Jerome Delvin
District 1
Shon Small
District 2
Will McKay
District 3

Board of County Commissioners

Jerrod MacPherson
County Administrator

Matt Rasmussen
Deputy County Administrator

To view items in detail, click on highlighted areas.

Notice: Meeting provided in-person, by live-broadcast and telephonically via WebEx as follows:

Live-Broadcast @ link below:
https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181

REVISED AGENDA
BOARD OF BENTON COUNTY COMMISSIONERS
Regular Board Meeting
Tuesday, June 22, 2021
Benton County Courthouse, Prosser, WA

9:00 AM **Call to Order**

Pledge of Allegiance

Approval of Minutes
- **June 15, 2021**

Review Agenda

Consent Agenda

Assessor
a. Contract w/Automatic Funds Transfer Services for Printing & Mailing of Property Notices

Auditor
b. Election Canvassing Board Appointment

Human Services
c. Agreement w/Bradley Bricker for the Purchase of Two Properties for Affordable Housing Rentals

Juvenile
d. Contract w/Crest Counseling Services for Sex Offender Services & Treatment

Office of Public Defense
e. Superior Court Public Defense Contract w/Jennifer Azure
f. Early Termination of District Court Public Defense Contract w/Brian Gieszler

Purchasing

g. Agreement w/CompuNet for Televisions for Administration Building
h. Contract w/River City Environmental for As-Needed Grease Trap & Oil-Water Separator Pumping & Cleaning
i. Third Amended Contract w/Parker Corporate Services for Unarmed Security Guard Services
j. Memorandum of Understanding w/WA Traffic Safety Commission for Drug Recognition Experts

Public Comment ~ *for public engagement during Commissioners' meetings, please use the public comments phone line @: Dial: 509 460-4941*

Public Hearing

Benton County Shoreline Master Program Update ~ G Wendt

Planning Ordinance Relating to Critical Areas, General Provisions & Fish & Wildlife Habitat Conservation Areas; Amending Ordinance 609 ~ G Wendt

Other Business

MINUTES

BOARD OF BENTON COUNTY COMMISSIONERS

Draft

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, June 15, 2021, 9:00 a.m.
Meeting provided in-person, by Video Live-Broadcast and Telephonically

Present: Chairman Jerome Delvin (via/WebEx)
Commissioner Shon Small
Commissioner Will McKay
County Administrator Jerrod MacPherson
Clerk of the Board Cami McKenzie

Benton County Employees Present During All or a Portion of the Meeting: Deputy County Administrator Matt Rasmussen (via/WebEx); Robert Heard, IT Manager; Robert Blain, Operations & Capital Programs; Adam Fyall, Sustainable Development Manager; County Engineer Doug D'Hondt; Clerk Josie Delvin; Adam Morasch, Risk Manager.

Pledge of Allegiance

The Board recited the Pledge of Allegiance.

Agenda Review

Scheduled Busines item "Change Order No. 10 with Banlin Construction" was pulled for further review.

Commissioner Small requested an Executive Session to review the performance of a public employee.

Approval of Minutes

The Minutes of June 8, 2021 were approved.

The Minutes of the Special Meeting of June 8, 2021 were approved.

Consent Agenda

MOTION: Commissioner McKay moved to approve the consent agenda items "a" through "n". Commissioner Small seconded and upon vote, the Board approved the following:

Information Technology

a. Agreement w/LeadOnLine for Subscription to Electronic Reporting & Criminal Investigation System for Law Enforcement Use; Amending Resolution 2018-231

Office of Public Defense

b. Superior Court Public Defense Contract w/Michelle Alexander

Public Works

c. Sundown Estates Franchise for Domestic Water Lines Systems & Facilities
d. Olsen Brothers Ranches Inc. Franchise for Electrical Lines, Irrigation Systems & Facilities
e. Vacation & Abandonment of a Portion of County Right-Of-Way Abutting E. 45th Avenue

Purchasing

f. Contract w/Contract Resource Group for Furniture of New Administration Building
g. Contract w/Total Office Concepts for Furniture of New Administration Building
h. Contract w/Brutzman's Inc. for Furniture of New Administration Building
i. Second Amended Contract w/Meier Architecture & Engineering for the Design of Shooting Range @ Rattlesnake Mountain Shooting Facility
j. Contract Award for Dallas Road Bike Path to Granite Construction Company
k. Ratifying Task Orders #1 & #2 for On-Call Architecture & Engineering Contract w/Wave Design Group
l. First Amended Contract w/Wave Design Group for Redesign of the Front Entrance @ Justice Center
m. Award of Obsolete Bridge Removal Project to C & E Trenching
n. Amended Contract w/Tyler Technologies for Purchase of EnerGov Permitting Software

Public Comment

None.

Petition to Establish County Road

Douglas D'Hondt presented a petition submitted by RQ Bradley LLC to establish a new county road across their property to serve a future subdivision located south of the Chandler Canal. US Bureau of Reclamation required any roadway crossing their canal to be owned by a public agency. The roadway would be located entirely within a single property owner's land and serve only land owned by that person. If the Board accepted the petition, the next step would be to prepare a feasibility report and hold a public hearing. He recommended the Board accept the petition as presented.

MOTION: Commissioner McKay moved to accept the petition to establish a county road submitted by RQ Bradley LLC and order the County Engineer to prepare a report on the feasibility thereon. Commissioner Small seconded and upon vote, the motion carried.

Request to Proceed w/Request for Qualifications for Fairgrounds Master Plan

Adam Fyall requested the Board authorize him to proceed with an RFQ for the Fairgrounds Master Plan. He said this would address opportunities at the Fairgrounds and expand from traditional

events (Fair, horse racing, barrel racing, 4H, etc.) to a more expansive year-round event center. He estimated the planning process to cost between $100,000 to $150,000.

He said they were ready to advertise tomorrow and if they could find a suitable consultant, could get ready to go in September with the planning process.

The Board asked about funding, and Mr. Fyall said they were looking at a few funding mechanisms for the planning process. Additionally, looking at economic development and capital funding for potential improvements. He said it was not their plan to increase the ongoing maintenance costs, but hopefully received more funding in rental income.

MOTION: Commissioner McKay moved to proceed with publishing a request for qualifications to review for potential consulting firms that would assist the County with development of a new master plan for the Benton County Fairgrounds. Commissioner Small seconded and upon vote, the motion carried.

Update to Benton County Reopening Guide

Adam Morasch said the Board adopted the Benton County Roadmap to Recovery Reopening Guide on May 4, 2021. He said there were changes to the sections regarding public meetings and face coverings and they needed to amend the guide to make sure it was consistent and up to date. Commissioner Small asked about the changing the 6-foot social distance rule to 3-feet and Mr. Morasch said he believed that was in a classroom setting, but he would review it.

MOTION: Commissioner McKay moved to approve the amended Benton County Roadmap to Recovery Reopening Guide. Commissioner Small seconded and upon vote, the motion carried.

Other Business

Ben-Franklin Transit Board

Commissioner Small expressed concern about the message submitted by the Chair of the Ben-Franklin Transit about the potential change in the sales tax.

Commissioner McKay said whether they agreed or disagreed, it should be up to the voters and he strongly encouraged them to put it out to a vote.

Employee Recognition Certificates

Chairman Delvin recognized the following employees for their service:

15 Years
Cynthia Young
Albert Montelongo
Christina Young
Carrie Vandine

Deidra Beck
Ryan French

25 Years
Shawn Guajardo

35 Years
Judy Tanner

Certificate of Good Practice

Chairman Delvin presented a Certificate of Good Practice approved by the County Road Administration Board to County Engineer Douglas D'Hondt.

Non-Partisan Vacancy Policy

The Board discussed whether it wanted to amend the current policy to keep the qualified applicant list valid for up to six months, in the event there was another vacancy in the near future. If they used the current list of qualified applicants, they would not have to go through the interview process again.

The Board agreed to have the HR Manager amend the policy and put in a 6-month window, with the option to either use the current list or complete the entire process again.

The Board recessed, reconvening at 9:35 a.m.

Executive Session – Review Performance of Public Employee

The Board went into executive session at 9:35 a.m. for up to five (5) minutes to discuss the performance of a public employee. Also present were Jerrod MacPherson, Cami McKenzie, and Chairman Delvin (via/WebEx) and Matt Rasmussen (via/WebEx).

The Board came out at 9:40 a.m. No decisions were made in executive session.

Accounts Payable

Check Date: 06/10/2021

P-Cards #: 0621
Total all funds: $312,330.20

Resolutions

2021-459: Agreement w/LeadOnLine for Subscription to Electronic Reporting & Criminal Investigation System for Law Enforcement Use; Amending Resolution 2018-231
2021-460: Superior Court Public Defense Contract w/Michelle Alexander

2021-461: Sundown Estates Franchise for Domestic Water Lines Systems & Facilities
2021-462: Olsen Brothers Ranches Inc. Franchise for Electrical Lines, Irrigation Systems & Facilities
2021-463: Vacation & Abandonment of a Portion of County Right-Of-Way Abutting E. 45th Avenue
2021-464: Contract w/Contract Resource Group for Furniture of New Administration Building
2021-465: Contract w/Total Office Concepts for Furniture of New Administration Building
2021-466: Contract w/Brutzman's Inc. for Furniture of New Administration Building
2021-467: Second Amended Contract w/Meier Architecture & Engineering for the Design of Shooting Range @ Rattlesnake Mountain Shooting Facility
2021-468: Contract Award for Dallas Road Bike Path to Granite Construction Company
2021-469: Ratifying Task Orders #1 & #2 for On-Call Architecture & Engineering Contract w/Wave Design Group
2021-470: First Amended Contract w/Wave Design Group for Redesign of the Front Entrance @ Justice Center
2021-471: Award of Obsolete Bridge Removal Project to C & E Trenching
2021-472: Amended Contract w/Tyler Technologies for Purchase of EnerGov Permitting Software
2021-473: Accepting a Petition to Establish a County Road from RR Bradley LLC and Ordering the County Engineer to Prepare a Report
2021-474: Amending the Benton County Roadmap to Recovery Reopening Guide for County Facilities

There being no further business before the Board, the meeting adjourned at approximately 9:40 a.m.

_____ _____

Clerk of the Board Chairman

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	
Subject:	Service Contract between Benton County Assessors Office and AFTS
Presenter:	Bill Spencer
Prepared By:	Chris Roberts
Reviewed By:	

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☒ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

The County has elected to enter a services contract with Automatic Funds Transfer Services (AFTS), to provide formatting, printing, and mailing of the Benton County change of value, new construction, and personal property notices.

Fiscal Impact

Costs include the total professional services fee to provide formatting, printing, and mailing of the Benton County change of value, new construction, and personal property notices not to exceed a total amount of $40,000/per year of the contract. The Assessor's office has budgeted for this cost in Fund 0000101 Dept 101.

Recommendation

The Board of Benton County Commissioners authorizes the Chairman of said Board to sign the service contract for the formatting, printing, and mailing of change of value, new construction, and personal property notices from Automatic Funds Transfer Services - AFTS.

Suggested Motion

Benton County Assessor's office requests the Benton County Commissioners pass the enclosed resolution and sign the service contract with AFTS.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE SERVICES CONTRACT BETWEEN AUTOMATIC FUNDS TRANSFER SERVICES AND BENTON COUNTY TO PROVIDE FORMATTING, PRINTING AND MAILING OF THE BENTON COUNTY CHANGE OF VALUE, NEW CONSTRUCTION AND PERSONAL PROPERTY NOTICES FOR THE ASSESSOR'S OFFICE

WHEREAS, per Benton County Resolution 2021-233, Section 5.3.2 Services"....The County need not advertise or follow a formal competitive bidding procedure for service contracts (except for Professional Services), but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost...."; and,

WHEREAS, the Benton County Assessor received a proposal from Automatic Funds Transfer Services, Seattle, WA to provide the formatting, printing, and mailing of said notices, further described Exhibit A and attached hereto; and,

WHEREAS, the Benton County Assessor recommends entering a service contract with Automatic Funds Transfer Services, Seattle, WA for a contract amount not to exceed $80,000 including WSST with said service effective January 1, 2021 expiring on December 31, 2022, **NOW, THEREFORE,**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County, Washington, the Board hereby agrees with the recommendation to enter into a service agreement with Automatic Funds Transfer Services to provide necessary services for the formatting, printing and mailing of the revaluation, new construction and personal property notices for a contract amount not to exceed $80,000 including WSST; and,

BE IT FURTHER RESOLVED, the Board of Benton County Commissioners authorizes the Chairman of said Board to sign said service contract attached hereto.

Dated this _____ day of _____, 20___.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest.....

BENTON COUNTY
PERSONAL SERVICES CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **AUTOMATIC FUNDS TRANSFER SERVICES ("AFTS")**, a corporation organized under the laws of the State of Washington with its principal offices at **151 S. Lander, STE #C, Seattle, WA 98134** (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of these Terms and Conditions and the following documents:

a. Exhibit "A" - which delineates the terms of the agreement with respect to printing services to be provided by the CONTRACTOR, mailing services to be provided by the CONTRACTOR, and pricing for the services in accordance with this CONTRACT.

2. DURATION OF CONTRACT

The term of this Contract shall begin on January 1, 2021 and shall expire on December 31, 2022. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR shall perform the laser printing and mailing of revaluation real property and personal property notices as more fully set forth in Exhibit "A", which is attached hereto and incorporated herein by reference.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

e. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name:	**Mr. Rick Soth, AFTS VP of Sales**
Address:	**151 S. Lander, STE #C**
	Seattle, WA 98134
Phone:	**(206) 342-0225**
Email:	**ricks@afts.com**

b. For COUNTY:

Name:	**Mr. Bill Spencer, Benton Co. Assessor**
Address:	**P.O. Box 902**
	Prosser, WA 99350
Phone:	**(509) 735-2394**
Email:	**Bill.Spencer@co.benton.wa.us**

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in Exhibit "A", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed ($40,000), including W.S.S.T, per year of the contract.

c. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

d. The CONTRACTOR may, in accordance with Exhibit "A", submit invoices to the COUNTY not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTY during the billing period. The COUNTY shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

e. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTY.

f. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTY, the COUNTY may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

g. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

6. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment or modification shall be made to this Contract,

unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

7. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents.

b. In any and all claims against the COUNTY and its officers, officials, employees, and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 7 shall survive termination and expiration of this Contract.**

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all

claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents, or subcontractors.

8. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract. CONTRACTOR shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

b. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury, and property damage that may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR.

The minimum commercial general liability insurance limits shall be as follows:

$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal Injury and Advertising Injury
$1,000,000 Each Occurrence

The commercial general liability policy must contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR must provide commercial general liability coverage that does not exclude activities to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section 7. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

$1,000,000 Each Accident
$1,000,000 Policy Limit for Disease
$1,000,000 Each Employee for Disease

c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONTRACTOR (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

d. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY or its elected and appointed officers, officials, employees, or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTY or its officers, officials, employees, or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this Contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

e. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington that have an A.M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Auto Liability and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or cancelled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY and its elected or appointed officials, employees, and agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the COUNTY's Contract Representative referenced in Section 4.

3. All written notices under this Section 8 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager to the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

9. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced, or limited in any way after the effective date of this Contract, the COUNTY may summarily terminate this Contract notwithstanding any other termination provision in this Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTY to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTY, the COUNTY may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTY shall pay the CONTRACTOR only for the costs of services accepted by the COUNTY, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTY, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTY in completing the work and all damage sustained by the COUNTY by reason of the CONTRACTOR'S breach.

10. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTY.

b. The CONTRACTOR warrants that it has not paid, nor has it agreed to pay, any company, person, partnership, or firm, other than a bona fide employee working exclusively for the CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee, or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR, nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent,

or representative of the COUNTY.

d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state, or local law that are now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative, or designee.

13. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the COUNTY upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

15. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, forms of electronic media, data, and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTY. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTY agrees that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless therefrom to the extent such use is not agreed to in writing by the CONTRACTOR.

b. An electronic copy of all word processing documents shall be submitted to the COUNTY upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTY.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any claimed action, cause, or demand brought against the COUNTY, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTY of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTY, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTY at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION, AND VENUE

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to

its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton County, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves and their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term, or provision of this Contract to be illegal or invalid, in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed

to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to: indemnification provisions (Sections 7 and 17); inspection and keeping of records and books (Section 14); litigation hold notice (Section 26); Public Records Act (Section 27); and confidentiality (Section 19).

26. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section 14 of this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section 14 of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records

marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on January 1, 2019.

Dated: _____

FOR: BENTON COUNTY

_____
Chairman

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington.

Attest: _____
Clerk of the Board

Approved as to Form

_____
Civil Deputy Prosecuting Attorney

Dated: 5-15-2021

FOR: AUTOMATIC FUNDS TRANSFER SERVICES (AFTS)

_____
Signature

VP of Sales
Title:

Rick Soth
Print Name

EXHIBIT A

AFTS will provide laser printing and mailing services to Benton County Assessor, hereinafter referred to as County, for production and mailing of Assessor Revaluation Real Property notices and Personal Property notices.

The term of this agreement shall run from January 1, 2021 through December 31, 2022.

All production is completed by AFTS from its offices in Seattle, WA.

Real Property Notices

Revaluation notice production will be completed from electronic data files transmitted to AFTS by County via File Transfer Protocol (FTP). Notices will be formatted onto postcards for single parcels for a given owner name/address. Statements are created where multiple-parcels are being sent to the same property owner name/address commonly referred to as "Householded" statements.

Postcards are printed on white card stock ready for mailing, size 5.5" x 4.25" or 6" x 4.25". Statements are on 8.5" x 11" white paper, folded and inserted into #10 window envelopes.

All data processing, address management and presorting, black duplex laser printing, trimming, folding, inserting, delivery to USPS is included. Production turnaround is 3-5 days from data delivery. Data must be delivered and notified by email (or telephone call) by 10 a.m. for that day to be considered a production day. No processing will be handled on weekends.

Postage must be received by AFTS prior to each revaluation card or notices being mailed. A deposit based on the 5-digit Automation rate times the expected number of items being mailed will be calculated. During our final billing for the services performed, the actual postage and deposit applied will be shown on the bill. AFTS can invoice for the postage deposit based on annual expectations or periodically throughout the year as Benton prefers.

Production generally occurs in early to mid-August of each year.

Pricing

One-Time Set up Fee: $550.00

Postcard stock
67# Vellum: $0.02

Statement stock
20# white bond: $0.015

Statement #10 double-window mailing envelope: $0.035

Mailing Services: ..... $0.082 per parcel

Postage (Presort Est Cost: Cards/$0.29 & Stmts/$0.42): ..... At Cost

EXHIBIT A (CONT)

Personal Property Notices

County to provide PDF file(s) of the formatted data from your PACs system, along with a Word file for the static copy "Info Letter". AFTS will "text scrape" the name/address/account number from the PDF file and create individual PDF files using the account number in the file name.

The name/address data will be prepared for presorting using our standard address management tools.

The Info Letter will be formatted for the return address and mailing address merge, followed by printing all the PDF pages for that County's Personal Property tax statement.

An intelligent inserter barcode will be added to each page by AFTS to control the folding/inserting process which ensures accurate inserting into #10 or 6x9 double window envelopes. Custom envelopes or return envelopes can be added as well.

The plan is to print the Info Letter on a colored sheet of 8.5" x 11", with the tax forms on white. All laser printing will be black only, duplex mode to reduce the number of sheets needed.

Hand-inserting into AFTS provided 9x12 window envelopes will handle the larger sets that can't fit into a #10 or 6x9 size.

Production generally occurs in late December or the first week of January.

Pricing

AFTS basic production services:.....$0.17 each
Covers text scraping, PDF processing, address management, formatting, PDF proofs, black duplex laser printing on 2 sheets of paper, folding, inserting, delivery to USPS.

Additional Pages Imaged, as needed: .....$0.059 each
Includes simplex or duplex printing (1 or 2 logical sides printed)

8.5" x 11" paper stocks – White or common office colors
20# white bond: $0.015
24# white bond (less "bleed-thru" on reverse printing): $0.021

AFTS stock #10 double-window mailing envelope: $0.035
or
AFTS stock 6x9 double-windows: $0.081
or
Custom envelopes: ..... Quoted per requirements

Hand-inserting large page count envelopes: .....$0.75 each 9x12
Includes the 9x12 window, color addressing page and hand-inserting.

Postage (Presort Letters est. $0.42): .....At Cost

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	2021-06-22
Subject:	2021 Election Canvassing Board Appointment
Presenter:	
Prepared By:	Amanda Hatfield
Reviewed By:	Brenda Chilton

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☒ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☐ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance
	☐ Sign Letter/Document	☐ Execute Contract

Summary / Background Information

Pursuant to RCW 29A.60.150, the chair of the county legislative body is a member of the canvassing board for canvassing the ballots and returns for elections.

Fiscal Impact

None

Recommendation

Have commissioner chair, Jerome Delvin sign the letter appointing himself as the member of the canvassing board.

Suggested Motion

Approve as part of consent agenda.

Jerome Delvin, *District 1*
Shon Small, *District 2*
Will McKay, *District 3*

Jerrod MacPherson
County Administrator
Matt Rasmussen
Deputy County Administrator

Board of County Commissioners

CANVASSING BOARD APPOINTMENT

I, Jerome Delvin, Chair of the Benton County Commissioners, hereby designate myself to serve on the Benton County Canvassing Board for the August Primary Election and the November General Election.

The timeframe I will serve for the Primary Election will be June 16, 2021 through August 17, 2021.

The timeframe I will serve for the November General Election will be September 15, 2021 through November 23, 2021.

DATED this 22nd day of June, 2021

_____
Jerome Delvin
Chair, Board of County Commissioners

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021
Subject:	Execute Agreement #2021-BRICKER-2060 with Bradley Bricker
Presenter:	
Prepared By:	Mari Clark, DHS Contract Manager
Reviewed By:	Kyle Sullivan, DHS Manager

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:

- ☒ Consent Agenda
- ☐ Public Hearing
- ☐ Scheduled Business

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

- ☐ Discussion Only
- ☐ Decision / Direction
- ☐ Sign Letter / Document
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance
- ☒ Execute Contract

Summary / Background Information

The purpose of this Agreement is to purchase two properties, one in Benton City and one in West Richland. These two single-family homes will be used for affordable housing rentals, which inventory is low in those two cities.

Fiscal Impact

There is no impact on the current expense budget. All revenues and expenditures are from the Fund 0152101 State/Affordable Housing Fund, for a Consideration amount of $250,000.00.

Recommendation

- Sign the resolution to accept the proposed Grant Agreement
- Approve the proposed Grant Agreement by signing all the copies where indicated

Suggested Motion

Consent Agenda

RESOLUTION

Benton County Resolution No. _____

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF EXECUTING GRANT AGREEMENT #2021-BRICKER-2060 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND BRADLEY BRICKER.

WHEREAS, the purpose of this Agreement is to purchase two properties, one in Benton City and one in West Richland. These two single-family homes will be used for affordable housing rentals, which inventory is low; and

WHEREAS, funding will not exceed $250,000.00; **NOW, THEREFORE,**

BE IT RESOLVED, that the Board of Benton County Commissioners hereby accepts the proposed Grant Agreement; and

BE IT FURTHER RESOLVED, that the Chairman of the Board of Benton County Commissioners be, and hereby is, authorized to sign on behalf of Benton County, Grant Agreement #2021-BRICKER-2060 between Benton County Human Services and Bradley Bricker; to purchase two properties, one in Benton City and one in West Richland. These two single-family homes will be used for affordable housing rentals. Total funding shall not exceed $250,000.00; and

BE IT FURTHER RESOLVED, the term of the attached Grant Agreement commences March 1, 2021 and ends on December 31, 2021.

Dated this . . . .day of . . . . . , 2021

_____
Chair

_____
Member

_____
Member
Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Human Services; Benton County Commissioners

M.Clark

Benton County
DEPARTMENT OF HUMAN SERVICES
Grant Agreement #2021-BRICKER-2060

This Grant Agreement, hereinafter referred to as the "Agreement", is executed by and between **Benton County**, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350, by and for the **Benton County Department of Human Services**, with its principal offices at 7102 West Okanogan Place, Suite 201, Kennewick, WA 99336 (hereinafter collectively referred to as the "County"), and **Bradley Bricker**, a for profit housing developer, with its principal offices at 1976 Birch Ave. Richland, WA 99354, (hereinafter "Contractor").

County Contact Representative:
Kyle Sullivan, Manager
Benton County
7102 W. Okanogan Place Suite 201
Kennewick, WA 99336
Phone: (509) 783-5284
Fax: (509) 783-5981
Email: Kyle.sullivan@co.benton.wa.us

Contractor Contact Representative:

Bradley Bricker
1976 Birch Ave
Richland, WA 99354
Phone: (509) 942-9495
Email:brad.redii@gmail.com

Agreement Start Date ..... March 1, 2021
Agreement End Date..... December 31, 2021
Unless this Agreement is terminated sooner as set forth herein.

Consideration ..... Benton County $250,000

Exhibit A ..... Budget
Exhibit B..... Restrictive Covenant

By their signatures below, the parties agree to the terms and conditions of this Agreement and all documents attached or incorporated by reference. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties. The parties signing below certify that they are authorized to sign this Agreement.

For the Contractor:

Bradley M. Bricker 3/30/2021

Contractor Date

For Benton County:

Benton County Commissioners Date

Attest: Clerk of the Board

Approved as to Content:

Department of Human Services

Approved as to Form:

Benton County Prosecutor's Office

TABLE OF CONTENTS

1. SPECIAL TERMS AND CONDITIONS

Purpose 3
Compensation 3
Eligible Use of Funds 3
Contractor's Obligations 3
Period of Performance 3
Funding Sources 3
Billing Procedures and Payment 3
Recovery of Overpayment 4
Fiscal Management 4
Access to Children, Disabled Persons, and Vulnerable Adults 4
Relationship of Parties 5
Insurance 5
Reporting 6
Order of Precedence 6

2. GENERAL TERMS AND CONDITIONS

Definitions 7
Agreement 7
Advanced Payments Prohibited 7
All Writings Contained Herein 7
Amendments and Modifications 7
Americans with Disabilities Act (ADA) 8
Approval 8
Assignment 8
Attorney's Fees 8
Audit, Monitoring, Access and Examinations 8
Confidentiality/Safeguarding of Information 8
Copyright Provisions 9
Debarment Certification 10
Disputes 10
Duplicate Payment 10
Ethics/Conflicts of Interest 10
Governing Law and Venue 10
Headings and Captions 10
Indemnification 10
Licensing, Accreditation and Registration 11
Limitation of Authority 11
Performance Goals 11
Proprietary Rights 11
Recapture 11
Records Maintenance 11
Right of Inspection 12
Severability 12
Survival 12
Suspension/Reduction of Services 12
Termination for Cause/Suspension 12
Termination for Convenience 12
Termination Procedures 13
Waiver 13

1. SPECIAL TERMS AND CONDITIONS

1.1 **Purpose:** The purpose of this Agreement is to purchase two properties; 5978 Deer Street in West Richland, WA and 113 Alma Avenue in Benton City, WA. These two single family homes will be rented as affordable housing and assist in filling a need for affordable housing in areas where it can be difficult to rent affordable housing due to lack of inventory.

1.2 **Compensation:** The County shall pay to the Contractor an amount not to exceed the amount shown in the Budget, which is identified on the face of this Agreement and in Exhibit A, for the performance of all things necessary for or incidental to the performance of the obligations of this Agreement.

1.3 **Eligible Use of Funds:** Funding awarded under this Agreement may only be used for eligible activities and expenses in accordance with Exhibit A, not to exceed $250,000.00.

1.4 **Contractor's Obligations**: A restrictive covenant is required on the properties that will state it cannot be sold, refinanced, assigned, transferred, or otherwise disposed of for 15 years (Deer Street property) and 5 years (Alma Street property) past the contract's expiration date. The property will be used for affordable housing for those 5 or 15 years per the restrictive covenant. The restrictive covenant will be executed and filed with the County. A copy of the Restrictive Covenant will be sent to Human Services.

1.5 **Period of Performance**: The purchase of the properties, required by this Agreement shall be made and completed by the Contractor between date of execution and December 31, 2021 (hereinafter referred to as the "Project Period").

1.6 **Funding Sources**: Funding sources under this Agreement are as follows: Benton County Affordable Housing Surcharge received pursuant to RCW 36.22.178.

1.7 **Billing Procedures and Payment:** The Contractor shall submit written claims for actual costs incurred on the appropriate forms provided by the County, which must be accompanied with verifiable documentation, by the 10th day of each month. Payments made under this Agreement are intended by both the Contractor and the County to be reimbursement for actual costs incurred by the Contractor to complete the Project described in Exhibit A, up to the amounts budgeted in the exhibit, and constitute the County's only financial obligation hereunder irrespective of whether the total cost to the Contractor for the Project exceeds $250,000.00.The final billing for services against this Agreement shall occur no more than 30 days after the end date of this Agreement.

No payment shall be made for any work performed by the Contractor, except for work identified and set forth in this Agreement.

Unless otherwise provided for in this Agreement or any exhibits hereto, the Contractor will not be paid for any billings or invoices presented for costs incurred prior to the date of execution or after December 31, 2021.

The County may, at its sole discretion, terminate the Agreement or withhold payments claimed by the Contractor for services rendered if the Contractor fails to satisfactorily comply with any term or condition of this Agreement.

No payments in advance or in anticipation of services or supplies to be provided under this Agreement shall be made by the County.

The Contractor is responsible for any audit exceptions or disallowable costs incurred by its own organization or that of its sub-contractors.

1.8 **Recovery of Overpayment:** The Contractor shall not be reimbursed more than the amount of the allowable costs of performance of the Agreement. If the Contractor, County, or any other state agency

determines that the Contractor has received payments under this Agreement in excess of the amount authorized by this Agreement, or otherwise not in conformity with the Agreement and/or if the Contractor bills and is paid fees for costs that County later finds were (a) not incurred; or (b) for work not performed in accordance with applicable standards, the County may recoup those payments, together with interest, as provided in this section.

The Contractor shall pay interest on overpayments at the rate of one percent (1%) per month or portion thereof. Where partial repayment of an overpayment is made, interest accrues on the remaining balance. Interest will not accrue when the overpayment occurred due to County error.

If the overpayment is discovered by the Contractor prior to discovery and notice by the County, the interest shall begin accruing ninety (90) days after the Contractor notifies the County of such overpayment.

If the overpayment is discovered by the County prior to discovery and notice by the Contractor, the interest shall begin accruing as follows, whichever occurs first:

a. Thirty (30) days after the date of notice by the County to the Contractor; or

b. Ninety (90) days after the date of overpayment by the County, whichever is later.

If the Contractor receives a notice of overpayment, which the County shall be required to timely provide, the Contractor may protest the overpayment determination pursuant to the Dispute Resolution Section of this Agreement. Failure to invoke said section within fifteen (15) days of receipt of a notice of overpayment will result in an overpayment debt against the Contractor.

1.9 **Fiscal Management:** The Contractor shall establish and maintain a system of accounting and internal controls that complies with generally accepted accounting principles and all state, and local accounting principles and governmental accounting and financial reporting standards that are applicable to state and/or local grants, awards, and/or contracts. The Contractor shall ensure that construction and management of the Project is done in the most cost-effective and efficient manner possible.

The Contractor's financial management system at a minimum shall:

- Be a viable, single organizational entity capable of effective and efficient processing of all of the fiscal matters, including proof of adequate protection against insolvency.
- Have the ability to pay for all expenses incurred during the Agreement period, including services that have been provided under the Agreement but are paid for after the Project Period.
- Include source documentation in support of allowable actual costs necessary to indicate costs incurred by the Contractor directly related to the costs identified in the Budget.

1.10 **Access to Children, Disabled Persons, and Vulnerable Adults:** The Contractor shall prohibit staff or volunteers with a criminal conviction set forth in RCW 43.43.830 from having access to children, developmentally disabled persons, or vulnerable adults in the course of providing the services herein. The Contractor must conduct a background check for all applicants for staff or volunteer positions who have unsupervised access to children, developmentally disabled persons, or vulnerable adults. The Contractor shall immediately report to the County any allegations/arrests identified in the background checks. If it becomes known to the Contractor, or the Contractor has reason to believe that an applicant has or may have a disqualifying conviction or finding as described in RCW 43.43.842, subsequent to the completion date of his or her most recent criminal background inquiry, the Contractor shall immediately report that finding to the County and immediately remove and thereafter restrict the employee or volunteer from providing services to children, developmentally disabled persons, or vulnerable adults, unless otherwise granted written permission by the County's authorized representative(s).

1.11 **Relationship of Parties:** The relationship of the Contractor to the County shall be that of independent contractor. No provision of this Agreement is intended or deemed to create any relationship between the Parties hereto other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither of the Parties hereto, nor any of their respective employees, shall be construed to be the agent, employee, representative, joint venture, or partner of the other.

The Contractor and its employees or agents will not hold themselves out as, nor claim to be, an agent, officer, or employee of the County, nor will they claim any of the rights, privileges, or benefits which might accrue to County employees.

Contractor shall be responsible for all federal and/or state tax, industrial insurance, and Social Security liability that may result from the performance of services, and resulting compensation for services described herein.

The Contractor agrees to immediately remove any of its employees or agents from their assignment to perform services under this Agreement upon written request to do so from the County's Authorized Representative or designee.

1.12 **Insurance:** The Contractor shall provide insurance coverage as set out in this section. The intent of the required insurance is to protect the County and its agents, officers, and employees should there be any claims, suits, actions, costs, damages, or expenses arising from any loss, or negligent or intentional act or omission of the Contractor, or agents of the Contractor, while performing under the terms of this Agreement. Prior to request for reimbursement under this Agreement, Contractor shall submit to the County certificates of insurance or certified copies of insurance policies and endorsements for the coverage required below and shall maintain the same type and amount of coverage as is currently in effect for five (5) years. Each insurance certificate shall provide that coverage will not be canceled or reduced below the contractual amounts stated herein without forty-five (45) days prior notice to the County. Contractor shall maintain at Contractor's sole expense, unless otherwise stipulated, the following insurance coverages, insuring Benton County and its elected and appointed officials, officers, employees, and agents as required herein.

All insurance policies shall be issued by companies authorized to do business under the laws of the State of Washington unless an exception is given in writing by the County's authorized representative(s). All insurance, other than Professional Liability and Workers' Compensation, shall specifically include the County and its officials, officers, employees, and agents as an "Additional Insured" and shall not be reduced or canceled without forty-five (45) days prior written notice to the County. The Contractor's insurance coverage shall be primary insurance with respect to the County and its elected and appointed officials, officers, employees, and agents. Any insurance or self–insurance maintained by the County or its elected and appointed officials, officers, employees, or agents shall be excess of the Contractor's insurance and shall not contribute to it.

Liability coverage, except Professional Liability, should be written on an Occurrence policy form. Should Claims Made be the only option, a minimum of three (3) year tail coverage shall be maintained after the expiration of this Agreement. If coverage is Claims Made form, the retroactive date shall be prior to or coincident with the date of this Agreement, and the policy shall state that coverage is Claims Made, and state the retroactive date.

The Contractor shall provide insurance coverage that shall be maintained in full force and effect during the term of this Agreement, as follows:

1.11.1 **Commercial General Liability Insurance Policy:** The Contractor shall maintain, during the life of this Agreement, Commercial General Liability Insurance (Policy Form CG0001 or equivalent) to protect the County from claims or actions for damages for bodily injury, including wrongful death, as well as from claims or actions of property damage which may arise from any operations under this

Agreement whether such operations are by the Contractor or by anyone directly employed by or contracting with the Contractor.

Specific limits required	$2,000,000 General Aggregate $1,000,000 Products/Completed Operations Aggregate $1,000,000 Personal Injury and Advertising Injury $1,000,000 Each Occurrence

1.11.2 **Workers' Compensation Insurance:** Contractor shall secure its liability for industrial injury to its employees in accordance with the provisions of Title 51 of the Revised Code of Washington. Contractor shall submit a copy of its certificate of coverage from the Department of Labor and Industries prior to the commencement of work. **With respect to the performance of this Agreement and as to claims or actions against the County and its officials, officers, agents, and employees, the Contractor expressly waives its immunity under Title 51 of the Revised Code of Washington, the Industrial Insurance Act, for injuries to its employees and agrees that the obligations to indemnify, defend, and hold harmless provided in this Agreement extend to any claim or actions brought by or on behalf of any employee of the Contractor against the County**. However, Contractor's waiver of immunity by the provisions of this paragraph extend only to claims or actions against Contractor by County, and does not include or extend to claims or actions by Contractor's employees directly against Contractor. **This waiver is mutually negotiated by the parties to this Agreement.**

1.11.3 **Professional Liability Insurance:** Professional Liability Insurance. Prior to the start of work, the Contractor will secure and maintain at its own expense Professional Liability Insurance in the amount of not less than $1,000,000 per claim and in the aggregate. If coverage is Claims Made, the retroactive date shall be prior to or coincident with the date of this Agreement. The policy shall state that coverage is claims made, and state the retroactive date. Claims Made form coverage shall be maintained by the Contractor for a minimum of three (3) years following the termination of this Agreement, and the Contractor shall annually provide the County with proof of renewal.

1.11.4 **Waiver of Subrogation Clause:** The County shall not be liable to the Contractor or to any insurance company (by way of subrogation or otherwise) insuring the Contractor for any loss or damage to any person, building, structure, or tangible personal property of the other occurring as a result of activity under the Agreement, even if such loss or damage might have been occasioned by the negligence of the County or its officials, officers, agents, or employees, when the loss or damage is covered by insurance benefiting the Contractor suffering such loss or damage was required to be covered by insurance under terms of this Agreement. Contractor shall cause each insurance policy it obtains to contain this waiver of subrogation clause.

1.13 **Reporting:** The Contractor will be required to send Human Services an annual report stating how many households they have served.

1.14 **Order of Precedence:** In the event of an inconsistency in this Agreement, the inconsistency shall be resolved by giving precedence in the following order:

1. Applicable federal, state, and local laws, regulations, rules and ordinances;
2. This Agreement, including all documents attached to or incorporated by reference.

2. GENERAL TERMS AND CONDITIONS

2.1 Definitions: As used throughout this Agreement, the following terms shall have the meaning set forth below:

2.1.1 **"Authorized Representative"** shall mean the Director, Executive Director, and/or the designee authorized in writing to act on the Director's behalf and/or Administrator of the Benton and Franklin Counties' Department of Human Services.

2.1.2 **"Personal Information"** shall mean information identifiable to any person, including, but not limited to, information that relates to a person's name, health, finances, education, business, use or receipt of governmental services or other activities, addresses, telephone numbers, social security numbers, driver license numbers, other identifying numbers, and any financial identifiers.

2.1.3 **"Contractor"** shall mean the entity identified on the face sheet performing service(s) under this Agreement, and shall include all employees and agents of the Contractor.

2.1.4 "**State**" shall mean the State of Washington.

2.2 **Advance Payments Prohibited:** No payments in advance of or in anticipation of goods or services to be provided under this Agreement shall be made by the County.

2.3 **Agreement:** This Agreement, including all documents attached to or incorporated by reference; contain all the terms and conditions agreed upon by the parties. No other understandings or representations, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or bind the parties.

2.4 **All Writings Contained Herein:** This Agreement contains all the terms and conditions agreed upon by the parties. No other understandings, oral or otherwise, regarding the subject matter of this Agreement shall be deemed to exist or to bind any of the parties hereto.

2.5 **Amendments and Modifications:** Except as provided otherwise herein, this Agreement may be amended only in writing by the agreement of all parties hereto and their authorized representatives. The Contractor hereby acknowledges that this Agreement is subject to all federal, state, and local laws, rules, and regulations applicable to this Agreement. Any provision of the Agreement that conflicts with federal, state, or local laws, rules, or regulations is hereby amended to conform to those provisions, as applicable or controlling. Such amendment of the Agreement will be effective on the effective date of the law, rule, or regulation necessitating it and will be binding on the parties even though such amendment may not have been reduced to writing and formally agreed upon and executed by the parties. The Contractor agrees to accept, and execute any and all amendments offered by the County needed to effectuate the federal, state, or local laws, rules, or regulations.

Any proposed change(s) in the Project must be submitted in writing to the County for approval prior to Contractor implementing any such change. Any such change shall be considered a request to modify or amend this Agreement.

2.6 **Americans with Disabilities Act (ADA) of 1990, Public Law 101-336, also referred to as the "ADA" 28 CFR Part 35**: The Contractor must comply with the ADA, which provides comprehensive civil rights protection to individuals with disabilities in the areas of employment, public accommodations, state and local government services, and telecommunications.

2.7 **Approval**: This Agreement shall be subject to the written approval of the County's Authorized Representative and shall not be binding until so approved. The Agreement may be altered

amended, or waived only by a written amendment executed by both parties' authorized representatives.

2.8 **Assignment, Delegation, and Subcontracting:** The Contractor shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the Contractor under this Agreement shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the County. Notwithstanding the foregoing, Contractor may freely assign this Agreement or delegate all or part of its obligations to any affiliate or successor in interest, without the consent of the County. For the avoidance of doubt, County's consent is not required for an assignment of this Agreement in connection with a sale or other disposition of substantially all of the assets of Contractor or subsequent sale by Contractor's successor in interest.

The Contractor warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for Contractor, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Agreement.

2.9 **Attorney Fees:** Unless expressly permitted under another provision of the Agreement, in the event of litigation or other action brought to enforce Agreement terms, each party agrees to bear its own attorney's fees and costs.

2.10 **Audit, Monitoring, Access, and Examination:** When requested by the Contractor, the County shall provide technical assistance to the Contractor, to the extent practicable, regarding compliance with the statutory use of the funds paid hereunder throughout the term of this Agreement. The County may monitor Contractor's performance hereunder and compliance with the terms of this Agreement. Monitoring may include a visit to the Property or to the Contractor organization.

The Contractor shall cooperate with the County or its agent in the evaluation of Contractor's performance under this Agreement and make available all information reasonably required by any such evaluation process. The results and records of said evaluations shall be maintained and disclosed in accordance with the Public Records Act, Chapter 42.56 RCW.

The Contractor shall provide right of access to its facilities, including those of any subcontractor, to the County, the state, and/or federal agencies or officials at all reasonable times in order to monitor and evaluate the Contractor's performance hereunder. The County shall provide reasonable notice of any county monitoring or evaluation, unless the County has reason to believe that monitoring without notice is necessary. The County shall monitor the Contractor programmatically and financially on site within the sole discretion of the County. The Contractor shall make available to the County and/or the state auditor all records, books, or pertinent information that the Contractor shall have kept pertaining to this Agreement and as required by this Agreement, federal law, and/or Washington law. Contractor shall also furnish such progress reports, schedules, financial and costs reports, and other such program or fiscal data reasonably required to evaluate the performance of this Agreement.

The Contractor shall respond timely and accurately to requests from the County to provide information necessary to respond to inquiries from other entities having authority to make such requests.

The Contractor agrees to notify the County in advance of any state or other formal inspections, audits, accreditation, or program reviews and provide to the County copies of said review, including any final written plan of correction or other written response, within thirty (30) days of receipt.

2.11 **Confidentiality/Safeguard of Information:** The parties to this Agreement shall use Personal Information (and other information such as demographics, personal health information, and income

verification) gained as a result of this Agreement only for purposes of carrying out this Agreement. The Contractor shall comply with all state and federal laws related to the use, sharing, transfer, sale, or disclosure of confidential information. The Contractor shall use confidential information solely for the purposes of this Agreement and shall not use, share, transfer, sell, or disclose any confidential information to any third-party except with the prior written consent of the County or as may be required by law. The Contractor shall take all necessary steps to assure that confidential information is safeguarded to prevent unauthorized use, sharing, transfer, sale, or disclosure of confidential information or violation of any state or federal laws related thereto. Upon request, the Contractor shall provide the County with its policies and procedures on confidentiality. The County may require changes to such policies and procedures as they apply to this Agreement whenever the County reasonably determines that changes are necessary to prevent unauthorized disclosures. The Contractor shall make the changes within the time period specified by the County. Upon request, the Contractor shall immediately return to the County any confidential information that the County reasonably determines has not been adequately protected by the Contractor against unauthorized disclosure.

The Contractor shall notify the County within five (5) working days of any unauthorized use or disclosure of any confidential information, and shall take necessary steps to mitigate the harmful effects of such use or disclosure.

The Contractor understands that as public entities, the County is subject to the Public Records Act (RCW 42.56.020) which mandates the release of most public records held for any purpose. The Contractor understands that any written record (including electronically stored records) it submits to the County, including, but not limited to, descriptions of work, client files, billings, and correspondence, may be subject to the Public Records Act and if requested by a member of the public, will be disclosed by the County if mandated by the Public Records Act. Provided, however, that the County will not disclose any records that are protected by a statutory scheme (e.g., the Health Information Portability and Accountability Act) or case law. Accordingly, Contractor agrees that to the extent it feels that any of the written records it submits to the County are confidential, proprietary, or otherwise protected from disclosure under the Public Records Act, the Contractor will prominently designate the record(s) as such on its face. To the extent that the County receives a Public Records Act request for any written records that have been designated as confidential or proprietary, the County will take all reasonable steps to contact Contractor as soon as possible and advise of the request so that Contractor can request a court order protecting the record(s). Contractor also hereby waives any and all rights to recover damages against the County for any records released pursuant to the Public Records Act.

2.12 **Copyright Provisions:** Unless otherwise provided, all Materials produced under this Agreement shall be considered "works for hire" as defined by the U.S. Copyright Act and shall be owned by the County. The County shall be considered the author of such Materials. In the event the Materials are not considered "works for hire" under the U.S. Copyright laws, the Contractor hereby irrevocably assigns all right, title, and interest in all Materials, including all intellectual property rights, moral rights, and rights of publicity to the County effective from the moment of creation of such Materials.

"Materials" means all items in any format and includes, but is not limited to, data, reports, documents, pamphlets, advertisements, books, magazines, surveys, studies, computer programs, films, tapes, and/or sound reproductions. "Ownership" includes the right to copyright, patent, and register, and the ability to transfer these rights.

For Materials that are delivered under the Agreement, but that incorporate pre-existing materials not produced under the Agreement, the Contractor hereby grants to the County a nonexclusive, royalty-free, irrevocable license (with rights to sublicense to others) in such Materials to translate, reproduce, distribute, prepare derivative works, publicly perform, and publicly display. The Contractor warrants and represents that the County has all rights and permissions, including intellectual property rights, moral rights and rights of publicity, necessary to grant such a license to the County.

The Contractor shall exert all reasonable effort to advise the County, at the time of delivery of Materials furnished under this Agreement, of all known or potential invasions of privacy contained therein and of any portion of such document which was not produced in the performance of this Agreement. The Contractor shall provide the County with prompt written notice of each notice or claim of infringement received by the Contractor with respect to any Materials delivered under this Agreement. The County shall have the right to modify or remove any restrictive markings placed upon the Materials by the Contractor.

2.13 **Debarment Certification:** The Contractor, by signature to this Agreement, certifies that the Contractor is not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participating in this Agreement by any federal department or agency. The Contractor shall not employ any person or contract with any person or agency excluded from participation in federal health care programs or debarred or suspended per this Agreement.

2.14 **Disputes:** Disputes between the Contractor and the County, arising under and by virtue of this Agreement, shall be brought to the attention of the County at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the Contractor shall be decided by the County's Authorized Representative or designee. All rulings, orders, instructions, and decisions of the County's Authorized Representative shall be final and conclusive, subject to Contractor's right to seek judicial relief.

2.15 **Duplicate Payment:** The Contractor certifies that work to be performed under this Agreement does not duplicate any work to be charged against any other grant, sub grant, or other source.

2.16 **Ethics/Conflicts of Interest:** In performing under this Agreement, the Contractor shall assure compliance with the Ethics in Public Service Act (Chapter 42.52 RCW) and any other applicable state or federal law related to ethics or conflicts of interest.

2.17 **Governing Law and Venue:** This Agreement has been and shall be construed as having been made and delivered within the State of Washington and this Agreement shall be governed by laws of the State of Washington both as to interpretation and performance. Any action at law, suit in equity, or judicial proceeding for the enforcement of this Agreement, or any provisions thereof, shall be instituted and maintained only in the courts of competent jurisdiction in Benton County, Washington.

2.18 **Headings and Captions:** The headings and captions used in this Agreement are for reference and convenience only, and in no way define, limit, or decide the scope or intent of any provisions or sections of this Agreement.

2.19 **Indemnification:** The Contractor shall hold harmless, indemnify, and defend the County and its officers, officials, employees, and agents, from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the Contractor or its subcontractors or their property upon or in the proximity of the property of the County. Provided, that the Contractor's obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the County or its officers, officials, employees, or agents.

In any and all claims against the County and its officers, officials, employees, and agents by any employee of the Contractor, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this section shall not be limited in any way by any limitation on the amount or type of damages,

compensation, or benefits payable by or for the Contractor or subcontractor under Workers' Compensation acts, disability benefit acts, or other employee benefits acts, it being clearly agreed and understood by the parties hereto that the Contractor expressly waives any immunity the Contractor might have had under such laws. By executing this Agreement, the Contractor acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this section shall be incorporated as relevant, into any Agreement the Contractor makes with any subcontractor or agent performing work hereunder. Contractor's obligations under this Section 2.19 shall survive termination and expiration of this Agreement.

The Contractor's obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from actions, error, or omission, or breach of any common law, statutory, or other delegated duty by the Contractor, the Contractor's employees, agents, or subcontractors.

2.20 **Licensing, Accreditation and Registration:** The Contractor shall comply with all applicable local, state, and federal licensing, accreditation and registration requirements or standards necessary for the performance of this Agreement.

2.21 **Limitation of Authority:** Only the County Commissioners shall have the express, implied, or apparent authority to alter, amend, modify, or waive any clause or condition of this Agreement.

2.22 **Performance Goals:** The performance goals for the Benton County Affordable Housing and Assistance funds are:

- **a.** to provide direct services to homeless individuals;
- **b.** to provide supportive services to eligible clients;
- **c.** to support County efforts in meeting the goals of the Benton and Franklin Counties Ten-Year Homeless Housing Plan; and
- **d.** to decrease homelessness.

2.23 **Proprietary Rights:** The County hereby retains a nonexclusive, royalty free, and irrevocable right to duplicate, use for its own purposes, disseminate, disclose, or authorize others to utilize any copyrighted or copyrightable work developed or purchased with Affordable Housing funds (RCW 36.22.178).

2.24 **Recapture:** In the event that the Contractor fails to perform this Agreement in accordance with state laws, federal laws, and/or the provisions of this Agreement, the County reserves the right to recapture funds in an amount to compensate the County for the noncompliance in addition to any other remedies available at law or in equity.

Repayment by the Contractor of funds under this recapture provision shall occur within the time period specified by the County. In the alternative, the County may recapture such funds from payments due under this Agreement.

2.25 **Records Maintenance:** The Contractor shall maintain all books, records, documents, data, and other evidence relating to this Agreement and performance of the services described herein, including, but not limited to accounting procedures and practices that sufficiently and properly reflect all direct and indirect costs of any nature expended in the performance of this Agreement. Contractor shall retain such records for a period of six (6) years following the date of final payment.

If any litigation, claim, or audit is started before the expiration of the six (6) year period, the records shall be retained until all litigation, claims, or audit findings involving the records have been finally resolved.

Project records shall include evidence of benefit to very low-income persons, description of the work, financial records (source and use of funds, authorization to expend funds, obligations,

unobligated balance, assets, liabilities, outlays, and income), property acquisition, fair housing, equal opportunity, property disposition, etc. The public shall be granted reasonable access to all "public records" pursuant to the Public Records Act, Chapter 42.56 RCW.

Contractor shall prepare a report once the agreed upon work has been completed. The report shall include a summary of the work completed and the cost associated with said work.

The Contractor shall additionally report to the County within five (5) business days of a request by the County for the Contractor's policies and procedures for screening and admissions of qualified residents.

2.26 **Right of Inspection:** At no additional cost all records relating to the Contractor's performance under this Agreement shall be subject at all reasonable times to unannounced site inspections by the County as necessary to review, monitor, and evaluate performance, compliance, and quality assurance under this Agreement. The Contractor shall provide access to its facilities for this purpose.

2.27 **Severability:** If any provision of this Agreement or any provision of any document incorporated by reference shall be held invalid, such invalidity shall not affect the other provisions of this Agreement that can be given effect without the invalid provision, if such remainder conforms to the requirements of law and the fundamental purpose of this Agreement and to this end the provisions of this Agreement are declared to be severable.

2.28 **Survival:** The terms, conditions, and warranties contained in this Agreement that by their sense and context are intended to survive the completion of the performance, cancellation, or termination of this Agreement shall so survive.

2.29 **Suspension/Reduction of Services:** The Contractor shall provide the County with prompt notification of any discontinuance or suspension of or significant reduction in the provision of housing to low income persons at the Property.

2.30 **Termination for Cause/Suspension:** In the event the County determines that the Contractor has failed to comply with any term or condition of this Agreement, the County may terminate the Agreement in whole or in part upon written notice to the Contractor. Such termination shall be deemed "for cause." Termination shall take effect on the date specified in the notice.

In the alternative, upon written notice the County may allow the Contractor a specific period of time in which to correct the non-compliance. During the corrective-action time period, the County may suspend further payment to the Contractor in whole or in part, or may restrict the Contractor's right to perform duties under this Agreement. Failure by the Contractor to take timely corrective action shall allow the County to terminate the Agreement upon written notice to the Contractor.

"Termination for Cause" shall be deemed a "Termination for Convenience" when the County determines that the Contractor did not fail to comply with the terms of the Agreement or when the County determines the failure was not caused by the Contractor's actions or negligence.

If the Agreement is terminated for cause, the Contractor shall be liable for damages as authorized by law, including, but not limited to, any cost difference between the original Agreement and the replacement Agreement, as well as all costs associated with entering into the replacement Agreement (*i.e.,* competitive bidding, mailing, advertising, and staff time).

The County may terminate the Agreement for default without written notice and without opportunity for correction if the County reasonably believes that the Contractor has violated, or is alleged to have violated, as determined by the County, any law, regulation, rule, or ordinance applicable to this Agreement.

2.31 **Termination for Convenience:** Except as otherwise provided in this Agreement, the County may terminate this Agreement, in whole or in part, for convenience by mailing written notice of termination to the addresses set forth on the face page of this Agreement. Such termination is effective ten (10) business days after the date of mailing. If this Agreement is terminated for convenience, the County shall be liable only for payment required under the terms of this Agreement for services rendered or goods delivered prior to the effective date of termination.

2.32 **Termination Procedures:** After receipt of a notice of termination, except as otherwise directed by the County, the Contractor shall:

- Stop work under the Agreement on the date, and to the extent specified, in the notice;
- Place no further orders or sub grants for materials, services, or facilities related to the Agreement;
- Assign all of the rights, title, and interest of the Contractor under the orders and sub-grants so terminated, in which case the County has the right, at its discretion, to settle or pay any or all claims arising out of the termination of such orders and sub-grants. Any attempt by the Contractor to settle such claims must have the prior written approval of the County's authorized representatives; and
- Preserve and transfer any materials, Agreement deliverables, and/or the County's property in the Contractor's possession as directed by the County.

Upon termination of the Agreement, the County shall pay the Contractor for any service provided by the Contractor under the Agreement prior to the date of termination. The County may withhold any amount due as the County reasonably determines is necessary to protect the County against potential loss or liability resulting from the termination. The County shall pay any withheld amount to the Contractor if the County later determines that loss or liability will not occur.

The rights and remedies of the County under this section are in addition to any other rights and remedies provided under this Agreement or otherwise provided under law.

2.33 **Waiver:** No employee of the County or the Contractor has the power, right, or authority to waive any of the terms, conditions, and/or covenants of this Agreement.

The waiver of any breach or violation of any provision of this Agreement shall not operate as or be construed to be a waiver of any subsequent breach of the Agreement.

The failure of the County or the Contractor to enforce any of the terms or covenants of this Agreement or the failure to require performance under the Agreement shall not be construed as a waiver nor in any way affect the validity of the Agreement or the right of the County or the Contractor to enforce each and every term of the Agreement.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	FC 06/08/21 BC 06/22/21
Subject:	Personal Services Contract with Crest Counseling Services, P.S.
Presenter:	N/A
Prepared By:	Rosa Garcia
Reviewed By:	Darryl Banks

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:

- ☒ Consent Agenda
- ☐ Public Hearing
- ☐ Scheduled Business

Type of Action Needed: *(Multiple boxes can be checked, if necessary)*

- ☐ Discussion Only
- ☐ Decision / Direction
- ☐ Sign Letter / Document
- ☐ Pass Motion
- ☒ Pass Resolution
- ☐ Pass Ordinance
- ☐ Execute Contract

Summary / Background Information

July Crest of Crest Counseling Services, P.S. to provide services and treatment for first time adjudicated sex offenders. Julie Crest has provided services through the Juvenile Justice Center since 2011.

The current contract is set to expire on June 30, 2021. The Juvenile Justice Center desires to continue services with Julie Crest of Crest Counseling Services, P.S. The attached Personal Services Contract commences July 1, 2021 and expires on June 30, 2023.

Fiscal Impact

The fiscal amount is not to exceed $65,000.00. These services are paid from state funds under the SSODA treatment program. There is no fiscal impact to the county budgets.

Recommendation

We recommend that the Board of Commissioners of Benton County and the Board of Commissioners of Franklin County sign the Personal Services Contract between Julie Crest of Crest Counseling Services, P.S. and Benton-Franklin Counties Juvenile Justice Center for services.

Suggested Motion

Approve as part of consent agenda.

JOINT RESOLUTION

BENTON COUNTY RESOLUTION NO. _____

FRANKLIN COUNTY RESOLUTION NO. _____

BEFORE THE BOARDS OF THE COMMISSIONERS OF BENTON AND FRANKLIN COUNTIES, WASHINGTON;

IN THE MATTER OF AWARDING CREST COUNSELING SERVICES, P.S. A PERSONAL SERVICES CONTRACT TO PROVIDE SERVICES AND TREATMENT TO FIRST-TIME ADJUDICATED SEX OFFENDERS

WHEREAS, per resolution 2021-233, "County need not advertise or follow a formal competitive bidding procedure for service contracts, but rather the County may instead evaluate and utilize the procedures it deems best under the individual circumstances in order to obtain services of the highest quality at the lowest cost"; and

WHEREAS, Benton and Franklin Counties has a Contract with Julie Crest of Crest Counseling Services, P.S. to provide services and treatment to first-time adjudicated sex offenders from July 1, 2019 through June 30, 2021 via Benton County Resolution numbered 2019-481 and Franklin County Resolution numbered 2019-170; and

WHEREAS, the Juvenile Administrator recommends entering into a new Personal Services Contract; **NOW, THEREFORE**

BE IT RESOLVED, by the Board of Benton County Commissioners, Benton County Washington and by the Board of Franklin County Commissioners, Franklin County Washington the Boards concur with the Juvenile Administrator's recommendation and hereby awards the Personal Service Contract to Julie Crest of Crest Counseling Services, P.S., in an amount not to exceed $65,000.00; and

BE IT FURTHER RESOLVED, that the Chairs are authorized to sign the attached Personal Service Contract; and

BE IT FURTHER RESOLVED, the term of the attached Contract commences July 1, 2021 and expires on June 30, 2023.

DATED this ____ day of _____ 2021
BENTON COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Benton County, Washington

Attest:

_____
Clerk of the Board

DATED this ____ day of _____ 2021
FRANKLIN COUNTY BOARD OF COMMISSIONERS

_____
Chair of the Board

_____
Chair Pro Tem

_____
Member

Constituting the Board of
County Commissioners,
Franklin County, Washington

Attest:

_____
Clerk of the Board

Originals (2): 1-BC Commissioners, 1-FC Commissioners; Electronic (2): 1-Crest, 1-Juvenile R. Garcia

BENTON-FRANKLIN COUNTIES
PERSONAL SERVICES CONTRACT
TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between BENTON COUNTY, a political subdivision, with its principal offices at 620 Market Street, Prosser, WA 99350 and Franklin County, a political subdivision of the State of Washington, with its principal offices at 1016 North Fourth Avenue, Pasco, WA 99301, by and for the Benton-Franklin Counties Juvenile Justice Center, a bi-county agency located at 5606 West Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTIES"), and **Julie Crest of Crest Counseling Services, P.S.**, a corporation organized under the laws of the State of Washington with her principal office at 412 South 12th Avenue, Yakima, WA 98902(hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. DURATION OF CONTRACT

The term of this Contract shall begin on **July 1, 2021** and shall expire on **June 30, 2023**. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

2. SERVICES PROVIDED

a. Pursuant to RCW 13.40.160, the CONTRACTOR shall provide the following services for selected first-time, adjudicated sex offenders:

1. Assess offenders prior to disposition of a sex offense to determine amenability to treatment and risk to the community. The assessment shall be completed by the Washington State certified sex offender treatment provider and shall include:

a. Respondent's version of the facts;
b. Official version of the facts;
c. Respondent's offense history;
d. Assessment of problems in addition to the alleged deviant behaviors;
e. Respondent's, social, educational, and employment situation;

f. Other evaluation measures used; and
g. Amenability to treatment and risk to the community.

2. Develop a proposed treatment plan that includes:
   a. Frequency and type of contact between offender and treatment providers;
   b. Specific issues to be addressed in the treatment and description of planned treatment modalities;
   c. Monitoring plans including any requirement regarding living conditions; lifestyle requirements, and monitoring by family members, legal guardians, or others;
   d. Anticipated length of treatment, and
   e. Recommended crime-related prohibitions.

3. Provide treatment that complies with WAC Chapter 246-930 and the rules adopted by the Department of Health, and that consists of a combination of services identified in the Sex Offender Treatment Provider assessment, and the Washington State Juvenile Court Risk Assessment, deemed most effective to decrease recidivism, increase youth protective factors, and decrease youth risk factors. Specifics of family, group, or individual sessions shall be identified in the provider treatment plan provided during assessment and shall be updated quarterly. Group and Individual treatment services may be provided by the CONTRACTOR in the group treatment room located at the Benton-Franklin Counties Juvenile Justice Center, 5606 W. Canal Place, Suite 106, Kennewick, WA, at the discretion of the Juvenile Justice Center Administrator.

4. Submit, at the request of the Juvenile Probation Counselor, a six-month Court Review Treatment Report, that includes at minimum the following: Dates of attendance, respondent's compliance with requirements, treatment activities, respondent's relative progress in treatment, formal risk assessments to include at minimum the Structured Assessment of Violence Risk Youth (SAVRY) and Estimate of Risk of Adolescent Sexual Offense Recidivism (ERASOR), modifications to the treatment plan, and any other material specified by the court at the time of disposition.

b. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTIES.

c. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

d. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

e. The CONTRACTOR shall confer with the COUNTIES from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTIES.

3. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a contract representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR: Julie Crest
Crest Counseling Services, P.S.
412 South 12th Avenue
Yakima, WA 98902
Phone: (509) 575-8989
Email: jdcrest66@gmail.com

b. For COUNTIES: Darryl Banks
Benton-Franklin Juvenile Justice Center
5606 West Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 222-2316
Fax: (509)222-2311
Email: Darryl.Banks@co.benton.wa.us

4. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rate of $85.00 per hour for each hour of service provided for individual and/or family counseling. A quarterly report, as required by RCW 13.40.160 addressing client's treatment progress is to be included in this hourly rate.

b. At the rate of $800.00 for each typed assessment that meets SSODA requirements.

c. At the rate of $170.00 per group to provide weekly group sex offender therapy. This rate will include staff consultation

and case planning regarding juvenile sex offenders following group sessions.

d. At the rate of $75.00 per hour for Provider meetings.

e. At the flat rate of $75.00 for each six-month Court Review Treatment Report.

f. The maximum total amount payable by the Counties to the Contractor under this Contract shall not exceed Sixty-Five Thousand Dollars ($65,000.00).

g. No payment shall be made for any work performed by the CONTRACTOR, except for work identified and set forth in this Contract.

h. The CONTRACTOR may submit invoices to the COUNTIES not more than once per month during the progress of the work for partial payment of the work completed to date. Invoices shall cover the time CONTRACTOR performed work for the COUNTIES during the billing period. The COUNTIES shall pay the CONTRACTOR for services rendered in the month following the actual delivery of work and will remit payment within thirty (30) days from the date of receipt of the invoice.

i. The CONTRACTOR shall not be paid for services rendered under this Contract unless and until they have been performed to the satisfaction of the COUNTIES.

j. In the event the CONTRACTOR has failed to perform any substantial obligation to be performed by the CONTRACTOR under this Contract and such failure has not been cured within ten (10) days following notice from the COUNTIES, the COUNTIES may, in its sole discretion, upon written notice to the CONTRACTOR, withhold any and all monies due and payable to the CONTRACTOR, without penalty, until such failure to perform is cured or otherwise adjudicated. "Substantial" for the purposes of this Contract means faithfully fulfilling the terms of this Contract with variances only for technical or minor omissions or defects.

k. Unless otherwise provided in this Contract or any exhibits or attachments hereto, the CONTRACTOR will not be paid for any billings or invoices presented for services rendered prior to the execution of this Contract or after its termination.

5. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in

the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTIES.

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties' authorized representatives. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTIES.

6. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES and its officers, officials, employees and agents, from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTIES. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death or damage caused by or arising out of the sole negligence of the COUNTIES or its officers, officials, employees or agents.

b. In any and all claims against the COUNTIES and its officers, officials, employees and agents by any employee of the CONTRACTOR, any subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under Workers Compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract**

the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section [6] shall survive termination and expiration of this Contract.

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting and defending all claims alleging loss from action, error or omission, or breach of any common law, statutory or other delegated duty by the CONTRACTOR, or the CONTRACTOR'S employees, agents or subcontractors.

7. INSURANCE

a. **Professional Liability Insurance:** Prior to the start of work under this Contract, the CONTRACTOR shall secure and maintain at its own expense Professional Liability Insurance appropriate to the CONTRACTOR'S profession and shall be written subject to limits of not less than one million dollars ($1,000,000) each claim and in the aggregate. Such insurance will be provided by an insurance carrier with a Best's Rating of not less than A-VII.

The coverage shall apply to liability for a professional error, act or omission arising out of the scope of the CONTRACTOR'S services defined in this Contract. Coverage shall not exclude hazards related to the work rendered as part of the Contract or within the scope of the CONTRACTOR'S services as defined by this Contract. If the policy is claims made, the retroactive date shall be prior to or coincident with the effective date of this Contract. CONTRACTOR is required to maintain claims made professional liability insurance for a minimum of 36 months after the effective date of termination or completion of this Contract. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a Retroactive Date prior to the contract effective date, the CONTRACTOR must purchase "extended reporting" coverage for a minimum of 36 months after the completion of work. The CONTRACTOR shall annually provide COUNTIES with proof of all such insurance.

b. **Workers Compensation:** CONTRACTOR acknowledges and represents that Contractor currently does not have any employees and, therefore, does not maintain workers compensation insurance. To the extent Contractor hires any employees; however, Contractor shall comply with all State of Washington workers compensation statutes and regulations. Workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage

shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTIES incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTIES. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTIES by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTIES to CONTRACTOR for performance of this Contract.

c. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury and property damage that may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal Injury and Advertising Injury
$1,000,000 Each Occurrence

The commercial general liability policy must contain an endorsement naming the COUNTIES and its elected and appointed officials, employees and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR'S commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTIES.

The CONTRACTOR must provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability pursuant to the indemnification requirement under Section [6]. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the

first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

$1,000,000 Each Accident
$1,000,000 Policy Limit for Disease
$1,000,000 Each Employee for Disease.

d. **Automobile Liability**: The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any autos owned by the CONTRACTOR (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

e. **Other Insurance Provisions**:

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTIES or its elected and appointed officers, officials, employees or agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTIES shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTIES as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the COUNTIES or its officers, officials, employees or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTIES shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract, except for professional liability under Section **[7(a)]**, shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR'S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR'S compliance, such payments not otherwise subject to withholding or set-off will be released to CONTRACTOR.

f. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington that have a A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be

reviewed and approved in writing by the Benton and Franklin Counties Risk Managers. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Professional Liability and Auto Liability shall specifically include the COUNTIES and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES and its elected and appointed officials, employees and agents shall be excess of the CONTRACTOR'S insurance and shall not contribute to it.

2. Certificates of Liability Insurance with endorsements attached, must be provided to the COUNTIES' Contract Representative referenced in Section 3.b.

3. All written notices under this Section **[7]** and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTIES' Contract Representative referenced in Section 3.b.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton and Franklin Counties Risk Manager to the following address: Benton-Franklin Counties Juvenile Justice Center 5606 West Canal Place, Suite 106 Kennewick WA 99336.

8. TERMINATION

a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determines, in its sole discretion, that such termination is in the best interests of the COUNTIES. The COUNTIES may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTIES shall pay the CONTRACTOR for all costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with the Compensation Section of this Contract.

b. In the event that funding for this project is withdrawn, reduced or limited in any way after the effective date of this Contract, the COUNTIES may summarily terminate this Contract notwithstanding any other termination provision in this

Contract. Termination under this subsection shall be effective upon the date specified in the written notice of termination sent by COUNTIES to the CONTRACTOR. After the effective date, no charges incurred under this Contract shall be allowed.

c. If the CONTRACTOR breaches any of its obligations hereunder, and fails to cure the breach within ten (10) days of written notice to do so by the COUNTIES, the COUNTIES may immediately terminate this Contract by so notifying the CONTRACTOR, in which case the COUNTIES shall pay the CONTRACTOR only for the costs of services accepted by the COUNTIES, in accordance with the Compensation Section of this Contract. Upon such termination, the COUNTIES, at its discretion, may obtain performance of the work elsewhere, and the CONTRACTOR shall bear all costs and expenses incurred by the COUNTIES in completing the work and all damage sustained by the COUNTIES by reason of the CONTRACTOR'S breach.

d. The CONTRACTOR shall have a right to terminate this Agreement upon ten (10) days advance written notice to the COUNTIES in the event the COUNTIES fails to comply with any of the provisions of this Agreement or upon thirty (30) days written notice without cause.

9. ASSIGNMENT, DELEGATION AND SUBCONTRACTING

a. The CONTRACTOR shall perform the terms of this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior express written consent of the COUNTIES.

b. The CONTRACTOR warrants that it has not paid nor has it agreed to pay any company, person, partnership, or firm, other than a bona fide employee working exclusively for CONTRACTOR, any fee, commission, percentage, brokerage fee, gift, or other consideration contingent upon or resulting from the award or making of this Contract.

10. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and signed by the waiving parties' authorized representatives, and in the absence of such, no action

or inaction shall be construed to be such a waiver.

11. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTIES. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section **[4]** of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTIES' benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTIES' employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTIES.

d. CONTRACTOR shall pay for all taxes, fees, licenses, or payments required by federal, state or local law that are now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTIES' Contract Representative or designee.

12. COMPLIANCE WITH LAWS

The CONTRACTOR shall comply with all applicable federal, state and local laws, rules and regulations in performing this Contract.

13. OTHER PROVISIONS

The CONTRACTOR shall comply with the following other provisions for all services provided under this Contract.

a. Background Check/Criminal History

1. CONTRACTOR shall authorize Counties to conduct a background check of the CONTRACTOR. The background check

may include, but is not limited to, a review of records on file with the Washington State Patrol, the FBI National Criminal Information Computer (NCIC) and Interstate Identification Index (III), local law enforcement agencies, the Department of Licensing, courts of law, and other agencies, and also may, depending upon assignment of CONTRACTOR, involve fingerprinting.

2. In accordance with chapters 388-700 WAC, 72.05 RCW, and 43.20A RCW the CONTRACTOR and/or Counties shall be required to conduct background check/criminal history clearance for all employees, subcontractors, and/or volunteers who may or will have regular access to any client/juvenile.

3. In addition, the CONTRACTOR and/or Counties may also be required to conduct background check/criminal history clearance for employees, subcontractors, and/or volunteers, who may or will have limited access to any client/juvenile.

b. Sexual Misconduct

1. The CONTRACTOR shall ensure all employees, subcontractors, and/or volunteers are knowledgeable about the requirements of RCW 13.40.570 and of the new crimes included in RCW 9A.44, Sex Offenses.

