ATTACHMENT A: FINDINGS AND CONCLUSIONS
FOR PROPOSED COMPREHENSIVE UPDATE TO THE COUNTY OF BENTON
SHORELINE MASTER PROGRAM

SMP Submittal accepted June 26, 2014, Ordinance No. 2014-440
Prepared by Angela San Filippo on December 11, 2014

Brief Description of Proposed Amendment:

Benton County has submitted to Ecology for approval, a comprehensive update to their Shoreline Master Program (SMP) to comply with Shoreline Management Act (SMA) and SMP Guidelines requirements. The updated master program submittal contains locally tailored shoreline management policies, regulations, environment designation maps, and administrative provisions. Additional reports and supporting information and analyses noted below, are included in the submittal.

FINDINGS OF FACT

Need for amendment. The proposed amendment is needed to comply with the statutory deadline for a comprehensive update of the County’s local Shoreline Master Program pursuant to RCW 90.58.080 and 100. This amendment is also needed for compliance with the planning and procedural requirements of the SMP Guidelines contained in WAC 173-26 and 27. The original County SMP was approved by Ecology in 1974 and has never been comprehensively updated. This SMP update is also needed to address land use changes that have occurred along the County’s shorelines over the past 40 years and to provide consistency between the updated SMP and the environmental protection and land use management policies and practices provided by the County’s Critical Areas regulations, Comprehensive Plan, Comprehensive Parks Plan, and Hanford Site Comprehensive Land Use Plan.

SMP provisions to be changed by the amendment as proposed:
This comprehensive SMP update is intended to entirely replace the County’s existing SMP. This SMP will regulate approximately 330 miles of the Columbia and Yakima River shorelines. The updated SMP is a significant upgrade from the current 1974 SMP. Since 1974, much has changed along Benton County shorelines, including development pressures, state laws and guidance, knowledge of best development and conservation practices. The proposed SMP contains locally tailored shoreline management policies, regulations, environment designation maps, and administrative provisions that have been updated to reflect these changes. Overall, the state SMP guidelines are more restrictive than they were for the 1974 SMP and this SMP is consistent with the most current guidelines.

The following elements outline the key differences between the county’s proposed SMP and the existing 1974 SMP:

Environment Designations
Benton County’s existing SMP has four environment designations: Urban, Rural, Conservancy, and Natural Environments. The proposed SMP has eight environment designations: Urban Transition Area, Rural Industrial, Rural, Residential, Conservancy, Natural, Hanford, and Aquatic Environments. The proposed SMP environment designations include a purpose statement, designation criteria, and management policies for each shoreline environment. In addition, the proposed shoreline environments are more descriptive, tailored to Benton County’s unique shorelines, and meet current state SMP guidelines.
Shoreline Uses and Modifications Matrix
The existing SMP does not distinguish between water-oriented and non-water-oriented uses and does not provide a shoreline use and modification matrix.

The proposed SMP distinguishes between water-oriented and non-water-oriented uses for commercial, industrial, institutional, and recreational uses. The proposed SMP includes a shoreline use and modification matrix (Table 04.110-1) that outlines categories and subcategories of uses and modifications and identifies whether they are permitted, conditional, or prohibited uses and whether they are subject to use limitations. Through the shoreline use and modification matrix and the accompanying text the proposed SMP contains detailed policies and regulations with more direction and detail for specific types of uses.

Development Standards Matrix
The existing SMP does not include a development standards matrix. The proposed SMP includes a development standards matrix with height limits, minimum shoreline lot frontages, buffers, and minimum structure setbacks from side property lines.

Amendment History, Review Process: The County indicates the proposed SMP amendments originated from a local planning process that began in February 2012. The record shows that regional public forums were held in 2013 on the following dates:
- January 9,
- January 10,
- June 5,
- June 6,
- October 9, and
- October 10.

A Shoreline Advisory Committee representing a cross-section of interests served as a sounding board for the project management team; advised the Benton County Planning Commission about the community’s vision for the shoreline areas; and recommended SMP goals, policies, and regulations. Shoreline Advisory Committee meetings were held on:
- October 18, November 8, and December 13, 2012;
- January 17, February 14, March 14, April 11, May 9, June 13, July 11, August 8, September 12, October 10, November 14, and December 12, 2013; and
- January 9, 2014.

