

City of Moses Lake SMP Update - Comments received during State public comment period				
Comment Topic	Name of Commenter	Specific Comment	Local Government Response and Rationale	Ecology Response
Docks	Rick Trenbeath, Local resident, Lakeshore Dr.	"In section 6-70-01 it states that public access includes docks that touch the water. If this is true for resident docks then who is liable if they get hurt?"	Public access does not include access to private docks.	Noted; Ecology staff spoke with this commenter and provided similar feedback
Noise	Rick Trenbeath	"Section 6.2 Talks about noise caused by industrial manufacturing but what about the boats on the lake that play very very loud music?"	Music played by boats is not "development" that is regulated by the SMP. See Moses Lake Municipal Code 8.28, Noise Control, for existing noise regulations.	Noted; Ecology staff spoke with this commenter and provided similar feedback
Non Conforming Uses	Rick Trenbeath	"Can you tell me were in the proposal you read the Grandfather info." (Upon further conversation with Mr. Trenbeath, he is referring to the status of non-conforming uses and structures).	Non-conforming use provisions are in Chapter 12, Section 12-60.	Noted
Allowed Uses - Natural	Eric Pentico – Washington Department of Fish & Wildlife	WDFW recommends water- dependent (recreation) and transportation facility uses not be allowed in areas designated as Natural within the City of Moses Lake. "Natural environments in the City of Moses Lake contain the most intact riparian environments within the city and provide the best protection to riparian area functions. However, according to table 9.3, buffers in Recreation Areas for water-dependent uses are allowed to be reduced to 0'. Transportation facility setbacks are allowed to be reduced to 100' or 150'. Higher intensity water-dependent uses which require buffer widths to be reduced to 0' and transportation facility uses are not physical alterations which 'serve to protect or enhance any significant, unique, or highly valued feature...', which is the stated policy for natural environment areas in the City of Moses Lake."	Transportation facilities are only allowed in the natural environment as a conditional use permit (See Table 9.2, Ch. 9, p.13). Approval of conditional use permits is limited to those that can meet the criteria listed in 12-20-050, including no significant adverse effects to the shoreline environment, including cumulative impacts of similar projects (Ch.12, p.4). The Transportation Facilities provisions in 7-110 (Ch.7, p.16-18) minimizes roads and bridges in all shoreline environments. The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from the maintenance or development of transportation uses (p.33). By its definition, a water-dependent use cannot exist in a location that is not adjacent to the water. Water-dependent uses can't have a setback from the water, or they won't work. So the setback can't be increased. Water dependent recreation uses are only allowed in the natural environment as a conditional use	Concur

			<p>permit (See Table 9.2, Ch. 9, p.12). Approval of conditional use permits is limited to those that can meet the criteria listed in 12-20-050, including no significant adverse effects to the shoreline environment, including cumulative impacts of similar projects (Ch.12, p.4). The Recreational Uses provisions in 7-90 (Ch.7, p.12-13) require no net loss of shoreline ecological functions, compatibility, and minimizing any adverse environmental effects. Recreation is limited to uses that complement their surroundings and protect natural areas (Policy #5). Protection of the natural character, resources, and ecology of the shoreline is addressed in Policy #10. The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from recreational uses (p.30).</p>	
Setbacks – SR-S	Eric Pentico - WDFW	<p>WDFW recommends Aquaculture, Boating Facilities, and Recreation water-dependent uses not be allowed unless absolutely necessary in SR-S designated areas within the City of Moses Lake and that required buffers for recreational trails be expanded to a minimum width of 25'. "Shoreline areas designated SR-S within the City of Moses Lake demonstrate some ecological impairments, but '...they also retain important ecological functions and have high potential for ecological protection and restoration because they include relatively large tracts that have not been subdivided or include large wetland areas.' (Table 9.1) Proposed buffers listed in Table 9.3 for SR-S designated areas that could hinder properly functioning ecological conditions or interfere with future restoration efforts include the allowed buffer reduction for Aquaculture water-dependent structures and facilities to 0', Boating water-dependent facilities to 0', and Recreation water-dependent uses and paths and trails reduced to 0' and 15'."</p>	<p>Aquaculture: We could prohibit this in the SR-S designation. It was our understanding that we were supposed to allow/encourage aquaculture as a priority use in shorelines.</p> <p>Boating Facilities: The only boating facilities allowed in SR-S are boat lifts. It is our understanding that boat lifts have very minimal impact.</p> <p>Recreation: Same as for Natural, above.</p> <p>Buffers for trails: All recreational uses in the SR-S designation, including trails, are conditional uses, so all the safeguards listed above for Recreational Uses in the Natural Designation are in place.</p>	<p>Aquaculture is exceptionally unlikely in Moses Lake, but as a water depended use, it should be accommodated where appropriate. We generally concur with this response.</p>
Setbacks – SR-R	Eric Pentico - WDFW	<p>WDFW recommends buffers for water-related, water-dependent and water enjoyment structures and facilities in areas that are currently functioning properly or may possibly be restored to proper functioning conditions be set at a</p>	<p>65' buffers in SR-R: Most of the proposed buffers in SR-R are 50' or more. The proposed residential buffer in SR-R is 25', 50', or 100', depending on the existing conditions. In places</p>	<p>Ecology generally concurs with this response. Without further information, it</p>

		<p>minimum of 65' wide and buffer widths for paths and trails should only be allowed to be reduced to 25'. "Residential uses should have the buffers expanded to a minimum of 65' to retain most functioning conditions and allow for adequate restoration of degraded areas. SR-R designated lands, similar to SR-S lands, demonstrate impairments to ecological functions, but 'They retain important ecological functions and have the potential for development that is compatible with ecological protection and restoration.' (Table 9.1)</p> <p>Proposed buffers in table 9.3 that could hinder properly functioning ecological conditions and impair potential restoration efforts include 0' and 50' buffers for Aquaculture water-dependent and water-related structures, 50' Commercial water-related and water-enjoyment buffers, and 35' & 10' Recreation water-oriented uses and Recreational path/trail buffers. In addition, 25' and 50' buffer widths are allowed for dwelling units and non-water-dependent accessory structures in Residential uses areas."</p>	<p>where there are existing houses built 25' back from the water and only a few scattered vacant lots, the buffer was set at 25', since there isn't ecological function left to preserve in those areas. The places that did have ecological function remaining were set at 50' or 100', depending on how much of a buffer currently exists. This varying-width buffer was a recommendation based on the Cumulative Impacts Analysis. See Recommendations to Meet No Net Loss of Ecological Functions in the City's Shoreline Master Program, Oct. 31, 2013, by The Watershed Company.</p> <p>25' trail buffer: The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from recreational uses (p.30).</p>	<p>is not clear why the commenter is proposing that 65' is a more appropriate buffer width than those proposed, and supported by the IAC and CIA documents</p>
Setbacks - H-R	Eric Pentico - WDFW	<p>WDFW recommends buffers in areas retaining some properly functioning ecological conditions or may be restored should be set for water-related, water-dependent and water-enjoyment structures and Recreation water-oriented uses to a minimum 65' buffer width. Buffer widths for Recreation paths and trails should only be allowed to be reduced to 25'. WDFW recommends buffers in Residential areas be expanded to a minimum of 65' to retain most functioning ecological conditions and allow for adequate restoration of degraded areas. "H-R designated lands demonstrate impairments to ecological functions, but 'They retain important ecological functions and have the potential for development that is compatible with ecological protection and restoration.' (Table 9.1) The proposed buffers listed in Table 9.3 that could hinder properly functioning ecological conditions and impair restoration efforts include 50' buffers for Aquaculture water-related structure and facilities, 50' buffers for Commercial water-dependent and water-enjoyment structures, and 35' & 10' buffers for Recreation water-oriented uses and Recreational paths/trails. For Residential use areas, buffer reductions to</p>	<p>50' buffer Aquaculture, 50' Commercial: There are only a few areas designated H-R. All of these areas are zoned Commercial or Industrial. However, in the H-R designation, all commercial uses, even water dependent, are only allowed by conditional use permit. Approval of conditional use permits is limited to those that can meet the criteria listed in 12-20-050, including no significant adverse effects to the shoreline environment, including cumulative impacts of similar projects (Ch.12, p.4). Commercial developments are required to be designed, constructed, operated, and maintained to ensure no net loss of shoreline ecological functions (7-40-020 Policy 8, p.5; 7-40-030 Regulation 2.d, p.6).</p> <p>35' Recreation: Only water-dependent recreation is allowed outright, water related or water enjoyment recreation uses are CUPs, with all the protections listed above for CUPs.</p>	

		25' are proposed for dwelling units and non-water dependent accessory structures."	<p>10' Trail: All water related and water enjoyment recreation uses, including trails, in the H-R environment are conditional uses, so all the safeguards listed above for Recreational Uses in the Natural Designation are in place. The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from recreational uses (p.30).</p> <p>25' Residential: Residential uses, while allowed by the draft SMP in H-R, would be highly restricted by the Commercial and Industrial zoning so would be unlikely to be proposed.</p>	
Setbacks	Eric Pentico - WDFW	WDFW recommends that a 65' buffer be required to retain most functioning ecological conditions and allow for adequate restoration potential of degraded areas. "The SD-D designated areas have '... been found to be relatively intact as regards ecological functions.' and '...has high potential for planned development that combines limited residential use with ecological protection and restoration.'(Table 9.1) Table 9.3 indicates ecological functions and restoration potentials are being adequately protected in most cases. A planned development permit is required for Residential uses."	<p>Trail buffer: The proposed buffer for recreational paths and trails is the same in SR-D as in the Natural Environment.</p> <p>Residential buffer: If reviewing the proposed residential buffer as part of the Planned Development is not sufficient, a specific minimum distance could be set.</p>	SR-D area will be removed and Reach 25 will be afforded AR-R environment designation based on the city designation criteria in Chapter 9, and the lack of applicable standards present in the Municipal Code (Chapter 18.67 – Planned Development District Zone) the city defers to for governing SR-D.
Boating Facilities	Hugo Flores- Department of Natural Resources	7-30 Boating Facilities. 7-30-020.(1) Policies. Page 3. Provide criteria that defines how "maximum feasible protection and enhancement" will be achieved or remove the "maximum feasible" qualifier.	"Maximum feasible" will be removed.	Ecology concurs with this approach, and will include this text edit as a Recommended Change in our Findings and Conclusions
Boating Facilities	Hugo Flores- DNR	7-30 Boating Facilities. 7-30-020 (6). Policies Page 3. Consider using "shall be prohibited" rather than "should" with reference to floating homes, houseboats, and liveaboards.	Per State direction, policies are "should" statements. The "shall" statement comes in the regulation. Floating homes are prohibited in all environment designations in Table 9.2 (under	Ecology concurs with this approach, and will work with the city on revised language,