2. The CONTRACTOR shall ensure that written notification must occur within seven (7) days of a conviction or plea of guilty to any offenses as defined in RCW 9.94A.030 and RCW 9A.44.130, any crime specified in Chapter 9A.44 RCW when the victim is a juvenile and any violent offense as defined in RCW 9.94A.030. Such notification will be directed to the Office of the Juvenile Court Administrator, Benton-Franklin Counties Juvenile Justice Center, 5606 West Canal Place, Suite 106, Kennewick WA 99336-1388.

14. INSPECTION OF BOOKS AND RECORDS

The COUNTIES may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep all records required by this Contract for six (6) years after termination of this Contract for audit purposes. The CONTRACTOR shall also keep all fiscal and clinical books, records, documents and other material relevant to this Contract in accordance with WAC 388-805-320 and the WAC Implementation Guide.

15. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, the presence of any sensory, mental, or physical disability, or any other protected status.

16. OWNERSHIP OF MATERIALS/WORKS PRODUCED

a. All reports, drawings, plans, specifications, all forms of electronic media, and data and documents produced in the performance of the work under this Contract shall be "works for hire" as defined by the U.S. Copyright Act of 1976 and shall be owned by the COUNTIES. Ownership includes the right to copyright, patent, and register, and the ability to transfer these rights. The COUNTIES agree that if it uses any materials prepared by the CONTRACTOR for purposes other than those intended by this Contract, it does so at its sole risk and it agrees to hold the CONTRACTOR harmless there from to the extent such use is not agreed to in writing by the CONTRACTOR.

b. An electronic copy of all word processing documents shall be submitted to the COUNTIES upon request and/or at the expiration of the Contract, using the word processing program and version specified by the COUNTIES.

17. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES and its officers, officials, employees and agents, from and against any claimed action, cause or demand brought against the COUNTIES, where such action is based on the claim that information supplied by the CONTRACTOR or subcontractor infringes any patent or copyright. The CONTRACTOR shall be notified promptly in writing by the COUNTIES of any notice of such claim.

18. DISPUTES

Disputes between the CONTRACTOR and the COUNTIES, arising under and by virtue of this Contract, shall be brought to the attention of the COUNTIES at the earliest possible time in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the

COUNTIES' Contract Representative or designee. All rulings, orders, instructions and decisions of the COUNTIES' Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

19. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTIES or acquired by the COUNTIES in performance of this Contract, except upon the prior written consent of the COUNTIES' authorized representatives or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTIES written notice of any judicial proceeding seeking disclosure of such information.

20. CHOICE OF LAW, JURISDICTION AND VENUE

a. This Contract has been and shall be construed as having been made and delivered within the State of Washington and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

b. Any action at law, suit in equity, or judicial proceeding arising out of this Contract shall be instituted and maintained only in any of the courts of competent jurisdiction in Benton and Franklin Counties, Washington.

21. SUCCESSORS AND ASSIGNS

The COUNTIES, to the extent permitted by law, and the CONTRACTOR each bind themselves, and their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

22. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if this Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall

be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

23. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

24. NOTICES

Any notices provided under this Contract shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the mailing addresses set out in Section 4 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 4 of this Contract, with the original notice to follow by regular mail. Notice shall be deemed to be given three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

25. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, indemnification provisions (Sections **[6]** and **[17]**); extended reporting period requirements for professional liability insurance (Section **[7(a)]**); inspection and keeping of records and books (Section **[14]**); litigation hold notice (Section **[26]**); Public Records Act (Section **[27]**) and confidentiality (Section **[19]**).

26. LITIGATION HOLD NOTICE

In the event the COUNTIES learn of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR pursuant to Section **[14]** of this Contract may be of evidentiary value, the COUNTIES may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to "hold" such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received at a time when a Contract between CONTRACTOR and the COUNTIES is in force. Such directions will include, but will not be limited to, instructions to suspend the six (6) year purge schedule required by Section **[14]** of this Contract.

27. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTIES are a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made, the COUNTIES may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTIES that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTIES' release of records covered under the Public Records Act. The COUNTIES agree to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act that will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

- This section left blank intentionally -

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives, and it is effective on **July 1, 2021.**

The parties specifically certify that the provisions contained within Section 7 are mutually negotiated.

Crest Counseling Services, P.S.	Benton Franklin Counties Juvenile Justice Center
Julie Crest 5/25/21 **Julie Crest** **Date**	Darryl Banks 6-7-2021 Darryl Banks Date Juvenile Court Administrator
BENTON COUNTY APPROVAL Approved as to Form: Stephen Hallstrom 05/28/21 Stephen Hallstrom, Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____	FRANKLIN COUNTY APPROVAL Approved as to Form: _____ Civil Deputy Prosecuting Attorney Date By: _____ Name: _____ Title: Chair, Board of Commissioners Date: _____ Attest: Clerk of the Board: _____

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	06/22/21
Subject:	Award of public defense contract to Jennifer Azure
Presenter:	N/A
Prepared By:	Denise Gerry
Reviewed By:	Eric Hsu

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Benton County is legally obligated to provide public defense services in Benton County Superior Court on adult criminal cases ("Services").

Because of an attorney departure, OPD is needing to award one or more additional contracts to provide Services.

Jennifer Azure ("Attorney") is qualified to provide Services and interested in contracting with Benton County to do so. The proposed contract and resolution effectuate a contract with Attorney for the provision of such Services on the terms contained therein, for the period from 06/10/21 to 12/31/22 at the rate of $700 per Case.

Fiscal Impact

None beyond budgeted.

Recommendation

Execute contract with attorney Jennifer Azure for public defense services in Benton County Superior Court for adult criminal cases. Approve associated resolution as presented.

Suggested Motion

N/A – Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AWARDING A PUBLIC DEFENSE CONTRACT WITH ATTORNEY JENNIFER AZURE TO PROVIDE PUBLIC DEFENSE SERVICES IN BENTON COUNTY SUPERIOR COURT FOR ADULT CRIMINAL CASES

WHEREAS, Benton County ("County") is obligated by law to provide indigent defense services in Benton County Superior Court for adult criminal cases ("Services"); and

WHEREAS, because of an attorney departure, it is necessary for County to award a public defense contract at this time to provide Services; and

WHEREAS, attorney Jennifer Azure is qualified to provide Services and interested in entering into a contract with County for such Services; and

WHEREAS, a proposed public defense contract with attorney Jennifer Azure for Services is presented for execution by the Board of Commissioners; **NOW, THEREFORE**

BE IT RESOLVED that the proposed public defense contract with attorney Jennifer Azure, to provide public defense services in Benton County Superior Court for adult criminal cases, for the time period from 06/10/21 to 12/31/22 for compensation not to exceed $700 per Case, plus other allowable expenses, premiums, and fees as detailed, is hereby approved and executed on behalf of Benton County.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, Jennifer Azure
Copy – Auditor, S Godinez

E. Hsu

PROFESSIONAL SERVICES AGREEMENT TO PROVIDE LEGAL REPRESENTATION TO INDIGENT PERSONS IN BENTON COUNTY SUPERIOR COURT

BCSC2122JMA001

CONTRACT SUMMARY			
Contract Type	Monthly		
Contract Number	BCSC2122JMA001	**Contract Holder**	Jennifer Azure
WSBA #	30494	**Effective Dates**	06/10/21 to 12/31/22
Caseload Cap	**130**	**Compensation**	**$700 per Case**
Assigned Court	**Superior Court**	**Compensation Structure**	**By the Case until June 15, 2021** **Monthly from June 15, 2021 until expiration.**
Contract Slot Identifier SCF-3			
Compensation Payable to: Azure Law Office, PLLC			

THIS AGREEMENT is entered into by and between **Jennifer Azure,** attorney at law, Washington State Bar Association #30494 ("Attorney"), and **BENTON COUNTY, WASHINGTON**, a state of Washington political subdivision ("County"), for and on behalf of the Benton County Superior Court.

THIS AGREEMENT IS ENTERED INTO BASED UPON THE FOLLOWING FACTS AND CIRCUMSTANCES:

A. The County has the legal responsibility to provide legal defense services to indigent persons charged with felony criminal offenses alleged to have been committed within the County's jurisdictional boundaries.

B. Attorney is engaged in the private practice of law, has direct experience in litigating cases involving persons charged with felony criminal offenses, and desires to contract with the County to provide legal services to indigent persons subject to felony criminal charges in Benton County Superior Court.

NOW, THEREFORE, for and in consideration of the mutual covenants and agreements contained herein, the County and Attorney hereby agree as follows:

1. **AGREEMENT TERM.** This Agreement shall be deemed effective for all purposes as of **06/10/21,** and shall continue thereafter through and including **12/31/22**, unless earlier terminated pursuant to the applicable terms and provisions of this Agreement. Upon expiration of this Agreement, depending on County's staffing needs, County may elect to utilize any legally appropriate means (including, but not limited to, a Request for Qualifications) to select contract awardees. Thereupon, depending on factors including, but not limited to, County's staffing needs, number of qualified applicants, and Attorney's performance during the term of this Agreement,

County may choose to re-award a contract Attorney, to other attorneys, or to no-one, at its sole and exclusive discretion.

2. **ATTORNEY'S OFFICE LOCATION.**

a. Attorney presently and regularly maintains (or has access to) an office adequate and appropriate for the practice of law at 7135 W. Hood Pl, Kennewick, WA 99336; Attorney's current local office telephone and fax numbers are (509) 491-3941 and n/a, respectively; and Attorney's current office/work e-mail address is jennifer@azurelawoffice.com.

b. Throughout the entire term of this Agreement, Attorney shall continue to maintain (or have access to) such office, such telephone and fax numbers, and such e-mail address; provided that, however, Attorney may relocate Attorney's office to another location within the greater Tri-Cities, Washington, and/or Attorney may change Attorney's telephone/fax number to another greater Tri-Cities local telephone/fax number, and/or Attorney may change Attorney's e-mail address, provided that Attorney must provide immediate written notice of such change(s) to the Benton-Franklin Counties Public Defense Manager ("PDM"), the Benton County Prosecuting Attorney, and the Benton-Franklin Counties Superior Court Administrator ("Superior Court Administrator").

c. Regardless of the location or manner in which Attorney decides to maintain an office, throughout the entire term of this Agreement the office facility must comply with any and all applicable public defense standards adopted by the Washington Supreme Court.

3. **ATTORNEY'S QUALIFICATIONS.** Attorney acknowledges and agrees that the County has an obligation to provide competent and effective legal counsel to indigent persons subject to proceedings in Benton County Superior Court. Attorney shall perform all services hereunder in strict accordance with the usual skills and professional ethical standards exercised by attorneys engaged in the defense of persons accused of felony crimes in the state of Washington and generally exercised by members of the Washington State Bar Association ("WSBA"). Without limitation in that regard, Attorney acknowledges and agrees that Attorney has a fundamental duty and responsibility to effectively promote and protect the best interests and rights of all persons whom Attorney is appointed to represent under this Agreement.

a. As of the date of this Agreement, Attorney represents and warrants that Attorney is unconditionally licensed to practice law within the state of Washington; has had at least one (1) year of direct trial experience in felony criminal defense or criminal prosecution matters; meets the minimum standards for Superior Court felony public defense (for Class A, B, and C felonies, sex-case felonies, and violent Class A and B felonies) as adopted by the Washington State Supreme Court; has not been a party to a previous personal services agreement with any governmental entity or any other entity for the provision of public indigent defense services that was terminated due to Attorney's breach or other contractual non-compliance; has not been previously employed by any governmental entity or any other entity to provide indigent defense services and had such employment terminated due to any reason relating to Attorney's job performance; has not been censured, admonished, or otherwise formally disciplined for past conduct or behavior that would negatively reflect on Attorney's duty and ability to effectively and competently render legal services hereunder; has not been suspended or disbarred from

the practice of law in any state or other jurisdiction at any time in the past; and does not have any bar association complaints filed and pending against him/her.

(i) This Agreement may be subject to review and potential termination pursuant to paragraph 19 below in the event that Attorney's license to practice law in Washington is revoked or otherwise limited or restricted; in the event that a court of competent jurisdiction formally determines and expressly finds that Attorney has rendered ineffective assistance of counsel to any person; in the event that Attorney is censured, admonished, or otherwise formally disciplined for conduct or behavior that negatively reflects on Attorney's duty and ability to effectively and competently render legal services hereunder; or in the event that Attorney is suspended or disbarred from the practice of law in any other state or jurisdiction.

(ii) Attorney shall notify the County within five (5) business days if any event specified in paragraph 3.a.(i) occurs or if any bar association complaint is filed against Attorney. Failure to do so shall constitute a substantial and incurable breach of this Agreement and shall subject this Agreement, at the election of the County, to immediate termination.

b. Attorney acknowledges and agrees that the County may conduct criminal history background check(s) on Attorney including any such recurring check as the County may deem appropriate, in its sole discretion, even at times after execution of this Agreement. Attorney acknowledges and agrees that this Agreement shall be deemed immediately and automatically terminated upon the County receiving a non-complying or otherwise unsatisfactory criminal history background check report.

c. Attorney represents, warrants, and certifies that Attorney has read and fully understands the requirements of RCW 13.40.570 (sexual misconduct by state employees, contractors) and all sex offense crimes included in RCW Chapter 9A.44. Attorney shall comply with any and all applicable legal and/or administrative requirements relating to the documentation/reporting of sexual misconduct.

d. During each calendar year of the term of this Agreement, Attorney shall obtain at least seven (7) hours of WSBA-qualified Continuing Legal Education ("CLE") credits in courses directly relating to Attorney's public defense practice under this Agreement. Attorney shall provide the PDM with written proof and confirmation that such CLE credits have been obtained no later than by December 31st of each calendar year. Additionally, during each calendar year during the term of this Agreement, in addition to participating in any specialized training-related activity specified in RCW 10.101.060(1)(a)(iii) or otherwise specifically required by other applicable law or court rule, Attorney shall attend at least one (1) public defense services-related training seminar sponsored and/or approved by the Washington Office of Public Defense ("OPD"), and any CLE credit earned by Attorney by attending such training seminar(s) may be applied towards the above-mentioned minimum seven (7) hours. The County may provide Attorney's name and address to the OPD for purposes of the OPD notifying Attorney of any such upcoming training seminars. Attorney shall provide the PDM with written proof and confirmation that such required training seminar has been attended by Attorney no later than by December 31st of each calendar year.

From time to time County may, but is not obligated to, offer additional training to Attorney on subjects of relevance to Attorney's provision of public defense services pursuant to this Agreement. Attorney acknowledges that such additional training is completely optional and is offered for Attorney's convenience only. None of this additional optional training shall be regarded as County's right to train attorney in any way. Attorney may choose not to attend any additional training offered and such a choice will not be detrimental to Attorneys contract, or opportunity to continue to contract in the future, in any way whatsoever.

e. Attorney represents and warrants that, throughout the entire term of this Agreement, Attorney's private law practice caseload; Attorney's schedule; and Attorney's office resources, equipment, and support staff will allow Attorney to competently undertake and effectively perform all services required under this Agreement. Attorney represents and warrants that Attorney's private law practice and schedule will not interfere with Attorney's ability to timely and effectively perform such services including, without limitation, Attorney's ability to prepare for and attend regularly scheduled trials and dockets or Attorney's ability to schedule and conduct face-to-face meetings with the persons Attorney is appointed to represent under this Agreement for purposes of discussing, preparing, and pursuing the most viable defense(s) and/or resolution available and keeping such persons reasonably apprised as to the status of their case.

f. Pursuant to RCW 10.101.050, no later than 15 calendar days after the end of each calendar year during the term of this Agreement, Attorney shall provide the PDM with a written report showing the total number and specific types of private practice cases (which for purposes of this Agreement shall include pro bono cases, retained-fee cases, and any cases handled by Attorney under any other professional/personal services agreement) in which Attorney provided legal services during the preceding year and the total number and specific types of appointed cases under this Agreement in which Attorney provided legal services during the preceding year.

Additionally, in the event that the public defense reporting requirements under RCW 10.101.050, other applicable statute or relevant case law are later amended/modified (or, in the case of case law, reasonably required as a best practice) Attorney shall correspondingly comply with any such amended/modified reporting requirements without added compensation upon written notice from the County to do so.

g. Attorney recognizes and acknowledges that Attorney is required by Washington Supreme Court Order to meet certain Supreme Court-adopted Standards for Indigent Defense ("Defense Standards") to provide quality representation to indigent criminal defendants, and to periodically file certain certifications attesting to Attorney's compliance with such Defense Standards. Attorney understands and acknowledges that Attorney's compliance with such Defense Standards and periodic certification filing requirements is a direct professional and ethical obligation between Attorney and any Court in which Attorney appears while performing services under this Agreement. Attorney further acknowledges and understands that, though Attorney's compliance with such Defense Standards and such periodic certification filing requirements is not an express term of this Agreement and therefore not subject to the County's monitoring or control, Attorney's noncompliance with such Defense Standards and/or such filing requirements would directly impair Attorney's ability to perform and fulfill Attorney's basic obligations under this Agreement. Accordingly, if the County is notified by any Court in

which Attorney appears to perform services under this Agreement that Attorney has failed to comply with such Defense Standards or such periodic certification filing requirements, Attorney shall then be considered to be in substantive breach of this Agreement and this Agreement shall then become subject to potential termination under the provisions of paragraph 19.b. below.

h. Attorney understands and acknowledges that Attorney is solely and personally responsible to obtain and maintain all necessary state and local government business licenses and/or other approvals necessary to operate Attorney's private legal services business.

4. **OTHER INDIGENT DEFENSE ATTORNEYS.**

In addition to entering into this Agreement with Attorney, the County has entered into, or contemplates entering into, separate and independent professional services agreements with other licensed attorneys to primarily provide criminal defense services to persons accused of felony crimes in Benton County Superior Court. Attorney agrees to fully cooperate and coordinate with such other independent contractor attorneys, the Benton County Superior Court, the Superior Court Administrator, the PDM, and any attorneys hired and employed by the County ("Public Defenders") to provide criminal defense services to persons accused of felony crimes in Benton County Superior Court, to establish a process to effectuate the efficient and equitable distribution of case appointments between Attorney, said other independent contractor attorneys, and said Public Defenders (collectively the "Benton County Superior Court Criminal Defense Panel"). The Superior Court Administrator and/or the PDM shall have the inherent discretion and authority to monitor and control (and reasonably modify/change) such process.

5. **CASE APPOINTMENTS.** During the term of this Agreement, Attorney agrees to and shall accept appointments to represent indigent persons (regardless of their race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation) on any matter in Benton County Superior Court in which publicly provided counsel is furnished or required by law. More specifically, Attorney shall accept court appointments to represent indigent persons on any of the following types of matters:

- Any felony matter filed or otherwise pending under the applicable Washington criminal statutes and/or under any other applicable Washington law in Benton County Superior Court.

- Any post-disposition probation violation, revocation, modification, and/or contempt-of-court proceeding relating to any underlying criminal case.

- Any misdemeanor or gross misdemeanor filed directly in Benton County Superior Court, whether as a part of another separate case or filed independently.

- Any material witness matter relating to a felony case or matter filed in Benton County Superior Court.

- Any case or matter returned to Benton County Superior Court from any higher court.

- Any other type of Benton County Superior Court case or matter in which another Benton County Superior Court Criminal Defense Panel member and/or any other attorney who is under a professional services agreement to provide legal representation in Benton County Superior Court is unable to handle due to a conflict of interest.

- Any case or matter transferred from the Juvenile Court through declination or other court proceedings.

- Any civil contempt of court proceeding, not including non-contempt matters such as non-criminal custody or paternity matters.

- Any case or matter initially filed in Benton County District Court but then transferred to Benton County Superior Court, including those cases in which the felony charge later is reduced to a non-felony charge.

- Any case or matter for which post-conviction representation is mandated by law including, but not limited to, sentence reviews and requests for furloughs (only as appointed by the Superior Court).

- Homicide and persistent offender cases (only if Attorney requests such appointments and is qualified).

a. The Benton County Superior Court criminal pre-trial dockets ("Dockets") are held on two days every week: Wednesday and Thursday. Attorney will be assigned to one Docket day and will primarily receive case appointments on cases filed and pending on their assigned Docket day. However, the parties acknowledge that i) the criminal Docket days are set by Benton County Superior Court and not by County and therefore they may be subject to temporary or permanent modification at the discretion of Benton County Superior Court; ii) emergency court operations (including emergency court operations necessitated by the COVID-19 pandemic) may necessitate to modification of Docket scheduling including the splitting of dockets into multiple days a week or otherwise modifying weekly docket responsibilities; iii) from time to time it may be necessary to assign cases from the Docket day other than to which Attorney is primarily assigned to Attorney because of conflict of interest (by other attorneys) or caseload overflow reasons (the preceding 5a.i) – iii) shall collectively be referred to as "Docket Scheduling or Assignment Irregularities").

b. As to the Docket Scheduling or Assignment Irregularities described in the preceding paragraph, the parties agree that:

i) Docket Scheduling or Assignment Irregularities do not constitute a breach of this Agreement or such change in circumstances that the Agreement needs to be renegotiated;

ii) Docket Scheduling or Assignment Irregularities do not, in themselves, entitle Attorney to additional compensation;

iii) County agrees to provide Attorney with as much advance notice as reasonably possible as to any anticipated and known Docket Scheduling or Assignment

Irregularities, respectful of the fact that Attorney likely has obligations to private practice or other clients (together with case scheduling obligations) outside of clients assigned through this Agreement.

6. **CONTINUED REPRESENTATION.**

Attorney has a duty to timely and fully complete all cases appointed to Attorney under this Agreement. "Timely and fully complete" means, for each case, continuing to represent the defendant up to and including the time of final disposition of their case whether by way of conviction, dismissal of all charges (as a result of a finding of not guilty or as a result of an empaneled jury being unable to reach a verdict), or a change of plea and entering of a sentencing. Provided, however, that if a case, where the empaneled jury is unable to reach a verdict, is re-tried, Attorney shall only be entitled to the trial per diem, if applicable, for the re-trial, and not for any additional case credit. Provided further, however, if restitution is not agreed upon at time of sentencing and a separate restitution hearing is necessary, then Attorney shall represent the defendant at such restitution hearing in order to have "timely and fully completed" the case. In cases where a defendant is placed on a deferred prosecution or stipulated order of continuance program, then Attorney shall be responsible for providing legal representation to such a defendant in the event the defendant is accused of a violation of the terms of such a program and is ordered to show cause why their participation in such a program should not be terminated. The determination of case credit entitlement at such subsequent representation shall be governed by the provisions of Article 8 herein.

Attorney's responsibility to provide continuing legal representation to clients upon expiration or termination of this Agreement shall be determined as follows:

a. In the event of termination of this Agreement at the election of either party by providing sixty (60) days' notice of desire to do so as provided by paragraph 19.c below, Attorney shall provide the PDM with accurate documentation identifying Attorney's then-existing indigent defense caseload which shall include for each identified case the case title and cause number, the case type, the case status, and the next court appearance date ("Caseload Information"). Attorney shall provide the Caseload Information to the PDM contemporaneously with Attorney providing his/her notice of termination to the County (or, if the County provides the notice of termination to Attorney, within five (5) business days of Attorney receiving such notice) and Attorney shall again provide the PDM with updated Caseload Information thirty (30) days prior to the effective date of Agreement termination. Attorney shall then be responsible for providing continued legal representation to clients in any and all such identified cases that remain unresolved as of the effective date of Agreement termination for a period of sixty (60) days after such effective date.

b. In the event of expiration of this Agreement by expiration of its specified term set forth in paragraph 1 above, if Attorney provides the PDM with at least sixty (60) days' written notice prior to such term expiration date that Attorney has no interest in seeking a potential new contract with the County to continue providing public defense services after such date and further provides the PDM with all of the Caseload Information required under paragraph 6.a. above, Attorney shall then be responsible for providing continued legal representation to clients in any and all identified cases that remain unresolved as of such term expiration date for a period of sixty (60) days after such expiration date. However, if Attorney fails to timely provide such sixty (60) days' advance

notice to the PDM, Attorney shall then be responsible for providing continued legal representation to clients with cases that remain unresolved as of such term expiration date for a period of time equivalent to sixty (60) days plus an additional number of days corresponding to the numerical difference between sixty (60) days advance notice and the number of days advance notice Attorney actually provided to the PDM. By way of illustration, if Attorney only provided thirty (30) days' advance notice to the PDM, then Attorney would be responsible for providing continued legal representation for an aggregated total of ninety (90) days [i.e., 60 days + (60 days – 30 days)] after the Agreement term expiration date.

c. In the case of either expiration or earlier termination of this Agreement, if the required Caseload Information provided by Attorney pursuant to above paragraphs 6.a. or 6.b. omits any existing case(s), Attorney shall then be responsible for providing continuing legal representation on such omitted case(s) until the earlier of the final resolution of the case(s) or thirty (30) days from the date upon which the existence of such omitted case(s) is brought to the attention of the PDM in writing.

7. **NUMBER OF APPOINTMENTS.** During each calendar year of the term of this Agreement, Attorney agrees to and shall accept appointments hereunder to represent persons in the Benton County Superior Court up to a maximum of **130 total cases per calendar year** (proratable for any partial calendar year).

8. **CASE COUNTING.**

a. Benton County does not employ a case weighting system for Superior Court appointments. Therefore, all new criminal case appointments that meet the definition of a "case" in SID 3.3 shall each count as one case toward Attorney's maximum annual caseload as set forth in Section 7 herein.

Specifically, the following types of appointments shall count as a case:

Type of Matter	**Treatment**
Any new criminal case filed in Superior Court	Counts as 1 case
DOSA, SSOSA, or Sentence review on another attorney's case	Counts as 1 case. If reviews extend beyond a year, then it is considered Attorney's case and additional compensation shall be paid according to the terms of Section 12 herein
Post-sentencing matter on another attorney's case	Counts as 1 case
Sentencing for another attorney's case	Counts as 1 case
Child support contempt conflict case	Counts as 1 case

Civil commitment conflict case	Counts as 1 case
Homicide or persistent offender cases (if applicable)	Counts as 1 case (Attorney shall be entitled to enhanced compensation for these types of cases pursuant to the terms of Section 13 herein).

The following types of appointments types do not qualify under the definition of a "case" but do entitled Attorney to additional compensation according to the terms of Section 12 herein:

Material witness matters
Provisional representation during preliminary appearances to cover for the unavailability of a Staff Defender
DOSA, SSOSA, or Sentence Reviews on Attorney's own cases

b. An appointment to any matter in which Attorney was previously appointed shall not be further counted as any type of case equivalent if such matter was not fully concluded and subsequently arises again before the Benton County Superior Court and Attorney continues representing the same person in such matter within a twelve (12) month period (e.g., if Attorney was appointed to represent a person on a criminal charge who fails to appear for trial but is back before the court within 12 months, Attorney's continued representation of such person following his later arrest shall be deemed as being a prior and ongoing representation and shall not count as any type of further or additional case equivalent). Provided that, if Attorney was appointed to represent a person who is duly tried, convicted, and sentenced, Attorney's subsequent representation of such person during subsequent proceedings for alleged violations of sentence conditions shall be deemed as being an independent and unrelated matter.

c. Except as may be otherwise specifically and expressly provided in this Agreement, an appointment to any matter involving multiple charges arising out of a single incident or series of substantially related incidents shall be considered as being one (1) case equivalent. Similarly, except as may be otherwise expressly provided in this Agreement, an appointment to any matter involving multiple charges brought/filed under a single cause number and/or which are properly joined for purposes of trial shall be considered as being one (1) case equivalent. Further provided, however, that the PDM may in his sole discretion adjust the case equivalent total after consultation.

9. **CLIENT ELIGIBILITY.** The Benton County Superior Court (or its designee), consistent with applicable laws, rules and standards, shall determine the eligibility of any particular

person for representation by Attorney under this Agreement. Attorney is under no obligation to determine a person's eligibility or continuing eligibility to receive publicly provided representation. If Attorney is appointed to represent a person and subsequently discovers that that the client's circumstances have changed such that the client is no longer entitled to court appointed counsel, or that the client may have obtained appointed counsel initially by fraud, misrepresentation or omission, assuming that clear standards for financial eligibility have been communicated to the client by the court, then pursuant to RPC 4.1(b) Attorney should, unless prohibited by another Rule of Professional Conduct, advise the court of the circumstances. If the Benton County Superior Court (or its designee) then determines that such person is not eligible for publicly-provided representation, the appointment of Attorney to represent such person shall be rescinded and such person shall be required to retain his/her own legal counsel. Attorney shall not thereafter represent such person in such matter on a retained-fee basis unless such person applies for and receives the Benton County Superior Court's permission allowing such representation. Nothing contained herein shall prevent Attorney from representing a person on a retained-fee basis in an action in which Attorney has not been appointed by the Benton County Superior Court to represent such person, or from representing a person on a retained-fee basis whom Attorney has been appointed by the Benton County Superior Court to represent provided that the matter(s) involving the retained representation are wholly independent and unrelated to the matter for which Attorney was appointed.

10. **CONFLICTS.** Notwithstanding any other terms or provisions contained in this Agreement to the contrary, Attorney shall not be required to accept, and Attorney shall decline to accept, an appointment under this Agreement if the particular appointment would create a true and bona fide conflict of interest for Attorney or would otherwise cause or constitute an actual violation of any generally recognized ethical or professional standards common and applicable to attorneys in the state of Washington. Furthermore, in the event a true and bona fide conflict of interest arises subsequent to Attorney receiving an appointment under this Agreement (or in the event Attorney's continued involvement in a pending case would cause or constitute an actual violation of any such ethical or professional standards), Attorney shall immediately make the Benton County Superior Court aware of such development for purposes of the Court taking action to appoint another attorney to assume and undertake legal representation in such case.

11. **SCOPE OF REPRESENTATION; FILE RETENTION; CONVICTION OF CRIMINAL OFFENSE.** Attorney agrees to and shall represent all persons whom Attorney is appointed to represent hereunder with the same skill and commitment as Attorney exercises and expends when representing persons on a private and/or retained-fee basis. Without limitation in that regard, such representation should include the investigation of the underlying facts, the research of all relevant law, interviewing of potential witnesses, retention and use of investigators and/or experts when warranted and necessary, appropriate communication with the client, review of potential plea alternatives, review of potential collateral consequences associated with a plea/conviction (e.g., potential immigration or civil commitment consequences), and the preparation for and appearance on behalf of the client in all stages of Superior Court proceedings including, without limitation, arraignments, pre-trial hearings, motions, trials, sentencing/disposition proceedings, contempt proceedings, appeals (limited to the preparation and filing of any and all pleadings necessary and appropriate to perfect any appeal or statutory writ to a higher court, including the appointment of publicly-provided counsel, if and when applicable), and post-conviction reviews.

a. Without limiting Attorney's obligation to initially meet with an indigent person to discuss his/her case as soon as reasonably possible following Attorney's

appointment to the case, when Attorney is appointed to an "in custody" case (i.e., a case in which the person is confined/incarcerated), Attorney should use best efforts to meet face-to-face with such person within three (3) business days of Attorney receiving the appointment (unless the circumstances of a particular case reasonably require that Attorney make earlier initial contact with the person), otherwise, as soon thereafter as is reasonably feasible.

b. Additionally, throughout Attorney's representation of any person under this Agreement, Attorney shall maintain reasonably appropriate contact/communications with the person so as to keep him/her fully apprised as to the status of his/her case (with the specific manner and frequency of such contact/communications left entirely to Attorney's professional judgment); and Attorney should use best efforts to apprise the person of any new development in his/her case within three (3) business days of Attorney learning of such development (unless the circumstances of a particular case reasonably require that Attorney make earlier contact with the person), otherwise, as soon thereafter as is reasonably feasible. Without limiting any of the foregoing provisions of this paragraph, with regard to any court hearing involving a represented person, Attorney should contact such person (preferably in person or at least via telephone) to discuss his/her case and the purpose of the hearing no later than one (1) business day prior to the hearing date.

c. Attorney shall compile and maintain appropriate case records for each person whom Attorney is appointed to represent hereunder. The manner of storage, the portion or portions of case records that must be stored, and the required period of storage, shall comply with any and all applicable Rule of Professional Conduct, Washington State Bar Ethics Opinion, case law, and court rule.

d. Upon Attorney pleading guilty or being convicted of any of the following-described offenses, Attorney shall notify the PDM of such plea/conviction within seven (7) calendar days thereafter, and Attorney's failure to timely report within such timeframe shall constitute a substantial and incurable breach of this Agreement and result in the immediate and automatic termination of this Agreement. Even if County is timely notified, County may elect, at its sole discretion, to terminate this Agreement and if it elects to do so, may do so with ten (10) days written notice to Attorney:

(i) Any felony offense as defined in RCW 9.94A.030 and RCW 9A.44.130 or misdemeanor sex offense under the laws of the State of Washington, any other State, or Federal law.

(ii) Any crime specified in RCW Chapter 9A.44 when the victim was a juvenile in the custody of, or under the jurisdiction of, the Juvenile Rehabilitation Administration, Washington Department of Social and Health Services; and/or

(iii) Any violent offense as defined in RCW 9.94A.030 or its equivalent in any other State or Federal Statute

(iv) Any crime of dishonesty or deception.

12. **COMPENSATION.**

a. Attorney shall be compensated in the amount of **$700 per case**. For the mutual convenience of the parties, Attorney shall be compensated in equal monthly payments of $7,583.33, based on Attorney's selected caseload.

Attorney's monthly compensation shall commence on June 15, 2021 and, for the month of June, 2021 Attorney shall be compensated a prorated 50% of the regular monthly compensation.

Any cases appointed to attorney (including cases reassigned to Attorney from any other public defense attorney) prior to June 15, 2021 ("Initial Cases"), shall be compensated on the basis of $700 per Class B or C felony, and $1,400 per Class A felony. Cases selected for appointment or assignment to Attorney prior to June 15, 2021, but which are not able to be legally reassigned until the Thursday, June 17 or June 24, 2021 Superior Court criminal dockets, shall nevertheless be considered Initial Cases. Initial Cases are compensated separately from Attorney's monthly compensation, and shall not count toward Attorney's pro-rated contractual caseload for the remainder of 2021, but may serve to limit Attorney's overall capacity for public defense cases for the year, as permitted by Washington State public defense caseload standards.

All compensation shall be payable to Azure Law Office, PLLC: *since Attorney is a(n) principal with that firm.*

Attorney shall receive additional compensation for the following assignments:

Type of Assignment	**Additional Compensation**
Class A felony	$700
Unusually complex or laborious cases	Up to $1,400 (at the discretion of the Public Defense Manager)
Material witness matters	$225
Provision representation during preliminary appearance dockets (Monday, Tuesday or Friday) to cover for a Staff Defender's unavailability	$175
DOSA or SSOSA review on Attorney's own case	$225 per year that reviews continue
Post-sentencing matter on Attorney's own case	$225

In order to receive additional compensation for the assignments listed above, Attorney shall submit Claims for Compensation pursuant to the terms of Section 12c. below.

b. In addition to receiving the above-stated compensation under paragraph 12.a., Attorney shall receive $400.00 per day for each full day of trial and $200.00 for each

partial day of trial, not to include pre-trial motions or time waiting for disposition. A full day of trial is defined as actual trial proceedings going beyond 2 p.m. each day. "Trial" for purposes of this paragraph 12.b. only, shall be defined as actual proceedings related to a jury or bench trial in court, and on the record, including jury selection, all portions of the trial, and any special set sentencing proceeding. Trial shall not include any time awaiting a jury decision (even if Attorney is required to remain in or close by the courthouse) and also shall not include any time conferring with the Judge or any other persons off the record. In any case where Attorney has actually expended time or resources preparing for trial and, because of either a motion to dismiss by the prosecutor or the extension of a more favorable offer by the prosecution communicated on the day of trial, the need for trial is permanently eliminated, then Attorney shall nonetheless be entitled to a trial per diem in the amount of $400.00 if the matter was scheduled for a jury trial or $200.00 if the matter was scheduled for a bench trial. Attorney may seek compensation for trial per diem by submitting a claim for compensation utilizing the procedure set forth in paragraph 12.d. below. Any claims for trial per diem for matters where the trial was canceled permanently due to a better plea offer or motion to dismiss by the prosecutor on the day of trial shall include a statement that the Attorney did actually expend time or resources preparing for the trial and that the better plea offer or motion to dismiss was not fully anticipated at a time prior to the day of trial.

c. Attorney acknowledges and agrees that the above-stated compensation to Attorney under paragraphs 12.a. and 12.b. shall constitute Attorney's full and exclusive compensation hereunder for all cases handled by Attorney under this Agreement, and Attorney shall not be entitled to receive any other additional compensation for services performed under this Agreement.

d. No claim for compensation is necessary for Attorney to receive the monthly compensation due under Section 12a. herein. As a precondition to Attorney receiving payment of the additional compensation specified under paragraphs 12.b. above, or for the specific assignment types warranting additional compensation as listed in Section 12a., Attorney must submit a claim for compensation to the PDM that includes the necessary information specified in said paragraphs (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims for compensation shall not be billable to the County. All claims for compensation shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for compensation to the PDM within sixty (60) days of Attorney becoming entitled to receive such compensation, and the County shall have the right to deny payment of any claim for compensation that is not timely submitted within said requisite sixty (60) day period. e. If any submitted claim for compensation is disapproved by the PDM in whole or in part for any reason(s), the PDM shall promptly provide Attorney with written notice of such disapproval that specifically identifies and describes the reason(s) for disapproval ("Dispute Notice"). Upon Attorney's receipt of a Dispute Notice, Attorney must notify the PDM in writing within ten (10) business days thereafter if Attorney disputes, and desires to have the PDM reconsider, the Dispute Notice, and Attorney must include with that notice to the PDM any information and/or documentation that Attorney wants the PDM to review and consider as part of that reconsideration process (including, without limitation, full copies of any documents from the official court file relating to the particular case(s) addressed by the Dispute Notice, which court-filed documents the parties' hereby agree shall be conclusively presumed as

being complete and accurate for purposes of addressing and resolving any contested Dispute Notice). If Attorney fails to duly respond to a Dispute Notice within said ten (10) day period, the contents of the Dispute Notice shall then become conclusively binding on Attorney and shall be used by the County to calculate and make any compensation payment to Attorney arising from the disapproved claim for compensation. If Attorney duly responds to a Dispute Notice within said ten (10) day period, and if the result of the above-referenced reconsideration process does not fully resolve the disputed issue(s) arising from the Dispute Notice, the parties may then proceed to address and resolve the disputed issue(s) pursuant to the provisions of paragraph 31 below.

f. Attorney shall notify the PDM about any case appointment for which Attorney has already been compensated but for which Attorney has lost eligibility for full case equivalent credit by virtue of a substitution of counsel or withdrawal by Attorney for any other reason before the omnibus hearing as provided in paragraph 8.(xi) above. Attorney shall provide such notice within thirty (30) days of such event (i.e., the substitution of counsel or withdrawal by Attorney resulting in lost eligibility for full case equivalent credit) and, if Attorney believes partial/fractional case equivalent credit is warranted under the provisions of above paragraph 8.(xi), Attorney shall include with such notice a written claim for partial/fractional case equivalent credit to be potentially used and applied for purposes of reversing the previously-awarded full case equivalent credit and correspondingly reducing the compensation previously paid to Attorney based thereon. If Attorney fails to notify the PDM as required in this paragraph 12.f. within said thirty (30) day period, Attorney shall forfeit any eligibility for partial/fractional credit and shall receive no credit for the particular case appointment even if Attorney performed services for which partial/fractional case equivalent credit may have otherwise been awarded under paragraph 8.(xi).

g. The County shall have the right at any time (even after compensation has been paid to Attorney) to audit records pertaining to Attorney's case appointments under this Agreement, and if such audit determines that Attorney has lost eligibility to receive a full case equivalent credit for a particular case appointment by virtue of a substitution of counsel or withdrawal by Attorney for any other reason, the County shall then be entitled to immediately setoff and deduct any compensation amount(s) previously paid to Attorney for such case appointment, but for which Attorney is no longer eligible to receive, from any compensation amounts then due or thereafter becoming due to Attorney hereunder. Attorney's potential eligibility to receive partial credit for such cases shall be determined pursuant to above paragraphs 8.(xi) and 12.f.

h. To assist County in maintaining accurate caseload records, Attorney shall provide County with monthly caseload reports, containing an accurate listing of cases and other matters appointed during the month. These reports shall use the form and format prescribed by County, and are due on the 15th day of the following month. For example, the caseload report for February, 2019 is due by March 15, 2019. Failure to submit caseload reports shall constitute a breach of this contract and Attorney's compensation may be withheld until Attorney is in compliance.

i. County will compare submitted caseload reports with its internal records and note any discrepancies. If any are found and County cannot reasonable resolve it, then Attorney will be notified of such discrepancy by way of a Discrepancy Report. Thereafter, Attorney shall be responsible for providing records sufficient to prove

Attorney's appointment to the case in question and entitlement for credit. If Attorney is unable to do so or does not do so within 10 business days of receiving a Discrepancy Report from the County, then Attorney may be regarded as having forfeited credit for the case in question.

13. **HOMICIDE/PERSISTENT OFFENDER CASES.** If Attorney wishes to be appointed to provide public defense services on Homicide and Persistent Offender cases, and is capable and certified to do so (under State court rules as well as local rules and Superior Court practices) then Attorney may be so appointed. For Homicide and Persistent Offender cases, Attorney shall be entitled to compensation in the amount of $85 per hour, up to an initial maximum of $10,000, billed in increments of 1/10 hours. Upon consultation, the Public Defense Manager may increase the maximum in whatever increments he sees fit, by issuing a Funding Authorization email through OPD's email-based funding authorization system.

14. **COSTS AND EXPENSES.**

a. Attorney acknowledges and agrees that Attorney shall not be entitled to claim or receive any reimbursement/payment from the County for any law practice-related overhead costs or expenses incurred by Attorney during the course of rendering legal services under this Agreement (including, without limitation, costs and expenses associated with Attorney's office, office staff, office equipment/facilities, and/or other office or law practice-related resources).

b. The County recognizes, however, that in certain circumstances the need may arise for Attorney to incur certain types of expenses directly related to an indigent person's case such as private investigator fees, psychological or psychiatric evaluations, interpreter fees, scientific test fees, expert witness fees, and costs of out-of-area travel, meals and lodging.

(i) Attorney shall be entitled to receive reimbursement for the actual cost of such out-of-pocket expenditures or may arrange with the PDM for the service provider (e.g., private investigator, psychologist/psychiatrist, interpreter, testing lab, or expert witness) to be compensated directly by the County provided that, however, Attorney shall not incur any such expense (and shall not direct a service provider to incur any expenses), nor shall Attorney be entitled to be reimbursed or the service provider compensated for any such expense, unless such expense has been pre-approved by the PDM in writing pursuant to pre-approval process established by the PDM and promulgated by written policy. Such pre-authorization will state and provide a specific dollar amount for the requested and authorized expenditure; provided that, in the event it is not reasonably possible to state and provide a specific dollar amount for a particular requested expenditure, such pre-authorization may nevertheless provide authorization for the expenditure but shall establish and set forth a maximum dollar expenditure amount. In regard to any reimbursement to Attorney for any PDM-approved expenditures and costs pertaining to case-related travel, meals, and lodging, any reimbursement to Attorney for such expenditures and costs shall not exceed the locally adjusted amounts that are established and published by the Federal General Services Administration.

(ii) In addition to any other prerequisites imposed by court rules, procedures, or standards, as a precondition to Attorney being eligible to be reimbursed or a service provider being eligible to be compensated for an expenditure under paragraph 14.b., either Attorney or the service provider shall be required to submit a claim for reimbursement/compensation to the PDM that identifies the specific expenditure(s) for which reimbursement is sought (exercising appropriate discretion to protect client confidentiality given that such claims are matters of public record unless sealed by the court at Attorney's request) and that has attached thereto a copy of the PDM's pre-authorization that specifically pre-approved and authorized such expenditure(s) (unless sealed by the court at Attorney's request) together with attached copies of all written payment receipts relating to such incurred expenditure(s) (unless sealed by the court at Attorney's request). Attorney's administrative time expended to prepare, submit, and process claims shall not be billable to the County. All payment vouchers and claims for reimbursement/compensation under this paragraph shall be subject to the PDM's review and final approval for payment. Attorney shall submit claims for reimbursement to the PDM within sixty (60) days of Attorney incurring the expense(s) for which reimbursement is sought, and the County shall have the right to deny payment of any claim that is not timely submitted within said requisite sixty (60) day period.

15. **ADDITIONAL ASSISTANCE.** Attorney may from time-to-time be appointed to handle certain Class-A or other serious or complex felony matters hereunder in Benton County Superior Court that may require an extraordinarily excessive amount of Attorney's time and/or responsibility. If Attorney is appointed to handle such a matter, Attorney may request that the PDM appoint one of the other Benton County Criminal Defense Panel attorneys to assist Attorney in such matter, with the other attorney (unless prevented by a conflict of interest) being appointed to assist Attorney in the same manner as any other indigent defense appointment. The decision about whether or not to appoint an additional Attorney for assistance shall be made in the sole and absolute discretion of the PDM. The parties intend that the provisions of this paragraph may be pursued and utilized only under extraordinary and exceptional circumstances when the appointment of another attorney is actually necessary to prevent Attorney from performing an inordinately greater amount of work or accepting an inordinately greater amount of responsibility than the other members of the Benton County Criminal Defense Panel. Notwithstanding the foregoing provisions of this paragraph, however, if the Benton County Superior Court determines in any particular matter that the appointment of another attorney to assist Attorney requires the appointment of a non-panel member attorney because of the nature and complexity of the particular matter, the County recognizes that the Court would have the ultimate and inherent discretion and power to do so.

16. **INDEMNIFICATION AND HOLD HARMLESS.** Attorney agrees to and shall fully indemnify and hold fully harmless the County and its elected/appointed representatives, officers, employees, and agents from and for any and all losses, damages, costs, charges, claims, demands, suits, or actions of whatsoever nature directly or indirectly arising out of or by reason of Attorney's (or any person, employee, agent, contractor, or entity acting for or on behalf of Attorney or at Attorney's request or direction) acts, defaults, errors and/or omissions of whatsoever nature in the performance of legal services to any person under this Agreement. In the event any suit or any other type of legal proceeding is brought against the County or any of its elected/appointed representatives, officers, employees or agents at any time on account of or by reason of any such acts, defaults, errors and/or omissions, Attorney hereby covenants and

agrees to assume the defense thereof (through counsel acceptable to the County) and to defend the same at Attorney's sole cost and expense and to pay any and all costs, charges, attorneys' fees, and other expenses as well as any and all judgments or awards that may be incurred by or entered against the County or any of its elected/appointed representatives, officers, employees or agents in such suits or other legal proceedings; provided that, however, the County shall, at all times, retain the full and exclusive right to control the terms and conditions of any type of settlement or other resolution of any such suit or legal proceeding. Without limiting the intended broad scope and application of the indemnification and hold harmless provisions of this paragraph, for purposes of this paragraph, Attorney waives, with respect to the County only, any immunity that would otherwise be available to Attorney under the Industrial Insurance Act provisions of Title 51 RCW or any other similar workers/employee disability or benefit law. The indemnification and hold harmless provisions of this paragraph shall survive the termination or expiration of this Agreement.

17. **INSURANCE.**

a. Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of professional liability insurance in an amount of not less than $1,000,000.00 per claim nor less than $1,000,000.00 in the aggregate during the policy term and with a maximum deductible of not more than $10,000.00.

(i) Said policy shall include coverage as an additional insured for any other person(s) or attorney(s) acting for or on behalf of Attorney in the performance of this Agreement; shall provide professional liability insurance coverage for any acts, errors and/or omissions by Attorney (and/or such additional insureds) during the course of performing legal services under this Agreement; shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(ii) Attorney shall continuously maintain the professional liability insurance coverage required by this paragraph 17.a. throughout the entire term of this Agreement, throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder, and for a period of no less than thirty-six (36) consecutive months after Attorney has fully completed all services and duties required hereunder.

b. Attorney shall also obtain and maintain, at Attorney's sole cost and expense, a policy of Commercial General Liability insurance (including Endorsement Form CG2011 or direct equivalent insurance industry additional insured endorsement form and including Contractual Liability coverage) in the amount of not less than $1,000,000.00 per occurrence nor less than $2,000,000.00 in the aggregate during the policy term. Additionally, if Attorney is an employer, Attorney shall obtain and maintain, at Attorney's sole cost and expense, a policy of Statutory Workers Compensation and Employers Liability/Stop Gap insurance in the amount of not less than $1,000,000.00.

(i) The policy of Commercial General Liability insurance shall be written on an occurrence basis; shall name the County, the Benton County

Superior Court, and their elected/appointed representatives, officers, employees and agents as additional insureds; shall be primary coverage for both defense and indemnity and non-contributory with any insurance coverage maintained by the County; and shall provide for waiver of subrogation rights as to the County.

(ii) The insurance policies required by this paragraph 17.b shall require that the insurance company provide the County with no less than thirty (30) days prior written notice in the event the policy is cancelled or materially altered; shall comply with all applicable state of Washington insurance requirements; and shall be issued by an insurance company rated A- or better by A.M. Best authorized to conduct business and issue insurance in the state of Washington.

(iii) Attorney shall continuously maintain the insurance coverage required by this paragraph 17.b. throughout the entire term of this Agreement and throughout any other longer time period during which Attorney is obligated to continue performing services and duties hereunder.

c. Contemporaneously with Attorney's execution of this Agreement, Attorney shall provide the County with copies or certificates of the insurance policies and coverage (including any endorsements) required under this paragraph 17, and Attorney shall annually provide the County with the same type of documented proof and confirmation that such insurance policies and coverage continue to exist no later than thirty (30) days after the policies' annual renewal date(s).

18. **COMPLAINTS; PERFORMANCE MONITORING.** In the event that the PDM, another employee/representative of the County's Office of Public Defense, or the Benton County Superior Court receives an oral/written communication from a person represented by Attorney under this Agreement that in substance asserts an unresolved complaint about the legal services rendered to such person by Attorney and is not readily subject to resolution simply by facilitating communication between Attorney and client, a written, dated, and signed statement shall be obtained from the complainant describing and detailing the relevant facts and circumstances underlying and alleged in the complaint, copies of which shall be provided to the PDM.

a. Upon receiving such complaint, the PDM, without limitation to any other action the County may deem necessary/appropriate to pursue under this Agreement, shall promptly forward a copy of the complaint to Attorney and request Attorney's written, dated, and signed response thereto (which Attorney shall prepare and provide to the PDM within five (5) business days). The PDM shall then review the complaint and Attorney's response thereto and take any action deemed necessary with Attorney and/or the represented person to address and resolve the complaint, and the disposition of the complaint shall be communicated to the represented person as soon as reasonably possible. The PDM may then follow-up with the Benton County Superior Court to confirm or advise that the complaint has been, or is in the process of being, addressed and disposed of. The foregoing procedure does not interfere with or otherwise impair the Benton County Superior Court's ability and/or duty to monitor the performance of attorneys appearing before the Court.

b. Additionally, during the term of this Agreement, in order to help ensure that indigent persons are consistently provided effective legal representation, and without limitation to any other means or methods of performance monitoring/evaluation the

County may deem necessary/appropriate, Attorney acknowledges that the County and/or the PDM have the right to periodically ask, without limitation, the Benton County Superior Court and/or the Superior Court Administrator and/or other attorneys and/or persons previously represented by Attorney to provide the County with an evaluation/assessment of the quality and effectiveness of Attorney's performance of legal services and related duties and obligations under this Agreement, provided that such inquiry shall not be made of any person represented, absent a complaint from such person, during the course of representation.

19. **TERMINATION.**

a. In addition to any other automatic or discretionary termination provisions set forth in this Agreement, this Agreement shall automatically terminate in the event that Attorney is suspended/disbarred from the practice of law in Washington, effective without notice as of the date of suspension/disbarment. In such event, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to the appointment of substitute legal counsel for any person(s) whom Attorney was appointed to represent hereunder; and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

Further, in the event that the Benton County Superior Court enters an order that prohibits or disqualifies Attorney from receiving any further appointments hereunder for any reason whatsoever, this Agreement shall automatically terminate without further notice as of the date such order is entered by the court. In the event that the court enters such an order because of unethical/unprofessional conduct by Attorney and/or because of Attorney's breach of this Agreement and the court determines at that time that the circumstances justify or require a substitution of appointed counsel for any person(s) whom Attorney was appointed to represent hereunder, Attorney shall be liable up to $5,000.00 for any additional costs or expenses incurred by the County and/or the Benton County Superior Court relating to such substitute appointment(s); and the County shall be entitled and authorized to setoff and deduct any such additional costs or expenses from any unpaid compensation owing to Attorney hereunder.

b. In addition to the above-referenced automatic termination provisions, the County may elect to terminate this Agreement in the event Attorney fails for whatever reason to comply with any provision of this Agreement after giving Attorney ten (10) business days advance written notice to cure, which notice shall specify the reason(s) for the notice, the act(s) necessary to cure Attorney's failure(s), and the consequence if the failure(s) is/are not cured within said ten (10) day period (e.g., termination without further notice or potential termination upon further notice). The County's right to terminate this Agreement in such regard shall be in addition to any other rights and remedies available to the County.

c. In addition to the foregoing provisions regarding termination, either party may elect to terminate this Agreement with or without cause or reason by providing the other party with sixty (60) days advance written notice of such election. Attorney shall continue to receive case appointments during said sixty (60) day notice period and shall have continued responsibility for those appointed cases pursuant to paragraph 6 above. A sixty (60) day notice of termination given by either party under this paragraph 19.c. shall

be fully and immediately effective when received by the recipient party pursuant to the provisions of below paragraph 32 (notwithstanding the inclusion of any contrary terms or language in the notice) without any need for formal or informal acceptance or any other response by the recipient party, and such notice may not thereafter be rescinded/revoked by the party giving such notice unless such rescission/revocation is expressly acknowledged and agreed to by the recipient party in writing in the recipient party's sole discretion.

d. In any event, regardless of the manner in which this Agreement is terminated, Attorney acknowledges and agrees that Attorney shall not be entitled to receive any further compensation from the County in the event this Agreement is terminated; provided that, Attorney shall be entitled to be paid for any unpaid compensation duly earned by Attorney under this Agreement up to the date of termination. Additionally, as required by paragraph 6 above, the termination of this Agreement, regardless of the manner of termination, shall not relieve Attorney from the obligation and duty to continue representing all persons whom Attorney was appointed to represent prior to the termination unless Attorney is expressly barred or prohibited from doing so by court order and/or the suspension/disbarment of Attorney from the practice of law in Washington.

e. If the County decides in its discretion to provide public defense representation in Benton County Superior Court through a County agency (such as an Office of Public Defense or similar entity) that would reduce or fully eliminate the need for continuing this Agreement with Attorney, the County will notify Attorney of the County's intentions in that regard as soon as reasonably practicable so that Attorney and the County can coordinate and pursue an appropriate transition. Upon receipt of such notice from the County, Attorney may apply to the County for available staff-attorney employment positions in such agency in accordance with the County's then-existing hiring and employment practices and policies; though Attorney understands and acknowledges that the hiring of Attorney to fill any such positions would not be automatic nor in any way guaranteed.

20. **INDEPENDENT CONTRACTOR.** Attorney fully understands, acknowledges, and agrees that Attorney shall not be an agent, representative, or employee of the County or the Benton County Superior Court for any type of purpose or situation whatsoever (including, without limitation, for purposes of any type of wage, hours/overtime, workers/industrial insurance compensation, unemployment, fair labor, and/or employee benefit/leave laws, disability act coverage or rules, and/or regulations) and that Attorney, as of the date of this Agreement and throughout its entire term, is and will always be acting and operating as a fully independent contractor. In that regard, subject to Attorney's duties, responsibilities and obligations imposed under this Agreement, Attorney shall have sole and absolute discretion using Attorney's best professional legal judgment to determine the manner and means of providing the legal representation services required under this Agreement; and neither the County, the PDM, the Superior Court Administrator, nor the Benton County Superior Court shall have any authority or duty to directly control the actual performance of Attorney's professional services hereunder.

21. **NON-ASSIGNMENT AND TEMPORARY SUBSTITUTIONS.** Except as otherwise expressly provided in paragraphs 21.a-d. below, Attorney shall not allow or arrange for any other person to perform any of the services required by this Agreement, nor shall Attorney

assign, subcontract out, or otherwise delegate any of Attorney's rights, responsibilities, or obligations under this Agreement.

a. Attorney and any of the other Benton County Criminal Defense Panel members may mutually agree to make temporary, substitute appearances for each other on routine docket matters and routine court hearings on an as-needed basis as approved by the court and by the person being represented (if that person has previously discussed the case with his/her appointed attorney). Any compensation or consideration (if any) to be paid or given by Attorney to the other Benton County Criminal Defense Panel members for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and said other panel members, and said other members shall not be entitled to receive any additional compensation from the County for such substitution(s).

b. In the event Attorney needs or desires to take up to a maximum of four (4) consecutive weeks (or such longer requested period of time as may be expressly pre-approved in writing by the PDM on a case-by-case basis, in his sole and absolute discretion) leave of absence from the practice of law and/or the requirements of representation under this Agreement during the term of this Agreement and is unable to obtain the assistance of the other Benton County Criminal Defense Panel members during such temporary absence, Attorney may seek and obtain the assistance of another Washington-licensed attorney to make temporary, substitute appearances for Attorney during such absence on routine docket matters and routine court hearings on an as-needed basis provided that Attorney and such other attorney jointly prepare, sign and file a written certification with the court (with a copy to be provided to the Superior Court Administrator and the PDM) in all such matters and hearings that expressly certifies that such other attorney has reviewed this Agreement and fully meets all criteria, qualifications, and requirements under this Agreement to render legal services to indigent persons and provided further that such temporary substitution is expressly authorized on the court record by the court and the particular person(s) being represented by Attorney who is/are affected by such substitution of legal counsel.

(i) Any compensation or consideration (if any) to be paid or given by Attorney to such other attorney for such substitution(s) shall be a matter of direct negotiation and agreement between Attorney and such other attorney, and such other attorney shall not be entitled to receive any compensation from the County for such substitution(s).

(ii) Unless called to active military duty, Attorney shall be responsible to ensure that such other attorney fully complies with all terms and conditions of this Agreement during such temporary absence period (including, without limitation, the requirement to maintain the insurance coverage specified in paragraph 17 above), and Attorney shall be liable for any damages or losses sustained as a result of such other attorney's non-compliance with the terms and conditions of this Agreement.

c. In the event Attorney is called up for active military duty or for direct civilian support of active military operations, Attorney shall provide the PDM with written notice of such event within five (5) business days of Attorney being called up so that the PDM and Attorney can coordinate and arrange for an appropriate substitute attorney to handle Attorney's duties under this Agreement while Attorney is on military leave and any

reasonable back-to-civilian-life transition time requested by Attorney upon return. Conditioned upon Attorney complying with said notice and cooperation requirements, Attorney shall be entitled to resume Attorney's contract duties hereunder upon written request to the PDM within a reasonable time after Attorney's return from active service, but Attorney shall receive no compensation under this Agreement while on leave or during any such transition time.

d. Attorney may sub-contract substantially all of the duties to be provided pursuant to this Agreement provided that all of the following conditions are met:

(i) The proposed sub-contractor meets all the criteria set out in Section 3 of this Agreement; and

(ii) County agrees to the selection of the sub-contractor in its sole and exclusive discretion; and

(iii) Sub-contractor signs an acknowledgement and agreement to abide by all the terms and conditions of this Agreement (in such form as may be required by County); and

In the event that Attorney sub-contracts substantially all of the duties to be provided pursuant to this Agreement, Attorney agrees to continue to be professionally responsible for all of the work performed pursuant to this Agreement (even if the work is actually performed by the sub-contractor), and agrees that Attorney's obligations in Section 14. Indemnification and Hold Harmless, continue to apply to any work that is performed by a sub-contractor.

22. **VACANCY AND REPLACEMENT.** In the event this Agreement is terminated by either party prior to the expiration date specified in paragraph 1 above, the County may initiate, implement and pursue any actions or process deemed appropriate/necessary to seek, select, and contract with another qualified attorney to replace and succeed Attorney in representing indigent persons in Benton County Superior Court.

23. **OTHER APPOINTMENTS.** Attorney shall not enter into any contract/arrangement to perform criminal prosecution services in any court or jurisdiction. Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may enter into a part-time contract/arrangement to receive public defense appointments in another court or jurisdiction, provided that, and on the indispensable condition that, Attorney's duties and obligations under said part-time contract/arrangement will not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Consistent with Attorney's status as an independent contractor, Attorney shall have sole and personal professional responsibility for ensuring that Attorney's obligations on other contracts or arrangements to receive public defense appointments, when combined with this Agreement, are fully in compliance with Washington State Standards for Indigent Defense including, but not limited to, the caseload standards contained therein.

24. **TEMPORARY JUDICIAL SERVICE.** Subject to, and without limiting/waiving, Attorney's duties and obligations under this Agreement, Attorney may temporarily serve as a judge pro tem in any capacity and under any circumstances except on any criminal cases pending before the Benton County Superior Court, provided that, and on the indispensable condition that, it would not conflict with or interfere with Attorney's ability to timely and effectively perform Attorney's duties and obligations under this Agreement. Any potential exceptions to the foregoing limitation on Attorney serving as a judge pro tem would be strictly on a case-by-case basis and

would be strictly subject to Attorney obtaining the PDM's prior express approval and authorization, which decision shall be decided on a case-by-case basis in the PDM's sole and absolute discretion.

25. **ENTIRE AGREEMENT.** This Agreement constitutes the entire integrated agreement and understanding of the undersigned parties. No amendment, modification or other type of change to this Agreement shall be valid or enforceable unless reduced to writing and signed by the parties.26.

26. **CAPTIONS; TIME COMPUTATION.**

a. The captions and headings herein are for convenience only and shall not be relied upon or used to interpret or construe this Agreement or any portion thereof.

b. Unless otherwise expressly specified herein, any period of time specified in this Agreement shall expire at 5:00 p.m. (PTZ) of the last calendar day of the specified period of time, unless the last day is Saturday, Sunday, or a legal holiday, as prescribed in RCW 1.16.050, in which event the specified period of time shall expire at 5:00 p.m. (PTZ) of the next business day. Unless otherwise expressly specified herein as being business days only, any period of time specified in this Agreement shall mean and be calculated to include calendar days.

27. **GOVERNING LAW.** This Agreement shall be exclusively construed under and interpreted consistent with the laws of the state of Washington.

28. **BINDING EFFECT.** Strictly subject to the above restrictions against assignment, subcontracting, or delegation, this Agreement shall be binding upon Attorney's heirs, legal/personal representatives, successors, and assigns.

29. **SEVERABILITY.** In the event that any one or more provisions contained in this Agreement shall, for whatever reason, be determined by arbitration to be invalid, illegal or unenforceable in any respect, such invalid, illegal or unenforceable provision(s) shall not affect any other provision hereof, and this Agreement shall nevertheless be construed and enforced as if such invalid, illegal or unenforceable provision(s) were not contained herein.

30. **NON-WAIVER.** A party's express or implied consent to or waiver of any breach or default by the other party in the performance of such other party's obligations hereunder shall not be deemed or construed to be a consent to or waiver of any other breach or default in the performance by such other party of the same obligations or any other obligation(s) of such other party hereunder.

31. **DISPUTE RESOLUTION.**

a. The parties hereby specifically waive, release, and irrevocably relinquish any and all right to file a court lawsuit of any type to address any claims or dispute between the parties involving the performance or interpretation of this Agreement or that in any other way relate to, or arise from, this Agreement, and regardless of whether money damages, equitable relief, or any other type of relief is being sought. Provided, however, if necessary due to a party's disregard of and failure to abide by the non-judicial Dispute Resolution provisions contained in this paragraph 31, the other party may pursue court

action to seek and obtain an order compelling and enforcing such Dispute Resolution provisions, and as part of such action and court order, the court shall order the party not complying with the requirements of such Dispute Resolution provisions to pay the other party's incurred attorney fees and costs.

b. Accordingly, in furtherance of the parties' above-stated agreement to submit any and all claims and disputes to non-judicial resolution, in the event any type of dispute arises between the parties involving the performance or interpretation of this Agreement, or that in any other way relates to, or arises from, this Agreement, either party may then make written demand on the other party to submit the dispute to mediation through the assistance of an experienced mediator chosen by mutual agreement of the parties who must be a Washington-licensed attorney experienced in contract disputes. The mediation shall occur within thirty (30) days of the mediation demand, unless the parties mutually agree otherwise. The County shall pay one-half of the mediator's fees and expenses, and Attorney shall pay the other one-half of such fees and expenses.

c. In the event that mediation proves unsuccessful in resolving the dispute, the parties shall submit the dispute for resolution via binding arbitration pursuant to RCW Chapter 7.04A. A single arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) shall be selected by agreement of the parties or, in the absence of agreement, each party shall select one (1) arbitrator (who must be a Washington-licensed attorney experienced in contract disputes) and those two (2) so selected arbitrators shall mutually select a third arbitrator (who must be a Washington-licensed attorney experienced in contract disputes). The County shall pay one-half of the fees and expenses of the arbitrator(s), and Attorney shall pay the other one-half of such fees and expenses. The provisions of RCW Chapter 7.04A and applicable Mandatory Arbitration Rules as adopted and implemented in Superior Court shall be binding as to procedure, except as to the right of appeal, which shall not be applicable. Within ten (10) business days after the unsuccessful mediation session, the arbitrator(s) shall be selected and designated, and the hearing shall be held within thirty (30) business days after designation of the arbitrator(s), unless the parties mutually agree otherwise. The arbitrator(s) shall render a written decision and award within ten (10) business days of such hearing. Without limitation, the arbitrator(s) may award damages, specific performance, and/or injunctive relief, and may register a judgment in Benton County Superior Court, including judgment by default. The most prevailing party shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party as a part of the arbitration decision and award. In the event of suit or action to enforce an arbitration award, venue shall lie exclusively in Benton County Superior Court, and the most prevailing party in such suit or action shall be entitled to recover such party's reasonable attorneys' fees, costs and expenses from the other party.

32. **NOTICES.**

a. Any notices required or permitted to be given by Attorney to the County under this Agreement shall be in writing and shall be either personally delivered to the County's PDM at his below-stated office address; mailed to the County's PDM at his below-stated office address via certified U.S. mail, postage prepaid; or emailed to the County's PDM at the below-stated official email address for notices:

Eric Hsu, Public Defense Manager
Benton Office of Public Defense
7122 West Okanogan Place, Building A
Kennewick, WA 99336

OPDNotices@co.benton.wa.us

b. Any notices required or permitted to be given by the County to Attorney under this Agreement shall be in writing and shall be either personally delivered to Attorney at his/her below-stated business address; mailed to Attorney at his/her business address set forth in paragraph 2.a above, via certified U.S. mail, postage prepaid; or emailed to Attorney at his/her business email address set forth in paragraph 2.a.

c. Any such notices under this Agreement shall be deemed to have been duly given, made, and received when either personally delivered to the notice recipient in the manner described above; when duly deposited in the U.S. mail addressed to the recipient in the manner described above; or when emailed to the recipient in the manner described above. A party may change the address(es) to which notices are to be sent by giving notice of such change of address(es) in conformity with the above provisions of this paragraph for the giving of notice.

33. **LEGAL COMPLIANCE.** Attorney agrees to and shall strictly follow and comply with any and all federal, state, local, and administrative laws, rules, and regulations applicable to Attorney's pursuit and performance of activities under this Agreement. Without limitation in that regard, Attorney shall timely and fully pay all applicable taxes, fees, licenses, and other payments required by law; and Attorney shall fully comply with any and all anti-discrimination laws and policies including, without limitation, the County's policy that no person will be subjected to discrimination by the County or their contractors based on race, color, national origin, age, sex, marital status, sexual orientation, handicap/disability, personal background, creed, or political or religious affiliation.

34. **PUBLIC DEFENSE MANAGER.** Attorney acknowledges that the County has employed the above-referenced PDM to coordinate, monitor, and evaluate the performances and compliance of independent contractor attorneys (like Attorney) under public defense agreements with the County. Attorney further acknowledges that the County has the right and discretion to direct the PDM to assume and fulfill various roles and functions under this Agreement. Though the PDM will not have or attempt to exercise direct control over the manner and means in which Attorney provides legal services under this Agreement, Attorney agrees to reasonably cooperate with the PDM (and his designees), and to promptly comply with reasonable requests from the PDM (and/or his designees), to allow for the effective monitoring and evaluation of Attorney's performance under and in compliance with this Agreement.

33. **PERFORMANCE STANDARDS MONITORING**. The parties agree and acknowledge that the County, pursuant to its legal duty to provide effective and competent public defense representation, and needing a reasonable, effective and relatively objective way to gauge the effectiveness of contract public defenders, will, by and through its Office of Public Defense, monitor the effectiveness and competence of contract public defenders, including Attorney, by Performance Standards Monitoring ("Monitoring"). Attorney understands that her performance and eligibility for future contracts will be evaluated based on data collected through Monitoring and the County Office of Public Defense may, but is not obligated to, from time to time

make known to Attorney any opportunities for improvement as observed through Monitoring efforts and/or issues that need to be addressed. Attorney further agrees to reasonably cooperate with County, its Office of Public Defense, and any staff from that office that are engaged in Monitoring efforts so that data collected through such efforts are accurate and timely. The actual Performance Standards to be monitored are contained in the Performance Standards Monitoring section, attached as Exhibit "A" to this Agreement, the acknowledgement of which, by Attorney's affirmative signature, is required to fully execute this Agreement.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have entered into and executed this Agreement on the date set forth below.

BENTON COUNTY

Date_____

_____
Chairman

_____
Commissioner

_____
Commissioner

Constituting the Board of County Commissioners for Benton County

Attest:

_____
Clerk of the Board

Approved as to Form and Content

Eric Hsu (Jun 10, 2021 16:19 PDT)

_____
Eric Hsu
Public Defense Manager

ATTORNEY

Date Jun 10, 2021

Jennifer Azure

_____
Jennifer Azure, WSBA # 30494
Not valid unless Performance Standards Monitoring Acknowledgment on following page is also signed.

EXHIBIT A

PERFORMANCE STANDARDS MONITORING

Attorney acknowledges that County will be engaging in Performance Standards Monitoring as more fully described in Section 34 of this Agreement and that said Monitoring will comprise of the following:

a. Metrics Monitoring will entail the collection of the following metrics specific to Attorney:

- Trials held and cases disposed of with favorable resolutions at trial readiness
- 3.5, 3.6 and other significant motions filed
- Motions filed under RCW 10.77 for competency evaluations
- Number of cases disposed of at trial readiness with dismissal or other comparable favorable result
- Number of cases where investigative services were requested
- Number of visits to incarcerated clients in Benton County Jail
- Number of client complaints

b. Court Observation Monitoring will also entail direct observation of Attorney's performance in court (including, but not limited to pre-trial dockets, motion dockets and trials) by Benton County Office of Public Defense Supervisory Staff to evaluate, among other things:

- Attorney's preparedness and readiness
- Attorney's interactions with clients
- Attorney's ability and willingness to advocate to the court on behalf of clients

Attorney acknowledgment:

Jennifer Azure
_____

I understand and acknowledge that Benton County will utilize the Performance Standards Monitoring as set out in this Exhibit to my public defense contract to evaluate my effectiveness as a public defender and that contract decisions, such as renewals, extensions, caseload increases, or assignment to other public defense duties will be made with reference to the results of such Performance Standards Monitoring.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021
Subject:	Early termination of public defense contract with Brian Gieszler
Presenter:	n/a
Prepared By:	Eric Hsu
Reviewed By:	Denise Gerry

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

Benton County currently contracts with attorney Brian Gieszler ("Attorney") for public defense services in Benton County District Court (executed through Resolution #2020-883). The contract provides that either party may terminate the contract early, with or without cause, simply by written notice with a requisite notice period.

Attorney has provided such notice of early termination, by way of a written notice dated May 18, 2021. The proposed resolution acknowledges this notice and sets September 15, 2021 as the final effective date of the early termination, pursuant to the provisions of the contract.

