

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

SMP Submittal accepted May 20, 2014, Ordinance No. 14-020-CC
Prepared by Jaime Short & Jeremy Sikes on August 11, 2014

Brief Description of Proposed Amendment:

Grant 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 1975 and was last amended in 2005. The SMP 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 Unified Development Code.

Amendment History, Review Process: The County indicates the proposed SMP amendments originated from a local planning process that began in October 2011. The record shows that 12 workshops open to the public were held on the following dates: 4/4/12, 5/2/12, 6/6/12, 11/7/12, 11/28/12, 1/2/13, 2/6/13, 3/6/13, 4/3/13, 6/5/13, 10/2/13, and 1/8/14. A public hearing before the Planning Commission was held on March 19, 2014. Affidavits of publication provided by the County indicate notice of the hearing was published on February 5, 2014, in the Columbia Basin Herald, the Quincy Valley Post Register (2/6/14), The Star, the Grant County Journal (2/6/14), and the Mattawa Area News. Notice was also sent out directly to approximately 2,800 property owners, agencies, and interested parties.

Six individuals and/or entities provided comments to the County during the public comment period on the draft SMP; held from February 5 to March 6, 2014. Eleven individuals provided testimony during the course of the Planning Commission's public hearing on March 19, 2014. The Board of County Commissioners (BOCC) also held a public hearing on April 9, 2014. An affidavit of publication provided by the County indicates notice of the BOCC hearing was published on March 25 and April 1, 2014, in the Columbia Basin Herald.

With passage of Ordinance #14-020-CC, on April 15, 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 May 20, 2014. Notice of the state comment period was distributed to approximately 2,600 state task force members and interested parties identified by the County on June 11, 2014, in compliance with the requirements of WAC 173-26-120. The state comment period began on June 18, 2014, and continued through

July 18, 2014. Ten individuals or organizations submitted comments on the proposed amendments. Ecology sent all written comments it received to the County on July 20, 2014. On August 6, 2014, the County submitted to Ecology its responses to issues raised during the state comment period. Ecology's own responses to issues raised during the comment period are available as part of the SMP amendment process record (*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 6, 2014. The record demonstrates that notice of the SEPA determination was published in the in the Columbia Basin Herald, the Quincy Valley Post Register (2/6), The Star, the Grant County Journal (2/6), and the Mattawa Area News on February 5, 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:

- *a May 2012 public participation plan,*
- *a June 2013 shoreline inventory and characterization and use analysis,*
- *a June 2013 Semi-Arid Riparian Functions assessment*
- *a May 2014 cumulative impacts analysis and No Net Loss report,*
- *a May 2014 restoration plan*

Summary of Issues Raised During The Public Review Process:

The County's comprehensive SMP update process went relatively smoothly. The Planning Commission provided a thorough review of draft products and encouraged members of the public who attended the open workshops to participate in the discussion. During the course of the 30 day public comment period and Planning Commission hearing, individuals expressed general concerns about the size of buffers, joint use dock requirements, and potential impacts to existing agricultural operations. County planning staff provided both the comments and a responsiveness summary to the Planning Commission for their consideration.

At the Planning Commission hearing, a representative from the Bureau of Reclamation (BOR) provided testimony questioning the inclusion of Trail Lake and Sand Hollow Creek in shoreline jurisdiction. BOR asserts that Trail Lake is simply a wide spot in the main canal and is managed as an irrigation facility, so the SMA does not apply. They also claim it is completely within federal ownership and there are no plans for future development of the facility. The BOR representative also testified that because the flow of Sand Hollow Creek's stream channel is controlled by BOR and operated similarly to an irrigation facility, it should be excluded from shoreline jurisdiction. BOR is concerned that the inclusion of Sand Hollow Creek in the SMP

could cause “conflicts for future water service contracts and require shoreline permitting for new turnouts.” These concerns led to additional discussion at both the Planning Commission level and with the Board of County Commissioners.