			Boating Facilities). A regulation could be added to 7-30-030, the regulations that implement the policies in 7-30-020.	should they chose to develop regulations relating to floating homes.
Boating Facilities	Hugo Flores-DNR	7-30 Boating Facilities. 7-30-030 (3). Regulations. Page 4. Provide a numerical value for the minimum required for a dock-to-shore- attachment site abutment.	The minimum for a private dock could be very different from the minimum needed for a commercial or public access dock.	This response does not address the comment provided, it merely states that two different standards may need to be developed. Ecology will coordinate with the city on possible alterations to the text
Boating Facilities	Hugo Flores-DNR	7-30 Boating Facilities. 7-30-030 (5). Regulations. Page 4. At "...The City shall request technical assistance from agencies with jurisdiction...", consider adding DNR to the list of agencies.	DNR will be added to the list of agencies.	Ecology concurs with this approach, and will include this text edit as a Recommended Change in our Findings and Conclusions
Boating Facilities	Hugo Flores-DNR	7-30 Boating Facilities. 7-30-030 (13). Regulations. Page 4. At "...Boat houses, as non-water dependent structures, are prohibited.". Consider clarifying how a boathouse can be used as a non-water dependent use. Suggests "Boathouses, as a residential use, are prohibited." as replacement text.	We disagree that a boathouse is a residential use. Our definition of a boathouse is a structure over or immediately adjacent to water, used to store watercraft (Ch. 13). Boats can be stored upland, therefore boathouses are not needed and are prohibited.	Ecology concurs with this response.
Commercial Uses	Hugo Flores-DNR	7-40 Commercial Uses. 7-40-030 (1)(b). Regulations. Page 5. Regards prohibition of non-water-oriented uses where "Navigability is severely limited at the proposed site...". Provide criteria for assessing severe limitation on navigability.	We would be open to suggestions for criteria for assessing severe limitations on navigability.	The comment could provide a sensible improvement to the Draft SMP. Ecology will coordinate with the city on possible alterations to the text
Archeological and Historical Resources	Eric Oosahwee-Voss - Colville Confederated Tribes	"Please be advised that your proposed undertaking (SMP update) lies within the traditional territory of the Moses-Columbia tribe, one of the twelve tribes that make up the Confederated Tribes of the Colville Reservation (also known as the Colville Confederated Tribes or CCT), which is governed by the Colville Business Council (CBC). The CBC has delegated to the Tribal Historic Preservation Officer	Noted.	Noted

		(THPO) the responsibility of representing the CCT with regard to cultural resources management issues throughout the traditional territories of all of the constituent tribes under Resolution 1996-29."		
Archeological and Historical Resources	Eric Oosahwee-Voss - Colville Confederated Tribes	<p>Commenter includes attached general recommended SMP language, without specific text edits for section as follows: "State and local cultural resources laws apply to shoreline development. State laws include RCW 27.53 (Archaeological Sites and Records), which prohibits the unpermitted removal of archaeological materials and establishes a permitting process, and RCW 27.44 (Indian Graves and Records), which describes how human remains must be treated. This shoreline management master plan requires each project proponent to:</p> <ul style="list-style-type: none"> • Consult with the Department of Archaeology and Historic Preservation (DAHP) and Native American tribes to determine if the projects lie within areas of cultural significance. • Conduct background research at DAHP • Conduct a site assessment if cultural resources are recorded in the proposed project area or if requested by DAHP or Native American tribes • Recover archaeological materials in compliance with RCW 27.53 prior to construction • Consult with the County, DAHP, and Native American tribes if resources are discovered during construction • Consider cultural resources in planning for public spaces and access <p>Given the importance of shoreline locations throughout the human history of Washington, the potential for cultural resources should be considered high for any shoreline development permit unless demonstrated otherwise. To comply with state and local law, applicants should perform records searches at DAHP and require cultural resources site assessments in high potential areas where resources are recorded on or near the project lands. If the probability of unrecorded resources is high, applicants should be prepared</p>	<p>Earlier versions of the SMP included a requirement that subdivisions and commercial development submit a site inspection and evaluation, unless deemed unnecessary by DAHP. This requirement was removed by the Planning Commission as it was felt the other regulations were protective enough. Our current permit process includes notifying DAHP & CCT for all shoreline permits that include ground or lakebed disturbance. If no comments are received, we assume there are no cultural resources concerns about the site/project.</p> <p>In addition, 6-20-030 Regulation 3 (p.3) requires immediate stoppage of work and notification of the City, DAHP, & CCT if anything of possible archaeological interest is uncovered.</p>	<p>Ecology appreciates the thoughtful comments provided by the Tribe. While we believe incorporation of the proposed language would improve the SMP, Ecology generally concurs with this response. The SMP appears to be compliant with WAC 173-26-221(1). Any changes to the cultural resources section will be at the city's discretion to improve the SMP. The city is aware of the need to comply with the provisions of RCW 27.53 and 27.44 as indicated.</p>

		to follow the provisions of RCW 27.53 and 27.44 if cultural resources are identified or encountered during the planning or construction process."		
Archeological and Historical Resources	Gretchen Kaehler - State Dept. of Archaeology and Historic Preservation	In regard to 6-20-010, recommended change to this statement would read something like the following: "The following policies and regulations apply to sites, buildings, structures, districts, and objects within the shoreline jurisdiction that are identified in the Shoreline Inventory and Characterization; that are recorded at the Washington Department of Archaeology and Historic Preservation; and/or within local jurisdictions including the City of Moses Lake, Grant County, and affected Indian tribes; or that have been inadvertently discovered.	The recommended change can be made. Here is the text as modified: The following policies and regulations apply to all "Historical/Archeology Areas" identified in the Shoreline Inventory and Characterization and on all sites, buildings, structures, districts, and objects within shoreline jurisdiction <u>that are identified in the Shoreline Inventory and Characterization</u> ; having archaeological or historic resources that are recorded at the Washington Department of Archaeology and Historic Preservation (DAHP); and/or within local jurisdictions, including the City of Moses Lake, Grant County, and affected Indian tribes; or that have been inadvertently uncovered-discovered .	Ecology concurs with this approach, and will include this text edit as a Recommended Change in our Findings and Conclusions.
Archeological and Historical Resources	Gretchen Kaehler - State Dept. of Archaeology and Historic Preservation (DAHP) (note that comments by this reviewer were provided 56 minutes after the comment period closed on March 4th)	We recommend clarifying Policy 6-20-020 (4) as to the purpose of this policy. It is unclear as to why access to these resources should be at public expense. Access to archaeological sites should be restricted to appropriate parties. Also please be aware the location of archaeological site is exempt from public disclosure to prevent looting and depredation (RCW 42.56.300).	We will delete this policy in Chapter 6, p. 2.	Ecology concurs with this approach, and will include this text edit as a Recommended Change in our Findings and Conclusions.
Archeological and Historical Resources	Gretchen Kaehler - DAHP	We recommend that "The completed archaeological evaluation should be submitted to DAHP and the interested Tribe for review prior to the issuance of any shoreline permits" to Policy 6-20-30(2).	We will incorporate the recommendation as follows: An evaluation and a report meeting the minimal reporting standards of DAHP, prepared by a cultural resource	Ecology concurs with this approach, and will include this text edit as a Recommended Change in our Findings

			management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61, shall be required before the start of any ground disturbance work in any area known to contain archaeological or historic resources. The City may require such an evaluation prior to the issuance of any shoreline permit or shoreline exemption. <u>The completed archaeological evaluation shall be submitted to DAHP and the interested Tribe for review prior to issuance of any shoreline permits.</u>	and Conclusions.
Archeological and Historical Resources	Gretchen Kaehler - DAHP	In the definitions in Chapter 13, we note the inclusion of a definition of "archaeological resources." However, we recommend that definitions for cultural resources be broadened to be clear that the Shoreline Master Program addresses a broader range of cultural resource types.	We would be willing to consider including a definition of cultural resources.	Ecology will work with the city on any definition changes they would propose and will include them as Recommended Changes.
Archeological and Historical Resources	Gretchen Kaehler - DAHP	In regard to Appendix A Mitigation, it should be made clear elsewhere in the document (such as in section 6-20) that mitigation will also pertain to cultural resources that are negatively impacted and should be identified and implemented in consultation with DAHP, affected Tribes, and other appropriate affected parties.	The Mitigation Appendix is specific to ecological mitigation, with plant survival rates, irrigation, monitoring, etc. Cultural resources impacts would need to be mitigated very differently. Since cultural resources are already regulated by the state, we would defer to state requirements for mitigation should any resources be found.	Ecology generally concurs with this response. The SMP appears to be compliant with WAC 173-26-221(1). Any changes to the cultural resources section will be at the city's discretion to improve the SMP.
Archeological and Historical Resources	Gretchen Kaehler - DAHP	There is little specificity or process with regard to cultural resources. There are also no details on how previously recorded archaeological sites will be recognized during pre-project review. We recommend that the City of Moses Lake enter into a data sharing agreement with DAHP so that archaeological and historic sites can be identified prior to project construction.	Our current permit process includes notifying DAHP & CCT for all shoreline permits that include ground or lakebed disturbance. If no comments are received, we assume there are no cultural resources concerns about the site/project.	Ecology generally concurs with this response. While the entering into a data sharing agreement is a sensible recommendation, the SMP as submitted appears to be compliant with WAC

				173-26-221(1). Any changes to the cultural resources section will be at the city's discretion to improve the SMP.
Archeological and Historical Resources	Gretchen Kaehler - DAHP	We also recommend adding process and specificity to the shoreline management plan regarding cultural resources. We have attached DAHP's model shoreline management language for that purpose. (commenter provides copy of the DAHP model language for SMPs).	We prefer to keep our regulations as short as possible. We believe we have provided adequate protection with the regulations as proposed.	While the suggested model SMP language may provide for more specificity, and may improve implementation of the cultural resources provisions, the SMP as submitted appears to be compliant with WAC 173-26-221(1).

Comments received during Local Government public comment period – Unresolved at local adoption

Selected text local submittal document: "City Council Public Hearing and Comments Responsiveness Summary"

Comment Topic	Name of Commenter	Specific Comment	Local Government Response and Rationale	Ecology Response
Wetlands - mitigation	Jeremy Sikes (Ecology)	p.16. 6-30-070-C-5-e-v (mitigation ratios). <i>While the provisions are generally well written and thorough, this compensatory mitigation standard does not reflect the most current science on wetland mitigation, and per the Cumulative Impacts Analysis (Watershed Co. 2013) will result in net loss of ecological function. Ratios should be similar to those found in Wetlands in Washington State Vol. 2 or Ecology's Small Cities Guidance which was the source for many of the wetland provisions in this SMP. Wetland impacts from fill also require authorization from Ecology and possibly from the US Army Corps of Engineers. Mitigation ratios...were co-developed by Ecology and the Corps, and would be required for an applicant to obtain the needed permits. Revising the SMP to align with federal and state requirements will ensure that applicants have a predictable process to follow when they wish to do a project that will impact wetlands.</i>	The Planning Commission recommendation of not requiring mitigation for any larger area than has been impacted is supported by the City Council.	This previous comment from Ecology observed that the draft language would not meet the standards required in WAC 173-26-221(c)(i), or 173-26-201(2)(a)(i)(E) and (F) Mitigation. The mitigation language will be revised as a required change.
Wetlands -	Jeremy Sikes	p.18. Table 6.1. Buffers for Category 3 and 4 wetlands	The Planning Commission recommendation	This previous

buffers	(Ecology)	have been reduced arbitrarily from 60' (with additional buffers of 30' and 60') and 40'; to 25' for both categories with no additional area for higher scores.	of a 25' buffer for Category 3 and 4 wetlands is supported by the City Council and has been determined to be adequate based on the Cumulative Impact Analysis developed by The Watershed Company.	comment from Ecology observed that the draft language would not meet the standards required in WAC 173-26-221(c)(i), or 173-26-201(2)(a). Generally Ecology finds the CIA/ CIR to be thorough and well done, this particular conclusion of the CIA is in error. Buffers for Category 3 and 4 wetlands have been reduced arbitrarily from 60' (with additional buffers of 30' and 60') and 40'; to 25' for both categories with no additional area for higher scores. While we recognize that the CIR report prepared by Watershed Co. made recommendation that Category 3 wetlands should be provided a 25' buffer, we do not agree with the underlying analysis, and the proposed buffers do not reflect the totality of the recommendation. Watershed Co, makes the statement that "...proposed buffers should either be: 1)
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				<p>consistent with existing conditions, or 2) consistent with recommendations of the "most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern" (WAC 173-26-201(2)(a))." This is an incorrect interpretation of the WAC. The analysis of existing conditions is informative and should be considered, but it cannot substitute for the requirement under WAC 173-26-201(2)(a). The analysis performed regarding category 3 wetland buffers presented does not meet the definition under 201(2)(a), having only one, unverified category 3 wetland, along with subjective conclusions about function based on aerial photo interpretation as its basis. In addition, the proposed wetland buffers do not reflect</p>
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				even <u>that</u> flawed recommendation by allowing the smaller buffer without the required additional buffer width for higher habitat scores or for non SR-R designations. Category 4 wetland buffers should align with the science-based buffer of 40 feet (Small Cities Guidance-Ecology Publication No. 10-06-001).
Docks	Jeremy Sikes (Ecology)	p.6. 7-50-020 (Dock Policies). <i>Per RCW 173-26-231(3)(b), SMPs should* contain a provision that "requires new residential development of two or more dwelling units to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence." The recently adopted Grant County SMP provides clear language and feasibility review standards to this effect, and was developed specifically for Moses Lake (See May 2012 Grant County Draft SMP Section 24.12.390 Private Moorage Facilities, p.64-66)</i> <i>*Note that when used in the context of an SMP update, "Should" means 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 (WAC 173-26-020(35)).</i>	The Planning Commission recommendation not requiring new residential development of two or more dwelling units to share a dock is supported by the City Council.	Per WAC 173-29-321(3)(b), the city has not provided "...a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action". Without this, the SMP must require the use of joint use docks when feasible, and revised language will be provided as a required change.
Docks	Jeremy Sikes (Ecology)	p.7. 7-50-030 (Dock Regulations). See comments above about joint-use docks.	The Planning Commission recommendation not requiring new residential development of two or more dwelling units to share a dock is supported by the City Council.	Per WAC 173-29-321(3)(b), the city has not provided "...a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter,