Fiscal Impact

None

Recommendation

Recommend approving proposed resolution which acknowledges the early contract termination notice tendered by attorney Brian Gieszler on May 18, 2021 and sets September 15, 2021 as the final effective date of the termination

Suggested Motion

Approve with Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF ACKNOWLEDGING THE CONTRACT EARLY TERMINATION NOTICE OF ATTORNEY BRIAN GIESZLER, AN ATTORNEY HOLDING A PUBLIC DEFENSE CONTRACT IN BENTON COUNTY DISTRICT COURT

WHEREAS, Benton County is obligated by law to provide indigent defense services in Benton County District Court; and

WHEREAS, attorney Brian Gieszler ("Attorney") has been providing public defense services in Benton County District Court pursuant to a public defense contract with Benton County; and

WHEREAS, the said public defense contract provides for either party to provide notice of early contract termination; and

WHEREAS, Attorney has, in fact, provided notice of early contract termination in a notice dated May 18, 2021 (attached as Exhibit "A"); and

WHEREAS, pursuant to Attorney's public defense contract, the notice, as provided, will result in a final effective date of September 15, 2021, with certain post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in said public defense contract; **NOW, THEREFORE**

BE IT RESOLVED that the District Court public defense contract with attorney Brian Gieszler, executed by and through Resolution #2020-883, is hereby terminated at the request of Attorney, pursuant to Attorney's Notice of Early Termination dated May 18, 2021 with a final effective termination date of September 15, 2021 and with post-notice and post-effective date appointment eligibility and continuing case responsibility as detailed in attorney Brian Gieszler's public defense contract.

Dated this _____ day of _____ 20 _____

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

cc: Originals – OPD, Brian Gieszler
Copy – Auditor, S Godinez

E. Hsu

EXHIBIT "A"

Denise Gerry

From: Eric Hsu
Sent: Thursday, June 10, 2021 9:00 AM
To: Denise Gerry
Subject: FW: [EXTERNAL] Follow up re: Brian Gieszler contract

---

From: Asa LaMusga <Asa@gravislaw.com>
Sent: Tuesday, May 18, 2021 10:16 PM
To: Eric Hsu <Eric.Hsu@co.benton.wa.us>
Cc: Derek Johnson <Derek@gravislaw.com>; Caleb DiPeso <Caleb.DiPeso@co.benton.wa.us>
Subject: [EXTERNAL] Follow up re: Brian Gieszler contract

EXTERNAL EMAIL WARNING!!!: This email originated from outside of Benton County. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Eric,

It is my understanding that Brian Gieszler contacted you via phone last week and indicated his intention to terminate his contract, pursuant to the notice provisions of the contract. This email is being provided to serve as written confirmation of the intent to terminate the contract. Please advise what, if any, additional information you need from us to make this process as smooth as possible. Thank you.

Gravis Law PLLC is committed to providing accessible, quality legal services to our communities while at the same time, promoting the health and well-being of our clients and staff. As a result of the current Covid-19 pandemic, Gravis Law has transitioned for the time being to a largely remote work environment. Accordingly, response times to your e-mail communications may be slightly delayed.

We understand your legal matters are of utmost importance to you and promise to respond as soon as possible. Thank you for your patience as we all work though these unprecedented circumstances.

We wish health and comfort to you and your family.

Asa LaMusga
Principal | Chief Performance Officer
503 Knight St., Ste. A
Richland, WA 99352
509-380-9102
GravisLaw.com

NOTICE: This email (including any attachments) is covered by the Electronic Communications Privacy Act (ECPA), 18 U.S.C., Sec. 2510 - 2522, is confidential and privileged. This email is solely for the personal and confidential use of the recipient(s) named above. Receipt by anyone other than the individual recipient(s) is NOT a waiver of attorney-client privilege. Any violation of the ECPA is subject to the penalties stated therein. If you have received this message in error, please notify me immediately by reply e-mail at asa@gravislaw.com and immediately delete the original message.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021
Subject:	Purchase Agreement between Benton County and Compunet, Inc. utilizing Region 14 Education Service Center, TX Contract No. 01-107
Presenter:	
Prepared By:	Paul Schut
Reviewed By:	Robert Blain & Robert Heard

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

As per Resolution 2021-296, Benton County entered into an agreement with the National Cooperative Purchasing Alliance (NCPA) to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise.

The Region 14 Education Service Center is also a member of NCPA and issued RFP #29-20 for Audio/Visual Products and Services to establish a national cooperative contract for said services as per Contract No. 01-107, for a term commencing December 8, 2020, and terminating December 31, 2023.

The Benton County IT Department wishes to utilize Contract No. 01-107 for the purchase of TVs for the new Administration Building, as further outlined in the attached Purchase Agreement between Benton County and Compunet, Inc. and the documents attached thereto, for a contract amount not to exceed $19,947.97 including WSST.

Fiscal Impact

Amount: $19,947.97 including WSST

Fund: Fund # 0305-101 – Capital Projects Fund

Recommendation

Approve the attached Resolution and Purchase Agreement between Benton County and Compunet, Inc. and authorize the Chairman of the Board to sign said agreement.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE PURCHASE OF TELEVISIONS FOR THE NEW ADMINISTRATION BUILDING FROM COMPUNET, INC. UTILIZING THE NATIONAL COOPERATIVE PURCHASING ALLIANCE AND REGION 14 EDUCATION SERVICE CENTER, TX CONTRACT NO. 01-107

WHEREAS, per Resolution 2021-296, Benton County entered into an agreement with the National Cooperative Purchasing Alliance (NCPA) to allow parties of said agreements to cooperatively purchase or acquire supplies, equipment, and materials under each other's contracts as needs arise; and

WHEREAS, Region 14 Education Service Center, TX is also a member with NCPA and issued RFP No. 29-20 for Audio/Visual Products and Services on October 6, 2020, to establish a national cooperative contract for said supplies and services; and

WHEREAS, proposals were received and evaluated and Region 14 Education Service Center, NCPA, and Compunet, Inc. successfully negotiated Contract No. 01-107 for a term commencing December 8, 2020, and expiring December 31, 2023; and

WHEREAS, the Benton County IT Department wishes to utilize Contract No. 01-107 to purchase TVs for the New Administration Building, as further outlined in the attached Purchase Agreement between Benton County and Compunet, Inc., and documents attached thereto, for an overall contract amount not to exceed $19,947.97 including WSST; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby approves the attached Purchase Agreement between Benton County and Compunet, Inc., utilizing the NCPA and Region 14 Education Service Center Contract No. 01-107 for the purchase of TVs for the New Administration Building, with an amount not to exceed $19,947.97 including WSST; and

BE IT FURTHER RESOLVED, the attached Purchase Agreement shall commence upon signature of both parties and shall terminate December 31, 2023; and

BE IT FURTHER RESOLVED, the Chairman of the Board is hereby authorized to sign the attached Purchase Agreement between Benton County and Compunet, Inc.

Dated this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Member

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: Purchasing Dept.
Cc: Auditors, PA, Compunet, Inc. P. Schut

PURCHASE AGREEMENT
Benton County, Washington

Benton County is a political subdivision, with its principal offices located at 620 Market Street, Prosser, WA 99350

RESOLUTION No: _____

Resolution number must appear on all invoices, packing slips, packages, correspondence, etc.

Vendor: Compunet, Inc.	CompuNet, Inc. 1111 S. Silverstone Way, Ste 200 Meridian, ID 83642 Ph. 208-286-3000
Vendor Code:	
Vendor Contact: Jamie Kelly - jkelly@compunet.biz	Remit to: PO Box 35143 (LB 410802) Seattle, WA 98124-5143
Vendor Contact Phone: 208-559-2783	
Vendor Principal Place of Business: 410 Terry Ave. N, Seattle, WA 98109	remit@compunet.biz
Ship To: Benton County (various locations)	Bill To: Benton County (various departments)

AGREEMENT:
The Vendor agrees to make available the goods provided in Exhibit A to Benton County under the terms described herein.

Line	Description	Qty	Amount:
	The Vendor agrees to make available the goods provided in Exhibit A to Benton County		$ 18,368.30
	Vendor agrees to provide all items and name brands in accordance with the attached Region 14 Education Service Center Contract No. 01-107 and further outlined in Attachment B of said Contract as currently in effect, or hereafter amended.		
	The attached Contract includes following categories as futher outlined in Attachment B:		
	1) Audio/Visual Products & Services		

The term of this Agreement shall commence upon signature of both parties and shall expire 12/31/2023.

This purchase agreement incorporates by reference all terms and conditions issued off the Region 14 Edcucation Center Cooperative Contract 01-107 (copy attached hereto as Master Contract) as well as the Price Worksheet (attached as Exhibit A); as a registered member of the National Cooperative Purchasing Alliance.

Vendor signature on this Purchase Agreement certifies acceptance of this agreement and all terms and conditions, and supersedes any conflicting terms and/or previous contracts.

In case of conflict, the order of precedence is:
1. Region 14 Education Service Center Contract No. 01-107
2. This Purchase Agreement

Questions and Clarifications should be Addressed to Buyer Contact:

Contact: Paul Schut
Address: 7122 W. Okanogan Pl, Bldg. A
Kennewick, WA 99336
Phone: 509-737-3943
Email: Paul.schut@co.benton.wa.us

Approved as to Form
(Deputy Prosecutor): _____
Eric Andrews, Civil DPA

By signing in the space provided, the parties hereby acknowledge the following:

1) The person executing the Agreement is authorized to enter into and undertake contractual financial obligations on behalf of his/her party;
2) The person executing this Agreement is authorized to do so by his/her party;
3) The parties agree that they shall be bound by facsimile or electronic copies of Agreements (including purchase orders) and further agree that such copies shall constitute the original agreement(s) for all purposes.

Vendor Name (Print): Thomas McFarlin Title: VP of Operations Date: 6/10/2021

Vendor Signature: Thomas McFarlin

Chairman
Benton County
Board of Commissioners: _____ Date: _____
Jerome Delvin, Chairman

CompuNet, Inc.

Admin Building - Displays

Exhibit A

Contract Information:
ALL, NCPA, 01-107

Bill To:

Benton County

P.O. Box 608
Prosser, WA 99350

Ship To:

Benton County

620 Market Street
Prosser, WA 99350

Quote Information:

Quote #: NM162433

Version: 2
Delivery Date: 05/24/2021
Expiration Date: 06/24/2021

Prepared by:

Nathan Meacham
(208) 286-3078
nmeacham@compunet.biz

Prepared for:

Robert Heard
(509) 737-3529
Robert.Heard@co.benton.wa.us

LG Display

Description		List Price	Price	Qty	Ext. Price
86UT640S0UA	LG 86" UT640S Series UHD Commercial Signage TV - 86" LCD - 3840 x 2160 - LED - 315 Nit - 2160p - HDMI - USBEthernet - Black - TAA Compliant	$4,410.00	$3,514.52	2	$7,029.04
75UT640S0UA	LG 75" UT640S Series UHD Commercial Signage TV - 75" LCD - 3840 x 2160 - LED - 315 Nit - 2160p - HDMI - USB - SerialEthernet - Black - TAA Compliant	$2,450.00	$2,050.55	2	$4,101.10
55UT640S0UA	LG 55" UT640S Series UHD Commercial Signage TV - 55" LCD - 3840 x 2160 - LED - 360 Nit - 2160p - HDMI - USB - SerialEthernet - Black - TAA Compliant	$1,078.00	$904.77	8	$7,238.16
			Subtotal:		**$18,368.30**

Shipping

Description		Qty
Shipping	Ground Shipping To Be Determined, Billed As Actual	1

Quote Summary

Description	Amount
LG Display	$18,368.30
Subtotal:	**$18,368.30**
Estimated Tax:	**$1,579.67**
Total:	**$19,947.97**

Taxes, shipping, handling and other fees may apply. We reserve the right to cancel orders arising from pricing or other errors. Your electronic signature, per the Electronic Signature Act, is considered equivalent to your signed and faxed signature, and allows you to accept and place your order. A copy of this acceptance and the attached proposal document will be sent to your email address to complete your order acceptance. You are NOT required to electronically sign your order, you may fax or email your signed proposal to your Account Manager.

Benton County

Signature: _____

Name: _____

Date: _____

PO Number: _____

CompuNet, Inc.

Competitive Solicitation by Region 14 Education Service Center
For
Audio/Visual Products and Services
On behalf of itself and other Government Agencies And made available through the
National Cooperative Purchasing Alliance RFP #29-20

National Cooperative Purchasing Alliance

Thursday, November 19th, 2020 2:00 CST

CompuNet, Inc.
Corporate Headquarters | 2264 S. Bonito Way, Suite 150 | Meridian, ID 83642 | Toll Free: (877) 822-2841, Phone: (208) 286-3000 | Fax: (208) 286-3002
http://www.compunet.biz

TABLE OF CONTENTS

- Cover Letter
- Tab 1 – Master Agreement / Signature Form
- Tab 2 – NCPA Administration Agreement
- Tab 3 – Vendor Questionnaire
- Tab 4 – Vendor Profile
- Tab 5 – Products and Services / Scope
- Tab 6 - References
- Tab 7 - Pricing
- Tab 8 – Value Added Products and Services
- Tab 9 – Required Documents
  - Clean Air and Water Act / Debarment Notice
  - Contractors Requirements
  - Antitrust Certification Statements
  - Required Clauses for Federal Funds Certifications
  - Required Clauses for Federal Assistance by FTA
  - State Notice Addendum

November 19, 2020

Region 14 ESC
1850 Highway 351
Abilene, Texas 79601

Re: **RFP #29-20 Audio/Visual Products and Services**

NCPA:

It is a pleasure to introduce **CompuNet, Inc.** an engineering led national information technology (IT) solution provider that offers consulting, design and implementation services built on-premise or in the cloud. Our solutions include Managed Cloud Carrier Co-Location, Modern Infrastructure, Collaboration, Enterprise Networking, Information Security, Physical Security, Integrated Media Solutions, and Modern Applications.

Our approach is to understand our clients' business needs, engineer IT solutions that solve those needs, and deploy those solutions on time and on budget. In other words, we create technology solutions that solve business problems. As a full solution provider, we are strategically partnered with best-in-class technology manufacturers to provide a solution set that offers the breadth our customers demand.

CompuNet appreciates the opportunity to respond to your RFP. We've sold multiple different software and hardware solutions to various State, Local and Education agencies throughout the terms of our current NCPA 01-62 contract and are proposing products and services solution providers which meet the requirements of this RFP. We've also enhanced and added value by offering additional products and services which are defined in this response.

Please contact us should have you have any questions or need further clarification.

Sincerely,

Thomas McFarlin, Vice President of Operations
Email: tmcfarlin@compunet.biz; Phone: (208) 286-3032

TAB 1 –

- **MASTER AGREEMENT GENERAL TERMS AND CONDITIONS**
- **SIGNATURE FORM**

- Customer Support
  - The vendor shall provide timely and accurate technical advice and sales support. The vendor shall respond to such requests within one (1) working day after receipt of the request.

- Disclosures
  - Respondent affirms that he/she has not given, offered to give, nor intends to give at any time hereafter any economic opportunity, future employment, gift, loan, gratuity, special discount, trip, favor or service to a public servant in connection with this contract.
  - The respondent affirms that, to the best of his/her knowledge, the offer has been arrived at independently, and is submitted without collusion with anyone to obtain information or gain any favoritism that would in any way limit competition or give an unfair advantage over other vendors in the award of this contract.

- Renewal of Contract
  - Unless otherwise stated, all contracts are for a period of three (3) years with an option to renew for up to two (2) additional one-year terms or any combination of time equally not more than 2 years if agreed to by Region 14 ESC and the vendor.

- Funding Out Clause
  - Any/all contracts exceeding one (1) year shall include a standard "funding out" clause. A contract for the acquisition, including lease, of real or personal property is a commitment of the entity's current revenue only, provided the contract contains either or both of the following provisions:
  - Retains to the entity the continuing right to terminate the contract at the expiration of each budget period during the term of the contract and is conditioned on a best efforts attempt by the entity to obtain appropriate funds for payment of the contract.

- Shipments (if applicable)
  - The awarded vendor shall ship ordered products within seven (7) working days for goods available and within four (4) to six (6) weeks for specialty items after the receipt of the order unless modified. If a product cannot be shipped within that time, the awarded vendor shall notify the entity placing the order as to why the product has not shipped and shall provide an estimated shipping date. At this point the participating entity may cancel the order if estimated shipping time is not acceptable.

- Tax Exempt Status
  - Since this is a national contract, knowing the tax laws in each state is the sole responsibility of the vendor.

- Payments
  - The entity using the contract will make payments directly to the awarded vendor or their affiliates (distributors/business partners/resellers) as long as written request and approval by NCPA is provided to the awarded vendor.

- Adding authorized distributors/dealers
  - Awarded vendors may submit a list of distributors/partners/resellers to sell under their contract throughout the life of the contract. Vendor must receive written approval from NCPA before such distributors/partners/resellers considered authorized.
  - Purchase orders and payment can only be made to awarded vendor or distributors/business partners/resellers previously approved by NCPA.
  - Pricing provided to members by added distributors or dealers must also be less than or equal to the pricing offered by the awarded contract holder.
  - All distributors/partners/resellers are required to abide by the Terms and Conditions of the vendor's agreement with NCPA.

- Pricing
  - All pricing submitted shall include the administrative fee to be remitted to NCPA by the awarded vendor. It is the awarded vendor's responsibility to keep all pricing up to date and on file with NCPA.
  - All deliveries shall be freight prepaid, F.O.B. destination and shall be included in all pricing offered unless otherwise clearly stated in writing

- Warranty
  - Proposals should address each of the following:
    - Applicable warranty and/or guarantees of equipment and installations including any conditions and response time for repair and/or replacement of any components during the warranty period.
    - Availability of replacement parts
    - Life expectancy of equipment under normal use
    - Detailed information as to proposed return policy on all equipment

- Indemnity
  - The awarded vendor shall protect, indemnify, and hold harmless Region 14 ESC and its participants, administrators, employees and agents against all claims, damages, losses and expenses arising out of or resulting from the actions of the vendor, vendor employees or vendor subcontractors in the preparation of the solicitation and the later execution of the contract.

- Franchise Tax
  - The respondent hereby certifies that he/she is not currently delinquent in the payment of any franchise taxes.

- Supplemental Agreements
  - The entity participating in this contract and awarded vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the participating entity and awarded vendor.

- Certificates of Insurance
  - Certificates of insurance shall be delivered to the Public Agency prior to commencement of work. The insurance company shall be licensed in the applicable state in which work is being conducted. The awarded vendor shall give the participating entity a minimum of ten (10) days notice prior to any modifications or cancellation of policies. The awarded vendor shall require all subcontractors performing any work to maintain coverage as specified.

- Legal Obligations
  - It is the Respondent's responsibility to be aware of and comply with all local, state, and federal laws governing the sale of products/services identified in this RFP and any awarded contract and shall comply with all while fulfilling the RFP. Applicable laws and regulation must be followed even if not specifically identified herein.

- Protest
  - A protest of an award or proposed award must be filed in writing within ten (10) days from the date of the official award notification and must be received by 5:00 pm CST. Protests shall be filed with Region 14 ESC and shall include the following:
    - Name, address and telephone number of protesters
    - Original signature of protester or its representative
    - Identification of the solicitation by RFP number
    - Detailed statement of legal and factual grounds including copies of relevant documents and the form of relief requested
  - Any protest review and action shall be considered final with no further formalities being considered.

- Force Majeure
  - If by reason of Force Majeure, either party hereto shall be rendered unable wholly or in part to carry out its obligations under this Agreement then such party shall give notice and full particulars of Force Majeure in writing to the other party within a reasonable time after occurrence of the event or cause relied upon, and the obligation of the party giving such notice, so far as it is affected by such Force Majeure, shall be suspended during the continuance of the inability then claimed, except as hereinafter provided, but for no longer period, and such party shall endeavor to remove or overcome such inability with all reasonable dispatch.
  - The term Force Majeure as employed herein, shall mean acts of God, strikes, lockouts, or other

industrial disturbances, act of public enemy, orders of any kind of government of the United States or any civil or military authority; insurrections; riots; epidemics; landslides; lighting; earthquake; fires; hurricanes; storms; floods; washouts; droughts; arrests; restraint of government and people; civil disturbances; explosions, breakage or accidents to machinery, pipelines or canals, or other causes not reasonably within the control of the party claiming such inability. It is understood and agreed that the settlement of strikes and lockouts shall be entirely within the discretion of the party having the difficulty, and that the above requirement that any Force Majeure shall be remedied with all reasonable dispatch shall not require the settlement of strikes and lockouts by acceding to the demands of the opposing party or parties when such settlement is unfavorable in the judgment of the party having the difficulty

- Prevailing Wage
  - It shall be the responsibility of the Vendor to comply, when applicable, with the prevailing wage legislation in effect in the jurisdiction of the purchaser. It shall further be the responsibility of the Vendor to monitor the prevailing wage rates as established by the appropriate department of labor for any increase in rates during the term of this contract and adjust wage rates accordingly.

- Miscellaneous
  - Either party may cancel this contract in whole or in part by providing written notice. The cancellation will take effect 30 business days after the other party receives the notice of cancellation. After the 30th business day all work will cease following completion of final purchase order.

- Open Records Policy
  - Because Region 14 ESC is a governmental entity, responses submitted are subject to release as public information after contracts are executed. If a vendor believes that its response, or parts of its response, may be exempted from disclosure, the vendor must specify page-by- page and line-by-line the parts of the response, which it believes, are exempt. In addition, the respondent must specify which exception(s) are applicable and provide detailed reasons to substantiate the exception(s).
  - The determination of whether information is confidential and not subject to disclosure is the duty of the Office of Attorney General (OAG). Region 14 ESC must provide the OAG sufficient information to render an opinion and therefore, vague and general claims to confidentiality by the respondent are not acceptable. Region 14 ESC must comply with the opinions of the OAG. Region14 ESC assumes no responsibility for asserting legal arguments on behalf of any vendor. Respondent are advised to consult with their legal counsel concerning disclosure issues resulting from this procurement process and to take precautions to safeguard trade secrets and other proprietary information.

Process

Region 14 ESC will evaluate proposals in accordance with, and subject to, the relevant statutes, ordinances, rules, and regulations that govern its procurement practices. NCPA will assist Region 14 ESC in evaluating proposals. Award(s) will be made to the prospective vendor whose response is determined to be the most advantageous to Region 14 ESC, NCPA, and its participating agencies. To qualify for evaluation, response must have been submitted on time, and satisfy all mandatory requirements identified in this document.

- Contract Administration
  - The contract will be administered by Region 14 ESC. The National Program will be administered by NCPA on behalf of Region 14 ESC.
- Contract Term
  - The contract term will be for three (3) year starting from the date of the award. The contract may be renewed for up to two (2) additional one-year terms or any combination of time equally not more than 2 years.
  - It should be noted that maintenance/service agreements may be issued for up to (5) years under this contract even if the contract only lasts for the initial term of the contract. NCPA will monitor any maintenance agreements for the term of the agreement provided they are signed prior to the termination or expiration of this contract.
- Contract Waiver
  - Any waiver of any provision of this contract shall be in writing and shall be signed by the duly authorized agent of Region 14 ESC. The waiver by either party of any term or condition of this contract shall not be deemed to constitute waiver thereof nor a waiver of any further or additional right that such party may hold under this contract.
- Products and Services additions
  - Products and Services may be added to the resulting contract during the term of the contract by written amendment, to the extent that those products and services are within the scope of this RFP.
- Competitive Range
  - It may be necessary for Region 14 ESC to establish a competitive range. Responses not in the competitive range are unacceptable and do not receive further award consideration.
- Deviations and Exceptions
  - Deviations or exceptions stipulated in response may result in disqualification. It is the intent of Region 14 ESC to award a vendor's complete line of products and/or services, when possible.
- Estimated Quantities
  - The estimated dollar volume of Products and Services purchased under the proposed Master Agreement is $15 - $20 million dollars annually. This estimate is based on the anticipated volume of Region 14 ESC and current sales within the NCPA program. There is no guarantee or commitment of any kind regarding usage of any contracts resulting from this solicitation

Evaluation

- Region 14 ESC will review and evaluate all responses in accordance with, and subject to, the relevant statutes, ordinances, rules and regulations that govern its procurement practices. NCPA

will assist the lead agency in evaluating proposals. Recommendations for contract awards will be based on multiple factors, each factor being assigned a point value based on its importance.

- Formation of Contract
  - A response to this solicitation is an offer to contract with Region 14 ESC based upon the terms, conditions, scope of work, and specifications contained in this request. A solicitation does not become a contract until it is accepted by Region 14 ESC. The prospective vendor must submit a signed Signature Form with the response thus, eliminating the need for a formal signing process.
- NCPA Administrative Agreement
  - The vendor will be required to enter and execute the National Cooperative Purchasing Alliance Administration Agreement with NCPA upon award with Region 14 ESC. The agreement establishes the requirements of the vendor with respect to a nationwide contract effort.
- Clarifications / Discussions
  - Region 14 ESC may request additional information or clarification from any of the respondents after review of the proposals received for the sole purpose of elimination minor irregularities, informalities, or apparent clerical mistakes in the proposal. Clarification does not give respondent an opportunity to revise or modify its proposal, except to the extent that correction of apparent clerical mistakes results in a revision. After the initial receipt of proposals, Region 14 ESC reserves the right to conduct discussions with those respondent's whose proposals are determined to be reasonably susceptible of being selected for award. Discussions occur when oral or written communications between Region 14 ESC and respondents are conducted for the purpose clarifications involving information essential for determining the acceptability of a proposal or that provides respondent an opportunity to revise or modify its proposal. Region 14 ESC will not assist respondent bring its proposal up to the level of other proposals through discussions. Region 14 ESC will not indicate to respondent a cost or price that it must meet to neither obtain further consideration nor will it provide any information about other respondents' proposals or prices.
- Multiple Awards
  - Multiple Contracts may be awarded as a result of the solicitation. Multiple Awards will ensure that any ensuing contracts fulfill current and future requirements of the diverse and large number of participating public agencies.
- Past Performance
  - Past performance is relevant information regarding a vendor's actions under previously awarded contracts; including the administrative aspects of performance; the vendor's history of reasonable and cooperative behavior and commitment to customer satisfaction; and generally, the vendor's businesslike concern for the interests of the customer.

Evaluation Criteria

- Pricing (40 points)
  - Electronic Price Lists
    - Products, Services, Warranties, etc. price list
    - Prices listed will be used to establish both the extent of a vendor's product lines, services, warranties, etc. available from a particular bidder and the pricing per item.

- Ability to Provide and Perform the Required Services for the Contract (25 points)
  - Product Delivery within participating entities specified parameters
  - Number of line items delivered complete within the normal delivery time as a percentage of line items ordered.
  - Vendor's ability to perform towards above requirements and desired specifications.
  - Past Cooperative Program Performance
  - Quantity of line items available that are commonly purchased by the entity.
  - Quality of line items available compared to normal participating entity standards.

- References (15 points)
  - A minimum of ten (10) customer references for product and/or services of similar scope dating within past 3 years

- Technology for Supporting the Program (10 points)
  - Electronic on-line catalog, order entry use by and suitability for the entity's needs
  - Quality of vendor's on-line resources for NCPA members.
  - Specifications and features offered by respondent's products and/or services

- Value Added Services Description, Products and/or Services (10 points)
  - Marketing and Training
  - Minority and Women Business Enterprise (MWBE) and (HUB) Participation
  - Customer Service

Signature Form

The undersigned hereby proposes and agrees to furnish goods and/or services in strict compliance with the terms, specifications and conditions at the prices proposed within response unless noted in writing. The undersigned further certifies that he/she is an officer of the company and has authority to negotiate and bind the company named below and has not prepared this bid in collusion with any other Respondent and that the contents of this proposal as to prices, terms or conditions of said bid have not been communicated by the undersigned nor by any employee or agent to any person engaged in this type of business prior to the official opening of this proposal.

Prices are guaranteed: **120 days**

Company name	CompuNet, Inc.
Address	2264 S. Bonito Way, Ste 150
City/State/Zip	Meridian, ID 83642
Telephone No.	208-286-3000
Fax No.	208-286-3002
Email address	tmcfarlin@compunet.biz
Printed name	Thomas McFarlin
Position with company	Vice President of Operations
Authorized signature	Thomas McFarlin

TAB 2 – NCPA ADMINISTRATION AGREEMENT

This Administration Agreement is made as of December 8, 2020, by and between National Cooperative Purchasing Alliance ("NCPA") and CompuNet, Inc. ("Vendor").

Recitals

WHEREAS, Region 14 ESC has entered into a certain Master Agreement dated December 8, 2020, referenced as Contract Number 01-107, by and between Region 14 ESC and Vendor, as may be amended from time to time in accordance with the terms thereof (the "Master Agreement"), for the purchase of Audio/Visual Products and Services;

WHEREAS, said Master Agreement provides that any state, city, special district, local government, school district, private K-12 school, technical or vocational school, higher education institution, other government agency or nonprofit organization (hereinafter referred to as "public agency" or collectively, "public agencies") may purchase products and services at the prices indicated in the Master Agreement;

WHEREAS, NCPA has the administrative and legal capacity to administer purchases under the Master Agreement to public agencies;

WHEREAS, NCPA serves as the administrative agent for Region 14 ESC in connection with other master agreements offered by NCPA

WHEREAS, Region 14 ESC desires NCPA to proceed with administration of the Master Agreement; WHEREAS, NCPA and Vendor desire to enter into this Agreement to make available the Master

Agreement to public agencies on a national basis;

NOW, THEREFORE, in consideration of the payments to be made hereunder and the mutual covenants contained in this Agreement, NCPA and Vendor hereby agree as follows:

- General Terms and Conditions
  - The Master Agreement, attached hereto as Tab 1 and incorporated herein by reference as though fully set forth herein, and the terms and conditions contained therein shall apply to this Agreement except as expressly changed or modified by this Agreement.
  - NCPA shall be afforded all of the rights, privileges and indemnifications afforded to Region 14 ESC under the Master Agreement, and such rights, privileges and indemnifications shall accrue and apply with equal effect to NCPA under this Agreement including, but not limited to, the Vendor's obligation to provide appropriate insurance and certain indemnifications to Region 14 ESC.
  - Vendor shall perform all duties, responsibilities and obligations required under the Master Agreement in the time and manner specified by the Master Agreement.
  - NCPA shall perform all of its duties, responsibilities, and obligations as administrator of purchases under the Master Agreement as set forth herein, and Vendor acknowledges that NCPA shall act in the capacity of administrator of purchases under the Master Agreement.
  - With respect to any purchases made by Region 14 ESC or any Public Agency pursuant to the Master

Agreement, NCPA (a) shall not be construed as a dealer, re-marketer, representative, partner, or agent of any type of Vendor, Region 14 ESC, or such Public Agency, (b) shall not be obligated, liable or responsible (i) for any orders made by Region 14 ESC, any Public Agency or any employee of Region 14 ESC or Public Agency under the Master Agreement, or (ii) for any payments required to be made with respect to such order, and (c) shall not be obligated, liable or responsible for any failure by the Public Agency to (i) comply with procedures or requirements of applicable law, or (ii) obtain the due authorization and approval necessary to purchase under the Master Agreement. NCPA makes no representations or guaranties with respect to any minimum purchases required to be made by Region 14 ESC, any Public Agency, or any employee of Region 14 ESC or Public Agency under this Agreement or the Master Agreement.

- The Public Agency participating in the NCPA contract and Vendor may enter into a separate supplemental agreement to further define the level of service requirements over and above the minimum defined in this contract i.e. invoice requirements, ordering requirements, specialized delivery, etc. Any supplemental agreement developed as a result of this contract is exclusively between the Public Agency and Vendor. NCPA, its agents, members and employees shall not be made party to any claim for breach of such agreement.

- Term of Agreement
  - This Agreement shall be in effect so long as the Master Agreement remains in effect, provided, however, that the obligation to pay all amounts owed by Vendor to NCPA through the termination of this Agreement and all indemnifications afforded by Vendor to NCPA shall survive the term of this Agreement.

- Fees and Reporting
  - The awarded vendor shall electronically provide NCPA with a detailed quarterly report showing the dollar volume of all sales under the contract for the previous quarter. Reports are due on the fifteenth (15th) day after the close of the previous quarter. It is the responsibility of the awarded vendor to collect and compile all sales under the contract from participating members and submit one (1) report. The report shall include at least the following information as listed in the example below:

Entity Name	Zip Code	State	PO or Job #	Sale Amount

Total _____

  - Each quarter NCPA will invoice the vendor based on the total of sale amount(s) reported. From the invoice the vendor shall pay to NCPA an administrative fee based upon the tiered fee schedule below. Vendor's annual sales shall be measured on a calendar year basis. Deadline for term of

payment will be included in the invoice NCPA provides.

Annual Sales Through Contract	Administrative Fee
0 - $30,000,000	2%
$30,000,001 - $50,000,000	1.5%
$50,000,001+	1%

- Supplier shall maintain an accounting of all purchases made by Public Agencies under the Master Agreement. NCPA and Region 14 ESC reserve the right to audit the accounting for a period of four (4) years from the date NCPA receives the accounting. In the event of such an audit, the requested materials shall be provided at the location designated by Region 14 ESC or NCPA. In the event such audit reveals an under reporting of Contract Sales and a resulting underpayment of administrative fees, Vendor shall promptly pay NCPA the amount of such underpayment, together with interest on such amount and shall be obligated to reimburse NCPA's costs and expenses for such audit.

- General Provisions
  - This Agreement supersedes any and all other agreements, either oral or in writing, between the parties hereto with respect to the subject matter hereof, and no other agreement, statement, or promise relating to the subject matter of this Agreement which is not contained herein shall be valid or binding.
  - Awarded vendor agrees to allow NCPA to use their name and logo within website, marketing materials and advertisement. Any use of NCPA name and logo or any form of publicity regarding this contract by awarded vendor must have prior approval from NCPA.
  - If any action at law or in equity is brought to enforce or interpret the provisions of this Agreement or to recover any administrative fee and accrued interest, the prevailing party shall be entitled to reasonable attorney's fees and costs in addition to any other relief to which such party may be entitled.
  - Neither this Agreement nor any rights or obligations hereunder shall be assignable by Vendor without prior written consent of NCPA, provided, however, that the Vendor may, without such written consent, assign this Agreement and its rights and delegate its obligations hereunder in connection with the transfer or sale of all or substantially all of its assets or business related to this Agreement, or in the event of its merger, consolidation, change in control or similar transaction. Any permitted assignee shall assume all assigned obligations of its assignor under this Agreement.
  - This Agreement and NCPA's rights and obligations hereunder may be assigned at NCPA's sole discretion, to an existing or newly established legal entity that has the authority and capacity to perform NCPA's obligations hereunder
  - All written communications given hereunder shall be delivered to the addresses as set forth below.

National Cooperative Purchasing Alliance:		Vendor: CompuNet, Inc.	
Name:	Matthew Mackel	Name:	Thomas McFarlin
Title:	Director, Business Development	Title:	Vice President of Operations
Address:	PO Box 701273	Address:	2264 S. Bonito Way, Ste 150
	Houston, TX 77270		Meridian, ID 83642
Signature:		Signature:	Thomas McFarlin
Date:	December 8, 2020	Date:	11/18/2020

TAB 3 – VENDOR QUESTIONNAIRE

Please provide responses to the following questions that address your company's operations, organization, structure, and processes for providing products and services.

- States Covered
  - Bidder must indicate any and all states where products and services can be offered.
  - Please indicate the price co-efficient for each state if it varies.

☐ **50 States & District of Columbia** (Selecting this box is equal to checking all boxes below)

☐ Alabama	☐ Maryland	☐ South Carolina
☐ Alaska	☐ Massachusetts	☒ South Dakota
☒ Arizona	☒ Michigan	☒ Tennessee
☐ Arkansas	☒ Minnesota	☐ Texas
☒ California	☐ Mississippi	☒ Utah
☒ Colorado	☐ Missouri	☐ Vermont
☒ Connecticut	☒ Montana	☐ Virginia
☐ Delaware	☐ Nebraska	☒ Washington
☐ District of Columbia	☒ Nevada	☐ West Virginia
☒ Florida	☐ New Hampshire	☒ Wisconsin
☐ Georgia	☐ New Jersey	☒ Wyoming
☐ Hawaii	☒ New Mexico	
☒ Idaho	☐ New York	
☐ Illinois	☐ North Carolina	
☐ Indiana	☐ North Dakota	
☐ Iowa	☐ Ohio	
☐ Kansas	☐ Oklahoma	
☐ Kentucky	☒ Oregon	
☐ Louisiana	☐ Pennsylvania	
☐ Maine	☐ Rhode Island	

☐ **All US Territories and Outlying Areas** (Selecting this box is equal to checking all boxes below)

- ☐ American Samoa
- ☐ Federated States of Micronesia
- ☐ Guam
- ☐ Midway Islands
- ☐ Northern Marina Islands
- ☐ Puerto Rico
- ☐ U.S. Virgin Islands

- Minority and Women Business Enterprise (MWBE) and (HUB) Participation
  - It is the policy of some entities participating in NCPA to involve minority and women business enterprises (MWBE) and historically underutilized businesses (HUB) in the purchase of goods and services. Respondents shall indicate below whether or not they are an M/WBE or HUB certified.
    - Minority / Women Business Enterprise
      - Respondent Certifies that this firm is a M/WBE ☐
    - Historically Underutilized Business
      - Respondent Certifies that this firm is a HUB ☐
- Residency
  - Responding Company's principal place of business is in the city of Meridian, State of Idaho.
- Felony Conviction Notice
  - Please Check Applicable Box;
    - ☐ A publicly held corporation; therefore, this reporting requirement is not applicable.
    - ☒ Is not owned or operated by anyone who has been convicted of a felony.
    - ☐ Is owned or operated by the following individual(s) who has/have been convicted of a felony
  - If the 3rd box is checked, a detailed explanation of the names and convictions must be attached.
- Distribution Channel
  - Which best describes your company's position in the distribution channel:
    - ☐ Manufacturer Direct
    - ☐ Authorized Distributor
    - ☒ Value-added reseller
    - ☐ Certified education/government reseller
    - ☐ Manufacturer marketing through reseller
    - ☐ Other:
- Processing Information
  - Provide company contact information for the following:
    - Sales Reports

      Contact Person: Kelly Freeman

      Title: Corporate Services Administrator

      Company: CompuNet, Inc.

      Address: 2264 S. Bonito Way, Ste 150

      City: Meridian State: ID Zip: 83642

      Phone: 208-286-3028 Email: kfreeman@compunet.biz

- Accounts Payable
  Contact Person: Kallie Yost
  Title: Payables Specialist
  Company: CompuNet, Inc.
  Address: 2264 S. Bonito Way, Ste 150
  City: Meridian State: ID Zip: 83642
  Phone: 208-488-7226 Email: accounting@compunet.biz

- Purchase Orders
  Contact Person: Shannon Jaffa
  Title: Customer Success Manager
  Company: CompuNet, Inc.
  Address: 2264 S. Bonito Way, Ste 150
  City: Meridian State: ID Zip: 83642
  Phone: 1 (877) 822-2841 Email: help@compunet.biz

- Sales and Marketing
  Contact Person: Jamie Kelley
  Title: Business Development Manager
  Company: CompuNet, Inc.
  Address: 2264 S. Bonito Way, Ste 150
  City: Meridian State: ID Zip: 83642
  Phone: 208-559-2783 Email: jkelley@compunet.biz

- Pricing Information
  - In addition to the current typical unit pricing furnished herein, the Vendor agrees to offer all future product introductions at prices that are proportionate to Contract Pricing.
    - If answer is no, attach a statement detailing how pricing for NCPA participants would be calculated for future product introductions.

    ☒ Yes ☐ No
  - Pricing submitted includes the required NCPA administrative fee. The NCPA fee is calculated based on the invoice price to the customer.

    ☒ Yes ☐ No
  - Vendor will provide additional discounts for purchase of a guaranteed quantity.

    ☐ Yes ☒ No

TAB 4 – VENDOR PROFILE

Please provide the following information about your company:

- Company's official registered name.
  CompuNet, Inc.

- Brief history of your company, including the year it was established.
  CompuNet, Inc. is an engineering led national information technology (IT) solution provider that offers consulting, design and implementation services built on-premise or in the cloud. Founded in Grangeville, Idaho in 1998. Our offices are primarily located in the Western United States, headquartered in Boise, Idaho. Our engineering led approach is to understand our clients' business needs, engineer IT solutions that solve those needs while deploying those solutions on time and on budget. In other words, we architect technology solutions that solve business problems.

  Engineering isn't just something we do, it's who we are. Our team believes in the power and benefit of information technology (IT). Our mission is to design, test, deploy, and support the right IT solutions for each customers' most vital business goals.

  We put the customer at the center of every engagement. All CompuNet regional offices have a local, dedicated engineering team committed to delivering personalized service and an exceptional experience, every time.

- Company's Dun & Bradstreet (D&B) number.
  CompuNet DUNS 627024636

- Company's organizational chart of those individuals that would be involved in the contract.

Contract Manager Jamie Kelley Business Development Manager	**Integrated Media Solutions** Ryan Willden Sr. Systems Engineer	**Integrated Media Solutions** Marco Vranish Engineering Manager
Accounts Payable Kallie Yost Payables Specialist	**Physical Security** Jason Smart Business Development Manager	**Enterprise Networking** Darrin Good Business Development Director
Sales Reporting Kelly Freeman Corporate Services Administrator	**Information Security** Darrin Good Business Development Director	**Modern Infrastructure** Dan Beeler Business Development Director
Marketing Rainer Engel Tech Marketing Director	**Collaboration** Jamie Kelley Business Development Manager	**Modern Applications** Jeramey James Business Development Director

- Corporate office location.
  CompuNet, Inc.
  2264 S. Bonito Way, Ste 150
  Meridian, ID 83642

  - List the number of sales and services offices for states being bid in solicitation.

    Arizona: 1
    Idaho: 4
    Montana: 3
    Nevada: 1
    Oregon: 1
    Utah: 1
    Washington: 2

  - List the names of key contacts at each with title, address, phone and e-mail address.

Arizona	Idaho	Northern Idaho
Richard MacQueen, Account Manager Phoenix, AZ 480-355-2262 rmacqueen@compunet.biz	Jay Ellis, VP of Sales 2264 S. Bonito Way, Ste 150 Meridian, ID 83642 208-286-3030 jellis@compunet.biz	Dominic Ponozzo, Account Manager 507 Thain Rd Lewiston, ID 83501 208-848-3972 dponozzo@compunet.biz
Eastern Idaho	**Montana & Wyoming**	**Oregon**
Randy Elsethagen, Account Manager 3910 S. Yellowstone Ave Idaho Falls, ID 83402 208-562-4720 randyelsethagen@compunet.biz	Adam Kopczuk, Director of Sales 55 W. 14th St. #202 Helena, MT 59601 406-922-5622 akopczuk@compunet.biz	Brad Vasel, Director of Sales 15575 SW Sequoia Pkwy Ste 100 Tigard, OR 97224 503-214-4628 bvasel@compunet.biz
Utah, California & Nevada	**Western Washington**	**Eastern Washington**
Shawn Heiden, Vice President of Sales 6985 S. Union Park Center Ste 250 Cottonwood Heights, UT 84047 801-747-5052 sheiden@compunet.biz	Colleen Tillman, Sr. Account Manager Seattle, WA 503-214-4646 ctillman@compunet.biz	Dominic Casey, Director of Sales 1326 N Whitman Ln Liberty Lake, WA 99019 509-795-8270 dcasey@compunet.biz

- Define your standard terms of payment.
  CompuNet payment terms are Net 30.

- Who is your competition in the marketplace?
  While we at CompuNet find our engineering lead model unique in the marketplace we do find ourselves occasionally competing with other reseller/VAR's in the market such as CDW, SHI and WWT.

- What differentiates your company from competitors?

Our engineering-centric engagement model. Each customer works with a dedicated local team who understands their business, their infrastructure, and their goals. This team takes ownership for the entire project lifecycle, from discovery and design through deployment, training, and handoff.

Our engineering-led culture means that our engineers make decisions based on good engineering and design principles, not sales quotas. Decisions to bring in products and services to our customers are made by experienced and certified engineers who listen to customer demand. It is not driven by sales or by manufacturer pressures. This autonomy of our engineers and our cultural respect for excellent engineering sets us apart from many of our sales-led competitors. This innovative company structure makes for happy employees and happy customers.

Our people. Our team consists of highly skilled IT architects and enterprise engineers with a long history designing IT solutions that solve real-world business problems and improve operational efficiency. Our Account Managers all have a consistent thread of; experience with long-term relationship first mentalities and who do not carry sales quotas Our track record. Because of our absolute commitment to helping customers achieve success, many of our engagements become long-term relationships. We are proud that our customers across many industries see us as a trusted advisor.

Our relationships. Our partnerships bring you a broad ecosystem of technologies and solutions that can meet your business and technical requirements. Plus, we hold some of the industry's most elite partner certifications.

Our track record. Because of our absolute commitment to helping customers achieve success, many of our engagements become long-term relationships. We are proud that our customers across many industries see us as a trusted advisor.

Our approach. While we know perfection is tough to achieve, we always have it in our sights. Every day we work to design, deliver, and support IT solutions that help our customers succeed, whether they need to cut costs, boost productivity, reach new markets, or all of the above.

- Describe how your company will market this contract if awarded.
  CompuNet has an active; State, Local and Education strategy with dedicated employees and resources with many long standing and new customers. We communicate to these as well as prospective customers frequently with information about new technologies, services and buying vehicles. We also hold exclusive public sector events to accomplish the same on a larger scale. We will also publish this information on our website. Should we be awarded with the ability to be named to NCPA, CompuNet will proactively market to all of the above with an email campaign, an official press release on our News feed on our Website and social media outlets as well as at all in-person events over the coming months.

- Describe how you intend to introduce NCPA to your company.
  As a current contract holder our sales team is already accustomed to promoting and utilizing NCPA Contracts. CompuNet also advertises this contract vehicle via tradeshows and vendor events. CompuNet holds weekly all-staff meetings as well as leadership meetings in which we will announce our partnership and post to our internal communication hub.

- Describe your firm's capabilities and functionality of your on-line catalog / ordering website.
  Our corporate website; www.compunet.biz has an individual customer login for participating organizations to log in and shows order history, shipment status, invoice as well as other order details. This site is constantly being upgraded and new features/functionality added which will include marketplace capabilities in the future. Manufactures and suppliers are listed on the site today.

- Describe your company's Customer Service Department (hours of operation, number of service centers, etc.)
  Sales and Sales Support: Monday-Friday, 8:00AM-5:00PM Mountain Time.
  We strive to have representatives available for all customers during all business hours. If a customer contacts CompuNet outside of these hours, CompuNet will respond to any missed calls, voicemails, or E-mails at the earliest appropriate time.

- Green Initiatives
  - As our business grows, we want to make sure we minimize our impact on the Earth's climate. We are taking every step we can to implement innovative and responsible environmental practices throughout NCPA to reduce our carbon footprint, reduce waste, energy conservation, ensure efficient computing and much more. To that effort we ask respondents to provide their companies environmental policy and/or green initiative.
    CompuNet is committed to protecting natural resources, promoting environmental stewardship, and implementing sustainable business practices to reduce our carbon footprint. Protecting our shared environment is of fundamental importance to us. It is our policy to carry out all company activities in a manner that minimizes environmental impacts, conserves natural resources, and provides effective stewardship of the environment. To that end, CompuNet is committed to making environmental management an integral core value and vital part of our company's culture.

    As a value-added reseller (VAR) of information technology products and services our actions are somewhat limited, as we do not manufacture any of the products we sell, we lease our office spaces,

and therefore we have a very small carbon footprint. Our primary partners and distributors all have Environmental Sustainability programs in place.

CompuNet does however have some sustainability initiatives worth mentioning:

* Video conferencing to reduce the amount of in-person events
* Flexible working policy enabling employees to work from home saving travel time
* Move towards virtualized cloud environments eliminating the need for physical servers, both for us and our customers. This saves on heating and cooling of data centers
* Use of Energy Star compliant hardware reducing electricity
* Utilizing email blasts instead of marketing materials to cut down on paper and shipping
* Recycling bins placed in key office areas and cubicles
* Recycling program for all cardboard, paper, toner, aluminum and other recyclable materials
* Employees are encouraged to turn lights off when not in use
* Outdated and old PCs are donated

- Vendor Certifications (if applicable)
  - Provide a copy of all current licenses, registrations and certifications issued by federal, state and local agencies, and any other licenses, registrations or certifications from any other governmental entity with jurisdiction, allowing respondent to perform the covered services including, but not limited to, licenses, registrations, or certifications. Certifications can include M/WBE, HUB, and manufacturer certifications for sales and service.

CompuNet is licensed to do business in the identified states. We are also ISO 27001:2013 certified and hold a number of elite certifications with our partners, including but not limited to:

- Cisco – Gold Partner
- Palo Alto Networks – Diamond Level & CPSP
- Pure Storage -Elite
- HPE – Gold Partner
- VMware – Premier Solution Partner
- Dell – Gold Partner
- F5 – Unity Gold, Guardian Partner
- Microsoft – Gold Partner
- Veeam – Platinum Partner
- NetApp - Gold Partner
- Gigamon – Catalyst Gold Partner
- Genetec – Unified Elite Partner
- Gemalto – Platinum Partner
- ExtraHop - Platinum Partner
- Axis – Solution Gold Partner

TAB 5 – PRODUCTS AND SERVICES / SCOPE

- Respondent shall perform and provide these products and/or services under the terms of this agreement. The supplier shall assist the end user with making a determination of their individual needs.
- The following is a list of suggested (but not limited to) categories. List all categories along with manufacturer that you are responding with:
  - Products
    - Presentations and Displays
    - Interactive Solutions
    - Control Systems
    - Cameras and Videos
    - Audio Solutions
    - Interactive White Boards
    - Interactive Displays
    - Software
    - Curriculum and Assessment
    - Document Cameras
    - Mounts
    - Projectors and Screens
  - Services
    - Customer Support
    - Installation
    - Warranty

Integrated Media Solutions (Audio/Visual Solutions)

The Integrated Media Solutions team is committed to helping our customers create new and more productive ways to work using the latest trends in **Audio Visual technologies**. We partner with your team to design a workplace experience that's fits your unique business needs.

We believe integrated media solutions will provide the foundation for tomorrow's work experience. CompuNet's engineers can help you choose, configure and deploy solutions that will get you there.

Solutions Provided:

Video Conferencing, Design, Mobility, Endpoints & Applications, Next Generation Meeting Rooms
https://compunet.biz/solutions/integrated-media-services

Products	Manufacturers include, but are not limited to:
Presentations and Displays	LG, Sharp, Samsung, Sony, Mersive, Chief, NEC, Planar
Interactive Solutions	LG, Cisco, Crestron, Apple
Control Systems	Crestron, Extron
Cameras and Videos	Crestron, Cisco, Zoom, Extron, Vaddio, AVer, Huddly IQ, Kramer Electronics
Audio Solutions	Biamp, QSC, Shure, Crown, BSS Harman, Atlas, Audio Enhancement, Behringer, ClearOne, JBL Professional, Williams Sound, Listen Technologies
Interactive White Boards	Crestron
Interactive Displays	LG, Sharp, Cisco
Software	WebEx, Microsoft Teams, Zoom, AudioCodes
Document Cameras	Vaddio, Samsung
Mounts	Chief, Legrand, Peerless, Premier Mounts
Projectors and Screens	Sony, Panasonic, Da-Lite, Chief, Epson, Draper, NEC, Christie
Digital Signage	AppSpace, Crestron, Spinetix, Mersive, Brightsign
Rack Solutions and Accessories	Tripp Lite, Middle Atlantic, APC, Cables To Go, Contemporary Research, Countryman
Recording Solutions	Denon, Extron, Epiphan Video
Furniture	Intelligent Lecterns, SoundCraft
Codecs	Poly, Cisco, Crestron, Logitech

Services	
Installation/Support Services	Engineer: $200/hr Project Manager: $195/hr
Materials for installation a %percent Markup from cost	10%
Add-On Services	per project or per scope
Extended Warranties	per equipment/manufacturer

Distributors	
ADI Global	https://www.adiglobaldistribution.us/
Almo Pro AV	https://www.almoproav.com/
TechData	https://shop.techdata.com/

***COMPUNET USES DISTRIBUTORS TO FULFILL UNIQUE CUSTOMER NEEDS SUCH AS ADAPTERS, CONNECTORS, CABLES ETC TO FORM A COMPLETE SOLUTION.**

TAB 8 – VALUE ADDED PRODUCTS AND SERVICES

- Include any additional products and/or services available that vendor currently performs in their normal course of business that is not included in the scope of the solicitation that you think will enhance and add value to this contract for Region 14 ESC and all NCPA participating entities.

CompuNet is offering additional products and solutions to enhance and add value to this contract.

See core competencies below and included **RFP #29-20 VALUE ADDED Products and Services Pricing** with listed manufacturers and discounts.

Modern Infrastructure

Hybrid IT is the new normal!
CompuNet's Modern Infrastructure group **streamlines the journey** for organizations to become digital businesses that **deliver better experiences** to their customers and **empower** employees to do their best work. Our solutions span compute, storage and data management, on-premise to hybrid to cloud, and the digital workspace.
https://compunet.biz/solutions/modern-infrastructure

Cisco	Pure Storage	Gravity Data
VMware	Dell	Clumio
Citrix	NetApp	Veeam
HPE	Microsoft	Rubrik

CompuNet Professional Services: $250/hr

Collaboration

Today's workplace is more than just **making connections** between people, ideas and information.

CompuNet will help build or modernize your organization's unified communications framework so it can yield extraordinary value in terms of productivity, creativity and cost savings.
https://compunet.biz/solutions/collaboration

Cisco	RedSky
Microsoft	Zoom

CompuNet Professional Services: $250/hr

Enterprise Networking

Enterprise Networking technologies are evolving at an exceptional rate to keep up with customer needs to support complex datacenter environments, cloud centric applications, and mobile workforces.

The amount of available technologies positioned to meet these needs can be overwhelming to evaluate, design, and implement by IT personnel that are already stretched with advanced job duties.

This is where CompuNet excels. CompuNet's **"Engineering-Led" model** enables customers to engage with extremely knowledgeable architects and engineers with a true passion for network design and implementation. CompuNet truly **understands customer needs and will match the appropriate solution** to completely meet the requirements, as well as providing all the services required to implement the solution within the customer's timelines and ensuring that the customer's goals are fully satisfied.
https://compunet.biz/solutions/enterprise-networking

Cisco
Cisco Meraki
F5
CompuNet Professional Services: $250/hr
Gigamon
HPE
InfoBlox
OpenGear
Ekahau
Cradlepoint

Information Security

Information Security now impacts just about every aspect of today's workplace. Whether it's **securing data, validating identities or providing safe and secure remote access**, CompuNet engineers can design and build effective security solutions for every need.

Leveraging the Center for Information Security Critical Security Control framework as well as industry best practices, CompuNet takes pride in designing **tailored solutions** to solve complex problems. When tackling information security challenges, there is no one size fits all approach. We combine decades of experience and published industry frameworks to provide an attainable security blueprint for our customers.
https://compunet.biz/solutions/information-security

Arctic Wolf
Cisco
Cofense
CriticalStart
Crowdstrike
CyberArk
Exabeam
CompuNet Professional Services: $250/hr
ExtraHop
F5
Gigamon
Imperva
InfoBlox
Mimecast
Palo Alto Networks
Proofpoint
Splunk
Tenable
Thycotic
Varonis

Physical Security

Security is always too much….until it's not enough!

Let us help you understand the ROI and TCO to a solution that fits your needs.

Another strong element that CompuNet has to offer is Physical Security. With more than a **decade of experience** in the industry, we are here to listen and provide a solution that helps solve your business needs in **securing, managing, and auditing** your physical security activity.
https://compunet.biz/solutions/physical-security

Genetec
Assa Abloy
Mercury Security
CompuNet Professional Services: $250/hr

Axis
Certified Integrator
2N

Altronix

Modern Applications

The Modern Applications Group (MAG) at CompuNet. Today's applications are changing the way business gets done. Software combined with Cloud Services has made it possible to secure access to our data in physical, mobile and virtual environments. We engage with vendors whose tools have a significant impact on business outcomes. Line-of-business applications, workplace productivity and understanding the licensing landscape are all part of the consultative skill set that we employ.
https://compunet.biz/solutions/modern-applications

Microsoft 365
Microsoft Teams
Azure
CompuNet Professional Services: $250/hr

TAB 9 – REQUIRED DOCUMENTS

- Clean Air and Water Act / Debarment Notice
- Contractors Requirements
- Antitrust Certification Statements
- Required Clauses for Federal Funds Certifications
- Required Clauses for Federal Assistance by FTA
- State Notice Addendum

CLEAN AIR AND WATER ACT & DEBARMENT NOTICE

I, the Vendor, am in compliance with all applicable standards, orders or regulations issued pursuant to the Clean Air Act of 1970, as Amended (42 U.S. C. 1857 (h), Section 508 of the Clean Water Act, as amended (33 U.S.C. 1368), Executive Order 117389 and Environmental Protection Agency Regulation, 40 CFR Part 15 as required under OMB Circular A-102, Attachment O, Paragraph 14 (1) regarding reporting violations to the grantor agency and to the United States Environment Protection Agency Assistant Administrator for the Enforcement.

I hereby further certify that my company has not been debarred, suspended or otherwise ineligible for participation in Federal Assistance programs under Executive Order 12549, "Debarment and Suspension", as described in the Federal Register and Rules and Regulations

Potential Vendor	CompuNet, Inc.
Print Name	Thomas McFarlin, Vice President of Operations
Address	2264 S. Bonito Way, Ste 150
City, Sate, Zip	Meridian, ID 83642
Authorized signature	
Date	11/18/2020

CONTRACTOR REQUIREMENTS

Contractor Certification
Contractor's Employment Eligibility

By entering the contract, Contractor warrants compliance with the Federal Immigration and Nationality Act (FINA), and all other federal and state immigration laws and regulations. The Contractor further warrants that it is in compliance with the various state statues of the states it is will operate this contract in.

Participating Government Entities including School Districts may request verification of compliance from any Contractor or subcontractor performing work under this Contract. These Entities reserve the right to confirm compliance in accordance with applicable laws.

Should the Participating Entities suspect or find that the Contractor or any of its subcontractors are not in compliance, they may pursue any and all remedies allowed by law, including, but not limited to: suspension of work, termination of the Contract for default, and suspension and/or debarment of the Contractor. All costs necessary to verify compliance are the responsibility of the Contractor.

The offeror complies and maintains compliance with the appropriate statutes which requires compliance with federal immigration laws by State employers, State contractors and State subcontractors in accordance with the E-Verify Employee Eligibility Verification Program.

Contractor shall comply with governing board policy of the NCPA Participating entities in which work is being performed

Fingerprint & Background Checks
If required to provide services on school district property at least five (5) times during a month, contractor shall submit a full set of fingerprints to the school district if requested of each person or employee who may provide such service.
Alternately, the school district may fingerprint those persons or employees. An exception to this requirement may be made as authorized in Governing Board policy. The district shall conduct a fingerprint check in accordance with the appropriate state and federal laws of all contractors, subcontractors or vendors and their employees for which fingerprints are submitted to the district. Contractor, subcontractors, vendors and their employees shall not provide services on school district properties until authorized by the District.

The offeror shall comply with fingerprinting requirements in accordance with appropriate statutes in the state in which the work is being performed unless otherwise exempted.

Contractor shall comply with governing board policy in the school district or Participating Entity in which work is being performed

Business Operations in Sudan, Iran
In accordance with A.R.S. 35-391 and A.R.S. 35-393, the Contractor hereby certifies that the contractor does not have scrutinized business operations in Sudan and/or Iran.

Authorized signature _____
CompuNet, Inc. - Thomas McFarlin, Vice President of Operations

Date 11/18/2020

ANTITRUST CERTIFICATION STATEMENTS (TEX. GOVERNMENT CODE § 2155.005)

I affirm under penalty of perjury of the laws of the State of Texas that:

(1) I am duly authorized to execute this contract on my own behalf or on behalf of the company, corporation, firm, partnership or individual (Company) listed below;

(2) In connection with this bid, neither I nor any representative of the Company has violated any provision of the Texas Free Enterprise and Antitrust Act, Tex. Bus. & Comm. Code Chapter 15;

(3) In connection with this bid, neither I nor any representative of the Company has violated any federal antitrust law; and

(4) Neither I nor any representative of the Company has directly or indirectly communicated any of the contents of this bid to a competitor of the Company or any other company, corporation, firm, partnership or individual engaged in the same line of business as the Company.

Company Name	CompuNet, Inc.
Address	2264 S. Bonito Way, Ste 150
City, Sate, Zip	Meridian, ID 83642
Telephone No.	208-286-3032
Fax No.	208-286-3002
Email address	tmcfarlin@compunet.biz
Printed Name	Thomas McFarlin
Position with the company	Vice President of Operations
Authorized signature	Thomas McFarlin

REQUIRED CLAUSES FOR FEDERAL FUNDS CERTIFICATIONS

Participating Agencies may elect to use federal funds to purchase under the Master Agreement. The following certifications and provisions may be required and apply when a Participating Agency expends federal funds for any purchase resulting from this procurement process. Pursuant to 2 C.F.R. § 200.326, all contracts, including small purchases, awarded by the Participating Agency and the Participating Agency's subcontractors shall contain the procurement provisions of Appendix II to Part 200, as applicable.

APPENDIX II TO 2 CFR PART 200

(A) Contracts for more than the simplified acquisition threshold currently set at $150,000, which is the inflation adjusted amount determined by the Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council (Councils) as authorized by 41 U.S.C. 1908, must address administrative, contractual, or legal remedies in instances where contractors violate or breach contract terms, and provide for such sanctions and penalties as appropriate.

(B) Termination for cause and for convenience by the grantee or subgrantee including the manner by which it will be effected and the basis for settlement. (All contracts in excess of $10,000)

(C) Equal Employment Opportunity. Except as otherwise provided under 41 CFR Part 60, all contracts that meet the definition of "federally assisted construction contract" in 41 CFR Part 60-1.3 must include the equal opportunity clause provided under 41 CFR 60-1.4(b), in accordance with Executive Order 11246, "Equal Employment Opportunity" (30 CFR 12319, 12935, 3 CFR Part, 1964-1965 Comp., p. 339), as amended by Executive Order 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and implementing regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

Pursuant to Federal Rule (C) above, when a Participating Agency expends federal funds on any federally assisted construction contract, the equal opportunity clause is incorporated by reference herein.

(D) Davis-Bacon Act, as amended (40 U.S.C. 3141-3148). When required by Federal program legislation, all prime construction contracts in excess of $2,000 awarded by non-Federal entities must include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 3141-3144, and 3146-3148) as supplemented by Department of Labor regulations (29 CFR Part 5, "Labor Standards Provisions Applicable to Contracts Covering Federally Financed and Assisted Construction"). In accordance with the statute, contractors must be required to pay wages to laborers and mechanics at a rate not less than the prevailing wages specified in a wage determination made by the Secretary of Labor. In addition, contractors must be required to pay wages not less than once a week. The non-Federal entity must place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation. The decision to award a contract or subcontract must be conditioned upon the acceptance of the wage determination. The non- Federal entity must report all suspected or reported violations to the Federal awarding agency. The contracts must also include a provision

for compliance with the Copeland "Anti-Kickback" Act (40 U.S.C. 3145), as supplemented by Department of Labor regulations (29 CFR Part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient must be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he or she is otherwise entitled. The non-Federal entity must report all suspected or reported violations to the Federal awarding agency.

(E) Contract Work Hours and Safety Standards Act (40 U.S.C. 3701-3708). Where applicable, all contracts awarded by the non-Federal entity in excess of $100,000 that involve the employment of mechanics or laborers must include a provision for compliance with 40 U.S.C. 3702 and 3704, as supplemented by Department of Labor regulations (29 CFR Part 5). Under 40 U.S.C. 3702 of the Act, each contractor must be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than one and a half times the basic rate of pay for all hours worked in excess of 40 hours in the work week. The requirements of 40 U.S.C. 3704 are applicable to construction work and provide that no laborer or mechanic must be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission ofintelligence.

(F) Rights to Inventions Made Under a Contract or Agreement. If the Federal award meets the definition of "funding agreement" under 37 CFR §401.2 (a) and the recipient or subrecipient wishes to enter into a contract with a small business firm or nonprofit organization regarding the substitution of parties, assignment or performance of experimental, developmental, or research work under that "funding agreement," the recipient or subrecipient must comply with the requirements of 37 CFR Part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

(G) Clean Air Act (42 U.S.C. 7401-7671q.) and the Federal Water Pollution Control Act (33 U.S.C. 1251-1387), as amended— Contracts and subgrants of amounts in excess of $150,000 must contain a provision that requires the non-Federal award to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401- 7671q) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251- 1387). Violations must be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

(H) Debarment and Suspension (Executive Orders 12549 and 12689)—A contract award (see 2 CFR 180.220) must not be made to parties listed on the government wide exclusions in the System for Award Management (SAM), in accordance with the OMB guidelines at 2 CFR 180 that implement Executive Orders 12549 (3 CFR part 1986 Comp., p. 189) and 12689 (3 CFR part 1989 Comp., p. 235), "Debarment and Suspension." SAM Exclusions contains the names of parties debarred, suspended, or otherwise excluded by agencies, as well as parties declared ineligible under statutory or regulatory authority other than Executive Order 12549.

(I) Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)—Contractors that apply or bid for an award exceeding $100,000 must file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee

of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier must also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the non-Federal award.

RECORD RETENTION REQUIREMENTS FOR CONTRACTS INVOLVING FEDERAL FUNDS

When federal funds are expended by Participating Agency for any contract resulting from this procurement process, offeror certifies that it will comply with the record retention requirements detailed in 2 CFR § 200.333. The offeror further certifies that offeror will retain all records as required by 2 CFR § 200.333 for a period of three years after grantees or subgrantees submit final expenditure reports or quarterly or annual financial reports, as applicable, and all other pending matters are closed.

CERTIFICATION OF COMPLIANCE WITH THE ENERGY POLICY AND CONSERVATION ACT

When Participating Agency expends federal funds for any contract resulting from this procurement process, offeror certifies that it will comply with the mandatory standards and policies relating to energy efficiency which are contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 U.S.C. 6321 et seq.; 49 C.F.R. Part 18).

CERTIFICATION OF COMPLIANCE WITH BUY AMERICA PROVISIONS

To the extent purchases are made with Federal Highway Administration, Federal Railroad Administration, or Federal Transit Administration funds, offeror certifies that its products comply with all applicable provisions of the Buy America Act and agrees to provide such certification or applicable waiver with respect to specific products to any Participating Agency upon request. Purchases made in accordance with the Buy America Act must still follow the applicable procurement rules calling for free and open competition.

REQUIRED CLAUSES FOR FEDERAL ASSISTANCE PROVIDED BY FTA

ACCESS TO RECORDS AND REPORTS

Contractor agrees to:

a) Maintain all books, records, accounts and reports required under this Contract for a period of not less than three (3) years after the date of termination or expiration of this Contract or any extensions thereof except in the event of litigation or settlement of claims arising from the performance of this Contract, in which case Contractor agrees to maintain same until Public Agency, the FTA Administrator, the Comptroller General, or any of their duly authorized representatives, have disposed of all such litigation, appeals, claims or exceptions related thereto.

b) Permit any of the foregoing parties to inspect all work, materials, payrolls, and other data and records with regard to the Project, and to audit the books, records, and accounts with regard to the Project and to reproduce by any means whatsoever or to copy excerpts and transcriptions as reasonably needed for the purpose of audit and examination.

FTA does not require the inclusion of these requirements of Article 1.01 in subcontracts. Reference 49 CFR 18.39 (i)(11).

CIVIL RIGHTS / TITLE VI REQUIREMENTS

1) Non-discrimination. In accordance with Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. § 2000d, Section 303 of the Age Discrimination Act of 1975, as amended, 42 U.S.C. § 6102, Section 202 of the Americans with Disabilities Act of 1990, as amended, 42 U.S.C. § 12132, and Federal Transit Law at 49 U.S.C.
§ 5332, Contractor or subcontractor agrees that it will not discriminate against any employee or applicant for employment because of race, color, creed, national origin, sex, marital status age, or disability. In addition, Contractor agrees to comply with applicable Federal implementing regulations and other implementing requirements FTA may issue.

2) Equal Employment Opportunity. The following Equal Employment Opportunity requirements apply to this Contract:

   a. Race, Color, Creed, National Origin, Sex. In accordance with Title VII of the Civil Rights Act, as amended, 42 U.S.C. § 2000e, and Federal Transit Law at 49 U.S.C. § 5332, the Contractor agrees to comply with all applicable Equal Employment Opportunity requirements of U.S. Dept. of Labor regulations, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor, 41 CFR, Parts 60 et seq., and with any applicable Federal statutes, executive orders, regulations, and Federal policies that may in the future affect construction activities undertaken in the course of this Project. Contractor agrees to take affirmative action to ensure that applicants are employed, and that employees are treated during employment, without regard to their race, color, creed, national origin, sex, marital status, or age. Such action shall include, but not be limited to, the following: employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay or other forms of compensation; and selection for training, including apprenticeship. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

   b. Age. In accordance with the Age Discrimination in Employment Act (ADEA) of 1967, as amended, 29 U.S.C. Sections 621 through 634, and Equal Employment Opportunity Commission (EEOC) implementing regulations, "Age Discrimination in Employment Act", 29 CFR Part 1625, prohibit employment discrimination by Contractor against individuals on the basis of age, including present and prospective employees. In addition, Contractor agrees to comply with any implementing requirements FTA may issue.

c. Disabilities. In accordance with Section 102 of the Americans with Disabilities Act of 1990, as amended (ADA), 42 U.S.C. Sections 12101 *et seq.*, prohibits discrimination against qualified individuals with disabilities in programs, activities, and services, and imposes specific requirements on public and private entities. Contractor agrees that it will comply with the requirements of the Equal Employment Opportunity Commission (EEOC), "Regulations to Implement the Equal Employment Provisions of the Americans with Disabilities Act," 29 CFR, Part 1630, pertaining to employment of persons with disabilities and with their responsibilities under Titles I through V of the ADA in employment, public services, public accommodations, telecommunications, and other provisions.

d. Segregated Facilities. Contractor certifies that their company does not and will not maintain or provide for their employees any segregated facilities at any of their establishments, and that they do not and will not permit their employees to perform their services at any location under the Contractor's control where segregated facilities are maintained. As used in this certification the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive or are in fact segregated on the basis of race, color, religion or national origin because of habit, local custom, or otherwise. Contractor agrees that a breach of this certification will be a violation ofthis Civil Rights clause.

3) Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation, made by Contractor for work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by Contractor of Contractor's obligations under this Contract and the regulations relative to non-discrimination on the grounds of race, color, creed, sex, disability, age or national origin.

4) Sanctions of Non-Compliance. In the event of Contractor's non-compliance with the non-discrimination provisions of this Contract, Public Agency shall impose such Contract sanctions as it or the FTA may determine to be appropriate, including, but not limited to: 1) Withholding of payments to Contractor under the Contract until Contractor complies, and/or; 2) Cancellation, termination or suspension of the Contract, in whole or in part.

Contractor agrees to include the requirements of this clause in each subcontract financed in whole or in part with Federal assistance provided by FTA, modified only if necessary to identify the affected parties.

DISADVANTAGED BUSINESS PARTICIPATION

This Contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, "*Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs*", therefore, it is the policy of the Department of Transportation (DOT) to ensure that Disadvantaged Business Enterprises (DBEs), as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in the performance of DOT-assisted contracts.

1) Non-Discrimination Assurances. Contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this Contract. Contractor shall carry out all applicable requirements of 49 CFR Part 26 in the award and administration of DOT-assisted contracts. Failure by Contractor to carry out these requirements is a material breach of this Contract, which may result in the termination of this Contract or other such remedy as public agency deems appropriate. Each subcontract Contractor signs with a subcontractor must include the assurance in this paragraph. (See 49 CFR 26.13(b)).

