

## STAFF REPORT

**TO: DOUGLAS COUNTY PLANNING COMMISSION**  
**FROM: DOUGLAS COUNTY TRANSPORTATION & LAND SERVICES STAFF**  
**DATE: OCTOBER 29, 2014**

### REQUESTED ACTION

Formulate a recommendation to the Board of Commissioners regarding draft limited amendments to the Douglas County Regional Shoreline Master Program (SMP). The limited amendments are enclosed as Exhibit A of this staff report:

- Revisions to Section 1.11 Prior development and nonconformance to ensure consistency with the proposed amendments to Section 5.12 Residential;
- Revisions to Section 5.12 Residential to include nonconforming standards for residential uses and structures and to recognize legally established structures that do not meet the bulk and dimensional standards of the Shoreline Master Program as conforming;
- Revisions to Section 5.13 Shoreline bulk and dimensional standards to include specific critical area and buffer standards for lots within subdivisions and short subdivisions in all shoreline environment designations;
- Revision to Section 8 Definitions to change definition number 17 from "appurtenant" to "appurtenant structure."

### ENVIRONMENTAL REVIEW

On August 7, 2014 Douglas County issued a Determination of Non-significance pursuant to WAC 197-11 for the draft amendments.

### PUBLIC PROCESS

Notice for the workshops and the public hearing were e-mailed to the individuals on the interested parties list. Notice for the 60-day comment period and public hearing were published in the *Wenatchee World* and *Empire Press*. The draft amendments were made available on the Douglas County Website and at the Douglas County Public Services Building in East Wenatchee. The public review of draft amendments followed the timeline below:

1. August 7, 2014 - Douglas County submitted the limited amendments to the Washington State Departments of Ecology and Commerce in accordance with WAC 173-26-100 and RCW 36.70A.106.
2. August 7, 2014 - Douglas County submitted environmental documentation to the Washington State Department of Ecology SEPA Register and issued threshold determinations.
3. September 10, 2014 – Douglas County Planning Commission Workshop.
4. October 30, 2014 - Notice of Public Hearing published in the *Wenatchee World* and *Empire Press*.
5. November 12, 2014 – Douglas County Planning Commission Public Hearing.

## **AGENCY AND PUBLIC COMMENTS:**

The public, agency, and environmental review was initiated on August 7, 2014 and concluded on October 6, 2014. A copy of comment letters and comment response matrix are attached as Exhibit B of this staff report.

## **POLICY ANALYSIS:**

### Overview of the Shoreline Management Act and the Douglas County Regional Shoreline Master Program.

Sections 1.1 through 1.3 of the Regional Shoreline Master Program outline the Shoreline Management Act, the scope of the regional plan, and purpose and intent of the regional plan.

#### **1.1 The Shoreline Management Act**

The Washington State Shoreline Management Act (SMA; the Act) was passed by the Legislature in 1971 and adopted by a vote of Washington's citizens in a 1972 referendum (RCW 90.58). The goal of the Shoreline Management Act is "to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines." The Act also recognizes that "shorelines are among the most valuable and fragile" of the state's resources.

The Act provides for the management and protection of the state's shoreline resources by requiring planning for their reasonable and appropriate use. The area designated to be regulated under the Act generally includes lands within two hundred (200) feet of the shoreline.

The Shoreline Management Act establishes a balance of authority between local and state government. Cities and counties have the primary review responsibility for development along their shorelines, and the state (through the Department of Ecology) has authority to review local master programs and local shoreline development permit decisions.

#### **1.2 Scope and jurisdiction of the Douglas County Regional Shoreline Master Program**

The SMA applies to all 39 counties and more than 200 cities of Washington State that have "shorelines of the state" (see RCW 90.58.030(2)) within their jurisdictional boundaries. These shorelines are defined as:

- All marine waters;
- Streams with greater than 20 cubic feet per second mean annual flow;
- Lakes 20 acres or larger;
- Upland areas called shorelands that extend 200 feet landward, in all directions on a horizontal plane, from the edge of the ordinary high water mark of these waters; and
- The following areas when they are associated with one of the above:
  - Wetlands and river deltas; and

- Floodways and contiguous floodplain areas landward 200' from such floodways.