				<i>against taking the action". Without this, the SMP must require the use of joint use docks when feasible, and revised language will be provided as a required change.</i>
Docks	Jeremy Sikes (Ecology)	p.9. 7-50-030-C (Joint-use community docks). Expand this section to include developments of two or more dwellings.	The Planning Commission recommendation not requiring new residential development of two or more dwelling units to share a dock is supported by the City Council.	Per WAC 173-29-321(3)(b), the city has not provided "...a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action". Without this, the SMP must require the use of joint use docks when feasible, and revised language will be provided as a required change.
Docks	Jeremy Sikes (Ecology)	p.15. 7-100-020-7 (Residential). Statement "Individual docks should be allowed for lots in subdivisions with joint-use or community docks" is not consistent with the WAC requirements. See above comments regarding the requirement to provide for joint-use docks on developments of 2 or more dwelling units.	There are currently only 3 developments in city limits where individual docks were limited and joint use (1 development) or community (2 developments) docks were planned. See above comments for limited extent of provisions that affect new shoreline subdivisions.	While it may be accurate that there are very limited circumstances where the provision would apply, this is not determinative in the requirement under the cited WAC that SMPs must require joint use docks where feasible. Revised language will be provided as a required change.
Docks	Jeremy Sikes (Ecology)	p.16. 7-100-030 (Residential Regulations). <i>New multi-unit residential development (including subdivision of</i>	There are only 3 large parcels remaining in the City that this provision would apply to,	While it may be accurate that there are

		<i>land for more than 4 parcels) is required to provide community and/or public access in conformance to local public access plans per WAC 173-26-241(3)(j).</i>	plus possibly a few smaller ones on the lower Peninsula (see vacant land map).	very limited circumstances where the provision would apply, this is not determinative in the requirement under the cited WAC that SMPs must require public access for new multi-unit developments. Revised language will be provided as a required change
Buffers - platted	Jeremy Sikes (Ecology)	p.17. 7-100-030-11 (plats with wetland or shoreline buffers set during the platting process prior to adoption of updated SMP). <i>This section requires some additional discussion between the City and Ecology, and may need to be refined.</i>	Additional discussion between Ecology and City of Moses Lake shall take place prior to final approval of SMP.	This goes to vesting with previously platted subdivisions. Recent case law suggests that vesting for development regulations occurs when a complete building application is submitted to the jurisdiction, unless the LDCs specify another threshold. Section 11 will be removed as a required change, and statutory preliminary plat vesting rules will apply. Please see Attachments A and B for more detailed discussion.
Public Access	Jeremy Sikes (Ecology)	p.15. 7-100-020-6 (Residential). <i>New multi-unit residential development (including subdivision of land for more than 4 parcels) is required to provide community and/or public access in conformance to local public access plans per WAC 173-26-241(3)(j).</i>	There are only 3 large parcels remaining in the City that this provision would apply to, plus possibly a few smaller ones on the lower Peninsula (see vacant land map).	While it may be accurate that there are very limited circumstances where the provision would apply, this is not

				determinative in the requirement under the cited WAC that SMPs must require public access for new multi-unit developments. Revised language will be provided as a required change
Bulkheads	Jeremy Sikes (Ecology)	p.12. 8-30-070 (bulkhead regulations: "A bulkhead-type structure used to stabilize a dock may be permitted, but the size shall be limited to the minimum necessary for the dock. The stabilization structure shall not exceed 2' wider than the dock on each side nor shall it exceed 14' in total width along the shoreline.") <i>There are a number of problems with this provision (list)...Consider removing this provision, or providing detailed standards by which a project that incorporates a mini-bulkhead demonstrates need, avoids impacts, and mitigates for unavoidable impacts, and tie it more to the dock construction process.</i>	This provision was added at the suggestion of Doug Pineo, when he was the Department of Ecology reviewer of shoreline master programs. It can be deleted.	Ecology supports the deletion of this language, but it appears to still be present in the locally adopted draft. The text is deleted as a Recommended Change in our Findings and Conclusions
		Shoreline Residential Special Resource (SR-S) Environment, p.11 to 16 Table 9.2 & 9.3. <i>Shoreline areas designed SR-S within the City of Moses Lake demonstrate some ecological impairments, but "...they also retain important ecological functions and have high potential for ecological protection and restoration because they include relatively large tracts that have not been subdivided or include large wetland areas." (Table 9.1) Some of the proposed buffers listed in Table 9.3 for the SR-S designated areas could significantly hinder properly functioning ecological conditions or interfere with future restoration efforts. ... buffer reductions to 15 ft. wide are allowed for trails in the Recreation use areas. WDFW recommends... required buffers for recreational trails be expanded to a minimum of 25 ft.</i>	Trail: The Planning Commission specifically reduced the recreational trail distance from the initially proposed 50' to 15'.	The city provided no rationale for the proposed trail buffer in either the SR-R or the SR-S environments. Both of these environments are characterized by areas of special or intact ecological function, and are likely to have wetland buffer overlays. With the exception of trails specific to access a dock, there is no compelling reason trails should be located within the shoreline buffer. Trails that

				parallel the shoreline, depending on the type and construction methods can be highly destructive to habitat, can create vectors for invasive plants, and can fragment migration corridors.
		<p>Shoreline Residential Resource (SR-R) Environment, p.11 to 16 Table 9.2 & 9.3. <i>SR-R designated lands demonstrate impairment to ecological functions, but "They retain important ecological functions and have the potential for development that is compatible with ecological protection and restoration" (Table 9.1).... WDFW recommends buffers for water-related structures and facilities in areas that are properly functioning ecologically or may be restored should be set at a minimum of 65' and buffer widths for paths and trails should only be allowed to be reduced to 25'. SR-R areas having Residential uses should have the buffers expanded to a minimum of 65' to retain most functioning ecological conditions and allow for adequate restoration of degraded areas.</i></p>	<p>...</p> <p>Residential: The residential buffers are based on the Cumulative Impacts Analysis and Recommendations, which found no cumulative impacts for the 25' and 50' buffers as proposed. Most shoreline residential lots have already been developed—see Vacant Incorporated Residential Lots map. Buffer for paths and trails: The Planning Commission specifically reduced the recreational trail distance from the initially proposed 50' to 10'.</p>	<p>The city provided no rationale for the proposed trail buffer in either the SR-R or the SR-S environments. Both of these environments are characterized by areas of special or intact ecological function, and are likely to have wetland buffer overlays. With the exception of trails specific to access a dock, there is no compelling reason trails should be located within the shoreline buffer. Trails that parallel the shoreline, depending on the type and construction methods can be highly destructive to habitat, can create vectors for invasive plants, and can fragment migration corridors. Ecology can work with the city to develop required</p>

				language to provide greater specificity in trail location regulations, while protecting the most sensitive riparian areas.

DRAFT

City of Moses Lake SMP Comprehensive Update

Attachment B Required and Recommended Changes (by chapter)

Chapter 6 General Policies and Regulations

6-20. Archaeological and Historic Resources

6-20-010. The following policies and regulations apply to all ~~"Historical/Archeology Areas" identified in the Shoreline Inventory and Characterization and on all sites, buildings, structures, districts, and objects within shoreline jurisdiction that are identified in the Shoreline Inventory and Characterization; having archaeological or historic resources~~ that are recorded at the Washington Department of Archaeology and Historic Preservation (DAHP); and/or within local jurisdictions, including the City of Moses Lake, Grant County, and affected Indian tribes; or that have been inadvertently ~~uncovered~~ discovered.

6-20-020. Policies

4. ~~Where practical, access to identified historic or archaeological sites should be made available to the public at public expense. Such public access should be designed and managed to protect the resources.~~

6-20-030. Regulations

2. An evaluation and a report meeting the minimal reporting standards of DAHP, prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61, shall be required before the start of any ground disturbance work in any area known to contain archaeological or historic resources. The City may require such an evaluation prior to the issuance of any shoreline permit or shoreline exemption. The completed archaeological evaluation shall be submitted to DAHP and the interested Tribe for review prior to issuance of any shoreline permits.

Comment [SJ(1)]: Recommended changes from Moses Lake staff based on public comment

Comment [SJ(2)]: Recommended changes from Moses Lake staff based on public comment

Comment [SJ(3)]: Recommended changes from Moses Lake staff based on public comment

6-30-070. Critical Areas: Wetlands

6-30-070-C. Regulations

4. Wetland ratings

- a. *Classification.* Wetlands in the City of Moses Lake and its UGA shall be classified into the following categories according to the *Washington State Wetlands Rating System for Eastern Washington* (Washington Department of Ecology Publication ~~#14-06-030~~ 04-06-15, or as amended);
- c. Criteria for wetland analysis reports
 - ii. The written report and the accompanying scaled plan sheets shall contain the following information, at a minimum:
 1. Written report:
 - i. Evaluation of functions of the wetland and adjacent buffer using a functions assessment method recognized by local or state agency staff and including the

Comment [SJ(4)]: Required change. Corrected reference to current wetland rating system manual.

reference for the method used and all data sheets. Wetlands shall be rated according to the Washington State Department of Ecology wetland rating system, as set forth in the Washington State Wetland Rating System for Eastern Washington (Ecology Publication #14-06-030, or as amended and approved by Ecology). The preferred methods are as follows: for Category I wetlands, use (detailed) *Methods for Assessing Wetland Functions* (Washington Department of Ecology Publication 00-06-47); for Category II, III, and IV wetlands use (generic) *Washington State Wetlands Rating System for Eastern Washington* (Washington Department of Ecology Publication 04-06-15).

Comment [SJ(5): Required change to correct reference to current wetland rating system, and remove reference to the outdated detailed functional assessment method no longer in use.

d. Criteria for compensatory mitigation reports

3. The compensatory mitigation report must include a written report and scaled plan sheets containing, at a minimum, the following elements. Full guidance can be found in the *Wetland Mitigation in Washington State: Part 2 - Developing Mitigation Plans*, March 2006 (Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10; Ecology Publication #06-06-011b) or as revised, or, *Selecting Wetland Mitigation Sites Using a Watershed Approach* (Eastern Washington) (Publication #10-06-07, November 2010).