2) Prompt Payment. Contractor is required to pay each subcontractor performing Work under this prime Contract for satisfactory performance of that work no later than thirty (30) days after Contractor's receipt of payment for that Work from public agency. In addition, Contractor is required to return any retainage payments to those subcontractors within thirty (30) days after the subcontractor's work related to this Contract is satisfactorily completed and any liens have been secured. Any delay or postponement of payment from the above time frames may occur only for good cause following written approval of public agency. This clause applies to both DBE and non-DBE subcontractors. Contractor must promptly notify public agency whenever a DBE subcontractor performing Work related to this Contract is terminated or fails to complete its Work, and must make good faith efforts to engage another DBE subcontractor to perform at least the same amount of work. Contractor may not terminate any DBE subcontractor and perform that Work through its own forces, or those of an affiliate, without prior written consent of publicagency.

3) DBE Program. In connection with the performance of this Contract, Contractor will cooperate with public agency in meeting its commitments and goals to ensure that DBEs shall have the maximum practicable opportunity to compete for subcontract work, regardless of whether a contract goal is set for this Contract. Contractor agrees to use good faith efforts to carry out a policy in the award of its subcontracts, agent agreements, and procurement contracts which will, to the fullest extent, utilize DBEs consistent with the efficient performance of the Contract.

ENERGY CONSERVATION REQUIREMENTS

Contractor agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State energy conservation plans issued under the Energy Policy and Conservation Act, as amended, 42 U.S.C. Sections 6321 *et seq.* and 41 CFR Part 301-10.

FEDERAL CHANGES

Contractor shall at all times comply with all applicable FTA regulations, policies, procedures and directives, including without limitation those listed directly or by reference in the Contract between public agency and the FTA, as they may be amended or promulgated from time to time during the term of this contract. Contractor's failure to so comply shall constitute a material breach of this Contract.

INCORPORATION OF FEDERAL TRANSIT ADMINISTRATION (FTA) TERMS

The provisions include, in part, certain Standard Terms and Conditions required by the U.S. Department of Transportation (DOT), whether or not expressly set forth in the preceding Contract provisions. All contractual provisions required by the DOT, as set forth in the most current FTA Circular 4220.1F, dated November 1, 2008, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Contract. Contractor agrees not to perform any act, fail to perform any act, or refuse to comply with any public agency requests that would cause public agency to be in violation of the FTA terms and conditions.

NO FEDERAL GOVERNMENT OBLIGATIONS TO THIRD PARTIES

Agency and Contractor acknowledge and agree that, absent the Federal Government's express written consent and notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying Contract, the Federal Government is not a party to this Contract and shall not be subject to any obligations or liabilities to agency, Contractor, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying Contract.

Contractor agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

PROGRAM FRAUD AND FALSE OR FRAUDULENT STATEMENTS

Contractor acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. §§ 3801 et seq. and U.S. DOT regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this Contract. Upon execution of the underlying Contract, Contractor certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to me made, pertaining to the underlying Contract or the FTA assisted project for which this Contract Work is being performed.

In addition to other penalties that may be applicable, Contractor further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986 on Contractor to the extent the Federal Government deems appropriate.

Contractor also acknowledges that if it makes, or causes to me made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with Federal assistance originally awarded by FTA under the authority of 49 U.S.C. § 5307, the Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307 (n)(1) on the Contractor, to the extent the Federal Government deems appropriate.

Contractor agrees to include the above clauses in each subcontract financed in whole or in part with Federal assistance provided by FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

STATE NOTICE ADDENDUM

The National Cooperative Purchasing Alliance (NCPA), on behalf of NCPA and its current and potential participants to include all county, city, special district, local government, school district, private K-12 school, higher education institution, state, tribal government, other government agency, healthcare organization, nonprofit organization and all other Public Agencies located nationally in all fifty states, issues this Request for Proposal (RFP) to result in a national contract.

For your reference, the links below include some, but not all, of the entities included in this proposal:

http://www.usa.gov/Agencies/State_and_Territories.shtml

https://www.usa.gov/local-governments

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021
Subject:	Contract w/ River City Environmental for As-Needed Grease Trap & Oil-Water Separator Pumping & Cleaning
Presenter:	N/A
Prepared By:	Paul Schut
Reviewed By:	Robert Blain

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:**	
☒ Consent Agenda	☐ Discussion Only (1st)	☐ Pass Motion
☐ Public Hearing	☐ Discussion Only (2nd)	☒ Pass Resolution
☐ Scheduled Business	☐ Decision/Direction	☐ Pass Ordinance
	☐ Sign Letter/Document	☒ Execute Contract

Summary / Background Information

Benton County has multiple grease traps & oil-water separators at various locations, including one very large 20,000-gallon tank next to the Jail.

The City of Kennewick has a list of five (5) authorized vendors for this type of service, and Benton County found that River City Environmental Inc. is one of the only approved contractors that has the necessary equipment to perform this volume of work needed.

The Facilities Manager reviewed the quote for completeness and recommends awarding the said project to River City Environmental, Inc., Portland, OR

A contract has been prepared, reviewed, and approved to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division and has been executed by River City Environmental, Inc.

Fiscal Impact

Amount: $225,000.00 plus WSST

Fund: Fund # 0000-101 – Facilities Department

Recommendation

It is recommended by the Facilities Manager & Procurement and Contract Coordinators to approve the contract with River City Environmental, Inc. for as-needed grease trap & oil-water separator pumping & cleaning.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF AWARDING A CONTRACT TO RIVER CITY ENVIRONMENTAL, INC, PORTLAND, OREGON FOR AS-NEEDED GREASE TRAP & OIL-WATER SEPARATOR PUMPING & CLEANING AND AUTHORIZING THE CHAIRMAN TO SIGN SAID CONTRACT

WHEREAS, Benton County has multiple grease traps & oil-water separators at various locations, including one very large 20,000-gallon tank next to the Jail; and

WHEREAS, the City of Kennewick has a list of five (5) authorized vendors for this type of service; and

WHEREAS, Benton County found that River City Environmental Inc. is one of the only approved contractors that has the necessary equipment to perform the volume of work needed; and

WHEREAS, River City Environmental Inc. has provided a quote for as-needed pumping & cleaning of both grease traps & oil-water separators at all Benton County locations; and

WHEREAS, the Facilities Manager reviewed the quote for completeness and recommends awarding the said project to River City Environmental, Inc., Portland, OR; and

WHEREAS, a contract has been prepared, and reviewed and approved as to form by the departmental assigned Deputy Prosecuting Attorney from the Civil Division, and has been executed by River City Environmental, Inc.; and

WHEREAS, the Facilities Manager recommends the Chairman sign said contract; **NOW, THEREFORE,**

BE IT RESOLVED, the Board of Benton County Commissioners concurs with the Facilities Manager's recommendation and awards the as-needed grease trap & oil-water separator pumping & cleaning to River City Environmental, Inc. in the amount not to exceed $225,000.00 excluding WSST; and

BE IT FURTHER RESOLVED, the Board hereby authorizes the Chairman of the Board of County Commissioners to sign on behalf of Benton County said contract to River City Environmental, Inc.; and

BE IT FURTHER RESOLVED, the contract shall begin on the date last signed and expire on June 30, 2022.

Dated this 22nd day of June 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Department
C: Auditors, PA, River City Environmental, Inc.

P. Schut

BENTON COUNTY
PURCHASED SERVICE CONTRACT

TERMS AND CONDITIONS

THIS CONTRACT is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **RIVER CITY ENVIRONMENTAL, INC.**, a corporation organized under the laws of the State of Washington with its principal offices at 5410 NE 109th Ave, Portland, OR 97220 (hereinafter "CONTRACTOR").

In consideration of the mutual benefits and covenants contained herein, the parties agree as follows:

1. CONTRACT DOCUMENTS

This Contract consists of these Terms and Conditions and the following documents:

a. Exhibit A – Quote;
b. Exhibit B – Prevailing Wage Information; and

2. DURATION OF CONTRACT

The term of this Contract shall begin upon execution by both parties and shall expire on June 30, 2022. The COUNTY further reserves the right to renew the Contract for an additional one year without advertising. The CONTRACTOR shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. SERVICES PROVIDED

a. The CONTRACTOR, on as-needed basis, pump/clean the grease trap & Oil Water Separators at various Benton County Locations. A detailed description of the services to be performed by the CONTRACTOR is set forth in Exhibit A, "Quote", which is attached hereto and incorporated herein by reference.

b. In the event that the requested work encompasses work that is legally required to be completed by another type of contractor, CONTRACTOR shall inform COUNTY of that fact and shall coordinate with COUNTY to complete the work in

conjunction with the other contractor. In the event that the requested work requires, under State or local law, the issuance of a building or other permit, CONTRACTOR shall be responsible for procuring such permit and arranging for inspection and certification of the work. CONTRACTOR may bill COUNTY for the full cost of the permit and any labor time for any of its employees involved in the permitting process, but may not charge any additional processing or other fees that it does not actually incur.

c. Upon completion of services, CONTRACTOR shall ensure that a completed work order, detailing the work done, the time expended, and the parts used, is remitted to the COUNTY's Contract Representative, or his or her designee, prior to the CONTRACTOR leaving the work site.

d. The COUNTY does not guarantee utilization of the "As needed Service" portion this contract. The COUNTY may award contracts to other vendors for similar products or services. Actual utilization will be based on availability, proximity of vendor facilities, frequency of deliveries, or any other factor deemed important to the COUNTY.

d. The CONTRACTOR agrees to provide its own labor and materials. Unless otherwise provided in this Contract, no material, labor, or facilities will be furnished by the COUNTY.

e. The CONTRACTOR shall perform the work specified in this Contract according to standard industry practice.

f. The CONTRACTOR shall complete its work in a timely manner and in accordance with the schedule agreed by the parties.

g. The CONTRACTOR shall confer with the COUNTY from time to time during the progress of the work. The CONTRACTOR shall prepare and present status reports and other information that may be pertinent and necessary, or as may be requested by the COUNTY.

4. CONTRACT REPRESENTATIVES

Each party to this Contract shall have a Contract Representative. Each party may change its representative upon providing written notice to the other party. The parties' Contract Representatives are as follows:

a. For CONTRACTOR:

Name:	Daniel Zundel
Address:	5410 NE 109th Ave Portland, OR 97220-1128
Phone:	503-252-6144
Email:	dan.zundel@rivercityusa.com

b. For COUNTY:

Name:	Jeff Jones
Address:	7122 W Okanogan Place; Building A Kennewick, WA 99337
Phone:	509-736-3080
Email:	Thomas.Jones@co.benton.wa.us

5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid at the rates set forth in Exhibit A, "Quote", which is attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed Two Hundred Twenty-five thousand dollars and zero cents ($225,000.00), excluding W.S.S.T. The CONTRACTOR shall monitor its cumulative total accounts receivables to ensure that it will not do work in excess of the maximum total amount payable set forth in this section and that its total billings will not exceed the maximum total amount payable. Any dollar amount above the maximum total amount payable will only be approved with an amendment to this Contract.

c. Prior to any compensation being paid, CONTRACTOR shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov/ and then forward a copy of the statement to COUNTY'S Contract Representative. At the completion of all work contemplated by this Contract, or at the end of the contract term, whichever comes first, CONTRACTOR shall submit an Affidavit of Wages Paid via https://secureaccess.wa.gov/ and then forward a copy of the affidavit to COUNTY'S Contract Representative. No final payment will be made until the affidavit is provided. COUNTY requires that all Statements of Intent to Pay Prevailing Wages and Affidavits of Wages Paid be filed electronically with

https://secureaccess.wa.gov/.

d. The CONTRACTOR may invoice the COUNTY for filing fees paid to the Washington State Department of Labor and Industries for filing one Statement of Intent to Pay Prevailing Wages per year and one Affidavit of Wages Paid per site visit when billable work is performed.

e. No payment shall be for any work performed by CONTRACTOR, except for work identified and set forth in this Contract.

6. INVOICING

a. The CONTRACTOR may submit invoices to the COUNTY for services that have been performed as they are performed, but shall not submit invoices more than once per calendar month. Such invoices shall detail the work done, the personnel involved, and the date of service and shall also reference the work order provided to COUNTY as required in Section 3.c. of this Contract.

b. Before or at the time that the CONTRACTOR submits its first invoice, the CONTRACTOR and any subcontractors and sub-subcontractors employed by the CONTRACTOR for the work contemplated by this Contract shall submit a Statement of Intent to Pay Prevailing Wages via https://secureaccess.wa.gov and then forward a copy of the statement to the COUNTY's Contract Representative.

c. The CONTRACTOR shall not be paid for work rendered under this Contract until all required parties have executed and submitted a Statement of Intent to Pay Prevailing Wages in accordance with this section and the work has been performed to the satisfaction of the COUNTY. The COUNTY shall only be liable to pay for invoiced amounts that are detailed and supported as described in this section. The COUNTY shall authorize payment when the work billed is accepted by the COUNTY and will remit payment for the accepted work, less any retainage or other legally withheld funds, within thirty (30) days after receiving the invoice.

d. For each invoiced and approved payment due to the CONTRACTOR under this section, the COUNTY shall withhold from the earned portion of the payment (*i.e.* that portion excluding sales tax or other tax) five percent (5%) as a contract retainage, pursuant to RCW 60.28.011 and in accordance with chapter 60.28 RCW. Within ten (10) days following the execution of this

Contract, the CONTRACTOR shall submit written notice to the COUNTY stating the method it has elected pursuant to RCW 60.28.011(4) for the holding of moneys retained by the COUNTY. If such written election is not received by the COUNTY, then the COUNTY may choose any method allowed by RCW 60.28.011(4)(a)-(c) for holding the retained moneys.

7. AMENDMENTS AND CHANGES IN WORK

a. In the event of any errors or omissions by the CONTRACTOR in the performance of any work required under this Contract, the CONTRACTOR shall make any and all necessary corrections without additional compensation. All work submitted by the CONTRACTOR shall be certified by the CONTRACTOR and checked for errors and omissions. The CONTRACTOR shall be responsible for the accuracy of the work, even if the work is accepted by the COUNTY.

b. No amendment or modification shall be made to this Contract, unless set forth in a written Contract Amendment signed by both parties. Work under a Contract Amendment shall not proceed until the Contract Amendment is duly executed by the COUNTY.

8. HOLD HARMLESS AND INDEMNIFICATION

a. The CONTRACTOR shall hold harmless, indemnify, and defend the COUNTY and its officers, officials, employees, and agents from and against any and all claims, actions, suits, liabilities, losses, expenses, damages, and judgments of any nature whatsoever, including reasonable costs and attorneys' fees in defense thereof, for injury, sickness, disability, or death to persons or damage to property or business, arising in connection with the work performed under this Contract, or caused or occasioned in whole or in part by reason of the presence of the CONTRACTOR or its subcontractors or their property upon or in the proximity of the property of the COUNTY. PROVIDED, that the CONTRACTOR'S obligation hereunder shall not extend to injury, sickness, death, or damage caused by or arising out of the sole negligence of the COUNTY or its officers, officials, employees, or agents. In the event of the concurrent negligence of the CONTRACTOR or its subcontractors, employees, or agents and the COUNTY or its employees or agents this indemnification obligation of the CONTRACTOR shall be valid and enforceable only to the extent of the negligence of the CONTRACTOR and its subcontractors, employees, and agents.

b. In any and all claims against the COUNTY or its officers, officials, employees, or agents by any employee of the CONTRACTOR, subcontractor, anyone directly or indirectly employed by any of them, or anyone for whose acts any of them may be liable, the indemnification obligation under this Section shall not be limited in any way by any limitation on the amount or type of damages, compensation, or benefits payable by or for the CONTRACTOR or subcontractor under workers compensation acts, disability benefit acts, or other employee benefit acts, it being clearly agreed and understood by the parties hereto that the CONTRACTOR expressly waives any immunity the CONTRACTOR might have had under such laws, including but not limited to Title 51 of the Revised Code of Washington. **By executing this Contract, the CONTRACTOR acknowledges that the foregoing waiver has been mutually negotiated by the parties and that the provisions of this Section shall be incorporated, as relevant, into any contract the CONTRACTOR makes with any subcontractor or agent performing work hereunder. CONTRACTOR'S obligations under this Section 8 shall survive termination and expiration of this Contract.**

c. The CONTRACTOR'S obligations hereunder shall include, but are not limited to, investigating, adjusting, and defending all claims alleging loss from action, error, or omission, or breach of any common law, statutory, or other delegated duty by the CONTRACTOR or the CONTRACTOR'S employees, agents, or subcontractors. The foregoing indemnification obligations of the CONTRACTOR are a material inducement to COUNTY to enter into this Contract, are reflected in the CONTRACTOR's compensation, and have been mutually negotiated by the parties.

9. INSURANCE

The CONTRACTOR shall obtain and maintain continuously the following insurance:

a. **Workers Compensation:** CONTRACTOR shall comply with all State of Washington workers compensation statutes and regulations. Prior to the start of work under this Contract, workers compensation coverage shall be provided for all employees of CONTRACTOR and employees of any subcontractor or sub-subcontractor. Coverage shall include bodily injury (including death) by accident or disease, which arises out of or in connection with the performance of this Contract.

CONTRACTOR shall submit a copy of its certificate of coverage from the Washington State Department of Labor and Industries prior to commencement of work. Except as prohibited by law, CONTRACTOR waives all rights of subrogation against the COUNTY for recovery of damages to the extent they are covered by workers compensation and employers liability.

If CONTRACTOR, subcontractor, or sub-subcontractor fails to comply with all State of Washington workers compensation statutes and regulations and COUNTY incurs fines or is required by law to provide benefits to or obtain coverage for such employees, CONTRACTOR shall indemnify the COUNTY. Indemnity shall include all fines, payment of benefits to CONTRACTOR or subcontractor employees, or their heirs or legal representatives, and the cost of effecting coverage on behalf of such employees. Any amount owed to COUNTY by CONTRACTOR pursuant to the indemnity agreement may be deducted from any payments owed by COUNTY to CONTRACTOR for performance of this Contract.

b. **Commercial General Liability and Employers Liability Insurance:** Prior to the start of work under this Contract, CONTRACTOR shall maintain commercial general liability coverage (policy form CG0001 or equivalent) to protect the CONTRACTOR from claims for wrongful death, bodily injury, personal injury, and property damage, which may arise from any actions or inactions under this Contract by CONTRACTOR or by anyone directly employed by or contracting with CONTRACTOR. The minimum commercial general liability insurance limits shall be as follows:

$2,000,000 General Aggregate
$2,000,000 Products/Completed Operations Aggregate
$1,000,000 Personal Injury and Advertising Injury
$1,000,000 Each Occurrence

The commercial general liability policy must contain an endorsement naming the COUNTY and its elected and appointed officials, employees, and agents as an Additional Insured and an endorsement that specifically states that CONTRACTOR's commercial general liability policy shall be primary, and not contributory, with any other insurance maintained by the COUNTY.

The CONTRACTOR must provide commercial general liability coverage that does not exclude any activity to be performed in fulfillment of this Contract and does not exclude liability

pursuant to the indemnification requirement under Section 8. CONTRACTOR'S commercial general liability policy shall provide cross liability coverage, indicating essentially that except with respect to the limits of insurance and any rights or duties specifically assigned in this coverage part to the first named insured, this insurance applies as if each named insured were the only named insured, and separately to each insured against whom claims are made or suit is brought.

CONTRACTOR shall also provide Stop Gap Employer's Liability Insurance coverage with minimum limits as follows:

$1,000,000 Each Accident
$1,000,000 Policy Limit for Disease
$1,000,000 Each Employee for Disease

c. **Automobile Liability:** The CONTRACTOR shall maintain, during the life of this Contract, Automobile Liability Insurance (ISO Form Number CA0001 or equivalent) covering any auto (Symbol 1), or if the CONTRACTOR has no owned autos, any hired (Symbol 8) and non-owned autos (Symbol 9), in the amount of not less than one million dollars ($1,000,000) per accident for Bodily Injury and Property Damage to protect CONTRACTOR from claims that may arise from the performance of this Contract, whether such operations are by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

d. **Other Insurance Provisions:**

1. The CONTRACTOR'S liability insurance provisions shall be primary with respect to any insurance or self-insurance programs covering the COUNTY and its elected and appointed officers, officials, employees, and agents. CONTRACTOR'S liability insurance policies must be endorsed to show this primary coverage. Any insurance, self-insured retention, deductible, or risk retention maintained or participated in by the COUNTY shall be excess and not contributory to CONTRACTOR'S insurance policies.

2. The CONTRACTOR'S liability insurance policies shall contain no special limitations on the scope of protection afforded to the COUNTY as an additional insured.

3. Any failure to comply with reporting provisions of the policies shall not affect coverage provided to the

COUNTY or its officers, officials, employees, or agents.

4. The CONTRACTOR'S insurance shall apply separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the insurer's liability.

5. The CONTRACTOR shall include all subcontractors as insureds under its policies or shall furnish separate certificates and endorsements for each subcontractor. All coverage for subcontractors shall be subject to all of the requirements stated herein.

6. The insurance limits mandated for any insurance coverage required by this Contract are not intended to be an indication of exposure nor are they limitations on indemnification. **If the CONTRACTOR maintains higher limits than the minimums required in this contract, the COUNTY shall be entitled to coverage for the higher limits maintained by the CONTRACTOR.**

7. The CONTRACTOR shall maintain all required policies in force from the time services commence until services are completed. Certificates, policies, and endorsements expiring before completion of services shall be promptly replaced. All liability insurance required under this Contract shall be written on an Occurrence Policy form.

8. CONTRACTOR hereby agrees to waive subrogation with respect to each insurance policy maintained under this Contract. When required by an insurer, or if a policy condition does not permit CONTRACTOR to enter into a pre-loss agreement to waive subrogation without an endorsement, then CONTRACTOR agrees to notify the insurer and obtain such endorsement. This requirement shall not apply to any policy which includes a condition expressly prohibiting waiver of subrogation by the insured or which voids coverage should the CONTRACTOR enter into such a waiver of subrogation on a pre-loss basis.

9. Compensation and/or payments due to CONTRACTOR under this Contract are expressly conditioned upon CONTRACTOR’S strict compliance with all insurance requirements. Payment to CONTRACTOR may be suspended in the event of non-compliance. Upon receipt of evidence of CONTRACTOR’S compliance, such payments not otherwise

subject to withholding or set-off will be released to CONTRACTOR.

e. **Verification of Coverage and Acceptability of Insurers:**

All insurance required under this Contract shall be issued by companies authorized to do business under the laws of the State of Washington that have an A. M. Best's rating of at least A-VII or better in the most recently published edition of Best's Reports. Any exception to this requirement must be reviewed and approved in writing by the Benton County Risk Manager. If an insurer is not admitted to do business within Washington State, all insurance policies and procedures for issuing the insurance policy must comply with Chapter 48.15 RCW and Chapter 284-15 WAC.

1. All insurance to be maintained by the CONTRACTOR, other than Auto Liability and Workers' Compensation, shall specifically include the COUNTY and its elected officials, employees, and volunteers as an "Additional Insured" by way of endorsement and shall not be reduced or canceled without thirty (30) days prior written notice to the COUNTY. Any insurance or self-insurance maintained by the COUNTY or its elected and appointed officials, employees, or agents shall be excess of the CONTRACTOR's insurance and shall not contribute to it.

2. Certificates of Liability Insurance, with endorsements attached, must be provided to the County's Contract Representative referenced in Section 4.

3. All written notices under this Section 9 and notice of cancellation or change of required insurance coverages shall be mailed to the COUNTY's Contract Representative referenced in Section 4.

4. The CONTRACTOR or its broker shall provide a copy of any and all insurance policies specified in this Contract upon request of the Benton County Risk Manager at the following address: Benton County Risk Manager, 7122 W. Okanogan Place, Bldg. A, Kennewick, WA 99336.

11. NON-WAIVER OF RIGHTS

The parties agree that the excuse or forgiveness of performance, or waiver of any provision(s) of this Contract does not constitute a waiver of such provision(s) or future performance, or prejudice the right of the waiving party to enforce any of the provisions of this Contract at a later time. All waivers of any provision(s) of this Contract shall be in writing and in the absence of such, no action or inaction shall be construed to be such a waiver.

12. INDEPENDENT CONTRACTOR

a. The CONTRACTOR'S services shall be furnished by the CONTRACTOR as an independent contractor and not as an agent, employee or servant of the COUNTY. The CONTRACTOR specifically has the right to direct and control CONTRACTOR'S own activities in providing the agreed services in accordance with the specifications set out in this Contract.

b. The CONTRACTOR acknowledges that the entire compensation for this Contract is set forth in Section 5 of this Contract, and neither the CONTRACTOR nor its employees are entitled to any COUNTY benefits, including, but not limited to: vacation pay; holiday pay; sick leave pay; medical, dental, or other insurance benefits; fringe benefits; or any other rights or privileges afforded to COUNTY employees.

c. The CONTRACTOR shall have and maintain complete responsibility and control over all of its subcontractors, employees, agents, and representatives. No subcontractor, employee, agent, or representative of the CONTRACTOR shall be, deem to be, act, or purport to act as an employee, agent, or representative of the COUNTY.

d. The CONTRACTOR shall pay for all taxes, fees, licenses, or payments required for the performance of work under this Contract by federal, state, or local law that is now or may be enacted during the term of this Contract.

e. The CONTRACTOR agrees to immediately remove any of its employees or agents from their assignment to perform services under this Contract upon receipt of a written request to do so from the COUNTY'S Contract Representative or designee.

13. INSPECTION OF BOOKS AND RECORDS

The COUNTY may, at reasonable times, inspect the books and records of the CONTRACTOR relating to the performance of this Contract. The CONTRACTOR shall keep, and make available to the County upon request, all records relating to the performance of this Contract for six (6) years after Contract termination or expiration.

14. CHOICE OF LAW AND JURISDICTION

This Contract has been and shall be construed as having been made and delivered within the State of Washington, and it is agreed by each party hereto that this Contract shall be governed by the laws of the State of Washington, both as to its interpretation and performance.

15. SUCCESSORS AND ASSIGNS

The COUNTY, to the extent permitted by law, and the CONTRACTOR each bind themselves, their partners, successors, executors, administrators, and assigns to the other party to this Contract and to the partners, successors, administrators, and assigns of such other party in respect to all covenants to this Contract.

16. TERMINATION

a. The COUNTY may terminate this Contract in whole or in part whenever the COUNTY determines in its sole discretion that such termination is in the best interests of the COUNTY. The COUNTY may terminate this Contract upon giving ten (10) days written notice by certified mail to the CONTRACTOR. In that event, the COUNTY shall pay the CONTRACTOR for actual costs incurred by the CONTRACTOR in performing the Contract up to the date of such notice. Payment shall be made in accordance with Section 6, Invoicing. Nothing in this Section shall limit the rights of the COUNTY pursuant to this Contract or by law.

17. COMPLIANCE WITH LAWS AND PREVAILING WAGES

The CONTRACTOR shall comply with all applicable federal, state, and local laws, rules, and regulations in performing this Contract, including, but not limited to, prevailing wage laws. Specifically, at a minimum, the prevailing wages set out in Exhibit B, which is attached hereto and incorporated herein by reference, shall be paid to all employees, agents, subcontractors, and sub-subcontractors who do any work for the CONTRACTOR on this project. The CONTRACTOR shall ensure that all subcontractors or sub-

subcontractors sign an agreement to pay these same wages and that the signed agreement is submitted to the COUNTY prior to subcontractor commencing any work on the project. This schedule of prevailing wages is duplicated from the Washington State Department of Labor and Industries website, it is provided for informational purposes only, and the COUNTY takes no responsibility for any inaccuracies or ambiguities contained therein. If CONTRACTOR believes the schedule contains any such ambiguities or inaccuracies, then the CONTRACTOR is responsible for contacting the Washington State Department of Labor and Industries directly to resolve them. Perceived inaccuracies or ambiguities in the schedule shall not relieve CONTRACTOR from its obligation pursuant to this Contract and relevant law to pay prevailing wages.

18. NONDISCRIMINATION

The CONTRACTOR and its assignees, delegates, and subcontractors shall not discriminate against any person in the performance of any of their obligations hereunder on the basis of race, religion, color, national origin, sex, age, honorably discharged veteran or military status, sexual orientation, marital status, or the presence of any sensory, mental, or physical disability.

19. DISPUTES

Disputes over the CONTRACTOR’s performance shall be promptly addressed in writing by the aggrieved party in order that such matters may be settled or other appropriate action promptly taken. Any dispute relating to the quality or acceptability of performance and/or compensation due the CONTRACTOR shall be decided by the COUNTY'S Contract Representative or designee. All rulings, orders, instructions, and decisions of the COUNTY'S Contract Representative shall be final and conclusive, subject to CONTRACTOR'S right to seek judicial relief.

20. ASSIGNMENT, DELEGATION, AND SUBCONTRACTING

The CONTRACTOR shall perform the services under this Contract using only its bona fide employees or agents, and the obligations and duties of the CONTRACTOR under this Contract shall not be assigned, delegated, or subcontracted to any other person or firm without the prior written consent of the COUNTY.However, subcontracting is allowed for Parking Lot Cleaning, Side Walk Cleaning, and Brush Mowing Services Only.

21. ENTIRE AGREEMENT

The parties agree that this Contract is the complete expression of their agreement. Any oral or written representations or understandings not incorporated in this Contract are specifically excluded.

22. NOTICES

Any notices shall be effective if personally served upon the other party or if mailed by registered or certified mail, return receipt requested, to the addresses set out in Section 4 of this Contract. Notice may also be given by e-mail, using the e-mail addresses set forth in Section 4 of this Contract, with the original to follow by regular mail. Notice shall be deemed effective three (3) days following the date of mailing or immediately if personally served. For service by e-mail, service shall be effective at the beginning of the next working day.

23. SEVERABILITY

a. If a court of competent jurisdiction holds any part, term or provision of this Contract to be illegal, or invalid in whole or in part, the validity of the remaining provisions shall not be affected, and the parties' rights and obligations shall be construed and enforced as if the Contract did not contain the particular provision held to be invalid.

b. If it should appear that any provision of this Contract is in conflict with any statutory provision of the State of Washington, said provision which may conflict therewith shall be deemed inoperative and null and void insofar as it may be in conflict therewith, and shall be deemed modified to conform to such statutory provision.

24. LITIGATION HOLD NOTICE

In the event the COUNTY learns of circumstances leading to an increased likelihood of litigation regarding any matter where the records kept by CONTRACTOR regarding the work performed under this Contract may be of evidentiary value, the COUNTY may issue written notice to CONTRACTOR of such circumstances and direct the CONTRACTOR to “hold” such records. In the event that CONTRACTOR receives such written notice, CONTRACTOR shall abide by all directions therein whether or not such written notice is received

at a time when a Contract between CONTRACTOR and the COUNTY is in force. Such directions will include, but will not be limited to, instructions to suspend any regularly scheduled purge schedule.

25. PUBLIC RECORDS ACT

The CONTRACTOR hereby acknowledges that the COUNTY is a governmental entity and as such is subject to the requirements of the Public Records Act, Chapter 42.56 RCW. Accordingly, CONTRACTOR understands that to the extent a proper request is made the COUNTY may be required by virtue of that Act to disclose any records related to this Contract actually in its possession or in CONTRACTOR'S possession. This may include records that CONTRACTOR regards as confidential or proprietary. To the extent that CONTRACTOR provides any records to the COUNTY that it regards as confidential or proprietary, CONTRACTOR agrees to conspicuously mark the records as such. The CONTRACTOR also hereby waives any and all claims or causes of action for any injury it may suffer by virtue of COUNTY'S release of records covered under the Public Records Act. The COUNTY agrees to take all reasonable steps to notify CONTRACTOR in a timely fashion of any request made under the Public Records Act which will require disclosure of any records marked by CONTRACTOR as confidential or proprietary, so that CONTRACTOR may seek a judicial order of protection if necessary.

26. SURVIVABILITY

All Contract terms, which by their context are clearly intended to survive the termination and/or expiration of this Contract, shall so survive. These terms include, but are not limited to, provisions for: indemnification; insurance; non-waiver; inspection of books and records; choice of law; compliance with laws; litigation hold; and the Public Records Act.

27. CONFIDENTIALITY

The CONTRACTOR and its employees, subcontractors, and subcontractors' employees shall maintain the confidentiality of all information provided by the COUNTY or acquired by the COUNTY in performance of this Contract, except upon the prior written consent of the COUNTY or an order entered by a court of competent jurisdiction. The CONTRACTOR shall promptly give the COUNTY written notice of any judicial proceeding seeking disclosure of such information.

IN WITNESS WHEREOF, the parties have caused this Contract to be signed by their duly constituted legal representatives and it is effective on the last date signed.

Date: _____	Date: 06.10.2021
BENTON COUNTY	**RIVER CITY ENVIRONMENTAL, INC.**
_____	Mick Wheeler
Chairman Benton County Board of County Commissioners	Signature
	Contracts Administator
Approved as to Form:	Title:
_____	Mick Wheeler
Civil Deputy Prosecuting Attorney	PRINTED NAME

RIVER CITY
ENVIRONMENTAL, INC.

Exhibit A: Quote

Benton County Facilities
7122 W Okanogan Pl
Kennewick WA 99336

Clean grease trap onsite and also go inside and pressure wash the solids/sludge out (5 hours to 6 hours onsite)

Vacuum tanker x 4	$8,640.00
Labor x 2 (confine space)	$2,935.00
Per Diem	$1,350.00
Confine space	$425.00
Tools	No Charge
Support truck	No Charge
Pressure washer (hot)	$350.00
PPE gear	$250.00
Disposal 22,000 gallons	$4,840.00 (.22 per gallon) (this is all trucks getting full I think you guys have 20,000 so it should be less)
Intent	$80.00
Sale Tax	TBA

Wiser road to clean out a 1000 Gallon Oil/Water Separator need to do at the same time when we do the grease and I can send one labor in the small vacuum truck it can keep cost lower for travel time from Portland

Vacuum truck	$900.00
Per diem	$225.00
Pressure washer	$150.00
Disposal solids	$337.50 (2.5 ton) estimate $135.00 per ton
Disposal liquids	$420.00 (1000 gallons) estimate .42 per gallon
Intent	$80.00
Sale Tax	TBA

Phone: 503-252-6144 / Fax: 503-288-3658

EXHIBIT B

State of Washington
Department of Labor & Industries
Prevailing Wage Section
PO Box 44540, Olympia, WA 98504-4540
360-902-5335

Public contract awarding agencies are required by RCW 39.12.030 to include a provision stating the required prevailing rate(s) of wage in the bid and contract specifications for public works. Historically, this has required inclusion of a list of such rates in the specifications. Labor & Industries looked at how to allow an additional option within the law and rule.

Bid specifications may provide the required prevailing wage rate information in this alternate format:

> The Department of Labor & Industries prevailing wage rate website is http://wsdot.wa.gov/Design/ProjectDev/WageRates/default.htm
>
> The publication date to use is date of Contract Execution.
>
> The public works project is located in Benton County.

A copy of the prevailing wage rates, the benefit code key and the supplement are available for viewing at the Purchasing Department, 7122 W Okanogan Place, Kennewick, WA Monday through Friday, between 8:00 a.m. & noon and between 1:00 p.m. & 5:00 p.m. except holidays.

The Purchasing Department will mail a hard copy of the wage rates upon request. We can be reached at (509)737-3943 or by email at Procurement@co.benton.wa.us

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021
Subject:	Amendment of Parker Corporate Services, Inc. Personal Services Contract
Presenter:	N/A
Prepared By:	Adam Morasch, Risk Manager
Reviewed By:	Paul Schut, Contract Coordinator & Mary Christen, Administrative Assistant

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☒ Execute Contract

Summary / Background Information

Per Resolution 2017-495, Parker Corporate Services, Inc. entered into a personal services contract to provide unarmed security guards at the Benton County Courthouse, Benton County Jail, and Benton County Justice Center Lobby. There have been two more resolutions, 2020-031 for an increase in service rates and 2020-1037 for a contract extension.

This is the third amendment to the contract, and it will address both the service rate increase and the contract expiration date, which is set to expire at the end of June 2021.

To be fair to the Contractor and ensure we continue to receive the best possible service, it is desirable for the County to negotiate a fair price increase to help cover the cost of regular wage increases. The Contractor initially requested the service rate be increased to $22.00 per hour. The Risk Manager referenced the State Contract and offered to match that amount, which is $21.17 per hour, and the Contractor accepted.

A contract amendment has been prepared to address the increase in service rates and extend the contract expiration date.

Fiscal Impact

The current not-to-exceed amount for this contract is $625,000. It is estimated with the rate increase and contract extension, the not-to-exceed amount should be raised to $725,000. This will also allow for some flexibility for possible overtime costs, should they occur.

No impact. This was included in the 2021-2022 budget.

Recommendation

Approve the attached Resolution and sign the attached Personal Services Contract between Benton County and Parker Corporate Services, Inc.

Suggested Motion

Consent Agenda

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF THE THIRD AMENDMENT TO THE PERSONAL SERVICES CONTRACT WITH PARKER CORPORATE SERVICES, INC. DBA: PACIFIC SECURITY FOR UNARMED SECURITY GUARD SERVICES.

WHEREAS, per Resolution 2017-495, the Board of Benton County Commissioners entered into a contract with Parker Corporate Services, Inc. DBA Pacific Security to provide unarmed security guard services at various Benton County locations; and

WHEREAS, per Resolution 2020-031, the Board of Benton County Commissioners approved a contract amendment with Parker Corporate Services, Inc. DBA Pacific Security to raise the hourly rate for the 2020 calendar year to accommodate the increase in the minimum wage rate; and

WHEREAS, per Resolution 2020-1037, the Board of Benton County Commissioners approved a second contract amendment with Parker Corporate Services, Inc. DBA Pacific Security to extend the contract expiration to June 30, 2021; and

WHEREAS, a third contract amendment is needed to extend the expiration date to June 30, 2022, increase the hourly service rates, and increase the total contract amount; **NOW, THEREFORE,**

BE IT RESOLVED, that the attached third amendment to the Personal Services Contract between Benton County and Parker Corporate Services, Inc. DBA Pacific Security is hereby approved, and the Chairman of the Board of Benton County Commissioners is authorized to sign said amendment; and

BE IT FURTHER RESOLVED, the contract shall expire on June 30, 2022; and

BE IT FURTHER RESOLVED, the hourly service rates shall increase as shown on Exhibit B of the amendment; and

BE IT FURTHER RESOLVED, the total contract amount shall not exceed $725,000.00.

Dated this . . . . . day of . . . . . , 2021.

Chairman of the Board

Chairman Pro-Tem

Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: . . . . . .
Clerk of the Board

Orig.: File – Purchasing Department P. Schut
cc: Auditors; S.Araiza; Parker Corporate Services, Inc.

THIRD CONTRACT AMENDMENT
PERSONAL SERVICES CONTRACT

THIS THIRD CONTRACT AMENDMENT (hereinafter "Third Amendment") is made and entered into by and between **BENTON COUNTY**, a political subdivision with its principal offices at 620 Market Street, Prosser, WA 99350 (hereinafter "COUNTY"), and **PARKER CORPORATE SERVICES, INC. DBA: PACIFIC SECURITY**, a corporation organized under the laws of the State of Washington, with its principal offices at 2929 Bond Street, Everett, WA 98201 (hereinafter "CONTRACTOR").

WHEREAS, per Benton County Resolution No. 2017-495, the parties entered into a Personal Services Contract, beginning August 14, 2017 and ending December 31, 2020 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to provide unarmed security guard services in the Benton County Courthouse and the lobby of the Benton County Justice Center and Benton County Jail; and

WHEREAS, Per Benton County Resolution No. 2020-031 the parties agreed to raise the hourly rates for the 2020 Calendar Year; and

WHEREAS, Per Benton County Resolution No. 2020-1037 the parties agreed to extend the contract to June 30, 2021; and

WHEREAS, this Third Amendment is necessary to increase the hourly rates, increase the total CONTRACT Amount, and Extend the CONTRACT Expiration date;

NOW THEREFORE, the parties agree that all provisions of the CONTRACT remain in full force and effect, except for the following amendment:

1. **EXHIBIT B – SERVICE RATES:** Replace Exhibit B of the original CONTRACT with the attached page. New rates are effective July 1, 2021 and will remain in force until the end of the contract.

2. **SECTION 2 – DURATION OF CONTRACT**

   The term of this Contract shall begin **August 14, 2017** and shall expire **June 30, 2022**. The CONTRACTOR shall all the work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

3. **SECTION 5(C) – COMPENSATION**

   The maximum total amount payable by the COUNTY to the CONTRACTOR under this CONTRACT shall not exceed Seven Hundred and Twenty-Five Thousand Dollars and Zero Cents ($725,000.00), not including any applicable Washington State Sales Tax

<INTENTIONALLY LEFT BLANK>

IN WITNESS WHEREOF, the parties have caused this Third Amendment to the CONTRACT to be signed by their duly constituted legal representatives and it is effective on the last date signed.

FOR BENTON COUNTY

Chairman, Board of Benton County Commissioners

Date

Attest: Clerk of the Board

PARKER CORPORATE SERVICES, INC.

Signature

06/01/2021

Date

Jay Yarbrough

Name

Operation Manager

Title

APPROVED AS TO FORM:

Benton County Deputy Prosecuting Attorney, Civil

6/1/21

Date

Exhibit B

Service Rates

FACILITY	A NUMBER OF GUARDS	B SHIFT AND TOTAL HOURS	C COST PER GUARD PER HOUR	EXTENSION (A x B x C = COST PER Week)
Benton County Justice Center	Monday - Friday 1	7:30 - 5:00 9.5 hours	$ 21.17	$ 1,005.58
	2	8:00 - 4:00 8 hours	$ 21.17	$ 846.80
	3	8:00 - 4:00 8 hours	$ 21.17	$ 846.80
Benton County Courthouse	Tuesday 1	8:00 - 4:00 8 hours	$ 21.17	$ 169.36
Benton County Courthouse	Thursday 1	8:00 - 4:00 8 hours	$ 21.17	$ 150.08
Benton County Jail	Monday 1 Tuesday - Friday 1	7:00 - 4:00 9 hours 7:00 - 5:30 10.5 hours	$ 21.17	$ 1,079.67
Benton County Jail	Saturday 1	8:00 - 4:00 8 hours	$ 21.17	$ 169.36
			Total	$ 4,267.65

* All hours listed above are hours of operation. Guards will be relieved for breaks and for lunch, the jail lobby is opne during lunch. Prosser Courthouse on Tuesdays and Thursdays the guard will take a 30 minute lunch. All schedules for locations are subject to change.

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021
Subject:	Memorandum of Understanding between Benton County Sheriff's Office and Washington Traffic Safety Commission for Drug Recognition Experts
Presenter:	
Prepared By:	Lisa Small
Reviewed By:	Robert Blain; Sheriff Hatcher; US Clary; Ryan Lukson

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☒ Consent Agenda	☐ Discussion Only	☐ Pass Motion
☐ Public Hearing	☐ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

The Benton County Sheriff's Office (BCSO) received the attached Memorandum of Understanding (MOU) between the BCSO and Washington Traffic Safety Commission (WTSC) outlining overtime funding to law enforcement agencies who have certified Drug Recognition Experts (DRE) to help assist the Washington State Patrol (WSP) when necessary.

DRE's will be maintained and available for callout by WSP communications in their individual regions to respond in person when no other DRE is available on duty; cover shift extension "overtime" when completing a drug evaluation or request for DRE; testifying in court as a result of performing drug evaluations; and participating in DRE sponsored patrol emphasis, DRE related request, or other DRE programs such as teaching and training deemed necessary and pre-approved by the State DRE Program Coordinator between July 1, 2021 through June 30, 2023.

WTSC is requesting that Benton County sign the MOU first. They will provide us a fully executed copy for the records.

Fiscal Impact

Reimbursable overtime funding paid back to the County.

Recommendation

Approve the attached Resolution and MOU and authorize the Benton County Sheriff to sign the attached MOU between Benton County Sheriff's Office and Washington Traffic Safety Commission.

Suggested Motion

Approve as part of the Consent Agenda.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF AUTHORIZING THE BENTON COUNTY SHERIFF TO SIGN THE MEMORANDUM OF UNDERSTANDING BETWEEN BENTON COUNTY SHERIFF'S OFFICE AND WASHINGTON TRAFFIC SAFETY COMMISSION PROVIDING OVERTIME FUNDING RELATING TO DRUG RECOGNITION EXPERTS (DRE)

WHEREAS, the Benton County Sheriff's Office received the attached Memorandum of Understanding (MOU) between the Benton County Sheriff's Office (BCSO) and Washington Traffic Safety Commission (WTSC) outlining overtime funding to BCSO to law enforcement agencies who have certified Drug Recognition Experts (DRE) to help assist the Washington State Patrol (WSP) when necessary; and

WHEREAS, all DRE's will be maintained and available for callout by WSP communications in their individual regions to respond in person when no other DRE is available on duty; cover shift extension "overtime" when completing a drug evaluation or request for DRE; testifying in court as a result of performing drug evaluations; and participating in DRE sponsored patrol emphasis, DRE related request, or other DRE programs such as teaching and training deemed necessary and pre-approved by the State DRE Program Coordinator between July 1, 2021 through June 30, 2023; and

WHEREAS, the Benton County Sheriff's Office recognizes the importance of having Drug Recognition Experts available to assist the WSP when needed with DUI or other impaired investigation and recommends authorizing the Benton County Sheriff to sign the attached MOU; **NOW, THEREFORE**

BE IT RESOLVED, the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and authorizes the Benton County Sheriff to sign the attached MOU between Benton County Sheriff's Office and Washington Traffic Safety Commission to provide overtime funding for as needed certified Drug Recognition Experts assisting with investigations as further outlined in the attached MOU; and

BE IT FURTHER RESOLVED, the term of said MOU is July 1, 2021 through June 30, 2023.

Dated this _____ day of _____, 2021.

_____
Chairman of the Board

_____
Chairman Pro Tem

Attest.....
Clerk of the Board

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Orig: BCSO
Cc: Auditors, PA, WTSC L. Small

MEMORANDUM OF UNDERSTANDING

WASHINGTON TRAFFIC SAFETY COMMISSION
621 8th Ave SE, Suite 409, PO Box 40944, Olympia WA 98504-0944

THIS AGREEMENT is made and entered into by and between:

BENTON COUNTY SHERIFF'S OFFICE
(Agency Name)

Hereinafter referred to as "CONTRACTOR" and the WASHINGTON TRAFFIC SAFETY COMMISSION, hereinafter referred to as "WTSC."

IT IS THE PURPOSE OF THIS AGREEMENT to provide overtime funding to law enforcement agencies who have certified Drug Recognition Experts (DRE) to conduct the following activities:

- **Respond in person** to allied agency requests for DRE assessments when no other DRE is available on duty and this response is in 'overtime status' from a list of certified DREs.
- Cover shift extension 'overtime' when completing a drug evaluation or covering a request for a DRE
- Court testimony resulting from performing drug evaluations with call outs and shift extensions when overtime is required. (This MOU and grant funding is not responsible for overtime generated from cases/arrests during normal employment or assignment)
- On an overtime basis, participate in duties as a DRE during emphasis patrols, allied agency DRE-related requests, or other DRE programs such as teaching and training deemed necessary and pre-approved by the Washington State DRE Coordinator between **July 1, 2021 through June 30, 2023.**

IT IS, THEREFORE, MUTUALLY AGREED THAT:

1. All contractor DREs will be available for callout by Washington State Patrol (WSP) communications in their individual regions. **WSP Communications will be notified of the DRE availability when that DRE signs into service with their respective allied agency.** As part of this agreement, contractor DREs are responsible to ensure that WSP Communications has their correct contact information in the DRE callout system.
2. Contractor will provide a certified DRE on an "overtime" basis (**not to exceed 1.5 times contracted salary and allowable benefits, even during paid holiday**) to perform DRE activities as specified. No other commissioned personnel will be funded.
3. The period of activity will begin on July 1, 2021 and extend through June 30, 2023.
4. Drug evaluation performance standards for certified and funded DREs must meet the standards of the International Association of Chiefs of Police (IACP).
5. DREs will maintain good standing with Drug Evaluation Classification Program; i.e. paperwork, rolling logs, and resumes. (Contractor and DRE will be notified if DRE is not eligible for availability and removed from WSP roster -30 day notice given.)
6. Disputes arising under this agreement shall be resolved by a panel consisting of one representative of the WTSC, one representative from Contractor agency and one representative from the DECP. The dispute panel shall thereafter decide the dispute with the majority prevailing.
7. Either party may terminate this agreement upon (30 days) written notice to the other party. In the event of termination of this agreement, the terminating party shall be liable for the performance rendered prior to the effective date of termination.

8. WTSC Termination – This project agreement may be terminated or fund payments discontinued or reduced by WTSC at any time upon written notice to the Contractor due to non-availability of funds, failure of the Contractor to accomplish any of the terms herein, or from any change in the scope or timing of the project.
9. The WTSC will monitor and track the availability of DRE Callout funds. Expenditure tracking will be shared with WSP quarterly to ensure DRE Callout funding is being fully utilized.

FISCAL RESPONSIBILITY:

1. For all DRE overtime activities to be billed against this MOU, any projected overtime amount greater than $3,000 must get prior written approval from WTSC.
2. Contractor must submit the billings and supporting documents to the WTSC at PO Box 40944, Olympia, WA 98504-0944 or emailed to mmedalen@wtsc.wa.gov for approval and reimbursement **not more than 30 days after the last day of the month in which the overtime is worked**. Billings and supporting documents submitted later than the 30 day cutoff will be reviewed on a case by case basis. Contractor must ensure that reimbursement being requested is not for on-duty time, but for call out and shift extension overtime only.
   Billings will include:
   - Completed and signed invoice Voucher, A19-1A Form (attached). Your agency must be identified as the "Claimant" and Federal Tax ID # and an original signature of the agency head, command officer or contracting officer must be provided on the A19-1A form.
   - Payment documentation (overtime slips, payroll documents, etc.)
   - DRE Request Form showing all pertinent information. If for court case, evidence it came from a prior MOU overtime situation must be provided with the A-19 1A form.

IN WITNESS WHEREOF, PARTIES HAVE EXECUTED THIS AGREEMENT.

APPROVED/DISAPPROVED

Benton County Sheriff's Office _____
(Agency) **(Date)**

_____
Washington Traffic Safety Commission (Date)

Jerry Hatcher, Sheriff
Contracting Agent Title & NAME (print/type name)

_____
(Signature)

Approved as to Form:

_____
Ryan J Lukson, Civil DPA

Please return this signed form (email is preferred) to:

mmedalen@wtsc.wa.gov

Washington Traffic Safety Commission
Attn: Mark Medalen
PO Box 40944
Olympia, WA 98504

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021 **Memo Date: June 6, 2021**
Subject:	Public Hearing: Benton County's Shoreline Master Program Periodic Review
Presenter:	Greg Wendt and Ben Floyd, White Bluffs Consulting
Prepared By:	Donna Hutchinson
Reviewed By:	Greg Wendt

PA Review, Approval to Form: ☐ Yes ☐ No ☒ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☒ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☐ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

The Shoreline Management Act (SMA), RCW 90.58, requires mandatory "periodic updates" to local shoreline master programs every eight (8) years. Every Washington city and county must periodically review and, if needed, revise its Shoreline Master Program (SMP) to ensure compliance with the SMA.

The last update of the Benton County SMP was completed and approved by the Washington State Department of Ecology in 2015. Per RCW, the Benton County SMP is required to be updated by June 2021.

Ben Floyd, White Bluffs Consulting, has assisted the County with the development of the SMP update. The county has prepared draft SMP amendments to keep the SMP current with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

Benton County and the Department of Ecology held a joint local/state Public Comment Period and Public Hearing on Benton County's Shoreline Master Program Periodic Review on April 13, 2021 and continued the hearing to May 11, 2021. The Planning Commission continued the hearing to May 11, 2021 to ensure all public comments were addressed in the response matrix. The Planning Commission, after taking testimony and discussion among the Commission members, voted to forward a recommendation for approval of the proposed amendments subject to ten (10) findings of fact.

Fiscal Impact

None known at this time.

Recommendation

It is the recommendation of the Benton County Planning Department and the Planning Commission that Shoreline Master Program- Periodic Review, be approved with the suggested ten (10) Findings of Fact.

Suggested Motion

I move that the Board of County Commissioners adopt the Planning Commission's Findings and Conclusions as our own and that the Board of County Commissioners preliminarily approve the Shoreline Master Program, subject to Department of Ecology approval and that upon Washington Department of Ecology approval, the County will adopt the Shoreline Master Program by ordinance.

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF THE BENTON COUNTY SHORELINE MASTER PROGRAM UPDATE (SMP) IN ACCORDANCE WITH WASHINGTON STATE SHORELINE MANAGEMENT ACT (SMA) RCW 90.58, PURSUANT TO SMP GRANT AGREEMENT NO. SEASMP-1921-BeCOPD-00012.

WHEREAS, the people of the State of Washington enacted the Shoreline Management Act (RCW 90.58) by a vote of the people in 1971; and,

WHEREAS, the Growth Management Act (RCW 36.70A.480) adds the goals and policies of the Shoreline Management Act as set forth in RCW 90.58.020 as one of the goals of the Growth Management Act without creating an order of priority; and,

WHEREAS, the last update of the Benton County Shoreline Master Program (SMP) was completed and approved by the Washington State Department of Ecology on February 16, 2015. Per RCW, the Benton County SMP is required to be updated by June 2021; and,

WHEREAS, the County received a grant from the Washington State Department of Ecology to defray the costs of the update process; and,

WHEREAS, the County developed a public participation plan that provided public notice, a project website, public meetings and hearings before the Planning Commission and Board of County Commissioners between June of 2019 and June of 2021; and,

WHEREAS, the County used the Shoreline Master Program Periodic Review Checklist to determine which areas of the plan needed to be reviewed and possibly amended; and,

WHEREAS, the County coordinated with the State of Washington Department of Ecology in preparing interim products and solicited comments consistent with the Grant Agreement No. SEASMP-1921-BeCOPD-00012; and,

WHEREAS, the County considered and responded to government agency and public comments and prepared and issued Revised Draft Shoreline Master Programs or elements thereof for Planning Commission and Board of County Commissioner review; and,

WHEREAS, an Environmental Review was made by Benton County in File No. EA 2021-003, and a determination of Non-Significance was issued on February 24, 2021; and,

WHEREAS, the 60-day Notice of Proposed Amendment was submitted to the Washington State Department of Commerce and acknowledgment was received on February 24, 2021; and,

WHEREAS, a Joint Open Record hearing with the Department of Ecology was held on April 13, 2021 with the legal notice for the Planning Commission Open Record Hearing being published on March 24, 2021; and,

WHEREAS, a joint local/state public comment period was conducted from March 24, 2021 to April 23, 2021 where comments on the proposed Shoreline Master Plan were accepted; and,

WHEREAS, those listed on the listed on the Public Participation Plan e-mail lists were given notice

of the Planning Commission Open Record Hearing by e-mail on March 23, 2021, and,

WHEREAS, the Planning Commission open record hearing was held on April 13, 2021, in a virtual format via Web Ex due to COVID 19 restrictions; and,

WHEREAS, the following Planning Commission members were present at the April 13, 2021 meeting; Martin Sheeran, Tammara McKeirnan, Marjorie Kaspar, Lloyd Coughlin, and Brian Skeels; and,

WHEREAS, at the Joint Open Record Hearing on April 13, 2021, the Planning Commission received information and considered all evidence and testimony. After closing the public testimony portion of the open record hearing, the Planning Commission made a motion to continue the public hearing for decision making only to May 11, 2021; and,

WHEREAS at the continued open record hearing on May 11, 2021, the Planning Commission considered all evidence and testimony and made a motion to approve the Shoreline Master Plan as presented and to forward to the Board of County Commissioners a recommendation for approval; and,

WHEREAS, the legal notice for the Board of County Commissioners Open Record Hearing was published on June 9, 2021; and,

WHEREAS, those listed on the Public Participation Plan email lists were given notice of the Board of County Commissioners Open Record Hearing by e-mail on June 10, 2021; and,

WHEREAS, the Board of County Commissioners conducted an Open Record Hearing on June 22, 2021 at 9:00 a.m. via an in person and virtual format in the Commissioners Meeting Room on the Third Floor of the Courthouse, in Prosser, WA 99350; and,

WHEREAS, the following Board of County Commissioner members were present at the June 22, 2021 meeting; Jerome Delvin, Shon Small, and Will McKay; and,

WHEREAS, the Board of County Commissioners at the Open Record Hearing reviewed all testimony and public hearing exhibits that were entered into evidence; and,

WHEREAS, once the County approves the Shoreline Master Program, it will be sent to the State of Washington Department of Ecology for review and approval, a process which may entail further changes and amendments to the documents of the Shoreline Master Program; and,

WHEREAS, upon Washington Department of Ecology approval, the County will adopt the Shoreline Master Program by ordinance; and,

WHEREAS, the Board of County Commissioners made its decision on June 22, 2021 based on findings recorded in the Planning Commission Recommendation and Conclusions dated May 11, 2021; and,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

Section 1. The Board of County Commissioners approves the findings and conclusions in Planning Commission Findings and Conclusions.

Section 2. The Board of County Commissioners preliminarily approves the Shoreline Master Program, subject to Department of Ecology approval. The Shoreline Master Program is comprised of the proposed Plan amendments attached as Exhibit PCM 1.3.

Section 3. The Board of County Commissioners directs the Benton County Planning Department to forward the following documents to the State Department of Ecology for review and approval:

Exhibit PCM 1.3: Shoreline Master Program Hearing Document
Exhibit PCM 1.2: Benton County SMP Periodic Review Checklist
Exhibit PCM: 1.5 Environmental Checklist
Exhibit PCM: 1.6: Determination of Non-Significance
Exhibit BCCM 1.3: Planning Commission signed Recommendation and Conclusions
Exhibit BCCM 1.5: Comment Response Matrix

The Planning Division is authorized to make necessary corrections to Exhibits including, but not limited to, the correction of scrivener's/clerical errors, dates and references, resolution numbering, section/subsection numbers and any references thereto.

Section 4. The Clerk of the Board is authorized to make necessary corrections to the Resolution including, but not limited to, the correction of scrivener's/clerical errors, dates and references, resolution numbering, section/subsection numbers and any references thereto.

Dated this 22nd day of June 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County Washington.

Attest_____
Clerk of the Board

GW/djh

RECOMMENDATION OF THE BENTON COUNTY PLANNING COMMISSION

RE: In the Matter of County Planning: Shoreline Master Plan-Periodic Update

RECOMMENDATION, FINDINGS OF FACT AND CONCLUSIONS
Planning File: SMP Update 2019-2021

RECOMMENDATION

An amendment to the Benton County Shoreline Master Program- Period Update 2019-2021 be APPROVED subject to the thirteen (13) findings of fact.

RESOLUTION

WHEREAS, the legal notification for the joint Washington State Department of Ecology and Benton County open record public hearing was given pursuant to RCW 36.70.590 on March 24, 2021;

WHEREAS, a virtual public hearing was held on April 13, 2021 at 6:00 p.m. The Planning Commission was available to receive public testimony, exhibits, and answer questions in the public portion of the hearing with the public being able to attend and comment through telephonic access to the meeting. The meeting was also broadcast through video access to allow the public to view the meeting; and,

WHEREAS, after receiving public input and comments on the amendments, the public hearing was continued to May 11, 2021. The public was able to submit written comments up until April 23, 2021. The continuation of the hearing provides time for staff and the Planning Commission to review the public input and comments provided; and

WHEREAS, the following members attended the meeting, including, Lloyd Coughlin, Brian Skeels, Marjorie Kaspar, Tammy McKeirnan, Leo Perales, and Martin Sheeran with one member absent; and,

WHEREAS, all those who testified and those public hearing exhibits that were received into evidence are identified in the minutes for the hearing on April 13, 2021 and the hearing on May 11, 2021; and,

WHEREAS, the Planning Commission at the continued open record public hearing on May 11, 2021 considered the evidence submitted and voted to recommend approval with the findings of fact as outlined in the staff memo dated May 3, 2021; and,

WHEREAS, the Planning Commission is entering its written findings of fact, conclusions and recommendations concerning this matter, and is forwarding the same to the Board

of County Commissioners and,

FINDINGS OF FACT

1. The Shoreline Management Act (SMA), RCW 90.58, requires mandatory "periodic updates" to local shoreline master programs every eight (8) years. Every Washington city and county must periodically review and, if needed, revise its Shoreline Master Program (SMP) to ensure compliance with the SMA.

2. The last update of the Benton County SMP was completed and approved by the Washington State Department of Ecology in 2015. Per RCW, the Benton County SMP is required to be updated by June 2021.

3. Benton County is proposing changes to the Shorelines Master Plan to ensure the SMP is consistent with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

4. The proposed changed focus on the following:

   a. Section 15.02 Definitions. Delete the definition for Board of Adjust and add text regarding Hearing Examiner
   ~~"Board of Adjustment" means the County board which hears applications for variances, conditional use permits, and other quasi-judicial matters assigned to it by the legislative body.~~ "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, land use permits, and certain appeals. Appeals may be taken to the ~~Board~~ Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.

   b. Section 15.02 Definitions. Add text to clarify the definition of development regarding dismantling or removing structures.
   Dismantling or removing structures if there is no other associated development or re-development.

   c. Section 15.02 Definitions. Amend the definition for "Substantial development" by updating the $ amount for exceeding the fair market value
   "Substantial development" shall mean any development of which the total cost or fair market value exceeds ~~six thousand, four hundred, and sixteen dollars~~ seven thousand, and forty seven dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state.

   d. Section 15.04.120 Development Standards. Add text to Section 15.04.120 regarding "Developments not required to obtain shoreline permits or local

reviews".

04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews

(a) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

(1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

(2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit

(3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(4) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

(5) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

e. Section 15.06.010(2b) Critical Areas in Shoreline Jurisdiction add text

(2b) identification and characterization of the critical area of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area, where 'adjacent' is defined as "immediately adjoining or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas;

f. Section 16.06.020(d1) Wetlands - Delete text from this Section as it is already specified in the State Dept. of Ecology's Wetland Rating System (Publication #14-06-030)

(1) ~~Category I Wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as wetlands of high conservation value; 3) bogs;~~

~~4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well. These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are~~

~~impossible to replace within a human lifetime; or 4) provide a high level of function.~~
~~(2) Category II Wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and~~
~~4) wetlands that perform functions well.~~
~~(3) Category III Wetlands are: 1) vernal pools that are isolated and 2) wetlands with a moderate level of functions. These wetlands generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.~~
~~(4) Category IV Wetlands are wetlands that should be able to be replaced, and in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected~~.

g. Section 15.07.150: Add a language regarding County permit review time.
(m) Pursuant to RCW 47.01.485, the County permit review time shall have a target of 90 days for projects on a state highway.

5. The Shorelines Master Plan Update is found to be in conformance with the intent of the Benton County Zoning Code Title 11, Environment Code Title 15, and Permit Review Process Code Title 17. All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, are a part of the County's development regulations and are contained in the Shoreline Master Program.

6. The Shoreline Master Plan is found to be in conformance with the intent of the Benton County Comprehensive Plan and as such is a sub area plan of the Benton County Comprehensive Plan and is adopted by reference within the Plan.

7. The Shoreline Master Plan update was submitted by email to the State of Washington's Department of Commerce on February 24, 2021 for review in compliance with WAC 365-196-630.

8. Legal notification for the joint public hearing between Benton County and the Dept. of Ecology was given on March 24, 2021 pursuant to RCW 36.70.590.

9. The Shoreline Master Plan update appeared in a joint open record virtual public hearing before the County Planning Commission and Dept. of Ecology on April 13, 2021 at the Public Services Building, 102206 E. Wiser Parkway, Kennewick WA. Public Comment will be taken until April 23, 2021.

10. At the April 13, 2021 joint open record hearing, the Planning Commission and Dept. of Ecology were available to receive public testimony, exhibits, and answer questions in the public portion of the hearing.

11. The April 13, 2021 public hearing was continued to May 11, 2021 to give staff and the Planning Commission an opportunity to review the public comments.

12. All those who testified and those public hearing exhibits that were received into evidence are identified in the minutes and are contained in the official record.

13. The Planning Commission received the Staff Memos, dated April 1st and May 7, 2021, that includes the SMP Comment Response Matrix and agrees with the information found in the staff memo and comment matrix.

NOW, THEREFORE BE IT RESOLVED BY THE BENTON COUNTY PLANNING COMMISSION, through its chairman as authorized by motion of the Board, that these findings of fact for the aforementioned update to the Benton County Shoreline Master Plan- Periodic Update be approved for transmittal to the Board of County Commissioners, with a recommendation to adopt the amendments.

Martin Sheeran 5/11/2021

Martin Sheeran, Chairman DATE
BENTON COUNTY PLANNING COMMISSION

Benton County Shoreline Master Program Update – Comment Response Matrix

Comment No.	Commenter	Section No.	Comment	Response
1	Patrick Paulson, Laurie Ness	SMP –	Introduction and Overview We feel that because of the major revision of the County's Critical Areas Ordinance (CAO) that the environmental protections section should be updated by copying relevant sections of the Critical Areas Ordinance into the Shoreline Master Program (SMP) (with references updated appropriately). This will help to ensure not consistency with the County's Comprehensive Plan and Development Regulations, but also that the Critical Areas Protections for the shoreline jurisdiction are based on the same science used to develop the CAO. Below we make this argument clearer and point out some deficiencies in the SMP's protections that would be addressed by copying in appropriate portions of the CAO. These short-comings include a lack of specific qualifications for who can prepare critical habitat reports, failure to consider net-loss to critical areas outside of a proposed project site, and confusing language regarding wetland categories. In addition to the changes to the Critical Areas Protection, we feel the protections for shoreline vegetation need strengthening. We'll address those deficiencies in the next section before addressing Critical Areas protections.	Thank you for your thoughtful review of the County's SMP and for your suggestions. We have provided responses to each of these below.
		05.030	2 Shoreline Vegetation Conservation (SMP Draft Section 05.030**)** Paragraphs (b) and (c) state: (b) Vegetation within shoreline buffers, other stream buffers, wetlands and wetland buffers, [Washington Department of Fish and Wildlife (WDFW)]-mapped priority habitats and species areas, and other critical areas must be managed consistent with Section 15.06, Critical Areas in Shoreline Jurisdiction. Regulations specifying establishment and management of shoreline buffers (buffers associated with the Yakima and Columbia Rivers) are located in Section 15.06.030, Rivers and Creeks. (c) Other vegetation within shoreline jurisdiction, but outside of shoreline buffers, creek buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas must be managed according to Section 15.05.020, Environmental Protection, and any other regulations specific to vegetation management contained in this SMP and Benton County Code. Note that paragraph (c) applies only to non-critical areas; it is imperative, therefore, that the Critical Areas in Shoreline Jurisdiction (CASJ) code comprehensively ensure 'no net loss'.	**See 05.020 Environmental Protection** (a) Ecological Functions. **Uses and developments on Benton County shorelines must be designed, located, sized, constructed and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources** (emphasis added). New uses and developments must not have an unmitigated adverse impact on other shoreline functions fostered by this SMP…. (d) Mitigation Sequence. In order to ensure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to Section 15.05.020(c) must describe how the proposal will follow the sequence of mitigation. Critical areas are addressed through this section, along with Section 15.06. The SMP must be taken in totality, as every use, every standard, regulatory item, or mitigation strategy is designed to achieve no net loss – it is the measure of performance. Additionally, policies, purposes

Comment No.	Commenter	Section No.	Comment	Response
				and regulations in many other sections also identify no net loss as the standard. Here are a few examples. Definition - "No net loss of ecological functions" means a public policy goal and requirement to maintain the aggregate total of the County's shoreline ecological functions at its current level. For purposes of reviewing and approving this SMP, "current" is equivalent to the date of the Final Shoreline Analysis Report (April 2013). As a development standard, it means the result of the application of Mitigation Sequencing, in which impacts of a particular shoreline development and/or use, whether permitted or exempt, are identified and addressed, such that there are no adverse impacts on shoreline ecological functions or processes relative to the legal condition just prior to the proposed development and/or use. ***03.030.03 Policies*** (f) Protect the resources and ecology of the shoreline. (1) All shoreline development should be located, designed, constructed and managed consistent with mitigation sequencing provisions outlined in Section 15.05.020 to minimize adverse impacts to regionally important wildlife resources, including spawning, nesting, rearing and habitat areas, and migratory routes and **result in no net loss of shoreline ecosystems and ecosystem-wide processes** (emphasis added).
2		05.030	2.1 Pruning for Views Paragraph (i) states: Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation and must not compromise the health of the tree. This should not be allowed. Given this provision, there will be no way to ensure such pruning can be done while ensuring 'no net loss'. Further this contradicts guidance from Washington Department of Ecology (WDOE) that "view protection does not allow for excessive vegetation removal to create views or enhance existing views."1	Selective pruning is allowed but with limitations related to keeping understory vegetation intact and not compromising the health of the tree, as noted. Also the vegetation standards in 05.030 also apply. Selective pruning can still meet the no net loss standard as the vegetation is expected to grow back; so over time the tree and associated understory vegetation remain.

Comment No.	Commenter	Section No.	Comment	Response
				Excessive vegetation removal is not allowed and is an enforceable violation of the SMP, when discovered by the County. Washington Department of Ecology (Ecology) reviewed and approved this language on pruning in the Benton County and many other SMPs.
3		05.030	2.2 Hand-removal of invasive species should require replanting with native vegetation Paragraph (j) states: Hand removal or spot-spraying of invasive species (such as Russian olive) or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is encouraged. No requirement for replanting with natives is specified. This will result in a net loss of habitat function. Many non-natives provide valuable habitat and removal without replacement creates a hole for the next non-native species to fill which further degrades shoreline protections. The same requirements for to replant with native plants given for 'Mechanical removal' in paragraph (k) should apply to 'hand removal' (there should be no difference between the two – a troop of boy scouts can remove a lot of plants!).	Update as suggested – add provision to 05.030 (j) to include requirement to replant with native vegetation
4		General	3 Integration of Critical Areas Code into the Shoreline Management Program We agree with WDOE's recommendation that Benton County ensure consistency with the updated CAO by copying the applicable parts of the updated CAO into the environmental protection section of the SMP. 2 This is the 'preferred method' given in Ecology's SMP.	The requirements and standards for each type of critical area – wetland, frequently flooded areas, critical aquifer recharge areas, geologic hazards and fish and wildlife habitat conservation areas are identical in purpose, function and protection, with the County's updated SMP. The language in the SMP for how to protect critical areas is different from the County's critical areas code in organization (e.g., mitigation sequencing, environmental protection standards, etc., in different locations) to meet the different structural requirements in the SMP but the protection methods and results for critical areas is the same. While the preferred method for protecting critical areas is as you identified, the approach Benton County took is also satisfactory, as WDOE approved the County's SMP in 2015, including determined that the program would achieve the SMP requirements including no net loss of ecological function. Furthermore, the SMP went through an extensive public involvement process, including an advisory committee to provide guidance on how to craft the

Comment No.	Commenter	Section No.	Comment	Response
				SMP to ensure uses and activities are allowed consistent with the no net loss standard.
5		General	1 Chapter 9, Shoreline Public Access. SMP Handbook, https://fortress.wa.gov/ecy/publications/parts/1106010part9.pdf. 2 WDOE, Shoreline Master Programs Handbook [SMP Handbook], December 2017, Chapter 18, p. 5. https://apps.ecology.wa.gov/publications/parts/1106010part18.pdf.Handbook. This is the best way to meet the requirement that the periodic review ensures the SMP is consistent with the County's Comprehensive Plan and development regulations and the most current scientific information	The SMP checklist provided by Ecology is the primary tool used to determine if the periodic review has addressed each of the legal requirements since the County adopted the SMP in 2015. This checklist was used to guide the periodic review and resulted in the identified SMP updates. We have discussed both the County SMP and the checklist with Ecology and they have concurred that we have met the required changes necessary to comply with the latest requirements. The changes are also consistent with the Comprehensive Plan and development regulations.
6		General	3.1 Benton County's Critical Areas Ordinance was revised in 2018 to be consistent with the Comprehensive Plan the County made a major revision to its CAO in 2018. The findings supporting the resolution state the revision was required because: The record establishes a need for the proposed critical area update to bring the critical area regulations into compliance with the goals and policies of the recently updated Benton County Comprehensive Plan and the intent of the Growth Management Act and applicable state law	The County 2018 CAO update was required to address deficiencies within the CAO that existed prior to 2018. Several updates were needed to make sure the standards and requirements were consistent with the goals and policies of the County Comprehensive Plan and the Growth Management Act. The SMP, when adopted in 2015, was determined to be in compliance with all state requirements at the SMP, and the proposed revisions for the periodic update ensure the SMP meets the requirements in place in 2021. The Comprehensive Plan update that occurred in 2017 and 2018, incorporated by reference the goals, policies and standards in the SMP, making them consistent.
7		General	3.2 Shoreline Master Program Periodic review must ensure consistency with Comprehensive Plan and Development Regulations WAC 173-26-090.3.b.ii requires the County, as part of its periodic review of the SMP, "review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them." Further, the WAC states "It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations" (our emphasis); approval of the SMP by WDOE does not ensure the SMP complies with this WAC.	See response to Comment 6.

