

**ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED LIMITED UPDATES TO THE DOUGLAS COUNTY
SHORELINE MASTER PROGRAM**

SMP submittal accepted January 8, 2015
Douglas County Ordinances - TLS 14-52
Prepared by Lennard Jordan on September 29, 2015.

Brief Description of Proposed Amendments:

Douglas County has submitted to the Washington State Department of Ecology (Ecology) four proposed limited amendments to their Shoreline Master Program (SMP). The updated master program submittals propose to modify regulations related to residential nonconformities, critical area buffers and setbacks, and the definition of appurtenant structures. Douglas County completed a comprehensive SMP update in 2009 and began working on a set of limited amendments in 2013, the first of those amendments were approved by Ecology on February 18, 2015. These four additional amendments were drafted by County staff and a Board of County Commissioner (Board) appointed citizen work group for submittal to Ecology.

Decision Summary

Proposed amendment	Consistent with RCW 90.58.020 – State Shoreline Policy	Consistent with WAC 173-26-171 - 251 – SMA Guidelines	Ecology decision
Amendment #1 – Revisions to Section 1.1, Prior Development and nonconformance	Yes	Yes	Approved as submitted
Amendment #2 – Revisions to Section 5.12, Residential nonconforming uses	Yes	Yes	Approved as submitted
Amendment #3 – Revisions to Section 5.13, Shoreline Bulk and Dimensional Standards	No	No	Not approved
Amendment #4 – Revisions to Section 8, definition of appurtenant structure	Yes	Yes	Approved as submitted

FINDINGS OF FACT

Need for amendment. The proposed amendments address issues that have come up as the County has implemented its SMP which was comprehensively updated and became effective August 27, 2009.

Since the adoption of the Douglas County SMP, County staff have identified amendments intended to facilitate administration of the Master Program.

Proposed SMP provisions to be changed by the amendments:

1. Section 1.1, Prior Development and nonconformance – creates exception for residential nonconforming use provisions.
2. Section 5.12, Residential nonconforming uses – creates provisions for residential nonconforming uses.
3. Section 5.13, Shoreline Bulk and Dimensional Standards – creates buffers and setbacks for existing lots within shoreline jurisdiction.
4. Section 8, definition of appurtenant structure – creates new definition.

Amendment History and Review Process: Douglas County originally proposed six minor SMP amendments to Ecology. The County chose to divide these amendments into two groups for processing. Ecology approved the first group of amendments on February 18, 2015. The Board organized a shoreline work group on May, 5, 2014, to review and recommend the additional SMP amendments. The shoreline work group completed their work on July 17, 2014, and recommended the four subject amendments to the County’s SMP. The Douglas County Planning Commission held a public hearing the November 12, 2014, and transmitted a recommendation of approval to the Board of County Commissioners. The Board accepted the findings of the Planning Commission and with passage of Ordinance TLS 14-12-52B, on December 9, 2014, the Board authorized staff to forward the adopted amendments to Ecology for approval.

The second group of amendments was submitted to Ecology for review and approval on January 8, 2015. The submittal materials were determined to be complete and a completeness letter was sent to the County on February 9, 2015. In compliance with the requirements of WAC 173-26-120, notice of the state comment period was distributed to state agencies and interested parties identified by the County on March 23, 2015. The state comment period began on March 30, 2015, and continued through April 30, 2015. Approximately 50 comments were received on the proposed SMP amendments. Ecology sent a summary of the issues raised during the comment period to the County on May 21, 2015. Ecology requested that Douglas County review the issues raised by the public, interested parties, groups, agencies, and tribes and provide a written response as to how their proposal addresses the identified issues consistent with RCW 90.58.020 and the applicable guidelines. On July 15, 2015, the County submitted to Ecology its responses to comments received during the state comment period (see Attachment B, Summary of Public Comments).

Consistency review 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). The 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 review with “applicable guidelines” (Chapter 173-26 WAC, Part III): The proposed amendments have 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) and included review of a SMP Submittal Checklist, which was completed by the County.

Consistency review 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 on August 5, 2014. Notice of the SEPA determination was published in the Wenatchee World on August 7, 2014. Ecology did not comment on the DNS.

Summary of Issues Raised During The Public Comment Process:

Generally, comments received were simply voicing support for the proposed amendments and requested approval of the amendments. Ecology provided a summary of issues raised during the comment period to the County. On July 15, 2015, Ecology received the County's responses to issues identified in the summary of public comments. Attachment B is Ecology's Summary of Public Comments with Douglas County's responses.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Based on communications with County staff, coordination with the Board appointed shoreline work group, and consideration of public comments and County responses, (attachment B), the following provides a general summary of issues relevant to Ecology's final decision on the County's amendments.

Amendment #1 – The proposed amendment to Section 1.11, Prior development and nonconformance, provides an exception to the provisions of WAC 173-27-080 for residential development. Provisions addressing nonconforming residential uses are further addressed in amendment #2 below.

Amendment #2 – The proposed amendment to 5.12, Residential nonconforming uses, creates a set of provisions for reviewing residential uses and structures that is different than those provisions found in WAC 173-27-080. The revision to Section 5.12 adds new standards specific to nonconforming residential uses and structures that do not meet the dimensional standards of the current SMP and allows them to be considered conforming. The State Legislature in 2011 approved SSB 5451, which allows previously nonconforming residential uses and structures to be considered conforming. The proposed amendment is consistent with RCW 90.58.620 which allows amended master programs approved by Ecology after September 1, 2011 to include these nonconforming residential provisions.