Comment [SJ(6): Required change to include recent alternative methods for developing wetland mitigation plans that were not available at the time this section was initially drafted.

e. Compensatory mitigation standards

- v. The size of a compensatory mitigation project shall be greater than the size of the affected wetland per Table 6.1.

- a. When impacts to wetlands and wetland critical area buffers are proposed they must be mitigated using a 1:1 ratio based on area of wetland buffer impacted.
- b. To more fully protect functions and values, and as an alternative to the mitigation ratios in Table 6.1, the SMP Administrator may allow mitigation based on the "credit/debit" method developed by the Department of Ecology in "Calculating Credits and Debits for Compensatory Mitigation in Wetlands of Eastern Washington: Final Report" (Ecology Publication #11-06-015, August 2012, or as amended).

Comment [SJ(7): Required change per WAC 173-26-221(c)(i), or 173-26-201(2)(a)(i)(E) and (F), and previous Ecology comments.

Table 6.1: Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
<u>Category I:</u> <u>Bog, Natural Heritage site</u>	<u>Not considered possible</u>	<u>Case by case</u>	<u>Case by case</u>
<u>Category I:</u> <u>Mature Forested</u>	<u>6:1</u>	<u>12:1</u>	<u>24:1</u>
<u>Category I:</u> <u>Based on functions</u>	<u>4:1</u>	<u>8:1</u>	<u>16:1</u>
<u>Category II</u>	<u>3:1</u>	<u>6:1</u>	<u>12:1</u>

While the provisions generally are well written and thorough, this compensatory mitigation standard does not reflect the most current science on wetland mitigation and, per the Cumulative Impacts Analysis (Watershed Co., 2013), will result in net loss of ecological function. Ratios should be similar to those found in *Wetlands in Washington State Volume 2* (Publication #06-06-011b) or Ecology's *Small Cities Guidance* (Publication #10-06-001) which was the source for many of the wetland provisions in this SMP. Wetland impacts from fill also require authorization from Ecology and possible from the US Army Corps of Engineers. Mitigation ratios presented in the documents cited above were co-developed by Ecology and the Corps, and would be required for an applicant to obtain the needed permits. Revising the SMP to align with federal and state requirements will ensure that applicants have a predictable process to follow when they wish to do a project that will impact wetlands.

<u>Category III</u>	<u>2:1</u>	<u>4:1</u>	<u>8:1</u>
<u>Category IV</u>	<u>1.5:1</u>	<u>3:1</u>	<u>6:1</u>

From "Wetlands and CAO Updates- Guidance for Small Cities Eastern Washington Version" October 2012 Revision; Ecology publication # 10-06-001.

h. Wetland buffers

- i. Buffer widths: wetland buffers must be maintained in accordance with the following tables:

Table 6.21: Wetland Buffer Widths

Wetland Category	Standard Buffer Width	Additional buffer width if wetland scores <u>21-255</u> habitat points	Additional buffer width if wetland scores <u>26-296-7</u> habitat points	Additional buffer width if wetland scores <u>30-368-9</u> habitat points
Category I or II: Based on total score	75'	Add 15'	Add 45'	Add 75'
Category I or II: Forested	75'	Add 15'	Add 45'	Add 75'
Category I: Natural Heritage Wetlands	190'	NA	NA	NA
Category I or II: Alkali or Vernal Pool	150'	NA	NA	NA
Category III (all)	<u>25'-60'</u>	<u>Add 15'NA</u>	<u>Add 45'NA</u>	<u>Add 75'NA</u>
Category IV (all)	<u>25'-40'</u>	NA	NA	NA

Table 6.32: Required Measures to Minimize Impacts to Wetlands

Comment [SJ(8)]: Required change to table number to accommodate new wetland mitigation table above.

Comment [SJ(9)]: Required changes to score ranges based on updates to Eastern Washington Wetland Rating system

Comment [SJ(10)]: Required change per WAC 173-26-201 (2)(a), and 173-26-221(2)(c), based on flawed CIA wetland analysis and unsupported reduction of standard buffers.

Buffers for Category 3 and 4 wetlands have been reduced arbitrarily from 60' (with additional buffers of 30' and 60') and 40', to 25' for both categories with no additional area for higher functioning scores. While we recognize that the Cumulative Impacts Recommendations report prepared by Watershed Co made recommendation that Category 3 wetlands should be provided a 25' buffer, we do not agree with the underlying analysis, and the proposed buffers do not reflect the totality of the recommendation.

Watershed Co, makes the statement that "...proposed buffers should either be: 1) consistent with existing conditions, or 2) consistent with recommendations of the "most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern" (WAC 173-26-201(2)(a)).". This is an incorrect interpretation of the WAC. The analysis of existing conditions is informative and should be considered, but it cannot substitute for the requirement under WAC 173-26-201(2)(a). The analysis performed regarding category 3 wetland buffers presented does not meet the definition under 201(2)(a), having only one, unverified category 3 wetland, along with subjective conclusions about function based on aerial photo interpretation as its' basis. In addition, the proposed wetland buffers do not reflect even that flawed recommendation by allowing the smaller buffer without the required additional buffer width for higher habitat scores or for non SR-R designations. Category 4 wetland buffers should align with the science-based buffer of 40 feet (Small Cities Guidance Publication #10-06-001).

Comment [SJ(11)]: Required change to table number to accommodate new wetland mitigation table above.

Chapter 7

Specific Shoreline Use Policies and Regulations

7-30. Boating Facilities

7-30-020. Policies

1. Boating facilities should be located, designed, and operated to provide ~~maximum feasible~~ protection and enhancement of aquatic and terrestrial life including animals, fish, birds, plants, and their habitats and migratory routes. When plastics and other non-biodegradable materials are used, precautions should be taken to ensure their containment.

7-30-030. Regulations

2. ~~Boating facilities shall be designed in accordance to technical standards found in WAC 220-660-150 Boat ramps and launches in freshwater areas, and -160 Marinas and terminals in freshwater areas (or as amended) as applicable.~~
6. A marina shall be allowed only as a conditional use. The City shall request technical assistance from agencies with jurisdiction and/or knowledge, including but not limited to the Washington departments of Ecology, of Fish and Wildlife, ~~of Natural Resources, and of Health, and shall make available to those agencies the Shoreline Inventory and Characterization and maps developed as part of this SMP. The Planning Commission shall consider the comments received from commenting agencies before making a decision on whether or not to approve the permit, and any conditions or modifications required.~~

7-50-030. Regulations

7-50-030-C. Joint-use community recreational docks

1. All multi-family residences proposing to provide moorage facilities shall be limited to a single, joint-use moorage facility, provided that the City may authorize more than one joint-use dock if, based on conditions specific to the site, a single facility would be inappropriate for reasons of safety, security, or impact to the shoreline environment.
2. ~~If moorage is to be provided or planned as part of a new residential development of two or more waterfront dwelling units or lots, or as part of a subdivision or other divisions of land occurring after the effective date of this SMP, joint use or community dock facilities shall be required when feasible, rather than allow individual docks for each residence. A joint use dock shall not be required for:~~
 - a. Development of a single residence.
 - b. Existing single residential units that currently do not have a dock.
 - c. Replacement of existing single residential docks.
3. ~~In order to evaluate the feasibility of a joint community dock in a new residential development of two or more waterfront dwelling units, the applicant/proponent shall demonstrate the following:~~
 - a. Existing facilities in the vicinity, including marinas and shared moorage, are not adequate or feasible for use; and
 - b. The applicant/proponent has contacted abutting property owners and none have indicated a willingness to share an existing dock or develop a shared moorage in conjunction with the applicant/proponent.

7-100-030. Regulations

2. ~~New multi-unit residential development (including multiplexes), and the subdivision of land into four or more lots shall make adequate provisions for public access consistent with the regulations set forth in Section 7-90. Recreational Uses, and all provisions of this SMP.~~

Comment [SJ(12)]: Delete "maximum feasible" from text. Recommended changes from Moses Lake staff based on public comment

Comment [SJ(13)]: Required change to address DNR Comment regarding dimensional standards for marina construction. While 220-660-160 does not provide dimensional standards per se, referencing it here does ensure that marina and boat ramp designs are compliant with other permit requirements.

Comment [SJ(14)]: Recommended changes from Moses Lake staff based on public comment

Comment [SJ(15)]: Required change. Per RCW 173-26-231(3)(b) SMPs should* contain a provision that; "requires new residential development of two or more dwelling units to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence".

Note that when used in the context of an SMP update, "Should" means 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 (WAC 173-26-020(35)).

Per WAC 173-29-321(3)(b), the city has not provided "...a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action".

The recently adopted Grant County SMP provides clear language and feasibility review standards to this effect, which were developed specifically for Moses Lake, and are provided here as a required change.

Comment [SJ(16)]: Required change, adding 2 new sections and changing outline numbering accordingly. WAC 173-26-221(4)(d)(iii) requires that SMPs provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non water-dependent uses and for the subdivision of land into more than four parcels. Specific to residential development, WAC 173-26-241 (3)(j) states that "new multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's p ... [1]

3. ~~Public access shall be located and designed to respect private property rights, be compatible with the shoreline environment, protect ecological functions and processes, protect aesthetic values of shoreline, and provide for public safety (including consistency with Crime Prevention through Environmental Design (CPTED) principles, where applicable).~~

~~810.~~ Environment-specific regulations:

- a. Residential uses shall comply with the environment-specific requirements in Chapter 9, except as provided in Regulation ~~9-10~~ below.

~~911.~~ **Common Line Setbacks:** The residential buffers in Table 9.3 shall not apply in cases where the majority of existing development in the area does not meet the established buffer standards. In such cases residential structures shall be set back common to the average of setbacks for existing dwelling units within three hundred (300) feet of ~~side-property lines~~ **a proposed residential structure**. If there is only one or no dwelling units within three hundred (300) feet of **a proposed residential structure**, the shoreline buffers of Table 9.3 shall apply. Common line setback allowed in this section is subject to approval by the Shoreline Administrator. Common line setback shall only be allowed where no loss of shoreline ecological functions or interference with shoreline processes will result from said common line setback **per the mitigation requirements in this SMP**. The Administrator may place conditions on the approval. Any further deviation from setback requirements beyond that allowed in this section shall require approval of a shoreline variance permit.

~~4012.~~ For lots platted before the adoption of this Master Program, if the required shoreline buffer causes there to be less than 60' from the buffer to the front zoning setback line, the front yard zoning setback may be reduced to 10' for a porch, 15' for living space or the side of a garage, and 20' for a garage door. Side yard setbacks may be reduced to 5'. If there is still not 60' from the reduced zoning setback to the shoreline buffer, the shoreline buffer may also be reduced by the minimum amount that will allow 60' of buildable area, provided there will be no net loss of shoreline ecological function **(per Section 6-30 Critical Areas, and Appendix A Mitigation of this SMP)** and provided that at least a 25' shoreline buffer will be maintained. These reductions in buffer and setbacks do not authorize encroachments into any easements which may be on the property. All proposals to reduce setbacks and buffers shall be submitted to the Administrator for review. The Administrator may place conditions on the approval.

~~11.~~ **For lots in plats with preliminary plat approval before the adoption of this Master Program, and which had wetland or shoreline buffers set during the platting process, the buffer shall be as set during the platting process:**

~~4213.~~ Residential Fencing: Fencing meeting Municipal Code standards may extend to the landward edge of the shoreline buffer. Fencing may be installed within the buffer if all of the following are met:

Comment [SJ(17): Changes to internal numbering structure accommodate new subsections 7-100-030 2. and 3. above.

Comment [SJ(18): Changes to internal numbering structure accommodate new subsections 7-100-030 2. and 3. above.

Comment [SJ(19): Changes to internal numbering structure accommodate new subsections 7-100-030 2. and 3. above.