The Act recognizes that certain waters are so important to citizens as to necessitate a special status for classification and protection. These are "shorelines of statewide significance." WAC 173-18-040 further clarifies the characteristics of streams and rivers in Eastern Washington that are considered "shorelines of statewide significance." The Columbia River is a shoreline of Statewide Significance. The SMA also states that "the interests of all the people shall be paramount in the management of shorelines of statewide significance." These shorelines of statewide significance are defined in the SMA as:

- Pacific Coast, Hood Canal and certain Puget Sound shorelines;
- All waters of Puget Sound and the Strait of Juan de Fuca;
- Lakes or reservoirs with a surface area of 1,000 acres or more;
- Larger rivers (1,000 cubic feet per second or greater for rivers in Western Washington, 200 cubic feet per second and greater east of the Cascade crest);
- Wetlands associated with any of the above; and
- Those "shorelands" associated with the water bodies identified above.

Specifically in Eastern Washington, the Act lists the following criteria for defining "shorelines of statewide significance":

Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer.

Douglas County, and the Cities of Bridgeport, East Wenatchee and Rock Island, the participating jurisdictions, originally adopted a regional shoreline master program in 1975, which was not revised, with the exception of the City of Bridgeport in the early 1990s, until now (2008). Within the County there were 16 lakes, 6 reservoirs, the Columbia River (which contains 5 of those reservoirs) and Douglas Creek/Rattlesnake Creek drainages within the Moses Coulee watershed that were listed under the Shoreline Management Act. The jurisdictional areas of this updated regional program have changed. A set of maps is included in Chapter 9 that depict the jurisdictional areas. Those removed are included at the end of Appendix A.

### **1.3 Purpose and intent**

The purpose and intent of this SMP are to:

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 Douglas County and its applicable jurisdictions;

2. To manage shorelines in a positive, effective and equitable manner; and
3. To further assume and carry out the responsibilities established by the Act for the participating jurisdictions, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the State:

It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the State's shoreline. Alterations of the natural condition of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the State, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the State, and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the State.

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use the water.

Douglas County and the Cities of Bridgeport, East Wenatchee, and Rock Island each adopted the Regional Shoreline Master Program in 2008. The Department of Ecology reviewed the Douglas County RSMP, made required changes, recommended other changes, and issued their approval letter in the summer of 2009. The effective date of the Douglas County Regional Shoreline Master Program for the County is August 27, 2009.

**Limited amendments to a Shoreline Master Program and review process.**

The Shoreline Management Act implementing guidelines in WAC 173-26 outlines the process to adopt or amend a shoreline master program. A limited amendment to a shoreline master program may be approved by the Department of Ecology if found to meet the six specific criteria (i-vi) as provided for in WAC 173-26-201(1)(c):

(c) Limited master program amendments may be approved by the department provided the department concludes:

- (i) The amendment is necessary to:
  - (A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;
  - (B) Include a newly annexed shoreline of the state within the local government jurisdiction;
  - (C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;
  - (D) Improve consistency with the act's goals and policies and its implementing rules; or
  - (E) Correct errors or omissions.
- (ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;
- (iii) The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines;
- (iv) The amendment is consistent with all applicable policies and standards of the act;
- (v) All procedural rule requirements for public notice and consultation have been satisfied; and
- (vi) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the limited amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

The purpose of the limited amendment process is for local jurisdictions to address minor changes as a result of master program implementation, changes in legislation, changes due to annexations, implement master program consistency with the Shoreline Management Act, or to correct errors. Many issues relating to shorelines are very complex due to their basis in scientific studies and analysis.

