

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED AMENDMENT OF DOUGLAS COUNTY
SHORELINE MASTER PROGRAM**

SMP Submittal accepted October 9, 2020, Ordinance No. TLS 20-07-19C
Prepared by Department of Ecology on November 18, 2020

Brief Description of Proposed Amendment

Douglas County has submitted to the Washington State Department of Ecology (Ecology) four proposed locally initiated amendments to their Shoreline Master Program (SMP). The master program submittals propose to modify regulations related to building setbacks, definitions, mitigation requirements, and Fish and Wildlife Habitat Conservation Area buffers. This will be the third locally initiated amendment since Douglas County completed their comprehensive SMP update in 2009.

FINDINGS OF FACT

Need for amendment

Douglas County was an early adopter when jurisdictions were mandated to comprehensively update their Shoreline Master Programs. The county's SMP went into effect on August 27, 2009. Over the last ten years through implementation of the SMP and new knowledge regarding the semi-arid environments which cover the majority of Douglas County, the county determined that the existing provisions in the SMP did not fit the specific landscape and could be improved. In 2018, the county convened a technical review of best available science pertaining to the county's shoreline buffer functions and values, as well as the Best Available Science regarding buffer widths and characteristics necessary to provide these functions in the context of the county's semi-arid conditions. This review, performed by Grette Associates LLC, resulted in the technical report titled *Best Available Science Review for Riparian and Wetlands Areas in Douglas County*.

SMP provisions to be changed by the amendment as proposed

The following sections of the existing county SMP are proposed for change:

1. Revisions to Section 5.13 Shoreline Bulk and Dimensional Standards. Adds language that prohibits the disturbance of the building setback during construction activities, and removes the requirement to maintain a building setback from critical area buffers when vegetation within buffer is already disturbed. The rationale behind structural setbacks is to protect buffers from construction activities and potential mitigation requirements resulting from buffer impacts. Where vegetation within regulatory buffers is already disturbed with little habitat function, structural setbacks are unnecessary, and elimination of this requirement will improve the administration and effectiveness of the SMP
2. Revisions to Chapter 8 Definitions to include the following definitions for 'disturbed vegetation' and 'road':

“Disturbed vegetation” means areas, particularly within wetland and riparian buffers, where native vegetation has been and continues to be disturbed as part of a legally established recreational or residential development, including associated site improvements, or prior agricultural use, resulting in vegetated area that provides minimal habitat function or value. Typical disturbances include mowed lawn areas, landscaped areas, recreational uses, previous agricultural uses that are currently mowed, and maintained upland grasses and weedy species.

“Road” means an improved and maintained public or private road that provides vehicular circulation or principal means of access to abutting properties and may also include provisions for public utilities, pedestrian walkways, public open space and recreation areas, cut and fill slopes, and drainage.

3. Revisions to Appendix H, Chapter 2 Wetlands, allows the administrator, at the recommendation of a qualified professional, to increase the required monitoring up to 10 years after the initial mitigation installation and require appropriate changes to the mitigation plan. Language has also been added that specifies when monitoring and monitoring reports are required, and where they shall be submitted. The additional criteria were added to address the enforcement of mitigation implementation such as mechanisms for sureties and criteria for additional monitoring cycles (years) if mitigation plantings are not installed or if mitigation site performance fails to meet interim performance objectives.

The amendment also adds a provision where building setbacks from wetland buffers shall not apply where existing vegetation within the critical area buffer is part of a legally established recreational or residential development, or prior agricultural use.

4. Revisions to Appendix H, Chapter 3, Fish and Wildlife Habitat Conservation Areas. This amendment allows the administrator, at the recommendation of a qualified professional, to increase the required monitoring up to 10 years after the initial mitigation installation and require appropriate changes to the mitigation plan.

It also includes conditions where building setbacks from buffers are not applicable where existing vegetation within the critical area buffer is part of a legally established recreational or residential development, or prior agricultural use.

It includes conditions where existing development ends buffer requirements. Where a legally established road, railway, parking area, or other type of continuous impervious development crosses or extends along a shoreline or critical area buffer and is wider than 20 feet, the Administrator may approve a modification of the minimum required buffer width to the waterward edge of the improved continuous development provided the upland side of the continuous development area does not provide shoreline buffer function.

Lastly, the amendment removes the Zone 1-Zone 2 approach to buffers and provides the following riparian buffer requirements organized by shoreline environment designation.

Environment Designations	
Perennial and intermittent streams in all environment designations	50 feet
High Intensity	50 feet
Rural Conservancy, Shoreline Residential, Urban Conservancy	75 feet
Natural	100 feet

Within the county’s Columbia River shoreline environment designations, the bulk of the environments are proposed to be regulated with 75 foot or 100 foot buffers. The High Intensity environment is one of two exclusively urban designations. The vast majority of this designation is located within the city limits of Rock Island and East Wenatchee and therefore not affected by this amendment. Out of the 155 miles of river shoreline in Douglas County there is approximately 1.25 miles designated High Intensity in county jurisdiction, or approximately under 2%. Riparian buffers are only one tool that exist in the toolbox that the county uses to protect existing ecological functions and ecosystem wide processes. In locations where shoreline conditions are more complex and other critical areas are present, those protections overlay the riparian protection.

Amendment History, Review Process

The county indicates the proposed SMP amendments originated from a local planning process that began in 2018 when they initiated a review of the Best Available Science. The county involved the public in accordance with WAC 173-26-104 to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines.