Comment [SJ(20): Common line setbacks are a useful tool for the purpose of allowing shoreline views to be adequate and comparable to adjacent residences. Ecology has previously only approved common line setback language for 150' on each side of a structure for the purpose of providing for comparable views. The distance measured should be the minimum needed to encompass a similar view corridor on either side of a residence, and with the application of mitigation requirements. No change to the 300-foot allowance is required.

Comment [SJ(21): Changes to internal numbering structure accommodate new subsections 7-100-030 2. and 3. above.

Comment [SJ(22): Required change. Limited administrative buffer reductions that allow reasonable development on previously platted lots, are a sensible approach to avoiding the need for complex variances. As written, the provision does not specify how no net loss is to be achieved or evaluated. This required change refers the applicant to standards in the Critical Areas and Mitigation provisions of the regulations.

Comment [SJ(23): SEE FULL COMMENT AND RATIONALE AT END OF ATTACHMENT B

Required change. Delete section 7-100-030 (11.) for compliance with

Comment [SJ(24): Changes to internal numbering structure accommodate new subsections 7-100-030 2. and 3. above.

Chapter 8

Shoreline Modification Policies and Regulations

8-30-040. Bulkheads and Riprap

8-30-070. Regulations

~~3. A bulkhead type structure used to stabilize a dock may be permitted, but the size shall be limited to the minimum necessary for the dock. The stabilization structure shall not exceed 2' wider than the dock on each side nor shall it exceed 14' in total width along the shoreline.~~

Comment [SJ(25)]: Recommended change. Deleted per city response to comments provided earlier in the adoption process, but that did not occur prior to the local adoption action.

Chapter 9 Shoreline Environment Designations

City of Moses Lake Shoreline Environment Designations

This master program establishes nine shoreline environments for the City of Moses Lake and its UGA:

H = High Intensity
H-R = High Intensity—Resource Area
SR = Shoreline Residential
SR-R = Shoreline Residential—Resource Area
SR-S = Shoreline Residential—Special Resource Area
~~SR-D = Shoreline Residential—Dunes Area~~
W = Water-Oriented Parks and Public Facilities
N = Natural
A = Aquatic

The table below describes the designation criteria for each of the nine shoreline environments. Policies for each shoreline environment follow.

**TABLE 9.1
SHORELINE ENVIRONMENT CLASSIFICATION CRITERIA**

Environment designation	Classification criteria	Comments
Shoreline Residential—Dunes	The area to be designated "Shoreline Residential—Dunes" has been found to be relatively intact as regards ecological function. It is part of a dunes ecosystem that performs important ecological functions. It is also planned for shoreline residential use. The area has high potential for planned development that combines limited residential use with ecological protection and restoration.	

Comment [SJ(26): SEE FULL COMMENT AND RATIONALE AT END OF ATTACHMENT B

Required change to re-designate SR-D to SR-S environment designation. Without providing specific development standards for the SR-D designation, as called for in the Cumulative Impacts Analysis (page 10) to ensure no net loss, this area outside the city UGA is more appropriately designated SR-S based on its physical ecological characteristics, underlying zoning, and the areas' current designation as Natural in the Grant County SMP.

Comment [SJ(27): Required change to re-designate SR-D to SR-S environment designation. See full comment below.

Reaches Designated "SR-S"

Reach	Rationale	Zoning	Comp Plan Designation
<u>25</u>	<u>Undeveloped dunes, emergent vegetation, wetlands, riparian tree cover</u>	<u>UR-3</u>	<u>LDR</u>

Comment [SJ(28): Required change to re-designate SR-D to SR-S environment designation. See full comment below.

~~Shoreline Residential—Dunes Area (SR-D) Environment Policies~~

- ~~1. All of the policies listed above for Shoreline Residential shoreline environments also apply in Shoreline Residential Dunes environments.~~
- ~~2. A Planned Development Permit should be required for any use or activity in the Shoreline Residential Dunes environment, with the exception of transportation facilities, which should be allowed with a Conditional Use Permit.~~
- ~~3. The following uses should not be allowed in Shoreline Residential Dunes environments: commercial activities, industrial activities, mining, agriculture, municipal uses, golf courses, non-water-oriented recreation, and roads and parking areas that can be located elsewhere.~~
- ~~4. As noted in the general regulations in Chapter 6, maintenance of ecological functions should be required for uses and activities in the Shoreline Residential Dunes environment.~~

Reaches Designated "SR-D"

The reaches designated "SR-D" are undeveloped tracts in a dunes ecosystem. They are relatively intact as regards ecological function, and are planned for low-density residential use. Both reaches are located in the City's UGA; they are zoned for Urban Residential 3 (UR-3) use; and designated for Low-Density Residential (LDR) use in the *Comprehensive Plan*.

Reach	Rationale	Zoning	Comp Plan Designation
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TABLE 9.2
SHORELINE ENVIRONMENT USE & ACTIVITY CHART

All uses and activities, including those classified as "Allowed" ("P") in the table below and including those considered exempt, must comply with all provisions of this Shoreline Master Program (SMP), including the General Regulations in Chapter 7. Uses and activities not listed in the Shoreline Environment Use and Activity Chart may be allowed, subject to approval by the Shoreline Administrator, if they comply with the standards in this section and with any special regulations that apply to similar uses.

Legend

H= High Intensity

H-R = High Intensity—Resource Area

SR = Shoreline Residential

~~SR-D = Shoreline Residential—Dunes Area~~

SR-R = Shoreline Residential—Resource Area

SR-S = Shoreline Residential—Special Resource Area

W = Water-Oriented Parks and Public Facilities

N = Natural

A = Aquatic

P = Allowed use; Substantial Development Permit required unless use is exempt

CUP = Shoreline Conditional Use Permit required

X = Prohibited use

PD = Planned Development Permit required

S = Same as in adjacent environment shoreward of the OHWM

N/A= Not Applicable

Comment [SJ(29)]: Required change to re-designate SR-D to SR-S environment designation. See full comment below.

Comment [SJ(30)]: Required change to re-designate SR-D to SR-S environment designation. See full comment below.

	H	H-R	SR	SR-R	SR-S	SR-D	W	N	A
Agriculture (subject to regulations in Chapter 7)	X	X	X	X	X	X	X	X	NA
Aquaculture (subject to regulations in Chapter 7)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A	CUP
Boating facilities (subject to regulations in Chapter 7)									
rail-type boat launch systems	CUP	CUP	CUP	CUP	X	X	X	X	S
Boat houses [<i>prohibited by WAC 173-26-211(5)(c)(ii)A</i>]	X	X	X	X	X	X	X	X	X
Boat launch ramps, community and public	CUP	CUP	CUP	CUP	X	X	CUP	X	S
Boat launch ramps, private	X	X	X	X	X	X	X	X	S
Boat lifts, private	CUP	CUP	P	P	P	PD	CUP	X	S
Marinas	CUP	CUP	CUP	CUP	X	X	CUP	X	S
Floating homes, houseboats, and liveaboards	X	X	X	X	X	X	X	X	X
Commercial uses (subject to regulations in Chapter 7)									
Water dependent	P	CUP	P	CUP	X	X	X	X	S
Water related & water-enjoyment	CUP	CUP	CUP	CUP	X	X	X	X	X
Other (not water-oriented)	CUP	CUP	CUP	X	X	X	X	X	X
Docks ¹									

¹ Docks will only be allowed in accordance with all applicable provisions of this SMP, including critical areas provisions and the specific use regulations that apply to docks.

	H	H-R	SR	SR-R	SR-S	SR-D	W	N	A
Joint-use community recreational docks	P	P	P	P	P	PD	P	X	S
Private residential docks	X	X	P	P	P	PD	X	X	S
Commercial docks	P	CUP	CUP	CUP	X	X	X	X	S
Industrial uses	X	X	X	X	X	X	X	X	X
Mining (subject to regulations in Chapter 7)	CUP	X	X	X	X	X	X	X	X
Parking—primary (subject to regulations in Chapter 6)	X	X	X	X	X	X	X	X	X
Parking—serving a permitted use other than a single-family residential use (subject to regulations in Chapter 6)	P	P	P	P	CUP	PD	P	X	X
Parking—serving a single-family residential use (subject to regulations in Chapter 6)	P	P	P	P	P	PD	P	X	X
Public access (subject to regulations in Chapter 6)	P	P	P	P	CUP	PD	P	CUP	S
Recreation (subject to regulations in Chapter 7)									
Water dependent	P	P	P	P	CUP	PD	P	CUP	CUP
Water related	P	CUP	P	CUP	CUP	PD	P	CUP	CUP
Water enjoyment	P	CUP	P	CUP	CUP	PD	P	CUP	CUP
Golf courses	X	X	X	X	X	X	X	X	X
Other (not water-oriented)	P	CUP	CUP	CUP	X	X	X	X	X
Residential uses (subject to regulations in Chapter 7)	P	P	P	P	P	PD	X	X	X
Residential subdivision (subject to regulations in Chapter 6)	P	CUP	P	P	P	PD	X	X	X
Retaining walls for purposes other than shoreline stabilization (subject to regulations in Chapter 6)	X	X	P	P	P	X	X	X	X
Shoreline modifications (subject to regulations in Chapter 8)									
Dredging	CUP	X	CUP	X	X	X	CUP	X	CUP
Dredge material disposal	CUP	CUP	CUP	CUP	CUP	X	CUP	CUP	CUP
Filling	P	CUP	P	CUP	CUP	X	CUP	CUP	CUP
Shoreline stabilization									
Structural stabilization, other than bulkheads ²	P	CUP	P	CUP	CUP	PD	P	X	X
Bulkheads ³	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP	CUP

Comment [SJ(30): Required change to re-designate SR-D to SR-S environment designation. See full comment below.

² Structural shoreline stabilization will only be allowed in accordance with all applicable provisions of this SMP, including, in the case on non-water-dependent uses, the requirement to demonstrate through a geotechnical report the need to protect the use.

³ Bulkheads may be allowed with a Shoreline Conditional Use Permit where the need has been documented by a geotechnical analysis. See Bulkhead regulations in Chapter 8. While existing single-family residences are exempt from the requirement to obtain a Shoreline Substantial Development Permit in order to construct a normal protective bulkhead, they must comply with all provisions of this SMP.

	H	H-R	SR	SR-R	SR-S	SR-D	W	N	A
Vegetative stabilization	P	CUP	P	P	CUP	PD	P	CUP ⁴	CUP
Flood protection facilities	X	X	X	X	X	X	X	X	X
Signs (subject to regulations in Chapter 6)									
Highway and public information	P	P	P	P	P	P	P	P	P
Off-premises outdoor advertising, and temporary	X	X	X	X	X	X	X	X	X
On premises	P	P	P	P	CUP	PD	P	X	X
Solid waste disposal	X	X	X	X	X	X	X	X	X
Stormwater management facilities (primary) ⁵	CUP	CUP	CUP	CUP	CUP	X	CUP	X	X
Transportation facilities (subject to regulations in Chapter 7)	P	CUP	P	CUP	CUP	CUP	CUP	CUP	CUP
Utilities (primary; not associated with a use allowed under the provisions of this SMP) (subject to regulations in Chapter 7)									
Water-oriented	P	CUP	CUP	CUP	X	X	CUP	X	CUP
Non-water-oriented	CUP	X	CUP	X	X	X	CUP	X	CUP

Comment [SJ(30): Required change to re-designate SR-D to SR-S environment designation. See full comment below.

⁴ On sites previously disturbed, when accompanied by a habitat restoration and mitigation management plan.

⁵ See "Environmental Impacts and Water Quality" in Chapter 6 for policies and regulations related to stormwater management.

