

Benton County Shoreline Master Program – Ecology Comments

Comment and Response Matrix, May 2014

The following matrix documents informal comments received from Washington Department of Ecology in advance of the Board of County Commissioners Public Hearing (June 3, 2014).

SMP Section	Commenter ¹	Comment	Response or Change Proposed
General	AS/ LJ	Various minor typos (e.g., application vs. applicable) and internal or WAC consistency edits (e.g., use Critical Areas Special Study vs. Critical Areas Report, occupied vs. constructed)	Changes made
Readers Guide	AS	As stated in section 15.09 Ecology recommends listing out the exemptions in their entirety to avoid potential confusion and complication upon implementation if the RCW and WAC citations become out of date. With a comprehensive list of exemptions this section can simply refer to section 15.09. [Comment made on the statement that reads: <u>Exemptions are fully described and listed in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515. See Section 9 for additional information on exemptions.</u>]	<p>It is our understanding that changes to the Exemptions in the WAC can automatically be considered as a part of the SMP regardless of the date of SMP adoption. We shouldn't be stuck with old WAC exemptions (or definitions) as we would be stuck with other references to County or other Agency regulations, since Ecology would have approved their own WAC exemptions and definitions changes with their adoption.</p> <p>Medina's SMP was just approved and contains this language: "This section shall apply to activities defined as development pursuant to RCW 90.58.030(3)(a), and located within the shoreline jurisdiction as defined by the Shoreline Management Act, and implements the provisions set forth in WAC 173-27-040 as they currently exist or are hereafter amended."</p> <p>For clarity, "as amended" has been added after the listing of the RCW and WAC sections.</p>

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Readers Guide	AS	In regards to providing link to ORA website, AS suggested providing the name of the website so that it's easily found even when the link changes	Suggested language was substituted for the link: "The Governor's Office for Regulatory Innovation and Assistance permitting services website is a useful tool for identifying potential jurisdictional agencies and permits."
15.01.030	AS	<p>See WAC 173-27-045 for developments that are not subject to the Shoreline Management Act.</p> <p>WAC 173-26-191(2)(a)(iii)(A) The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a substantial development permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties and natural resources. Local governments have the authority and responsibility to enforce master program regulations on all uses and development in the shoreline area.</p> <p>AS stated in WAC 173-27-040 only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the substantial development process. An exemption from the substantial development process is not an exemption from compliance with the act or the local master program, nor from any other regulatory requirements.</p>	WAC 173-27-045 identifies <i>developments</i> that are not subject to the Act – we were attempting to provide clarity to applicants and staff about activities that do not meet that first level of even being a "development" and thus are not subject to the Act.
15.01.030 (b)(3)	AS	Normal maintenance or repair of existing structures or developments is an exemption. See WAC 173-27-040(2)(b). Suggest listing this as an exemption in section 15.09. [Comment made on the regulation that read: <u>Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning), wells, and individual utility service connections.</u>]	This language had been included in response to input from the Shoreline Advisory Committee and was really only intended to address routine service and cleaning. Because these actions may have impacts in shoreline jurisdiction, even if unintended such as a spill or vegetation damage, we agree that it may not be appropriate here. This provision has been deleted.
15.01.030	AS	WAC 173-26-241(3)(a) refers to exemptions from Substantial	This language was generally retained (now as .030(b)(4)) with