Comment No.	Commenter	Section No.	Comment	Response
8		General	3.3 Shoreline Master Plan periodic reviews should ensure the latest science and data are used. The findings supporting Ord. 609 state that the updated regulations are consistent with WAC 365-190 which identifies the minimum guidelines to classify critical areas, including wetlands (WAC 365-190-090), critical aquifer recharge areas (WAC 365-190-100), frequently flooded areas (WAC 365-190) geologically hazardous areas (WAC 365-190-120), and fish and wildlife habitat conservation areas (WAC365-190-130) It is assumed, then, the CAO contains protections based on the Best Available Science (BAS). If the Critical Area protections in the SMP are not at least as protective as those in the CAO, it is likely those protections are not based on "the most current, accurate and complete."	See response to Comment 4, first paragraph. The SMP is based on the latest science and data.
9		General	3 Benton County Ordinance No. 609 [Ord. 609], adopted August 21, 2018. https://www.co.benton.wa.us/files/documents/CAOOrdinance6098-21-18129114718082318AM.pdfscientific and technical information available"4 However, WAC 173-26-090.3.b.iii states that--as part of a periodic review--the County "should consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data".	No changed circumstances, new information or improved data beyond the required items in the Ecology SMP checklist has been presented that would require an update. As noted above, while formatted differently, the standards for the critical areas code and the SMP are functionally equivalent. See Comment 4 response, first paragraph.
10		6.010	3.4 Specific Issues Regarding Critical Areas Protection 3.4.1 General (Draft SMP Section 06.010) 3.4.1.1 Critical Area Reports, Qualified Professionals Paragraph e.2 states that critical area studies shall be "performed by a professional who is licensed or qualified as an expert in the critical areas at issue". This requirement should be at least as specific as requirements given in CAO 15.02.190.a, which requires preparation by a 'qualified professional', where a definition gives specific criteria to be met by qualified professionals.5 While the CASJ also contains a definition for 'qualified professional', the definition is not as specific as that given in the CAO, nor is it clear from the text that the person performing critical area studies needs to be a 'qualified professional' as defined in the SMP.	Update definition of qualified professional to incorporate specific criteria from CAO 15.02.190.a
11		06.070	3.4.1.2 Critical Areas Reports, Net Loss to Critical Areas outside of Project Site Paragraph (3)(2)b requires only that report contain the "identification and characterization of the critical area", where the CAO requires the report to contain "Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area" (15.02.190.c.4), where 'adjacent' is defined as "immediately adjoining or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas" (BCC 15.02.070.1). The requirement given in the CASJ is inadequate to ensure no-net-loss of ecological functions since it doesn't consider the impact of activities on critical areas or buffers that are not within the site of the proposal but are close enough to be affected by the proposed activity. An example of net loss caused by activities adjacent to critical areas is human disturbance of Great Blue Heron rookery, a Priority Habitat. 4 Required by WAC 173-26-201(2)(a) 5 BCC 15.02.070.57.and Species (PHS) identified by the Washington Department of Fish and Wildlife (WDFW), which may require a 400meter buffer during nesting season.	Update .06.070.d.2 to incorporate suggested language in BCC 15.02.190.c.4 and 15.02.070.1)

Comment No.	Commenter	Section No.	Comment	Response
12		6.020	3.4.2 Wetlands (06.020) 3.4.2.1 Paragraph d, Categories The current CAO includes wetlands category definitions from current WDOE guidance by reference so there is no misunderstanding (BCC 15.04.010.b). While also referencing WDOE guidance, the CASJ also explicitly lists the types of wetlands for each wetland category. Given this listing, the CASJ makes it unclear how to categorize wetlands listed in the current WDOE Wetlands Rating System but not listed in the SMP. For example, the definition of Category I Wetlands in CASJ fail to protect "Calcareous fens" and do not adequately define "wetlands that perform many functions very well." Similarly, the definition of Category II Wetlands does not define "wetlands that perform functions well." The definitions of Category III and IV wetlands do not match the definitions given in the WDOE Wetlands Rating System. The critical area report for wetlands requirements given CASJ 06.010 fail to adequately define any qualifications of the individual preparing the report. Also missing are the additional requirements for Critical Area Reports for Wetlands given in the CAO (BCC 15.04.030). These requirements include the assessment of critical areas within 250 ft. of the proposed activity.	Update by deleting existing definitions and only relying on those referenced in the latest Ecology rating system guidance document. ------ Section 06.020 c and d includes these provisions: (c) Identification and Delineation. Wetlands shall be identified and delineated by a qualified professional in accordance with WAC 173-22-035 and designated based on the definitions, methods, and standards set forth in the currently approved Federal Wetland Delineation Manual and applicable regional supplement. (d) Categories. Criteria for categorizing a wetland are those specified in the Washington State Department of Ecology's Washington State Wetland Rating System for Eastern Washington, or as revised (Publication #14-06-030). These "currently approved" and "or as revised" provisions require the County to use the latest federal management and rating system from Ecology for identifying, delineating, categorizing and typing wetlands. ----- Regarding qualifications, see response to Comment 10
13		6.070	3.4.3 Fish and Wildlife Conservation Areas (06.070) 3.4.4 Paragraph d, Site Analysis As noted in the section above, like the other Critical Areas reports, the reports for Habitat areas are missing any requirements for report preparation by a 'qualified professional' (15.14.030.a). Also missing is a requirement to survey areas within 300 ft. of the site boundary (15.14.030.b.2). 6 Azerrad, J. M. 2012. Management recommendations for Washington's priority species: Great Blue Heron. Washington Department of Fish and Wildlife, Olympia, Washington. https://wdfw.wa.gov/sites/default/files/publications/01371/wdfw01371.pdf 7 Hruby, T. 2014. Washington State Wetland Rating System for Eastern Washington: 2014 Update. (Publication #14-06-030). Olympia, WA: Washington Department of Ecology. https://apps.ecology.wa.gov/publications/documents/1406030.pdf4 Summary	Regarding qualifications, see response to Comment 10 See also Section 05.020.f.2, which requires consideration of any applicable WDFW management recommendations as part of preparing mitigation plan – which is how requirements such as the one referenced are incorporated into the protection process. " A discussion of any federal, state, or local management recommendations which have been developed for critical areas or other species or habitats located on the site"

Comment No.	Commenter	Section No.	Comment	Response
14		General	We have shown that the current Draft of the SMP is not consistent with the Benton County's development regulations, specifically the recently updated CAO, which may lead to a net loss of environmental functions in the shoreline jurisdiction. We also feel the Draft SMP's protections for shoreline vegetation are insufficient and ignore authoritative guidance, allowing the removal of vegetation for 'view' purposes and the removal of invasive plants without a requirement for a revegetation program. Both of these deficiencies can result in net loss of shoreline functions through loss of habitat, creating the potential for erosion and the potential for replacement by another type of by invasive species. We ask that these issues with the Draft SMP be addressed before approval.	Thank you for the thoughtful concluding comment. Please see the responses above for any recommended updates based on these and your other comments provided.
15	Alison Cable, Futurewise	General	I have reviewed and support the comments from Debbie Berkowitz and Patrick Paulson and look forward to the County's response to their comments related to buffers and protection of ecological function of the County's critical areas. The Growth Management Act "requires that the regulations for critical areas must protect the 'functions and values' of those designated [critical] areas. This means all functions and values." Furthermore, Critical areas are to be protected by at least "maintaining existing conditions." Please See: Whidbey Env't Action Network v. Island Cty. (WEAN), 122 Wn. App. 156, 174–75, 93 P.3d 885, 894 (2004); and Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd., 161 Wn.2d 415, 430, 166 P.3d 1198, 1206 (2007), as corrected (Nov. 28, 2007), as corrected (Apr. 3, 2008).	Thank you for the thoughtful comment. Please see the responses above for any recommended updates.
16	Elizabeth Torrey, Dept. of Fish and Wildlife	General	WDFW has two updated volumes of the Riparian Ecosystems guidelines. Volume 1 was updated in July 2020. Volume 2 was updated in December 2020. WDFW recommends that these two newest documents be reviewed, utilized, and referenced as part of the literature review and Best Available Science for code updates. Within these documents, a 100-foot Riparian Management Zone is recommended as being protective of the functions and values of riparian ecosystems and their adjacent waterbodies within the Columbia Plateau. This is what guided my original comments regarding RMZ/buffer sizing. However, I was made aware that Area Habitat Biologist Mike Ritter had previously reviewed and considered Benton County's proposed buffers, and concurred that the buffer sizing of 50-feet for type N and 75-feet for type F is appropriate and protective. Therefore, I defer to Mike Ritter's original assessment, and agree that what Benton County has proposed is sufficient and acceptable. WDFW requests no changes to the proposed buffers.	Thank you for the thoughtful comment. Please see the responses above for any recommended updates.

Comments on Draft Shoreline Master Program (as of 4/1/2021), Benton County

Patrick Paulson
Laurie Ness

1 Introduction and Overview

We feel that because of the major revision of the County's Critical Areas Ordinance (CAO) that the environmental protections section should be updated by copying relevant sections of the Critical Areas Ordinance into the Shoreline Master Program (SMP) (with references updated appropriately). This will help to ensure not consistency with the County's Comprehensive Plan and Development Regulations, but also that the Critical Areas Protections for the shoreline jurisdiction are based on the same science used to develop the CAO. Below we make this argument clearer and point out some deficiencies in the SMP's protections that would be addressed by copying in appropriate portions of the CAO. These short-comings include a lack of specific qualifications for who can prepare critical habitat reports, failure to consider net-loss to critical areas outside of a proposed project site, and confusing language regarding wetland categories.

In addition to the changes to the Critical Areas Protection, we feel the protections for shoreline vegetation need strengthening. We'll address those deficiencies in the next section before addressing Critical Areas protections.

2 Shoreline Vegetation Conservation (SMP Draft Section 05.030)

Paragraphs (b) and (c) state:

(b) Vegetation within shoreline buffers, other stream buffers, wetlands and wetland buffers, [Washington Department of Fish and Wildlife (WDFW)]-mapped priority habitats and species areas, and other critical areas must be managed consistent with Section 15.06, Critical Areas in Shoreline Jurisdiction. Regulations specifying establishment and management of shoreline buffers (buffers associated with the Yakima and Columbia Rivers) are located in Section 15.06.030, Rivers and Creeks.

(c) Other vegetation within shoreline jurisdiction, but outside of shoreline buffers, creek buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas must be managed according to Section 15.05.020, Environmental Protection, and any other regulations specific to vegetation management contained in this SMP and Benton County Code.

Note that paragraph (c) applies only to non-critical areas; it is imperative, therefore, that the Critical Areas in Shoreline Jurisdiction (CASJ) code comprehensively ensure 'no net loss'.

2.1 Pruning for Views

Paragraph (i) states:

> Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation and must not compromise the health of the tree.

This should not be allowed. Given this provision, there will be no way to ensure such pruning can be done while ensuring 'no net loss'. Further this contradicts guidance from Washington Department of Ecology (WDOE) that "view protection does not allow for excessive vegetation removal to create views or enhance existing views."[1]

2.2 Hand-removal of invasive species should require replanting with native vegetation

Paragraph (j) states:

> Hand removal or spot-spraying of invasive species (such as Russian olive) or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is encouraged.

No requirement for replanting with natives is specified. This will result in a net loss of habitat function. Many non-natives provide valuable habitat and removal without replacement creates a hole for the next non-native species to fill which further degrades shoreline protections. The same requirements for to replant with native plants given for 'Mechanical removal' in paragraph (k) should apply to 'hand removal' (there should be no difference between the two – a troop of boy scouts can remove a lot of plants!).

3 Integration of Critical Areas Code into the Shoreline Management Program

We agree with WDOE's recommendation that Benton County ensure consistency with the updated CAO by copying the applicable parts of the updated CAO into the environmental protection section of the SMP.[2] This is the 'preferred method' given in Ecology's *SMP*

---

[1] Chapter 9, Shoreline Public Access. *SMP Handbook*, p. 11. https://fortress.wa.gov/ecy/publications/parts/1106010part9.pdf.

[2] WDOE, *Shoreline Master Programs Handbook* [SMP Handbook], December 2017, Chapter 18, p. 5. https://apps.ecology.wa.gov/publications/parts/1106010part18.pdf.

Handbook. This is the best way to meet the requirement that the periodic review ensures the SMP is consistent with the County's Comprehensive Plan and development regulations and the most current scientific information.

3.1 Benton County's Critical Areas Ordinance was revised in 2018 to be consistent with the Comprehensive Plan

The County made a major revision to its CAO in 2018.[3] The findings supporting the resolution state the revision was required because:

> The record establishes a need for the proposed critical area update to bring the critical area regulations into compliance with the goals and policies of the recently updated Benton County Comprehensive Plan and the intent of the Growth Management Act and applicable state law

3.2 Shoreline Master Program Periodic review must ensure consistency with Comprehensive Plan and Development Regulations

WAC 173-26-090.3.b.ii requires the County, as part of its periodic review of the SMP, "review changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them." Further, the WAC states "It is the *responsibility of the local government* to assure consistency between the master program and other elements of the comprehensive plan and development regulations" (our emphasis); approval of the SMP by WDOE does *not* ensure the SMP complies with this WAC.

3.3 Shoreline Master Plan periodic reviews should ensure the latest science and data are used

The findings supporting *Ord. 609* state that

> The updated regulations are consistent with WAC 365-190 which identifies the minimum guidelines to classify critical areas, including wetlands (WAC 365-190-090), critical aquifer recharge areas (WAC 365-190-100), frequently flooded areas (WAC 365-190) geologically hazardous areas (WAC 365-190-120), and fish and wildlife habitat conservation areas (WAC 365-190-130)

It is assumed, then, the CAO contains protections based on the Best Available Science (BAS). If the Critical Area protections in the SMP are not at least as protective as those in the CAO, it is likely those protections *are not* based on "the most current, accurate and complete

---

[3] Benton County Ordinance No. 609 [Ord. 609], adopted August 21, 2018. https://www.co.benton.wa.us/files/documents/CAOOrdinance6098-21-18129114718082318AM.pdf

scientific and technical information available"[4]. However, WAC 173-26-090.3.b.iii states that--as part of a periodic review--the County "should consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data".

3.4 Specific Issues Regarding Critical Areas Protection

3.4.1 General (Draft SMP Section 06.010)

3.4.1.1 Critical Area Reports, Qualified Professionals

Paragraph e.2 states that critical area studies shall be "performed by a professional who is licensed or qualified as an expert in the critical areas at issue". This requirement should be at least as specific as requirements given in CAO 15.02.190.a, which requires preparation by a 'qualified professional', where a definition gives specific criteria to be met by qualified professionals.[5]

While the CASJ also contains a definition for 'qualified professional', the definition is not as specific as that given in the CAO, nor is it clear from the text that the person performing critical area studies needs to be a 'qualified professional' as defined in the SMP.

3.4.1.2 Critical Areas Reports, Net Loss to Critical Areas outside of Project Site

Paragraph (3)(2)b requires only that report contain the "identification and characterization of the critical area", where the CAO requires the report to contain "Identification and characterization of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area" (15.02.190.c.4), where 'adjacent' is defined as "immediately adjoining or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas" (BCC 15.02.070.1). The requirement given in the CASJ is inadequate to ensure no-net-loss of ecological functions since it doesn't consider the impact of activities on critical areas or buffers that are not within the site of the proposal but are close enough to be affected by the proposed activity. An example of net loss caused by activities adjacent to critical areas is human disturbance of Great Blue Heron rookery, a Priority Habitat

---

[4] Required by WAC 173-26-201(2)(a)

[5] BCC 15.02.070.57.

and Species (PHS) identified by the Washington Department of Fish and Wildlife (WDFW), which may require a 400 meter buffer during nesting season.[6]

3.4.2 Wetlands (06.020)

3.4.2.1 Paragraph d, Categories

The current CAO includes wetlands category definitions from current WDOE guidance by reference so there is no misunderstanding (BCC 15.04.010.b). While also referencing WDOE guidance, the CASJ also explicitly lists the types of wetlands for each wetland category. Given this listing, the CASJ makes it unclear how to categorize wetlands listed in the current WDOE Wetlands Rating System[7] but not listed in the SMP. For example, the definition of Category I Wetlands in CASJ fail to protect "Calcareous fens" and do not adequately define "wetlands that perform many functions very well." Similarly, the definition of Category II Wetlands does not define "wetlands that perform functions well." The definitions of Category III and IV wetlands do not match the definitions given in the WDOE Wetlands Rating System.

The critical area report for wetlands requirements given CASJ 06.010 fail to adequately define any qualifications of the individual preparing the report. Also missing are the additional requirements for Critical Area Reports for Wetlands given in the CAO (BCC 15.04.030). These requirements include the assessment of critical areas within 250 ft. of the proposed activity.

3.4.3 Fish and Wildlife Conservation Areas (06.070)

3.4.4 Paragraph d, Site Analysis

As noted in the section above, like the other Critical Areas reports, the reports for Habitat areas are missing any requirements for report preparation by a 'qualified professional' (15.14.030.a). Also missing is a requirement to survey areas within 300 ft. of the site boundary (15.14.030.b.2).

---

[6] Azerrad, J. M. 2012. Management recommendations for Washington's priority species: Great Blue Heron. Washington Department of Fish and Wildlife, Olympia, Washington. https://wdfw.wa.gov/sites/default/files/publications/01371/wdfw01371.pdf

[7] Hruby, T. 2014. Washington State Wetland Rating System for Eastern Washington: 2014 Update. (Publication #14-06-030). Olympia, WA: Washington Department of Ecology. https://apps.ecology.wa.gov/publications/documents/1406030.pdf

4 Summary

We have shown that the current Draft of the SMP is not consistent with the Benton County's development regulations, specifically the recently updated CAO, which may lead to a net loss of environmental functions in the shoreline jurisdiction. We also feel the Draft SMP's protections for shoreline vegetation are insufficient and ignore authoritative guidance, allowing the removal of vegetation for 'view' purposes and the removal of invasive plants without a requirement for a revegetation program. Both of these deficiencies can result in net loss of shoreline functions through loss of habitat, creating the potential for erosion and the potential for replacement by another type of by invasive species.

We ask that these issues with the Draft SMP be addressed before approval.

Donna Hutchinson

From: Alison Cable <alison@futurewise.org>
Sent: Tuesday, April 13, 2021 3:08 PM
To: Greg Wendt
Cc: Michelle Cooke; Donna Hutchinson
Subject: RE: [EXTERNAL] FW: Joint Hearing between Benton County and the Dept. of Ecology on Benton County's Shoreline Master Program Amendment

Hi Greg,

Thank you for sending the Riparian Buffer Analysis memo. I reviewed the memo along with the staff report for tonight's public hearing on the critical areas ordinance. I understand from speaking with other interested residents that you expect that the comment period for the CAO will close today. I also have reviewed and support the comments from Debbie Berkowitz and Patrick Paulson and look forward to the County's response to their comments related to buffers and protection of ecological function of the County's critical areas. The Growth Management Act "requires that the regulations for critical areas must protect the 'functions and values' of those designated [critical] areas. This means all functions and values." Furthermore, Critical areas are to be protected by at least "maintaining existing conditions." Please See: *Whidbey Env't Action Network v. Island Cty. (WEAN)*, 122 Wn. App. 156, 174–75, 93 P.3d 885, 894 (2004); and *Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 430, 166 P.3d 1198, 1206 (2007), as corrected (Nov. 28, 2007), as corrected (Apr. 3, 2008).

Thank you again,

Alison Cable
Tri-Cities Program Manager
206-343-0681 x114
connect:
futurewise.org

From: Greg Wendt <Greg.Wendt@co.benton.wa.us>
Sent: Tuesday, March 23, 2021 3:14 PM
To: Alison Cable <alison@futurewise.org>
Cc: Michelle Cooke <Michelle.Cooke@co.benton.wa.us>; Donna Hutchinson <Donna.Hutchinson@co.benton.wa.us>
Subject: RE: [EXTERNAL] FW: Joint Hearing between Benton County and the Dept. of Ecology on Benton County's Shoreline Master Program Amendment

Hi Alison,
We are currently working on two (2) updates. 1) The SMP Update is rather small this time around. Essentially we are just going down the required SMP checklist and making sure all the necessary updates are included. 2) The CAO amendment focuses on modifying the Fish and Wildlife Conservation Area Chapter. Specifically, we recently had a study done to help the county understand the actual riparian ecological functions of each stream, and then apply a buffer which is based on

best available science and what makes sense on the ground. We have wanted to get than done since our CAO update in 2018, glad to finally have that to move forward with.
If you have any questions, please let me know.
Thanks!
Greg

Greg Wendt
Director of Community Development
Benton County Public Services Building
102206 E Wiser Parkway
Kennewick, WA 99336
(509) 786-5612

Mailing Address:
Benton County Community Develoment Department
PO Box 910, Prosser, WA 99350

From: Alison Cable <alison@futurewise.org>
Sent: Tuesday, March 23, 2021 2:53 PM
To: Greg Wendt <Greg.Wendt@co.benton.wa.us>
Cc: Michelle Cooke <Michelle.Cooke@co.benton.wa.us>
Subject: [EXTERNAL] FW: Joint Hearing between Benton County and the Dept. of Ecology on Benton County's Shoreline Master Program Amendment

EXTERNAL EMAIL WARNING!!!: This email originated from outside of Benton County. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Hi Greg,
Hope this finds you well. I haven't reviewed this draft yet and haven't been able to attend any of the open houses or informational meetings – has there been any other public meetings or presentations on this update that you could share now? Given that the County recently updated your CAO, how will that be included in the scope for the SMP update?
Thank you!
Alison

From: Donna Hutchinson <Donna.Hutchinson@co.benton.wa.us>
Sent: Tuesday, March 23, 2021 12:06 PM
To: Badger Mountain Irrig. District <bmid@pocketinet.com>; Cristina Woods <Cristina.Woods@co.benton.wa.us>; Benton Franklin Health District - Rick Dawson <rickd@bfhd.wa.gov>; bidmitchell@frontier.com; Bureau of Land Management - Spokane <OR_Spokane_Mail@blm.gov>; Benton City Clerk - Jeni Zuniga <jzuniga@ci.benton-city.wa.us>; City of Kennewick - CEDInfo <cedinfo@ci.kennewick.wa.us>; City of Kennewick - Greg McCormick <Greg.McCormick@ci.kennewick.wa.us>; City of Prosser - Steve Zetz <szetz@cityofprosser.com>; City of Richland - Stevens, Mike <mstevens@CI.RICHLAND.WA.US>; Eric Mendenhall <emendenhall@westrichland.org>; Columbia Irrigation District <CID@columbiairrigation.com>; Confederated Tribes of the Umatilla Indian Reservation - Ashley M. Morton <AshleyMorton@ctuir.org>; Environmental Review, Inc. - Tom Price <envreview@gmail.com>; FAA - Joseph Jackson <joseph.a.jackson@faa.gov>; Fire District #1 - Billie <billie@bentonone.org>; lonnie@bentonone.org; Fire District # 1 - Scott <scott@bentonone.org>; Fire District #1 - Staff <staff@bentonone.org>; Fire District #2 - R. Duncan <rduncan@bcfpd2.org>; Fire District #3 - Seth <SJohnson@westbentonfirerescue.org>; wwhealan@bcfd4.org; Fire District #4 - Deputy Chief Paul Carlyle (pcarlyle@bcfd4.org) <pcarlyle@bcfd4.org>; Fire District # 5 - Brian <brian@newhouseassociates.com>; chiefwatt@bcfd6.com; Alison Cable <alison@futurewise.org>; Kennewick Irrigation District - Application and SEPA Review (development@kid.org) <development@kid.org>; Kennewick Irrigation District - Ben Woodard <bwoodard@kid.org>; Kennewick Irrigation District - Seth Defoe <sdefoe@kid.org>; Kiona Irrigation District <kiid@owt.com>; MEDIA - KAPP/KVEW-TV <kappnews@kapptv.com>; KEPR General Newsroom <newsroom@keprtv.com>; MEDIA KOLU-FM - Martin Gibbs <kolu@kolu.com>; kvewnews@kvewtv.com;

editor@recordbulletin.com; MEDIA - Tri-City Herald - Sarah Schilling <sschilling@tricityherald.com>; Port of Benton - Bud Zeck <budzeck@portofbenton.com>; Port of Kennewick - Larry Peterson <lpeterson@portofkennewick.org>; Roza Irrigation District - Steve Hayman <shayman@roza.org>; Sunnyside Valley Irrigation District - Rigo Diosdado <diosdador@svid.org>; US Army Corps of Engineers - David Moore <David.J.Moore@usace.army.mil>; US Army Corps of Engineers - Real Estate Division <cenww-re@usace.army.mil>; US Army Corps of Engineers - Tim Erkel <tim.r.erkel@usace.army.mil>; US Navy - Kimberly Peacher <kimberly.peacher@navy.mil>; WA Dept of Agriculture - Jada Burrell <jada.burrell@sc.usda.gov>; WA Dept of Archaeology and Historic Preservation (sepa@dahp.wa.gov) <sepa@dahp.wa.gov>; WA Dept of Commerce - William Simpson <william.simpson@commerce.wa.gov>; Dept. of Fish and Wildlife - Eric Bartrand <bartrelb@dfw.wa.gov>; Dept. of Fish and Wildlife - Mark Teske <Mark.Teske@dfw.wa.gov>; Dept. of Fish and Wildlife - Michael W. Ritter <rittemwr@dfw.wa.gov>; WA Dept of Fish and Wildlife SEPA Desk <SEPADesk@dfw.wa.gov>; DNR Sepa Center (sepacenter@dnr.wa.gov) <sepacenter@dnr.wa.gov>; WSDOT - Aviation Airports and Land Use (plattst@wsdot.wa.gov) <plattst@wsdot.wa.gov>; WA Dept of Transportation - Paul Gonseth <Gonsetp@wsdot.wa.gov>; WA Dept of Transportation - SEPA Review - TDM Coordinator <scplanning@wsdot.wa.gov>; Yakama Indian Nation (SEPA) - Elizabeth Sanchey <esanchey@yakama.com>; Yakama Indian Nation Environmental Review - Thalia Sachtleber <enviroreview@yakama.com>; SEPA Review - Washington Dept of Health <SEPA.reviewteam@doh.wa.gov>; Yakima Indian Nation-John Marvin <john_marvin@yakama.com>; BPA <almarshall@bpa.gov>; WA Dept of Health - Kelly Cooper - WA Dept of Health - Kelly Cooper (SEPA.reviewteam@doh.wa.gov) <SEPA.reviewteam@doh.wa.gov>; emcnagny@agr.wa.gov; nabr461@ecy.wa.gov; hugo.flores@dnr.wa.gov; deborah.johnson@doh.wa.gov; changt@wsdot.wa.gov; Dept. of Archaeology and Historic Preservation <greg.griffith@dahp.wa.gov>; peter.herzog@parks.wa.gov; eric.heinitz@doc.wa.gov; rsshultz@scc.wa.gov; john.lyle@bentoncleanair.org; Benton Clean Air - Rob Rodger <rob.rodger@bentoncleanair.org>; Benton Clean Air - Tyler Thompson <tyler.thompson@bentoncleanair.org>; Benton Clean Air Authority - Robin Priddy <robin.priddy@bentoncleanair.org>; Brian Bell <Brian.Bell@co.benton.wa.us>; Jenelle Schadler <Jenelle.Schadler@co.benton.wa.us>; Michelle Johnson <Michelle.Johnson@co.benton.wa.us>; Rod Worthington <Rod.Worthington@co.benton.wa.us>; Troy Taylor <Troy.Taylor@co.benton.wa.us>; Dept. of Ecology - Gwen Clear <crosepacoordinator@ecy.wa.gov>; Dept. of Ecology SEPA Unit <SEPAUNIT@ecy.wa.gov>; WA Dept of Ecology - Lori White <Lori.White@ecy.wa.gov>; WA State Dept. of Ecology SEPA Register <separegister@ecy.wa.gov>; Bureau of Reclamation - C. Garner (cgarner@usbr.gov) <cgarner@usbr.gov>; Bureau of Reclamation - L Hendrix - Bureau of Reclamation (lhendrix@usbr.gov) <lhendrix@usbr.gov>; Bureau of Reclamation -McKinley (cmckinley@usbr.gov) <cmckinley@usbr.gov>; Yakama Indian Nation - John Marvin <John_Marvin@Yakama.com>
Subject: Joint Hearing between Benton County and the Dept. of Ecology on Benton County's Shoreline Master Program Amendment

Benton County is conducting a Periodic Review of their Shoreline Master Program (SMP) and has elected to use the optional joint review process with the Department of Ecology (Ecology). As required by the Shoreline Management Act, we are initiating our formal review process with the opening of a joint public comment period and by notifying interested parties of the opportunity to provide comments. We are specifically inviting you and other potentially interested parties to provide comments.

Ecology's joint review of the County's SMP periodic review is allowed by the Shoreline Management Act (Chapter 90.58 RCW) and the SMP Guidelines (WAC 173-26-104). **The joint public comment period is open from March 24, 2021 to April 23, 2021 at 5:00 p.m.** Comments provided to the County will be reviewed by both the County and Ecology; there is no need to send duplicates. Comments may be submitted by email to planning.department@co.benton.wa.us or by mail to:

Benton County Planning Division
PO Box 910
Prosser, WA 99350

You may also submit verbal comments at the joint public hearing, which will be held at 6:00 p.m. on **April 13, 2021.** Due to the Governor's "Stay Home Order" the Public Hearing will be held via video

conferencing. Information on how to attend the public hearing will be available on the County's webpage. www.tinyurl.com/BCPublicNotice. Agencies, affected tribes, and members of the public are invited and encouraged to participate.

At the conclusion of the comment period, the County will prepare a response to comments and determine if changes are needed. Public comments and the County responses will be shared with Ecology. After local adoption, the SMP amendment will be formally submitted to Ecology for final decision per WAC 173-26-104 and WAC 173-26-110. At the conclusion of our formal review, Ecology's Director must decide to approve the program as submitted, approve it with required changes and/or recommended changes, or deny approval. We invite you to comment on the proposed program and would appreciate receiving your comments by the end of the joint public comment period on April 23, 2021, in order to give them full consideration prior to the Director's decision.

Proposed amendments to Benton County's Shoreline Master Program are available for review at https://tinyurl.com/SMP2021update. Paper copies may be requested by contacting the County Planner at the contact information above.

Donna Hutchinson
Office Assistant IV
Community Development
Dept. - Planning Division
P.O. Box 910
Prosser, WA 99350
509-786-5612

NOTICE OF PUBLIC DISCLOSURE: This e-mail account is public domain. Any correspondence from or to this email account may be a public record. Accordingly, this email, in whole or in part, may be subject to disclosure pursuant to RCW 42.56, regardless of any claim of confidentiality or privilege asserted by an external party.

Prosser: We are now located within the Road Department/Public Works Office on the first floor of the Benton County Courthouse at 620 Market St, Prosser WA 99350. Due to COVID 19 the Prosser Courthouse is currently closed to the public. Please contact us by email or phone.
Kennewick: The County has opened a new Public Services Office at 102206 E Wiser Parkway, Kennewick, which houses the Planning, Building and Road Departments.

State of Washington
DEPARTMENT OF FISH AND WILDLIFE
South Central Region • Region 3 • 1701 South 24th Avenue, Yakima, WA 98902-5720
Telephone: (509) 575-2740 • Fax: (509) 575-2474

April 15, 2021

Mr. Greg Wendt
Benton County Planning Director
VIA EMAIL
Greg.Wendt@co.benton.wa.us

SUBJECT: UPDATED COMMENTS ON 2021 DRAFT SHORELINE MASTER PROGRAM UPDATE FOR BENTON COUNTY

Dear Mr. Wendt:

I was informed that WDFW had provided comments on the Benton County SMP update prior to the official comment period, of which my most recent comments and testimony were contradictory. You understandably want clarification on WDFW's position, and so I offer the following to summarize the agency's position, in light of this confusion:

- WDFW has two updated volumes of the Riparian Ecosystems guidelines. Volume 1 was updated in July 2020. Volume 2 was updated in December 2020. **WDFW recommends that these two newest documents be reviewed, utilized, and referenced as part of the literature review and Best Available Science for code updates.**
- Within these documents, a 100-foot Riparian Management Zone is recommended as being protective of the functions and values of riparian ecosystems and their adjacent waterbodies within the Columbia Plateau. This is what guided my original comments regarding RMZ/buffer sizing. However, I was made aware that Area Habitat Biologist Mike Ritter had previously reviewed and considered Benton County's proposed buffers, and concurred that the buffer sizing of 50-feet for type N and 75-feet for type F is appropriate and protective. Therefore, **I defer to Mike Ritter's original assessment, and agree that what Benton County has proposed is sufficient and acceptable. WDFW requests no changes to the proposed buffers.**

I hope that this clarifies WDFW's position in light of the confusion. If you would like any additional clarification, please reach out at any time.

Sincerely,

Elizabeth Torrey
Washington Dept. of Fish & Wildlife
Elizabeth.Torrey@dfw.wa.gov
509-607-6711

cc:
Benjamin Floyd, White Bluffs Consulting
Michael Ritter, WDFW Fish & Wildlife Biologist
Perry Harvester, WDFW Region Habitat Program Manager
Mike Livingston, WDFW Region 3 Director

Benton County

DRAFT 2021 PERIODIC SHORELINE MASTER PROGRAM UPDATE

Locally Approved ~~June 3, 2014~~ _____

Ecology approved ~~February 16, 2015~~ _____

Benton County Grant No. ~~G1200022~~ SEASMP-1921-BeCOPD-00012

SHORELINE MASTER PROGRAM
FOR
BENTON COUNTY

Originally Adopted in 1974

AMENDMENTS:

Update locally approved June 3, 2014 by Resolution # 2014-440
Update Adopted by Ecology on February 16, 2015

2021 Update locally approved _____ by Resolution # _____
2021 Update approved by Ecology on _____

BENTON COUNTY
SHORELINE MASTER PROGRAM
20~~14~~ 21

BOARD OF COUNTY COMMISSIONERS

Jerome Delvin, Chairman Shon Small Will McKay ~~James Beaver, Chairman~~

BENTON COUNTY PLANNING COMMISSION

Martin Sheeran, Chairman ~~Toni Harris~~ Marjorie Kaspar Tammy McKeirnan
Leo Perales Brian Skeels Lloyd Coughlin Curtis Wills
~~James Willard Richard Giberson Yi Qu Darwin Crosby~~

BENTON COUNTY PLANNING STAFF

Greg Wendt, Director
Michelle Cooke, Assistant Planning Manager
Donna Hutchinson, Office Assistant IV
~~Mike Shuttleworth, Planning Manager~~
~~Susan Walker, Senior Planner~~
~~Valerie Smith, Associate Planner~~

The Benton County Planning Staff would like to extend their thanks and appreciation to the residents of Benton County and the Benton County Planning Commission for their contributions throughout development of this Shoreline Master Program.

~~*Shoreline Master Program Update Resolution #2014-440 locally approved June 3, 2014.~~
~~*Approved by the Department of Ecology with an effective date of February 16, 2015.~~

TABLE OF CONTENTS

Shoreline Master Program Policy Chapter *1*

A. Introduction **1**

1. Purpose and Relationship to State Planning and Shoreline Laws 1
2. Profile of Benton County's Shoreline Jurisdiction 3

B. General Statement of Goals **3**

C. Shoreline Uses and Modifications Sub-element **4**

1. Shoreline Environment Designation Policies 4
2. Agriculture Policies 5
3. Aquaculture Policies 6
4. Boating and Private Moorage Facilities Policies 6
5. Breakwaters, Jetties, Groins and Weirs Policies 6
6. Dredging and Dredge Material Disposal Policies 6
7. Fill Policies 6
8. In-Stream Structures Policies 7
9. Mining Policies 7
10. Residential Development Policies 7
11. Shoreline Stabilization Policies 7
12. Utilities Policies 8
13. Existing Development Policies 8

D. Economic Development Sub-element **9**

1. Commercial Development Policies 9
2. Industry Policies 9

E. Public Access Sub-element **9**

G. Recreation Sub-element **10**

H. Circulation Sub-element **10**

I. Conservation Sub-element **11**

1. Environmental Protection Policies 11
2. Critical Areas Policies 11
3. Shoreline Vegetation Conservation Policies 11
4. Water Quality, Stormwater, and Nonpoint Pollution Policies 12

J. Historic / Cultural Sub-element **12**

L. Restoration Sub-element **12**

M. Shoreline Process and Administration Sub-element **13**

Shoreline Master Program Regulations **14**

Reader's Guide **14**

The Shoreline Management Act and Benton County's SMP 14
Shoreline Jurisdiction 14

Applicability and Exemptions 14
How to Read and Apply this SMP 15
Coordination of Permits and Requirements with Other Agencies 15

Section 15.01 Authority and Purpose 17
01.010 Authority 17
01.020 Purpose 17
01.030 Applicability 17
01.040 Findings 18
01.050 Relationship to Other Codes, Ordinances and Plans 18
01.060 Liberal Construction 18
01.070 Effective Date 19

Section 15.02 Definitions 19

Section 15.03 Shoreline Jurisdiction and Use Preferences 34
03.010 Definition 34
03.020 General Shoreline Use Preferences 35
03.030 Shorelines of Statewide Significance 35

Section 15.04 Shoreline Environment Designations 37
04.010 Urban Transition Area 37
04.020 Rural Industrial 38
04.030 Residential 39
04.040 Rural 39
04.050 Hanford 40
04.060 Conservancy 40
04.070 Natural 41
04.080 Aquatic 42
04.090 Environment Designation Interpretation 43
04.100 Official Shoreline Maps and Unmapped or Undesignated Shorelines 43
04.110 Use and Modifications Matrix 44
04.120 Development Standards 47

Section 15.05 General Regulations and Performance Standards 48
05.010 Archaeological and Historic Resources 48
05.020 Environmental Protection 48
05.030 Shoreline Vegetation Conservation 50
05.040 Water Quality, Stormwater, and Nonpoint Pollution 52
05.050 Public Access 52
05.060 Flood Hazard Reduction 54

Section 15.06 Critical Areas in Shoreline Jurisdiction 56
06.010 General 56
06.020 Wetlands 59
06.030 Rivers and Creeks 65
06.040 Critical Aquifer Recharge Areas 69
06.050 Frequently Flooded Areas 70
06.060 Geologically Hazardous Areas 70
06.070 Fish and Wildlife Conservation Areas 72

Section 15.07 Use-Specific & Modification Regulations & Performance Standards 73
07.010 Agriculture 73
07.020 Aquaculture 74
07.030 Boating Facilities and Private Moorage Structures 74
07.040 Breakwaters, Jetties, Groins, and Weirs 79
07.050 Commercial Development 79
07.060 Dredging and Dredge Material Disposal 80
07.070 Fill 81
07.080 Industry 82
07.090 In-Stream Structures 83
07.100 Mining 83
07.110 Recreational Development 83
07.120 Residential Development 84
07.130 Shoreline Habitat and Natural Systems Enhancement Projects 84
07.140 Shoreline Stabilization 85
07.150 Transportation 88
07.160 Utilities 89

Section 15.08 Nonconforming Uses, Structures, and Lots 89
08.010 Non-Conforming Uses and Structures: Continuance and Discontinuance 89
08.020 Alteration, Expansion, or Restoration of Nonconforming Uses and Structures 90
08.030 Nonconforming Lots 90
08.040 Pre-Existing Legal Residential Uses – Conforming Legal Residential Structures 91

Section 15.09 Administration, Permits, and Enforcement 91
09.010 Purpose 91
09.020 Administrative Responsibilities 92
09.030 Noticing Requirements 92
09.040 Exemption from Permit Requirements 93
09.050 Interpretations 93
09.060 Permit Applications 93
09.070 Procedures Applicable to all shoreline permits 94
09.080 Procedures Applicable to Substantial Development Permits 94
09.090 Procedures Applicable to Shoreline Conditional Use Permits 95
09.100 Procedures Applicable to Shoreline Variances 95
09.110 Revisions to Permits 96
09.120 Enforcement Authority 97
09.130 Amendments to SMP 97
09.140 Monitoring 98

SHORELINE MASTER PROGRAM POLICY CHAPTER

A. Introduction

1. Purpose and Relationship to State Planning and Shoreline Laws

Washington State's citizens voted to approve the Shoreline Management Act (SMA) of 1971 in November 1972. In accordance with the SMA, Benton County developed and adopted its first Shoreline Master Program (SMP) in 1974. A SMP is a set of goals, policies and regulations required by the SMA that:

- Encourages reasonable and appropriate development of shorelines with an emphasis on water-oriented use, such as docks, marinas, and recreational facilities, or industries and commercial uses that require a shoreline location and support economic development; and,
- Protects the natural character of the shorelines, the land, vegetation, wildlife, and shoreline environment; and,
- Promotes public access and provides opportunities to enjoy views and recreational activities in shoreline areas.

The SMP addresses the Yakima and Columbia Rivers, land within 200 feet of the ordinary high-water mark (OHWM) of these rivers, their floodways, contiguous 100-year floodplain extending up to 200 feet inland of the floodway, and associated wetlands.

In 2003 the Washington State Department of Ecology (Ecology) updated the SMP Guidelines (referenced as SMP Guidelines). The SMA and implementing SMP Guidelines require all towns, cities, and counties across the state to comprehensively update their SMPs. The SMP update allows preparation of a locally tailored program that represents the visions and interests of our citizens and meets the needs of our rural communities. The SMP is required to be updated and adopted by June ~~2014~~ 2021.

After the local development and adoption process is complete, the completed SMP is reviewed by Ecology to ensure compliance with the SMP Guidelines. The SMP does not become effective until it has been adopted by the County and approved by Ecology.

This SMP Policy Chapter addresses one aspect of requirements: a statement of goals and policies. Detailed regulations are located in the Benton County Code Title 15. Together, the Shoreline Master Program Policy Chapter and the Shoreline Master Program Regulations constitute the entire SMP.

The SMP Policy Chapter is considered a sub area plan of the Benton County Comprehensive Land Use Plan (Comprehensive Plan) prepared in accordance with the Growth Management Act (GMA). The GMA was amended in 1995 to add the goals and policies of the SMA as one of the goals of the GMA. The purpose of the SMA is stated in RCW 90.58.020 as follows:

"The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer

meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

This SMP Policy Chapter implements the goals of the SMA and is designed to be compatible with the GMA Comprehensive Plan. This SMP Policy Chapter is a sub area plan of the Benton County Comprehensive Plan and is adopted by reference within the Plan. This Chapter provides the framework for future decision making and a guide for future development of lands within the County's SMP jurisdiction boundaries.

As used in this SMP Policy Chapter, goals are the broad value statements and reflect the community's broad vision for its shorelines. Goals are organized into different SMP "elements." Policies are more detailed statements of the County's vision and complete and give detail to the goals. Policies serve as a bridge between the goals and regulations.

Regulations are the specific, enforceable standards which will be implemented for shoreline development, uses and activities. They are organized by shoreline environment designations and specific land use and activity regulations. Unlike shoreline goals and policies, shoreline regulations do not become part of the County's Comprehensive Plan. Rather, shoreline regulations become part of the Benton County Code (See Title 15).

2. Profile of Benton County's Shoreline Jurisdiction

Benton County's shoreline jurisdiction encompasses 330 miles of the Columbia and Yakima Rivers. The total acreage of upland shorelands regulated by the Benton County SMP is 14.93 square miles, which, in accordance with state law, includes lands within 200 feet of the ordinary high water mark (OHWM) of the Columbia and Yakima Rivers, as well as floodways, floodplain areas within 200 feet of a mapped floodway, and associated wetlands.

Fifty-eight (58) percent of the County's shorelands occurs along the Columbia River, and the remaining 42 percent of the County's shorelands occur along the Yakima River. Both the Columbia and the Yakima Rivers within Benton County are classified as Shorelines of Statewide Significance, meaning that under State Law, specific shoreline management preferences and priorities must be applied. Federal lands make up approximately 35 percent of the area in the County's shoreline jurisdiction.

B. General Statement of Goals

It shall be the ultimate goal of the Benton County SMP to provide plans, policies and regulations consistent with the SMA (RCW 90.58) and with the SMP Guidelines (WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines), which will reflect the desires of the citizens of Benton County regarding the balanced use of the county shorelines.

It is recognized that the Columbia and Yakima River shorelines in Benton County are Shorelines of Statewide Significance and must be given consideration as a major resource from which all people derive benefit. For these areas, the goals of the SMP, consistent with RCW 90.58.020, shall:

- Recognize and protect the statewide interest over local interest. This means that the County will consider its local Comprehensive Plan and development regulations as well as consult State agency policies, programs and recommendations in developing use regulations.
- Preserve the natural character of the shoreline.
- Result in long-term over short-term benefit.
- Protect the resources and ecology of the shoreline.

- Increase public access to publicly owned areas of the shorelines. In Benton County, public access should be planned and coordinated to ensure locations are appropriately sited and designed to prevent damage to the natural environment and respect the privacy of adjacent private property owners.
- Increase recreational opportunities for the public in the shoreline. Recreational opportunities should likewise be appropriately sited and designed to be compatible with the natural environment and adjacent privately owned lands.
- Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (Consistent with RCW 90.58.020)

It shall further be the goal of the SMP to:

- Recognize and protect private property rights and provide for the use and enjoyment of private property consistent with the intent of the SMA.
- Avoid undue burdens on private property and streamline standards and procedures where feasible.
- Preserve the public's and property owner's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state to the greatest extent feasible.
- Promote preferred uses which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline consistent with the SMA and SMP Guidelines.
- Recognize the Columbia River as a transportation corridor.
- Recognize alterations of the natural condition of the shorelines and shorelands of the state.

The following statements of goals and policies are directed to address elements as outlined in the SMA and SMP Guidelines. The major SMP Policy Chapter sub-elements are: shoreline uses and modification, economic development, public access, recreation, circulation, conservation, historic/cultural, flood hazard management, restoration, and shoreline process and administration.

C. Shoreline Uses and Modifications Sub-element

SMP-Goal 1. To foster and promote the best use of Benton County shorelines. To encourage shoreline development and modifications which are wisely placed, consistent with the physical limitations of the areas, serve the needs and desires of the local citizens, and protect the functions and values of the shorelines.

1. Shoreline Environment Designation Policies

SMP-P1. To provide a high-quality shoreline environment where:

A. Recreational opportunities are available and compatibly located and designed.

B. The public enjoys access to and views of shoreline areas.

C. Natural systems are preserved, restored or enhanced.

D. Ecological functions of the shoreline are maintained and improved over time.

E. Water-oriented uses are promoted consistent with the shoreline character and environmental functions.

F. The rural and agricultural character of Benton County shorelines is encouraged.

SMP-P2. Provide a comprehensive shoreline environment designation system to categorize Benton County shorelines into environments based upon the primary characteristics of shoreline areas to guide the use and management of these areas.

SMP-P3. Designate shorelines with the following shoreline environment system:

A. Aquatic: Protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark

B. Natural: Protect those public shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use.

C. Conservancy: Protect ecological functions of open space, floodplain and other sensitive public or protected lands and ensure appropriate management and development of existing and future public parks and recreation areas.

D. Hanford: Recognize and foster the unique economic, environmental, and recreational values of the Hanford area as it transitions over time from federal energy purposes to other land uses and management consistent with the Hanford Reach National Monument designation.

E. Rural: Promote agricultural use and activities, including associated irrigation and support facilities, and accommodate low-density rural home sites, function as a separation between urban areas, and maintain an open space character and provide opportunities for recreational uses compatible with agricultural activities.

F. Residential: Accommodate residential development and accessory structures that are consistent with existing rural character and provide appropriate public access and recreational uses.

G. Rural Industrial: Provide for intensive water-oriented commercial, transportation, power production, and industrial uses, while protecting existing ecological functions.

H. Urban Transition Area: Ensure optimum utilization of shorelines occurring within designated Urban Growth Areas by managing development and uses so that it enhances and maintains shorelines for a variety of future urban uses and protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

2. Agriculture Policies

SMP-P4. Preserve and maintain productive farmlands in shoreline jurisdiction.

SMP-P5. Promote and protect agri-tourism.

SMP-P6. Encourage erosion control measures in accordance with the United States Department of Agriculture Natural Resources Conservation Service agency guidelines.

SMP-P7. Limit livestock access to shoreline areas.

SMP-P8. Control irrigation runoff to minimize discharge of chemicals, fertilizer, sediment, and organic materials in aquatic areas in accordance with federal and state water quality standards.

SMP-P9. Allow diversion of water for agricultural purposes consistent with water rights laws and rules.

SMP-P10. Encourage maintenance of vegetative zones between tilled areas and aquatic areas to reduce stormwater runoff, reduce sedimentation, and promote fish and wildlife habitat.

3. Aquaculture Policies

SMP-P11. Encourage aquaculture that supports the recovery of endangered or threatened fish species.

SMP-P12. Restrict aquaculture in areas where it would result in a net loss of ecological functions or significantly conflict with navigation or other water-dependent uses.

4. Boating and Private Moorage Facilities Policies

SMP-P13. Give boating facilities and private moorage structures priority for shoreline location.

SMP-P14. Design and construct boating facilities and private moorage structures to result in no net loss of ecological functions.

SMP-P15. Give preference to boating facilities and private moorage structures that minimize the amount of shoreline modification, in-water structure, and overwater cover. In support of this, community structures are encouraged.

SMP-P16. Ensure new boating facilities are located only at sites where suitable environmental conditions, shoreline configuration, access, and compatible adjacent uses are present. Such facilities should be coordinated with applicable local, state and federal plans and, where feasible, collocated with other compatible water-dependent uses to efficiently provide recreational resources, avoid unnecessary duplication, and minimize adverse impacts to shoreline ecological functions and processes.

SMP-P17. Ensure boating facilities are located, designed, constructed and maintained to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; impacts to navigation; and impacts to public access to the shoreline.

5. Breakwaters, Jetties, Groins and Weirs Policies

SMP-P18. Allow breakwaters, jetties, and groins to be located waterward of the OHWM only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

SMP-P19. Consider alternative structures with less impact where physical conditions make such alternatives feasible.

6. Dredging and Dredge Material Disposal Policies

SMP-P20. Site and design new development to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

SMP-P21. Ensure dredging and dredge material disposal is done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

SMP-P22. Discourage the disposal of dredge material on shorelands or wetlands within a channel migration zone.

7. Fill Policies

SMP-P23. Allow fill when it is demonstrated to be the minimum extent necessary to accommodate an allowed shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes.

SMP-P24. Encourage fill when it is associated with restoration projects.

8. In-Stream Structures Policies

SMP-P25. Ensure the location, design, construction and maintenance of in-stream structures give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

SMP-P26. Encourage non-structural and non-regulatory approaches as an alternative to in-stream structures. Non-regulatory and non-structural approaches may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.

9. Mining Policies

SMP-P27. Ensure mining activities are sited, designed, conducted, and completed to result in no net loss of shoreline ecological functions and processes.

SMP-P28. Base the determination no net loss of ecological function on an evaluation of the reclamation plan required for the site.

SMP-P29. Give preference to mining proposals that result in the creation, restoration or enhancement of habitat for priority species.

10. Residential Development Policies

SMP-P30. Design subdivisions in shoreline jurisdiction to be compatible with environmental conditions and to protect shoreline aesthetics.

SMP-P31. Encourage pedestrian access along the shoreline through the subdivision.

SMP-P32. Require residential development make adequate provision for wastewater, water, and stormwater facilities and apply best management practices to protect shoreline water quality and meet the needs of the development.

SMP-P33. Restrict residential development in areas subject to flooding.

SMP-P34. Encourage low impact development and vegetation conservation measures to promote environmental quality.

SMP-P35. Prohibit over-water residential development and floating homes.

11. Shoreline Stabilization Policies

SMP-P36. Locate and design new development to avoid the need for future shoreline stabilization to the extent feasible.

SMP-P37. Use structural shoreline stabilization measures only when nonstructural methods are infeasible. Nonstructural methods include building setbacks, structure relocation, groundwater management, and other measures.

SMP-P38. Ensure soft structural shoreline stabilization measures are used prior to hard stabilization measures unless demonstrated to be insufficient.

SMP-P39. Allow new or expanded structural shoreline stabilization only where demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage, or for reconfiguration of the shoreline for mitigation or enhancement purposes.

SMP-P40. Ensure all proposals for structural shoreline stabilization, both individually and cumulatively, do not result in a net loss of ecological functions.

12. Utilities Policies

SMP-P41. Locate new utilities outside shoreline jurisdiction unless alternative locations are unfeasible, the utility requires a shoreline location, or the utility is necessary to support an approved shoreline use.

SMP-P42. Ensure new utilities utilize existing transportation and utility rights-of-way easements, or existing cleared areas to the greatest extent feasible.

SMP-P43. Design and locate utility structures to minimize disruption of public access to the shoreline, obstruction of visual access to the water, and loss of shoreline ecological function.

13. Existing Development Policies

SMP-P44. Allow legal pre-existing uses and structures to continue in accordance with this SMP.

SMP-P45. Allow alterations of legal pre-existing structures, uses, and lots in consideration of:

A. historic development patterns, or

B. occupancy by preferred uses pursuant to the SMA, or

C. provision of ecological restoration, or

D. public safety or other public purposes.

SMP-P46. Encourage transitions from non-water-oriented uses to water-oriented uses and from non-conforming uses to conforming uses.

SMP-P47. Review changes to nonconforming uses, structures, or lots in relation to the SMP no-net-loss of ecological function objective.

SMP-P48. Balance rural historic character and protection/rehabilitation of significant cultural and historic properties with conformity to SMP rules when considering changes to nonconforming uses, structures, and lots.

D. Economic Development Sub-element

SMP-Goal 2. To promote and protect tourism and agricultural activities along the shoreline.

SMP-Goal 3. To realize locally the inherent economic opportunities and benefits associated with transition of the Hanford lands, infrastructure and resources from a military to a peacetime mission.

SMP-Goal 4. To encourage economic development along shorelines in a manner compatible with environmental conditions and desired land use character of the shorelines.

SMP-Goal 5. To facilitate shoreline economic growth and prosperity while taking into account the existing rural quality of life.

1. Commercial Development Policies

SMP-P49. Give preference to water-dependent commercial uses over non-water-dependent commercial uses in the shoreline environment. Prefer water-related and water-enjoyment uses over non-water-oriented commercial uses.

SMP-P50. Ensure shoreline commercial development provides public access to the shoreline where opportunities exist, provided that such access would not pose a health or safety hazard.

SMP-P51. Limit over-water, and non-water-oriented commercial uses in the shoreline environment.

SMP-P52. Allow limited commercial development in rural areas characterized by agriculture and/or industrial development to support the needs of employees.

2. Industry Policies

SMP-P53. Design industrial development in the shoreline environment to minimize impacts to shoreline resources and interference with shoreline use by adjacent property owners.

SMP-P54. Limit non-water-oriented industrial development in the shoreline environment and only in areas physically separated from the shoreline, where navigability is restricted, or as part of a project that provides public access or ecological restoration benefits.

SMP-P55. Encourage cooperative use of existing port facilities, including docks and piers to reduce additional disruption to the shoreline.

SMP-P56. Allow future industrial and port facilities that are dependent upon a shoreline location in areas where the shoreline is already characterized by industrial development or planned for such uses.

E. Public Access Sub-element

SMP-Goal 6. To provide, protect, and enhance a public access system that is both physical and visual, which increases the amount and diversity of public access to Columbia and Yakima River shorelines, consistent with the natural shoreline character, private property rights, and

public safety. To prioritize public access on public properties, promote coordinated public access through incentives to private developments, and ensure appropriate resources are available for maintenance and enforcement.

SMP-Goal 7. Consistent with the adopted Benton County Comprehensive Plan and Comprehensive Parks Plan and together with other agencies, promote a connected public access system along the Yakima River west of Benton City to Columbia Point and Bateman Island.

SMP-P57. Ensure that the creation of public access will not endanger natural features or contribute to a loss of ecological functions.

SMP-P58. Provide additional physical and visual public access to shorelines, with a focus on public properties, by developing and implementing parks, recreation, and trails plans.

SMP-P59. In order to promote environmental protection and avoid private trespass, acquire or improve public access opportunities in high demand or good water locations. Priority locations include, but are not limited to: Snively, Chandler reach, Finley, Paterson, and others.

SMP-P60. Focus public access in less environmentally sensitive areas and offer adequate recreation facilities and parking.

SMP-P61. Apply public access standards to new development creating a demand for public access. Allow flexible options to provide public access in new development.

SMP-P62. Consider incentives for well-designed common access and for improved ecological function.

G. Recreation Sub-element

SMP-Goal 8. To meet the recreational needs of Benton County residents and visitors while protecting shoreline ecological resources.

SMP-P63. Develop recreational activity areas in a manner which complements the intent of the shoreline environment and natural habitats and results in no-net-loss of shoreline ecological function.

SMP-P64. Encourage recreational development and use of the shorelines that is related to enjoyment of, access to, and use of the water. Give shoreline recreational development priority within shoreline jurisdiction.

SMP-P65. Ensure provision of recreational space and uses is coordinated and consistent with the County's shoreline public access plan.

SMP-P66. Continue to work with non-profit, state, and federal agencies to support local and regional opportunities for public recreation, shoreline access and use.

SMP-P67. Recognize that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public.

SMP-P68. Require development applicants to monitor or limit the use of fertilizers, herbicides, and pesticides to maintain recreational facilities. Management that utilizes organic treatments, integrated pest management, or non-synthetic chemicals is preferred where feasible and practical.

H. Circulation Sub-element

SMP-Goal 9. To encourage a circulation system which will efficiently and safely move people, goods and services with good planning to minimize disruption or adverse effect on the shoreline areas.

SMP-Goal 10. To allow for safe emergency access to shorelines.

SMP-P69. Design transportation facilities within shoreline jurisdiction to the minimum size necessary to reduce their impact on the ecological function of the shoreline.

SMP-P70. Maintain transportation facilities in a manner that minimizes impacts on the ecological function of the shoreline.

SMP-P71. Encourage non-motorized trails that provide recreational access to the shoreline.

SMP-P72. Allow parking in shoreline jurisdiction for authorized uses where upland locations are not feasible. Allow parking in shoreline jurisdiction for water-oriented uses when needed to support access to water-oriented elements of the development.

I. Conservation Sub-element

SMP-Goal 11. To encourage sound management of renewable shoreline resources and protection of non-renewable shoreline resources. Non-renewable resources are those that are in danger of depletion faster than nature can create them. Renewable resources can be replaced over time. It is recognized that shorelines themselves are finite areas within which to balance shoreline uses, conservation, and public access.

SMP-Goal 12. To achieve sustainability of resource functions and values and no-net-loss of ecological functions by allowing shoreline development and modifications when impacts are minimized through mitigation sequencing and by encouraging and incentivizing restoration of ecological functions where they have been impaired.

SMP-Goal 13. Promote and protect the scenic aesthetic quality of shoreline areas and vistas to the greatest extent feasible.

1. Environmental Protection Policies

SMP-P73. Protect all shorelines of the state in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property so that there is no net loss of ecological functions from both individually permitted and exempt development.

SMP-P74. Protect and, where necessary, apply planning and land use measures to improve the quality and productivity of the County's environmental resources (air, ground and surface waters, and indigenous biology).

SMP-P75. Sustain a diverse, productive, and high-quality natural environment for the use, health and enjoyment of County residents.

2. Critical Areas Policies

SMP-P76. Identify and protect critical fish and wildlife habitat from destruction or encroachment of incompatible uses.

SMP-P77. Preserve natural wetlands (marshes, sloughs, shorelines, etc.) that are important wildlife and game habitat or recreational areas.

SMP-P78. Protect life and property by avoiding inappropriate developments in areas susceptible to natural disasters and hazards, such as floodways and steep slopes.

3. Shoreline Vegetation Conservation Policies

SMP-P79. Where new developments, uses and/or redevelopments are proposed, ensure shoreline vegetation, both upland and waterward of the OHWM, is conserved to maintain shoreline ecological functions and processes.

SMP-P80. Encourage management and control of noxious and invasive weeds. Control of such species should be done in a manner that retains onsite native vegetation, provides for erosion control, and protects water quality.

4. Water Quality, Stormwater, and Nonpoint Pollution Policies

SMP-P81. Maintain and improve the water quality of the Yakima and Columbia Rivers, and preserve surface and groundwater for the beneficial use of the rural area's citizens and wildlife.

SMP-P82. Require that new developments or expansions or retrofits of existing developments assess the effects of additional stormwater runoff volumes and velocities and mitigate potential adverse effects on shorelines through design and implementation of appropriate stormwater management measures.

J. Historic / Cultural Sub-element

SMP-Goal 14. To encourage the protection of areas and sites having historic, cultural, educational or scientific value.

SMP-P83. Ensure development applicants provide protection and restoration of sites, buildings, structures, districts and objects along Benton County shorelines having historic, archaeological, cultural, educational or scientific value consistent with state and federal laws.

SMP-P84. Require development applications along shorelines to consult with professional archaeologists, historians, biologists, Washington State Department of Archaeology and Historic Preservation (DAHP) and affected tribes to screen proposals, identify areas containing potentially valuable data, and to establish procedures for maintaining the area in an undisturbed condition, or salvaging the data.

SMP-P85. Require developers to immediately stop work and notify Benton County, DAHP, and affected tribes, if any archaeological or historic resources are uncovered during excavation to allow for preservation and/or retrieval of data.

K. Flood Hazard Management Sub-element

SMP-Goal 15. To protect life and property and avoid the need for new shoreline stabilization or flood control infrastructure.

SMP-Goal 16. To apply consistent flood hazard regulations to reduce the potential for damage to persons or property.

SMP-P86. Recognize and protect the hydrologic functions of floodplains by limiting the use of structural flood hazard reduction measures.

SMP-P87. Ensure developments subject to damage or that could result in loss of life do not locate in areas of known flood hazards unless it can be demonstrated by the project proponent that the development is sited, designed and engineered for long-term structural integrity, and that life and property on and off-site are not subject to increased hazards as a result of the development.

SMP-P88. Limit new development or uses in shoreline jurisdiction, including subdivision of land that would likely require structural flood hazard reduction measures.

L. Restoration Sub-element

SMP-Goal 17. To upgrade shoreline ecological functions and aesthetics to a level commensurate with their importance to the community and to achievement of regional goals for species and habitat recovery such as through the projects, programs and plans established within the SMP Shoreline Restoration Plan.

SMP-Goal 18. To provide voluntary incentives for restoration by property owners, facilitate the permitting for restoration projects, and coordinate with agencies, tribes, and non-profit

groups to achieve effective restoration of shoreline ecological functions and maximize public funding.

SMP-P89. Promote restoration and enhancement actions that improve shoreline ecological functions and processes and target the needs of sensitive plant, fish and wildlife species as identified by Washington Department of Fish and Wildlife, Washington Department of Natural Resources, affected tribes, National Marine Fisheries Service, and/or U.S. Fish and Wildlife Service.

SMP-P90. Ensure restoration and enhancement of shorelines is designed using principles of landscape and conservation ecology and restores or enhances chemical, physical, and biological watershed processes that create and sustain shoreline habitat structures and functions.

SMP-P91. Seek funding to implement restoration and enhancement projects, particularly those that are identified in the Restoration Plan of this SMP or in other pertinent plans. Funding may be sought by the county or other entities.

SMP-P92. Develop application processing guidelines that will streamline the review of restoration-only projects.

SMP-P93. Allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife and plants.

M. Shoreline Process and Administration Sub-element

SMP-Goal 19. To provide a process to update the SMP consistent with the update schedule of the SMA.

SMP-P94. When assigning environment designations and determining permitted uses within the different designations and use categories, consider the ability of the landscape to accommodate planned uses.

SMP-P95. Encourage citizen participation in the implementation of this SMP.

SMP-P96. Protect property rights of landowners from arbitrary and discriminatory actions.

SMP-P97. Develop administrative procedures which will help the applicant, the County, and other interested parties reach a quick and accurate assessment of a proposed development.

SMP-P98. Reconcile conflicting public policy goals by considering the overall needs of the community including public access, infrastructure requirements, utility corridor alignments and facilities, and natural resource protection.

SMP-P99. Implement shoreline improvements as scheduled through the Capital Facilities Element of the County's Comprehensive Plan and Capital Improvement Plan processes.

SHORELINE MASTER PROGRAM REGULATIONS

Reader's Guide

The Shoreline Management Act and Benton County's SMP

Washington State's citizens voted to approve the Shoreline Management Act (SMA) of 1971 in November 1972. The SMA seeks to provide environmental protection for shorelines, preserve and enhance shoreline public access, and encourage appropriate development that supports water-oriented uses. Benton County developed and adopted its first Shoreline Master Program (SMP) in 1974. That SMP was developed almost 40 years ago and since then much has changed along Benton County shorelines. In addition, knowledge of best development and conservation practices has evolved. There have also been changes in State laws and rules. Therefore, in accordance with the SMA, Benton County has prepared this SMP Periodic Update to guide and manage its shorelines.

The Benton County SMP contains goals, policies, regulations, and a use map that guide the development of shorelines in accordance with the SMA (Revised Code of Washington [RCW] 90.58), Washington State Department of Ecology (Ecology) SMP Guidelines (Washington Administrative Code [WAC] 173-26), and Shoreline Management Permit and Enforcement Procedures (WAC 173-27).

Consistent with RCW 36.70A.480, the goals and policies of Benton County's SMP, approved under chapter 90.58 RCW, are considered a sub area plan of the County's *Comprehensive Land Use Plan* (Comprehensive Plan) and are found in the SMP Policy Chapter. The SMP Policy Chapter is a sub area plan of the Benton County Comprehensive Plan and is adopted by reference within the Plan. It provides the framework for future decision making and a guide for future development of lands within the County's SMP jurisdiction boundaries.

All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, are a part of the County's development regulations and are contained in Title 15, Shoreline Master Program.

Shoreline Jurisdiction

In accordance with state laws and rules, the jurisdiction of Benton County's SMP encompasses the Columbia and Yakima Rivers, land within 200 feet of the ordinary high water mark (OHWM) of these waterways, their floodways, contiguous 100-year floodplain extending up to 200 feet inland of the floodway, and associated wetlands.

Applicability and Exemptions

The SMP applies to all proposed uses and development occurring within shoreline jurisdiction. This SMP does not apply to certain activities that do not alter structures or properties, such as interior building changes or routine gardening. It also does not apply to legally established uses already on the land such as existing agriculture, existing residences, and other existing uses, structures, and activities. See Section 15.01 for a complete description of SMP applicability.

There are also activities that are exempt from the Shoreline Substantial Development Permit system. These activities are subject to the standards of the SMP but are not required to submit fees and other materials associated with Shoreline Substantial Development Permits. Common exemptions include, but are not limited to:

- Normal maintenance or repair of existing structures or developments
- Bulkheads common to single-family residences
- Emergency construction necessary to protect property from damage
- Construction and practices normal or necessary for farming, irrigation, and ranching activities including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the

construction and maintenance of irrigation structures
- Construction of a single-family residence
- Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use

Exemptions are fully described and listed in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, as amended. See Section 15.09.040 for additional information on exemptions.

How to Read and Apply this SMP

When reading the SMP, it is useful to consider the definitions of the following terms that are based on definitions in the SMP Guidelines (WAC 173-26-020):

- Shall or must: means a mandate; the action must be done.
- Should: means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and shoreline master program, against taking the action.
- May: means the action is acceptable, provided it conforms to the provisions of this SMP and the Act.

In general, this SMP uses the word "should" in goals, objectives, and policies, and "shall" in the regulations. Additional definitions are located in Section 15.02.

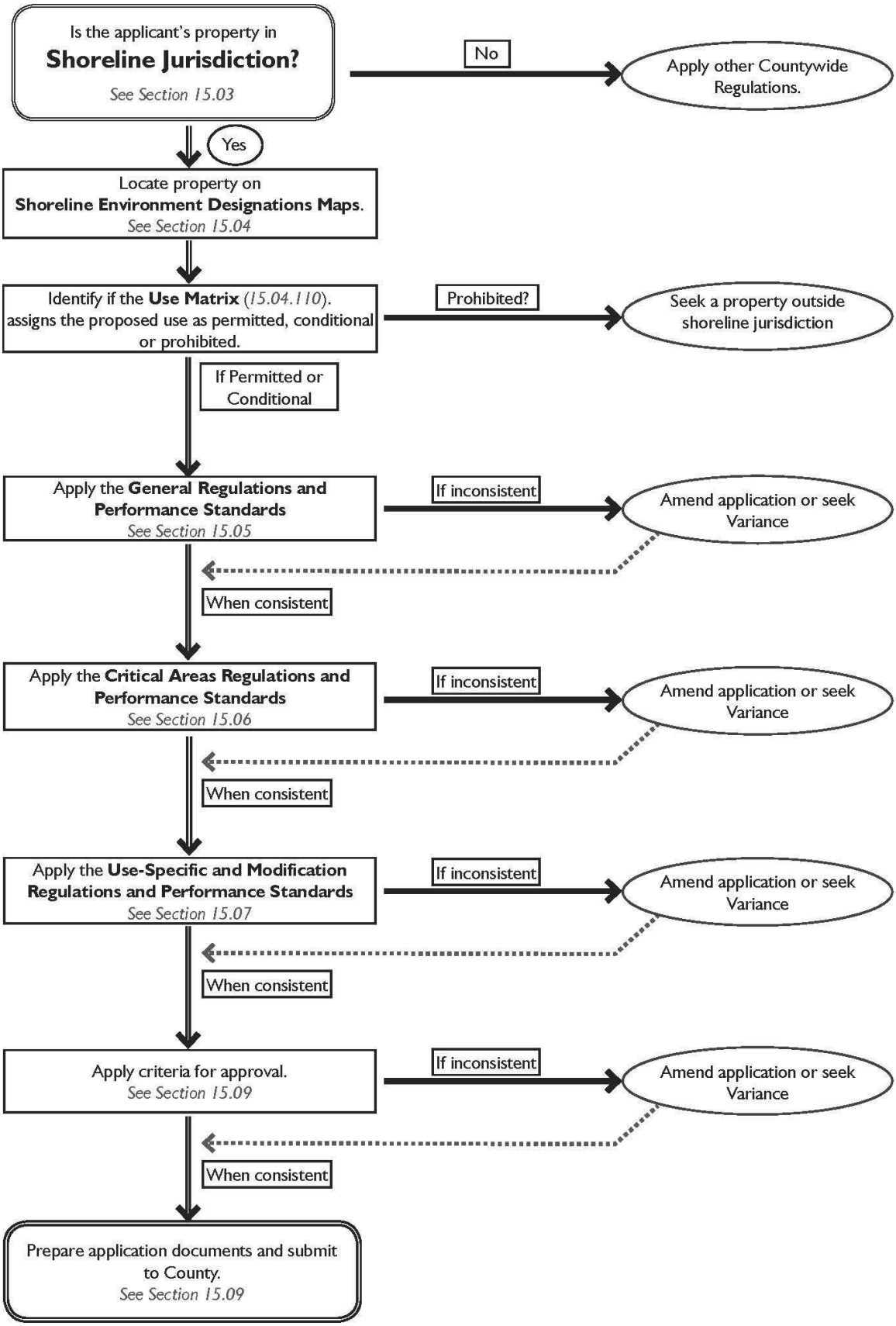
The SMP has a high level of detail for the following reasons: 1) to allow for more shoreline applications to be approved administratively for an efficient and cost-effective process, 2) to cross-reference applicable state and federal laws to help consolidate requirements and be a resource for property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

For informational purposes, the flow chart below illustrates how an applicant could navigate the regulations to determine if and how they apply to a particular project and property. In addition to approval from the Benton County Department (Permitting), any shoreline development or construction project may also require a permit from the U.S. Army Corps of Engineers and/or the Washington Department of Fish and Wildlife, and the Washington Department of Natural Resources, as well as other agencies (please see "Coordination" section below).