A joint Planning Commission and Shoreline Advisory Committee meeting was held on February 4, 2014. In addition, a postcard and online visioning survey was sent to shoreline property owners in March 2013.

Affidavits of publication provided by the County indicate notice of the hearing was published on May 16, 2014. A public hearing before the Board of County Commissioners was held on June 3, 2014.

With passage of Resolution #2014-440, on June 3, 2014 the County authorized staff to forward the proposed amendments to Ecology for approval.

The proposed SMP amendments were received by Ecology for state review and verified as complete on July 17, 2014. Notice of the state comment period was distributed to state task force members and interested parties identified by the County on July 30, 2014, in compliance with the requirements of WAC 173-26-120, and as follows: The state comment period began on August 11 and continued
through September 11, 2014. Ecology sent all oral and written comments it received to the County on September 16, 2014. On November 12, 2014 the County submitted to Ecology its responses to issues raised during the state comment period (see Attachment D).

**Consistency with Chapter 90.58 RCW:** The proposed amendment has 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 with “applicable guidelines” (Chapter 173-26 WAC, Part III):** The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program Guidelines (WAC 173-26-171 through 251 and 173-26-020 definitions). This included review of a SMP Submittal Checklist, which was completed by the County.

**Consistency with SEPA Requirements:** The County submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendments on March 21, 2014. Notice of the SEPA determination was published in the Tri-City Herald on May 16, 2014. Ecology did not comment on the DNS.

**Other Studies or Analyses supporting the SMP update:** Ecology also reviewed the following reports, studies, map portfolios and data prepared for the County in support of the SMP amendment:

These supporting documents include:

- Channel Migration Zone Maps
- Cumulative Impacts Analysis (includes net effect on ecological function), April 2014,
- Shoreline Analysis Report, April 2013
- Shoreline Restoration Plan, April 2014
- Public Access Framework, June 2014

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

Ecology received three written comments. Commenters focused on a variety of topics including the location and regulation of irrigation return flow facilities on the Yakima River, public access, archaeological resources, and critical areas.

Once commenter expressed concern that the shoreline administrator can approve another public access plan and that public access for subdivisions larger than four parcels and residential development with more than four parcels is not adequately address. Another commenter recommended requiring consultation and archaeological investigations for areas suspected to contain archaeological resources.

Comments on critical areas included the following recommendations:

- Expand shoreline jurisdiction to include critical area buffers;
- Provide more specific avoidance criteria for wetlands;
- Include areas of specific susceptibility and site classes (per Department of Natural Resources’ Liquefaction Susceptibility Site Class Maps) as geological hazards;
- Give county staff the authority to require a geotechnical report when proposed buildings are susceptible to damage from landslides or other geological hazards; and
Set buffers for landslides on a case-by-case basis using the site analysis.

Summary of Issues Identified by Ecology as Relevant To Its Decision:
The county’s responses to public comments are contained in Attachment D. Ecology finds the county’s proposed response are consistent with relevant citations and did not lead to any required or recommended changes. Ecology’s required changes include formatting changes to reflect proper internal citation and clarity over when the SMP and corresponding regulations take effect. Ecology’s recommended changes include additional clarity with regard to updates to the SMP Guidelines, rewording to establish clarity over non-development activities, editorial changes, and added language to provide specificity to definitions by including language from the WAC.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County’s proposed comprehensive SMP update, subject to and including Ecology’s required changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and 020 definitions). This includes a conclusion that approval of the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program (WAC 173-26-201(2)(c).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by the County, be included in Ecology’s approved SMP amendments.

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

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

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 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 comprehensive SMP update 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 and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

Ecology concludes that the County has chosen not to exercise its option pursuant to RCW 90.58.030(2)(d)(ii) to increase shoreline jurisdiction to include buffer areas of critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the County’s critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP, are consistent with Shoreline Management Act policy, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the County. Ecology approval of the proposed amendments with required changes is effective 14 days from Ecology’s final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the County may choose to submit an alternative to the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology’s original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final. Approval of the updated SMP and proposed alternative/s is effective 14 days from Ecology’s final action approving the alternative/s.