

ORDINANCE NO. 2015-1500

**AN ORDINANCE OF THE CITY COUNCIL OF THE
CITY OF CHELAN, WASHINGTON ADOPTING THE
UPDATED SHORELINE MASTER PROGRAM FOR THE
CITY OF CHELAN**

The City Council of the City of Chelan, Washington, FINDS:

- A. The Shoreline Management Act (RCW 90.58) and the rules adopted by the Washington Department of Ecology in WAC 173-26 and 173-27 require local governments to develop and administer shoreline master programs that include policies and regulations governing designated shorelines within their respective jurisdictions.
- B. The City adopted its original Shoreline Master Programs in 1975 and is required to update its Shoreline Master Program.
- C. The City, through the Planning and Community Development Department and its contracted planning consultants, Berk and Associates and the Watershed Company, underwent the public process to revise and update its Shoreline Master Program beginning in 2008, as detailed in the Findings attached to this Ordinance.
- D. The Planning and Community Development Department determined the revisions and updates to the Shoreline Master Program did not significantly affect the environment and issued a Determination of Non-Significance on May 20, 2015.
- E. The process of updating the Shoreline Master Program is described in the attached Findings recommended by the Planning Commission on December 12, 2012 that the City Council adopt;
- F. The update process culminated with a May 28, 2015 public hearing before the City Council upon a proposed draft Shoreline Master Program with revisions recommended by the Planning Commissions on December 12, 2012. The City Council adopted the findings and recommendations of the Planning Commission that the City Council adopt the proposed Shoreline Master Program, and directed the City's staff prepare this Ordinance.
- G. The resulting draft Shoreline Master Program and appendices recommended by the Planning Commission is itemized below and is on file with the Director of the Planning and Community Development Department (the "Approved Shoreline Master Program"):

- City of Chelan Shoreline Master Program, November 2015;
 - Appendix A: Shoreline Jurisdiction Boundaries and Environment Designation Maps;
 - Appendix B: Critical Areas Regulations;
 - Appendix C: Public Access Plan;
 - Appendix D: Shoreline Residential – SF Setback Tier Maps
 - Appendix E: Guidance for Development of Vegetation Mitigation Plans

Based on the above and attached Findings, the City Council of the City of Chelan, Washington, CONCLUDES:

1. The City has complied with the substantive, procedural and notice requirements associated with SEPA, the Shoreline Management Act, the Growth Management Act and CMC 19.22 and 19.40 for the purpose of revising and updating the City’s Shoreline Master Program, including the public in these processes.
2. The Approved Shoreline Master Program is (i) is consistent with the Shoreline Management Act (RCW 90.58), the Department of Ecology Regulations (WAC 173-26 and 173-27), the City of Chelan Comprehensive Plan, and the Chelan Municipal Code; (ii) achieves "no net loss of ecological function"; and (3) is in the best interest of the public health, safety and welfare.

Based on the Findings and Conclusions, the City Council of the City of Chelan, Washington, does ORDAIN as follows:

Section 1. The Findings and Conclusions are incorporated into this Ordinance.

Section 2. The Planning Commission’s recommendation to adopt the Approved Shoreline Master Program is accepted.

Section 3. The Approved Shoreline Master Program is adopted as the Shoreline Master Program for the City of Chelan, subject to review and approval by the Washington Department of Ecology.

Section 4. The City’s Comprehensive Plan, as amended through Ordinance 2015-1491, is amended to include the goals and policies of the Approved Shoreline Master Program;

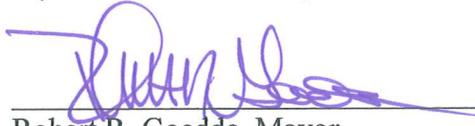
Section 5. The Planning and Community Development Department shall transmit the Approved Shoreline Master Program to the Washington State Department of Ecology for its review and approval;

Section 6. If any term or provision in this Ordinance shall be held to be invalid or unenforceable by a court of competent jurisdiction, such invalidity or unenforceability shall not affect the validity or enforceability of any other term or provision of this Ordinance.

