



# Frequently Asked Questions

## Chelan County Shoreline Master Program Update

July 2009

### What is an SMP?

Shoreline Master Programs (SMP) are a combination of rules and comprehensive planning that are prepared by local governments to guide the development of stream and lake shorelines in accordance with the State Shoreline Management Act (RCW 90.58). Chelan County's current SMP was adopted in 1975 and contains goals, policies and regulations for shorelines within the local area. Chelan County and the Cities of Cashmere, Chelan, Entiat, Leavenworth, and Wenatchee are partnering to update their SMP as part of a county-wide effort with project funding from the Washington State Department of Ecology (Ecology). The updated SMP, as required by Ecology, will provide environmental protection for shorelines, preserve and enhance public access, and encourage appropriate development that supports water oriented uses.

### What are shorelines?

Shorelines are special waterbodies that meet certain size or flow criteria under the Shoreline Management Act, including the adjacent uplands. They specifically include lakes greater than 20 acres, streams and rivers with an average annual flow greater than 20 cubic feet per second (cfs), lands within 200 feet of the ordinary high water mark, floodways, some floodplains, and associated wetlands. Chelan County has at least 130 shorelines that meet the definition, which include approximately 50 lakes and 80 streams or rivers.

### What do shoreline rules cover?

Shoreline rules apply to any land use activity that occurs within the shoreline jurisdiction as defined in the SMP. The rules cover the following:

- construction of new structures such as houses, sheds, and decks
- building height
- construction of in-water and over-water structures such as docks, buoys, and piers
- water-dependent uses such as residential docks and marinas
- land development such as clearing, grading, dredging, or filling
- other activities along the shorelines, including restoration (e.g., riparian planting, bank stabilization), trails, and public access.

### Why are we updating the SMP now?

Chelan County and its Cities developed and adopted SMPs in 1975 for the purpose of "focusing comprehensive, coordinated planning attention at the critical land-water interface" (page 1). The current SMP was developed more than 30 years ago and since then much has changed along Chelan County shorelines. In addition, knowledge of best development and conservation practices has evolved. There have also been changes in State laws and rules.

Based on State laws and revised rules issued in 2003, all local governments must update their SMPs. The due date in Chelan County is 2013. However, the County and Cities received a State grant as an early adopter on the east side, and are working cooperatively on the Update. Other early adopters on the east side include Douglas County, Okanogan County, Yakima County, and others.

## Why is the updated SMP detailed?

The Draft SMP has been prepared to meet the requirements of the Shoreline Management Act of 1971 (RCW 90.58), the implementing State rules codified as Chapter 173-26 of the Washington Administrative Code (WAC) "State Master Program Approval/Amendment Procedures and Master Program Guidelines" that were revised in 2003, and other applicable local, state, and federal laws. As was the case in 1975 and today, the SMP is developed locally, but must meet the Shoreline Management Act and implementing State rules, and is subject to approval by Ecology.

The Draft SMP is intended to be detailed for the following reasons:

- 1) to allow for more shoreline applications to be approved administratively for an efficient and cost-effective process,
- 2) to cross-reference applicable state and federal laws to help consolidate requirements and be a resource for property owners and local government staff, and
- 3) to provide some certainty of interpretation and application that benefits property owners and local government staff over time.

## How long will it take?

The SMP update process began in October 2007, and the adoption process is anticipated to be complete by June 30, 2010. Existing County and City SMPs will remain in effect until the updated plans are adopted by Ecology, the Board of Chelan County Commissioners, and the City Councils.

## How have the County and Cities involved the public? How can I comment?

The County and Cities invite you to become actively engaged in the SMP update process. The many ways to participate are:

- attend our public meetings and workshops
- invite us to attend your community organization meetings
- sign up for our e-mail distribution list
- learn more about shorelines
- talk to your neighbors and friends
- ask questions and provide comments on the products developed during the update

Our meeting schedule is available on the Internet, along with meeting notes and agendas, project updates, and products developed through the process. Visit the website for more information:

[www.co.chelan.wa.us/nr/nr\\_shoreline\\_master\\_program.html](http://www.co.chelan.wa.us/nr/nr_shoreline_master_program.html).

Some completed public involvement activities include a series of nine visioning workshops in fall 2008. On-going ways to participate are to join the Shoreline Advisory Committee which meets every other month. Additionally, the County and Cities will be holding public workshops and hearings with Planning Commissions, City Councils, and Board of County Commissioners. Written comments can be submitted at the website or by mailing the comments to the County or Cities (contact information is available at the County website).

The first review draft issued June 9, 2009 has a two month comment period, and meetings are scheduled with the County and City Planning Commissions, City Councils, and Board of County Commissioners. See the County website for more information.

## How would the SMP update affect agriculture?

SMP policies and regulations apply to *new* agricultural activities or to conversions of agricultural activities to other uses, and not to existing activities. Many agricultural activities are exempt from shoreline permits per RCW 90.58.030(3)(e) and WAC 173-27-040.

