

STAFF REPORT

TO: DOUGLAS COUNTY PLANNING COMMISSION
FROM: DOUGLAS COUNTY LAND SERVICES STAFF
DATE: JANUARY 30, 2014

REQUESTED ACTION

Adoption of limited amendments to the Douglas County Regional Shoreline Master Program by Douglas County and the Cities of Bridgeport and East Wenatchee. The City of Rock Island will review the amendments during its 2014 comprehensive plan amendment process. The limited amendments are enclosed as Exhibit A of this staff report:

- Amendment 1: Revisions to Section 5.10 Moorage to remove specific standards for pier, ramp and float construction;
- Amendment 2: Revisions to Section 5.12 to include text incorporating SSB 5451 that authorizes master programs to recognize legally established structures that do not meet the standards of the program as legally conforming;
- Amendment 3: Revisions to Section 5.13 amending common line buffer/setback standards;
- Amendment 4: Revisions to Section 6.7 to include written exemptions for remediation and restoration projects;
- Amendment 5: Revisions to Section 6.18 removing the planning commission from the list of councils/commission that may initiate master program amendment; and
- Amendment 6: Revisions to Appendix H 3.060 to remove references to shoreline access/dock corridors. (Applicable to Douglas County Only)

ENVIRONMENTAL REVIEW

On September 26, 2013 Douglas County issued a Determination of Non-significance and adoption of existing documents pursuant to WAC 197-11 for amendments 1, 3, 4, 5, and 6. On September 26, 2013 Douglas County issued a Determination of Non-significance for amendment number 2.

The City of East Wenatchee issued a Determination of Non-significance and Adoption of Existing Environments Documents with a 14 day comment period on January 21, 2014.

The City of City of Bridgeport issued a Determination of Non-significance and Adoption of Existing Environments Documents with a 14 day comment period.

PUBLIC PROCESS

Notice for the workshops and the public hearing were e-mailed to the individuals on the interested parties list. Notice for the public hearing was 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 and Bridgeport City Hall. The public review of draft amendments followed the timeline below:

1. September 26, 2013 - Douglas County and the cities of Bridgeport, East Wenatchee, and Rock Island jointly 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. September 26, 2013 - Douglas County submitted environmental documentation to the Washington State Department of Ecology SEPA Register and issued threshold determinations.
3. November 13, 2013 – Douglas County Planning Commission Workshop.
4. January 7, 2014 – City of East Wenatchee Planning Commission workshop.
5. January 9, 2014 – City of Rock Island City Council Workshop.
6. January 15, 2014 – City of Bridgeport Planning Commission workshop.
7. January 30, 2014 - Notice of Public Hearing published in the *Wenatchee World and Empire Press*.
8. February 12, 2013 – Joint City of Bridgeport, City of East Wenatchee, and Douglas County Planning Commission Public Hearing.

AGENCY AND PUBLIC COMMENTS:

The public, agency, and environmental review was initiated on September 26, 2013 and concluded on November 25, 2013. A copy of comment letters and comment response matrix are attached as Exhibit B of this staff report.

PROJECT ANALYSIS:

There are six (6) proposed limited amendments to the Regional Shoreline Master Program. Amendment number 6 is only applicable to Douglas County. Each proposed amendment includes a recommendation and specific findings.

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 streams and rivers in Eastern Washington 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 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 and City of Bridgeport is August 27, 2009 and January 28, 2010 for the City of East Wenatchee.

Limited amendments to a Shoreline Master Program and review process.

The Shoreline Management Act implementing guidelines in WAC 173-26 outlines to 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.

During the public workshops, numerous comments were made to the planning commissions regarding shoreline matters that are not within the scope of a limited amendment. These matters are important and should be addressed in the correct forum and to the correct governing bodies. Some of these issues included:

- The vesting of shoreline buffers/setbacks in subdivisions. Concern and frustration was expressed by several property owners in the Beebe Orchard Tracts subdivision. The Beebe Orchard Tracts subdivision was recorded on January 10, 2006. On that date and in accordance with RCW 58.17.170, which establishes the period of validity for recorded plats, the subdivision became a valid land use and was governed by the statutes, ordinances and regulations in effect at the time of approval for a period of five years.

In 2010, 2012, and 2013 the state legislature amended RCW 58.17.170 to extend this period of validity from five years to seven years from the date of

final approval for subdivisions recorded on or before December 31, 2014. This change gave property owners an additional two (2) years to develop their property according to the regulations in place at the time of final plat approval.