TABLE 9.3
SHORELINE ENVIRONMENT REQUIREMENTS: DEVELOPMENT STANDARDS AND
SPECIFIC SHORELINE DEVELOPMENT REGULATIONS

All uses and activities, including those considered exempt, must comply with all provisions of this Shoreline Master Program (SMP), including the General Regulations in Chapter 7. Uses and activities not listed in the Shoreline Environment Requirements Chart may be allowed, subject to approval by the Shoreline Administrator, if they comply with the standards in this section and with any special regulations that apply to similar uses.

Shoreline buffers are in feet, from the Ordinary High Water Mark (OHWM). All uses with 0' buffer must comply with all provisions of this Shoreline Master Program, including any development standards specific to the use. Other regulations, such as wetland buffers, may require a larger buffer than is noted in this table.

Where height limits are different from those specified in the Moses Lake Municipal Code, the more stringent requirement (i.e., the lower height limit) shall apply. Height is measured from the average finished grade around the structure to the highest point of the structure.

Legend

H= High Intensity

H-R = High Intensity—Resource Area

SR = Shoreline Residential

~~SR-D = Shoreline Residential—Dunes Area~~

SR-R = Shoreline Residential—Resource Area

SR-S = Shoreline Residential—Special Resource Area

W = Water-Oriented Parks and Public Facilities

N = Natural

A = Aquatic

PD = Planned Development Permit required

N/A = Not Applicable

	H	H-R	SR	SR-R	SR-S	SR-D	W	N	A
Agriculture ⁶	NA	NA	NA	NA	NA	NA	NA	NA	NA
Aquaculture									
Water-dependent structure and facility buffer	0'	0'	0'	0'	0'	NA	NA	NA	0'
Water-related structure and facility buffer	25'	50'	25'	50'	150'	NA	NA	NA	NA
Height limit	35'	25'	35'	25'	15'	NA	NA	NA	10'
Boating facilities (boat lifts, boat launch ramps, and marinas [whether commercial, private, or municipal])									
Water-dependent buffer	0'	0'	0'	0'	0'	0'	0'	NA	0'
Height limits									
Over-water structures	NA	NA	NA	NA	NA	NA	NA	NA	15'
0-100 feet from OHWM	35'	25'	25'	25'	NA	15'	15'	NA	NA
>100 feet from OHWM	35'	35'	35'	35'	NA	35'	35'	NA	NA
Commercial development—water dependent									
Water-dependent buffer	0'	0'	0'	0'	NA	NA	NA	NA	NA
Water-related and water-enjoyment buffer	50'	50'	50'	50'	NA	NA	NA	NA	NA
Non-water-oriented buffer	50'	150'	75'	150'	NA	NA	NA	NA	NA
Building height limit	35'	35'	35'	35'	NA	NA	NA	NA	NA
Docks: Dimensional standards are found in the Docks section of Ch. 7									
Industrial development (prohibited in shoreline jurisdiction)	NA	NA	NA	NA	NA	NA	NA	NA	NA
Mining and related facilities buffer	100'	NA	NA	NA	NA	NA	NA	NA	NA
Parking—primary (prohibited in shoreline jurisdiction)	NA	NA	NA	NA	NA	NA	NA	NA	NA
Parking—serving a permitted use ⁷	50'	75'	75'	100'	125'	150'	150'	150'	NA

Comment [SJ(31)]: Required change to re-designate SR-D to SR-S environment designation. See full comment below.

⁶ New agricultural uses are prohibited in areas of shoreline jurisdiction
Attachment B – Required and Recommended Changes – Moses Lake SMP

	H	H-R	SR	SR-R	SR-S	SR-D	W	N	A
Recreation									
Buffers									
Non-water-oriented uses	100'	150'	100'	150'	NA	NA	150'	NA	NA
Water-oriented uses	35'	35'	35'	35'	NA	NA	35'	NA	NA
Water-dependent uses	0'	0'	0'	0'	0'	0'	0'	0'	0'
play fields, and other intensive use areas	100'	150'	100'	150'	NA	NA	100'	NA	NA
Recreational paths and trails (non-motorized)	10'	10'	10'	10'	15'	25'	10'	25'	NA
Height limit	35'	15'	25'	15'	15'	15'	15'	NA	15'
Maximum site coverage (percent) ⁸	40	20	40	20	10	40	20	10	NA
Residential uses⁹									
Buffer—all dwelling units, and non-water-dependent accessory structures	25'	25'	25'	25' 50' or 100' ¹⁰	150'	PD	NA	NA	NA
Height limit	35'	35'	35'	35'	25'	25'	NA	NA	NA
Maximum site coverage (percent) ¹¹	60	50	50	50	25	25	NA	NA	NA
Maximum density (dwelling units per acre)	15	10	10	6	4	4	NA	NA	NA
Retaining walls for purposes other than shoreline stabilization—setback (subject to regulations in Chapter 6)	NA	NA	20'	30'	100'	NA	NA	NA	NA
Signs (on premises)									
Maximum height (in feet)	12	6	12	6	6	6	6	6	NA
Maximum surface area (in square feet)	36	36	36	36	36	36	36	36	NA
Setback	20'	50	25	50	150	150	20'	NA	NA
Solid waste disposal ¹²	NA	NA	NA	NA	NA	NA	NA	NA	NA
Transportation facility setbacks									
Arterials, highways, and railroads (excluding water crossings)	100'	125'	100'	125'	150'	150'	150'	150'	NA
Non-arterial, secondary, and access roads	50'	75'	75'	100'	100'	100'	100'	100'	NA
Utilities (primary; not associated with a use allowed under the provisions of this SMP)									
Setbacks for buildings, storage tanks, accessory uses, and distribution lines (excluding water crossings)	50'	100'	50'	100'	NA	NA	100'	NA	NA
Height limits									
Buildings, storage tanks, and accessory uses	35'	25'	35'	15'	NA	NA	15'	NA	NA
Distribution poles	35'	35'	35'	35'	NA	NA	35'	NA	NA

Comment [SJ(31): Required change to re-designate SR-D to SR-S environment designation. See full comment below.

⁷ Parking facilities shall be set back landward of the principal building being served a minimum of twenty-five feet or the required building setback, whichever is greater (see Chapter 6, General Policies and Regulations)

⁸ Includes all impervious surfaces

⁹ Common line setback may be allowed where the majority of existing development in an area does not meet the established setback standards, as provided in the Residential Use regulations in Chapter 7. Other provisions may also apply; see Chapter 7.

¹⁰ See Environment Designation map for buffer width at the specific location.

¹¹ Includes all impervious surfaces

¹² Solid waste disposal is prohibited in areas of shoreline jurisdiction

Chapter 12 Administration and Compliance

12-20 PERMITS

12-20-060 Variances

F. Variances from the use regulations of the master program are prohibited.

Comment [SJ(32): Required change to comply with WAC 173-27-

12-60 NON-CONFORMING DEVELOPMENT

12-60-050 Duration of Permits. The duration of permits shall be consistent with WAC 173-27-090.

12-60-060 Initiation of Development

- A. Each permit for a Substantial Development, Shoreline Conditional Use or Shoreline Variance, issued by local government shall contain a provision that construction pursuant to the permit shall not begin and is not authorized until twenty-one (21) days from the date of receipt with Ecology as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one (21) from the date of receipt of the decision, except as provided in RCW 90.58.140(5)(a) and (b). The date of receipt for a Substantial Development Permit means that date the applicant receives written notice from Ecology that it has received the decision. With regard to a permit for a Shoreline Variance or a Shoreline Conditional Use, date of receipt means the date a responsible local government or applicant receives the written decision of Ecology.
- B. Permits for Substantial Development, Shoreline Conditional use, or Shoreline Variance may be in any form prescribed and used by the City including a combined permit application form. Such forms will be supplied by the City.
- C. A permit data sheet shall be submitted to Ecology with each shoreline permit. The permit data sheet form shall be consistent with WAC 173-27-990.

12-60-070 Review Process

- A. After the City's approval of a Shoreline Conditional Use or Variance Permit, the City shall submit the permit to the Department of Ecology for approval, approval with conditions, or denial. Ecology shall render and transmit to the City and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the City pursuant to WAC 173-27-110.
- B. The Department of Ecology shall review the complete file submitted by the City on Shoreline Conditional Use or Variance Permits and any other information submitted or available that is relevant to the application. Ecology shall base its determination to approve, approve with conditions or deny a conditional use permit or variance on

consistency with the policy and provisions of the SMA and, except as provided in WAC 173-27-210, the criteria in WAC 173-27-160 and 173-27-170.

C. The City shall provide timely notification of the Department of Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

Comment [SJ(33)]: Recommended Change. All shoreline permits are subject to the requirements in WAC 173-27. To assist staff and applicants, we add new administrative sections regarding permit duration, timing and Ecology review requirements for CUPs and Variances.

Chapter 6

RATIONALE FOR DELETION OF BUFFER VESTING PROVISION

Required change. Delete section 7-100-030 (11.).

This provision grants broad vesting rights to preliminary plats without acknowledgment of time limitations inherent in RCW 58.17, nor analysis of future environmental effects under the CIA report from application of buffers that are potentially inconsistent with those based on the most current, accurate available scientific information.

As written, the proposed language is overly broad in its application. It is unclear what, if any buffer or setback standards would apply to shoreline development on parcels subject to this proposal. Generally, the proposed language subjects lots within shoreline jurisdiction to the critical areas setback and buffer dimensional standards that were established at the time of subdivision, yet no information has been provided describing those past buffer standards. The CIA report provided no analysis of the number of lots in the City that would be affected by the proposal, nor that the application of the negotiated buffers would result in no net loss of shoreline ecological functions.

For all master program updates, local government must demonstrate that the locally adopted SMP will not result in a net loss of shoreline ecological functions (173-26-201(1)(c)(vi)). Local governments should identify scientific information on which the master program provisions are based; and identify any risks to ecological functions associated with master program provisions (173-26-201(2)(a)).

As written, this provision effectively grants those buffers established with the preliminary plat to the development in perpetuity, regardless of its completion to final plat within the statutory timeframe.

In addition to the uncertainty of the environmental effects of the proposed language, the locally adopted draft appears to conflict with Washington State statutes addressing vesting right with regards to divisions of land. The process and timelines by which land divisions may occur in Washington is governed by state statute, 58.17 RCW. Local governments are charged with processing subdivision proposals and must adopt associated ordinances and procedures in conformity with state requirements. Local governments are allowed to extend the period of time for filing a final plat once a subdivision has received preliminary approval from the local government. RCW 58.17.140 allows local government to extend the time period for filing a final plat if they adopt by ordinance procedures to do so.

[RCW 58.17.170](#) establishes the time period after final plat approval under which the plat approval is vested. Approved final plats can be developed according to "the terms of approval of the final plat, and the statutes, ordinances, and regulations in effect at the time of approval." The vesting period is ten years, if the date of final plat approval was prior to January 1, 2008 and the plat is not subject to the Shoreline Management Act (SMA). Plats that are subject to the SMA are vested for seven years.

Once a plat has been finalized, that plat is vested for a period of time as determined by [RCW 58.17.170](#). There is no enabling legislation that specifically allows the local government to extend the time a final plat is vested. Ecology's understanding is that local governments are effectively preempted by state statute from extending final plat vesting timelines; that authority is reserved exclusively for the state.

After the final plat vesting period has expired, lots become divested; development of the plat would be subject to all applicable statutes, ordinances, and regulations that had been enacted or amended since final plat approval. It appears the proposed SMP amendment would create an exception to this statutory scheme that appears to exceed county's authority.

Chapter 9

RATIONALE FOR ELIMINATING SR-D ENVIRONMENT DESIGNATION; RE-DESIGNATE SR-S

Required change; delete SR-D Designation; re-designate Reach 25 SR-S.