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(b)(4)		Development permits not from the entire SMP. Also, you have definitions that are consistent with WAC 173-26-020 in section 15.02, recommend citing this SMP and the definitions herein rather than the WAC. Recommend moving this to exemptions stated in section 15.09. This SMP still applies to agriculture activities, however existing agricultural uses can continue and many other agricultural activities are exempt. [Comment made on the regulation that reads: <u>Consistent with WAC 173-26-020 (Definitions) and WAC 173-26-241(3)(a), agricultural activities on agricultural lands as of the date of adoption of the SMP.</u>]	the addition of a reference to SMP Section 15.02 (Definitions). WAC 173-26-241(3)(a) (ii) is actually a reference to the Agriculture use provisions; the citation has been made more specific.
15.01.030 (b)(5)	AS	<p>Yes, preexisting residential uses and structures can be considered conforming uses, see WAC 173-26-191(2)(a)(iii)(A) and RCW 90.58.620. However this does not mean that this SMP does not apply to them. I see where this is coming from and that Benton County wants to have it stated in the SMP but because this could be misinterpreted I don't think this is the appropriate place.</p> <p>This concept is already included in Section 15.08.010, it is unnecessary to repeat it here. [Comment made on the regulation that reads: <u>As of the effective date of the SMP [insert date], legal pre-existing residential uses and structures where no change or new activity is proposed.</u>]</p>	<p>This language was retained (now as .030(b)(3)). If a pre-existing home is not changed, there is no action to review. Section 08.040 is consistent with recent changes to the SMA.</p> <p>At 08.040 (b), if a change is proposed, consistency with the SMP is required: "The County shall allow redevelopment, expansion, or change with the class of occupancy, of the residential structure if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions. For example, vertical, lateral or anterior expansions that do not intrude farther into a required buffer and which are consistent with the maximum height allowed by this SMP and underlying zoning may be allowed."</p> <p>If a home is damaged (see 08.040(c)), but rebuilt to the same size/location it may do so.</p>
15.02	AS	Consider broadening this definition slightly so that if the makeup of the board changes over time this definition still fits. Recommend using language from RCW 90.58.170: "...for the purposes of the local SMP administration by Benton County, means up to a six member quasi-judicial body..." [Comment made on definition for Shorelines Hearings Board.]	Change made as suggested.
15.02	AS	The \$5,000 threshold was increased in 2012 to \$6,416. [Comment made on definition for Substantial development.]	Change made as suggested.

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15.04.110	LJ	What exactly does this mean? [Comment made on Use Matrix row for nonwater-oriented industry <i>Separated from the shoreline</i>]	This was a response to language on the WAC that provides flexibility for certain nonwater-oriented uses. A footnote has been added stating: <i>Applies when a proposed development is physically separated from the shoreline by another property or public right of way.</i>
15.04.110	AS	As indicated in WAC 173-26-241(h)(ii) mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a conditional use permit. [Comment made on Use Matrix row for Mining]	One of the matrix rows under mining is specifically for “mining in channel migration zones” and identifies it as either prohibited or C (conditional use permit). In case this is confusing, the row was re-ordered so it’s last of the mining categories, and the word “All” was added.
15.04.110	AS	Is multi-family housing addressed somewhere?	The County does not allow multi-family housing in any zone. No changes made.
15.05.030 (a)	LJ	The intent here is good, but perhaps you could clarify that vegetation associated with <u>legally established</u> uses and developments may be maintained. There are likely many legally established older uses (exemptions) that do not have “approval documents.” -Would they be able to be maintained? [Comment made on regulation that read: <u>Vegetation conservation standards do not apply retroactively to existing uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction as stipulated in the approval documents for the development.</u>]	Changes made consistent with comment. The regulation now reads: Vegetation conservation standards do not apply retroactively to existing <u>legally established</u> uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction as stipulated in the approval documents for the development.
15.05.030 (g)	AS	In the vegetation management section of Table 06.030-2 there is a 2:1 ratio for vegetation removal within 50 feet of the OHWM. Suggest changes the ratios here to be consistent or clarifying that the replacement ratio increases to 2:1 within 50 of the OHWM. [Comment made on the regulation that reads: <u>Native tree removal in shoreline jurisdiction must be mitigated by installation of a similar native tree at a 1:1 impact to mitigation ratio.</u>]	The language and 1:1 ratio included in this section 15.05.030(g) is what was intended by the Shoreline Advisory Committee after considerable discussion. The SAC agreed to a 100% survival standard after 3 years to provide assurance of success, and eliminate the need for a higher ratio. The Table 06.030-2 erroneously was not updated to match this provision after that discussion took place. The Vegetation Management section of the table has been revised as follows: Unavoidable tree and shrub removal within 50 feet of the