The Planning Commission recommended that County planning staff work with the consulting team and Ecology staff to reassess the designation of Sand Hollow Creek and other irrigation features as shoreline jurisdiction. Follow-up discussions with BOR narrowed the reassessment to Sand Hollow Creek and Trail Lake. During the April 9, 2014, BOCC hearing, the BOR reiterated their concerns and asked the Commissioners to remove the upper portion of Sand Hollow Creek and the entirety of Trail Lake from shoreline jurisdiction. The Commissioners granted that request which is memorialized in Ordinance #14-020-CC, Attachment A – Findings of Fact, #29.

During Ecology’s public comment period, Futurewise expressed concern over the width of the County’s riparian buffers. With the exception of the Natural Environment designation, Futurewise recommends wider buffers in order to protect riparian ecological functions. They provided a copy of Washington Department of Fish and Wildlife’s *Management Recommendations for Washington’s Priority Habitat: Riparian (1997)* to justify their recommended buffers.

Summary of Issues Identified by Ecology as Relevant To Its Decision:

Shoreline Jurisdiction:

Subsequent to the adoption of Grant County Ordinance #14-020-CC , Ecology received two letters from the BOR (Utter, April 28, 2014 and July 10, 2014), restating their concerns about the inclusion of portions of Sand Hollow Creek and Trail Lake in shoreline jurisdiction.

The April 28 letter to Ecology (Utter, April 28 2014) appears to be a request for Ecology not to reapply jurisdictional status during our approval. The letter stresses that the general purpose of the Columbia Basin Project (CBP) is to deliver irrigation water to farmers for agricultural purposes, and that this is accomplished through a series of constructed works owned and operated by the BOR and irrigation districts. They state further that, “The CBP has ongoing operations, maintenance, and construction related to the irrigation infrastructure, for the primary purpose of distribution, recapture, and reuse of the water for irrigation, which includes return flows and artificially stored groundwater. The water within these federal facilities is used in the production of agricultural crops as well as for industrial and municipal purposes, and is paid for by the beneficiaries.”(Utter, April 28, 2014).

These facts are not in dispute, and Ecology recognizes the vital role the BOR and irrigation districts play in administering the Columbia Basin Project for the benefit of all Washingtonians, and particularly the residents of Grant County. The essential nature of BOR-administered waters in the county is one reason Ecology worked with county staff to develop use regulations that will minimize any additional burden the new SMP might present on water users.

Sand Hollow Creek

The BOR April 28 letter erroneously cites Ecology’s SMP Update Handbook Chapter 5 to indicate that our guidance regarding exclusion of irrigation channels would apply to Sand Hollow Creek below the irrigation channel outfall.

Ecology finds the cited suggested criteria, read in whole, does not apply to Sand Hollow Creek below the outfall because it is a natural waterbody, not a constructed facility:

“Irrigation, return flow, and stockwatering channels:

Artificially created agriculture channels are explicitly excluded from the definition of a “stream” under Ecology’s rules (WAC 173-22-030). **However, natural streams with flows greater than 20 cfs that are used for agricultural purposes are shorelines.**” (Emphasis added)(SMP Handbook Chapter 5 Shoreline Jurisdiction, 2010)

Artificial channels are clearly excluded from shoreline jurisdiction through the definition of “Stream” found in 173-22-030(8), and the County correctly applied this exclusion through its extensive jurisdictional determination phase. During this assessment early in the update process, the county and its consultant, in collaboration with Ecology, removed several miles of wasteway canals and overflow areas (where no natural waterbody previously existed) from jurisdiction. This analysis also excluded the clearly manmade canal portions of the Sand Hollow system upstream of a point approximately 1100 feet west of the intersection of Road 11 SW and Road R SW (Lat. 46°N 55’42” ; Long. -119° 52’57”). The County provided incorrect maps during its public comment period which inadvertently showed these ditch lines as jurisdictional. The map products have been corrected in the final submittal to Ecology.