### **PROJECT ANALYSIS:**

In September of 2013, Douglas County and the cities of Bridgeport and East Wenatchee initiated a limited amendment to the Douglas County Regional Shoreline Master Program. During the public workshops and hearings of the Planning Commission and Board of County Commissioners, numerous comments were made regarding shoreline matters that were not within the scope of the limited amendments. The Board of Commissioners at their April 2014 Hearing stated that a committee of citizens would be formed to review the concerns brought up by the citizens during the amendment process. The Board of County Commissioners formed the committee in May 2014. The committee was comprised of a County Commissioner and six shoreline property owners. Technical assistance was provided by staff from Douglas County Transportation and Land Services and the Department of Ecology. The Board of County Commissioners tasked the committee to look specifically at the status of non-conforming structures under the current SMP especially in light of the legislative changes to RCW 90.58.620 that authorizes SMP's to consider legally established residential structures and appurtenant structures that do not conform to the bulk or dimensional standards of the SMP as conforming and the vesting of shoreline buffers/setbacks within subdivisions and short subdivision. The shoreline committee met four times between May and July 2014. The amendments as presented and available for public and agency comment are as drafted by the committee.

#### Amendment to Section 1.11 Prior development and nonconformance

The amendment is directly linked to the amendments to Section 5.12 Residential. Section 1.11 cites the provisions of WAC 173-27-080 as applying to nonconforming uses except as modified in Section 5.12 Residential and specifically draft regulation number 9.

#### Amendment to Section 5.12 Residential

The revision to Section 5.12 Residential adds new standards specific to nonconforming uses. Subsection (a) addresses residential and appurtenant structures that do not meet the bulk and dimensional standards of the current Regional Shoreline Master Program and considers them as conforming structures. The State Legislature in 2011 approved SSB 5451, codified as RCW 90.58.620, that allows these previously non-conforming structures to be considered conforming.

Subsections (b) through (f) address the process to establish a non-conforming use and standards for the maintenance and repair, reconstruction or replacement, and expansion of nonconforming uses and structures.

Amendment to Section 5.13 Shoreline bulk and dimensional standards

The shoreline committee drafted the revisions to Section 5.13 in response to numerous comments provided by the public regarding the vesting of buffers in short plats and plats, especially the Twin W and the plat of Beebe Ranch developments. The draft revisions include specific standards for development of lots within short plats and plats based on the setback and buffer standards in place at the time of approval and/or as depicted on the recorded short plat or plat. The revision establishes a minimum buffer width of fifty (50) feet as measured from the ordinary high watermark.

Amendment to Section 8 definition 17

This amendment is specifically tied to the revisions in Section 5.12 Residential and adds the word "structure" to the already existing definition of appurtenant.

**FINDINGS OF FACT AND CONCLUSIONS:**

Should the Planning Commission recommend approval to the Board of Commissions, the following findings and conclusions are applicable to the amendments and cover procedural matters.

Suggested findings:

1. The Washington State Legislature passed the Washington State Shoreline Management Act (RCW 90.58 [SMA]) in June 1971 and it was passed by public initiative in 1972. Under the SMA, each county and city is required to adopt and administer a local shoreline master program to carry out the provisions of the Act.
2. The Shoreline Master Program Guidelines (WAC 173-26) are the standards and guidance that have been adopted by the Department of Ecology which local governments must follow in drafting their local shoreline management programs.
3. Douglas County initiated a 60-day review on August 7, 2014 as required by WAC 173-26-100 and RCW 36.70A.106.
4. The comment period concluded on October 6, 2014.
5. On August 7, 2014, Douglas County submitted environmental documentation to the Washington State Department of Ecology SEPA Register and issued a Determination of Non-significance, pursuant to WAC 197-11.
6. The Douglas County Planning Commission conducted a workshop on the proposed Shoreline Master Program amendments on September 10, 2014.
7. The Notice of Public Hearing was published on October 23, 2014 in the Wenatchee World and Empire Press.
8. The Planning Commission of Douglas County conducted a public hearing on November 12, 2014. The Planning Commission entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
9. The participating jurisdictions of the Douglas County Regional Shoreline Master Program are not currently conducting a comprehensive update to the Regional Shoreline Master Program.
10. The proposed amendments will not foster uncoordinated and piecemeal development of the state's shorelines.

11. The amendments are consistent with all applicable policies and standards of the Shoreline Management Act.
12. The Washington State Legislature in 2011 approved SSB 5451, now codified as RCW 90.58.620, that authorizes legally established residential structures and appurtenant structures that are used for a conforming use to be considered conforming structures even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density and the redevelopment, expansion, change in the class of occupancy or replacement of the residential structure if consistent with the SMP, including the provisions for no net loss of shoreline ecological functions.
13. The limited amendments are consistent with WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules and WAC 173-26-201(1)(c)(D) to improve consistency with the Shoreline Management Act's goals and policies and its implementing rules.