## How would the SMP update affect single-family residences?

Single-family residences are preferred uses on shorelines of the state (RCW 90.58.020) “when developed in a manner consistent with control of pollution and prevention of damage to the natural environment” (WAC 173-26-241(j)). The Draft SMP proposes allowing single-family residences in nearly all Shoreline Use Environments where underlying zones allow for residential uses. Single-family residences would need to meet SMP policies and standards, but typically are exempt from shoreline permits when meeting the definitions in RCW 90.58.030 (3)(e) and WAC 173-27-040.

## How would the SMP update affect overwater structures (e.g. docks, floats, buoys, marinas)?

The SMP update continues to allow these water-dependent uses in appropriate areas, but provides an increased level of detail with respect to standards and mitigation, particularly for private uses. Marinas and other facilities are favored because they provide shoreline access to large numbers of the public. Fewer dimensional standards are therefore provided as the design of these facilities is largely dependent on the amount and kind of expected use. However, for all overwater structures, the new State rules direct updated SMPs to develop policies and regulations that “limit shoreline modifications in number and extent” and ensure that “shoreline modifications individually and cumulatively do not result in a net loss of ecological functions” (WAC 173-26-231(2)). Techniques for implementing this direction are to encourage use of buoys and joint-use structures when feasible, and to provide consistency with existing State and Federal permit requirements and policies.

## Does the Draft SMP require public access to shorelines?

Public access is a preferred use per the Shoreline Management Act (RCW 90.58.020). Public access can be physical access (e.g. trail) or visual (view corridors).

Public access is referenced numerous times in the Act and Shoreline Master Program Guidelines (WAC 173-26):

*RCW 90.58.020 Legislative findings — State policy enunciated — Use preference*  
*RCW 90.58.100 (2)(b) Programs as constituting use regulations — Duties when preparing programs and amendments thereto — Program contents*

*173-26-176 General policy goals of the act and guidelines for shorelines of the state*

*173-26-181 Special policy goals of the act and guidelines for shorelines of statewide significance*

*173-26-191 (1) Master program contents*

*173-26-211 (5c) Aquatic environment*  
*173-26-211 (5d) High-intensity environment*  
*173-26-211 (5e) Urban conservancy environment*  
*173-26-211 (5f) Shoreline residential environment*

*173-26-221 (2) Critical areas*  
*173-26-221 (3) Flood hazard reduction*  
*173-26-221 (4) Public access*

*173-26-231 (3) Provisions for specific shoreline modifications*  
*(a) Shoreline stabilization*  
*(b) Piers and docks*  
*(c) Fill*  
*(d) Breakwaters, jetties, groins, and weirs*

*173-26-241 Shoreline uses (3) Standards*  
*(c) Boating facilities*  
*(d) Commercial development*  
*(f) Industry*  
*(i) Recreational development*  
*(j) Residential development*

Generally, SMP Guidelines say public access “should” be required for private uses of a certain size and “shall” be required for public uses. The word “should” means in the SMP Guidelines: “that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.”

Public access was also discussed frequently at the Shoreline Vision Workshops in fall 2008:  
[http://www.co.chelan.wa.us/nr/data/vision\\_workshop\\_summary\\_w\\_fullappdx\\_22dec08.pdf](http://www.co.chelan.wa.us/nr/data/vision_workshop_summary_w_fullappdx_22dec08.pdf)

The first public review draft SMP responds to public comments received to date by more strongly promoting public access on public properties, and removing automatic requirements for public access on private properties.

At the same time, consistent with SMP Guidelines, the proposed SMP Update would:

- Protect views from large numbers of residences or public properties and give local governments the flexibility to modify height and frontage standards to help achieve that goal. (Implements RCW 90.58.320 and WAC 173-26-221(4)(d)(iv))
- Provide flexibility for nonwater-oriented commercial uses to locate in shoreline areas with public access. (Implements WAC 173-26-241(3)(d)) Nonwater-oriented uses are uses that are not water-dependent, water-related, or water-enjoyment.
- Address community access for larger mixed use or residential developments (e.g. over 20 units). (Addresses WAC 173-26-241(3)(j)) Community access would be considered only for areas where there is no public access plan and where there is a potential for a significant demand.
- Promote public access with water dependent marinas and water oriented recreation (implementing WAC 173-26-221 (4) and WAC 173-26-241 (c)).

## **How does the Draft SMP affect building heights and views?**

The Shoreline Management Act establishes a 35-foot height limit from average grade (RCW 90.58.320). Local governments may allow greater heights if it can be shown that shoreline development will not obstruct the view of a substantial number of residences on areas adjoining such shorelines when overriding considerations of the public interest will be served.

The SMP Update generally proposes 35 feet as the maximum height in most locations. Where the County or Cities have demonstrated that the public interest will be served, such as in industrial or waterfront plan areas, the SMP Update may allow for development taller than 35 feet if located away from significant concentrations of residential uses or public properties (WAC 173-26-221(4)(d)(iv)). In some cases taller buildings may protect views by concentrating buildings in one place rather than spreading them out, and the SMP Update would give local governments the flexibility to modify height and frontage standards to help protect significant views.