Relying primarily on a 2006 Washington State Department of Transportation report (*Reach and Site Assessment for SR 26, Milepost 1.5, Sand Hollow Wasteway Truck Climbing Lane Erosion Project, Grant County, Washington*), and the Grant County SMP Inventory, Analysis, and Characterization report (June 2013) we note the following facts regarding Sand Hollow Creek:

1. Sand Hollow is a naturally occurring stream with a single-thread steep channel that drains approximately 35,500 acres.
2. The stream has no identified perennial tributaries and is 10.34 miles long.
3. By routing irrigation return flows down the canyon, the Columbia Basin Project has effectively reversed the hydrograph with high flows in the summer and base flows in the winter. Mean flows during irrigation season range from 87-140 cfs while mean flows during the non-irrigated months range from 7-16 cfs.
4. The mean annual flow (MAF) measured at USGS station number 12464607 (SAND HOLLOW CREEK AT S RD SW NEAR VANTAGE, WA) is 57.4 cfs.
5. The lower portions of Sand Hollow Creek are actively used by Endangered Species Act-listed steelhead and Chinook.
6. The high flows (and high velocities) in the summer have created a destination for whitewater kayakers and it is noted as one of the best whitewater runs east of the Cascades.

Relevant WAC and RCW citations are as follows:

- RCW 90.58.030(2)(e): *“Shorelines” means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes:*
- WAC 173-18-040(1)(b): *Eastern Washington. Streams in Eastern Washington from the point at which the stream reaches a mean annual flow of twenty cubic feet per second down to the mouth of said*

stream or river: Provided, that the stream falls at said point, within the jurisdiction of chapter 90.58 RCW.

- WAC 173-22-030(8): A "stream" is a **naturally occurring body of periodic or continuously flowing water** where:
 - (a) *The mean annual flow is greater than twenty cubic feet per second; and*
 - (b) *The water is contained within a channel. A channel is an open conduit either naturally or artificially created. This definition does not include artificially created irrigation, return flow, or stockwatering channels; (emphasis added)*

Sand Hollow Creek below the ditch outfall downstream of the intersection of Road 11 SW and Road R SW is a stream. Upon review of USGS topographic maps rendered prior to the implementation of the Columbia Basin Project and physical alteration of the channel and hydrology of Sand Hollow Creek (Figure 1 - *Beverly 1:62,500 Quadrangle, 1912 and 1954*), Ecology finds that Sand Hollow Creek was a natural aquatic and geomorphic feature of the landscape, whose natural flow is augmented by the delivery of CBP water. Current aerial imagery shows the stream flowing through a highly sinuous channel at the outfall of the constructed channel just west of Road R SW, becoming less sinuous as gradient increases 1.5 miles upstream of Hwy 26. The stream continues to exhibit natural geomorphology despite highly altered flow regimes, and has natural flow during periods of time that irrigation return-water is not discharged.

Shoreline jurisdiction is not determined by the source of water flowing down a stream channel; RCW 90.58, and WACs 173-18, -22, and, -26, refer only to MAF as the distinguishing hydrologic characteristic. Documented mean annual flow at USGS station number 12464607 (SAND HOLLOW CREEK AT S RD SW NEAR VANTAGE, WA) is 57.4 cfs, well above the threshold flow of 20 cfs.

The BOR provided no compelling evidence that Sand Hollow Creek below the ditch outfall at the near Road R does not meet the criteria for inclusion in shoreline jurisdiction. They do not dispute the flow data that indicates MAF is greater than 20 cfs, nor do they provide evidence that the creek downstream of the ditch outfall is an artificial channel. Therefore, Ecology finds that the BOCC had no technical basis for removing the non-channelized segment of Sand Hollow Creek upstream of Highway 26 from jurisdiction.

Given that documented mean annual flows exceed the threshold criteria in RCW 90.58.030(e) and WAC 173-18-040(1) and that the stream is a naturally occurring body of flowing water per 173-22-030(8), Ecology concludes that Sand Hollow Creek is a shoreline jurisdictional stream from a point approximately 1100 feet downstream of the intersection of Road 11 SW and Road R SW (Lat. 46°N 55'42" ; Long. -119° 52'57") to the confluence with the Columbia River.

Trail Lake

The BOR argues in public testimony and in their April 28 letter (Utter, April 28 2014) that Trail Lake should not be considered within shoreline jurisdiction because it was formed due to seepage from the Main Canal immediately adjacent. Water in the canal escapes into the lake because the geology in the area leads to fractures in the concrete panels that form the canal, which are difficult and expensive to repair. The BOR further argues that the lands surrounding the lake are in federal ownership, so the Grant County SMP will not affect land use in that area.