Section 7. This Ordinance shall not be codified into the Chelan Municipal Code.

Section 8. This Ordinance, or a summary thereof, shall be published in the official newspaper of the City of Chelan and shall take effect thirty (30) days after passage and publication or upon approval of the Shoreline Master Program by the Washington State Department of Ecology, whichever is later.

PASSED by the City Council of the City of Chelan, Washington on November 24, 2015.



Robert R. Goedde, Mayor

ATTEST:



Peri Gallucci, City Clerk

FILED WITH THE CITY CLERK: November 19, 2015

PASSED BY THE CITY COUNCIL: November 24, 2015

PUBLISHED: December 2, 2015

EFFECTIVE DATE: January 1, 2016 OR upon Approval of DOE – whichever is later.

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Findings recommended by the Planning Commission

General Findings

1. Requirement to update the SMP. The City of Chelan (City) SMP was approved by the Washington State Department of Ecology (Ecology) on April 22, 1975. The City is required by the Shoreline Manage Act (SMA) under 90.58.080 and WAC 173-26-080 to update its SMP. In 2003, Ecology issued new WAC guidelines which integrate the SMA with the Growth Management Act (GMA) and the Regulatory Reform Act. These new guidelines require significant changes to existing SMPs and also require jurisdictions to inventory, analyze and characterize the existing conditions of shorelines and demonstrate no-net-loss of ecological functions with implementation of amended SMPs.
2. Interlocal agreement for regional planning. On February 29, 2008 the City entered into an interlocal agreement for Regional SMP planning with Chelan County.
3. Grant for local SMP update. On June 14, 2012, the City Council approved a grant agreement with the Ecology to conduct a local SMP development process.
4. Public processes. During the regional and local SMP process, the City conducted approximately 18 public meetings, and relied on the review and recommendations provided by the Planning Commission. The Planning Commission conducted three joint meetings with the City Council in October 27, 2010, September 19, 2012, and January 23, 2013. The Planning Commission made recommendations on December 12, 2012 and reviewed them with the City Council on January 23, 2013.
5. Consultant Assistance. The City utilized the services of a professional consultant upon the advice of Ecology. A consultant team can handle many of the technical and specialized duties associated with an SMP Update that city staff may not have the time or expertise to perform. To defray the costs of these consultant services, Ecology entered into an Agreement with the City whereupon Ecology will reimburse the City for up to \$4,000 in costs associated with the SMP Update. The City of Chelan utilized Ecology grant funds to hire a consultant team comprised of BERK and The Watershed Company (Consultant team) to assist with the Chelan SMP Update.
6. Phases of the SMP Update Process. The WAC Guidelines provide that SMP Updates consist of six phases:
 - Phase 1: Preliminary Assessment of Jurisdiction, Public Participation Plan and Shoreline Inventory
 - Phase 2: Shoreline Analysis and Characterization

- Phase 3: Shoreline Policy, Environmental Designation and Regulation Development
- Phase 4: Cumulative Impacts Analysis and Restoration Planning
- Phase 5: Local SMP Adoption Process
- Phase 6: State Approval Process.

The Findings adopted by the City Council follows the order of the first four phases with Phase 5, the local adoption process, being an on-going activity and Phase 6, the state approval process, to be scheduled.

7. RCW Principles applicable to SMP Updates. An SMP Update is governed by the RCW 90.58 which contains a number of requirements which are explained by Legislative Findings. The SMA contains the principles and objectives to be achieved for shorelines of the State and includes the following State Legislative Policies in RCW 90.58.020, which states in part:

"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 and their appurtenant structures, 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. Alterations of the natural condition of the shorelines and shore lands of the state shall be recognized by the department."