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			OHW shall be mitigated at a 2:1 ratio using native species. New and expanded uses in shoreline jurisdiction shall comply with Section 15.05.030, Shoreline Vegetation Conservation.
15.05.050 (c)	AS	Please attach these plans as supporting documentation. See WAC 173-26-191(2)(b) Local Shoreline master programs may include other policies and regulations by referencing a specific, dated edition. A copy of the referenced regulations shall be submitted to the department with the proposed master program or amendment. [Comment made on the regulation that lists the Comp Plan, Parks Plan, and Hanford Land Use Map as components of the Public Access Plan.]	The referenced documents will be provided following adoption. However, we have made some specific language suggestions to avoid having to send the whole Comprehensive Plan (i.e. to reference the Parks and Recreation Element). The intent is not to expand Ecology’s authority under the Growth Management Act.
15.05.060 (c)	LJ	Is this list exclusive, or can other uses also be authorized? [Comment made on the list of “uses and activities may be authorized within the CMZ or floodway”]	This list is from the WAC’s list of “uses and activities may be appropriate and/or necessary within the channel migration zone or floodway” (WAC 173-26-221(3)(c)(i)). After consideration of the comment, the following additional item was added to the list: <u>(9) Uses and developments allowed in the floodway under BCC 3.26, provided they are otherwise consistent with all provisions of this SMP.</u>
15.05.060 (c)(2)	AS	Editorial change. [Comment made on the regulation that reads: New development or redevelopment landward of existing legal structures, such as levees, that prevent active channel movement and flooding.]	This suggested comma deletion changes the meaning – the comma is important and is included in the WAC. Levees are only one example. “that prevent active channel movement and flooding” is intended to qualify legal structures, not levees. No change made.
15.06.020 (h)(1)	AS	This language is from the Guidance for small cities, but probably isn’t too applicable within Benton Co or shorelines in general. All wetlands within shoreline jurisdiction are associated with a riparian area. [Comment made on provision that reads: Buffers and application of the normal mitigation sequencing process in BCC 05.020, Environmental Protection, is not required of isolated Category III and IV wetlands less than 1,000 square feet that are not associated with a riparian area or	All wetlands in shoreline jurisdiction are associated with a shoreline waterbody, but not necessarily a riparian area. A small wetland upland of a railroad or other feature may still be in Columbia River shoreline jurisdiction for example, but would not necessarily be associated with a riparian area. The wetland may be 150 ft upland of OHWM and the riparian area may extend for only 20 feet before stopping at the railroad.

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		buffer...]	No change made.
15.06.020 (h)(2)	LJ	Yet c. below requires a CA report? [Comment made on provision (h)(2) which identifies a list of uses that can take place without a critical areas special study. However, c. then stated that "Passive recreation facilities designed and in accordance with an approved critical area report,..."]	Provision (h)(2)c. was revised to strike the unintended requirement for a critical areas special study.
15.06.020 (i)(3)	LJ	Clarify that a project that generates impacts, and the associated mitigation, need to be reviewed under a shoreline permit. Mitigation needs to be tied directly to a specific project. [Comment made on a regulation that reads: Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, State policy on advance mitigation, and State water quality regulations.]	A sentence was added to the end of (i)(3) as follows: <u>If the project with impacts would take place in shoreline jurisdiction, it must also be evaluated via the appropriate shoreline permit process.</u>
Table 06.030-2	AS	Suggest changing the language to clarify the preference is for trails to be outside of the shoreline buffer. [Comment made on a provision that read: New or expanded trail systems shall avoid existing riparian areas and comply with vegetation management requirements below. Existing trail systems shall be expanded landward of existing trail where feasible. Parallel trails are preferred in the outer 25% of the shoreline buffer. Parallel portions of trails may be constructed closer to the aquatic area if the trail is located on previously disturbed rights-of-way, access and/or utility easements, and legally altered sites. Viewing platforms and crossings are allowed in buffers, provided they are also located to avoid significant vegetation removal.]	After consideration of the context of this table, which is intended to provide maximum flexibility for site-specific design of public access and recreation facilities <i>in lieu of</i> buffers while protecting existing functions in the Conservancy environment only, the following changes were made: New or expanded trail systems shall avoid existing riparian areas and comply with vegetation management requirements below. Existing trail systems shall <u>may only be expanded in response to increased demand, and shall be expanded</u> landward of existing trail where feasible. Parallel trails are preferred <u>shall be placed at least 50 feet upland of the OHWM in the Conservancy environment, when feasible</u> . Parallel portions of trails may be constructed closer to the aquatic area if the trail is located on <u>or upland of</u> previously disturbed rights-of-way, access and/or utility easements, and legally altered sites. Viewing platforms and crossings are allowed in buffers, provided they are also located to avoid significant vegetation