The Grant County IAC report (June 2013) classifies the 129-acre Trail Lake into the group of reservoirs along the Main Canal, which also includes Billy Clapp Lake and Brook Lake.

The County has conducted a careful, systematic jurisdictional analysis on many waterbodies within the CBP. In all cases, they made findings compliant with Ecology guidance and the definition of lakes in WAC 173-20-030; *“As used herein, the following words and phrases shall have the following meanings: (1) “Lakes” means all the surface water areas of the state, including reservoirs; except (a) Lakes less than twenty acres in size;”*

As a result of the analysis many waterbodies similar to Trail Lake in configuration and source water were brought into, or remained in jurisdiction. Billy Clapp Lake, Brook Lake, Potholes Reservoir, and even Banks Lake are examples of other lakes that store and convey CBP water. Trail Lake is unique due to its “accidental” nature, whereas the other CBP reservoir lakes were clearly intended by design to take advantage of topography to create contiguous waterbodies with CBP works. However, the definition found in WAC 173-20-030 makes no distinction between accidental or purposeful lakes, and indeed specifically identifies reservoirs meeting the size criteria as shorelines.

The BOR goes on to indicate that ownership of the land surrounding the lake should be determinative in whether it is jurisdictional. In fact, all surface waters are routinely assessed for jurisdiction and planned for during the SMP process, as was the case for the entirety of BOR, Department of Defense, USFWS and all other federal ownership in the county. Federal ownership only becomes relevant when federal entities are conducting projects on federal lands. Such projects are not subject to the SMP, but shoreline planning is necessary for these areas in the event that non-federal entities undertake a project on federal lands, such as a lease-holder or contractor.

The BOR provided no evidence that Trail Lake does not meet the criteria to be considered a lake, and therefore not subject to RCW 90.58 and the Grant County SMP. Therefore, Ecology finds that the BOCC had no technical basis for removing Trail Lake from shoreline jurisdiction. Given that Trail Lake is a lake exceeding 20 acres in size, and that its source-water and ownership are not determinative in applying shoreline jurisdiction, per RCW 90-58-030(e) and WAC 173-20-030 Ecology finds that Trail Lake must be designated as shoreline jurisdiction.

Riparian Buffers:

Anchor QEA, the consultant for Grant County, led a peer-reviewed literature research, review and report for riparian management recommendations to inform the County’s SMP update. The *Semi-Arid Riparian Functions and Associated Regulatory Protections to Support Shoreline Master Program Updates* report, finalized in 2013, included analysis of over 130 documents with specific relevance to semi-arid ecosystems, and underwent peer review by a panel of researchers with specific experience in the riparian ecology of the semi-arid western US. The recommendations are more current and relevant to conditions found in Grant County than recommendations found in the 1997 WDFW Riparian Management Recommendations referenced by Futurewise in comments submitted during the state public review process.

Information in this report summarizes at a landscape scale the physical area needed in a semi-arid setting from the edge of the water body upland to where the riparian vegetation community transitions into the shrub-steppe vegetation community as the dominant vegetation cover type. The ecological functions of each of these communities were analyzed with respect to their importance in supporting shoreline ecologic function. The information from this report was then applied to specific water bodies within Grant County, resulting in the identified buffers and other protection provisions provided in GCC 24.12 to assure no net loss of ecological function.

It is Ecology’s conclusion that the riparian buffers, as described in the locally adopted SMP, are appropriate and essential to meet the policy and standards of the SMA and the Guidelines. The buffers, in concert with GCC 24.12.230 (Environmental Protections); 24.12.240 (Shoreline Vegetation Conservation); 24.12.250 (Water

Quality, Stormwater and Nonpoint Pollution), 24.12.520 (Wetlands), and 24.12.530 (Fish and Wildlife Habitat Conservation Areas), along with other GCC 24.12 sections, are consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-201(3)(d), -211, and -221(5)).

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/amendment 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 alternatives is effective 14 days from Ecology's final action approving the alternatives.

References Cited:

Anchor QEA. *Final Draft Semi-Arid Riparian Functions and Associated Regulatory Protections to Support Shoreline Master Program Updates*, June 2013

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