Coordination of Permits and Requirements with Other Agencies

Although not required by this SMP, applicants may find it helpful to coordinate early in the project design process with one or more of the following agencies depending on the type and location of the project:

- Washington Department of Fish and Wildlife (any project that may affect upland or aquatic habitats)
- Washington Department of Natural Resources (projects waterward of the OHWM)
- Yakama Nation (any project that may affect upland or aquatic habitats)
- U.S. Army Corps of Engineers (projects waterward of the OHWM on the Columbia River or that involve any fill on the Yakima River)
- Washington Department of Ecology (any project, but particularly those that require a permit from the Corps or may have impacts on wetlands or other waters)
- Benton Conservation District (any project where the applicant is interested in restoration opportunities)


Is the applicant's property in
Shoreline Jurisdiction?
See Section 15.03
No
Apply other Countywide Regulations.
Yes
Locate property on
Shoreline Environment Designations Maps.
See Section 15.04
Identify if the Use Matrix (15.04.110).
assigns the proposed use as permitted, conditional or prohibited.
Prohibited?
Seek a property outside shoreline jurisdiction
If Permitted or Conditional
Apply the General Regulations and Performance Standards
See Section 15.05
If inconsistent
Amend application or seek Variance
When consistent
Apply the Critical Areas Regulations and Performance Standards
See Section 15.06
If inconsistent
Amend application or seek Variance
When consistent
Apply the Use-Specific and Modification Regulations and Performance Standards
See Section 15.07
If inconsistent
Amend application or seek Variance
When consistent
Apply criteria for approval.
See Section 15.09
If inconsistent
Amend application or seek Variance
When consistent
Prepare application documents and submit to County.
See Section 15.09

Many projects may also be under the jurisdiction of one or more of the above-listed agencies (particularly for projects located waterward of the OHWM), in which case early consultation is not only advised, but required. The Governor's Office for Regulatory Innovation and Assistance permitting services website is a useful tool for identifying potential jurisdictional agencies and permits.

For residents of the County interested in improving the ecological functions of their shoreline, the County's Shoreline Restoration Plan identifies a number of agencies and organizations that can provide advice or assistance with design and implementation.

Section 15.01 Authority and Purpose

01.010 Authority

This SMP is enacted and administered according to the following state law and rules:

(e) The Shoreline Management Act (SMA) of 1971, Chapter 90.58 RCW;
(f) State master program approval/amendment procedures and master program guidelines, WAC 173-26; and
(g) Shoreline management permit and enforcement procedures, Chapter 173-27 WAC.

01.020 Purpose

The purposes of this SMP are:

(a) To promote the public health, safety, and general welfare of the County by providing comprehensive policies and effective, reasonable regulations for development, use and protection of jurisdictional shorelines; and
(b) To further assume and carry out the local government responsibilities established by RCW 90.58.050 including planning and administering the regulatory program; and
(c) To assure no net loss of ecological functions associated with the shoreline; and
(d) To carry out the policies and use preferences in RCW 90.58.020, described in Section 15.03.

01.030 Applicability

(a) Except as described in Subsection (b) and (c), all proposed uses and development occurring within shoreline jurisdiction must conform to the intent and requirements of the laws and rules cited in Section 15.01.010 and this SMP.
(b) The following are examples of activities that are not considered development and are therefore not subject to this SMP:

    (1) Interior building improvements that do not change the use or occupancy;
    (2) Exterior structure maintenance activities, including painting and roofing, as long as it does not expand the existing footprint of the structure; and,
    (3) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding.

(c) Consistent with Section 15.02 (Definitions), WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a), as amended, this SMP shall not require modifications of or limit agricultural activities on agricultural lands.

(d) Activities that are exempt from the permit system in Section 15.09.040 shall comply with this SMP whether or not a permit or other form of authorization is required.

(e) The shoreline permit procedures, policies and regulations established in this SMP shall apply countywide to all nonfederal uses, activities, and development.

(f) This SMP applies to lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

01.040 Findings

This SMP was developed based on community participation, local shoreline conditions, and the Shoreline Management Act provisions per Resolution 2014-440 dated June 3, 2014. Key findings are highlighted below:

(a) The Benton County SMP Public Participation Plan, adopted by the County Commissioners in June 2012, was followed, and encouraged public involvement and interaction, and provided public forums, open houses and meetings in several venues in the County.

(b) A Shoreline Advisory Committee made up of fourteen volunteers with diverse backgrounds, including, shoreline property owners, residents, agri-business, economic and environmental interests, state and federal agencies and the Yakama Nation, and sanctioned by the Board of County Commissioners, reviewed, interacted and provided input for the SMP and all required documents.

(c) The Benton County Shoreline Analysis Report, Inventory and Channel Migration Maps, Cumulative Impacts Analysis, and voluntary Restoration Plan were utilized for the development of the Benton County SMP update which was prepared in conformance with RCW 90.58 (Shoreline Management Act) and WAC 173-26.

(d) The SMP is appropriately tailored to accommodate Benton County's unique environmental conditions and community needs.

(e) The policies, programs and regulations of the SMP address cumulative impacts of the reasonably foreseeable future development and use of the County's shoreline and further demonstrate through its Cumulative Impacts Analysis that the SMP as prepared will not result in degradation of shoreline ecological functions over the next 20-year planning horizon.

(f) The SMP will help protect water quality for the County's rivers and streams, increase protection of lives and property from flood, protect fish and wildlife habitat, allow preferred uses along the shoreline meeting the needs of the Benton County community, and promote recreational opportunities for County residents consistent with RCW 90.58/WAC 173-26.

(g) The SMP is in the best interest of the public and is consistent with the Benton County Comprehensive Plan and furthers the intent of the Shoreline Management Act (RCW 90.58/WAC 173-26).

01.050 Relationship to Other Codes, Ordinances and Plans

(a) All applicable federal, state, and local laws shall apply to properties in the shoreline jurisdiction.

(b) Consistent with RCW 36.70A.480, the goals and policies of this SMP approved under chapter 90.58 RCW shall be considered a sub area plan of Benton County's Comprehensive Plan. All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, shall be considered a part of Benton County's development regulations.

(c) All local development regulations including, but not limited to, zoning and subdivision rules shall apply in addition to this SMP. This SMP includes critical areas regulations applicable only in shoreline jurisdiction, and shall control within shoreline jurisdiction over other County critical area regulations adopted pursuant to the Growth Management Act.

(d) In the event provisions of this SMP conflict with provisions of federal, state, county or city regulations, the provision that is most protective of shoreline resources shall prevail, when consistent with policies set out in the SMA.

01.060 Liberal Construction

As provided for in RCW 90.58.900, the SMA is exempted from the rule of strict construction; the SMA and this SMP shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which they were enacted.

01.070 Effective Date

The SMP is hereby adopted on the 3rd of June 2014. This SMP and all amendments thereto shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

Section 15.02 Definitions

Whenever the words and terms set forth in this Section appear in this title, they shall be given the meaning attributed to them by this Section. Definitions established by RCW 90.58.030 and WAC 173 have been incorporated herein and should these definitions in the RCW or WAC be amended, the most current RCW or WAC definition shall apply. Except where specifically defined in this Section, the RCW, the WAC, or the Benton County Code, all words used in this SMP shall carry their customary meanings.

"Abutting" means bordering upon, to touch upon, or in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

"Accessory" means any use or development incidental to and subordinate to a primary use of a shoreline use or development. See also Appurtenance, Residential.

"Adjacent" means to be nearby and not necessarily abutting.

"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation. See Section 15.05.010 regarding interpretation of agricultural activities.

"Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

A. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;

B. corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

C. farm residences and associated equipment, lands, and facilities; and

D. roadside stands and on-farm markets for marketing fruit or vegetables.

"Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

"Agricultural lands of long-term commercial significance" means those lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.

"Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of

planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.

"Agricultural Related Industry" means specifically:

A. Packaging Plants - may include but are not limited to the following activities: washing, sorting, crating, and other functional operations such as drying, field crushing, or other preparation in which the chemical and physical composition of the agriculture product remains essentially unaltered. Does not include processing activities, or slaughterhouses, animal reduction yards, and tallow works.

B. Processing Plants - may include but are not limited to those activities which involve the fermentation or other substantial chemical and physical alteration of the agricultural product. Does not include slaughterhouses or rendering plants.

C. Storage Facilities - may include those activities which involve the warehousing of processed and/or packaged agricultural products.

“Agricultural tourism” or “Agri-tourism” refers to the act of visiting a working farm or any agricultural, horticultural or agribusiness operation for the purpose of enjoyment, education or active involvement in the activities of the farm or operation.

"Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program. “Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development, construction or use on a site.

"Approval" means an official action by a local government legislative body agreeing to submit a proposed SMP or amendments to the Department of Ecology for review and official action pursuant to this chapter; or an official action by the Department of Ecology to make a local government SMP effective, thereby incorporating the approved SMP or amendment into the state master program.

“Appurtenance, residential” is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenance includes a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

"Aquaculture" means the culture and/or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Commercial aquaculture is conducted to produce products for market with the objective of earning a profit. Non-commercial aquaculture is conducted for the benefit of native fish recovery, education and interpretation, or other public benefit or use.

"Aquifer" means a body of rock or soil that contains sufficient saturated permeable material to conduct groundwater and to yield economically significant quantities of groundwater to wells and springs.

"Aquifer confined" means groundwater overlain by a confining bed, such as an impermeable layer of clay or rock.

"Aquifer Recharge/Interchange Area" means those natural and man-made land features that hold or convey surface waters having connectivity to groundwater.

"Aquifer unconfined" means groundwater lying between the soil profile and the shallowest impermeable layer (i.e., clay, basalt).

“Archaeologist, professional” means a person who meets qualification standards promulgated by DAHP and the National Park Service and published in 36 CFR Part 61, and which define minimum education and experience required to perform identification, evaluation, registration and treatment activities for archaeological sites. In

some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the properties involved.

"Area of Special Flood Hazard", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" or "100-year Flood" means the designation on the Federal Emergency Management Act (FEMA) Flood Insurance Maps that denote areas subject to floods having a one (1) percent chance of being equaled or exceeded in any given year. The base flood is determined for existing conditions, unless a basin plan including project flows under future developed conditions has been completed and adopted by Benton County; in these cases, future flow projections shall be used. In areas where the Flood Insurance Study includes detailed base flood calculations, those calculations may be used until projections of future flows are completed and approved by Benton County.

"Best Management Practices" or "BMPs" means physical, structural and/or managerial practices, that, when used singly or in a combination protect the functions and values of critical resources. BMPs are current and evolving conservation practices, systems of practices, management and operational measures, design and construction techniques, or normal and accepted industry standards that are applied to land uses and land use activity in a manner which:

A. controls soil loss and reduces water surface and ground-water quality degradation caused by nutrients, animal wastes, toxins, and sediment; and,

B. mitigates adverse impacts to the natural chemical, physical and biological environment of the County; and,

C. facilitates the utilization of the County's natural resources on a long term, sustainable yield basis.

~~"Board of Adjustment" means the County board which hears applications for variances, conditional use permits, and other quasi-judicial matters assigned to it by the legislative body.~~ "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, land use permits, and certain appeals. Appeals may be taken to the ~~Board~~ Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.

“Boating Facilities” means developments and uses that support access to shoreline waters for purposes of boating, including marinas, community docks serving more than four single-family residences or multi-family units, public piers, and community or public boat launch facilities.

"Breakwater" means a fixed or floating offshore structure that protects the shore from wave action or currents.

"Buffer" means a designated area used to separate incompatible uses or protect resources or development. Buffers are generally undeveloped areas. There are different types of buffers for different purposes:

A. buffers which protect sensitive natural resources (critical areas) from the adverse impacts of development are generally undeveloped open space which are ecologically part of the protected resource;

B. buffers which protect the integrity of development from certain natural hazards such as slope instability, floods or fire prone areas, and which ensure that buildings and development avoid the hazardous condition;

C. buffers to separate incompatible uses, such as residential from industrial, airports, or certain activities common to commercial agriculture, are generally open or sparsely populated.

"Building Setback" means a line which establishes a definite point beyond which the foundation of a building shall not extend; this line is measured from the upland edge of the shoreline buffer.

"Bulkhead" means a vertical or nearly vertical erosion protection structure placed parallel to the shore consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

"Candidate" means any species officially designated as "Candidate" by the appropriate agency of the federal government or by the Washington State Department of Fish and Wildlife.

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

"Clearing" means the cutting or removal of vegetation or other organic plant material by physical, mechanical, chemical, or any other means.

“Commercial” means those activities engaged in commerce and trade and involving the exchange of money, including but not limited to, retail, services, wholesale, or business trade activities. Examples include, but are not limited to, hotels, motels, or other commercial accommodations, grocery stores, restaurants, concessions, shops, commercial recreation facilities such as marinas, boat repair, boat, canoe, or kayak rentals, and offices.

"Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the Department of Ecology’s SMP Guidelines effective January 17, 2004, as now or hereafter amended.

"Comprehensive Plan" means the Benton County Comprehensive Land Use Plan and any amendments, addenda, or supplemental plans that are duly adopted under Chapter 36.70 RCW (as amended), for Benton County or any portion thereof.

"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program.

"Creeks" mean those areas of Benton County where surface waters form or have formed a defined channel or bed and for which the State Department Fish and Wildlife has Hydraulic Permit Authority. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, channels, storm or surface water runoff devices or other entirely artificial watercourses unless they are, or have been, used by salmonids or used to convey streams naturally occurring prior to construction in such water course.

"Critical Aquifer Recharge/Interchange Areas" means those aquifer recharge/interchange areas that have an effect on, or are associated with, aquifers used for potable water in community water systems.

"Critical Areas" means those specific resources which are subject to protection by regulation under Section 15.07 (e.g., wetlands, geologically hazardous areas, fish and wildlife conservation areas, frequently flooded areas, critical aquifer recharge/interchange areas).

"Critical Areas Overlay Maps" were developed from and are augmented by resource and technical studies, aerial photographs, and other resource maps, such as the:

A. Federal Emergency Management Agency's (FEMA), 100-year flood maps,

B. County and other agency Geologic Hazards Map(s),

C. U.S.D.A. Natural Resources Conservation Service (NRCS) Soils Capabilities Map(s),

D. Slope Stability Map(s),

E. U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory Map(s),

F. Washington State Department of Fish and Wildlife (WDFW), Priority Habitats and Species Maps (PHS),

G. County Shoreline Management Map(s), and

H. other maps as are appropriate.

“Cumulative impact” means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Department" means the Benton County Planning Department.

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. See also “Substantial Development.” Development does not include the following activities:

A. Interior building improvements that do not change the use or occupancy;

B. Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;

C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and

D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections; and,

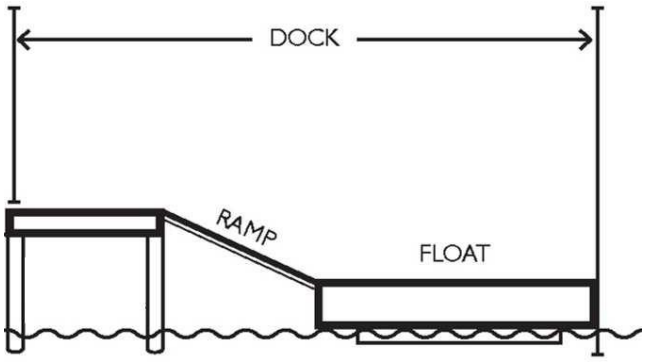
E. Dismantling or removing structures if there is no other associated development or re-development.

"Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a SMP other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

"Development Site" means the legal boundaries of the parcel or parcels of land for which an applicant has applied for authority from Benton County to carry out a development proposal.

"Diversity (ecological)" refers to the variety of species of plants and animals that compose a biotic community or ecosystem, often expressed as total number of different species.

“Dock" means a structure built over or floating upon the water and used as a landing place for boats and other marine transport, fishing, swimming, and other recreational uses. A dock typically consists of the combination of one or more of the following elements: pier, ramp, and/or float.



"Dredging" means removal of earth from the bed of a stream, lake, or pond for the purpose of flood control; navigation; utility installation (excluding on-site utility features serving a primary use, which are “accessory utilities” and shall be considered a part of the primary use); the construction or modification of essential public facilities and regional transportation facilities; restoration (of which the primary restoration element is sediment/soil removal rather than being incidental to the primary restoration purpose); and/or obtaining minerals, construction aggregate, or landfill materials. This definition does not include excavation for mining

within a pond created by a mining operation approved under this title or under a local zoning ordinance, or a mining operation in existence before Zoning, Shorelines, or Critical Areas permits were required for such operations. Dredging, as regulated in this SMP under Section 15.07.60, is not intended to cover other excavations waterward of the ordinary high-water mark that are incidental to construction of an otherwise authorized use or modification (e.g., bulkhead replacements, large woody debris installations, boat launch ramp installation, pile placement).

"Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. Shoreline ecological functions include, but are not limited to hydrologic (transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, nutrient flux, recruitment and transport of large woody debris and other organic material), shoreline vegetation (maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of high stream flow energy; and provision of woody debris and other organic matter), hyporheic functions (removing excessive nutrients and toxic compounds, water storage, support of vegetation, and sediment storage and maintenance of base flows), and habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish (e.g., space or conditions for reproduction; resting, hiding and migration; and food production and delivery).

"Ecologically intact" means shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent waterbodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

"Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

"Erosion" means the process in which soil particles are mobilized and transported by natural agents such as wind, rain, splash, frost action or stream flow.

"Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, as hereafter amended, which are not required to obtain a Shoreline Substantial Development Permit, but which must otherwise comply with applicable provisions of the SMA and this Master Program.

"Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

"Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

A. The action can be accomplished with technologies and methods that have been used in the past in similar

circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

B. The action provides a reasonable likelihood of achieving its intended purpose; and

C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where these Guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the County may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

"Fish and Wildlife" mean any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body parts thereof.

"Fish and Wildlife Conservation Areas" refer to the following:

A. Those areas shown on the Fish and Wildlife Conservation Areas Map in the Benton County Comprehensive Plan;

B. Areas identified on the Washington State Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) Map within which a Priority Species is known to have a Primary Association;

C. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. These do not include ponds deliberately designed and created from dry sites such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority;

D. Lakes, ponds, creeks and rivers planted with native fish populations, including fish planted under the auspices of federal, state, local or tribal programs or which supports priority fish species as identified by the Washington State Department of Fish and Wildlife;

E. Washington State Wildlife Areas as identified on Washington Department of Fish and Wildlife maps; and

F. Washington State Natural Area Preserves and Natural Resource Conservation Areas as identified on Washington Department of Natural Resources maps.

“Float” means an anchored (not directly to the shore) floating platform that is free to rise and fall with water levels and is used for water-dependent recreational activities such as boat mooring, swimming or diving. Floats may stand alone with no over-water connection to shore or may be located at the end of a pier or ramp.

“Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters and/or

B. The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary and Floodway Map (FBFM), and the water surface elevation of the base flood.

"Floodplain" is synonymous with the one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the SMA.

"Floodway" means the area, as identified in this Master Program, that either:

A. Has been established in Federal Emergency Management Agency Flood Insurance Rate Maps or floodway maps; or

B. Consists of those portions of a river valley lying stream ward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

"Frequently Flooded Areas" means those areas of Benton County subject to inundation by a base flood (100-Year Flood) and other flood hazard areas such as creeks, wasteways, wetlands, canyons, and closed depressions which are shown on the County's Geologic Hazards Maps. See also “Area of Special Flood Hazard.”

"Geologically Hazardous Areas" are areas which pose potential threats to life or property because of unstable soil, geologic or hydrologic conditions, or steep slopes. Geologically Hazardous Areas shall include, but are not limited to, all landslide and seismic hazard areas.

"Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

"Grade" means the vertical location of the ground surface. "Natural grade" is the grade as it exists or may have existed in its original undisturbed condition. "Existing grade" is the current grade in either its undisturbed, natural condition or as disturbed by some previous modification. "Rough grade" is a stage where grade conforms approximately to an approved plan. "Finish grade" is the final grade of the site which conforms to an approved plan. “Average grade level” is the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high-water mark.
Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

"Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land

“Groin” means a barrier type of structure that extends from the stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of materials. Groins may serve a variety of functions, including bank protection, pool formation, and increased roughness, and may include rock structures, debris jams, or pilings that collect wood debris. See also “Weir.”

"Groundwater" means the supply of fresh water under the surface of the ground in an aquifer that forms a natural reservoir of potable water.

"Guidelines" means those standards adopted by the Department of Ecology into the Washington Administrative Code (WAC) to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards also provide criteria for local governments and the Department of Ecology in developing and amending master programs.

“Hard structural shoreline stabilization” means shoreline erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, rip-rap, and similar structures.

"Height" is measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the SMP specifically requires that such appurtenances be included: Provided further, that temporary construction equipment is excluded in this calculation.

“Houseboat” or “floating home” means a dwelling unit constructed on a float that is moored, anchored, or otherwise secured in the water and is not designed for navigation under its own power.

"Hyporheic" means a groundwater area adjacent to and below channels where water is exchanged with channel water and water movement is mainly in the downstream direction

"Impervious Surface" means any material which reduces or prevents absorption of water into previously undeveloped land.

“Industry” means facilities for processing, manufacturing, and storage of finished or semi-finished goods, wholesale trade or storage, together with necessary accessory uses such as parking, loading, and waste storage and treatment.

“In-stream structures” are structure placed by humans within a stream or river waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, recreation, or other purpose.

"Landslide" means episodic downslope movement of a mass of soil or rock.

"Landslide Hazard Area" refers to those areas of Benton County subject to a severe risk of landslide which include the following:

A. Any areas with a combination of:

    1. Slopes greater than fifteen (15) percent;

    2. Impermeable soils (typically silt and clay) frequently inter-bedded with granular soils (predominately sand and gravel); or,

    3. Springs or ground water seepage.

B. Any area which has shown movement during the Holocene epoch (from ten thousand 10,000 years ago to

present) or which is underlain by mass wastage debris of that epoch;

C. Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by water action, including stream channel migration zones, or surcharge by upslope irrigation district canals or waterworks;

D. Any area located on an alluvial fan, presently subject to or potentially subject to inundation by debris flows or deposition of stream-transported sediments.

“Maintenance, Normal” means those usual acts to prevent a decline, lapse, or cessation from a legally established condition. See “Repair, Normal.”

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

"Manufactured Home Park" or "Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"May" means the action is acceptable, provided it conforms to the provisions of this chapter.

“Mining” means the removal of naturally occurring minerals and materials from the earth for commercial value. Mining includes processing and batching. Mining does not include large excavations for structures, foundations, parking areas, etc.

"Mitigation (sequencing)" means the use of any or all of the following actions that are listed in descending order of preference:

A. avoiding the impact altogether by not taking a certain action or parts of an action;

B. minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

C. rectifying the impact by repairing, rehabilitating or restoring the affected sensitive area;

D. reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;

E. compensating for the impact by replacing, enhancing or providing substitute sensitive areas and environments;

F. monitoring the impact and taking appropriate corrective measures.

"Monitoring" means the ongoing evaluation of the impacts of a development proposal on the biological, hydrologic and geologic conditions of Critical Areas. Monitoring includes the gathering of baseline data and the assessment of the performance of required mitigation measures through the collection and analysis of data for the purposes of understanding and documenting changes in natural ecosystems and features.

"Moorage facility" means a marina, pier, dock, mooring buoy, or any other similar fixed moorage site.

“Must" means a mandate; the action is required.

"Native vegetation" refers to plant species which are indigenous to the Central Basin region and which reasonably could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds.

"Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

"New Construction" means structures for which the "start of construction" commenced on or after the effective

date of this Title.

“Nonconforming,” when used in reference to a use or structure, means a land use or structure that was lawful when established, but which does not now conform to the use regulations of the zone in which it is located. A use or structure shall be considered established if it conformed to applicable development regulations at any time or if it commenced or was constructed under a permit that has not expired.

"Non water-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

“No net loss of ecological functions” means a public policy goal and requirement to maintain the aggregate total of the County’s shoreline ecological functions at its current level. For purposes of reviewing and approving this SMP, “current” is equivalent to the date of the Final Shoreline Analysis Report (April 2013). As a development standard, it means the result of the application of Mitigation Sequencing, in which impacts of a particular shoreline development and/or use, whether permitted or exempt, are identified and addressed, such that there are no adverse impacts on shoreline ecological functions or processes relative to the legal condition just prior to the proposed development and/or use.

"Ordinary High Water Mark" (OHWM) means that mark on lakes and streams which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Outcrop" refers to a geologic layer exposed at the earth's surface.

"Permit", for the purposes of this SMP, means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW.

“Pier” means a fixed platform above the water and supported by piles, usually perpendicular to the shoreline. See also “Dock.”

“Preferred uses” are those uses which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the shoreline. "Preferred" uses include single-family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments, and other developments that provide public access opportunities.

“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: Comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage. Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

“Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below:

A. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

B. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

C. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

D. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

"Provisions" means policies, regulations, standards, guideline criteria or environment designations.

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

“Public access” means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

“Public Trust Doctrine” is a common law principle generally holding that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses. While the doctrine protects public use of navigable water bodies below the ordinary high-water mark, the doctrine does not allow the public to trespass over privately owned uplands to access the tidelands.

"Qualified Professional" means an accredited or licensed professional with a combination of education and experience in the discipline appropriate for the subject matter under review, or someone who would qualify as an expert in their field. Related to critical areas, a qualified professional is a person with experience and training in the pertinent scientific discipline, and who is a qualified scientific expert with expertise appropriate for the relevant critical area subject in accordance with WAC 365-195-905(4), as it now exists or may be hereinafter amended. A qualified professional must have obtained a B.S. or B.A. or equivalent degree in biology, engineering, environmental studies, fisheries, geomorphology, or related field, and two years of related work experience, as further detailed below:

- A qualified professional for fish and wildlife habitats must have a degree in biology and professional experience related to the subject species or habitat.
- A qualified professional for a geological hazard must be a professional engineering geologist, geologist, or civil engineer licensed in the State of Washington.
- A qualified professional for critical aquifer recharge areas means a hydrogeologist, geologist, engineer, or other scientist with experience in preparing hydrogeologic assessments.
- A qualified professional for wetlands shall be a certified professional wetland scientist or have, at a minimum: (1) a Bachelor's degree in hydrology, soil science, botany, ecology, or related field; and (2) at least two years of full-time work experience as a wetlands professional, including delineating wetlands using the state or federal manuals, preparing wetland reports, conducting function assessments, and developing and implementing mitigation plans.

"Recharge Area" refers to an area in which water is absorbed and added to the groundwater reservoir.

“Recreation” means an experience or activity in which an individual engages for personal enjoyment and satisfaction. Shore-based outdoor recreation includes but is not limited to fishing; various forms of boating, swimming, hiking, bicycling, horseback riding, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.

“Recreational uses” refers to public, private, or commercial uses which offer activities, pastimes, and experiences that allow for the refreshment of mind and body. Examples include, but are not limited to, parks, viewpoints, trails, public access facilities, public parks, and other low intensity use outdoor recreation areas. Recreational uses that do not require a shoreline location, nor are related to the water, nor provide significant public access, are considered non-water oriented. For example, a recreation use solely offering indoor activities would be considered

non-water-oriented.

“Recreational Vehicle” is a vehicle which is a travel trailer, motor home, truck camper, or camping trailer that is designed and used as temporary living quarters or overnight camping, is either self-propelled or mounted on or drawn by another vehicle, has a body length of no more that forty-five (45) feet; or, any structure inspected, approved and designated as a recreational vehicle by an bearing the insignia of the State of Washington or any other state or federal agency having the authority to approve recreational vehicles.

"Regulated Substance" means the toxic or natural substances and dangerous waste which have the potential to cause adverse impacts to ground and surface water quality and are controlled to ensure proper management and handling. Toxic and dangerous substances are listed in but not limited to Washington Administrative Code (WAC) 173-201A-040, and WAC 173-303-080.

“Repair, Normal” means to restore a development or structure to a state comparable to its original, legally established condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment. See also “Maintenance, Normal.”

“Residential” means buildings, structures or portions thereof that are designed and used as a place for human habitation. Included are single, duplex or multi-family dwellings, manufactured homes, and other structures that serve to house people, as well as the creation of new residential lots through land division. This definition includes accessory uses common to normal residential use, including but not limited to, residential appurtenances, accessory dwelling units, and home occupations.

"Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

"Riparian Corridor" means the natural vegetation which lines the sides and tops of banks along rivers, creeks and streams. Typical vegetation includes willows, cottonwood, maples, alder and other brushy understory which transitions into upland vegetation as distance from the bank increases.

"River" means the Yakima and Columbia Rivers.

"Salmonid" means a member of the fish family salmonidae. In Benton County, these include, but are not limited to, coho, Chinook, sockeye, resident rainbow, brown trout, steelhead, and whitefish.

"Seismic Hazard Areas" mean those areas of Benton County that are potentially subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

“Setback”. See “Building Setback.”

"Shall" means a mandate; the action must be done

"Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams and lakes which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

"Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

"Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

"Shorelines of statewide significance" means the following shorelines of the state:

A. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high-water mark;

B. Those natural rivers or segments east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer; and

C. Those shorelands associated with A and B, above.

"Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state.

“Shoreline environment designations” are a classification of shorelines established by this SMP in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.

“Shorelines Hearings Board”, a quasi-judicial body within the state Environmental and Land Use Hearings Office, which hears appeals by any aggrieved party on the issuance of a shoreline permit. See RCW 90.58.170 et seq. for the role of the Washington State Shorelines Hearings Board.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

“Shoreline stabilization” means structural or non-structural modifications to the existing shoreline intended to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. They are generally located parallel to the shoreline at or near the OHWM.

"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.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

"Slide" refers to the downward mass movement of soil, rock, or snow resulting from failure of that material under stress.

“Slope” refers to the inclination of the surface of the land from the horizontal.

"SMA" meansthe Washington State Shoreline Management Act, chapter 90.58 RCW.

“Soft structural shoreline stabilization” means shoreline erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft structural shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in

a non-linear, generally sloping arrangement. Linear, vertical faces are an indicator of Hard Structural Shoreline Stabilization (see above definition).

“State master program” is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by Ecology.

“Structure” means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

“Substantial development” shall mean any development of which the total cost or fair market value exceeds ~~six thousand, four hundred, and sixteen dollars~~ seven thousand, and forty seven dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor.

The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials. See WAC 173-27-040 for a list of developments that are not considered substantial.

"Substantially degrade" means to cause significant ecological impact.

“Transportation” means roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, and trails.

"Use" means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. Use also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.

“Utility” means a primary or accessory service or facility that produces, transmits, stores, processes, or disposes of electrical power, gas, water, sewage, communications, oil, and the like.

"Vadose Zone Analysis" means the characterization of the soil profile above the water table.

"Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in this Master Program and not a means to vary a use of a shoreline.

"Vegetation" means any and all organic plant life growing at, below, or above the soil surface.

"Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

"Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

"Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location,

design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

"Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

"Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
B. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

“Weir” means a structure generally built perpendicular to the shoreline for the purpose of diverting water or trapping sediment or other moving objects transported by water.

“Wetland" or "wetlands" means that area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands specifically intentionally created from non-wetland areas to mitigate conversion of wetlands.

"Wetland Edge" means the line delineating the outer edge of a wetland established by using the procedures in the currently approved Federal Wetland Delineation Manual.

"Wetland Functions" refer to the natural processes performed by wetlands and include functions which are important in facilitating food chain production, providing habitat for nesting, rearing and resting site for aquatic, terrestrial or avian species, maintaining the availability and quality of water such as purifying water, acting as recharge and discharge areas for groundwater aquifers and moderating surface water and storm water flows as well as performing other functions including but not limited to those set out in U.S. Army Corps of Engineers regulations at 33 C.R.R. Section 320.4(b)(2) (1988).

Section 15.03 Shoreline Jurisdiction and Use Preferences

03.010 Definition

(a) As defined by the Shoreline Management Act of 1971, shorelines include certain waters of the State plus their associated “shorelands.” The waterbodies designated as shorelines of the State are streams whose mean annual flow is 20 cubic feet per second (cfs) or greater and lakes whose area is greater than 20 acres. In Benton County, only the Yakima River and the Columbia River meet shoreline criteria.
(b) Shorelands, as adopted by Benton County and indicated on the Official Shoreline Maps are available for

review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System, are defined as:

"those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter…." (RCW 90.58.030)

(c) The extent of shoreline jurisdiction is indicated on the Official Shoreline Maps available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. The purpose of the Official Shoreline Maps is to identify Environment Designations (Section 15.04 below). The maps only approximately identify or depict the lateral extent of shoreline jurisdiction. The actual lateral extent of the shoreline jurisdiction shall be determined on a site-specific basis based on the location of the ordinary high-water mark (OHWM), floodway, floodplain, and presence of associated wetlands.

(d) In circumstances where shoreline jurisdiction does not include an entire parcel, only that portion of the parcel within shoreline jurisdiction and any use, activity or development proposed within shoreline jurisdiction on that portion of the parcel is subject to this Shoreline Master Program.

03.020 General Shoreline Use Preferences

(a) This SMP adopts the following policy provided in RCW 90.58.020, and fully implements it to the extent of its authority under this SMP:

It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state….

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

(b) When determining allowable uses and resolving use conflicts on shorelines within jurisdiction consistent with the above policy, the following preferences and priorities as listed in WAC 173-26-201(2)(d) shall be applied in the order presented below:

(1) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
(2) Reserve shoreline areas for water-dependent and associated water related uses … Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.
(3) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
(4) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
(5) Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

03.030 Shorelines of Statewide Significance

03.030.01 Designation Criteria

Certain shoreline waterbodies and their associated shorelands have elevated status under the SMA if they are streams and rivers in Eastern Washington that are *"…*downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer" (RCW 90.58.030(2)(e)(v)(B)). These waterbodies are considered to be "shorelines of statewide significance," and have unique supplemental provisions outlined in Sections 15.03.030.02 and 15.03.030.03 below. All of Benton County's shorelines, the Yakima and Columbia Rivers, are Shorelines of Statewide Significance.

03.030.02 Use Preferences

(a) In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all Shorelines of Statewide Significance in the County and UGAs, as defined in RCW 90.58.030(2)(e). Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses in the following order that are consistent with the statewide interest in Benton County's shorelines. These are uses that:

(1) Recognize and protect the statewide interest over local interest;
(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline;
(5) Increase public access to publicly owned areas of the shorelines;
(6) Increase recreational opportunities for the public in the shoreline;
(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (WAC 173-26-251(2))

(b) Uses that are not consistent with these preferences should not be permitted on shorelines of statewide significance.

03.030.03 Policies

Consistent with the use preferences for Shorelines of Statewide Significance contained in RCW 90.58.020 and identified in Section 15.03.030.02, the County will base decisions administering this SMP on the following policies in order of decreasing priority:

(c) Recognize and protect the state-wide interest over local interest.

(1) Solicit comments and opinions from groups and individuals representing state-wide interests by

circulating amendments to the Master Program, and any proposed amendments affecting Shorelines of Statewide Significance, to state agencies, affected Tribes, adjacent local governments', citizen's advisory committees and local officials, and state-wide interest groups.

(2) Recognize and take into account state agencies' policies, programs and recommendations in developing and administering use regulations and in approving shoreline permits.

(3) Solicit comments, opinions and advice from individuals with expertise in ecology and other scientific fields pertinent to shoreline management.

(d) Preserve the natural character of the shoreline.

(1) Designate and administer shoreline environments and use regulations to protect and restore the ecology and environment of the shoreline as a result of human intrusions on shorelines.

(2) Restore, enhance, and/or redevelop those areas where intensive development already exists in order to reduce adverse impact on the environment and to accommodate future growth rather than allowing high-intensity uses to extend into low-intensity use or underdeveloped areas.

(3) Protect and restore existing diversity of vegetation and habitat values, wetlands, and riparian corridors associated with shoreline areas.

(4) Protect and restore habitats for State-listed "priority species."

(e) Support actions that result in long-term benefits over short-term benefits.

(1) Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.

(2) Preserve resources and values of Shorelines of Statewide Significance for future generations and restrict or prohibit development that would irretrievably damage shoreline resources.

(3) Ensure the long-term protection of ecological resources of statewide importance, such as anadromous fish habitats and unique environments.

(f) Protect the resources and ecology of the shoreline.

(1) All shoreline development should be located, designed, constructed and managed consistent with mitigation sequencing provisions outlined in Section 15.05.020 to minimize adverse impacts to regionally important wildlife resources, including spawning, nesting, rearing and habitat areas, and migratory routes and result in no net loss of shoreline ecosystems and ecosystem-wide processes.

(2) Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities, or general enhancement of shoreline areas.

(g) Increase public access to publicly owned areas of the shoreline.

(1) Give priority to developing paths and trails to shoreline areas and linear access along the shorelines, especially those trail corridors that would be a regional recreational and transportation resource.

(2) Locate development landward of the OHWM so that access is enhanced and opportunities for access are not precluded.

(3) Increase public access opportunities for those with disabilities consistent with the Americans with Disabilities Act.

(4) Provide incentives to landowners that provide shoreline public access, such as development incentives, tax reductions, or other measures.

(h) Increase recreational opportunities for the public on the shoreline.

(1) Plan for and encourage development of facilities for public recreational use of the shoreline, including facilities for boating, swimming, fishing, and other water-oriented activities.

(2) Reserve areas for lodging and related facilities on uplands with provisions for appropriate public access to the shoreline.

Section 15.04 Shoreline Environment Designations

04.010 Urban Transition Area

04.010.01 Purpose:

The purpose of assigning an area to an Urban Transition Area environment designation is to:

(a) Ensure optimum utilization of shorelines occurring within designated Urban Growth Areas by managing development and uses so that they enhance and maintain shorelines for a variety of future urban uses, and
(b) Protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

The Urban Transition Area designation also reflects Benton County's coordinated planning with its cities.

04.010.02 Designation Criteria:

Assign an Urban Transition Area environment designation to Urban Growth Areas, where high intensity land-uses, including residential, commercial, recreational and industrial development or supporting utilities and transportation exist or are planned for in the future or where there is existing or planned development that is compatible with maintaining or restoring the ecological functions of the area.

04.010-03 Management Policies:

(c) Recognize the cities' SMP development standards in Urban Transition Area areas. Shoreline regulations should reflect each UGA's unique character. Major Urban Transition Areas are described below:

(1) Richland UGA North: Richland intends this shoreline have a natural character. The shoreline in this area has a low level of human disturbance or has been disturbed in the past but either has been isolated from human activity in the near past or is subject to a restoration program designed to restore natural ecological processes and functions. Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.
(2) Benton City UGA: UGA lands vary in existing and planned character, allowing a range of residential, suburban agricultural, commercial, recreational, and transportation uses, designed in a manner to achieve no-net-loss of ecological function.
(3) Kennewick UGA: UGA lands are suitable for urban development that is compatible with maintaining or restoring of the ecological functions of the area.
(4) Prosser UGA: The Prosser UGA shorelines are intended for residential, industrial, and other low intensity development compatible with maintaining or restoring of the ecological functions of the area.

(d) In regulating uses in the Urban Transition Area environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non water-oriented uses should be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.
(e) When expanding the Urban Transition Area environment, first consider the availability of existing Urban Transition Area land for water-oriented development.
(f) Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term are encouraged. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(g) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development.
(h) Public access should be required on public lands. Private development that creates a demand for shoreline access should provide visual or physical access unless there are constitutional or legal limitations, safety, security, environment, or other similar factors that limit its feasibility.

04.020 Rural Industrial

04.020.01 Purpose:

The purpose of the Rural Industrial environment designation is to provide for intensive water-oriented commercial, transportation, power production, and industrial uses, while protecting existing ecological functions. This designation will provide the opportunity for the development, redevelopment and infill of existing rural industrial and commercial developments or former industrial or commercial sites consistent with the rural character of Benton County.

04.020.02 Designation Criteria

Assign a Rural Industrial environment designation to shoreline areas in industrial or commercial areas of intensive rural development if they currently support concentrations of commerce, transportation, power production, or navigation; or are suitable and planned for intensive water-oriented uses

04.020.03 Management Policies:

(a) In regulating uses in the Rural Industrial environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non water-oriented uses should be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.
(b) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.
(c) Public access should be required on public lands. Private development that creates a demand for shoreline access should provide visual or physical access unless there are constitutional or legal limitations, safety, security, environment, or other similar factors that limit its feasibility.
(d) Full utilization of existing industrial areas and altered lands should be achieved before further expansion of intensive development is allowed.

04.030 Residential

04.030.01 Purpose:

The purpose of the Residential environment designation is to accommodate residential development and accessory structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

04.030.02 Designation Criteria:

Assign a Residential environment designation to shoreline areas that are predominantly single-family residential development or are planned and platted for residential development.

04.030.03 Management Policies:

(a) Shoreline development standards should ensure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
(b) Subdivisions and recreational developments should provide public or community access.

(c) Access, utilities, and public services should be available and adequate to serve existing needs and those planned for future development.
(d) Commercial development, including commercial recreation and agri-tourism, should be consistent with underlying rural zoning and limited to water-oriented uses within shoreline jurisdiction.

04.040 Rural

04.040.01 Purpose:

The purpose of assigning an area to a Rural environment designation is to promote agricultural use and activities, including associated irrigation and support facilities, and accommodate low-density rural home sites, function as a separation between urban areas, and maintain an open space character and provide opportunities for recreational uses compatible with agricultural activities.

04.040.02 Designation Criteria:

Assign a Rural environment designation to those areas characterized by:

(a) agricultural lands of long-term commercial significance and low-density rural home sites;
(b) commercial agricultural potential; or
(c) parallel roads, railroads, canals, levees or other alterations in shoreline jurisdiction that limit shoreline ecological functions.

04.040.03 Management Policies:

(a) Promote agricultural activities on agricultural lands.
(b) Allow new agricultural activities and expansions of current agricultural activities on previously un-farmed lands consistent with this SMP.
(c) Non-agricultural uses should be limited to those compatible with agriculture. Shoreline development within or adjacent to designated agricultural resource lands should incorporate measures to reduce compatibility impacts, such as open space landscaped separations or other measures to address impacts to agricultural operations.
(d) Development standards should seek to conserve soils and water resources suitable for agricultural purposes.
(e) Activities and uses should be designed for compatibility with the rural character, including the overall density pattern.

04.050 Hanford

04.050.01 Purpose:

The purpose of the Hanford environment is to recognize and foster the unique economic, environmental, and recreational values of the area as it transitions over time from federal energy purposes to other land uses and management consistent with the Hanford Reach National Monument designation.

04.050.02 Designation Criteria:

Assign a "Hanford" environment designation to shoreline areas located in the U.S. Department of Energy's Hanford site.

04.050.03 Management Policies:

To the extent that this SMP is applicable to federal lands, the following policies should guide uses in shoreline jurisdiction:

(a) Predominant shoreline uses should include preservation of cultural, ecological and natural resources with limited public access where appropriate.

(b) High intensity uses in shoreline jurisdiction should be limited to heavy and light industry, energy generation and transmission, research and development, and environmental cleanup.
(c) High-intensity and low-intensity public access and recreation should be accommodated where consistent with local environmental conditions, and safety and security concerns.
(d) Uses and activities should be consistent with the Benton County Comprehensive Land Use Plan and Benton County zoning regulations.

04.060. Conservancy

04.060.01 Purpose:

The purpose of the Conservancy environment is to:

(a) protect ecological functions of open space, floodplain and other sensitive public or protected lands and conserve existing natural resources and valuable historic and cultural areas while allowing a variety of compatible uses; and

(b) Ensure appropriate management and development of existing and future public parks and recreation areas.

04.060.02 Designation Criteria:

Assign a Conservancy environment designation if any of the following characteristics apply:
(a) They are within existing or planned public parks or public lands intended to accommodate public access and recreational developments;
(b) They are suitable for water-related or water-enjoyment uses;
(c) They are open space, floodplain or other sensitive areas that should not be more intensively developed;
(d) They have potential for ecological restoration;
(e) They retain important ecological functions, even though partially developed; or
(f) They have the potential for development that is compatible with ecological restoration.

04.060.03 Management Policies:

(a) Uses in the Conservancy environment should be limited to those which sustain the shoreline area's physical and biological resources and uses of a non-permanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.
(b) Except in support of agriculture, aquaculture, and recreation uses, commercial and industrial uses should not be allowed.
(c) Water-oriented uses should be given priority over Non water-oriented uses. Water-dependent and water- enjoyment recreation facilities and uses that do not deplete the resource over time, such as boating facilities, fishing, hunting, wildlife viewing trails, swimming beaches, and scientific, historical, cultural, and educational research uses, are preferred, provided adverse impacts to the shoreline are mitigated.
(d) Shoreline development standards should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
(e) Existing uses and development, including roadways and railroads, may be maintained and expanded consistent with provisions of this SMP.
(f) Public access and public recreation objectives on public lands should be implemented when appropriate and when adverse ecological impacts can be mitigated.
(g) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions, and only when mitigation is applied.

04.070. Natural

04.070.01 Purpose:

The purpose of the Natural environment is to protect those public shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low-intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes.

04.070.02 Designation Criteria:

A Natural environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(a) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process;
(b) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
(c) The shoreline is a publicly managed portion of the Umatilla National Wildlife Refuge

04.070.03 Management Policies:

(a) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.
(b) The following new uses should not be allowed in the Natural environment:
    (1) Commercial uses.
    (2) Industrial uses.
    (3) Non water-oriented recreation with no relationship to the shoreline and waterbody.
    (4) Roads, utility corridors, and parking areas that can be located outside of "Natural" designated shorelines.
(c) Single-family residential development may be allowed as a conditional use within the Natural environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.
(d) Irrigation withdrawals and other agricultural uses of a very low-intensity nature may be consistent with the Natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.
(e) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses, including non-motorized trails, may be allowed provided that no significant ecological impact on the area will result.
(f) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.
(g) Consistent with the policies of the designation, the County should include planning for restoration of degraded shorelines within this environment.

04.080 Aquatic

04.080.01 *Purpose:*

The purpose of the Aquatic environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

04.080.02 *Designation Criteria:*

Assign an Aquatic environment designation to lands waterward of the ordinary high-water mark.

04.080.03 *Management Policies:*

(a) Allow new over-water structures only for water-dependent uses, including docks associated with single-family residences; public access; or ecological restoration.
(b) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
(c) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.
(d) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.
(e) Shoreline uses and modifications should be designed and managed to prevent adverse impacts to ecological functions and ecosystem-wide processes, including degradation of water quality and alteration of natural hydrographic conditions. Adverse impacts should not be allowed except where necessary to achieve the objectives of the Shoreline Management Act, and then only when mitigated as necessary to assure no net loss of ecological functions.

04.090 Environment Designation Interpretation

(a) If disagreement develops as to the exact location of an environment designation boundary line, the Official Shoreline Maps shall prevail consistent with the following rules:

    (1) Boundaries indicated as approximately following lot, tract, or section lines shall be so construed.
    (2) In cases where boundary line adjustments or subdivisions occur, the designation applied to the parent parcel prior to the boundary line adjustment or subdivision shall not change as a result. The shoreline designation can be re-designated through an SMP amendment.
    (3) Boundaries indicated as approximately following roads and railroads shall be respectively construed to follow the nearest right-of-way edge.
    (4) Boundaries indicated as approximately parallel to or extensions of features indicated in (1), (2), or (3) above shall be so construed.

(b) In the event of an environment designation mapping error where the SMP update or amendment record, including the public hearing process, is clear in term of the correct environment designation to apply to a property, the Shoreline Administrator shall apply the environment designation approved through the SMP Update or Amendment process and correct the map. Appeals of such interpretations may be filed pursuant to Section 15.09 and the County's appeal procedures referenced in Section 15.09 of this SMP. If the environment designation criteria were misapplied, but the map does not show an unintentional error (e.g. the SMP hearing and adoption record does not indicate another designation was intended), a SMP amendment may be obtained consistent with WAC 173-26-100 and Section 15.09.130.
(c) All shoreline areas waterward of the OHWM shall be designated Aquatic.
(d) Upland environment designations shall apply to shorelands.
(e) Only one environment designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature and the boundary shall be clearly noted on the map (for example: "boundary is 100 feet upland from the OHWM").

04.100 Official Shoreline Maps and Unmapped or Undesignated Shorelines

(a) The Official Shoreline Maps at the time of SMP adoption, which illustrate the delineation of shoreline jurisdiction and environment designations in the County and UGAs, are available for review in the

Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. The official map shall include the following language: "We hereby certify that this map constitutes the Official Shoreline Map as approved by Ordinance 2014-440 of the Board of County Commissioners and signed by its chairman dated this 3rd day of June 2014." The Official Shoreline Maps may be updated administratively or through an SMP amendment as indicated in 04.100(b), (c) and (d) below. The Department of Ecology will be provided with electronic files of the Official Shoreline Maps when any updates are made. Minor mapping errors corrected administratively shall not be greater than 1.0 acre in size. If greater than 1.0 acre in size, a SMP amendment shall be completed within three years of finding the mapping error.

(b) Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction from the shoreline waterbody related to site-specific surveys of OHWM, floodway, and/or floodplain are automatically assigned the category of the contiguous waterward shoreline environment designation. Where the mapping inaccuracy results in inclusion of an unmapped associated wetland, that wetland shall be assigned a Conservancy designation. Correction of these minor mapping inaccuracies may be made and incorporated into the Official Shoreline Maps without an SMP amendment.

(c) All other areas of shoreline jurisdiction that were neither mapped as jurisdiction nor assigned an environment designation shall be assigned a Conservancy designation until the shoreline can be re-designated through an SMP amendment process conducted consistent with WAC 173-26-100 and SMP Section 15.09.130.

(d) The actual location of the OHWM, floodplain, floodway, and wetland boundaries must be determined at the time a development is proposed. Wetland boundary and OHWM determinations are valid for five years from the date the determination is made. Floodplain and floodway boundaries should be assessed using FEMA maps or the most current technical information available.

(e) In addition, any property shown in shoreline jurisdiction that does not meet the criteria for shoreline jurisdiction (e.g., is more than 200 feet from the OHWM or floodway, is no longer in floodplain as documented by a Letter of Map Revision from FEMA, and does not contain associated wetlands) shall not be subject to the requirements of this SMP. Revisions to the Official Shoreline Maps may be made as outlined in this Section 15.04.100(e) without an SMP amendment.

04.110 Use and Modifications Matrix

(a) Table 04.110-1 indicates which shoreline activities, uses, developments, and modifications may be allowed or are prohibited in shoreline jurisdiction within each shoreline environment designation. Activities, uses, developments, and modifications are classified as follows:

(1) Uses allowed by Shoreline Substantial Development Permit are indicated by an “S” on the use matrix.
(2) Uses allowed by Shoreline Conditional Use Permit are indicated by a “C” on the use matrix.
(3) Prohibited activities, uses, developments, and modifications are not allowed and are shown as an “X” on the use matrix.
(4) Uses or activities not applicable to the shoreline environment designation in question are shown as “N/A” on the matrix.
(5) Uses in the Urban Transition Area shall be allowed subject to the most restrictive of the City or County Shoreline Master Program use allowances.

Table 04.110-1 Use and Modification Matrix

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Public	S	X	S	C	C	X	X	see adjacent upland environment
Commercial/Industrial	C	S	C	X	C	X	X	see adjacent upland environment
Other private	X	X	X	X	X	X	X	X

| Shoreline Use or Modification
Key:
S = Shoreline Substantial Development Permit or Exemption
C = Shoreline Conditional Use Permit
X = Not allowed N/A = Not Applicable | Urban Transition Area | Rural Industrial | Rural | Residential | Conservancy | Natural | Hanford | Aquatic |

Agriculture								
Agricultural Activities, Existing and New	S	S	S	S	S	C	X	N/A
Commercial Dairying, Poultry Raising, Commercial Hog Ranches, Animal Feedlots and Stockyards	X	X	X	X	X	X	X	N/A
Agricultural Stands	S	S	S	S	X	X	X	N/A
Agricultural Related Industries	C	S	S	X	X	X	X	N/A
Agri-tourism	C	S	S	X	X	X	X	N/A
Aquaculture								
Commercial	X	C	C	X	X	X	X	see adjacent upland environment
Non-commercial	S	C	S	X	C	C	S	see adjacent upland environment
Boating and Private Moorage Facilities								
Boat Launches								
Pier/Dock								

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
All other purposes	C	C	C	C	X	X	X	see adjacent upland environment
Residential, including community	S	S	S	S	S	S	X	see adjacent upland environment
Commercial, industrial, aquaculture, recreational or public access use	S	S	S	C	C	C	S	see adjacent upland environment
Marinas	C	C	C	X	X	X	X	see adjacent upland environment
Breakwaters, Jetties, and Groins								
To protect or restore ecological functions	S	S	S	S	S	S	S	S
To maintain existing water-dependent uses	C	C	C	C	C	C	C	see adjacent upland environment
Commercial and Service Uses								
Visitor-serving uses	S	S	S	S	X	X	X	C
Recreation concessions	S	S	S	S	S	S	S	S
Other retail, trade or service	C	C	C	C	X	X	X	C
Dredging and Dredge Material Disposal								
Dredging for water-dependent use and public access	S	S	S	S	C	C	C	see adjacent upland environment
Dredging for existing navigation uses	NA	NA	NA	NA	NA	NA	NA	S
Dredging or disposal of dredged material for habitat restoration	S	S	S	S	S	S	S	S
Dredging, other	NA	NA	NA	NA	NA	NA	NA	C
Disposal of dredged material inside CMZ	C	C	C	C	C	C	C	C
Disposal of dredged material outside CMZ	S	S	C	C	X	X	X	see adjacent upland environment
Implementation of dredging maintenance plan	S	S	S	S	S	S	S	S
Fill								
Waterward of the OHWM - restoration	N/A	N/A	N/A	N/A	N/A	N/A	N/A	S

Shoreline Use or Modification --- Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Waterward of the OHWM	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C
Upland of the OHWM	S	S	S	S	S	C	S	N/A
Flood Hazard Reduction Measures								
Modification of Existing Flood Hazard Facilities (including relocation farther landward)	S	S	S	S	C	C	C	N/A
New Facilities	S	S	C	C	C	C	C	N/A
Forest Practices								
Forest Practices	X	X	X	X	X	X	X	N/A
Industry / Manufacturing / Storage								
Water-Oriented	S	S	S	X	X	X	S	C
Non-Water-Oriented								
General	X	C	X	X	X	X	C	X
Separated from Shoreline[1]	S	S	S	X	X	X	S	N/A
Mixed-use project that includes a Water-Dependent Use	S	S	S	X	X	X	S	C
In-Stream Structures								
To protect public facilities	S	S	S	S	C	C	S	see adjacent upland environment
To protect, restore, or monitor ecological functions or processes	S	S	S	S	S	S	S	S
To support agriculture	S	S	S	S	S	C	S	see adjacent upland environment
Other	S	S	S	S	C	C	N/A	see adjacent upland environment
Mining								
Mining that creates, restores or enhances habitat for priority species	S	S	S	S	S	S	S	S
Other mining and on-site processing	C	S	C	X	X	X	C	C
All mining in channel migration zone	C	C	C	X	X	X	C	C
Recreational Development								

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Water-Oriented	S	S	S	S	S	S	S	S
Non-Water-Oriented								
General	C	C	C	C	C	X	C	X
Sites separated from shoreline	S	S	S	S	S	S	S	N/A
Residential Development								
Single-Family Dwelling	S	X	S	S	S	C	X	N/A
Accessory Dwelling Unit	S	X	S	S	C	X	X	N/A
Duplex	S	X	S	S	X	X	X	N/A
Houseboats and Over-Water Residential Uses	N/A	N/A	N/A	N/A	N/A	N/A	N/A	X
Shoreline Habitat and Natural Systems Enhancement Projects								
Shoreline Habitat and Natural Systems Enhancement Projects	S	S	S	S	S	S	S	S
Shoreline Stabilization								
New Hard Stabilization	S	S	S	S	C	X	S	see adjacent upland environment
New Soft Stabilization	S	S	S	S	S	C	S	see adjacent upland environment
Repair and Replacement	S	S	S	S	S	S	S	see adjacent upland environment
Transportation and Parking								
Access Roads Serving Permitted Uses	S	S	S	S	S	C	S	N/A
Highways, Freeways, Arterials & Collectors	S	S	S	S	C	C	S	N/A
Bridges	S	S	S	S	C	C	S	C
Railways	S	S	S	S	C	C	S	C
Airstrips	S	S	C	X	X	X	S	N/A
Trails	S	S	S	S	S	C	S	N/A
Parking for Authorized Use	S	S	S	S	S	C	S	N/A
Park and Ride lots and Similar Stand-Alone Parking	C	C	C	X	X	X	C	N/A
Utilities								
Utility Services Accessory to Individual Shoreline Projects	S	S	S	S	S	C	S	C
Utility Services to Projects outside Shoreline Jurisdiction	S	S	S	C	C	X	S	C
Power Generating Facilities	S	S	C	X	C	X	C	C

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Wind Turbine and Related Support Structures (Zoning Code)	S	S	C	C	C	X	C	C
Utility Transmission Lines	S	S	S	S	S	C	S	C
Utility Services, General	S	S	S	S	S	C	S	C
Wastewater Treatment Facility	S	S	C	X	C	X	C	C

[1] Applies when a proposed development is physically separated from the shoreline by another property or public right of way.

04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews

(a) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

(1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

(2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit.

(3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(4) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

(5) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

04.130 Development Standards

(a) There shall be a thirty-five (35) foot maximum building height for all structures, except that utility facilities and bridges are not required to meet this standard. To exceed 35 feet, an applicant must apply for a Shoreline Variance, and comply with the following criteria in addition to standard Shoreline Variance criteria:

(1) Demonstrate overriding considerations of the public interest will be served, and

(2) Demonstrate that the proposal will not obstruct the view of a substantial number of residences on areas adjoining such shorelines or impair views from public lands or impair scenic vistas.

(b) Minimum shoreline lot frontage shall be consistent with underlying zoning and be no less in width than the following by shoreline environment:

(1) Urban Transition Area: 70 feet

(2) Rural Industrial: 70 feet

(3) Rural: 90 feet

(4) Residential: 70 feet
(5) Conservancy: 90 feet
(6) Natural: 90 feet
(7) Hanford: 90 feet

(c) Shoreline buffers: See Section 15.06.030(a).
(d) Minimum structure setbacks from side property lines in shoreline jurisdiction shall be consistent with the underlying zoning and no less than 5 feet.

Section 15.05 General Regulations and Performance Standards

05.010 Archaeological and Historic Resources

(a) The County shall require development applicants to consult with DAHP to access data so that every proposal can be screened, and archaeological sites are not disturbed. Review of data and other consultation may occur directly with DAHP or through a professional archaeologist recognized by the State of Washington. Permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist. Auger tests may be required before construction and representatives of the DAHP and affected tribes may be invited to observe any tests and construction work, or the County may send results of the test to affected tribes. If auger or historical data indicate probable presence of cultural resources which may be disturbed by excavation, the County shall inform the shoreline permit applicant and may impose conditions on any shoreline permit to assure that such resources are protected, preserved or collected.
(b) Developers and property owners shall immediately stop work and notify the County, DAHP, and affected tribes if archaeological resources are uncovered during excavation. Following such notification, the County shall require a developer or property owner follow the provisions of Subsection (c).
(c) Where a professional archaeologist or historian, recognized by the State of Washington, has identified an area or site as having significant value, or where an area or site is listed in, or determined eligible for listing in, national, state or local historical registers, or where through the development application state data has identified the potential for cultural resources, the County shall, with additional DAHP consultation, require a development application to provide an evaluation of the resource, and appropriate conditions, which may include preservation and/or retrieval of data, proposal modifications to reduce impacts, or other mitigation authorized through the State Environmental Policy Act, or other local, state, or federal laws.
(d) Applicants shall be required to follow applicable provisions of federal and state laws, including but not limited to: Chapter 27.44 RCW Indian Graves and Records and Chapter 27.53 RCW Archaeological Sites and Resources.

05.020 Environmental Protection

(a) Ecological Functions. Uses and developments on Benton County shorelines must be designed, located, sized, constructed and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. New uses and developments must not have an unmitigated adverse impact on other shoreline functions fostered by this SMP.
(b) Protection of Critical Areas and Buffers. Critical areas, critical areas buffers, and shoreline buffers must be protected in accordance with the provisions of SMP Section 15.06, Critical Areas in Shoreline Jurisdiction.
(c) Mitigation Requirement. If a proposed shoreline use or development is entirely addressed by specific, objective standards (such as setback distances, pier dimensions, or materials requirements) contained in this SMP, then the mitigation sequencing analysis described in Section 15.05.020(d) is not required. In the following circumstances, the applicant must provide a mitigation sequencing analysis as described in Section 15.05.020(d):

(1) if a proposed shoreline use or development is addressed in any part by discretionary standards (such as standards requiring a particular action "if feasible" or requiring the minimization of development size) contained in this Chapter, then the mitigation sequencing analysis is required for the discretionary standard(s); or
(2) when an action requires a Shoreline Conditional Use Permit or Shoreline Variance Permit; or
(3) when specifically required by regulations contained in Sections 15.05, 15.06, 15.07 or 15.08 of this SMP.

(d) Mitigation Sequence. In order to ensure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to Section 15.05.020(c) must describe how the proposal will follow the sequence of mitigation as defined below:

(1) Avoid the impact altogether by not taking a certain action or parts of an action;
(2) Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;
(3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;
(4) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;
(5) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and
(6) Monitor the impact and the compensation projects and take appropriate corrective measures.

(e) Adverse Impacts. Example of common actions that may result in adverse ecological impacts include, but are not limited to, the following:

(1) Removal of native plant communities in shoreline jurisdiction,
(2) Removal of native or non-native trees that overhang the water,
(3) Removal of native or non-native vegetation on slopes if that vegetation supports maintenance of slope stability and prevents surface erosion,
(4) Removal or alteration of priority habitats or habitat for priority species,
(5) Construction of new or expanded in- and over-water structures,
(6) Construction of new or expanded shoreline stabilizations,
(7) New discharges of water into the Yakima or Columbia Rivers that may introduce pollutants,
(8) Construction of new impervious surfaces whose discharges are not infiltrated and thus may alter hydrologic conditions of shoreline waterbodies,
(9) Changes in grading or fill that reduce floodplain capacity.

(f) Mitigation Plan. All proposed alterations to shoreline jurisdiction that may have adverse effects on ecological functions require mitigation sufficient to provide for and maintain the functions and values of the shoreline area or to prevent risk from a critical areas hazard. The applicant must develop and implement a mitigation plan prepared by a qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required by Benton County, but may be voluntarily performed by an applicant. In addition to any requirements found in Section 15.07, Critical Areas in Shoreline Jurisdiction, a mitigation plan must include:

(1) An inventory and assessment of the existing shoreline environment including relevant physical, chemical and biological elements;
(2) A discussion of any federal, state, or local management recommendations which have been

developed for critical areas or other species or habitats located on the site;

(3) A discussion of proposed measures which mitigate the adverse impacts of the project to ensure no net loss of shoreline ecological functions;

(4) A discussion of proposed management practices which will protect fish and wildlife habitat both during construction, and after the project site has been fully developed;

(5) Scaled drawings of existing and proposed conditions, materials specifications, and a minimum three-year maintenance and monitoring plan, including performance standards;

(6) A contingency plan if mitigation fails to meet established success criteria; and

(7) Any additional information necessary to determine the adverse impacts of a proposal and mitigation of the impacts.

(g) Alternative Mitigation. When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions on site and in kind. To provide for flexibility in the administration of the ecological protection provisions of this SMP, alternative mitigation approaches may be approved within shoreline jurisdiction where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this SMP and are scientifically supported, or are consistent with the Shoreline Restoration Plan or watershed-level management plans. Potential alternative mitigation tools include in-lieu-fee, advance mitigation, and mitigation banking. Authorization of alternative compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions and may require approval by other state or federal agencies.

05.030 Shoreline Vegetation Conservation

(a) Vegetation conservation standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction.

(b) Vegetation within shoreline buffers, other stream buffers, wetlands and wetland buffers, WDFW-mapped priority habitats and species areas, and other critical areas must be managed consistent with Section 15.06, Critical Areas in Shoreline Jurisdiction. Regulations specifying establishment and management of shoreline buffers (buffers associated with the Yakima and Columbia Rivers) are located in Section 15.06.030, Rivers and Creeks.

(c) Other vegetation within shoreline jurisdiction, but outside of shoreline buffers, creek buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas must be managed according to Section 15.05.020, Environmental Protection, and any other regulations specific to vegetation management contained in this SMP and Benton County Code.

(d) Vegetation clearing must be limited to the minimum necessary to accommodate approved shoreline development that is consistent with all other provisions of this SMP and Benton County Code. Mitigation sequencing per Section 15.05.020(d), Environmental Protection, must be applied unless specifically excluded by this SMP, so that the design and location of the structure or development, including septic drainfields, minimizes short- and long-term vegetation removal. The County may approve modifications or require minor site plan alterations to achieve maximum tree retention.

(e) Where vegetation removal conducted consistent with this Section results in adverse impacts to shoreline ecological function, new developments or site alterations are required to develop and implement a supplemental mitigation plan. Examples of actions that may result in adverse impacts include:

(1) Removal of native trees, shrubs or groundcovers;

(2) Removal of non-native trees or shrubs that overhang aquatic areas or stabilize slopes; or

(3) Removal of native or non-native trees or shrubs that disrupts an existing vegetation corridor connecting the property to other critical areas or buffers.

Mitigation plans must be prepared by a qualified professional and must contain information required in Section 15.05.020(e). Performance standards shall require 100 percent survival in Year 1, with 100 percent tree survival and 80 percent shrub and groundcover survival at the end of the monitoring period. Mitigation measures must be maintained over the life of the use or development.

(f) Shoreline vegetation may be removed to accommodate a temporary staging area when necessary to implement an allowed use or modification, but mitigation sequencing must be utilized and the area must be immediately stabilized and restored with native vegetation once its use as a staging area is complete.

(g) Native tree removal in shoreline jurisdiction must be mitigated by installation of a similar native tree at a 1:1 impact to mitigation ratio. Non-native tree removal in shoreline buffers must be mitigated by installation of a native or suitable non-native tree at a 1:1 impact to mitigation ratio. All mitigation trees shall be preferentially placed in the shoreline buffer, unless the trees provide connectivity to upland habitats or other critical areas and shall be held to a 100% survival standard at the end of threeyears.

(h) Where a tree poses a safety hazard, it may be removed or converted to a wildlife snag if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. If a safety hazard cannot be easily determined by the County, a written report by a certified arborist or other qualified professional is required to evaluate potential safety hazards.

(i) Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation and must not compromise the health of the tree.

(j) Hand removal or spot-spraying of invasive species (such as Russian olive) or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is encouraged. Replant treated area with native riparian vegetation.

(k) Mechanical removal or large-scale chemical treatment of invasive species.

(1) Mechanical removal or large-scale chemical treatment of invasive species (such as Russian olive) or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is encouraged.

(2) Coordination with Benton Conservation District is encouraged prior to undertaking invasive or noxious weed removal projects to ensure that the control and disposal technique is appropriate.

(3) Where noxious weeds and invasive species removal results in bare soils that may be subject to erosion or recolonization by invasive or noxious species, the area must be stabilized using best management practices and replanted with native plants (in or outside of shoreline or critical area buffers) or suitable non-native plants (outside of shoreline or critical area buffers). The replanted vegetation must be similar in size and structure at maturity to the removed vegetation.

(4) Invasive species removal efforts that exceed one-quarter acre should be phased if feasible to minimize potential erosion and sedimentation impacts.

(l) Aquatic weed control must only be permitted where the presence of aquatic weeds will adversely affect native plant communities, fish and wildlife habitats, or an existing water-dependent recreational use. Aquatic weed control efforts must comply with all applicable laws and standards.

05.040 Water Quality, Stormwater, and Nonpoint Pollution

(a) Do not degrade ecological functions. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that there is no net loss of ecological functions.

(b) Do not degrade views and recreation opportunities. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that significant impacts to aesthetic qualities or recreational opportunities do not occur. A significant impact to aesthetics or recreation would occur if a stormwater facility and appurtenant structures such as fences or other features have the potential to

block or impair a view of shoreline waters from public land or from a substantial number of residences per RCW 90.58.320, or if water quality were visibly degraded such that the color and character were unattractive and discouraged normal uses such as swimming, fishing, boating, or viewing.

(c) Requirements for new development.

(1) New development and re-development shall manage short-term and long-term stormwater runoff to avoid and minimize potential adverse effects on shoreline ecological functions through compliance with the latest edition of the Benton County Hydrology Manual or approved equivalent. If certain thresholds are not met by a development that trigger compliance with the Benton County Hydrology Manual or approved equivalent, best management practices (BMPs) must still be employed to avoid and minimize potential adverse effects.

(2) When the Benton County Hydrology Manual applies, deviations from the standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

(d) Sewage management. To avoid water quality degradation, sewer service is subject to the requirements outlined below.

(1) Any existing septic system or other on-site system that fails or malfunctions will be required to connect to an existing municipal sewer service system if feasible or make system corrections approved by Benton-Franklin Health District.

(2) Any new development, business, single-family or multi-family unit in an Urban Growth Area will be required to connect to an existing municipal sewer service system if feasible, or install an on-site septic system approved by Benton-Franklin Health District.

(e) Materials requirements. All materials that may come in contact with water shall be untreated or approved treated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals.

05.050 Public Access

(a) Efforts to implement the public access provisions of this Section shall be consistent with all relevant constitutional and other legal limitations on regulation of private property and the principles of nexus and proportionality.

(b) Public access does not include the right to enter upon or cross private property, except on dedicated public rights-of-way or easements or where development is specifically designed to accommodate public access.

(c) The County adopts the following policies and plans as collectively constituting a shoreline public access plan for Benton County shorelines:

(1) Benton County Comprehensive Plan Parks and Recreation Element
(2) Benton County Comprehensive Parks Plan
(3) Hanford Site Comprehensive Land Use Plan Map

(d) The Shoreline Administrator may approve a public access plan not otherwise listed in Subsection (c) if it:

(1) Meets the requirements of WAC 173-26-221(4); and
(2) Is developed through an open public process as provided in WAC 173-26-201(3)(b)(i).

(e) Shoreline development shall not interfere with public access and enjoyment of any nearby publicly owned land areas.

(f) The County shall not vacate any road, street, or alley abutting a body of water except as provided under RCW 36.87.130 County Roads.

(g) Shoreline public access shall be required for the following shoreline uses and activities, unless excepted by Subsection (h):

(1) Shoreline recreation pursuant to Section 15.07.110;
(2) New structural public flood hazard reduction measures, such as dikes and levees;
(3) Shoreline development proposed or financed by public entities, including local governments, port districts, state agencies, and public utility districts;
(4) New marinas when water-enjoyment uses are associated with the marina;
(5) Where commercial use is proposed on land in public ownership;
(6) Where the nature of the proposed use, activity or development will likely generate a public demand for one or more forms of physical or visual access to the shoreline;
(7) When the proposed use, activity or development is not a water-oriented or other preferred shoreline use, activity or development under the SMA, such as a Non water-oriented commercial or industrial use; or
(8) When the proposed use, activity or development will interfere with the public use, activity and enjoyment of shoreline areas or waterbodies subject to the public trust doctrine (see Section 15.02).

