic Code

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

### 7.2.5 Forest Practices Act

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

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

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

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