8. WAC Guidance. Ecology has prepared WAC guidance to assist local jurisdictions when preparing SMP updates which provides additional detail to the general policy goals of the SMA within WAC 173-26-176(3). The Council finds that Ecology guidance is not hierarchical in nature and that all of the general policy goals of the SMP as detailed below must be given equal consideration. To save space only a portion of WAC 173-26-176(3) is provided below:

"The act's policy of protecting ecological functions, fostering reasonable utilization and maintaining the public right of navigation and corollary uses encompasses the following general policy goals for shorelines of the state.

- (a) The utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use. RCW 90.58.020 and RCW 90.58.100;
- (b) The utilization of shorelines and the waters they encompass for public access and recreation. RCW 90.58.020 and RCW 90.58.100;
- (c) Protection and restoration of the ecological functions of shoreline natural resources. RCW 90.58.020 and RCW 90.58.100;
- (d) Protection of the public right of navigation and corollary

uses of waters of the state. RCW 90.58.020;

- (e) The protection and restoration of buildings and sites having historic, cultural and educational value. RCW 90.58.100;
- (f) Planning for public facilities and utilities correlated with other shorelines uses. RCW 90.58.100;
- (g) Prevention and minimization of flood damages. RCW 90.58.100;
- (h) Recognizing and protecting private property rights. RCW 90.58.020;
- (i) Preferential accommodation of single-family uses. RCW 90.58.020; RCW 90.58.100; and
- (j) Coordination of shoreline management with other relevant local, state, and federal programs. RCW 90.58.020 and RCW 90.58.100." (partial)

9. Ecology's role with SMP's.

RCW 90.58.250(2) states: "The department [Ecology] is directed to cooperate fully with local governments in discharging their responsibilities under this chapter."

WAC 173-26-171(2) states: "The general purpose of the guidelines is to implement the 'cooperative program of shoreline management between local government and the state.' Local government shall have the primary responsibility for initiating the planning required by the Shoreline Management Act and 'administering the regulatory program consistent with the policy and provisions' of the act. 'The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and insuring compliance with the policy and provisions' of the act. RCW 90.58.050." While the SMP is to be locally prepared, per RCW 90.58.090, a SMP or amendment of an SMP only becomes effective when approved by Ecology.

10. Ecology comments to the proposed SMP. Through the Regional SMP process Ecology provided several rounds of comments. Through the local SMP development process, Ecology provided comments to the City on October 26, 2012, and there were responses prepared for the November and December 2012 Planning Commission meetings. These responses were provided to the City Council in advance of the joint meeting on January 23, 2013. The City and Ecology met on October 26, 2012 prior to the submittal of the

comments. The Council finds that Ecology's participation and assistance has produced a proposed SMP that meets Ecology guidance as contained in the Washington Administrative Code.

Findings of Local Conditions

11. The following findings represent the City of Chelan's unique local conditions and customized approach to shoreline management:
 - A. Arid Climate: The City of Chelan is located in an arid area receiving less than 15 inches of rain annually, much of it likely falling as snow during the winter months.
 - B. Water Quality: The lake is known for its generally clean and clear waters, a result of the ultraoligotrophic (low nutrient) conditions. Total Maximum Daily Loads (TMDLs) have been developed by the Washington Department of Ecology for certain chemicals (DDT/PCBs) and for total phosphorus.
 - C. Recreation: Lake Chelan is a popular recreation destination because of its climate and waters.
 - D. Limited Known Presence of Priority Habitats: With the exception of a common loon heritage point and a number of fish species (e.g., pygmy whitefish, rainbow trout, kokanee and Chinook salmon, and west slope cutthroat trout), no other Washington Department of Fish and Wildlife-designated priority habitats or species are mapped in the City's lake shoreline jurisdiction.
 - E. Lack of Wetlands: Wetlands are not mapped in the City's lake shoreline jurisdiction.
 - F. Lake Level Management: The Chelan Public Utility District (PUD) manages the lake level through its FERC license, maintaining a full pool from July through early September and for other months between May and October managing lake level so that it does not go below a certain minimum level necessary for lake recreation unless necessary to accomplish higher-priority purposes (such as City Council Pubic Hearing 2/28/13 maintenance of Chelan River flows for fish, flood hazard reduction, etc.). How far down the lake is drawn each year is determined by the PUD based on their predicted inflow from rain and snowmelt.
 - G. Seasonal Variation of Water's Edge: Lake level management has resulted in seasonal variation of the water's edge. In the winter months, when potential storm water impacts are greatest, the water level drops to a distance of 40 feet in some of the steeper shoreline areas, but more commonly 80 to 150 feet, and in some cases is ~1,000+ feet water ward of the high lake level. Yet it is at the high lake level where armoring and the limit of upland development are found. Overwater structures are often completely in the dry during 6-9 months of the year, with only