The Shoreline Management Act, RCW 90.58, does not govern subdivision vesting. As such, amendments to the Regional Shoreline Master program cannot vest subdivisions any additional period of time beyond that which is authorized by RCW 58.17.170. Citizens interested in this issue are encouraged to address this matter with their respective state legislative representatives. The planning commissions, the Board of Commissioners, the City Councils nor the Department of Ecology have the authority to amend the legislative timeframes established in RCW 58.17.170.

- Several property owners addressed the planning commissions regarding the enforcement of the Regional Shoreline Master Program and the issuance of violation letters. The RSMP enforcement process is not an issue that is within the authorities delegated to a planning commission. This matter is not before the planning commissions and is not within the scope of the limited amendments.
- Property owners have addressed the planning commissions at their workshops and in written commentary regarding establishing a statute of limitations for violations of the SMA and the RSMP. The SMA does not have a statute of limitations provision for violations. The RSMP cannot establish this statute of limitations that is inconsistent with the SMA. The Department of Ecology cannot approve amendments to the RSMP that are contrary to the SMA.
- Property owners have addressed the planning commissions at their workshops and in written commentary regarding revisions to shoreline environment designations and buffer widths. Amendments to buffers or shoreline environment designations are not within the scope authorized for limited amendments. Amendments to environment designations and/or buffers must be handled through a more comprehensive amendment and require scientific analysis to justify the change in buffer widths. The cities and the county will be developing a more detailed docketing process that may provide an avenue for applying for environmental amendments.

Analysis and recommendations on the proposed limited amendments.

Amendment #1

Revisions to Section 5.10 Moorage

Staff Analysis:

An amendment to Section 5.10, regulation 9 would help to avoid potentially conflicting federal or state standards/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. During the application process for moorage facilities, conflict could occur should state or federal moorage standards be different or contrary to section 5.10 as currently adopted. The draft amendment would require piers, ramps, and floats to be consistent with state and federal standards without including specific local requirements.

The amendment does not reduce or diminish the local review of moorage facilities. Policy number 9 in Section 5.10 states: "Multiple agencies have permitting standards, requirements or limitations for the use and development of moorage facilities. Many of these agencies have specific ownership or easement rights. The county and cities should coordinate with federal, tribal, state and local agencies during the review of shoreline permits. The granting of a shoreline permit does not relieve a project from compliance with the standards of other agencies." Local critical area standards for each jurisdiction, Appendix H of the RSMP, remain unaltered. The draft amendment ensures no net loss of ecological functions through the submittal and implementation of a fish and wildlife management and mitigation plan.

This limited amendment is allowable under WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.

Public comments: None

Recommendation:

Staff recommends approval of amendment 1 based on the suggested findings of fact and conclusions.

Amendment 2

Revisions to Section 5.12 Residential

Staff Analysis:

Legally established structures that do not meet the current bulk and dimensional standards of the Regional Shoreline Master Program are considered legal nonconforming structures. The RSMP has adopted the non-conforming standards of WAC 173-27-080. Structures with nonconforming status often create uncertainty for property owners and possibly financial lenders with issues such as repair and maintenance of structures, homeowners' insurance costs, and obtaining loans for repairs or new/refinanced mortgages.

To address some of these concerns, the State Legislature in 2011 approved SSB 5451, codified as RCW 90.58.620, that authorizes new or amended SMPs approved by Ecology after September 1, 2011 to include provisions that allow:

- (a) Legally established residential structures and appurtenant structures that are used for a conforming use to be considered a conforming structure even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density;
- (b) Redevelopment, expansion, change with 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.

The definition of appurtenant structures, in RCW 90.58.620, includes garages, sheds and other legally established structures, but does not include bulkheads and other shoreline modifications or over-water structures. Landscaping and lawn grasses are not included in the definition of an appurtenant structure. The term "yard" as used in RCW 90.58.620 is synonymous with the term setback. The RSMP defines "side yard" as "...the distance from the structure, such as a residence, to the parcel line."

Adoption of this amendment will allow nonconforming structures to be considered as conforming structures and outlines a means for expansion or alteration. One of the primary provisions of the Shoreline Management Act is no net loss of ecological functions. The RSMP accomplishes this by requiring submittal of a management and mitigation plan prepared by a qualified professional biologist. The plan establishes the ecological baseline for the property, identifies impacts proposed by the development, and any mitigation to address the impacts and ensure no net loss of ecological functions.

In order to be more consistent with the language of the legislative bill and RCW 90.58.620, a suggested revision has been included in Appendix A. The revision clarifies that structures that do not meet the standards of the current RSMP with respect to setbacks, buffers, area, bulk, height or density may be considered conforming.