The county consulted with Ecology and solicited comments throughout the review process.

The county held a joint local/state comment period on the proposed amendments following procedures outlined in WAC 173-26-104. The comment period began on October 17, 2019 and continued through November 18, 2019. A public hearing before the Planning Commission was held on January 8, 2020.

County provided notice to local parties. The original notice for the comment period, DNS, and hearing tentatively set the date of the hearing for December 11, 2019. This date was changed to January 8, 2020, so a second notice went out for the new public hearing date. Affidavits of publication provided by the county indicate notice of the hearing was published on December 26, 2019.

Ecology distributed notice of the joint comment period to state interested parties on October 15, 2019. Notices for comment went out to the Yakama Tribe and the Collville Tribe on the same date. No comments on the proposed amendments were received from either tribe.

Futurewise commented that the proposed amendments will not adequately protect water quality and fish and wildlife habitat and that the county should adopt science-based buffers as recommended by the Washington State Department of Fish and Wildlife (WDFW).

WDFW commented that the analysis of arid land riparian areas provided by Douglas County does not represent an appropriate characterization of the latest in peer reviewed, best available science. WDFW's concerns regarding the proposed amendments were generally that they would result in loss of protective buffers. WDFW cited their Priority Habitats and Species (PHS) publication entitled *Management Recommendations for Washington's Priority Habitats: Riparian* (Knutson and Naef 1997) and their update of that document, which consists of two volumes: *Riparian Ecosystems, Vol. 1: Science Synthesis and Management Implications* (Quinn et al. 2018; hereafter Vol. 1) and *DRAFT Riparian Ecosystems, Vol. 2: Management Recommendations* - (Windrope et al. 2018). In their comment letter, WDFW noted that these documents are considered the "the most current, accurate, and complete scientific and technical information available."

In order to provide additional time to address WDFW's comments submitted on November 18, 2019, Douglas County's Planning Commission agreed to extend the hearing date, originally scheduled for Dec 11, 2019, to January 8, 2020. At the request of WDFW, the county set up a meeting with county planners, Ecology staff, consultants from Anchor QEA and WDFW to discuss the issues raised in WDFW's comment letter. The meeting was held on December 13, 2019. The meeting was positive and constructive, all parties gained a mutual understand of the other's concerns. It was generally accepted that the WDFW's provided Priority Habitats and Species documents were valid scientific documents, however, after discussion of the Douglas County specifics it was determined that WDFW's original concerns did not constitute any SMA inconsistency. It was generally agreed upon, by the parties involved in this meeting, that no additional changes to the County's proposed amendment were necessary. At the January 8, 2020, public hearing, WDFW's Carmen Andonaegui, Region 2 Habitat Program Manager, provided oral comments stating that after the December 13, 2019, meeting, WDFW has a better understand the county's SMP amendments and was no longer opposed to the proposed changes.

The county's full response to comment matrix was submitted to Ecology as part of the initial and final submittal of this SMP amendment package. Ecology considered the comments received by Futurewise and WDFW in conjunction with the county's responses. This consideration was further informed by the December 13, 2019 multi-agency meeting.

The proposed SMP amendments package was received by Ecology for initial state review and verified as complete on March 5, 2020. After review of the county's initial submittal package, Ecology determined that the submitted proposed changes matched the amendments which Ecology had discussed with the county throughout the joint process. Ecology further considered comments received, found amended SMP remains consistent with the SMA and Guidelines, and determined that the comments and concerns did not warrant any modifications to the county's proposed amendments.

Ecology prepared an initial determination that the amendment is consistent with the policy of the SMA and applicable guidelines. Ecology requested no changes to the locally initiated

amendments. A written statement of initial concurrence was sent to the county on March 10, 2020.

With passage of Ordinance #TLS 20-07-19C, on September 29, 2020, the county authorized staff to forward the proposed amendments to Ecology for formal approval.

The submittal package was received on October 9, 2020. The final submittal was determined complete on October 22, 2020. This began Ecology's final formal review and decision process per WAC 173-26-120 for this locally initiated SMP amendment.

Consistency with Chapter 90.58 RCW

The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3), (4) and (5). County has also provided evidence of its compliance with SMA procedural requirements for amending their SMP contained in RCW 90.58.090(1) and (2).

Consistency with applicable guidelines (Chapter 173-26 WAC, Part III)

The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions).

Consistency with SEPA Requirements

The county submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update

Ecology also reviewed reports, studies, map portfolios and data prepared for the county in support of the SMP amendment. These documents include:

1. *Best Available Science Review for Riparian and Wetlands Areas in Douglas County*, prepared by Grette Associates LLC, September 2018

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the county proposed amendments are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions). This includes a conclusion that approval of the SMP amendments will assure that no net loss of shoreline ecological functions will result from implementation of the amended master program (WAC 173-26-201(2)(c)).

Ecology concludes that those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5)).

Ecology concludes that the county has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents. Ecology concludes that the county has

complied with the requirements of RCW 90.58.130 and WAC 173-26-090 and WAC 173-26-104 regarding public and agency involvement in the SMP review and amendment process.

Ecology concludes that the county has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the county SMP submittal to Ecology was complete pursuant to the requirements of WAC 173-26-090, WAC 173-26-104, and WAC 173-26-110.

Ecology concludes that it has complied with the procedural requirements for review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-104, WAC 173-26-110, and WAC 173-26-120.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules. Ecology approval of the proposed amendments is effective 14 days from Ecology's final action approving the amendment.