Suggested conclusions:

1. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
2. The procedural requirements of RCW 36.70A have been complied with.
3. The procedural requirements of WAC 173-26 have been complied with.
4. The proposed amendments are consistent with the Douglas County Regional Policy Plan, the Shoreline Master Program, and the Douglas County Countywide Comprehensive Plan.
5. The proposed amendments are consistent with the requirements of Revised Code of Washington and the Washington Administrative Code.

1 **1.11 Prior development and nonconformance**

2 The provisions of WAC 173-27-070 shall apply to substantial development  
3 undertaken prior to the effective date of the Act. Except as modified in Section  
4 5.12 Residential, the provisions of 173-27-080 shall apply to nonconforming  
5 uses.  
6

7  
8 **5.12 Residential**

9 Regulations:

10 9. Non-conforming residential uses.

11  
12 a. Residential structures and appurtenant structures, as defined by RCW  
13 90.58.620 and Section 8, Definitions, No. 17 herein, including related yard  
14 improvements, that were legally established and used for a conforming use  
15 which are located landward of the ordinary high water mark, and do not meet  
16 the standards of this program with the respect to setbacks, buffers, yards,  
17 area, bulk, height or density are considered to be conforming.

18  
19 b. A legally established lot, use, or structure may be continued, transferred or  
20 conveyed and/or used and considered conforming.

21  
22 c. Establishing status. To establish a use or structure as lawful it shall be  
23 determined by a joint collaboration between the property owner and the  
24 jurisdiction from one of the following:

25  
26 (1) Local agency permit;

27 (2) Orthophoto, aerial photo or planimetric mapping recognized as  
28 legitimate by the Administrator;

29 (3) Tax Records; or

30 (4) Other verifying documents.

31  
32 d. Maintenance and Repair of Structures. Normal maintenance and  
33 incidental repair of legal structures shall be permitted provided that the  
34 maintenance shall not create nonconformity.

35  
36 e. Reconstruction or Replacement. Reconstruction, restoration, or repair (and  
37 remodeling) of a legal structure damaged by fire, flood, earthquake, falling  
38 trees or limbs, or other disasters, shall be permitted provided, that such  
39 reconstruction shall not result in the expansion of the structure into or towards  
40 the critical area or its buffer, or in a manner that increases the potential  
41 impact on the critical area or risk of harm to public safety.

42  
43 f. Expansion. Within a critical area or its buffer, no residential use or structure  
44 may be expanded, enlarged, extended, or intensified in any way unless such  
45 modification is in full compliance with this Program or the terms and  
46 conditions of approved permits pursuant to this Program. Approved

47 expansions must be consistent with standards of the zoning code in which  
48 such building, structure, or land use lies and all of the following:

- 49
- 50 (1) the area of expansion is no more than twenty-five percent (25%) of  
51 the habitable floor area of the existing residence;
- 52 (2) the expansion does not exceed the allowed height limit;
- 53 (3) the expansion is no further waterward of the existing structure;
- 54 (4) When required by Appendix H, a management and mitigation plan is  
55 prepared by a qualified professional biologist that demonstrates that  
56 the expansion will result in no net loss of shoreline ecological  
57 functions;
- 58 (5) an exemption is issued for the project based on the request by the  
59 applicant that is accompanied by a site plan and construction plans  
60 sufficient to depict the expansion.

61

62

63 **5.13 Shoreline Bulk and dimensional standards**

64 **8. Critical area buffer:**

65 ~~See Appendix H for critical area buffer standards within shoreline jurisdiction.~~  
66 The following critical area setback and buffer standards apply uniquely to all lots  
67 within shoreline area subdivisions and short subdivisions, in all environmental  
68 designations. For properties within shoreline jurisdiction other than lots in  
69 subdivisions and short subdivisions, and for other critical area shoreline buffer  
70 and dimensional standards, see Appendix H.