## **What is “no net loss of ecological functions”?**

The SMP Guidelines (WAC 173-26-186) require that there be “no net loss of shoreline ecological function.” No net loss is both a performance standard that the updated SMP must meet at a planning level, and a mitigation standard that requires that the impacts of a particular shoreline development and/or use, whether permitted or exempt, be identified and prevented or mitigated. As part of the SMP update process, we must demonstrate through a variety of analyses that developments allowed to occur consistent with the revised SMP over a 20-year period would not degrade the baseline (current 2009) condition. Individual developments and uses subject to the updated SMP must conduct their activities such that no adverse impacts occur on shoreline ecological functions or processes compared to shoreline condition just prior to the proposed development and/or use. No net loss can be substantially achieved through regulations or shoreline permits, but also through implementing a Shoreline Restoration Plan that is part of the SMP Update. The Shoreline Restoration Plan acknowledges and plans for projects/programs outside the SMP that will improve shoreline function such that no net loss as a whole is met, and in fact net improvement may be realized.

## **How are Draft SMP regulations different than critical areas regulations? Does the Draft SMP require shoreline buffers?**

In general, an SMP regulates all uses, developments and activities in shoreline jurisdiction (see “What are shorelines” above) consistent with the requirements of the Shoreline Management Act. Critical areas regulations solely address protection of critical areas – wetlands, fish and wildlife habitat conservation areas, frequently flooded areas, aquifer recharge areas, and geologic hazard areas – and their buffers consistent with the requirements of the Growth Management Act. The SMP must directly include or specifically reference regulations protecting certain critical areas inside of shoreline jurisdiction (WAC 173-26-221(2)). Often, the critical areas regulations that apply within and outside of shoreline jurisdiction are virtually identical.

Some jurisdictions may include shoreline buffers within their critical areas regulations (e.g., Chelan County). However, other jurisdictions (e.g., the Cities) have chosen to establish shoreline buffers in the body of the Draft SMP in a Vegetation Conservation chapter. As a result of specific requirements of the Shoreline Management Act to balance a variety of uses in shoreline jurisdiction (e.g. water oriented uses and public access), a shoreline buffer often provides more development flexibility than a critical area buffer outside of shoreline jurisdiction.

## **How does the Draft SMP affect bulkheads and other shoreline stabilization projects?**

While the Draft SMP would still allow new bulkheads when necessary, the new State rules provide a strict set of conditions under which this could occur, including demonstration of necessity and imminent threat in a geotechnical analysis report. Proposed new, modified or replacement shoreline stabilization measures are also subject to the following provisions:

- “[L]imit the size of stabilization measures to the minimum necessary.
- Use measures designed to assure no net loss of shoreline ecological functions.
- Use “[s]oft approaches ... unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses” (WAC 173-26-231(3)(a)(iii)).

Consistent with the new State rules, the Draft SMP places greater emphasis on implementing the least impacting shoreline stabilization measures feasible, while still allowing property owners to respond to excessive erosion and protect legal structures.

## **What are shoreline permits? When are shoreline permits required?**

Shoreline permits are required for most shoreline uses and activities. There are three types of shoreline permits: Shoreline Substantial Development Permit, Shoreline Conditional Use Permits; and Shoreline Variances. Most uses and activities would be subject to approval of a Shoreline Substantial Development Permit. Shoreline uses or activities that require additional consideration to make sure they are compatible with the shoreline conditions and surroundings may require a Shoreline Conditional Use Permit. If shoreline applications propose to alter a shoreline development standard they may require a Shoreline Variance Permit. In general, the County or Cities issue shoreline permits but DOE reviews local permit decisions and approves Shoreline Conditional Use and Shoreline Variance permits.

Exempt activities do not require Shoreline Substantial Development Permits, but do require compliance with the SMP policies and regulations. The kinds of activities and uses that are typically exempt from Shoreline Substantial Development Permits include the following (see WAC 173-27-040 for details):

- Development not exceeding \$5,718<sup>1</sup> based on total cost or fair market value, whichever is higher.
- Normal maintenance or repair of existing structures or developments.

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<sup>1</sup> Or, dollar value as amended by the State of Washington Office of Financial Management based on the consumer price index.

- Construction of a bulkhead common to single-family residences.
- Emergency construction necessary to protect property from damage by the elements.
- Construction and practices for farming, irrigation, and ranching activities (roads, utilities, barns, irrigation facilities and channels).
- Construction or modification of navigational aids such as channel markers and anchor buoys;
- Construction of a single-family residence on land not exceeding 35 feet in height above average grade level
- Construction of a dock or community dock for private noncommercial use by single-family and multiple-family residences.
- Operation, maintenance, or construction of canals, waterways, drains, reservoirs.
- The marking of property lines or corners on state-owned lands.
- Operation and maintenance of existing dikes, ditches, drains, or other facilities for agricultural purposes
- Certain energy facilities (80.50 RCW, Energy Facilities -Site Locations).
- Site exploration and investigation activities that are prerequisites to preparing applications for development.
- The process of removing or controlling aquatic noxious weeds (RCW 17.26.020).
- Watershed restoration projects.
- Fish or wildlife habitat or fish passage improvement projects.