Amendment #3 – The shoreline work group drafted the revisions to Section 5.13, Shoreline Bulk and Dimensional Standards, to include non-specific critical area and buffer standards for lots within subdivisions and short-subdivisions in all shoreline jurisdictions, in response to concerns regarding the vesting of buffers on subdivided lands.

The language has been proposed by the work group in an effort to preserve or reverse buffer and setback standards for land divisions in shoreline jurisdiction. However, as written, the proposed language is overly broad in its application. It is unclear what, if any buffer or setback standards would apply to shoreline development on parcels subject to this proposal. Generally, the proposed language subjects lots within shoreline jurisdiction to the critical areas setback and buffer dimensional standards that were in effect at the time of subdivision, yet no information has been provided describing those past buffers standards. The staff report provided no analysis of the number of lots in the County that

would be affected by the proposal. The County did not provide any finding in the staff report that the proposed amendment would not reduce shoreline ecological functions.

Ecology is responsible for overseeing the SMP development process and ensuring approved SMPs are consistent with the state requirements. According to the WAC 173-26, Part III, SMP Guidelines, master programs shall address ecological function associated with applicable ecosystem-wide processes, and shall contain policies and regulations to assure no net loss of ecological functions to sustain shoreline natural resources. To achieve these standards while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply specific provisions to address the impacts of specific common shoreline uses, development activities and modification actions. Through administration of appropriate development standards, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist (WAC 173-26-201(2)(c)).

Limited master program amendments may be approved by the department provide the department concludes that master program guidelines analytical requirements and substantive standards have been satisfied where they reasonably apply to the limited amendment. For all master program amendments, local government must demonstrate that the amendment will not result in a net loss of shoreline ecological functions (173-26-201(1)(c)(vi)).

Local governments should identify scientific information on which the master program provisions are based; and identify any risks to ecological functions associated with master program provisions (173-26-201(2)(a)).

The draft amendment would reduce or eliminate existing buffer standards from an unknown number of lots within shoreline jurisdiction. The County has not provided an assessment of the proposal's net effect on shoreline ecological functions associated with the proposed amendment. Ecology cannot approve SMP amendments without an assessment of the associated environmental impacts.

In addition to the uncertainty of the environmental effects of the proposed language, the draft amendment appears to conflict with Washington State statutes addressing vesting right with regards to divisions of land. The process and timelines by which land divisions may occur in Washington is governed by state statute, 58.17 RCW. Local governments are charged with processing subdivision proposals and must adopt associated ordinances and procedures in conformity with state requirements. Local governments are allowed to extend the period of time for filing a final plat once a subdivision has received preliminary approval from the local government. RCW 58.17.140 allows local government to extend the time period for filing a final plat if they adopt by ordinance procedures to do so.

RCW 58.17.170 establishes the time period after final plat approval under which the plat approval is vested. Approved final plats can be developed according to "the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval." The vesting period is ten years, if the date of final plat approval was prior to January 1, 2008 and the plat is not subject to the Shoreline Management Act (SMA). Plats that are subject to the SMA are vested for seven years.

Once a plat has been finalized, that plat is vested for a period of time as determined by RCW 58.17.170. There is no enabling legislation that specifically allows the local government to extend the time a final plat is vested. Ecology's understanding is that local governments are effectively preempted by state statute from extending final plat vesting timelines; that authority is reserved exclusively for the state.

After the final plat vesting period has expired, lots become divested; development of the plat would be subject to all applicable statutes, ordinances, and regulations that had been enacted or amended since final plat approval. It appears the proposed SMP amendment would create an exception to this statutory scheme that appears to exceed county's authority.

Amendment #4 – The proposed amendment to Section 8, Definitions, simply changes the definition of “appurtenant” to “appurtenant structure” to add clarity to the intended meaning.

CONCLUSIONS OF LAW

Amendments 1, 2, and 4:

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County's proposed limited SMP amendments of Douglas County Sections 1.11, Prior Development and Nonconformance; Section 5.12, Residential Nonconforming uses; Section 8, Definitions;, 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). Ecology concludes that the SMP and these proposed SMP amendments contain sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the updated master program (WAC 173-26-201(2)(c)).

Amendment 3:

After review by Ecology on the complete record submitted, Ecology concludes that the County's proposed amendment to Section 5.13, Shoreline Bulk and Dimensional Standards, is inconsistent 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). Ecology concludes that approval of the proposed SMP amendment would not assure no net loss of ecological functions. Ecology concludes that each SMP must be evaluated for consistency with (WAC 173-26-201(2)(c)) and that without reasonably applicable analysis of the proposed amendment, effective evaluation cannot occur. Ecology concludes that other non-specific outdated buffer and setback standards cannot be relied on to protect shoreline functions.

After review by Ecology of the complete record submitted and all comments received, 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 regarding public and agency involvement in the SMP update and amendment process.

Ecology concludes that the County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

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

Ecology concludes that the County's limited SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

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

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed limited amendments to Douglas County Sections 1.11, Prior Development and Nonconformance (Amendment #1); Section 5.12, Residential Nonconforming uses (Amendment #2); Section 8, Definitions (Amendment #4) 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.

Ecology has determined the proposed limited amendment to Douglas County Section 5.13, Shoreline Bulk and Dimensional Standards (Amendment #3), is inconsistent with Shoreline Management Act policy, the applicable guidelines and implementing rules and is therefore not approved.