

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

SMP submittal accepted September 4, 2014  
Douglas County Ordinances - TLS 14-03-08, 14-04-08, & 14-05-08  
Prepared by Lennard Jordan on February 9, 2015.

**Brief Description of Proposed Amendment:**

Douglas County has submitted to the Washington State Department of Ecology (Ecology) three proposed limited amendments to their Shoreline Master Program (SMP). The updated master program submittals modify regulations related to boat mooring, common line setbacks, and view corridors. The changes are based on the County's experience implementing the existing master program, which was comprehensively updated in 2009.

**Decision Summary**

<b>Proposed amendment</b>	<b>Consistent with RCW 90.58.020 – State Shoreline Policy</b>	<b>Consistent with WAC 173-26-171 - 251 – SMA Guidelines</b>	<b>Ecology decision</b>
<b>Amendment #1</b> - Common line buffers/setbacks, Section 5.13 (Ordinance-TLS 14-04-08)	Yes	Yes	Approve as submitted
<b>Amendment #2</b> - View corridors, Appendix H 3.060 (Ordinance-TLS 14-05-08)	Yes	Yes	Approve as submitted
<b>Amendment #3</b> - Boat moorage, Section 5.10 (Ordinance-TLS 14-03-08)	No	No	Not approved

**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 identified three amendments intended to facilitate administration of the Master Program.

**SMP provisions to be changed by the amendment as proposed:**

1. Section 5.13 (Ordinance-TLS 14-04-08), common line buffer/setback standards - expands opportunities to take advantage of the common line setback reduction.

2. Appendix H 3.060 (Ordinance-TLS 14-05-08), view corridors – removes a reference to an outdated code component which was removed in 2009.
3. Section 5.10 (Ordinance-TLS 14-03-08), moorage – eliminates existing standards from the SMP and instead require piers, ramps, and floats to be constructed consistent with state and federal standards.

**Amendment History and Review Process:** The public, agency, and environmental review for the SMP amendments was initiated on September 26, 2013, when Douglas County submitted a draft of the proposed limited SMP amendment to the Washington State Department of Ecology and the Washington State Department of Commerce in accordance with WAC 173-26-100 and RCW 36.70A.106. The record shows that a workshop, open to the public, was held on November 13, 2013, a public hearing was held before the Planning Commission on February 12, 2014, and two public hearings were held before the Board of County Commissioners on March 18 and April 22, 2014.

With passage of Ordinances TLS 14-03-08, TLS 14-04-08, and TLS 14-05-08, on April 22, 2014, the Board of County Commissioners authorized staff to forward the adopted amendments to Ecology for approval.

The SMP amendments adopted by Douglas County were received by Ecology on July 17, 2014. The submittal materials were determined to be incomplete and a letter of incompleteness was sent to the County on August 12, 2014. On August 19, 2014, Ecology received the additional submittal materials and the proposed SMP amendments were verified as complete on September 4, 2014.

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 October 7, 2014. The state comment period began on October 13, 2014, and continued through November 13, 2014. A total of 11 individuals submitted comments on the proposed amendments. Ecology sent all written comments it received to the County on November 20, 2014. On November 20, 2014, the County submitted to Ecology its responses to all comments received during the state comment period (see Attachment B, Public Comment Summary)

**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). This 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 (September 26, 2013). Notice of the SEPA determination was published in the Wenatchee World on September 26, 2013. Ecology did not comment on the DNS.

**Summary of Issues Raised During The Public Comment Process:**

Other than one question received about the approval process, all comments received by Ecology on the County's proposed SMP amendments were positive and in favor of approval of the amendments. One commenter suggested revisions to one of the proposed amendments to fix minor spelling and grammatical errors. Another comment posed a question regarding whether or not Ecology has the authority to approve an amendment that would eliminate specific dock design standards from the SMP and instead rely on compliance with state and federal regulations. Ecology provided a summary of all comments received to the County. All comments were questions or general in nature and proposed no substantive changes to the amendments.

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

**Amendment #1** -The proposed amendment to Section 5.13, common line buffer/setback standards, proposes revisions to common line setback criteria that will expand opportunities for single family residences to take advantage of the common line setback reduction. This amendment is consistent with WAC 173-221(5)(b), which ensures the establishment of vegetation conservation standards that protect and restore ecological functions and ecosystem-wide processes performed by vegetation along shorelines; and 173-26-241(3)(j), residential development provisions. This amendment is also consistent with the SMP Handbook which advocates for buffers and setbacks that are flexible and reflect local conditions.

**Amendment #2** -The proposed amendment to Appendix H 3.060, view corridors, will remove a reference to an outdated code component which was removed during the adoption of Douglas County's regional SMP in 2009. This proposed amendment is consistent with WAC 173-26-201(1)(c)(E) which allows for the correction of an error in the processing procedures of the SMP.

**Amendment #3** - The proposed amendment to revise Section 5.10 of their SMP (Ordinance-TLS 14-03-08) will eliminate existing dimensional standards regarding boat moorage. The County states that an amendment to Section 5.10, regulation 9, would help to avoid potentially conflicting federal or state agency regulations with the Douglas County Regional SMP. Various federal and state agency regulations and permit conditions are relevant to construction of piers and docks and other structures. The draft amendment would eliminate existing standards from the SMP and instead require piers, ramps, and floats to be constructed consistent with state and federal standards. During the comment period a question arose regarding Ecology's ability to approve an amendment that would eliminate specific dock design standards from the SMP and instead rely on compliance with state and federal regulations.

Ecology is responsible for overseeing the SMP development process and its consistency 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)).

The WAC requires that each jurisdiction establish design parameters and standards for docking facilities so that ecological functions and values are maintained through the administration of those standards.

Ecology must evaluate the consistency of each SMP with WAC 173-26-231(3)(b) standards for piers and docks and the likelihood of each SMP to achieve no net loss of ecological function and avoid cumulative impacts. As a matter of policy, the state-wide requirement for SMPs under WAC 173-26-231 includes the following concepts:

- Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent;
- Allow new piers and docks only for water-dependent uses or public access;
- Restrict pier and dock construction to the minimum size necessary to meet the needs of the proposed water-dependent use; and
- Design and construct piers and docks, including those accessory to single-family residences, to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions.

State and federal regulations for piers and docks do not address the same provisions as required by WAC guidelines, therefore the elimination of specific pier and dock standards and reliance solely on state and federal regulations has created inconsistency between the proposed limited amendment and state regulations.

## **CONCLUSIONS OF LAW**

### **Amendments 1 and 2:**

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 Section 5.13 (Ordinance-TLS 14-04-08) and Appendix H 3.060 (Ordinance-TLS 14-05-08), 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). This includes a conclusion that the SMP and approval of 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 5.10 (Ordinance TLS-14-03-08), moorage, 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). This includes a conclusion 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 173-26-231(3)(b) and that without specific standards for piers and docks, effective evaluation cannot occur. Ecology concludes that other non-specific regulations 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 Section 5.13 (Ordinance-TLS 14-04-08) and Appendix H 3.060 (Ordinance-TL S14-05-08) 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 5.10 (Ordinance-TLS 14-03-08), moorage, is inconsistent with Shoreline Management Act policy, the applicable guidelines and implementing rules and is therefore not approved.