Without providing specific development standards for the SR-D designation, as called for in the Cumulative Impacts Analysis and Recommendations (MLCIA) to ensure no net loss of shoreline ecological function, this area outside the city UGA is more appropriately designated SR-S based on its physical ecological characteristics, underlying zoning, and the areas' current designation as Natural in the Grant County SMP. (Cumulative Impacts Analysis of City of Moses Lake's SMP and Recommendations to Meet No Net Loss. Watershed Company. October 31 2013)

The MLCIA states the following:

"Given the limited standards guiding the Planned Development (PD), which is allowed in the Shoreline Residential – Dunes Area designation, it is not possible to determine whether, how, and to what extent the sensitive shoreline dunes will be protected." (MLCIA Section 5.1.2)

And

"A buffer is not specified in the Shoreline Residential - Dunes Area environment, where only planned developments are allowed. The City's Zoning Code (MLMC 18.67.050(B)) states that the planned development district shall be compatible with adjacent land uses and shall not adversely affect the character of the area in which it is located. This could be interpreted to mean that sensitive ecological functions at the site would need to be maintained, but it does not provide sufficient specificity to ensure that the development would not result in a net loss of functions." (MLCIA Section 6.1.1)

The MLCIA concludes with the following recommendation to achieve No Net Loss:

"In order to minimize adverse effects of future residential development on the unique habitat in

the Shoreline Residential – Dunes Area environment designation, we recommend establishing a suite of performance standards that would accomplish the following:

1. limit the density of any new residential development (establish large minimum lot sizes and large minimum waterfront lot frontages),
2. limit site impervious surface coverage,
3. require placement of the residence in that portion of the site that has the greatest level of current alteration or has the least ecological impact,
4. prohibit clearing of all on-site native vegetation other than what may be required for construction of the residence and necessary appurtenances,
5. require native landscaping, and
6. prohibit creation of formal lawn areas.” (MLCIA, Recommendations Page 10)

The locally adopted draft failed to address the recommendations provided above. Rather than attempting to craft new regulations specific to this unique environment, Ecology re-designated Reach 25 as Shoreline Residential -Special Resource (SR-S) due to the areas' similarity with the SR-S designation criteria, including relatively intact condition, presence of extensive native vegetation, and its overall ecological function as described in the Inventory and Characterization (City of Moses Lake Shoreline Inventory and Characterization, CWU 2005; page 129). Of particular note, the Inventory and Characterization Report recommends a “Natural” Environment Designation (page 129), in part because the reach provides habitat for the highest diversity of fish species (13) of any reach inventoried. The required change to SR-S reflects the conditions of the reach, while acknowledging the likelihood of planned development.

Required change, adding 2 new sections and changing outline numbering accordingly. WAC 173-26-221(4)(d)(iii) requires that SMPs provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non water-dependent uses and for the subdivision of land into more than four parcels. Specific to residential development, WAC 173-26-241 (3)(j) states that “new multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government’s public access planning and this chapter.”

SHORELINE MASTER PROGRAM

Gilbert Alvarado, Interim City Manager, stated that staff met with the Department of Ecology and they have issues with the buffer widths and the joint docks. He mentioned that the City will have to make the changes to satisfy DOE or DOE will make the changes for the City.

1143
V26
P. 7658

1143

TO COUNCIL
Sept. 8, 2015

SHORELINE MASTER PROGRAM

The final Shoreline Master Program comments were provided

Gilbert Alvarado, Interim City Manager, gave the background on the draft Shoreline Master Program and mentioned that staff has drafted a response to the comments received during the Washington State Department of Ecology notice period for the Shoreline Master Program.

There was some discussion by the Council.

Action Taken: Mr. Voth moved that the staff responses be accepted, seconded by Dr. Curnel, and passed unanimously.

1142
V26
P.7641

1143

TO COUNCIL

July 28, 2015



July 23, 2015

Honorable Mayor and
Moses Lake City Council

Dear Council Members

Attached is a memo from Anne Henning, Senior Planner, with regard to our Final Shoreline Master Program comments received during the Washington State Department of Ecology (DOE) notice period. We delayed responding to the DOE comments until such time as some of our in-house staff adjustments could be made. DOE was made aware of changes in administration and granted an extension to our response.

The City Council may wish to consider the staff responses to the DOE comments received during the comment period. If the Council wishes to amend the staff responses, the Council should provide direction to staff on how to proceed.

This matter is presented for Council consideration. The Council may wish to consider the Final Shoreline Master Program DOE questions and responses.

Respectfully submitted

Gilbert Alvarado
Interim City Manager

GA:jt

To: Community Development Director
for Council Consideration

From: Senior Planner–Henning 

Subject: Shoreline Master Program Update
Response to Comments Received

Date: July 24, 2015

One of the steps of the process to update a Shoreline Master Program (SMP) is that the Department of Ecology holds a public comment period on the draft SMP. At the close of that comment period, Ecology provides the jurisdiction with a summary of the comments received. The jurisdiction then must provide a response to those comments, along with a final draft of the SMP for Ecology's review and approval.

Ecology held a public comment period on the City Council's draft SMP, and provided a summary matrix of the comments. There were only five commenters, four agencies and one member of the public. The agencies were:

- Washington Department of Fish & Wildlife
- Washington Department of Natural Resources
- Confederated Tribes of the Colville Reservation
- Washington Department of Archaeology & Historic Preservation

Attached is the summary of comments provided by Ecology, and the City's proposed response to each comment (4th column). The response to comments is due to Ecology by July 30. Because the Council is the body ultimately approving the SMP, the Council should review staff's draft responses.

City of Moses Lake SMP Update - Comments received during State public comment period

Comment Topic	Name of Commenter	Specific Comment	Local Government Response and Rationale	Ecology Response
Docks	Rick Trenbeath, Local resident, Lakeshore Dr.	"In section 6-70-01 it states that public access includes docks that touch the water. If this is true for resident docks then who is liable if they get hurt?"	Public access does not include access to private docks.	
Noise	Rick Trenbeath	"Section 6.2 Talks about noise caused by industrial manufacturing but what about the boats on the lake that play very very loud music?"	Music played by boats is not "development" that is regulated by the SMP. See Moses Lake Municipal Code 8.28, Noise Control, for existing noise regulations.	
Non Conforming Uses	Rick Trenbeath	"Can you tell me were in the proposal you read the Grandfather info." (Upon further conversation with Mr. Trenbeath, he is referring to the status of non-conforming uses and structures).	Non-conforming use provisions are in Chapter 12, Section 12-60.	
Allowed Uses - Natural	Eric Pentico – Washington Department of Fish & Wildlife	WDFW recommends water- dependent (recreation) and transportation facility uses not be allowed in areas designated as Natural within the City of Moses Lake. "Natural environments in the City of Moses Lake contain the most intact riparian environments within the city and provide the best protection to riparian area functions. However, according to table 9.3, buffers in Recreation Areas for water-dependent uses are allowed to be reduced to 0'. Transportation facility setbacks are allowed to be reduced to 100' or 150'. Higher intensity water-dependent uses which require buffer widths to be reduced to 0' and transportation facility uses are not physical alterations which 'serve to protect or enhance any significant, unique, or highly valued feature...', which is the stated policy for natural environment areas in the City of Moses Lake."	<p>Transportation facilities are only allowed in the natural environment as a conditional use permit (See Table 9.2, Ch. 9, p.13). Approval of conditional use permits is limited to those that can meet the criteria listed in 12-20-050, including no significant adverse effects to the shoreline environment, including cumulative impacts of similar projects (Ch.12, p.4). The Transportation Facilities provisions in 7-110 (Ch.7, p.16-18) minimizes roads and bridges in all shoreline environments. The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from the maintenance or development of transportation uses (p.33).</p> <p>By its definition, a water-dependent use cannot exist in a location that is not adjacent to the water. Water-dependent uses can't have a setback from the water, or they won't work. So the setback can't be increased. Water dependent recreation uses are only allowed in the natural environment as a conditional use permit (See Table 9.2, Ch. 9, p.12).</p>	

			Approval of conditional use permits is limited to those that can meet the criteria listed in 12-20-050, including no significant adverse effects to the shoreline environment, including cumulative impacts of similar projects (Ch.12, p.4). The Recreational Uses provisions in 7-90 (Ch.7, p.12-13) require no net loss of shoreline ecological functions, compatibility, and minimizing any adverse environmental effects. Recreation is limited to uses that complement their surroundings and protect natural areas (Policy #5). Protection of the natural character, resources, and ecology of the shoreline is addressed in Policy #10. The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from recreational uses (p.30).	
Setbacks – SR-S	Eric Pentico - WDFW	WDFW recommends Aquaculture, Boating Facilities, and Recreation water-dependent uses not be allowed unless absolutely necessary in SR-S designated areas within the City of Moses Lake and that required buffers for recreational trails be expanded to a minimum width of 25'. "Shoreline areas designated SR-S within the City of Moses Lake demonstrate some ecological impairments, but '...they also retain important ecological functions and have high potential for ecological protection and restoration because they include relatively large tracts that have not been subdivided or include large wetland areas.' (Table 9.1) Proposed buffers listed in Table 9.3 for SR-S designated areas that could hinder properly functioning ecological conditions or interfere with future restoration efforts include the allowed buffer reduction for Aquaculture water-dependent structures and facilities to 0', Boating water-dependent facilities to 0', and Recreation water-dependent uses and paths and trails reduced to 0' and 15'."	<p>Aquaculture: We could prohibit this in the SR-S designation. It was our understanding that we were supposed to allow/encourage aquaculture as a priority use in shorelines.</p> <p>Boating Facilities: The only boating facilities allowed in SR-S are boat lifts. It is our understanding that boat lifts have very minimal impact.</p> <p>Recreation: Same as for Natural, above.</p> <p>Buffers for trails: All recreational uses in the SR-S designation, including trails, are conditional uses, so all the safeguards listed above for Recreational Uses in the Natural Designation are in place.</p>	
Setbacks – SR-R	Eric Pentico - WDFW	WDFW recommends buffers for water-related, water-dependent and water enjoyment structures and facilities in areas that are currently functioning properly or may	65' buffers in SR-R: Most of the proposed buffers in SR-R are 50' or more. The proposed residential buffer in SR-R is 25', 50', or 100', depending on the	