This limited amendment is allowable under subsection 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.

Public comments: Comment letter submitted by John M. Groen. See Exhibit B, public comment and response matrix.

Recommendation:

Staff recommends approval of amendment 2 based on the suggested findings of fact and conclusions.

Amendment 3

Revisions to regulation number 7 in Section 5.13 Shoreline bulk and dimensional standards.

Staff Analysis:

The common line buffer/setback tool is currently available in the RSMP for the development of a single-family structure under the following circumstances:

- The lot is a legal lot of record at the time of adoption of the RSMP (2009);
- The lot is located adjacent to existing residential dwelling units on both adjacent shoreline lots;
- The lot is located within an urban growth area, planned development, Rural Service Center, or Rural Recreation zoning district, or is a cluster lot;
- The elevation of adjacent structures on adjacent lots is not 15' higher or lower from the natural grade on the vacant center lot.
- Neither of the adjacent lots has been developed since the date of adoption of this Program (2009), or
- Greater than 250 cubic yards of grade or fill needs to occur in order to accommodate utilizing the common line buffer/setback.

Since the adoption of the RSMP in 2009, this tool has not been used as there are very few properties that meet all of the criteria. A revision could expand opportunities to take advantage of the common line setback. The proposed revisions to this tool protect the visual shoreline access of property owners by allowing the development of single family residences on the shoreline at similar setbacks but not necessarily equal to adjacent lots.

Several jurisdictions, both in eastern and western Washington, have adopted Shoreline Master Programs with common line buffer/setback standards that ensure no net loss of ecological functions, preserve and protect shoreline views and allow the tool to be used on lots that are bounded on one side with another vacant lot. The draft amendments to this section include allowing existing vacant lots with residences on either side or only on one side, re-evaluate the shoreline environments where the tool is available, and remove the elevation, fill threshold, and timeframe of adjacent developments restrictions.

The common line buffer/setback tool is of particular importance to property owners in developments where the vesting timeframe established by RCW 58.17.170 has expired or is nearing expiration. This tool provides these property owners with a means to develop their properties similarly to their neighbors'.

The standard of "no net loss of ecological functions" associated with utilizing the tool is achieved through the submittal and implementation of a fish and wildlife management and mitigation plan by a qualified biologist.

Public Comment: A letter of support was submitted by Ken Hunziker. See Exhibit B, public comment and response matrix.

Recommendation:

Staff recommends approval of amendment 4 based on the suggested findings of fact and conclusions.

Amendment 4

Revisions to Section 6.7 Exemptions

Staff Analysis:

The purpose of this amendment is to include restoration projects, not associated with a substantial development permit, as a written letter of exemption with a five year monitoring timeframe. While not all development exempt from a shoreline substantial development permit require a written letter of exemption, WAC 173-27-050 does authorize local government to specify developments that do require the issuance of a written letter of exemption.

Appendix D. Monitoring and Evaluation in the RSMP requires the participating jurisdictions to monitor individual restoration and/or mitigation projects as a component of the overall shoreline monitoring effort. A written letter of exemption and the monitoring timeframe would assist in the requirement to monitor the shoreline conditions in the county. The five (5) year monitoring timeframe is consistent with each jurisdiction's monitoring timeframes for habitat management and mitigation plans, as required in Appendix H Shoreline Critical Area Regulations.

Restoration is defined in the RSMP as "...the re-establishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions."

Based on comments submitted, an amendment is recommended to remove the term "remediation" from the original draft. The term creates a certain amount of confusion and uncertainty regarding the intent of the amendment. The recommended change to the original draft is included in the comment matrix and is reflected in Exhibit A.

This amendment meets the criteria for a limited amendment in WAC 173-26-201(1)(c)(i)(D) by improving consistency with the act's goals and policies and implementing rules.

Public comments: Comment letter submitted by John M. Groen. See Exhibit B, public comment and response matrix.

Recommendation:

Staff recommends approval of amendment based on the suggested findings of fact and conclusions.

Amendment 5

Revisions to Section 6.18 Amendments to the Shoreline Master Program.

Staff Analysis:

To change the Shoreline Master Program amendment process to clarify the different roles of a planning commission and the legislative body by removing a city or county planning commission from the list of bodies authorized to initiate an amendment.

The involvement of the public is crucial to the review and amendment of plans, policies, and regulations in Douglas County. Primary tenets of both the Growth Management Act and the Shoreline Management Act are high levels of public involvement and participation in the review and adoption process. In order to accomplish this requirement, the cities of Bridgeport and East Wenatchee and Douglas County have adopted policies and guidelines within the Douglas County Regional Policy Plan, public participation plans, corresponding comprehensive plans, and the Douglas County Regional Shoreline Master Program. A critical component of the public participation process and review and amendment of official controls are the city or county planning commissions.