71

72 **a. Short Subdivisions.**

73 Critical area setback and buffer standards applicable to lots within short  
74 subdivisions (as defined in RCW 58.17.020(6)) shall be as follows:

- 75
- 76 (1) Short subdivisions approved prior to August 27, 2009. This category of  
77 land division is subject only to the land use rules and critical area  
78 setback requirements and buffer standards in effect at the time of plat  
79 approval.
- 80
- 81 (2) Short subdivisions approved on or after August 27, 2009. With respect  
82 to the Master Program critical area buffer and setback dimensional  
83 requirements, this category of land division is subject only to the  
84 conditions of approval shown on the approved plat.
- 85
- 86 (3) Except in the case of 5.13(8)(a)(1) above, the critical area setback  
87 and/or buffer width shall be not less than 50' as measured from the  
88 OHWL or wetland edge, whichever applies.

89

90 If an owner of a lot can demonstrate no net loss of shoreline ecological  
91 function, the critical area buffer may be reduced not to exceed twenty-five  
92 (25) percent of the total applicable buffer requirement, subject to 5.13(8)(a)(3)

93 above. Requests for buffer reduction shall be submitted and processed in  
94 accordance with the administrative buffer reduction provisions of Appendix H.

95

96 **b. Subdivisions.**

97 Critical area setback and buffer dimensional standards applicable to lots  
98 within subdivisions (as defined in RCW 58.17.020(1)) shall be the critical area  
99 buffer and setback requirements that were in effect at the time of plat  
100 approval, subject to the following:

101

102 (1) Where critical area setbacks and/or buffers are actually shown on the  
103 approved plat, those setbacks and/or buffers shall apply.

104

105 (2) In no case shall the critical area setback and/or buffer dimensional  
106 standard be less than 50' as measured from the OHWM or wetland  
107 edge, whichever applies.

108

109 (3) If an owner of a lot can demonstrate no net loss of shoreline ecological  
110 function, the critical area buffer may be reduced not to exceed twenty-  
111 five (25) percent of the total applicable buffer requirement, subject to  
112 5.13(8)(b)(2) above. Requests for buffer reduction shall be submitted  
113 and processed in accordance with the administrative buffer reduction  
114 provisions of Appendix H.

115

116

117 **8. Definitions**

118 17. "Appurtenant structure" – A structure or development which is necessarily  
119 connected to the use and enjoyment of a single-family residence and is located  
120 landward of the ordinary high water mark.

# Exhibit B

## RSMP Limited Amendment - Comment Matrix October 29, 2014

Sender	Date	Discussion point	Response	Recommended Alternative
Gary Piro	10-Sep-14	Supports amendments as proposed.	Comment noted.	None
Jim Eaton	10-Sep-14	Supports amendments as proposed.	Comment noted.	None
Teresa Eaton	10-Sep-14	Supports amendments as proposed.	Comment noted.	None
Joe Miller	25-Sep-14	Supports amendments as proposed.	Comment noted.	None
Carmen Bos	25-Sep-14	Supports amendments as proposed.	Comment noted.	None
Joseph & Julie Bodmer	25-Sep-14	Supports amendments as proposed.	Comment noted.	None
Gene & Marge Bearman	26-Sep-14	Supports amendments as proposed.	Comment noted.	None
Washington State Department of Fish and Wildlife	2-Oct-14	Provided three comments on nonconforming uses (1) labeling structures as "legally nonconforming" rather than "conforming" (2) nonconforming uses should not be grandfathered if abandoned, and (3) nonconforming development should not be automatically grandfathered if destroyed. Provided one comment on the setbacks/buffers in plats and short plats.	Nonconforming comment responses: (1) RCW 90.58.620 specifically allows the structures to be considered conforming. (2) The SMP still uses the SMA provisions in WAC 173-27-080 for nonconforming uses unless amended by Section 5.12. (3) The shoreline committee reviewed this section and did not want to further restrict property owners after a loss. Buffer comment response: Comment noted.	None
Fredric and Ana Stern	4-Oct-14	Supports amendments as proposed.	Comment noted.	None
Maria St. Jean	6-Oct-14	Supports amendments as proposed.	Comment noted.	None