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			removal.
15.06.050	AS	Make sure to include copies of these County Codes with the SMP submittal. Regulations adopted by reference will be submitted as specific, dated editions to Ecology and these editions will essentially become a part of this SMP. See WAC 173-26-191(2)(b). [Comment made on regulation that reads: Benton County Code 3.26 BCC (Flood Hazard Prevention, Adopted 1987, revised 2010) and 15.30 BCC (Frequently Flooded Areas, Adopted 1994, revised 1997) are adopted by reference.]	Comment noted.
15.07.010 (a)	AS	Recommend citing the definitions you have provided in the definition section of this SMP, these use the same language as the WAC and would avoid specific WAC citations that may become out of date quickly. [Comment made on regulation that reads: For Shoreline purposes, WAC 173-26-020 (Definitions) and WAC 173-26-241(3)(a) (Agriculture) shall determine the need for shoreline review for agricultural activities.]	Language revised as follows: For Shoreline purposes, Section 15.02 (Definitions) , WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a)(ii) (Agriculture) shall determine the need for shoreline review for agricultural activities. As noted above, County understanding is that the latest WAC definitions are automatically in effect. Reference to the SMP's definitions chapter is also added for faster reference. The likelihood that any of the agriculture-related definitions will be changed is extremely low.
15.07.010 (c)(5)	AS	Exempt activities still need to be reviewed to determine if they are consistent with the SMP and that they do indeed qualify for an exemption. [Comment made on regulation that reads: "SMP provisions shall apply in the following cases: ...agricultural development and uses not specifically exempted by the SMA."]	Clarified to use "excluded" rather than "exempted" with specific cross reference to WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a) (ii).
15.07.030 (e)(2)	LJ	Docks and floats are not appropriate in a free flowing river such as the Yakima.	The Yakima River currently has docks and floats, mostly associated with single-family residences. We consulted with the WDFW Habitat Biologist during development of these Yakima River-specific regulations, and incorporated all of the recommended provisions. No changes made.
15.07.060	AS	Do you mean the site where fill is to be place must be located landward	This language is straight from the Dredging section of the

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(e)		of the OHWM? Please clarify this sentence. [Comment made on regulation that reads: Dredging for the primary purpose of obtaining fill material is prohibited, except when the material is necessary for the restoration of ecological functions. The site where the fill is to be placed must be located waterward or the OHWM.]	WAC. I believe the intent is to limit excavations of material in the aquatic environment for purposes of obtaining fill to those projects in the water that require aquatic-origin fills. Material suitable for upland fills can presumably be obtained from uplands rather than the water. No changes made.
15.07.070 (f)	AS	Is the use of weed-free straw still considered a BMP? [Comment made on regulation that read: ... Disturbed areas shall be immediately protected from erosion using weed-free straw, mulches, hydroseed, or similar methods, and revegetated, as applicable.]	“weed-free straw” was struck from the regulation.
15.07.100	AS	According to WAC 173-26-241(3)(h)(ii)(E) all mining requires a conditional use permit. [Comment made on regulation that established that recreational mining that is not compliant with WDFW guidelines must obtain a CUP]	That provision of the WAC requires a CUP for mining within a CMZ, not to a CUP for all mining. Nevertheless, given the lack of known recreational mining in the County, the entire provision has been removed.
15.08.040 (f)	AS	Are there any floating homes in Benton County? [Comment made on regulation that read: Pursuant to RCW 90.58.270(5) a floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use.]	Nevertheless, given the lack of floating homes in the County, the entire provision has been removed.
15.09.040 (g)	AS	Recommend listing this out rather than citing specific sections of the WAC and RCW that may become out of date rather quickly and will then complicate and confuse implementation. [Comment made on regulation that listed the WAC and RCW citations for shoreline exemptions]	For clarity, “as amended” was added after the list of RCW/WAC citations. As previously mentioned, the County understands that the WAC exemptions and WAC definitions can and should be used in their most current form at all times. No change made.
15.09.040 (g)	LJ	Master shall include a mechanism for documenting all project review actions in shoreline areas. How will the county document the exemption process? Suggest that you issue letters of exemption for all exemptions, then you’ll have documentation of all shoreline decisions.	The County currently uses and will continue to use permit-tracking software to track all permits, including exemptions. See Section 15.09.140 (Monitoring).
09.130 (d) Amendments to SMP		You may want to clarify that these amendments should only be “limited amendments.” You probably don’t want a comprehensive SMP amendment to be initiated by anyone other than staff or BoCC. With that in mind, you may want to reconsider who can initiate an SMP amendment. It may be best to limit all amendments to staff, the PC, or	Change voluntarily made to allow the Administrator, Planning Commission, and BOCC to initiate amendments. Others may petition the Planning Commission or BOCC.

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09.130 (d) (i) Amendments to SMP		BoCC. All SMP amendments are time consuming and expensive. ...if this section is amended to only apply to limited amendments, then an amendment that would only affect a specific property would not be appropriate for review as a limited amendment.	See above.

¹AS = Angela San Filippo, LJ = Lennard Jordan