The Douglas County Planning Commission is a nine member commission appointed by the Board of Commissioners, pursuant to RCW 36.70.040, and specifically tasked to "assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto."

The planning commissions of the Cities of Bridgeport and East Wenatchee are organized under RCW 35A.63 as advisory bodies to the mayor and the city council.

As an advisory body to a planning department, a planning commission plays an integral role in the public participation process during the process of review and amendment of official controls, such as the Douglas County Regional Shoreline Master Program (RSMP). Section 6.4 of the RSMP vests a planning commission "with the responsibility to review the Master Program from time to time as a major element of each jurisdiction's planning and regulatory program, and make recommendations for amendments thereof to the board of county commissioners or city councils." This role of a planning commission cannot be removed or replaced as it is the purpose of the commission pursuant to RCW 36.70.040.

As the legislative authorities of the county and cities, the role of the Board of Commissioners and city councils, as they relate to the RSMP, are specifically outlined in Section 6.5 of the RSMP. The legislative bodies are vested with the authority to initiate amendments, adopt amendments, and make final decisions on permits where a hearing examiner system has not been established.

With the advisory role of a planning commission and the legislative role of the Board of Commissioners and City Councils as outlined in Sections 6.4 and 6.5 of the RSMP, an error in Section 6.18 of the RSMP was identified. This section gives authority to a planning commission to initiate amendments to the RSMP following the procedures in

WAC 173-26-100. As an advisory body, a planning commission is vested with the authority to review and recommend under the direction from the local legislative body. The legislative authority of the jurisdiction sets the planning agency budget, reviews work programs, and directs staff to work with a planning commission on amendments to official controls and procedural matters. Any amendment to an official control involves significant staff time, advertising costs for public hearings, and costs associated with notifying the public of available amendments. The draft amendments clarify the different roles of a planning commission and the legislative body.

The proposed amendment does not remove a planning commission from the public participation process. The requirement for a public participation process that includes a planning commission is well documented in the adopted plans and guidance documents of the county and cities, including the RSMP. While public comments submitted by Mr. Fleming and Mr. Groen do correctly identify the need for public participation and the role of a planning commission in this process, they appear to misunderstand the amendment and the purpose of a planning commission as advisory body as outlined in RCW 36.70.040 and 35A.63. Mr. Groen states that "...the proposal to eliminate the Planning Commission role will further undercut the ability of the public to participate and influence the planning and amendment process." (Page 3 of 3 in comments dated November 25, 2013) The amendments do not undercut the role of a planning commission; they do, however, clarify that a planning commission is an advisory body and does not act as a quasi-legislative body with the authority to initiate and direct budgetary resources.

Public Comment: Two public comments were submitted. See Exhibit B public comment and response matrix.

Recommendation:

Staff recommends approval of Amendment 5 based on the suggested findings of fact and conclusions.

Amendment 6:

Revisions to Appendix H, Section 4 Douglas County shoreline critical areas regulations, subsection 3.060(E)(1)(d).

Staff Analysis:

This amendment is only applicable to Douglas County. The purpose is to remove subsection 3.060(E)(1)(d) which refers to a code component removed during the adoption of the Regional SMP. The 2008 Douglas County locally adopted SMP included a provision for a shoreline access or dock corridor. This provision was required to be removed by the Department of Ecology as part of their adoption process. The reference in section 3.060(E) causes confusion as it refers to a non-existent SMP provision and should be removed.

This limited amendment is allowable under subsection WAC 173-26-201(1)(c)(E) in order to correct an error in the processing procedures of the SMP.

Public Comment: None

Recommendation:

Staff recommends approval of Amendment 6 based on the suggested findings of fact and conclusions.

FINDINGS OF FACT AND CONCLUSIONS:

The project analysis section for each amendment contains specific amendment findings and a recommended action. The following findings and conclusions are applicable to all 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 and the cities of Bridgeport, East Wenatchee, and Rock Island initiated a joint 60-day review on September 26, 2013 as required by WAC 173-26-100 and RCW 36.70A.106.
4. The comment period concluded on November 26, 2012.
5. On September 26, 2013, Douglas County submitted environmental documentation to the Washington State Department of Ecology SEPA Register and issued threshold determinations.
6. Douglas County issued a Determination of Non-significance for the proposed amendments on September 26 2012, pursuant to WAC 197-11.
7. Workshops were held on November 13, 2013 with the Douglas County Planning Commission, on January 7, 2014 with the City of East Wenatchee Planning Commission, on January 9, 2014 with the City of Rock Island City Council, and on January 15, 2014 with the City of Bridgeport City Council and Planning Commission.
8. The Notice of Public hearing was published on January 30, 2014 in the Wenatchee World and Empire Press.
9. The Planning Commissions of Douglas County and the Cities of Bridgeport, East Wenatchee, and Rock Island conducted a joint public hearing on February 12, 2014. The Planning Commissions entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
10. The participating jurisdictions of the Douglas County Regional Shoreline Master Program are not currently conducting a comprehensive update to the Regional Shoreline Master Program.
11. The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines.