the larger public, community or commercial structures extending partially water ward of the low lake elevation.

- H. Developed Properties: In the City and much of the Urban Growth Area (UGA), lakeshore properties are either developed or in many cases have been altered in preparation for development or associated with adjacent development. A significant number of properties already have an overwater structure, and even more properties have armored shorelines.
- I. Structure Setbacks: Existing primary structure setbacks for single-family development range widely, from minimums of 6 and 8 feet from the Ordinary High Water Mark (OHWM) to maximums of 100-200 feet from the OHWM. Sampled properties showed about 25% have primary structure setbacks of less than 25 feet and another 25% have setbacks between 25 and 50 feet.
- J. Alteration: The level of alteration is characteristically very high between the shoreline and the primary structure, including primarily lawn and other hardscape, such as pools, large patios and other impervious surfaces, a number of which are parallel and adjacent to the shoreline edge. Non-native trees and shrubs as well as lawns are also found on properties.
- K. Less Developed Lands with Geologic Hazards: On Lake Chelan, mapped geologically hazardous areas in the City's shoreline jurisdiction coincide with those currently undeveloped properties on the northshore that still retain some native shrub-steppe vegetation, lack overwater structures, and appear to lack armoring. SMP standards reflect the varying undeveloped and developed conditions.
- L. Limited Shoreline Functions: Many of the potential functions of shoreline vegetation have little to no application in the City of Chelan and its UGA, including those related to temperature control and provision of large woody debris. Other potential functions have very reduced opportunity to perform because of the management of the lake level by the PUD, which places the water's edge 10s to 100s of feet landward of the summer high water mark for 6-9 months of the year. The existing developed and armored condition of most of the City and the naturally rocky/steep sloped condition of the few remaining undeveloped areas limits the actual and potential value of any vegetation, particularly for wildlife or as a source of organic lake inputs.
- M. Water Quality Functions: Buffer functions related to water quality, however, do have some application regarding Lake Chelan. Sediment filtration, pollution filtration, and erosion control, are the primary buffer functions potentially applicable in the City's Lake Chelan shoreline jurisdiction.
- N. Available Scientific Literature and Buffers: Scientific literature regarding recommended buffers in arid Eastern Washington conditions is limited, and has

- Final Shoreline Analysis Report: April 2012
- C. Phase 3 - Environment Designation, Policy and Regulation Development, Cumulative Impacts Analysis (CIA)
- Regional SMP Draft
- Preliminary Draft, February 2009
 - Public Review Draft, June 2009
 - Revised Public Draft, August 2010
 - Comment/Response Draft (Chapters 1-8), July 2011, provided to Ecology (text rolled into City-specific draft and customized for local conditions and public review)
- City specific SMP drafts
- August 2012
 - October 2012
 - December 2012
- CIA
- Draft Regional CIA: July 2011
 - City-Specific Draft CIA: (Pending City Council Direction in February 2013)
- D. Phase 4 - Restoration Plan, Revisit Phase 3 products
- Draft Regional Restoration Plan: March 2009
 - Final Regional Restoration Plan: May 2010
 - City-specific Restoration Plan: October 2012 (appendix to SMP)
- E. Phase 5, the local approval process, is on-going.
- Planning Commission recommendation: December 2012
 - City Council Public Hearing and adoption: May 2015
 - Passage of Ordinance: November 2015
- F. Phase 6, the state approval process,
- Submission of adopted SMP to Ecology: November 2015