# Responsiveness Summary: City of Kelso Locally Adopted Shoreline Master Program (SMP)

## Ecology Public Comment Period: September 1, 2015 through 5:00 pm on October 1, 2015

| Comment Number | Comment Topic and/or SMP Citation | Commenter(s) | Comment (Summary) | Local Government Response and Rationale | State Response and Rationale |
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| 1. | Public access | Consolidated Diking Improvement District No. 3 of Cowlitz County (CDID No. 3) and Drainage Improvement District No. 1 of Cowlitz County (DID No. 1) | Public access can create problems on levee systems because people do not stay on marked paths. People accessing the shoreline down the face of the levee create erosion pathways that have the potential to decrease the structural stability of the levee. The current public access requirements require that all levee improvement projects provide on-site public access to the shorelines. CDID No. 3 and DID No. 1 would like the ability to participate in alternate public access projects in order to protect the integrity of the levee or be able to place restrictions on public access points. | Comment noted. In accordance with the provisions of the Washington State Shoreline Management Act, the updated Kelso Shoreline Master Plan (SMP) includes the following public access goal and policy that recognizes that there are limitations to public access as noted by DID #1 and CDID #3*:*<br><br>*"4.6.1 Goal Promote safe, convenient and diversified access to publicly owned shorelines of the City of Kelso that recognizes the rights of private property owners.*<br><br>*4.6.2 Policies*<br>*A. Public access should be provided in consideration of opportunities and constraints for physical and visual access, existing and planned future uses, as well as consideration of ecological functions and public safety."*<br><br>In addition, the regulations to implement the updated SMP includes the following provisions for alternative public access projects as noted by DID #1 and CDID #3:<br><br>*"The City may approve alternatives to on-site, physical access to the shoreline if the applicant can demonstrate with substantial evidence that at least one of the following conditions exist:*<br>*a. Unavoidable health or safety hazards to the public exist which cannot be prevented by any reasonable means;*<br>*b. Inherent security requirements of the use cannot be satisfied through the application of alternative design features or other solutions;*<br>*c. The cost of providing the access, easement, or an alternative amenity, is unreasonably disproportionate to the total long-term cost of the proposed development;* | Ecology concurs with the city's response. |

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| | | | | *d. Environmental impacts that cannot be mitigated, such as damage to spawning areas or nesting areas, would result from public access on-site;*<br>*e. Significant undue and unavoidable conflict between access provisions and the proposed use and/or adjacent uses would occur and cannot be mitigated; and/or*<br>*f. More effective public access can be provided off-site by focusing public access improvements at sites within shoreline jurisdiction identified in the adopted Public Access Plan, the Kelso Parks and Recreation Plan, the Cowlitz County Regional Trail Plan, and/or the Kelso Comprehensive Plan. "*<br><br>Given these provisions, no revisions to the SMP as submitted are proposed and the City stands ready to work in partnership with DID #1 and CDID #3 during the design of future improvements to their facilities to identify public access opportunities that would not compromise the integrity of levees or adversely impact the shoreline environment. | |
| 2. | Public access | CDID No. 3 and DID No. 1 | Many of the sections of the levee are constructed on easements that were obtained for diking purposes. CDID No. 3 and DID No. 1 do not have the right to allow access to the property. | Comment noted. See previous response. | Ecology concurs with the city's response. |
| 3. | Design standards | CDID No. 3 and DID No. 1 | The requirement for new or altered dikes and levees to be designed to 'no greater than the minimum height required' restricts CDID No. 3 and DID No. 1's abilities to design and construct new or improved facilities. Minimum heights needed are dependent on the flow model of the associated river; models are recalibrated as new data is collected. For example the 100-year event in 2005 might only be an 80-year event in 2015. If a levee were raised to meet the minimum height required in 2005, it would need to be raised again in 2015. This places CDID No. 3 and DID No. 1 in the position of having to complete small projects every 5 to 10 years due to minor changes in flood elevation. This could cause more ecological disturbance and cost to property owners than completing one project constructed higher than the 'minimum height required' in anticipation of future changes. | Comment noted. This concern was brought to the City's attention during the local adoption process and the applicable design standards were modified to read as follows:<br><br>*"To the maximum extent feasible, new or altered dikes and levees shall be designed to be:*<br>*a. No greater than the minimum height required to protect adjacent lands from the predicted flood stage as identified in the applicable comprehensive flood control management plan* ***or as required by the U.S. Army Corps of Engineers for dike certification****.(emphasis added)"*<br><br>The City recognizes the challenges associated with anticipating or responding to changes in flow models and shares the concerns regarding the potential for increased | Ecology concurs with the city's response. |