(h) Notwithstanding the applicability of Subsection (g), an applicant shall not be required to provide public access where the County determines that one or more of the following conditions apply:

(1) Reasonable, safe and convenient public access to the shoreline is accessible within one-quarter mile (1,320 feet) of the site;
(2) The County's shoreline public access plan defined in Subsection (c) does not indicate a need for public access at the property;
(3) The site is within or part of an overall development which has previously provided public access through other application processes;
(4) The economic cost of providing for public access upon the site is unreasonably disproportionate to the total long-term economic value of the proposed use, activity or development;
(5) The proposed use, activity or development only involves the construction of four or fewer single-family or multifamily dwellings;
(6) The proposed use, activity or development only involves agricultural activities;
(7) The proposal consists of a new or expanded road or utility crossing through shoreline jurisdiction serving development located outside of shoreline jurisdiction;
(8) The nature of the use, activity or development or the characteristics of the site make public access requirements inappropriate due to health, safety or environmental hazards based on evidence provided in the proposed application;
(9) The proposed use, activity or development has security requirements that are not feasible to address through the application of alternative design features or other measures;
(10) Significant and unmitigable harm to the shoreline environment would be likely to result from an increase, expansion or extension of public access upon the site; or
(11) Public access is deemed detrimental to threatened and/or endangered species under the Endangered Species Act.

(i) Public Access Standards. When public access is provided, the following standards shall apply.

(1) Physical public access is preferred to solely visual access. Where physical public access is not feasible, the applicant shall incorporate visual public access. Visual public access may consist of view corridors, viewpoints, or other means of visual approach to public waters. Physical public access may consist of a dedication of land or easement and a physical improvement in the form of a trail, park, or other area serving as a means of physical approach to public waters.

(2) Physical public access shall be designed to connect to existing or future public access features on adjacent or abutting properties or shall connect to existing public rights-of-way or access easements, consistent with design and safety standards.

(3) Public access proposals shall be designed consistent with parks and recreation standards or plans contained in applicable County, State, or Federal codes or approved plans.

(j) Shared community access may be allowed if there is no existing or planned public access along the shoreline as determined by a review of adopted parks and recreation plans. Where provided, community access is subject to all applicable development standards of this Section. Preference shall be given for consolidated community access over individual lot by lot access in new multi-lot or multi-unit development.

(k) Where public access is required pursuant to Subsection (g) and not exempt through Subsection (h), an applicant may request that the public access requirement be fulfilled through developing public access on another site – otherwise called off-site public access or by payment of a fee in lieu.

(1) Off-site public access, either physical or visual, may be permitted by the County where it results in an equal or greater public benefit than on-site public access, or when on-site limitations of security, environment, or feasibility are present. Off-site public access is preferred where it implements adopted County shoreline public access plans defined in Subsection (c). Off-site public access may include, but is not limited to, enhancing a nearby public property (e.g. existing public recreation site; existing public access; road, street or alley abutting a body of water; or similar) in accordance with County standards; providing, improving or enhancing public access on another property under the control of the applicant/proponent; or another equivalent measure.

(2) Instead of on-site or off-site public access improvements, the County may require, or an applicant may propose a fee-in-lieu. A fee-in-lieu may be assessed where the off-site improvement is best accomplished by the County or another agency at a later date or better implements the County Public Access Plans listed in Section 15.05.050. The cost of providing the off-site public access shall be proportionate to the total long-term cost of the proposed development or use. The fee-in-lieu agreements, conditions of approval, or mitigation measures shall address the responsibility and cost for operation and maintenance.

(l) The County may condition public access proposals to ensure compatibility with existing public access or transportation facilities, address environmental conditions or environmental impacts, and/or address compatibility with adjacent properties. Public access facilities shall be made compatible with adjacent private properties through the use of techniques to define the separation between public and private space, including but not limited to, fencing, vegetation, and elevation separations.

05.060 Flood Hazard Reduction

(a) Development in floodplains shall avoid significantly or cumulatively increasing flood hazards. Development shall be consistent with this SMP, including Section 15.06.050, as well as applicable guidelines of the Federal Emergency Management Agency and an approved flood hazard management plan.

(b) The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC 173-26-221(3)(b). The Channel Migration Zone Maps are available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. Applicants for shoreline development or modification may submit a site-specific CMZ study if they believe these conditions do not exist on the subject property and the map is in error. The CMZ study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification. The CMZ study must be

prepared by a licensed geologist or engineer with at least five years of applied experience in assessing fluvial geomorphic processes and channel response.

(c) The following uses and activities may be authorized within the CMZ or floodway, provided they are also consistent with Section 15.06.050:

(1) Actions that protect or restore the ecosystem-wide processes or ecological functions or development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.

(2) New development or redevelopment landward of existing legal structures, such as levees, that prevent active channel movement and flooding.

(3) Existing and ongoing agricultural activities provided that no new restrictions to channel movement are proposed.

(4) Development of new or expansion or redevelopment of existing bridges, utility lines, public stormwater facilities and outfalls, and other public utility and transportation structures, including trails, where no other feasible (see definition in Section 15.02) alternative exists or the alternative would result in unreasonable and disproportionate costs[1]. Where such structures are allowed, mitigation shall address adversely impacted functions and processes in the affected shoreline.

(5) New or redeveloped measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measures do not interfere with fluvial hydrological and geo-morphological processes normally acting in natural conditions, and that the measures include appropriate mitigation of adverse impacts on ecological functions associated with the river or stream.

(6) Water-dependent installations which by their very nature must be in the floodway.

(7) Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the modified or expanded development includes appropriate protection of ecological functions.

(8) Repair and maintenance of existing legally established use and developments, provided that channel migration is not further limited, flood hazards to other uses are not increased, and significant adverse ecological impacts are avoided.

(9) Uses and developments allowed in the floodway under BCC 3.26, provided they are otherwise consistent with all provisions of this SMP.

(d) Flood hazard reduction measures shall not result in channelization of normal stream flows, interfere with natural hydraulic processes such as channel migration, or undermine existing structures or downstream banks.

(e) New development in shoreline jurisdiction, including the subdivision of land, shall not be permitted if it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.

(f) New public and private structural flood hazard reduction measures:

(1) shall not be approved, unless a scientific and engineering analysis demonstrates the following:

a. that they are necessary to protect existing development;

b. that nonstructural measures, such as buffers and setbacks, land use controls, wetland restoration, dike removal, use or structure removal or relocation, biotechnical measures, and stormwater management programs are not feasible;

c. that adverse effects upon adjacent properties will not result relative to increased floodwater depths and velocities during the base flood or other more frequent flood occurrences;

d. that the ability of natural drainage ways to adequately drain floodwaters after a flooding event is not impaired;
e. that the proposal has been coordinated through the appropriate diking district where applicable, and that potential adverse effects upon other affected diking districts have been documented; and,
f. that adverse impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss.

(2) shall be consistent with an approved comprehensive flood hazard management plan.
(3) shall be placed landward of associated wetlands and designated shoreline buffers, except for actions that increase ecological functions, such as wetland restoration, or when no other alternative location to reduce flood hazard to existing development is feasible as determined by the Shoreline Administrator.

(g) New public structural flood hazard reduction measures, such as levees, shall dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant adverse ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

---

[1] For the purposes of this Section "unreasonable and disproportionate" means that locations outside of the floodway or CMZ would add more than 20% to the total project cost. Other methods to determine unreasonable and disproportionate cost may be used on a case-by-case basis with approval of the Shoreline Administrator. [20% has been used as a threshold by WSDOT and the Federal Department of Justice for ADA standards]

(h) In those instances where management of vegetation as required by this SMP conflicts with vegetation provisions included in state, federal or other flood hazard agency documents governing County-authorized, legal flood hazard reduction measures, the vegetation requirements of this SMP will not apply. However, the applicant shall submit documentation of these conflicting provisions with any shoreline permit applications and shall comply with all other provisions of this Section and this SMP that are not strictly prohibited by the approving flood hazard agency.
(i) The removal of gravel or other riverbed material for flood management purposes shall be consistent with Section 15.07.060, Dredging and Dredge Material Disposal, and be allowed only after a biological and geo-morphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

Section 15.06 Critical Areas in Shoreline Jurisdiction

06.010 General

(a) Applicability. This chapter applies to any real property located within the shoreline jurisdiction of unincorporated Benton County.
(b) Purpose. The purpose of this chapter is to meet the minimum requirements of the Washington State Growth Management Act, Chapter 36.70A RCW, and the Shoreline Management Act, Chapter 90.58 RCW, by designating the Critical Areas located in unincorporated Benton County and providing, through the use of the best science available, for the protection of the functions and values of those resources from incompatible and injurious use, encouraging the development of strategies to conserve and protect such

resources, and preventing cumulative adverse environmental impacts to ground and surface water availability, to water quality, and to wetlands and streams, thereby ensuring the public health, safety, and general welfare while attempting to minimize public expenditures and efforts in response to floods, geological activity, and other natural disasters.

(c) Identification of Critical Areas - Maps.

(1) The Critical Areas Overlay Maps for critical areas are used as a general guide to the location, type and extent of critical areas. If present, whether mapped or not, critical areas are protected under all the provisions of this title and all related titles.

(2) The Critical Areas Overlay Maps are available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. The maps will be amended over time to accurately reflect improvements in the accuracy of the data base.

(3) The Critical Areas Overlay Maps are also intended to alert the development community, appraisers, and current and prospective property owners of the potential encounter with natural site constraints due to critical areas, which may limit or cause alterations of development plans.

(4) If the SMP Administrator has reason to believe that the property proposed for development contains a critical resource based on other map or data sources or review of aerial photographs, then the SMP Administrator may require that additional information be provided prior to the County's acceptance of a development application as complete and ready for processing under current Benton County Codes.

(5) When any other title of the Benton County Code conflicts with this chapter, the more restrictive provision will apply.

(d) Initial Review. The SMP Administrator shall perform an initial Critical Areas Review of any application for development or use. The initial review shall accomplish the following:

(1) identify which critical areas or their buffers are present on the site;

(2) determine whether or not the development falls within the potential critical area(s) and potential buffer(s);

(3) in the case of a wetland, determine if it is subject to review under this chapter and if a delineation and wetland rating are necessary to establish whether a development may affect the wetland or its buffer;

(4) determine if the development is likely to have an adverse impact on the functions and values of the critical area(s). Development consisting of new construction or a related activity connected with an existing single-family residence shall not be considered an adverse impact to, or displacement of, the functions and values of a critical area if ground coverage is not increased by more than twenty (20) percent, native vegetation is not altered, and no portion of any new construction is located closer to a critical area than the existing principal structure;

(5) refer the applicant to such mitigating measures sufficient to protect the functions and values of the critical area and shall assist the applicant in the modification of the development to include specific measures, and appropriate monitoring strategy (where necessary), which meet the title's standards for the protection of the resource(s); and

(6) determine if a Critical Areas Special Study is required.

(e) Critical Areas Special Study - Requirements.

(1) The SMP Administrator may require an applicant to conduct a "Critical Areas Special Study" if the Administrator determines that the development could have adverse impacts on a critical area. The purpose of a Critical Areas Special Study is to adequately evaluate the proposal and all potential adverse impacts on a critical area. The study may be included as part of the environmental review process under SEPA as administrated by the County, in accordance with the provisions of this title.

(2) The study shall be performed by a professional who is licensed or qualified as an expert in the critical areas at issue. The study shall include the following where applicable:

a. the resume of the principal author(s) which disclose(s) their technical training and experience and demonstrates their stature as a qualified professional;
b. identification and characterization ~~of the critical area~~ of all critical areas, wetlands, water bodies, and buffers adjacent to the proposed project area, where 'adjacent' is defined as "immediately adjoining or within a distance that is less than that needed to separate activities from critical areas to ensure protection of the functions and values of the critical areas;
c. an assessment of any potential hazards associated with the proposed development;
d. an assessment of the impacts of the development proposal on any critical area; and
e. a mitigation plan which specifies maintenance, monitoring and bonding measures (where necessary).

(f) Buffer Requirements.

(1) For any development or use subject to the requirements to provide a buffer around critical areas, the SMP Administrator may allow buffer width averaging when the project proponent can demonstrate application of mitigation sequencing and that project elements would provide an equal or greater contribution to permanent critical resource protection than would the application of the standard buffer. The maximum reduction allowed in any location is 25 percent.
(2) The SMP Administrator may require a wider than standard buffer when analysis of impacts by qualified individuals indicates that the standard requirement will not protect a critical area's functions and values.
(3) Where a legally established road or railway crosses a shoreline or critical area buffer, the SMP Administrator may approve a modification of the minimum required buffer width to the waterward edge of the improved road if a study submitted by the applicant and prepared by a qualified professional demonstrates that the part of the buffer on the upland side of the road sought to be reduced:

a. does not provide additional protection of the shoreline waterbody; and
b. provides insignificant biological, geological or hydrological buffer functions relating to the waterward portion of the buffer adjacent to the shoreline waterbody.

If the improved roadway corridor is wider than 20 feet, a study is not required.

(g) Critical Areas Resource Mitigation Fund. There is hereby created a Critical Areas Resource Mitigation Fund which shall be administered by the Benton County Treasurer's Office. All funds derived from payments received in-lieu of on/off-site mitigation shall be deposited in the fund which shall be used for off-site critical area enhancement or critical area lands acquisition. Monies in said fund not needed for immediate expenditure shall be invested for the benefit of the Critical Areas Resource Mitigation Fund pursuant to RCW 36.29.020. For investment purposes, the Benton County Treasurer is hereby designated the fund manager.

(h) Permit Issuance.

(1) The SMP Administrator may issue, issue with conditions, or deny the issuance of a permit, or its extension, in order to comply with and carry out the goals, purposes, objectives and requirements of this chapter. The permit shall include the findings listed in Section 15.06.010(h)(2).
(2) A permit may be issued if:
a. after consideration of all feasible Best Management Practices, including alternative designs, scale (size), locations, and management plans, the proposed development meets the standards of this title, protects the functions and values of critical areas, and that required mitigation reduces

impacts to insignificant levels on an individual and/or cumulative project basis; or,

b. adverse impacts to critical area functions and values are both unavoidable and necessary because of public health and safety, or if specific local or regional economic considerations override the public interest in the protection of the critical areas, or because all reasonable economic uses for the property would be denied as a result of circumstances peculiar to the subject property; and all unavoidable adverse impacts are offset by enhancement of other critical areas on or off-site.

06.020 Wetlands

(a) Applicability. This chapter applies to wetlands and all development activities within or adjacent to such wetlands located within the shoreline jurisdiction of unincorporated Benton County. The following activities are subject to permitting if they occur in a regulated wetland or its buffer:

(1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.
(2) The dumping of, discharging of, or filling with any material.
(3) The draining, flooding, or disturbing the water level or water table.
(4) Pile driving.
(5) The placing of obstructions.
(6) The construction, reconstruction, demolition, or expansion of any structure.
(7) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.
(8) Activities that result in:

a. A significant change of water temperature.
b. A significant change of physical or chemical characteristics of the sources of water to the wetland
c. A significant change in the quantity, timing or duration of the water entering the wetland.
d. The introduction of pollutants.

(b) Developments Permitted. Developments within wetlands or their buffers as set forth in this chapter are permitted when sited, designed, and operated in a manner which protects the functions and values of the wetland when such developments meet the requirements of this title.

(c) Identification and Delineation. Wetlands shall be identified and delineated by a qualified professional in accordance with WAC 173-22-035 and designated based on the definitions, methods, and standards set forth in the currently approved Federal Wetland Delineation Manual and applicable regional supplement.

(d) Categories. Criteria for categorizing a wetland are those specified in the Washington State Department of Ecology's Washington State Wetland Rating System for Eastern Washington, or as revised (Publication #14-06-030).

~~(1) Category I Wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as wetlands of high conservation value; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well. These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.~~

~~(2) Category II Wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well.~~

~~(3) Category III Wetlands are: 1) vernal pools that are isolated and 2) wetlands with a moderate level of~~

~~functions. These wetlands generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.~~

~~(4) Category IV Wetlands are wetlands that should be able to be replaced, and in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.~~

(e) Buffer Requirements for Designated Wetlands.

(1) Vegetative buffers shall be measured from the wetland edge. The width of the buffer shall be determined according to the wetland type. The standard buffer widths are provided in Table 06.020-1 below.

(2) The use of the standard buffer widths requires the implementation of the measures in Table 06.020-2, where applicable, to minimize the impacts of the adjacent land uses.

(3) If an applicant chooses not to apply the minimization measures in Table 06.020-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot standard buffer would become a 100-foot buffer if the minimization measures are not implemented.

(4) The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 06.020 – 1. Wetland Buffers

Wetland Category	Standard Buffer Width Scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points*	Additional buffer width if wetland scores 6-7 habitat points*	Additional buffer width if wetland scores 8-9 habitat points*
Category I: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Bogs	190 ft	NA	NA	NA
Category I: Alkali	150 ft	N/A	NA	NA
Category I: Natural Heritage Wetlands	190 ft	N/A	NA	NA
Category II: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category II: Vernal pool	150	NA	NA	NA
Category II: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft

Wetland Category	Standard Buffer Width Scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points*	Additional buffer width if wetland scores 6-7 habitat points*	Additional buffer width if wetland scores 8-9 habitat points*
Category III (all)	60 ft	Add 30 ft	Add 60 ft	NA
Category IV (all)	40 ft	NA	NA	NA

* When the Department of Ecology updates its Wetland Rating Forms, these point ranges should be modified using Ecology's conversion table once developed.

Table 06.020-2. Required measures to minimize impacts to wetlands

(Measures are required, where applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	▮ Locate activity that generates noise away from wetland ▮ If warranted, enhance existing buffer with native vegetation plantings adjacent to noisesource ▮ For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	▮ Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered ▮ Establish covenants limiting use of pesticides within 150 ft of wetland ▮ Apply integrated pest management
Stormwater runoff	▮ Retrofit stormwater detention and treatment for roads and existing adjacent development ▮ Prevent channelized flow from lawns that directly enters the buffer ▮ Use Low Intensity Development techniques (per PSAT publication on LID techniques)
Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	▮ Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion. ▮ Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust
Disruption of corridors or connections	▮ Maintain connections to offsite areas that are undisturbed ▮ Restore corridors or connections to offsite habitats by replanting

(5) Increased Wetland Buffer Width. Buffer widths shall be increased on a case-by-case basis as determined by the SMP Administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

a. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or

b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or

c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

(6) Buffer averaging to *improve wetland protection* may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-

rated" wetland with a Category I area adjacent to a lower-rated area.

b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas special study from a qualified wetland professional.

c. The total area of the buffer after averaging is equal to the area required without averaging.

d. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

(7) All other proposals to reduce a wetland buffer may only be approved through the Shoreline Variance process.

(f) Protection of Water Quality. The following provisions shall be followed to ensure the protection of the quality of water.

(1) New surface water discharged to wetlands from developments, including retention/detention facilities, pre-settlement ponds, or other surface water management structures may be allowed provided that the discharge does not decrease the water quality of the wetland;

(2) Category I and II wetlands may be used for regional retention/detention facilities only when the use will employ the use of pre-settlement ponds and the use will not lower the wetland's level of function and value, or its category;

a. Use of wetland buffers for surface water management activities other than retention/detention facilities, such as energy dissipators and associated pipes, may be allowed only if:

b. no practicable alternative exists; and,

c. the functions of the buffer or the wetland are not adversely impacted.

(g) Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

(1) Land that is located wholly within a wetland or its buffer may not be subdivided.

(2) Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

a. Located outside of the wetland and its buffer; and

b. Meets the minimum lot size requirements of the underlying zoning district.

(h) Allowed Uses in Wetlands and Buffers

(1) Buffers and application of the normal mitigation sequencing process in Section 05.020, Environmental Protection, is not required of isolated Category III and IV wetlands less than 1,000 square feet that are not associated with a riparian area or buffer, are not part of a wetland mosaic, do not contain habitat identified as essential for local populations of priority species, and are not a vernal pool or alkali wetland. They may be filled if impacts are fully mitigated based on provisions in Section 15.06.020(i). If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, a critical area special study for wetlands meeting the requirements in Section 15.06.010(e) must be submitted.

(2) Activities Allowed in Wetlands and Buffers. The activities listed below are allowed in wetlands and buffers without submission of a Critical Areas Special Study, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

a. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland or buffer.

b. The harvesting of wild crops in a manner that is not injurious to natural reproduction of

such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland or buffer by changing existing topography, water conditions, or water sources.

c. Passive recreation. Passive recreation facilities, including:

1. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area except for crossings and infrequent viewpoints, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. In wetlands, raised boardwalks utilizing non-treated pilings may be acceptable.
2. Wildlife-viewing structures.

d. Drilling for utilities/utility corridors under a wetland or wetland buffer, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column will be disturbed.

e. Enhancement of a wetland or wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

f. Educational and scientific research activities.

g. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint or use of the facility or right-of-way.

(3) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the wetland buffer of Category III or IV wetlands only, provided that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions or values of the wetland; and

c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

(i) Compensatory Mitigation.

(1) Projects that propose compensation for wetland acreage and/or functions are subject to State and Federal regulations. Compensatory mitigation for alterations to wetlands shall provide for no net loss of wetland functions and values and must be consistent with the mitigation plan requirements of Section 15.05.020(f). The following documents were developed to assist applicants in meeting the above requirements.

a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State

– Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010).

b. Wetland mitigation ratios shall be consistent with Table 06.020-3.

Table 06.020-3. Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

c. To more fully protect functions and values, and as an alternative to the mitigation ratios in Table 06.020-3, 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 revised).

d. Impacts to wetland buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

(2) Wetland Mitigation Banks.

a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

1. The bank is certified under RCW Ch. 90.84 or WAC Ch. 173-700,
2. The SMP Administrator determines that the wetland mitigation bank can provide appropriate compensation for the authorized impacts, and
3. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

(3) Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, State policy on advance mitigation, and State water quality regulations. If the project with impacts would take place in shoreline jurisdiction, it must also be evaluated via the appropriate shoreline permit process.

(4) Monitoring. Mitigation monitoring shall be required for a period necessary to establish that

performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

06.030 Rivers and Creeks

(a) Buffer and building setback requirements. The minimum buffers for above ground development located in the vicinity of rivers and creeks are as follows:

Table 06.030 – 1. River and Creek Buffers

Environment Designation	Columbia River	Yakima River	Other Creeks
Urban Transition Area	Consistent with interlocal agreement to apply city SMP. If no agreement is in place: • Water-dependent: 0 • Water-related: 50 • Other: 50	Consistent with interlocal agreement to apply city SMP. If no agreement is in place: • Water-dependent: 0 • Water-related: 50 • Other: 50	Consistent with interlocal agreement to apply city SMP. If no agreement is in place: • Fish-bearing: 100 • Non-fish-bearing: 50
Rural Industrial	• Water-dependent: 0 • Water-related: 50 • Non water-oriented: 100	NA	Fish-bearing: 100 Non-fish-bearing: 50
Residential	50 buffer + 50 building setback	75 buffer + 25 building setback	Fish-bearing: 100 Non-fish-bearing: 50
Rural	• Water-dependent: 0 • Water-related: 50 • Other: 100	• Water-dependent: 0 • Water-related: 75 • Other: 100	Fish-bearing: 100 Non-fish-bearing: 50
Hanford	200	NA	Fish-bearing: 100 Non-fish-bearing: 50
Conservancy	• Water-dependent: 0 • Other water-oriented: see Section 15.06.030(e)(4) • Non water-oriented: 200	• Water-dependent: 0 • Other water-oriented: see Section 15.06.030(e)(4) • Non water-oriented: 150	Fish-bearing: 100 Non-fish-bearing: 50
Natural	200	NA	Fish-bearing: 100 Non-fish-bearing: 50

*All dimensions measured in feet horizontally upland of the ordinary high water mark.

(b) The introduction of any vegetation or wildlife which is not indigenous to the Central Basin region into any river or creek or its nearshore riparian area is prohibited unless authorized by a State of Washington or a federal license or permit. This provision does not apply to vegetation alterations to existing landscaped or agricultural areas.

(c) Alterations to buffers that occur incidental to construction of an approved use or structure upland of the buffer must be restored to the condition prior to the construction activity once construction is concluded.

(d) Use of river and creek buffers for surface water management activities other than retention/detention facilities, such as energy dissipators and associated pipes, may be allowed only if the applicant demonstrates that no practicable alternative exists.

(e) The following uses are allowed in river and creek buffers and building setbacks provided that mitigation sequencing (see Section 15.05.020(d)) is demonstrated and any adverse impacts to ecological functions are mitigated.

(1) Water-dependent uses. Consistent with the use allowances for each environment designation, water-dependent uses, modifications and activities may be located in shoreline buffers at the water's edge.

(2) Accessories to water-dependent uses. Uses, developments and activities accessory to water-dependent uses should be located outside any applicable standard or reduced shoreline buffer unless at least one of the following is met:

a. proximity to the water-dependent project elements is critical to the successful implementation of the facility's purpose and the elements are supportive of the water-dependent use and have no other utility (e.g., a road to a boat launch facility, facilities that support non-commercial aquaculture);

b. in parks or on other public lands where high-intensity recreational development is already legally established and whose use is primarily related to access to, enjoyment and use of the water, they do not conflict with or limit opportunities for other water-oriented uses; or

c. the applicant's lot/site has topographical constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).

In these circumstances, uses and modifications accessory to water-dependent uses must be designed and located to minimize intrusion into the buffer. All other accessory uses, developments and activities proposed to be located in a shoreline buffer must obtain a Shoreline Variance unless otherwise allowed by other regulations in this Section or in this SMP.

(3) In the Residential environment, the shoreline building setback may contain lawn, landscaping, decks, patios and other alterations that are no taller than 36 inches in height. Minor non-permanent structures taller than 36 inches that are normal residential accessories, such as play structures, picnic tables and benches, or trellises, may also be located in the shoreline building setback. All alterations in shoreline jurisdiction, including the shoreline buffer and the building setback, must also comply with requirements of Section 15.05.030 (Shoreline Vegetation Conservation).

(4) Water-oriented public access and recreation facilities.

a. In recognition of the existing condition of current and planned public shoreline parks and recreation facilities located in the Conservancy environment designation, the following standards shall guide new development and redevelopment of water-oriented public access and recreation facilities in lieu of shoreline buffers. Applicants shall submit a management plan that addresses compliance with each of the following applicable standards and principles, and contains additional information listed in Subsection (4)b below. The County may review and condition the project to more fully implement the principles below.

Table 06.030 – 2. Water-Oriented Public Access and Recreation Facilities: Design and Management Standards in Lieu of Shoreline Buffers

Design Element	Design and Management Standards

i. Category of Use	The following use preferences apply in priority order: • Water-dependent uses located waterward, at or immediately upland of the OHWM. • Water-related and/or water-enjoyment uses located upland of water-dependent uses. Water-related and water-enjoyment uses shall not displace existing or planned water-dependent uses. If water-dependent uses are not feasible, then water-related or water-enjoyment uses are allowed consistent with applicable performance standards. • Non water-oriented recreation uses located upland of water-oriented recreation uses. The preference is that Non water-oriented uses occupy existing structures upland of water-oriented recreation uses rather than be established in new structures. Where new Non water-oriented uses are proposed upland of water-oriented uses, but will not occupy existing structures, they shall avoid native and riparian vegetation consistent with Subsection iv below. • Accessory, Non water-oriented uses located upland of water-oriented uses. However, parking for those with disabilities, when no other location is feasible, may be located per "iii" below. • Existing primary Non water-oriented uses may only expand if they are located upland of water-oriented uses and if the expansion does not displace water-oriented uses. • Water-enjoyment recreational uses may be expanded. • Existing water-oriented uses may not be converted to a Non water-oriented use except when the existing water-oriented use is separated from the OHWM by another property.
ii. Impervious Surface and Stormwater Management	• New and expanded pollution-generating impervious surfaces (e.g., surfaces used predominantly by vehicles, such as parking areas, roads) must provide water quality treatment before discharging stormwater through use of oil-water separators, bioswales, or other approved technique. This provision does not apply to boat launches. • Treated runoff from pollution-generating impervious surfaces and runoff from non-pollution-generating impervious surfaces shall be infiltrated if feasible. • New or expanded pollution-generating impervious surfaces within 50 feet of the OHWM or within already disturbed areas shall be limited to those necessary to provide vehicle access to boat launches, to improve existing informal parking areas, to expand existing parking, or to provide ADA parking as outlined below under iii. Parking. • New or expanded trail systems shall avoid existing riparian areas and comply with vegetation management requirements below. Existing trail systems may only be expanded in response to increased demand and shall be expanded landward of existing trail where feasible. Parallel trails shall be placed at least 50 feet upland of the OHWM in the Conservancy environment, when feasible. Parallel portions of trails may be constructed closer to the aquatic area if the trail is located on or upland of previously disturbed rights-of-way, access and/or utility easements, and legally altered sites. Viewing platforms and crossings are allowed in buffers, provided they are also located to avoid significant vegetation removal.
Design Element	**Design and Management Standards**

iii. Parking	• New parking accessory to shoreline parks shall be at least 100 feet upland of the OHWM, except where a minimum number of parking spaces are provided closer than 100 feet to accommodate those with disabilities or where parking is provided on existing impervious surfaces. • Existing parking closer than 100 feet upland of the OHWM may only be expanded in response to increased demand. Expanded parking shall be expanded in the following order of preference, with 1) being the most preferred: 1) landward of existing parking and 2) laterally of the existing parking, if it is serving a previously existing authorized use and is located on existing impervious surface. Parking shall not be located closer than 50 feet upland of the OHWM unless the proposed expansion area is already an impervious surface or is necessary to accommodate those with disabilities.
iv. Vegetation Management	• New and expanded uses in shoreline jurisdiction shall be located to avoid and minimize intrusion into riparian areas, as well as avoid tree and shrub removal. • New and expanded uses in shoreline jurisdiction shall comply with Section 15.05.030, Shoreline Vegetation Conservation. • Landscape designs for new and modified recreation facilities in shoreline jurisdiction shall incorporate the following. ▪ Select species that are suitable to the local climate, having minimal demands for water, minimal vulnerability to pests, and minimal demands for fertilizers. Native species shall comprise 50 percent of the landscaped area, not counting lawn area. Redevelopment of lawn areas shall be no closer than 20 feet from the OHWM. Native grasses may be used within the first 20 feet landward of the OHWM. If lawn areas are not currently established within 50 feet of the OHWM, the existing riparian vegetation within 50 feet of the OHWM shall be maintained, unless a mitigation plan demonstrates improved ecological function.
	▪ Preserve existing soil and vegetation (especially trees) where possible. Amend disturbed soils with compost. Mulch existing and proposed landscapes regularly with wood chips, coarse bark, leaves or compost. ▪ Group plants by water need, use more efficient irrigation methods like drip and soakers under mulch, and design and maintain irrigation systems to reduce waste. ▪ Place vegetation to maximize the following benefits: – development or supplementation of a native vegetated wildlife corridor, – development or supplementation of riparian vegetation adjacent to the water's edge, – screening parking areas from views from the water or the park, and/or – discouragement of wildlife that may directly or indirectly interfere with park use or human health (e.g., geese),
	• While a specified buffer is not required for certain water-oriented recreational uses and developments in public access and recreation areas, recreational improvement projects shall place an emphasis on shoreline restoration/enhancement within 50 feet of the OHWM. This emphasis shall not require the removal of existing lawn areas, but should place an emphasis on incorporation of riparian plantings if the public access area is underutilized or public access would not be impaired by the plantings.

v. Chemical Applications	A lawn and landscape management strategy for any allowed uses in shoreline jurisdiction shall be developed that incorporates the following: • A site-specific plan for use of integrated pest management technique, if applicable. • A detailed plan identifying anticipated use of fertilizers, herbicides and pesticides, to include method of application that ensures these materials will not enter the water. Phosphorus-containing fertilizer treatments shall not be applied to turf or landscaping within 50 feet of the OHWM. Natural applications and hand removal are preferred over synthetic applications.
vi. Lighting	• Outdoor lighting fixtures and accent lighting must be shielded and aimed downward and shall be installed at the minimum height necessary. The shield must mask the direct horizontal surface of the light source. The light must be aimed to ensure that the illumination is only pointing downward onto the ground surface, with no escaping direct light permitted to contribute to light pollution by shining upward into the sky. • Outdoor lighting fixtures and accent lighting shall not directly illuminate the shoreline waterbody, unless it is a navigational light subject to state or federal regulations.
vii. Campgrounds	Proposed new campgrounds and their associated parking areas shall be a minimum of 50 feet from the OHWM, unless buffer averaging or reduction is applied.

b. Application requirements:

1. Drawings of existing park facilities, including a narrative that identifies area (sq. feet) and description of trails, parking, riparian vegetation, campsites, recreational facilities (ball parks, picnic table, grilling areas), upland vegetation and lawn areas.
2. Drawings of proposed park facilities, including a narrative that identifies area (sq. feet) and description of trails, parking, riparian vegetation, campsites, recreational facilities (ball parks, picnic table, grilling areas), upland vegetation and lawn areas.
3. Any increases in impervious surfaces (trail size, parking facilities, recreational facilities, etc.) shall include an explanation as part of the application that addresses the requirement for increased public facilities, what size facilities are needed by existing and projected park users, and the nearest locations of similar facilities.
4. Expansion of public/park facilities shall be accompanied by a mitigation plan that addresses the design elements and the design and management standards above, addresses any critical area impacts, addresses mitigation sequencing, and demonstrates no net loss of shoreline ecological functions.

(5) Shoreline residential access.

(a) A private access pathway constructed of pervious materials may be installed, a maximum of four (4) feet wide, through the shoreline buffer to the OHWM. Impervious materials may be used only as needed to comply with ADA requirements to construct a safe, tiered pathway down a slope. A railing may be installed on one edge of the pathway, a maximum of 36 inches tall and of open construction. Pathways to the shoreline should take the most direct route feasible consistent with any applicable ADA standards.

06.040 Critical Aquifer Recharge Areas

(a) Permitted Development. Developments are permitted when sited, designed, and operated in a manner which protects the functions and values of critical aquifer recharge/interchange areas and when such developments meet the requirements of this title.

(b) Site Analysis Required. An additional site analysis is required for the following types of activities if such

activities have the potential to impact recharge/interchange areas:

(1) divisions of land;
(2) commercial, industrial, manufacturing, and multiple residential projects in excess of four (4) units; or
(3) projects or land use activities which process, stockpile, store, receive, transport, discharge, or produce any chemical or organic product or by-product which may contaminate ground or surface water, except where those projects have the primary purpose of water conservation.

(c) General Information Requirements for Unconfined Aquifers. The SMP Administrator may require some or all ofthe following information relative to any unconfined aquifer in order to conduct the site analysis:

(1) depth to groundwater;
(2) hydro-geological susceptibility to contamination and contamination loading potential;
(3) hydraulic conductivity and gradient on-site and for relevant adjacent land;
(4) soil permeability and contamination attenuation;
(5) a vadose zone analysis including permeability and attenuation properties;
(6) existing aquifer water quality analysis; and
(7) a summary of the proposed activity's potential effect on the water quality of any unconfined aquifer.

(d) General Information Requirements for Regulated Substances. The SMP Administrator may require any of the following where regulated substances are associated with a development which has potential to impact an aquifer:

(1) a description of operations and an identification of regulated substances associated with the project;
(2) a list of names and volumes of toxic or concentrated organic substances which will be used on the property;
(3) a list of all substances to be monitored;
(4) a detailed description of how substances are to be handled at the site;
(5) a description of the containment devices to be used to comply with the requirements of this chapter and other applicable state and federal requirements;
(6) a proposed "Regulated Substance Management Plan" or a "Site Management Plan";
(7) a description of the procedures for inspection and maintenance to assure the proper functioning of containment devices and systems;
(8) a site map showing the location of the facility and property boundaries and the locations within the facility where regulated substances in containers larger than five (5) gallons or forty (40) pounds are stored, unloaded, tested, used, and/or produced. The location of each containment device (system if there is one) shall also be shown.

(e) Protection of Water Quality.

(1) The contamination of groundwater by surface water use, discharge, or runoff shall be prevented.
(2) New developments, during both construction and operational phases, which generate surface drainage or runoff to ground or surface water shall:

a. assure that the use, handling, discharge, or disposal of regulated substances be accomplished in a manner which prevents their entry into ground or surface waters;
b. retain and clean, to current state discharge standards, runoff prior to its discharge into ground or surface water; and
c. ensure that runoff or stormwater drainage will not result in soil erosion or water quality degradation.

(3) Water quality standards for critical aquifer re-charge/interchange areas shall correspond with appropriate State and Federal standards.

06.050 Frequently Flooded Areas

Benton County Code 3.26 BCC (Flood Hazard Prevention, adopted 1987, revised 2010) and 15.~~30~~30 BCC (Frequently Flooded Areas, adopted 1994, revised 1997) are adopted by reference.

06.060 Geologically Hazardous Areas

(a) Applicability. This chapter applies to development activities within or adjacent to geologically hazardous areas in shoreline jurisdiction, including steep slopes, channel migration zones, or hillsides located in unincorporated Benton County. A steep slope is defined as one with a slope of fifteen (15) percent or more or where Critical Areas Overlay Maps indicate potentially hazardous conditions.

(b) Permitted Development. Development as set forth in this chapter is permitted when sited, designed, and operated in a manner which protects life, property, and the public welfare and when such development meets the requirements of this title.

(c) Prohibited Development. New development and creation of new lots that would cause foreseeable risk from geological conditions during the life of the development or would require structural shoreline stabilization over the life of the development (except as allowed under ~~BCC~~ Section 15.07.140) is prohibited.

(d) Minimum hazard setback requirements. For the purposes of this chapter, a minimum hazard setback for development within or adjacent to a Geologically Hazardous Area shall be the hazard setback recommended in the Site Analysis and/or by the Building Department.

(e) Site Analysis – General Requirements. A site analysis is required within geologically hazardous areas and within 200 feet of geologically hazardous areas. In order to complete an analysis, the SMP Administrator may require any of the following:

(1) the physical features of the site, including identification of surface and subsurface soil types, vegetation, streams, canyons, alluvial fans, and drainage ways. Topography shall be shown in five (5) foot contours unless prior approval is received for contours greater than five (5) feet;

(2) lot and parcel sizes, proposed lot coverage, type of dwelling units, square footage, dimensions, general type of construction and location of all structures, the existing and proposed utility systems including wells, sanitary sewers, electric, gas, and telephone, and other pertinent information requested by the SMP Administrator;

(3) the general location and different circumstances that might be expected to precipitate a geological event;

(4) the geologic, topographic, and hydrologic factors that might contribute to slope instability and the location of the site susceptible to instability;

(5) suitable buildable areas taking into consideration the long-term stability and maintenance of access roads and all other permanent infrastructure needs that would be affected by both the underlying geology and soils;

(6) recommended hazard setbacks to protect the geologic and topographic features;

(7) relying on existing data, areas with known or potential for seismic hazard;

(8) the rate and extent of any potential hazards such as erosion, sliding, slumping etc., must be analyzed in light of the potential to impact the public health, safety and welfare;

(9) the potential impact of residential landscape irrigation, drain-fields, upslope and off-site irrigation activities, storm water generation from upslope properties and proposed impervious surfaces on-site, and the influence of street conveyance on slope stability;

(10) proposed access, parking, and basic internal vehicle/pedestrian circulation system;

(11) the proposed system for retention and release (detention) of storm and surface water runoff generated from the site;

(12) general landscaping plan indicating the type and placement of materials used around all structures,

parking areas and other cleared portions of the site;

(13) the relationship between the proposed development and existing and proposed adjacent areas;

(14) where development is proposed downslope of lands in, or with the potential for agriculture, analysis of the impact of surface and subsurface movement of waste irrigation water on the proposed development site shall be provided. The analysis shall include descriptions of the relevant soils, geologic, and hydrologic conditions of the project site and the upslope lands;

(15) for public buildings and facilities: identification of minimum design standards where seismic activity has the potential to occur.

(f) Required Plans.

(1) A site development and grading plan which meets the requirements of ~~BCC~~ Section 06.060(e) and accomplishes the following objectives shall be developed and submitted to the SMP Administrator for projects within 200 feet of geologically hazardous areas:

a. assure long term structural integrity of all development;
b. protect the public health, safety, and welfare by minimizing the potential for public expenditures for post-project geologic, soils, and hydrology hazards remediation;
c. avoid documented seismic and landslide hazard areas as locations for building construction, roads or utility systems where mitigation is not feasible;
d. eliminate as completely as practicable, any public or private exposure to landslide hazards or to abnormal maintenance or repair costs through the application of post construction slope stabilization and appropriately upgraded road construction specifications where appropriate;
e. minimize storm water runoff and soil erosion impacts;
f. control dust during all construction phases;
g. achieve maximum feasible retention, in their natural condition, of existing topographic features such as drainage swales, streams, slopes, structurally important ridge lines and rock outcroppings; and
h. minimize grading where it will adversely impact slope stability.

(2) All development and grading plans shall be approved by the appropriate County departments in order to ensure compliance with the current application of the County's Side Hill Development Standards.

(3) All development and grading plans shall adhere to the requirements of the Benton-Franklin Health District.

(4) In areas of steep slopes and natural drainages, when construction will extend into the rainy season and potentially cause eroded sediments to move offsite, the storm and surface water runoff retention and detention system must be completed before other phases of site development are begun so that it can serve as a sediment trap during the remainder of the construction.

06.070 Fish and Wildlife Conservation Areas

(a) Applicability. The provisions of this chapter shall apply within unincorporated Benton County to upland Priority Species and Priority Habitats of Priority Species. While wetlands, rivers and creeks, and their buffers may also be considered Fish and Wildlife Conservation Areas, other provisions of this SMP and Section 15.06 provide specific standards for study, protection and application of mitigation sequencing to those types of Fish and Wildlife Conservation Areas.

(b) Permitted Development. Developments adjacent to upland Priority Species or adjacent to or within Priority Habitats of Priority Species and their buffers are permitted when sited, designed, and operated in a manner which protects the functions and values of upland Priority Species and their Priority Habitats, and when such development meets the requirements of this title.

(c) Minimum Buffer Requirements. Buffers for upland Priority Species and Priority Habitats shall be

determined by the SMP Administrator based upon Washington Department of Fish and Wildlife recommendations after consultation with the applicant, state, and where appropriate, federal agencies and the Yakama Nation.

(d) Site Analysis Required.

(1) Where a regulated development or use is proposed on a parcel containing a mapped upland Priority Species or wholly or partially within a mapped upland Priority Habitat, the parcel shall be surveyed to determine if the following are associated with the parcel:

a. federal and state listed endangered, threatened, sensitive, or candidate species; and
b. any listed plant or animal species on the Washington Department of Natural Resources Natural Heritage Program lists.

(2) A Critical Area Special Study shall be performed if the resources identified in ~~BCC~~ Section 15.06.070(d)(1) are found to be associated with the parcel. The following shall be identified:
a. the nature and extent of the species' primary association with the habitat area;
b. the relative density and species richness, breeding, habitat, seasonal range dynamics and movement corridors;
c. the relative tolerance of species to human activities;
d. the influence of the project, individually and cumulatively, on the wildlife and associated habitats;
e. mitigative measures for any project element that would potentially threaten baseline populations and reproduction rates over the long term; and
f. information about the presence of migratory species and any migratory patterns.

(e) General Standards for Habitat Management. The maintenance of sufficient habitat to support baseline populations for all species identified in BCC 15.06.070(d)(1) shall be the objective pursued through the application of flexible site planning and timing of construction, Best Management Practices, and habitat management programs.

Section 15.07 Use-Specific and Modification Regulations and Performance Standards

07.010 Agriculture

(a) For Shoreline purposes, Section 15.02 (Definitions), WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a)(ii) (Agriculture) shall determine the need for shoreline review for agricultural activities.

(b) The provisions of this SMP do not limit or require modification of agricultural activities on agricultural lands as of the date of adoption of the SMP. In determining whether lands meet the definition of agricultural activities, the Shoreline Administrator shall consider laws and rules included in Subsection (a) and information regarding typical agricultural practices for the subject agricultural use, current use taxation records, conservation easements, farm plans, and other relevant information. Examples of agricultural practices that could vary by the type of agriculture include but are not limited to: rotations of fields for grazing, cultivation, production, and harvests; animal breeding, feeding, or forage activities; type and frequency of maintenance, repair and replacement of agricultural facilities; and other typical practices.

(c) SMP provisions shall apply in the following cases:

(1) new agricultural activities on land not meeting the definition of agricultural land;
(2) expansion of agricultural activities on non-agricultural lands, or conversion of non-agricultural lands to agricultural activities;
(3) conversion of agricultural lands to other uses;

(4) other development on agricultural land that does not meet the definition of agricultural activities; and

(5) agricultural development and uses not specifically excluded by the SMA and WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a)(ii).

(d) Feed lots and stockyards are prohibited in shoreline jurisdiction.

(e) New agricultural activities and facilities subject to the SMP in Section 15.07.010(c) shall comply with water quality provisions of Section 15.05.040 and Shoreline Vegetation Conservation provisions in Section 15.05.030.

(f) Vegetative buffers consistent with Section 15.06.030 shall be maintained between the ordinary high-water mark and cultivated ground for purposes of erosion control and riparian vegetation protection, and shall apply to uses and activities subject to the SMP in Section 15.07.010(c).

(g) Diversion of water for agricultural purposes shall be consistent with federal and state water rights laws and rules.

(h) No equipment or material shall be abandoned or disposed of in shoreline jurisdiction.

(i) Development in support of agricultural uses shall be consistent with the environment designation intent and management policies, located and designed to assure no net loss of ecological functions, and shall not have a significant adverse impact on other shoreline resources and values.

07.020 Aquaculture

(a) Aquacultural facilities must be designed and located to avoid:

(1) The spreading of disease, especially to native aquatic life;

(2) Introducing new non-native species which cause significant ecological impacts;

(3) Significantly conflicting with navigation and other water-dependent uses;

(4) A net loss of ecological functions; or

(5) Significantly impacting the aesthetic qualities of the shoreline.

(b) Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Therefore, some latitude in the development of this use shall be given, while the potential impacts on existing uses and natural systems are recognized.

(c) Aquaculture structures and activities that do not require a waterside location must be located landward of the shoreline buffers required by this SMP.

07.030 Boating Facilities and Private Moorage Structures

(a) Applicability.

(1) This Section applies to all over- and in-water structures and uses that facilitate as their primary purpose the launching or mooring of vessels or serve some other water-dependent purpose.

(2) Uses and modifications covered in this Section include private residential docks (including community docks); docks for commercial, industrial, aquaculture, recreational or public access use; marinas; and boat launches.

(b) General regulations.

(1) New docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single-family residence is a water-dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this SMP.

(2) No single-use residential docks may be authorized unless the applicant can demonstrate that

reasonable community dock options have been investigated and found infeasible.

(3) For all new residential development of two or more waterfront dwelling units or subdivisions or other divisions of land occurring after the effective date of this SMP, only community docks may be allowed.

(4) No more than one private, noncommercial dock is permitted per platted or subdivided shoreline lot or unplatted shoreline tract owned for residential or recreational purposes.

(5) Floating and other over-water homes, including liveaboards, are prohibited.

(6) Extended moorage on waters of the state without a lease or permission is prohibited except as allowed by applicable state regulations. When allowed per state regulations and this SMP, mitigation of any adverse impacts to navigation and public access is required.

(7) Overwater structure design, construction, and use must:

a. Minimize degradation of aquatic habitats.
b. Not impede any juvenile or adult salmonid life stage, including migration, rearing, and spawning.
c. Not enhance habitats used by potential salmonid predators (especially fishes and birds).
d. Be engineered or use proven methods to maximize human safety and minimize potential for flood-related detachment of the facility from shore.

(8) Consistent with requirements for mitigation sequencing, all boating facilities and private moorage structures must be the minimum size necessary and designed to avoid and then minimize potential adverse impacts. All unavoidable adverse impacts must be mitigated, and a mitigation plan submitted.

(c) General location regulations. New and expanded boating facilities and private moorage structures must be located to:

(1) Minimize hazards and obstructions to public navigation rights.
(2) Avoid blocking or obstructing lawfully existing or planned public shoreline access.
(3) Minimize the need for new or maintenance dredging.
(4) Eliminate the need for new shoreline stabilization, if feasible. Where the need for stabilization is unavoidable, only the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft may be allowed.

(d) General materials regulations.

(1) Boating facilities and private moorage structures shall be built with materials that do not leach preservatives or other chemicals.
(2) No treated wood of any kind shall be used on any boating facilities and private moorage structures.
(3) No paint, stain, or preservative shall be applied to boating facilities and private moorage structures.

(e) General design and operation regulations.

(1) Piers and ramps.

a. To prevent damage to shallow-water habitat, piers and/or ramps shall extend at least 40 feet perpendicular from the OHWM on the Columbia River and as needed to reach acceptable float conditions on the Yakima River, unless determined to be impractical due to specific site considerations.
b. Piers and ramps shall be the minimum size necessary to achieve their intended purpose.
c. The bottom of both the pier or landward edge of the ramp shall be elevated at least 2 feet above the plane of OHWM.
d. Grating shall cover the entire pier and ramp for residential structures, and as much area as practicable for other structures. Open areas of grating shall be at least 50 percent, as rated by

the manufacturer, unless determined to be infeasible due to specific site or project considerations.

(2) Floats.

a. Floats shall not be located in shallow-water habitat where they could ground or impede the passage or rearing of any salmonid life stage.

b. To prevent damage to shallow-water habitat, floats on the Columbia River shall be positioned at least 40 feet horizontally from the OHWM but no more than 100 feet from the OHWM, as measured from the landward-most edge of the float, unless determined to be impractical due to specific site considerations. Floats on the Yakima River must be located to maintain clearance of at least 18 inches between the riverbed and the bottom of the float between April 15 and July 15 in all years.

c. Grating shall cover the entire surface area of the float(s) not underlain by float tubs or other material that provides buoyancy. The open area of the grating shall be a minimum of 50 percent, as rated by the manufacturer, or as otherwise required by state or federal agencies during permit review unless determined to be infeasible due to specific site or project considerations.

d. Functional grating will cover no less than 50 percent of the float, or as otherwise required by state or federal agencies during permit review, unless determined to be infeasible due to specific site or project considerations.

e. Floating docks shall be designed or seasonally removed to prevent the dock from resting on the riverbed during periods of lower flow.

f. Flotation materials shall be permanently encapsulated to prevent breakup into small pieces and dispersal in water.

(3) No new skirting is allowed on any structure.

(4) Protective bumper material will be allowed along the outside edge of the float as long as the material does not extend below the bottom edge of the float frame or impede light penetration.

(5) Safety railings, if proposed, must meet International Building Code requirements and must be an open framework that does not unreasonably interfere with shoreline views.

(6) Boating facilities and private moorage structures must be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night.

(7) Exterior finish of all structures must be generally non-reflective, to reduce glare.

(8) New covered moorage is prohibited, except when necessary for operation of a water-dependent use at commercial, industrial, or transportation-related facilities.

(9) Shoreline armoring (i.e. bulkheads, riprap, and retaining walls) shall not occur in association with installation of the overwater structure, if feasible.

(10) Nothing shall be placed long term on the overwater structure that will reduce natural light penetration through the structure.

(11) Pilings.

a. New piling for residential docks shall not exceed 8 inches in diameter, except where larger pilings are required for safety or site-specific engineering reasons. New piling for other docks must be the smallest diameter necessary.

b. All pilings shall be fitted with devices to prevent perching by piscivorous (fish-eating) birds.

(f) General construction regulations.

(1) Construction of overwater structures shall be completed during allowed in-water work windows.

(2) Construction impacts shall be confined to the minimum area needed to complete the project.

(3) The boundaries of clearing limits associated with site access and construction shall be flagged to prevent ground disturbance of riparian vegetation, wetlands, and other sensitive sites. This action shall be completed before any significant alteration of the project area.
(4) All temporary erosion controls shall be in place and appropriately installed downslope of project activities until site restoration is complete.
(5) Any large wood, native vegetation, topsoil, and/or native channel material displaced by construction shall be stockpiled for use during site restoration.
(6) No existing habitat features (i.e., wood, substrate materials) shall be removed from the shoreland or aquatic environment without approval.
(7) If native vegetation is moved, damaged, or destroyed, it shall be replaced with a functionally equivalent native species during site restoration.
(8) Project construction shall cease under high flow conditions that could result in inundation of the project area, except for efforts to avoid or minimize resource damage.
(9) Temporary moorages are allowed for vessels used in the construction of boating facilities provided:

a. Upon termination of the project, the aquatic habitat in the affected area is returned to its pre-construction condition within one year.
b. Construction vessels may not ground or otherwise disturb substrates.
c. Temporary moorage is located to minimize shading of aquatic vegetation.

(g) Private residential dock (including community dock) regulations.

(1) No boat lifts or watercraft lifts of any type will be placed on, or in addition to, the overwater structure unless the applicant can demonstrate that the proposed boat lift meets the intent of the criteria to minimize structure, maximize light penetration, and maximize depth.
(2) No electricity shall be provided to, or on, the overwater structure.
(3) Piers and ramps shall be no more than 4 feet in width.
(4) Shoreline concrete anchors must be placed at least 10 feet landward from the OHWM, if feasible. Shoreline concrete anchors must be sized no larger than 4 feet wide by 4 feet long unless demonstrated insufficient. The maximum anchor height shall be only what is necessary to elevate the bottom of either the pier or landward edge of the ramp at least 2 feet above the plane of OHWM. Alternate anchoring methods may be allowed if approved in advance by WDFW for application on the Yakima River.
(5) Float components for private docks shall not exceed the dimensions of 8 feet by 20 feet, or an aggregate total of 160 square feet. Float components for community docks shall not exceed the dimensions of 8 feet by 40 feet, or an aggregate total of 320 square feet, for all float components.
(6) Piling and float anchors.

a. Pilings shall be spaced at least 18 feet apart on the same side of any component of the overwater structure. The pier/ramp and float are separate components.
b. Each overwater structure shall utilize no more than 4 piles total for the entire project. A combination of two piles and four helical anchors may be used in place of four piles.
c. Submerged float anchors will be constructed from concrete; and shall be horizontally compressed in form, by a factor of 5 or more, for a minimum profile above the stream bed (the horizontal length and width will be at least 5 times the vertical height).

(7) No in-water fill material (including uncured concrete or its by-products) will be allowed, with the exception of pilings and float anchors.

(h) Docks for commercial, industrial, aquaculture, recreational or public access use.

(1) The amounts of overwater cover, including length and width; the number of in-water structures; and

the extent of any necessary shoreline stabilization or modification must be minimized.

(2) Accessory development may include, but is not limited to, parking, non-hazardous waste storage and treatment, stormwater management facilities, and utilities where these are necessary to support the water-oriented use. Non water-dependent accessory uses must be located outside of shoreline jurisdiction or outside of the shoreline buffer whenever possible.

(3) Garbage or litter receptacles must be provided and maintained by the operator at locations convenient to users.

(i) Marinas.

(1) No part of a marina may be wider than 8 feet, except that components up to 10 feet wide may be approved administratively if justified in documentation.

(2) New marinas must provide physical and/or visual public access for as many water-oriented recreational uses as possible, commensurate with the scale of the proposal.

(3) New marinas must provide adequate restroom and sewage disposal facilities.

(4) New or enlarged marinas must provide facilities and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan.

(5) Marina operators must post all regulations pertaining to handling, disposal and reporting of waste, sewage, fuel, oil or toxic materials where all users may easily read them. Rules for spill prevention and response must also be posted on site.

(j) Boat launch ramps.

(1) New public, commercial, or industrial boat launch ramps may be approved only if they provide public access to waters that are not adequately served by existing access facilities, if use of existing facilities is documented to exceed the designed capacity, or the ramp is necessary to serve the water-oriented commercial or industrial use.

(2) New private boat launches not for commercial or industrial use are prohibited.

(3) New public or commercial boat launch facilities must provide adequate restroom facilities.

(4) Boat launch ramps must be located where there is adequate water mixing and flushing and where water depths are adequate to eliminate or minimize the need for dredging or filling. Boat launch ramps must be located to minimize the obstruction of currents, alteration of sediment transport, and the accumulation of drift logs and debris.

(k) Replacement of existing boating facilities and private moorage structures. If any of the following are proposed during a five-year period, the project is considered a new facility and must comply with applicable standards for new facilities.

(1) Replacement of the entire facility.

(2) Replacement of 75 percent or more of support piles.

(3) Replacement of 75 percent or more of a boat launch, by area.

(l) Modification or enlargement of existing boating facilities and private moorage structures.

(1) Applicants must demonstrate that there is a need for modification or enlargement due to increased or changed use or demand, safety concerns, or inadequate depth of water.

(2) Enlarged portions of existing boating facilities and private moorage structures must comply with applicable standards for new facilities.

(m) Repair of existing boating facilities and private moorage structures.

(1) Repairs to existing legally established boating facilities and private moorage structures are permitted consistent with all other applicable codes and regulations.

(2) All repairs must utilize any material standards specified for new facilities.

(n) Mitigation.

(1) Consistent with mitigation sequencing, new or expanded boating facilities and private moorage structures shall be designed to avoid and then minimize impacts, prior to pursuing mitigation.

(2) Mitigation proposals must provide impact mitigation at a minimum one-to-one ratio, by area, using one or more of the potential mitigation measures listed below. The ratio should be increased if the measure will take more than one year to provide equivalent function or if the measure does not have a high success rate. Applicants should consult with other permit agencies, such as Washington Department of Fish and Wildlife and/or U.S. Army Corps of Engineers, for additional specific mitigation requirements.

(3) For all new or expanded boating facilities and private moorage structures, appropriate mitigation may include one or more of the following measures. In-kind measures are preferred over out-of-kind measures when consistent with the objective of compensating for adverse impacts to ecological function. Mitigation may not include measures that are already required by regulations.

a. Removal of any legal existing over- or in-water structures that are not the subject of the application.
b. Replacement of areas of existing solid over-water cover with grated material or use of grating on altered structures.
c. Planting of native vegetation along the shoreline immediately landward of the OHWM consisting of a density and composition of trees and shrubs typically found in undisturbed areas adjacent to the subject waterbody.
d. Removal or ecological improvement of hardened shoreline. Improvement may consist of softening the face and toe of the hardened shoreline with soil, gravel and/or cobbles, and/or incorporating vegetation or large woody debris.
e. Removal of man-made debris waterward of the OHWM.
f. Placement of large woody material if consistent with local, state and federal regulations.
g. Participation in an approved mitigation program.

(o) Submittal requirements.

(1) For all new or expanded boating facilities and private moorage structures, applicants must provide:

a. An assessment of potential impacts to existing ecological processes, including but not limited to sediment transport, hydrologic patterns, and vegetation disturbance.
b. A mitigation plan for unavoidable adverse impacts to ecological functions or processes, if applicable.

(2) For all new or expanded boating or private moorage facilities other than private residential moorage facilities and commercial or industrial structures, applicants must additionally provide an assessment of need and demand. At a minimum, the assessment shall include the following:

a. Existing approved facilities, or pending applications, within the service range of the proposed new facility and relevant characteristics of those facilities, such as level of use and condition.
b. The expected service population and relevant characteristics of the population, including any characteristics that justify specific design elements of the proposed facility.
c. An assessment of existing water-dependent uses in the vicinity and potential impacts to those uses, and a description of proposed mitigation measures, if applicable.

07.040 Breakwaters, Jetties, Groins, and Weirs

(a) New, expanded or replacement structures shall only be allowed if it can be demonstrated that they will not result in a net loss of shoreline ecological functions and that they support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

(b) Breakwaters, jetties, and groins shall be limited to the minimum size necessary.
(c) Breakwaters, jetties, and groins must be designed to protect critical areas, and shall implement mitigation sequencing to achieve no net loss of ecological functions.
(d) Proposed designs for new or expanded structures shall be designed by qualified professionals, including both an engineer and a biologist.

07.050 Commercial Development

(a) Commercial development in shoreline areas shall be designed, located, and constructed to achieve no net loss of ecological functions.
(b) Preference shall be given to water-dependent commercial uses over non-water-dependent commercial uses. Water-related uses and water-enjoyment uses shall be given priority over Non water-oriented uses.
(c) Commercial development that is not water-dependent shall not be allowed over water except where it is located within the same building and is accessory to a water-dependent use.
(d) Non-water-oriented commercial development shall not be allowed unless:
  (1) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to provision of public access or ecological restoration; or
  (2) Navigability is severely limited at the proposed site, and the commercial use provides a significant public benefit with respect to provision of public access or ecological restoration.
(e) In areas of the shoreline designated for commercial uses, non-water-oriented commercial uses may be allowed on sites physically separated from the shoreline by another property or public right-of-way.
(f) New commercial developments shall provide public access to the shorelines, subject to Section 15.05.050, Public Access.

07.060 Dredging and Dredge Material Disposal

(a) As regulated in this SMP, dredging is the removal of bed material from below the OHWM or wetlands using other than unpowered, hand-held tools for one of the allowed dredging activities listed in Section (d) below. This Section is not intended to cover other removals of bed material waterward of the OHWM or wetlands that are incidental to the construction of an otherwise authorized use or modification (e.g. shoreline crossings, bulkhead replacements). These in-water substrate modifications should be conducted pursuant to applicable general and specific use and modification regulations of this SMP.
(b) New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.
(c) Dredging and dredge material disposal must be done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided must be mitigated in a manner that assures no net loss of shoreline ecological functions.
(d) Dredging may only be permitted for the following activities:
  (1) Development of new or expanded wet moorages, harbors, ports or water-dependent industries of economic importance to the region only when there are no feasible alternatives or other alternatives may have a greater ecological impact.
  (2) Development of essential public facilities when there are no feasible alternatives.
  (3) Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.
  (4) Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.
  (5) Trenching to allow the installation of necessary underground utilities if no alternative, including boring, is feasible; impacts to fish and wildlife habitat are avoided to the maximum extent possible; and the installation does not alter the natural rate, extent, or opportunity of channel migration.
  (6) Establishing, expanding, relocating or reconfiguring navigation channels where necessary to assure

safe and efficient accommodation of existing navigational uses.

(7) Maintenance dredging of established navigation channels and basins when restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

(e) Dredging for the primary purpose of obtaining fill material is prohibited, except when the material is necessary for the restoration of ecological functions. The site where the fill is to be placed must be located waterward or the OHWM. The project must be either associated with a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through a Shoreline Conditional Use Permit, any other significant habitat enhancement project.

(f) Dredge material disposal within shoreline jurisdiction is permitted under the following conditions:

(1) Shoreline ecological functions and processes will be preserved, restored or enhanced, including protection of surface and groundwater; and

(2) Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.

(g) Dredge material disposal in open waters may be approved only when authorized by applicable state and federal agencies, and when one of the following conditions apply:

(1) Land disposal is infeasible, less consistent with this SMP, or prohibited by law.

(2) Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.

(h) All applications for dredging or dredge material disposal shall include the following information, in addition to other application requirements:

(1) A description of the purpose of the proposed dredging activities.

(2) A site plan outlining the perimeter of the area proposed to be dredged and the dredge material disposal area, if applicable.

(3) A description of proposed dredging operations, including, but not limited to:

a. The method of removal.
b. The length of time required.
c. The quantity of material to be initially removed.
d. The frequency and quantity of projected maintenance dredging.

(4) A description of proposed dredge material disposal, including, but not limited to:

a. Size and capacity of disposal site.
b. Means of transportation to the disposal site.
c. Future use of the site and conformance with land use policies and regulations, if applicable.

(5) Plans for the protection and restoration of the shoreline environment during and after dredging operations.

(6) An assessment of potential impacts to ecological functions or processes from the proposal.

(7) A mitigation plan to address identified impacts, if necessary.

07.070 Fill

(a) All fills shall be located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. Any adverse impacts to shoreline ecological functions must be mitigated.

(b) Fills in wetlands, floodways, channel migration zones or waterward of the OHWM may be allowed only when necessary to support one or more of the following:

(1) Water-dependent uses.
(2) Public access.
(3) Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.
(4) Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources and/or the Dredged Material Management Office of the U.S. Army Corps of Engineers.
(5) Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.
(6) Ecological restoration or enhancement when consistent with an approved restoration plan.
(7) Maintenance or installation of flood hazard reduction measures consistent with a comprehensive flood hazard management plan and this SMP.
(8) Protection of cultural resources when fill is the most feasible method to avoid continued degradation, disturbance or erosion of a site. Such fills must be coordinated with any affected Indian tribes.

(c) Upland fills not located within wetlands, floodways, or channel migration zones may be allowed provided they are:

(1) Part of an allowed shoreline use or modification, or necessary to provide protection to cultural resources.
(2) Located outside applicable buffers, unless specifically allowed in buffers.

(d) All fills, except fills for the purpose of shoreline restoration, must be designed:

(1) To be the minimum size necessary to implement the allowed use or modification.
(2) To fit the topography so that minimum alterations of natural conditions will be necessary.
(3) To not adversely affect hydrologic conditions or increase the risk of slope failure, if applicable.

(e) Unless site characteristics dictate otherwise, fill material within surface waters or wetlands shall be sand, gravel, rock, or other clean material with a minimum potential to degrade water quality and shall be obtained from a state-authorized source.
(f) A temporary erosion and sediment control (TESC) plan, including BMPs, consistent with the latest edition of the Benton County Hydrology Manual or approved equivalent, shall be provided for all proposed fill activities. Disturbed areas shall be immediately protected from erosion using mulches, hydroseed, or similar methods, and revegetated, as applicable.

07.080 Industry

(a) Over-water construction associated with industrial development that is not water-dependent shall not be permitted. Docks, piers, and boating facilities necessary for operation of ports and water-related or water-dependent uses shall be permitted in accordance with the provisions of this SMP.
(b) Industrial and port development shall be located, designed, constructed, and operated in a manner that minimizes impacts to the shoreline, provides for no-net-loss of shoreline ecological function, and avoids unnecessary interference with shoreline use by adjacent property owners.
(c) In the review of shoreline developments, the County shall preference first to water-dependent uses, then to water-oriented industrial uses.
(d) Non-water-related industrial development shall be prohibited in the shoreline environment, except when:

(1) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to public access or ecological restoration; or
(2) Water navigability is severely limited, and the industrial use provides a significant public benefit with respect to public access or ecological restoration.

(e) Non water-oriented industrial uses may be allowed in shoreline jurisdiction on sites that are physically

separated from the shoreline by: 1) another property, 2) public right-of-way, or 3) a levee system maintained by or under license from the federal government, State of Washington, or a local government.

(f) Industrial and port facilities proposed in areas of the shoreline already characterized by industrial or port development shall be given priority over such facilities proposed in shoreline areas not currently developed for industrial or port uses.

(g) In the consideration of shoreline environment designation amendments, and in the review of shoreline permits, the County shall encourage Industrial uses and redevelopment to locate where environmental cleanup and restoration can be accomplished.

(h) New industrial developments shall provide public access to the shorelines, subject to Section 15.05.050, Public Access; exceptions include safety or operational considerations, or other significant impediments as described in Section 15.05.050, Public Access.

07.090 In-Stream Structures

(a) In-stream structures must provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, priority habitats and species, other wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.

(b) New in-stream structures shall not interfere with existing water-dependent uses, including recreation.

(c) In-water structures shall not be a safety hazard or obstruct water navigation.

(d) In-stream structures shall be designed by a qualified professional.

(e) Natural in-water features, such as snags, uprooted trees, or stumps, shall be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages or pose a hazard to navigation or human safety.

07.100 Mining

(a) All mining proposals in shoreline jurisdiction must demonstrate that the mining is dependent on a shoreline location by evaluating geologic factors such as the distribution and availability of mineral resources in the County, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors.

(b) Mining proposals shall be consistent with the Washington Department of Natural Resources Surface Mine Reclamation standards (WAC 332-18, RCW 78.44).

(c) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Meeting the no net loss of ecological functions standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation.

(d) Mining waterward of the OHWM of rivers and streams will not be allowed unless:

  (1) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the system as a whole;

  (2) the mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

  (3) Determinations required by the above requirements must be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (RCW 43.21C) and the SEPA rules (WAC 197-11).

  (4) In considering renewal, extension, or reauthorization of other mining operations waterward of the OHWM in locations where they have previously been conducted, the County must require compliance with this Subsection to the extent that no such review has previously been conducted. Where there has been prior review, the County must review previous determinations comparable to

the requirements of this Section to assure compliance with this Subsection under current site conditions.

(e) The proposed subsequent use of mined property must be consistent with the environment designation in which the property is located, and the reclamation of disturbed shoreline areas must provide appropriate ecological functions consistent with the setting.

07.110 Recreational Development

The following provisions apply to any development, construction, or use of land or water for recreational purposes within Shoreline jurisdiction, whether public or commercial.

(a) Recreational development shall demonstrate achievement of no-net-loss of ecological functions.
(b) Recreational activities must be compatible with existing or proposed uses in the area and must be consistent with County development standards regarding parking, traffic, noise, building location and size, and others.
(c) The location, design, and operation of recreational facilities shall be consistent with the purpose of the environmental designation.
(d) Recreational uses and facilities located within shoreline jurisdiction shall include features that relate to access, enjoyment and use of the water and shorelines of the state. Access to recreational areas should emphasize both consolidated park or open space areas and trail access.
(e) Commercial components of the use that are not explicitly related to the recreational operation must also conform to the Commercial use standards of Section 15.07.050, Commercial Development.

07.120 Residential Development

(a) Residential development shall be consistent with applicable environment designations and standards and comply with all applicable subdivision, critical area, and zoning regulations.
(b) Residential development shall include facilities for water supply, wastewater, stormwater, solid waste, access, utilities and other support facilities in conformance with County standards and which do not result in harmful effects on the shoreline or waters.
(c) Applications for new shoreline residences shall ensure that shoreline stabilization and flood control structures are not necessary to protect proposed residences.
(d) New residential developments of five or more units shall provide public access to the shorelines, subject to Section 15.05.050, Public Access.
(e) Parking areas shall be located upland of the uses they serve.
(f) Residential development shall be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.
(g) Residential development shall be designed, configured and developed in a manner that assures that no net loss of ecological functions results from division of land at full build-out of all lots and throughout all phases of development.
(h) Single-family residences are considered a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.
(i) In the Natural environment, subdivision of property is not allowed if it will require significant vegetation removal or shoreline modification that adversely impacts ecological functions.
(j) New floating residences and over-water residential structures shall be prohibited in shoreline jurisdiction.

07.130 Shoreline Habitat and Natural Systems Enhancement Projects

(a) Applicability. Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring or enhancing habitat for priority species in shorelines. Such projects may include shoreline modification actions such as

modification of vegetation, removal of non-native or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. This Section does not apply to mitigation.

(b) Shoreline restoration and enhancement projects must be designed using the best available scientific and technical information and implemented using best management practices.

(c) All shoreline restoration and enhancement projects must protect the integrity of adjacent natural resources, including aquatic habitats and water quality.

(d) Shoreline restoration and enhancement shall not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.

(e) Long-term maintenance and monitoring shall be included in restoration or enhancement proposals.

(f) Relief for OHWM shifts. Applicants seeking to perform restoration projects are advised to work with the County to assess whether and how the proposed project is allowed relief under RCW 90.58.580, in the event that the project shifts the OHWM landward.

07.140 Shoreline Stabilization

(a) New development must be located and designed to avoid the need for future shoreline stabilization, if feasible.

(1) Land subdivisions must be designed based on a geotechnical report to assure that future development of the created lots will not require shore stabilization for reasonable development to occur.

(2) New development adjacent to steep slopes or bluffs must be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated in a geotechnical report.

(b) New development that would require shoreline stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas is prohibited.

(c) All proposals for shoreline stabilization structures, both individually and cumulatively, must not result in a net loss of ecological functions, and must be the minimum size necessary. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.

(d) New or enlarged structural shoreline stabilization measures shall not be allowed, except as follows

(1) To protect an existing primary structure, including residences, when conclusive evidence, documented by a geotechnical analysis, is provided that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering hard or soft structural shoreline stabilization.

(2) In support of new Non water-dependent development, including single-family residences, when all of the conditions below apply:

a. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.

b. Nonstructural measures, such as placing the development farther from the shoreline, reducing the size or scope of the proposal, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as currents or waves.

(3) In support of water-dependent development when all of the conditions below apply:

a. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.

b. Nonstructural measures, such as planting vegetation, or installing on-sitedrainage improvements, are not feasible over time or sufficient.
c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.

(4) To protect projects for the restoration of ecological functions or for hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.

(e) New hard structural shoreline stabilization measures shall not be authorized, except when a report confirms that that there is a significant possibility that a primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard structural shoreline stabilization measures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

(f) An existing shoreline stabilization structure, hard or soft, may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves. While replacement of shoreline stabilization structures may meet the criteria for exemption from a Shoreline Substantial Development Permit, such activity is not exempt from the policies and regulations of this SMP.