		<p>possibly be restored to proper functioning conditions be set at a minimum of 65' wide and buffer widths for paths and trails should only be allowed to be reduced to 25'. "Residential uses should have the buffers expanded to a minimum of 65' to retain most functioning conditions and allow for adequate restoration of degraded areas. SR-R designated lands, similar to SR-S lands, demonstrate impairments to ecological functions, but 'They retain important ecological functions and have the potential for development that is compatible with ecological protection and restoration.' (Table 9.1) Proposed buffers in table 9.3 that could hinder properly functioning ecological conditions and impair potential restoration efforts include 0' and 50' buffers for Aquaculture water-dependent and water-related structures, 50' Commercial water-related and water-enjoyment buffers, and 35' & 10' Recreation water-oriented uses and Recreational path/trail buffers. In addition, 25' and 50' buffer widths are allowed for dwelling units and non-water-dependent accessory structures in Residential uses areas."</p>	<p>existing conditions. In places where there are existing houses built 25' back from the water and only a few scattered vacant lots, the buffer was set at 25', since there isn't ecological function left to preserve in those areas. The places that did have ecological function remaining were set at 50' or 100', depending on how much of a buffer currently exists. This varying-width buffer was a recommendation based on the Cumulative Impacts Analysis. See Recommendations to Meet No Net Loss of Ecological Functions in the City's Shoreline Master Program, Oct. 31, 2013, by The Watershed Company.</p> <p>25' trail buffer: The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from recreational uses (p.30).</p>	
Setbacks - H-R	Eric Pentico - WDFW	<p>WDFW recommends buffers in areas retaining some properly functioning ecological conditions or may be restored should be set for water-related, water-dependent and water-enjoyment structures and Recreation water-oriented uses to a minimum 65' buffer width. Buffer widths for Recreation paths and trails should only be allowed to be reduced to 25'. WDFW recommends buffers in Residential areas be expanded to a minimum of 65' to retain most functioning ecological conditions and allow for adequate restoration of degraded areas. "H-R designated lands demonstrate impairments to ecological functions, but 'They retain important ecological functions and have the potential for development that is compatible with ecological protection and restoration.' (Table 9.1) The proposed buffers listed in Table 9.3 that could hinder properly functioning ecological conditions and impair restoration</p>	<p>50' buffer Aquaculture, 50' Commercial: There are only a few areas designated H-R. All of these areas are zoned Commercial or Industrial. However, in the H-R designation, all commercial uses, even water dependent, are only allowed by conditional use permit. Approval of conditional use permits is limited to those that can meet the criteria listed in 12-20-050, including no significant adverse effects to the shoreline environment, including cumulative impacts of similar projects (Ch.12, p.4). Commercial developments are required to be designed, constructed, operated, and maintained to ensure no net loss of shoreline ecological functions (7-40-020 Policy 8, p.5; 7-40-030 Regulation 2.d, p.6).</p> <p>35' Recreation: Only water-dependent recreation is</p>	

		efforts include 50' buffers for Aquaculture water-related structure and facilities, 50' buffers for Commercial water-dependent and water-enjoyment structures, and 35' & 10' buffers for Recreation water-oriented uses and Recreational paths/trails. For Residential use areas, buffer reductions to 25' are proposed for dwelling units and non-water dependent accessory structures."	<p>allowed outright, water related or water enjoyment recreation uses are CUPs, with all the protections listed above for CUPs.</p> <p>10' Trail: All water related and water enjoyment recreation uses, including trails, in the H-R environment are conditional uses, so all the safeguards listed above for Recreational Uses in the Natural Designation are in place. The Cumulative Impacts Analysis (Oct. 2013) found no net loss of shoreline functions is anticipated to result from recreational uses (p.30).</p> <p>25' Residential: Residential uses, while allowed by the draft SMP in H-R, would be highly restricted by the Commercial and Industrial zoning so would be unlikely to be proposed.</p>	
Setbacks	Eric Pentico - WDFW	WDFW recommends that a 65' buffer be required to retain most functioning ecological conditions and allow for adequate restoration potential of degraded areas. "The SD-D designated areas have '... been found to be relatively intact as regards ecological functions.' and '...has high potential for planned development that combines limited residential use with ecological protection and restoration.'(Table 9.1) Table 9.3 indicates ecological functions and restoration potentials are being adequately protected in most cases. A planned development permit is required for Residential uses."	<p>Trail buffer: The proposed buffer for recreational paths and trails is the same in SR-D as in the Natural Environment.</p> <p>Residential buffer: If reviewing the proposed residential buffer as part of the Planned Development is not sufficient, a specific minimum distance could be set.</p>	
Boating Facilities	Hugo Flores- Department of Natural Resources	7-30 Boating Facilities. 7-30-020.(1) Policies. Page 3. Provide criteria that defines how "maximum feasible protection and enhancement" will be achieved or remove the "maximum feasible" qualifier.	"Maximum feasible" will be removed.	
Boating Facilities	Hugo Flores- DNR	7-30 Boating Facilities. 7-30-020 (6). Policies Page 3. Consider using "shall be prohibited" rather than "should" with reference to floating homes, houseboats, and liveaboards.	Per State direction, policies are "should" statements. The "shall" statement comes in the regulation. Floating homes are prohibited in all environment designations in Table 9.2 (under Boating Facilities). A regulation could be added to 7-30-030, the regulations that implement the	

			policies in 7-30-020.	
Boating Facilities	Hugo Flores-DNR	7-30 Boating Facilities. 7-30-030 (3). Regulations. Page 4. Provide a numerical value for the minimum required for a dock-to-shore- attachment site abutment.	The minimum for a private dock could be very different from the minimum needed for a commercial or public access dock.	
Boating Facilities	Hugo Flores-DNR	7-30 Boating Facilities. 7-30-030 (5). Regulations. Page 4. At "...The City shall request technical assistance from agencies with jurisdiction...", consider adding DNR to the list of agencies.	DNR will be added to the list of agencies.	
Boating Facilities	Hugo Flores-DNR	7-30 Boating Facilities. 7-30-030 (13). Regulations. Page 4. At "...Boat houses, as non-water dependent structures, are prohibited.". Consider clarifying how a boathouse can be used as a non-water dependent use. Suggests "Boathouses, as a residential use, are prohibited." as replacement text.	We disagree that a boathouse is a residential use. Our definition of a boathouse is a structure over or immediately adjacent to water, used to store watercraft (Ch. 13). Boats can be stored upland, therefore boathouses are not needed and are prohibited.	
Commercial Uses	Hugo Flores-DNR	7-40 Commercial Uses. 7-40-030 (1)(b). Regulations. Page 5. Regards prohibition of non-water-oriented uses where "Navigability is severely limited at the proposed site...". Provide criteria for assessing severe limitation on navigability.	We would be open to suggestions for criteria for assessing severe limitations on navigability.	
Archeological and Historical Resources	Eric Oosahwee-Voss - Colville Confederated Tribes	"Please be advised that your proposed undertaking (SMP update) lies within the traditional territory of the Moses-Columbia tribe, one of the twelve tribes that make up the Confederated Tribes of the Colville Reservation (also known as the Colville Confederated Tribes or CCT), which is governed by the Colville Business Council (CBC). The CBC has delegated to the Tribal Historic Preservation Officer (THPO) the responsibility of representing the CCT with regard to cultural resources management issues throughout the traditional territories of all of the constituent tribes under Resolution 1996-29."	Noted.	
Archeological and Historical Resources	Eric Oosahwee-Voss - Colville Confederated Tribes	Commenter includes attached general recommended SMP language, without specific text edits for section as follows: "State and local cultural resources laws apply to shoreline development. State laws include RCW 27.53 (Archaeological Sites and Records), which	Earlier versions of the SMP included a requirement that subdivisions and commercial development submit a site inspection and evaluation, unless deemed unnecessary by DAHP. This requirement was removed by the Planning Commission as it was felt the other regulations were protective enough.	

		<p>prohibits the unpermitted removal of archaeological materials and establishes a permitting process, and RCW 27.44 (Indian Graves and Records), which describes how human remains must be treated. This shoreline management master plan requires each project proponent to:</p> <ul style="list-style-type: none"> • Consult with the Department of Archaeology and Historic Preservation (DAHP) and Native American tribes to determine if the projects lie within areas of cultural significance. • Conduct background research at DAHP • Conduct a site assessment if cultural resources are recorded in the proposed project area or if requested by DAHP or Native American tribes • Recover archaeological materials in compliance with RCW 27.53 prior to construction • Consult with the County, DAHP, and Native American tribes if resources are discovered during construction • Consider cultural resources in planning for public spaces and access <p>Given the importance of shoreline locations throughout the human history of Washington, the potential for cultural resources should be considered high for any shoreline development permit unless demonstrated otherwise. To comply with state and local law, applicants should perform records searches at DAHP and require cultural resources site assessments in high potential areas where resources are recorded on or near the project lands. If the probability of unrecorded resources is high, applicants should be prepared to follow the provisions of RCW 27.53 and 27.44 if cultural resources are identified or encountered during the planning or construction process."</p>	<p>Our current permit process includes notifying DAHP & CCT for all shoreline permits that include ground or lakebed disturbance. If no comments are received, we assume there are no cultural resources concerns about the site/project.</p> <p>In addition, 6-20-030 Regulation 3 (p.3) requires immediate stoppage of work and notification of the City, DAHP, & CCT if anything of possible archaeological interest is uncovered.</p>	
Archeological and Historical Resources	Gretchen Kaehler - State Dept. of	<p>In regard to 6-20-010, recommended change to this statement would read something like the following: "The following policies and regulations apply to sites,</p>	<p>The recommended change can be made. Here is the text as modified: The following policies and regulations apply to all</p>	

	Archaeology and Historic Preservation	buildings, structures, districts, and objects within the shoreline jurisdiction that are identified in the Shoreline Inventory and Characterization; that are recorded at the Washington Department of Archaeology and Historic Preservation; and/or within local jurisdictions including the City of Moses Lake, Grant County, and affected Indian tribes; or that have been inadvertently discovered.	"Historical/Archeology Areas" identified in the Shoreline Inventory and Characterization and on all sites, buildings, structures, districts, and objects within shoreline jurisdiction that are identified in the Shoreline Inventory and Characterization; having archaeological or historic resources that are recorded at the Washington Department of Archaeology and Historic Preservation (DAHP); and/or within local jurisdictions, including the City of Moses Lake, Grant County, and affected Indian tribes; or that have been inadvertently uncovered discovered.	
Archeological and Historical Resources	Gretchen Kaehler - State Dept. of Archaeology and Historic Preservation (DAHP) (note that comments by this reviewer were provided 56 minutes after the comment period closed on March 4th)	We recommend clarifying Policy 6-20-020 (4) as to the purpose of this policy. It is unclear as to why access to these resources should be at public expense. Access to archaeological sites should be restricted to appropriate parties. Also please be aware the location of archaeological site is exempt from public disclosure to prevent looting and depredation (RCW 42.56.300).	We will delete this policy in Chapter 6, p. 2.	
Archeological and Historical Resources	Gretchen Kaehler - DAHP	We recommend that "The completed archaeological evaluation should be submitted to DAHP and the interested Tribe for review prior to the issuance of any shoreline permits" to Policy 6-20-30(2).	We will incorporate the recommendation as follows: An evaluation and a report meeting the minimal reporting standards of DAHP, prepared by a cultural resource management professional who meets the qualification standards promulgated by the National Park Service and published in 36 CFR Part 61, shall be required before the start of any ground disturbance work in any area known to contain archaeological or historic resources. The City may require such an evaluation prior to the issuance of any shoreline permit or shoreline exemption. <u>The completed archaeological evaluation shall be</u>	

			<u>submitted to DAHP and the interested Tribe for review prior to issuance of any shoreline permits.</u>	
Archeological and Historical Resources	Gretchen Kaehler - DAHP	In the definitions in Chapter 13, we note the inclusion of a definition of "archaeological resources." However, we recommend that definitions for cultural resources be broadened to be clear that the Shoreline Master Program addresses a broader range of cultural resource types.	We would be willing to consider including a definition of cultural resources.	
Archeological and Historical Resources	Gretchen Kaehler - DAHP	In regard to Appendix A Mitigation, it should be made clear elsewhere in the document (such as in section 6-20) that mitigation will also pertain to cultural resources that are negatively impacted and should be identified and implemented in consultation with DAHP, affected Tribes, and other appropriate affected parties.	The Mitigation Appendix is specific to ecological mitigation, with plant survival rates, irrigation, monitoring, etc. Cultural resources impacts would need to be mitigated very differently. Since cultural resources are already regulated by the state, we would defer to state requirements for mitigation should any resources be found.	
Archeological and Historical Resources	Gretchen Kaehler - DAHP	There is little specificity or process with regard to cultural resources. There are also no details on how previously recorded archaeological sites will be recognized during pre-project review. We recommend that the City of Moses Lake enter into a data sharing agreement with DAHP so that archaeological and historic sites can be identified prior to project construction.	Our current permit process includes notifying DAHP & CCT for all shoreline permits that include ground or lakebed disturbance. If no comments are received, we assume there are no cultural resources concerns about the site/project.	
Archeological and Historical Resources	Gretchen Kaehler - DAHP	We also recommend adding process and specificity to the shoreline management plan regarding cultural resources. We have attached DAHP's model shoreline management language for that purpose. (commenter provides copy of the DAHP model language for SMPs).	We prefer to keep our regulations as short as possible. We believe we have provided adequate protection with the regulations as proposed.	