12. The amendments are consistent with all applicable policies and standards of the Shoreline Management Act.

Amendment #1

13. Various state and federal agencies have regulations and permit conditions relevant to the construction of piers and docks.
14. State and federal agencies have expertise in the biological impact of docks, piers and similar structures.
15. No net loss of ecological functions is achieved through the submittal and implementation of a management and mitigation plan prepared by a qualified biologist.
16. The limited amendment to Section 5.10 is consistent with WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.

Amendment #2

17. 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.
18. Appurtenant structures are defined as garages, sheds and other legally established structures, but do not include bulkheads and other shoreline modifications and over-water structures.
19. The limited amendment to Section 5.12 is consistent with WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.
20. The provisions of this amendment are not allowed within the Natural Shoreline Environment Designation.
21. No net loss of ecological functions is achieved through the submittal and implementation of a management and mitigation plan prepared by a qualified biologist.
22. Any expansion to a single family residence may not occur further waterward of the existing structure.

Amendment #3

23. The Regional Shoreline Master Program includes the common line buffer/setback averaging tool. The tool has not been used since the adoption of the program in 2009.
24. Similar amendments have been adopted by jurisdictions in both Eastern and Western Washington.

25. The draft amendments achieve the standard of "no net loss of ecological functions" with the submittal and implementation of a fish and wildlife management and mitigation plan by a qualified biologist.
26. Written public testimony was received in favor of the amendments.
27. The limited amendment to Section 5.13 is consistent with WAC 173-26-201(1)(c)(D) in order to improve consistency with the Acts goals and implementing rules.

Amendment #4

23. Appendix D. Monitoring and Evaluation in the RSMP requires the participating jurisdictions to monitor individual restoration and/or mitigation projects as a component of the overall shoreline monitoring effort.
24. A written letter of exemption and the monitoring timeframe would assist in the requirement to monitor the shoreline conditions in the county.
25. WAC 173-27-050(3) authorizes local government to specify developments not specifically described in WAC 173-27-050(1) as requiring a letter of exemption.
26. Wetland and Fish and Wildlife Management and Mitigation Plans required in Appendix H Shoreline Critical Area Regulations, for each participating jurisdictions, require a 5 year monitoring timeframe with reviews at 1, 3, and 5 years.
27. No net loss of ecological functions is achieved through the submittal and implementation of a management and mitigation plan prepared by a qualified biologist.
28. The limited amendment to Section 6.7 is consistent with WAC 173-26-201(1)(c)(D) in order to improve consistency with the Acts goals and implementing rules.

Amendment #5

27. The Shoreline Management Act (RCW 90.58) requires a public process to review and amend local Master Programs.
28. The Douglas County Regional Shoreline Master Program is an official control as defined by RCW 36.70.020.
29. The Douglas County Planning Commission is organized pursuant to RCW 36.70.040, and specifically tasked to "assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto."
30. The planning commissions of the Cities of Bridgeport and East Wenatchee are organized under RCW 35A.63 as advisory bodies to the mayor and the city council.
31. Section 6.4 of the Douglas County Regional Shoreline Master Program vests the Planning Commission with the responsibility to "...review the Master Program from time to time...and make recommendations for amendments thereof to the board of commissioners."

32. The amendment to Section 6.18 is consistent with WAC 173-26-210(1)(c)(E) in order to correct an error in the processing procedure of the RSMP.

Amendment #6

33. Subsection 3.060(E)(1)(d) refers to a code component removed during the adoption of the Regional SMP in 2009.

34. The amendment to Subsection 3.060(E)(1)(d) is consistent with WAC 173-26-201(1)(c)(E) in order to correct an error in the processing procedures of the SMP.

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 173-26-100 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, the City of Bridgeport Comprehensive Plan, and the Greater East Wenatchee Area Comprehensive Plan.
5. The proposed amendments are consistent with the requirements of Revised Code of Washington and the Washington Administrative Code.