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| | | | | ecological disturbances and costs associated with numerous improvements to the dikes and levees protecting the community. The highlighted revision was included by the City in consultation with DOE in an effort to provide a bounded mechanism to strike an appropriate balance among the various public interests. No further revisions are proposed at this time. | |
| 4. | Chapter 2, Definitions | Washington State Department of Fish and Wildlife, Region 5 (WDFW) | WDFW recommends adding a definition for Conditional Use Permit (CUP). | Comment noted. Shoreline Conditional Use Permits are addressed in Chapter 8.5 and no further revisions are proposed. | Ecology concurs with the city's response. |
| 5. | Chapter 5.4.1, High Intensity Environment | WDFW | The designation criteria for these (and potentially other) SEDs relate strongly to the Comprehensive Plan. We recommend using ecological criteria to some extent for designating SEDs. Ideally the criteria would link back to the Inventory and Characterization Report (ICR). | Comment noted. The shoreline environment designations are consistent with and implement the Washington State Shorelines Management Act, the provisions of the Kelso SMP, **and** (emphasis added) the City of Kelso Comprehensive Plan. The Inventory and Characterization Report was in fact the basis for the shoreline environment designations. Several revisions were made during the update process to the designations and the corresponding buffers which were established on a reach by reach basis, in accordance with the findings of the Inventory and Characterization Report. As a result of these revisions, some of the areas designated for high intensity use were afforded the highest level of protection. No further revisions to the SMP are proposed. | Ecology concurs with the city's response. The purpose statement for the high intensity designation outlines that it is intended to provide for specific uses, but also reflects the need to protect existing shoreline ecological functions. The buffers the city has assigned to reaches with this designation vary; Ecology understands the concern with this designation is primarily related to reaches KS-02 and KS-03 at the confluence of the Cowlitz and Columbia Rivers. These reaches are characterized by a 150 foot wide buffer for non-water oriented uses in the city's updated SMP. |
| 6. | Chapter 6.6 (G), Aquatic Weed Control | WDFW | WDFW has published guidance and permit requirements for removal of aquatic weeds. In this section it would be useful to refer to WDFW publication # APF-1-98, "Aquatic Plants and Fish," available online at http://wdfw.wa.gov/licensing/aquatic_plant_removal/. | Comment noted. With the consent of the Department of Ecology, the City will include reference to this publication. | Ecology concurs with the city's response and has carried this recommended addition to the SMP forward (see **Attachment C**). |
| 7. | Chapter 6.6 (J), Shoreline Buffers, and Table 4 of Appendix C, Reach Specific Shoreline Buffers | WDFW | This section states that *"All required buffers shall only extend to the waterward face of levees, dikes, railroads, and streets as determined by the City."* [1]<br>It would be better to specify some criteria used to make this determination of functional isolation. As we commented in our January 23, 2013 letter, riparian forests lying landward of man-made dikes, levees, and roads still offer important habitat functions and values important to sustaining the system. These areas may still be | Comment noted. The most recent version of the updated SMP includes the following provision: *Vegetation may be removed or altered landward of shoreline buffers described in this Program* ***provided that there is no net loss of ecological function.*** (emphasis added). This provision addresses the concern raised regarding hydraulically connected riparian forests landward of a road | Ecology concurs with the city's response. |

[1] The cited language was the focus of a WDFW comment on a previous draft of Kelso's SMP, and is not included in the June 12, 2015 version of the SMP. WDFW acknowledges that the original language has been changed to consider ecological function; which it considers an improvement. However the comment is still relevant to the reaches in Table 4 of Appendix C where buffers are described as measured "From the OHWM to the waterward toe of the levee".

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| | | | hydrologically connected, even if physically isolated by a road or dike, and offer important functions and values. | or dike and no further revisions are proposed. | |
| 8. | Chapter 7.2.3 (D)(4)(g), Grating | WDFW | WDFW recognizes that the new language is an improvement over previous iterations. WDFW recommends that the updated SMP include language that includes, "60% surface area of the float as well as the pier and ramp". For guidance on docks, see:<br>• WAC 220-110-060<br>• http://wdfw.wa.gov/publications/00052/<br>• Other documents available at http://wdfw.wa.gov/conservation/habitat/planning/ahg/ | Comment noted. With the consent of the Department of Ecology, the City will make the appropriate revision and reference to the cited publications. | Ecology concurs with the city's response and has carried this recommended addition to the SMP forward (see **Attachment C**). |
| 9. | Chapter 7.5, Appendix D (Restoration Plan) | WDFW | WDFW recommends providing more detail on the in-lieu fee program. We recommend explaining how these funds would be managed and allocated to ensure no net loss of habitat functions. If mitigation is impossible or impractical onsite it should be done offsite by constructing a project with clear restoration objectives that replace the impacted habitat function, or improve a habitat function that has particular value to the local ecology. These details would help identify what the fee would provide. | Comment noted. It is the intent of the City to develop a detailed fee in-lieu-of program in consultation with the Department of Ecology and resource agencies such as the Department of Fish and Wildlife before this provision is implemented. No further revisions are proposed at this time. | Ecology concurs with the city's response. |