(1) For purposes of this Section, "replacement" means the construction of new structure to perform a shoreline stabilization function of existing structure that can no longer adequately serve its purpose. Any additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.
(2) Replacement shall be regulated as a new shoreline stabilization measure, except for the requirement to prepare a geotechnical analysis. A geotechnical analysis is not required for replacements of existing hard or soft structural shoreline stabilization with a similar or softer measure if the applicant demonstrates need to protect principal uses or structures from erosion caused by waves or other natural processes operating at or waterward of the OHWM.
(3) Replacement hard structural shoreline stabilization measures shall not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. All other replacement hard structural shoreline stabilization measures shall be located at or landward of the existing shoreline stabilization structure.
(4) Hard and soft shoreline stabilization measures may allow some fill waterward of the OHWM to provide enhancement of shoreline ecological functions through creation of nearshore shallow-water habitat and shoreline rearing habitat for salmonids.

(g) Repair and maintenance of existing shoreline stabilization measures may be allowed, subject to the following standards. While repair and maintenance of shoreline stabilization structures may meet the criteria for exemption from a Shoreline Substantial Development Permit, such activity is not exempt from the policies and regulations of this SMP.

(1) Repair and maintenance includes modifications to an existing shoreline stabilization measure that are designed to ensure the continued function of the measure by preventing failure of any part. Limitations on repair and maintenance include:

(2) If within a three-year time period, more than 50 percent of the length of an existing structure is removed, including its footing or bottom course of rock, prior to placement of new stabilization materials, such work will not be considered repair and maintenance and shall be considered replacement. Work that only involves the removal of material above the footing or bottom course of rock does not constitute replacement.

(3) Any additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.

(4) The placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure shall be considered a new structure, not maintenance or repair.

(5) Areas of temporary disturbance within the shoreline buffer shall be expeditiously restored to their pre-project condition or better.

(h) Structural shoreline stabilization design and construction standards:

(1) Structural shoreline stabilization measures shall not extend waterward more than the minimum amount necessary to achieve effective stabilization, except for those elements that enhance shoreline ecological functions and minimize impacts.

(2) Stairs or other water access measures may be incorporated into shoreline stabilization measures but shall not extend waterward of the measure or the OHWM.

(3) All structural shoreline stabilization measures must minimize and mitigate any adverse impacts to ecological functions resulting from short-term construction activities. Techniques may include compliance with timing restrictions, use of best management practices, and stabilization of exposed soils following construction.

(i) In addition to other submittal requirements, the applicant shall submit the following as part of a request to construct a new, enlarged, or replacement shoreline stabilization measure:

(1) For a new or enlarged hard or soft structural shoreline stabilization measure, a geotechnical report prepared by a qualified professional with a Washington state engineering license. The report shall include the following:

a. An assessment of the necessity for structural shoreline stabilization by estimating time frames and rates of erosion and reporting on the urgency associated with the specific situation.

b. An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM, and documentation of the OHWM field determination.

c. An assessment of alternative measures to shoreline stabilization.

d. Where structural shoreline stabilization is determined to be necessary, the assessment must evaluate the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.

e. Design recommendations for minimum sizing of hard structural or soft structural shoreline stabilization materials, including gravel and cobble beach substrates necessary to dissipate wave energy, eliminate scour, and provide long-term shoreline stability.

(2) For replacements of existing hard structural shoreline stabilization measures with a similar measure, the applicant shall submit a written narrative providing a demonstration of need. The narrative must be prepared by a qualified professional. The demonstration of need shall consist of the following:

a. An assessment of the necessity for continued structural shoreline stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch or flow velocities, and location of the nearest primary structure.

b. An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard-structural shoreline

stabilization, and documentation of the OHWM field determination.

c. An assessment of alternative measures to shoreline stabilization.
d. An assessment of the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.
e. Design recommendations for minimizing impacts of any necessary hard structural shoreline stabilization.
f. The demonstration of need may be waived when an existing hard structural shoreline stabilization measure is proposed to be repaired or replaced using soft structural shoreline stabilization measures, resulting in significant restoration of shoreline ecological functions or processes.

(3) For all structural shoreline stabilization measures, including soft structural shoreline stabilization, detailed construction plans, including, but not limited to, the following:

a. Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs.
b. Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation.

07.150 Transportation

This Section addresses all forms of transportation including systems for pedestrian, bicycle, and public transportation as well as roads, railroads, and parking.

(a) Where other options are available and feasible, new roads, road expansions or railroads shall not be built within shoreline jurisdiction. If subdivisions are being proposed, new road placement shall be evaluated at the time of the plat application, or site development planning.
(b) When railroads, roads or road expansions are unavoidable in the shoreline jurisdiction, proposed transportation facilities shall be planned, located, and designed to achieve the following:

(1) Mitigate possible adverse effects on unique or fragile shoreline features;
(2) Maintain no net loss of shoreline ecological functions;
(3) Avoid adverse impacts on existing or planned water-dependent uses; and
(4) Set back from the OHWM to the maximum feasible to allow for a usable shoreline area for vegetation conservation and planned shoreline uses unless infeasible, standards for ADA accessibility and functionality cannot be met, or the cost is disproportionate to the cost of the proposal.
(5) Be consistent with critical areas regulations in Section 15.06.

(c) Public roads within shoreline jurisdiction shall, where possible, provide and maintain visual access to scenic vistas. Visual access may include, but is not limited to, turn-outs, rest areas, and picnic areas.
(d) Shoreline crossings and culverts shall be designed to mitigate impact to riparian and aquatic habitat and shall allow for fish passage. Crossings shall occur as near to perpendicular with the waterbody as possible, unless an alternate path would minimize disturbance of native vegetation or result in avoidance of other critical areas such as wetlands.
(e) Crossings that are to be used solely for access to private property shall be designed, located, and constructed to provide access to more than one lot or parcel of property, where feasible, to minimize the number of crossings.
(f) The provisions of Section 15.06.050, Frequently Flooded Areas shall be addressed in the design of transportation facilities.

(g) Transportation proposals shall be consistent with circulation system plans for roads, railroads, pedestrian, bicycle, and public transportation. The SMP Administrator shall condition transportation proposals to be

consistent with applicable county, city, state, or federal plans and construction standards, as appropriate.

(h) Public access standards shall be met in Section 15.05.050.

(i) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use and when minimizing environmental and visual impacts. For the purposes of this Section, authorized means a use or activity included in the use matrix in Section 15.04.110 and associated definitions in Section 15.02. New or expanded parking areas shall:

(1) Be sited outside of shoreline jurisdiction unless no feasible alternative location exists, for example where a property does not extend outside jurisdiction;
(2) Be planted or landscaped to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas; and
(3) Observe critical area and shoreline buffers.

(j) If an applicant proposes to pave a roadway or parking area, the proposal shall comply with applicable water quality, stormwater, landscaping, and other applicable requirements of this SMP and the Benton County Code.

(k) A driveway for an individual single-family home is considered a residential appurtenance and is considered part of the primary use, and subject to Section 15.07.120. Private driveways or private roads serving more than one home are subject to the standards of Section 15.07.150.

(l) When a new or expanded roadway or new or expanded parking facility is proposed, the County may condition the proposal to provide a maintenance plan that promotes best management practices to achieve no-net-loss of shoreline ecological function. For example, maintenance standards may include restrictions on the use of herbicides, hazardous substances, sealants or other liquid oily substances, or de-icing practices adjacent to shoreline buffers or critical areas and their buffers.

(m) Pursuant to RCW 47.01.485, the County permit review time shall have a target of 90 days for projects on a state highway.

07.160 Utilities

(a) Utility projects within shoreline jurisdiction shall be designed to achieve no-net-loss of shoreline ecological function.

(b) If an underwater location is necessary, the design, installation and operation of utilities shall minimize adverse ecological impacts.

(c) Where utility corridors must cross shoreline jurisdiction, such crossings shall be designed to take the shortest, most direct route feasible, unless such a route would result in loss of ecological function, disrupt public access to the shoreline, or obstruct visual access to the shoreline.

(d) Utility projects within shoreline jurisdiction shall be located within existing transportation or utility corridors or existing cleared areas to the greatest extent feasible.

(e) Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

(f) Upon completion of utility system installation, and any maintenance project, the disturbed area shall be regraded to compatibility with the natural terrain and replanted to prevent erosion and provide appropriate vegetative cover.

(g) The presence of existing utilities shall not justify more intense development. Rather the development shall be consistent with the County Comprehensive Plan, zoning code, and this SMP, and shall be supported by adequate utilities.

Section 15.08 Nonconforming Uses, Structures, and Lots

Nonconforming uses or developments are shoreline uses or development which were lawfully constructed or

established prior to the effective date of this Master Program, or approved amendments to the Master Program, but which do not conform to present regulations or standards of the Master Program. The intent of this chapter is to provide regulations regarding nonconforming uses, structures, and lots as well as to establish residences as pre-existing legal uses, conforming to the Master Program as allowed by the SMA.

08.010 Non-Conforming Uses and Structures: Continuance and Discontinuance

(a) Lots, structures, and uses that were legally established prior to adoption of this Master Program or that were in compliance with the Master Program at the time of initial establishment but, due to revision or amendment of the Master Program, have become noncompliant are nonconforming uses that may continue, without regard to ownership changes, so long as in compliance with this chapter. A use of property that is unlawful under other local, state, or federal laws shall not be deemed a nonconforming use.

(b) Any use which existed prior to adoption of this Master Program or applicability of this Master Program to the property and which is not listed as a permitted use shall be considered a nonconforming use.

(c) If a nonconforming use is replaced by a conforming use for any length of time, use of the property shall not revert to the nonconforming use. The mere presence of a structure shall not constitute the continuance of a nonconforming use. When a nonconforming use is discontinued for a period of one (1) year or more without replacement by a conforming use, legal conforming use status expires and further use of the structure or lot must be in compliance with the provisions of this Master Program.

08.020 Alteration, Expansion, or Restoration of Nonconforming Uses and Structures

Alteration, expansion, or restoration of nonconforming structures and uses are not allowed except as set forth in this Subsection.

(a) Single Family Dwelling Units. See ~~BCC~~ Section 15.08.040.

(b) Other Structures or Uses – Legally Required Alterations or Expansions. Alteration or expansion of a nonconforming use or structure is allowed if necessary, to accommodate handicapped accessibility requirements, fire code, or other life safety related requirements mandated by local, state, or federal law.

(c) Other Structures or Uses – Dimensional Nonconformities. Legally established structures used for a conforming use but which are nonconforming with regard to setbacks, buffers, or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded, provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. For example, vertical, lateral or anterior expansions that do not intrude into a required buffer and which are consistent with the maximum height of this SMP and underlying zoning may be allowed.

(d) Structures Subject to Variances. A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this Section shall apply as they as they apply to pre-existing nonconformities.

(e) Movement of a Structure. A nonconforming structure which is moved any distance must be brought into conformance with this Title and the SMA.

(f) Other Non-conforming Structures. Except as set forth above, nonconforming structures may not be altered or expanded. Such other structures may be restored if less than fifty (50) percent of the gross floor area in flood hazard areas and seventy-five (75) percent of the gross floor area in the remainder of shoreline jurisdiction has been unintentionally destroyed or damaged if:

(1) All other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied, including but not limited to setback requirements;

(2) The nonconforming use resumes within such structure within one (1) year from the destroying or damaging event; and

(3) The restoration of the nonconforming structure does not increase the gross floor area that existed immediately prior to the destruction or damaging event. Structures intentionally destroyed or damaged and those with fifty (50) percent or more of the gross floor area in flood hazard areas and seventy-five (75) percent or more of their gross floor area in the remainder of shoreline jurisdiction unintentionally destroyed or damaged may not be restored or reconstructed.

08.030 Nonconforming Lots

(a) In any district, any permitted use or structure may be erected on any existing lot or parcel. This provision shall apply even though such lot fails to meet the minimum dimensional requirements of this Title, provided that such structure is allowed within the shoreline environment and all uses of the nonconforming lot shall comply with all other provisions this Master Program, underlying zoning requirements including setbacks, dimensional standards, and lot coverage requirements and the Benton- Franklin Health District .

(b) Structures and customary accessory buildings on non-conforming lots shall be set back from the OHWM to the greatest extent feasible. Development proposed inside required buffers shall go through mitigation sequencing and shall require a mitigation plan.

08.040 Pre-Existing Legal Residential Uses – Conforming Legal Residential Structures

Notwithstanding Sections 15.08.010 to 15.08.030, the following shall apply only to pre-existing legal residential structures constructed prior to the effective date of this Title.

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following shall be considered a conforming structure: Setback, buffers, or yards; area; bulk; height; or density.

(b) The County shall allow redevelopment, expansion, or change with the class of occupancy, of the residential structure if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions. For example, vertical, lateral or anterior expansions that do not intrude farther into a required buffer and which are consistent with the maximum height allowed by this SMP and underlying zoning may be allowed.

(c) Pre-existing legal residential structures that are damaged or destroyed may be replaced to their prior size and location subject to:

(1) all other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied; and

(2) to restore a damaged dwelling unit, a complete application for a building permit shall be submitted within one (1) year of the act causing damage or destruction to the dwelling unit.

(d) For purposes of this Section, “appurtenant structures” means garages, sheds, and other legally established structures. “Appurtenant structures” does not include bulkheads and other shoreline modifications or over-water structures.

(e) Nothing in this Section shall:

(1) Restrict the ability of this Title to limit development, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or

(2) Affect the application of other federal, state, or county requirements to residential structures.

Section 15.09 Administration, Permits, and Enforcement

09.010 Purpose

(a) RCW 90.58.140(3) requires local governments to establish a Program, consistent with the rules adopted by the Washington Department of Ecology, for the administration and enforcement of shoreline

development. Also, in accordance with RCW 90.58.050, Benton County has the primary responsibility for administering the regulatory program and Ecology acts primarily in a supportive and review capacity.

(b) Pursuant to the Shoreline Management Act at RCW 90.58.080 and the Growth Management Act at RCW 36.70A.130, local governments must periodically review, and where appropriate, amend their SMP. Consistent with state laws, Benton County has established a process to evaluate and consider amendments to this SMP.

(c) The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The SMP Administrator must give adequate consideration to mitigation measures, dimensional variances, and other possible methods to prevent undue or unreasonable hardships upon property owners.

09.020 Administrative Responsibilities

(a) The County shall designate a SMP Administrator. The SMP Administrator in Benton County is the Planning Manager and shall have overall administrative responsibility of this SMP. The SMP Administrator or his/her designee is hereby vested with the authority to:

(1) Administrate this SMP.
(2) Grant or deny exemptions from Shoreline Substantial Development Permit requirements of this SMP.
(3) To grant, grant with conditions, or deny Shoreline Substantial Development Permits and time extensions to shoreline permits and their revisions.
(4) Make field inspections as needed and prepare or require reports on shoreline permit applications.
(5) Make written recommendations to the Hearings Examiner, Planning Commission and Board of County Commissioners as appropriate. The SMP Administrator shall make recommendations to the Hearings Examiner regarding Shoreline Variances and Shoreline Conditional Use Permits. The SMP Administrator shall recommend SMP amendments to the Planning Commission and Board of County Commissioners.
(6) Advise interested persons and prospective applicants as to the administrative procedures and related components of this SMP.
(7) Determine and collect fees for all necessary permits as provided in County ordinances or resolutions. The determination of which fees are required shall be established by resolution of the Board of County Commissioners.
(8) Make administrative decisions and interpretations of the policies and regulations of this SMP and the SMA.

(b) The responsible SEPA official or his/her designee is authorized to conduct environmental review of all use and development activities subject to this SMP, pursuant to WAC 197-11 and RCW 43.21C. The responsible official is designated in accordance with the Benton County Code.

(c) The Hearing Examiner is authorized to:

(1) Grant or deny Shoreline Variances, and Shoreline Conditional Use Permits under this SMP.
(2) Decide on appeals of administrative decisions issued by the Administrator of this SMP.

(d) The Planning Commission is authorized to:

(1) Review the SMP as part of regular SMP updates required by RCW 90.58.080 as a major element of each County's planning and regulatory program and make recommendations for amendments thereof to the Board of County Commissioners.

(e) The Board of County Commissioners is vested with authority to:

(1) Initiate an amendment to this SMP according to the procedures prescribed in WAC 173-26-100.
(2) Adopt all amendments to this SMP, after consideration of the recommendation of the planning

commission, where established. Amendments shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

09.030 Noticing Requirements

(a) Applicants shall follow the noticing requirements of the County. At a minimum, the County shall provide notice in accordance with WAC 173-27-110, and shall be consistent with noticing requirements in BCC Title 17.
(b) Per WAC 173-27-120 the County shall comply with special procedures (public notice timelines, appeal periods, etc.) for limited utility extensions and bulkheads.

09.040 Exemption from Permit Requirements

(a) An exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the SMA or this SMP, or from any other regulatory requirements. To be authorized, all uses, and development must be consistent with the policies, requirements and procedures of this SMP and the SMA.
(b) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process.
(c) A development or use that is listed as a conditional use pursuant to this SMP or is an unlisted use, must obtain a Shoreline Conditional Use Permit even though the development or use does not require a Shoreline Substantial Development Permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this SMP, such development or use can only be authorized by approval of a Shoreline Variance.
(d) The burden of proof that a development or use is exempt from the permit process is on the applicant.
(e) If any part of a proposed development is not eligible for exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.
(f) The County may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the SMA and this SMP. Additionally, nothing shall interfere with the County's ability to require compliance with all other applicable laws and plans.
(g) The County shall exempt the shoreline developments listed in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, as amended, or successor laws, from the Shoreline Substantial Development Permit requirement.
(h) Letters of exemption shall be issued by the County when a development application is determined to meet the listed criteria for an exemption and when a letter of exemption is required by the provisions of WAC 173-27-050, as amended.

09.050 Interpretations

(a) The SMP Administrator shall provide administrative interpretations in accordance with the SMA, the SMP Guidelines and with BCC 17.10.170.
(b) The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The SMP Administrator shall give adequate consideration to mitigation measures, dimensional variances, and other possible methods to prevent undue or unreasonable hardships upon property owners.
(c) The County shall consult with Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and 173-26 WAC.

09.060 Permit Applications

(a) Shoreline applications are classified as follows:

(1) Substantial Development Permit
(2) Conditional Use Permit
(3) Variance
(4) Shoreline Exemption

(b) Permits for Substantial Development, Shoreline Conditional use, or Shoreline Variance shall be in a form prescribed and used by the County including a combined permit application form. Such forms will be supplied by the County.
(c) The contents of permit applications must be consistent with WAC 173-27-180 and Benton County Code.
(d) Where this SMP requires more information than the minimum required by WAC 173-27-180, the SMP Administrator may vary or waive requirements beyond WAC 173-27-180 if the information is unnecessary to process the application.
(e) The SMP Administrator may require additional specific information if required by the nature of the proposal or the presence of sensitive ecological features, to ensure compliance with other local requirements or the provisions of this SMP.
(f) At the time of application, the applicant must pay the application fee.

09.070 Procedures applicable to all shoreline permits

(a) All applications for a permit or a permit revision shall be submitted by the County to Ecology upon a final decision by the County. Final decision by the County shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed. Filing shall occur consistent with WAC 173-27-130.
(b) As set forth in WAC 173-27-190, each Substantial Development Permit, Conditional Use Permit, or Variance, issued by the County must contain a provision that construction pursuant to the permit may not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have terminated; except as provided in RCW 90.58.140(5)(a) and (b).
(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.
(d) After the County's approval of a conditional use or variance permit, the County shall submit the permit to the department for Ecology's approval, approval with conditions, or denial. Ecology shall render and transmit to the County and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the County pursuant to WAC 173-27-110.
(e) Ecology shall review the complete file submitted by the County on conditional use and 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.
(f) The County shall provide appropriate notification of the Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.
(g) All requests for review of any final permit decisions under chapter 90.58 RCW and chapter 173-27 WAC are governed by the procedures established in RCW 90.58.180 and chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.
(h) Except as specified in 09.110, Revisions to Permits, the applicant must comply with all aspects of an approval granted under this Chapter, including conditions and restrictions.
(i) Construction and activities authorized by a Shoreline Substantial Development Permit are subject to the time limitations of WAC 173-27-090.

09.080 Procedures applicable to Substantial Development Permits

(a) A Shoreline Substantial Development Permit shall be required for all development of shorelines, unless the proposal is specifically exempt per Section 09.040 or is not subject to the SMP per Section 01.030, Applicability.
(b) Shoreline Substantial Development permits shall be processed consistent with this SMP and BCC Chapter 17.10, Permit Review Process.
(c) A substantial development permit shall be granted only when the development proposed is consistent with:
    (1) The policies and procedures of the SMA;
    (2) The provisions of WAC 173-27; and
    (3) This SMP.
(d) The County may attach conditions to the approval of permits as necessary to assure consistency of the project with the SMA and this SMP.
(e) Nothing shall interfere with the County's ability to require compliance with all other applicable plans and laws.

09.090 Procedures Applicable to Shoreline Conditional Use Permits

(a) Uses specifically classified or set forth in this SMP as conditional uses shall be subject to review and condition by the Hearing Examiner and by Ecology. Shoreline Conditional Use Applications shall be processed consistent with this SMP and BCC Chapter 17.10, Permit Review Process.
(b) Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this Section and the requirements for conditional uses contained in this SMP.
(c) Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.
(d) Uses which are classified or set forth in this SMP as conditional uses may be authorized provided that the applicant demonstrates all of the following:
    (1) That the proposed use is consistent with the policies of RCW 90.58.020 and the SMP;
    (2) That the proposed use will not interfere with the normal public use of public shorelines;
    (3) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP;
    (4) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
    (5) That the public interest suffers no substantial detrimental effect.
(e) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

09.100 Procedures Applicable to Shoreline Variances

(a) The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this SMP where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited. Shoreline Variance Applications shall be processed consistent with this SMP and BCC Chapter 17.10, Permit Review Process.
(b) Variance permits should be granted in circumstances where denial of the permit would conflict with the

goals of the SMA as listed in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown, and the public interest shall suffer no substantial detrimental effect.

(c) Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in the SMP precludes, or significantly interferes with, reasonable use of the property;
(2) That the hardship described in criterion (1) of this Subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;
(3) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP and will not cause adverse impacts to the shoreline environment;
(4) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
(5) That the variance requested is the minimum necessary to afford relief; and
(6) That the public interest will suffer no substantial detrimental effect.

(d) Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable SMP precludes all reasonable use of the property;
(2) That the proposal is consistent with the criteria established under Subsection (c); and
(3) That the public rights of navigation and use of the shorelines will not be adversely affected.

(e) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

09.110 Revisions to Permits

(a) When an applicant seeks to revise a shoreline substantial development permit, conditional use permit, or variance, whether such permit or variance was granted under this SMP, or under the prior effective SMP the SMP Administrator shall request from the applicant detailed plans and text describing the proposed changes to the project. If the Administrative Official determines that the proposed changes are within the general scope and intent of the original substantial development permit, conditional use permit or variance, as the case may be, the revision may be approved by the Shoreline Administrator, without the need for the applicant to file a new Substantial Development Permit application, provided the development is consistent with the SMA, WAC 173-27-100 (Revisions to Permits), and the SMP.

(b) Within the “scope and intent” of the original permit as referenced in Subsection (a) means the following:

(1) No additional over-water construction will be involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less.
(2) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit.

(3) Additional or revised landscaping is consistent with the conditions attached to the original permit and with the SMP.
(4) The use authorized pursuant to the original permit is not changed.
(5) No adverse environmental impact will be caused by the project revision.
(6) The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the SMP except as authorized under a variance granted as the original permit or a part thereof.

(c) If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the SMP Administrator shall require the applicant to apply for a new shoreline substantial development or conditional use permit or variance, as appropriate, in the manner provided for herein.
(d) If proposed revisions to the original permit involve a conditional use or variance, the County shall submit the proposed revision to Ecology for review. Ecology shall respond with its final decision on the proposed revision request within 15 days of the date of receipt by Ecology per WAC 173-27-100(6).

09.120 Enforcement Authority

The County shall apply 173-27 WAC Part II, Shoreline Management Act Enforcement, to enforce the provisions of this SMP.

09.130 Amendments to SMP

(a) This SMP carries out the policies of the Shoreline Management Act for Benton County. It shall be reviewed and amended as appropriate in accordance with the review periods required in the SMA and in order to:

(1) Assure that this SMP complies with applicable law and guidelines in effect at the time of the review; and
(2) Assure consistency of this SMP with the County's Comprehensive Plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(b) This SMP and all amendments thereto shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.
(c) The SMP may be amended annually or more frequently as needed pursuant to theGrowth Management Act, RCW 36.70A.130(2)(a)(iii).
(d) Future amendments to this SMP may be initiated by any of the following: The Benton County Shoreline Administrator, Planning Commission, or Board of County Commissioners. The following persons may petition the Planning Commission and Benton County Commissioners to support an amendment:

(1) Any owner of property in unincorporated Benton County, when such request is for an amendment that would affect only that person's property;
(2) Any resident of unincorporated Benton County supported by ten (10) signatures of persons also residing in unincorporated Benton County; and
(3) Any local governmental or non-governmental agency operating in Benton County.

(e) Applications for SMP amendments shall specify the changes requested and any and all reasons therefore. Applications shall be made on forms specified by the County. Such applications shall contain information specified in the County's procedures for Comprehensive Plan and development regulation amendments pursuant to RCW 36.70A, the Growth Management Act, and information necessary to meet minimum public review procedures in Subsection C.
(f) The County shall accomplish the amendments in accordance with the procedures of the Shoreline Management Act, Growth Management Act, and implementing rules including, but not limited to, RCW 90.58.080, WAC 173-26-100, RCW 36.70A.106 and 130, and Part Six, Chapter 365-196 WAC.
(g) Proposals for amendment of this SMP shall be heard by the Planning Commission in an open record

hearing. After conducting a hearing and evaluating testimony regarding the application, including a recommendation from the Shoreline Administrator, the Planning Commission shall submit its recommendation to the Board of County Commissioners, who shall approve or deny the proposed amendment following their open record hearing.

(h) Prior to approval, the County shall make a finding that the amendment would accomplish #1 or #2, and must accomplish #3:

(1) The proposed amendment would make this Program more consistent with the SMA and/or any applicable Department of Ecology SMP Guidelines; or

(2) The proposed amendment would make this Program more equitable in its application to persons or property due to changed conditions in an area; and

(3) This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of April 2013 (the *Final Shoreline Analysis Report*).

(i) After approval or disapproval of a SMP amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the SMP amendment has been approved or disapproved by Ecology pursuant to the notice publication requirements of RCW 36.70A.290.

09.140 Monitoring

(a) The County will track all shoreline permits and exemption activities to evaluate whether the SMP is achieving no net loss of shoreline ecological functions. Activities to be tracked using the County's permit system include development, conservation, restoration and mitigation, such as:

(1) New shoreline development
(2) Shoreline Variances and the nature of the variance
(3) Compliance issues
(4) Net changes in impervious surface areas, including associated stormwater management
(5) Net changes in fill or armoring
(6) Net change in linear feet of flood hazard structures
(7) Net changes in vegetation (area, character)

(b) Using the information collected in Subsection (a) a no net loss report shall be prepared every eight years as part of the County's SMP evaluation or Comprehensive Plan Amendment process. Should the no net loss report show degradation of the baseline condition documented in the County's Shoreline Analysis Report, changes to the SMP and/or Shoreline Restoration Plan shall be proposed at the time of the eight-year update to prevent further degradation and address the loss in ecological functions.

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.co.benton.wa.us

Planning Division
(509) 786-5612
P.O. Box 910, Prosser, WA 99350
planning.department@co.benton.wa.us

Notice of Open Record Hearings

NOTICE IS GIVEN that Board of County Commissioners will be holding Public Hearings on Benton County's Shoreline Master Program Periodic Review and on an Ordinance amendment to BCC 15-Environment (Critical Areas) on June 22, 2021 at 9:00 a.m., in the Commissioners Meeting Room, Third Floor, Courthouse, Prosser, **in person and via a virtual meeting format** (see below for more information). Benton County is accepting comments on the periodic review of the County's Shoreline Master Program and on the ordinance amendment to BCC 15.02 and 15.14.

Shoreline Master Plan - The county has prepared draft SMP amendments to keep the SMP current with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

The proposed amendments within the Plan consist of housekeeping edits to reflect updated code sections, dates, etc. Deleting the definition for Board of Adjustment and adding text for Hearing Examiner, adding text to the definition for "Development", amending the definition for "Substantial development" by updating the dollar amount for exceeding the fair market value, adding text to Section 15.04.120 regarding "Developments not required to obtain shoreline permits or local reviews", adding text to 15.06.030 for external or internal retrofitting of an existing structure for compliance with ADA, amending 15.07.030 by adding language to Substantial Development Permit exception applying to dock construction, and amending 15.07.150 to add a language regarding County permit review time

OA 2021-002 -AN ORDINANCE relating to critical areas,· general provisions and fish and wildlife habitat conservation areas; amending the sections relating to applicability and performance standards-general requirements;·amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56. This amendment updates references within the Applicability portion of the ordinance; amends the buffer requirements; and amends and changes the title to Section 56 to read "Appendix A - General References and Best Available Science" and adds the words "general references" when referring to the list of data and best available science.

Proposed amendments to the county shoreline master program are available for review at https://tinyurl.com/SMPUpdate2021 and at the County Planning Division Office within the Public Services Building at 102206 E. Wiser Parkway, Kennewick WA 99338. The Ordinance amendments will also be available for review at https://tinyurl.com/pubnotice.

NOTICE IS FURTHER GIVEN that the Shoreline Master Plan and the proposed ordinance amendment have been reviewed under the requirements of the State Environmental Policy Act and Determinations of Non-Significance (DNS) for both proposals were issued on February 24, 2021 and accordingly Environmental Impact Statements were not required. Any comments regarding these determinations and the environmental impacts of the proposals can be made at the Board of County Commissioners Hearing or in writing to the Benton County Planning Division by 3 p.m. on Monday June 21, 2021.

To continue to provide citizens access to public meetings, Benton County **in addition to in person attendance**, will also be providing telephonic and video access for the public to view and provide testimony at public meetings. If you choose to join the meeting telephonically, we ask that you please limit background noise or mute your line to prevent any unnecessary interruption to the meeting. To find information on virtual attendance options, including streaming video, WebEx video conferencing and telephone, please visit https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181.

Comments regarding the proposed ordinance amendment, Shoreline Master Plan or SEPA determinations of the proposals may also be submitted in writing to the Benton County Planning Division; P.O. Box 910, Prosser, WA 99350 or via email to planning.department@co.benton.wa.us by 3 p.m. Monday, June 21, 2021. No individual with a disability shall be denied the benefit of participating in such meetings. If you wish to use auxiliary aids or require assistance to comment at a public meeting, please contact the Benton County Planning Division at least ten days prior to the meeting date to make arrangements for special needs.

At this hearing, the Board of County Commissioners may approve, or disapprove the amendments. Information concerning the applications can be obtained at the Benton County Planning Division, by calling 736-3086 (Tri-Cities) or 786-5612 (Prosser).

Dated at Prosser, Washington on this 4th day of June 2021.

JEROME DELVIN, Chairman
BENTON COUNTY
Board of County Commissioners

Greg Wendt, Director
COMMUNITY DEVELOPMENT DEPT.

PUBLISH ON: June 9, 2021

Planning Department
(509) 786-5612
P.O. Box 910
Prosser, WA 99350

www.co.benton.wa.us
planning.department@co.benton.wa.us
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway

PCM 1.1

STAFF REPORT TO THE
BENTON COUNTY PLANNING COMMISSION

FILE NO:	**Shoreline Master Plan Periodic Update 2021** **Benton County and the Department of Ecology** **Open Record Joint Hearing and Comment Period**
MEMO DATE:	April 1, 2021
HEARING DATE:	April 13, 2021
APPLICANT:	Benton County Planning Department
OWNER:	N/A
LOCATION:	Unincorporated Benton County
PROPERTY SIZE:	N/A
AREA TO BE USED:	N/A
LAND USE:	N/A
COMP. PLAN:	N/A
ZONING:	N/A
SUGGESTED STAFF RECOMMENDATION:	Positive recommendation with ten (10) findings of fact.

APPLICATION DESCRIPTION

The Shoreline Management Act (SMA), RCW 90.58, requires mandatory "periodic updates" to local shoreline master programs every eight (8) years. Every Washington city and county must periodically review and, if needed, revise its Shoreline Master Program (SMP) to ensure compliance with the SMA.

The last update of the Benton County SMP was completed and approved by the Washington State Department of Ecology in 2015. Per RCW, the Benton County SMP is required to be updated by June 2021.

Benton County and the Department of Ecology are holding a joint local/state Public Comment

Period and Public Hearing on Benton County's Shoreline Master Program Periodic Review and are accepting comments on the periodic review of the County's Shoreline Master Program under RCW 90.58.080(4). Public comment will be accepted from March 24th to April 23, 2021 at 5 p.m. The county has prepared draft SMP amendments to keep the SMP current with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

Ben Floyd of White Bluffs Consulting will be available, remotely to discuss the proposed updates to the Shoreline Master Program.

Proposed changes to the 2021 Periodic Shoreline Master Program

The following text indicates the proposed changes to the current Shoreline Master Plan the crossed-out text in red is wording that is being deleted and the blue text is what is being added to the Shoreline Master Plan text.

Cover Page:	Update to reflect new approval dates and Grant No.
Inside Cover:	Add text listing adoption and amendment dates.
Intro Page:	Update text to reflect current information.
Page 14:	Add text regarding the 2021 Periodic Update.
All pages:	Update the date on the footers on all pages.
Page 21:	Section 15.02 Definitions. Delete the definition for Board of Adjust and add text regarding Hearing Examiner ~~"Board of Adjustment" means the County board which hears applications for variances, conditional use permits, and other quasi-judicial matters assigned to it by the legislative body.~~ "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, land use permits, and certain appeals. Appeals may be taken to the ~~Board~~ Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.
Page 23:	Section 15.02 Definitions. Add text to the definition for "Development" regarding dismantling or removing structures A. Dismantling or removing structures if there is no other associated development or re-development.

Page 32: Section 15.02 Definitions. Amend the definition for "Substantial development" by updating the $ amount for exceeding the fair market value

"Substantial development" shall mean any development of which the total cost or fair market value exceeds ~~six thousand, four hundred, and sixteen dollars~~ seven thousand, and forty seven dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state.

Page 48: Section 15.04.120 Development Standards. Add text to Section 15.04.120 regarding "Developments not required to obtain shoreline permits or local reviews".

04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews

(a) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

(1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

(2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit

(3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(4) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

(5) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

Page 71: Section 15.06.050 and 060: Housekeeping edit to replace "BCC" with "Section"

Page 72: Section15.06.060: Housekeeping edit to replace "BCC" with "Section".

Page 73: Section 15.06.070: Housekeeping edit to replace "BCC" with "Section".

Page 90:	Section 15.07.150: Add a language regarding County permit review time (m) Pursuant to RCW 47.01.485, the County permit review time shall have a target of 90 days for projects on a state highway.
Page 91:	Section 15.08.020: Housekeeping edit to replace "BCC" with "Section".

PUBLIC NOTICE

1. A Notice of Public Hearing was published in the Prosser Record on March 30, 2021 and was put on the County's website on March 26, 2020.

2. The Planning Staff mailed out review packets to Technical Agencies on February 24, 2020.

APPLICABLE STANDARDS/ORDINANCES

1.	Shoreline Management Act:	RCW 90.58
2.	Comprehensive Plan:	2018 Benton County Comprehensive Plan.
3.	Zoning Code:	Benton County Code, Title 11, Zoning.

AGENCY COMMENTS

None received as of the date of the Staff Report.

RECOMMENDATION

It is the Recommendation of the Planning Division that the Planning Commission forward a **recommendation of approval** to the Board of County Commissioners based on the findings of fact and information contained within the Staff Report with the following suggested findings of fact and motion.

SUGGESTED FINDINGS OF FACT:

1. The Shoreline Management Act (SMA), RCW 90.58, requires mandatory "periodic updates" to local shoreline master programs every eight (8) years. Every Washington city and county must periodically review and, if needed, revise its Shoreline Master Program (SMP) to ensure compliance with the SMA.

2. The last update of the Benton County SMP was completed and approved by the Washington State Department of Ecology in 2015. Per RCW, the Benton County SMP is required to be updated by June 2021.

3. Benton County is proposing changes to the Shorelines Master Plan to ensure the SMP is consistent with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

4. The proposed changed focus on the following:

   a. Section 15.02 Definitions. Delete the definition for Board of Adjust and add text regarding Hearing Examiner

   ~~"Board of Adjustment" means the County board which hears applications for variances, conditional use permits, and other quasi-judicial matters assigned to it by the legislative body.~~ "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, land use permits, and certain appeals. Appeals may be taken to the ~~Board~~ Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.

   b. Section 15.02 Definitions. Add text to clarify the definition of development regarding dismantling or removing structures.

   Dismantling or removing structures if there is no other associated development or re-development.

   c. Section 15.02 Definitions. Amend the definition for "Substantial development" by updating the $ amount for exceeding the fair market value

   "Substantial development" shall mean any development of which the total cost or fair market value exceeds ~~six thousand, four hundred, and sixteen dollars~~ seven thousand, and forty seven dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state.

   d. Section 15.04.120 Development Standards. Add text to Section 15.04.120 regarding "Developments not required to obtain shoreline permits or local reviews".

   04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews

   (b) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

   (6) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

   (7) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit

   (8) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(9) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

(10) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

e. Section 15.07.150: Add a language regarding County permit review time.
(m) Pursuant to RCW 47.01.485, the County permit review time shall have a target of 90 days for projects on a state highway.

5. The Shorelines Master Plan Update is found to be in conformance with the intent of the Benton County Zoning Code Title 11, Environment Code Title 15, and Permit Review Process Code Title 17. All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, are a part of the County's development regulations and are contained in the Shoreline Master Program.

6. The Shoreline Master Plan is found to be in conformance with the intent of the Benton County Comprehensive Plan and as such is a sub area plan of the Benton County Comprehensive Plan and is adopted by reference within the Plan.

7. The Shoreline Master Plan update was submitted by email to the State of Washington's Department of Commerce on February 24, 2021 for review in compliance with WAC 365-196-630.

8. Legal notification for the joint public hearing between Benton County and the Dept. of Ecology was given on March 24, 2021 pursuant to RCW 36.70.590.

9. The Shoreline Master Plan update appeared in a joint open record virtual public hearing before the County Planning Commission and Dept. of Ecology on April 13, 2021 at the Public Services Building, 102206 E. Wiser Parkway, Kennewick WA. Public Comment will be taken until April 23, 2021.

10. At the April 13, 2021 joint open record hearing, the Planning Commission and Dept. of Ecology were available to receive public testimony, exhibits, and answer questions in the public portion of the hearing.

SUGGESTED MOTION-

I move that the Chairman, in conjunction with the Secretary of the Planning Commission, prepare and adopt written findings and conclusions reflecting the Commission's recommendation for approval of the Shorelines Master Plan Periodic Update, that articulate and are consistent with the findings, conclusions and recommendations made by the Planning Commission tonight.

Benton County SMP Periodic Review Checklist

Row	*Summary of change*	*Review*	*Action*
2017			
a.	OFM adjusted the **cost threshold for substantial development** to $7,047.	2015 SMP includes reference to previous $6,416 cost threshold.	Section 15.02, amend definition of Substantial Development cost threshold to new inflation-adjusted amount of $7,047.
b.	Ecology amended rules to clarify that the **definition of "development"** does not include dismantling or removing structures.	2015 SMP does not clarify that removing structures does not constitute "development." This issue has come up at the counter frequently enough that staff recommend adding this optional clarification to the SMP.	Section 15.02, amend definition of development to include Ecology example code.
c.	Ecology adopted rules that clarify **exceptions to local review under the SMA.**	Ecology's revised rule addressing exceptions incorporated a 2015 Legislative statutory exceptions for WSDOT projects that went into effect after the 2015 SMP was approved.	Add new Section 15.04.120, include new language based on Ecology example code.
d.	Ecology amended rules that clarify **permit filing procedures** consistent with a 2011 statute.	2015 SMP describes filing procedures for permit by stating "permits shall be filed with Department of Ecology pursuant to WAC 173-27-130." Ecology amendments apply to the County, but no local amendments are needed.	N/A
e.	Ecology amended **forestry use regulations** to clarify that forest practices that only involves timber cutting are not SMA "developments" and do not require SDPs.	N/A. No commercial forestry in County.	N/A
f.	Ecology clarified the SMA does not apply to lands under **exclusive federal jurisdiction**	Benton County has jurisdiction over SDPs on Hanford Nuclear Reservation, as applicable	N/A

Row	*Summary of change*	*Review*	*Action*
g.	Ecology clarified "default" provisions for **nonconforming uses and development**.	2015 SMP includes tailored nonconforming use and development provisions.	No amendments needed. County will retain existing nonconforming use and development provisions.
h.	Ecology adopted rule amendments to clarify the scope and process for conducting **periodic reviews**.	2015 SMP already referenced statutory obligation to conduct reviews under RCW 90.58.080. County may follow Ecology procedures for conducting reviews without amending the SMP.	No amendments needed.
i.	Ecology adopted a new rule creating an **optional SMP amendment process** that allows for a shared local/state public comment period.	2015 SMP does identify amendment process but doesn't specify this optional amendment process for shared comment period	No amendment to SMP needed. SMP provides flexibility to follow optional process.
j.	**Submittal** to Ecology of proposed SMP amendments.	2015 SMP does include description of the SMP submittal process, and also relies on state rule.	**No amendments to SMP needed. County will meet state requirements.**
2016			
a.	The Legislature created a new shoreline permit exemption for retrofitting existing structures to comply with the **Americans with Disabilities Act**.	2015 SMP incorporates the WAC by reference which includes this exemption	No amendments to SMP needed. County will meet state requirements.
b.	Ecology updated **wetlands critical areas guidance** including implementation guidance for the 2014 wetlands rating system.	Standards in SMP and County CAO based on 2014 wetlands rating system	No amendments to SMP needed. County will meet state requirements.
2015			
a.	The Legislature adopted a **90-day target** for local review of Washington State Department of Transportation (WSDOT) projects.	2015 SMP was adopted prior to effective date of 2015 legislation.	Section 15.07.150, adopt Ecology example code incorporating direction to conduct review consistent with legislative targets.
2014			
a.	The Legislature raised the cost threshold for requiring a Substantial Development Permit (SDP) for **replacement docks on lakes and rivers** to $20,000 (from $10,000).	2015 SMP incorporates the WAC by reference which includes this exemption	No amendments to SMP needed. County will meet state requirements.
b.	The Legislature created a new definition and policy for **floating**	The County includes no floating on-water residences.	N/A

Row	Summary of change	Review	Action
	on-water residences legally established before 7/1/2014.		
2012			
a.	The Legislature amended the SMA to clarify **SMP appeal procedures**.	County will rely on existing SMP language, and state laws and rules.	N/A
2011			
a.	Ecology adopted a rule requiring that wetlands be delineated in accordance with the approved **federal wetland delineation manual**.	Incorporated into 2015 SMP.	N/A
b.	Ecology adopted rules for new commercial **geoduck aquaculture**.	N/A	N/A
c.	The Legislature created a new definition and policy for **floating homes** permitted or legally established prior to January 1, 2011.	The County includes no floating on-water residences.	N/A
d.	The Legislature authorized a new **option to classify existing structures as conforming**.	Incorporated into 2015 SMP.	N/A
2010			
a.	The Legislature adopted **Growth Management Act – Shoreline Management Act clarifications**.	Incorporated into 2015 SMP.	N/A
2009			
a.	The Legislature created new "relief" procedures for instances in which a **shoreline restoration project within a UGA** creates a shift in Ordinary High Water Mark.	Incorporated into 2015 SMP.	N/A
b.	Ecology adopted a rule for certifying **wetland mitigation banks**.	Incorporated into 2015 SMP.	N/A
c.	The Legislature added **moratoria authority** and procedures to the SMA.	Incorporated into 2015 SMP.	N/A
2007			
a.	The Legislature clarified **options for defining "floodway"** as either the area that has been	Incorporated into 2015 SMP.	N/A

Row	*Summary of change*	*Review*	*Action*
	established in FEMA maps, or the floodway criteria set in the SMA.		
b.	Ecology amended rules to clarify that comprehensively updated SMPs shall include a **list and map of streams and lakes** that are in shoreline jurisdiction.	Incorporated into 2015 SMP.	N/A
c.	Ecology's rule listing statutory exemptions from the requirement for an SDP was amended to include **fish habitat enhancement projects** that conform to the provisions of RCW 77.55.181.	Incorporated into 2015 SMP.	N/A

Proposed Housekeeping changes to the 2021 Periodic Shoreline Master Program

Cover		update to reflect new approval dates and Grant No.
Inside Cover		Added text listing adoption and amendment dates
Intro Page		Updated text to reflect current information
Page 14		Added text regarding the 2021 Periodic Update
All pages		Updated the date on the footers on all pages.
Page 21		Delete Definition for Board of Adjust and add text regarding Hearing Examiner ~~"Board of Adjustment" means the County board which hears applications for variances, conditional use permits, and other quasi-judicial matters assigned to it by the legislative body.~~ "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, land use permits, and certain appeals. Appeals may be taken to the ~~Board~~ Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.
Page 71		15.06.050 and 060 Housekeeping edit to replace "BCC" with "Section"
Page 72		15.06.060 Housekeeping edit to replace "BCC" with "Section"
Page 73		15.06.070 Housekeeping edit to replace "BCC" with "Section"
Page 91		15.08.020 Housekeeping edit to replace "BCC" with "Section"

PCM 1.3

Benton County

DRAFT

2021 PERIODIC SHORELINE MASTER PROGRAM UPDATE

Locally Approved ~~June 3, 2014~~ _____

Ecology approved ~~February 16, 2015~~ _____

Benton County Grant No. ~~G1200022~~ SEASMP-1921-BeCOPD-00012

SHORELINE MASTER PROGRAM
FOR
BENTON COUNTY

Originally Adopted in 1974

AMENDMENTS:

Update locally approved June 3, 2014 by Resolution # 2014-440
Update Adopted by Ecology on February 16, 2015

2021 Update locally approved _____ by Resolution # _____
2021 Update approved by Ecology on _____

BENTON COUNTY
SHORELINE MASTER PROGRAM
20~~14~~ 21

BOARD OF COUNTY COMMISSIONERS

Jerome Delvin, Chairman Shon Small Will McKay ~~James Beaver, Chairman~~

BENTON COUNTY PLANNING COMMISSION

Martin Sheeran, Chairman ~~Toni Harris~~ Marjorie Kaspar Tammy McKeirnan
Leo Perales Brian Skeels Lloyd Coughlin Curtis Wills
~~James Willard Richard Giberson Yi Qu Darwin Crosby~~

BENTON COUNTY PLANNING STAFF

Greg Wendt, Director
Michelle Cooke, Assistant Planning Manager
Donna Hutchinson, Office Assistant IV
~~Mike Shuttleworth, Planning Manager~~
~~Susan Walker, Senior Planner~~
~~Valerie Smith, Associate Planner~~

The Benton County Planning Staff would like to extend their thanks and appreciation to the residents of Benton County and the Benton County Planning Commission for their contributions throughout development of this Shoreline Master Program.

~~*Shoreline Master Program Update Resolution #2014-440 locally approved June 3, 2014.~~
~~*Approved by the Department of Ecology with an effective date of February 16, 2015.~~

TABLE OF CONTENTS

Shoreline Master Program Policy Chapter ***1***

A. Introduction **1**

1. Purpose and Relationship to State Planning and Shoreline Laws 1
2. Profile of Benton County's Shoreline Jurisdiction 3

B. General Statement of Goals **3**

C. Shoreline Uses and Modifications Sub-element **4**

1. Shoreline Environment Designation Policies 4
2. Agriculture Policies 5
3. Aquaculture Policies 6
4. Boating and Private Moorage Facilities Policies 6
5. Breakwaters, Jetties, Groins and Weirs Policies 6
6. Dredging and Dredge Material Disposal Policies 6
7. Fill Policies 6
8. In-Stream Structures Policies 7
9. Mining Policies 7
10. Residential Development Policies 7
11. Shoreline Stabilization Policies 7
12. Utilities Policies 8
13. Existing Development Policies 8

D. Economic Development Sub-element **9**

1. Commercial Development Policies 9
2. Industry Policies 9

E. Public Access Sub-element **9**

G. Recreation Sub-element **10**

H. Circulation Sub-element **10**

I. Conservation Sub-element **11**

1. Environmental Protection Policies 11
2. Critical Areas Policies 11
3. Shoreline Vegetation Conservation Policies 11
4. Water Quality, Stormwater, and Nonpoint Pollution Policies 12

J. Historic / Cultural Sub-element **12**

K. Flood Hazard Management Sub-element **12**

L. Restoration Sub-element **12**

M. Shoreline Process and Administration Sub-element **13**

Shoreline Master Program Regulations **14**

Reader's Guide **14**

The Shoreline Management Act and Benton County's SMP 14
Shoreline Jurisdiction 14

Applicability and Exemptions 14
How to Read and Apply this SMP 15
Coordination of Permits and Requirements with Other Agencies 15

Section 15.01 Authority and Purpose 17
01.010 Authority 17
01.020 Purpose 17
01.030 Applicability 17
01.040 Findings 18
01.050 Relationship to Other Codes, Ordinances and Plans 18
01.060 Liberal Construction 18
01.070 Effective Date 19

Section 15.02 Definitions 19

Section 15.03 Shoreline Jurisdiction and Use Preferences 34
03.010 Definition 34
03.020 General Shoreline Use Preferences 35
03.030 Shorelines of Statewide Significance 35

Section 15.04 Shoreline Environment Designations 37
04.010 Urban Transition Area 37
04.020 Rural Industrial 38
04.030 Residential 39
04.040 Rural 39
04.050 Hanford 40
04.060 Conservancy 40
04.070 Natural 41
04.080 Aquatic 42
04.090 Environment Designation Interpretation 43
04.100 Official Shoreline Maps and Unmapped or Undesignated Shorelines 43
04.110 Use and Modifications Matrix 44
04.120 Development Standards 47

Section 15.05 General Regulations and Performance Standards 48
05.010 Archaeological and Historic Resources 48
05.020 Environmental Protection 48
05.030 Shoreline Vegetation Conservation 50
05.040 Water Quality, Stormwater, and Nonpoint Pollution 52
05.050 Public Access 52
05.060 Flood Hazard Reduction 54

Section 15.06 Critical Areas in Shoreline Jurisdiction 56
06.010 General 56
06.020 Wetlands 59
06.030 Rivers and Creeks 65
06.040 Critical Aquifer Recharge Areas 69
06.050 Frequently Flooded Areas 70
06.060 Geologically Hazardous Areas 70
06.070 Fish and Wildlife Conservation Areas 72

Section 15.07 Use-Specific & Modification Regulations & Performance Standards 73
07.010 Agriculture 73
07.020 Aquaculture 74
07.030 Boating Facilities and Private Moorage Structures 74
07.040 Breakwaters, Jetties, Groins, and Weirs 79
07.050 Commercial Development 79
07.060 Dredging and Dredge Material Disposal 80
07.070 Fill 81
07.080 Industry 82
07.090 In-Stream Structures 83
07.100 Mining 83
07.110 Recreational Development 83
07.120 Residential Development 84
07.130 Shoreline Habitat and Natural Systems Enhancement Projects 84
07.140 Shoreline Stabilization 85
07.150 Transportation 88
07.160 Utilities 89

Section 15.08Nonconforming Uses, Structures, and Lots 89
08.010 Non-Conforming Uses and Structures: Continuance and Discontinuance 89
08.020 Alteration, Expansion, or Restoration of Nonconforming Uses and Structures 90
08.030 Nonconforming Lots 90
08.040 Pre-Existing Legal Residential Uses – Conforming Legal Residential Structures 91

Section 15.09 Administration, Permits, and Enforcement 91
09.010 Purpose 91
09.020 Administrative Responsibilities 92
09.030 Noticing Requirements 92
09.040 Exemption from Permit Requirements 93
09.050 Interpretations 93
09.060 Permit Applications 93
09.070 Procedures applicable to all shoreline permits 94
09.080 Procedures applicable to Substantial Development Permits 94
09.090 Procedures Applicable to Shoreline Conditional Use Permits 95
09.100 Procedures Applicable to Shoreline Variances 95
09.110 Revisions to Permits 96
09.120 Enforcement Authority 97
09.130 Amendments to SMP 97
09.140 Monitoring 98

SHORELINE MASTER PROGRAM POLICY CHAPTER

A. Introduction

1. Purpose and Relationship to State Planning and Shoreline Laws

Washington State's citizens voted to approve the Shoreline Management Act (SMA) of 1971 in November 1972. In accordance with the SMA, Benton County developed and adopted its first Shoreline Master Program (SMP) in 1974. A SMP is a set of goals, policies and regulations required by the SMA that:

- Encourages reasonable and appropriate development of shorelines with an emphasis on water-oriented use, such as docks, marinas, and recreational facilities, or industries and commercial uses that require a shoreline location and support economic development; and,
- Protects the natural character of the shorelines, the land, vegetation, wildlife, and shoreline environment; and,
- Promotes public access and provides opportunities to enjoy views and recreational activities in shoreline areas.

The SMP addresses the Yakima and Columbia Rivers, land within 200 feet of the ordinary high-water mark (OHWM) of these rivers, their floodways, contiguous 100-year floodplain extending up to 200 feet inland of the floodway, and associated wetlands.

In 2003 the Washington State Department of Ecology (Ecology) updated the SMP Guidelines (referenced as SMP Guidelines). The SMA and implementing SMP Guidelines require all towns, cities, and counties across the state to comprehensively update their SMPs. The SMP update allows preparation of a locally tailored program that represents the visions and interests of our citizens and meets the needs of our rural communities. The SMP is required to be updated and adopted by June ~~2014~~ 2021.

After the local development and adoption process is complete, the completed SMP is reviewed by Ecology to ensure compliance with the SMP Guidelines. The SMP does not become effective until it has been adopted by the County and approved by Ecology.

This SMP Policy Chapter addresses one aspect of requirements: a statement of goals and policies. Detailed regulations are located in the Benton County Code Title 15. Together, the Shoreline Master Program Policy Chapter and the Shoreline Master Program Regulations constitute the entire SMP.

The SMP Policy Chapter is considered a sub area plan of the Benton County Comprehensive Land Use Plan (Comprehensive Plan) prepared in accordance with the Growth Management Act (GMA). The GMA was amended in 1995 to add the goals and policies of the SMA as one of the goals of the GMA. The purpose of the SMA is stated in RCW 90.58.020 as follows:

"The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition, it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer

meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water."

This SMP Policy Chapter implements the goals of the SMA and is designed to be compatible with the GMA Comprehensive Plan. This SMP Policy Chapter is a sub area plan of the Benton County Comprehensive Plan and is adopted by reference within the Plan. This Chapter provides the framework for future decision making and a guide for future development of lands within the County's SMP jurisdiction boundaries.

As used in this SMP Policy Chapter, goals are the broad value statements and reflect the community's broad vision for its shorelines. Goals are organized into different SMP "elements." Policies are more detailed statements of the County's vision and complete and give detail to the goals. Policies serve as a bridge between the goals and regulations.

Regulations are the specific, enforceable standards which will be implemented for shoreline development, uses and activities. They are organized by shoreline environment designations and specific land use and activity regulations. Unlike shoreline goals and policies, shoreline regulations do not become part of the County's Comprehensive Plan. Rather, shoreline regulations become part of the Benton County Code (See Title 15).

2. Profile of Benton County's Shoreline Jurisdiction

Benton County's shoreline jurisdiction encompasses 330 miles of the Columbia and Yakima Rivers. The total acreage of upland shorelands regulated by the Benton County SMP is 14.93 square miles, which, in accordance with state law, includes lands within 200 feet of the ordinary high water mark (OHWM) of the Columbia and Yakima Rivers, as well as floodways, floodplain areas within 200 feet of a mapped floodway, and associated wetlands.

Fifty-eight (58) percent of the County's shorelands occurs along the Columbia River, and the remaining 42 percent of the County's shorelands occur along the Yakima River. Both the Columbia and the Yakima Rivers within Benton County are classified as Shorelines of Statewide Significance, meaning that under State Law, specific shoreline management preferences and priorities must be applied. Federal lands make up approximately 35 percent of the area in the County's shoreline jurisdiction.

B. General Statement of Goals

It shall be the ultimate goal of the Benton County SMP to provide plans, policies and regulations consistent with the SMA (RCW 90.58) and with the SMP Guidelines (WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines), which will reflect the desires of the citizens of Benton County regarding the balanced use of the county shorelines.

It is recognized that the Columbia and Yakima River shorelines in Benton County are Shorelines of Statewide Significance and must be given consideration as a major resource from which all people derive benefit. For these areas, the goals of the SMP, consistent with RCW 90.58.020, shall:

- Recognize and protect the statewide interest over local interest. This means that the County will consider its local Comprehensive Plan and development regulations as well as consult State agency policies, programs and recommendations in developing use regulations.
- Preserve the natural character of the shoreline.
- Result in long-term over short-term benefit.
- Protect the resources and ecology of the shoreline.

- Increase public access to publicly owned areas of the shorelines. In Benton County, public access should be planned and coordinated to ensure locations are appropriately sited and designed to prevent damage to the natural environment and respect the privacy of adjacent private property owners.
- Increase recreational opportunities for the public in the shoreline. Recreational opportunities should likewise be appropriately sited and designed to be compatible with the natural environment and adjacent privately owned lands.
- Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (Consistent with RCW 90.58.020)

It shall further be the goal of the SMP to:

- Recognize and protect private property rights and provide for the use and enjoyment of private property consistent with the intent of the SMA.
- Avoid undue burdens on private property and streamline standards and procedures where feasible.
- Preserve the public's and property owner's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state to the greatest extent feasible.
- Promote preferred uses which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline consistent with the SMA and SMP Guidelines.
- Recognize the Columbia River as a transportation corridor.
- Recognize alterations of the natural condition of the shorelines and shorelands of the state.

The following statements of goals and policies are directed to address elements as outlined in the SMA and SMP Guidelines. The major SMP Policy Chapter sub-elements are: shoreline uses and modification, economic development, public access, recreation, circulation, conservation, historic/cultural, flood hazard management, restoration, and shoreline process and administration.

C. Shoreline Uses and Modifications Sub-element

SMP-Goal 1. To foster and promote the best use of Benton County shorelines. To encourage shoreline development and modifications which are wisely placed, consistent with the physical limitations of the areas, serve the needs and desires of the local citizens, and protect the functions and values of the shorelines.

1. Shoreline Environment Designation Policies

SMP-P1. To provide a high-quality shoreline environment where:

A. Recreational opportunities are available and compatibly located and designed.

B. The public enjoys access to and views of shoreline areas.

C. Natural systems are preserved, restored or enhanced.

D. Ecological functions of the shoreline are maintained and improved over time.

E. Water-oriented uses are promoted consistent with the shoreline character and environmental functions.

F. The rural and agricultural character of Benton County shorelines is encouraged.

SMP-P2. Provide a comprehensive shoreline environment designation system to categorize Benton County shorelines into environments based upon the primary characteristics of shoreline areas to guide the use and management of these areas.

SMP-P3. Designate shorelines with the following shoreline environment system:

A. Aquatic: Protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark

B. Natural: Protect those public shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use.

C. Conservancy: Protect ecological functions of open space, floodplain and other sensitive public or protected lands and ensure appropriate management and development of existing and future public parks and recreation areas.

D. Hanford: Recognize and foster the unique economic, environmental, and recreational values of the Hanford area as it transitions over time from federal energy purposes to other land uses and management consistent with the Hanford Reach National Monument designation.

E. Rural: Promote agricultural use and activities, including associated irrigation and support facilities, and accommodate low-density rural home sites, function as a separation between urban areas, and maintain an open space character and provide opportunities for recreational uses compatible with agricultural activities.

F. Residential: Accommodate residential development and accessory structures that are consistent with existing rural character and provide appropriate public access and recreational uses.

G. Rural Industrial: Provide for intensive water-oriented commercial, transportation, power production, and industrial uses, while protecting existing ecological functions.

H. Urban Transition Area: Ensure optimum utilization of shorelines occurring within designated Urban Growth Areas by managing development and uses so that it enhances and maintains shorelines for a variety of future urban uses and protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

2. Agriculture Policies

SMP-P4. Preserve and maintain productive farmlands in shoreline jurisdiction.

SMP-P5. Promote and protect agri-tourism.

SMP-P6. Encourage erosion control measures in accordance with the United States Department of Agriculture Natural Resources Conservation Service agency guidelines.

SMP-P7. Limit livestock access to shoreline areas.

SMP-P8. Control irrigation runoff to minimize discharge of chemicals, fertilizer, sediment, and organic materials in aquatic areas in accordance with federal and state water quality standards.

SMP-P9. Allow diversion of water for agricultural purposes consistent with water rights laws and rules.

SMP-P10. Encourage maintenance of vegetative zones between tilled areas and aquatic areas to reduce stormwater runoff, reduce sedimentation, and promote fish and wildlife habitat.

3. Aquaculture Policies

SMP-P11. Encourage aquaculture that supports the recovery of endangered or threatened fish species.

SMP-P12. Restrict aquaculture in areas where it would result in a net loss of ecological functions or significantly conflict with navigation or other water-dependent uses.

4. Boating and Private Moorage Facilities Policies

SMP-P13. Give boating facilities and private moorage structures priority for shoreline location.

SMP-P14. Design and construct boating facilities and private moorage structures to result in no net loss of ecological functions.

SMP-P15. Give preference to boating facilities and private moorage structures that minimize the amount of shoreline modification, in-water structure, and overwater cover. In support of this, community structures are encouraged.

SMP-P16. Ensure new boating facilities are located only at sites where suitable environmental conditions, shoreline configuration, access, and compatible adjacent uses are present. Such facilities should be coordinated with applicable local, state and federal plans and, where feasible, collocated with other compatible water-dependent uses to efficiently provide recreational resources, avoid unnecessary duplication, and minimize adverse impacts to shoreline ecological functions and processes.

SMP-P17. Ensure boating facilities are located, designed, constructed and maintained to avoid adverse proximity impacts such as noise, light and glare; aesthetic impacts to adjacent land uses; impacts to navigation; and impacts to public access to the shoreline.

5. Breakwaters, Jetties, Groins and Weirs Policies

SMP-P18. Allow breakwaters, jetties, and groins to be located waterward of the OHWM only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.

SMP-P19. Consider alternative structures with less impact where physical conditions make such alternatives feasible.

6. Dredging and Dredge Material Disposal Policies

SMP-P20. Site and design new development to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

SMP-P21. Ensure dredging and dredge material disposal is done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

SMP-P22. Discourage the disposal of dredge material on shorelands or wetlands within a channel migration zone.

7. Fill Policies

SMP-P23. Allow fill when it is demonstrated to be the minimum extent necessary to accommodate an allowed shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes.

SMP-P24. Encourage fill when it is associated with restoration projects.

8. In-Stream Structures Policies

SMP-P25. Ensure the location, design, construction and maintenance of in-stream structures give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

SMP-P26. Encourage non-structural and non-regulatory approaches as an alternative to in-stream structures. Non-regulatory and non-structural approaches may include public facility and resource planning, land or easement acquisition, education, voluntary protection and enhancement projects, or incentive programs.

9. Mining Policies

SMP-P27. Ensure mining activities are sited, designed, conducted, and completed to result in no net loss of shoreline ecological functions and processes.

SMP-P28. Base the determination no net loss of ecological function on an evaluation of the reclamation plan required for the site.

SMP-P29. Give preference to mining proposals that result in the creation, restoration or enhancement of habitat for priority species.

10. Residential Development Policies

SMP-P30. Design subdivisions in shoreline jurisdiction to be compatible with environmental conditions and to protect shoreline aesthetics.

SMP-P31. Encourage pedestrian access along the shoreline through the subdivision.

SMP-P32. Require residential development make adequate provision for wastewater, water, and stormwater facilities and apply best management practices to protect shoreline water quality and meet the needs of the development.

SMP-P33. Restrict residential development in areas subject to flooding.

SMP-P34. Encourage low impact development and vegetation conservation measures to promote environmental quality.

SMP-P35. Prohibit over-water residential development and floating homes.

11. Shoreline Stabilization Policies

SMP-P36. Locate and design new development to avoid the need for future shoreline stabilization to the extent feasible.

SMP-P37. Use structural shoreline stabilization measures only when nonstructural methods are infeasible. Nonstructural methods include building setbacks, structure relocation, groundwater management, and other measures.

SMP-P38. Ensure soft structural shoreline stabilization measures are used prior to hard stabilization measures unless demonstrated to be insufficient.

SMP-P39. Allow new or expanded structural shoreline stabilization only where demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage, or for reconfiguration of the shoreline for mitigation or enhancement purposes.

SMP-P40. Ensure all proposals for structural shoreline stabilization, both individually and cumulatively, do not result in a net loss of ecological functions.

12. Utilities Policies

SMP-P41. Locate new utilities outside shoreline jurisdiction unless alternative locations are unfeasible, the utility requires a shoreline location, or the utility is necessary to support an approved shoreline use.

SMP-P42. Ensure new utilities utilize existing transportation and utility rights-of-way easements, or existing cleared areas to the greatest extent feasible.

SMP-P43. Design and locate utility structures to minimize disruption of public access to the shoreline, obstruction of visual access to the water, and loss of shoreline ecological function.

13. Existing Development Policies

SMP-P44. Allow legal pre-existing uses and structures to continue in accordance with this SMP.

SMP-P45. Allow alterations of legal pre-existing structures, uses, and lots in consideration of:

A. historic development patterns, or

B. occupancy by preferred uses pursuant to the SMA, or

C. provision of ecological restoration, or

D. public safety or other public purposes.

SMP-P46. Encourage transitions from non-water-oriented uses to water-oriented uses and from non-conforming uses to conforming uses.

SMP-P47. Review changes to nonconforming uses, structures, or lots in relation to the SMP no-net-loss of ecological function objective.

SMP-P48. Balance rural historic character and protection/rehabilitation of significant cultural and historic properties with conformity to SMP rules when considering changes to nonconforming uses, structures, and lots.

D. Economic Development Sub-element

SMP-Goal 2. To promote and protect tourism and agricultural activities along the shoreline.

SMP-Goal 3. To realize locally the inherent economic opportunities and benefits associated with transition of the Hanford lands, infrastructure and resources from a military to a peacetime mission.

SMP-Goal 4. To encourage economic development along shorelines in a manner compatible with environmental conditions and desired land use character of the shorelines.

SMP-Goal 5. To facilitate shoreline economic growth and prosperity while taking into account the existing rural quality of life.

1. Commercial Development Policies

SMP-P49. Give preference to water-dependent commercial uses over non-water-dependent commercial uses in the shoreline environment. Prefer water-related and water-enjoyment uses over non-water-oriented commercial uses.

SMP-P50. Ensure shoreline commercial development provides public access to the shoreline where opportunities exist, provided that such access would not pose a health or safety hazard.

SMP-P51. Limit over-water, and non-water-oriented commercial uses in the shoreline environment.

SMP-P52. Allow limited commercial development in rural areas characterized by agriculture and/or industrial development to support the needs of employees.

2. Industry Policies

SMP-P53. Design industrial development in the shoreline environment to minimize impacts to shoreline resources and interference with shoreline use by adjacent property owners.

SMP-P54. Limit non-water-oriented industrial development in the shoreline environment and only in areas physically separated from the shoreline, where navigability is restricted, or as part of a project that provides public access or ecological restoration benefits.

SMP-P55. Encourage cooperative use of existing port facilities, including docks and piers to reduce additional disruption to the shoreline.

SMP-P56. Allow future industrial and port facilities that are dependent upon a shoreline location in areas where the shoreline is already characterized by industrial development or planned for such uses.

E. Public Access Sub-element

SMP-Goal 6. To provide, protect, and enhance a public access system that is both physical and visual, which increases the amount and diversity of public access to Columbia and Yakima River shorelines, consistent with the natural shoreline character, private property rights, and

public safety. To prioritize public access on public properties, promote coordinated public access through incentives to private developments, and ensure appropriate resources are available for maintenance and enforcement.

SMP-Goal 7. Consistent with the adopted Benton County Comprehensive Plan and Comprehensive Parks Plan and together with other agencies, promote a connected public access system along the Yakima River west of Benton City to Columbia Point and Bateman Island.

SMP-P57. Ensure that the creation of public access will not endanger natural features or contribute to a loss of ecological functions.

SMP-P58. Provide additional physical and visual public access to shorelines, with a focus on public properties, by developing and implementing parks, recreation, and trails plans.

SMP-P59. In order to promote environmental protection and avoid private trespass, acquire or improve public access opportunities in high demand or good water locations. Priority locations include, but are not limited to: Snively, Chandler reach, Finley, Paterson, and others.

SMP-P60. Focus public access in less environmentally sensitive areas and offer adequate recreation facilities and parking.

SMP-P61. Apply public access standards to new development creating a demand for public access. Allow flexible options to provide public access in new development.

SMP-P62. Consider incentives for well-designed common access and for improved ecological function.

G. Recreation Sub-element

SMP-Goal 8. To meet the recreational needs of Benton County residents and visitors while protecting shoreline ecological resources.

SMP-P63. Develop recreational activity areas in a manner which complements the intent of the shoreline environment and natural habitats and results in no-net-loss of shoreline ecological function.

SMP-P64. Encourage recreational development and use of the shorelines that is related to enjoyment of, access to, and use of the water. Give shoreline recreational development priority within shoreline jurisdiction.

SMP-P65. Ensure provision of recreational space and uses is coordinated and consistent with the County's shoreline public access plan.

SMP-P66. Continue to work with non-profit, state, and federal agencies to support local and regional opportunities for public recreation, shoreline access and use.

SMP-P67. Recognize that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public.

SMP-P68. Require development applicants to monitor or limit the use of fertilizers, herbicides, and pesticides to maintain recreational facilities. Management that utilizes organic treatments, integrated pest management, or non-synthetic chemicals is preferred where feasible and practical.

H. Circulation Sub-element

SMP-Goal 9. To encourage a circulation system which will efficiently and safely move people, goods and services with good planning to minimize disruption or adverse effect on the shoreline areas.

SMP-Goal 10. To allow for safe emergency access to shorelines.

SMP-P69. Design transportation facilities within shoreline jurisdiction to the minimum size necessary to reduce their impact on the ecological function of the shoreline.

SMP-P70. Maintain transportation facilities in a manner that minimizes impacts on the ecological function of the shoreline.

SMP-P71. Encourage non-motorized trails that provide recreational access to the shoreline.

SMP-P72. Allow parking in shoreline jurisdiction for authorized uses where upland locations are not feasible. Allow parking in shoreline jurisdiction for water-oriented uses when needed to support access to water-oriented elements of the development.

I. Conservation Sub-element

SMP-Goal 11. To encourage sound management of renewable shoreline resources and protection of non-renewable shoreline resources. Non-renewable resources are those that are in danger of depletion faster than nature can create them. Renewable resources can be replaced over time. It is recognized that shorelines themselves are finite areas within which to balance shoreline uses, conservation, and public access.

SMP-Goal 12. To achieve sustainability of resource functions and values and no-net-loss of ecological functions by allowing shoreline development and modifications when impacts are minimized through mitigation sequencing and by encouraging and incentivizing restoration of ecological functions where they have been impaired.

SMP-Goal 13. Promote and protect the scenic aesthetic quality of shoreline areas and vistas to the greatest extent feasible.

1. Environmental Protection Policies

SMP-P73. Protect all shorelines of the state in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property so that there is no net loss of ecological functions from both individually permitted and exempt development.

SMP-P74. Protect and, where necessary, apply planning and land use measures to improve the quality and productivity of the County's environmental resources (air, ground and surface waters, and indigenous biology).

SMP-P75. Sustain a diverse, productive, and high-quality natural environment for the use, health and enjoyment of County residents.

2. Critical Areas Policies

SMP-P76. Identify and protect critical fish and wildlife habitat from destruction or encroachment of incompatible uses.

SMP-P77. Preserve natural wetlands (marshes, sloughs, shorelines, etc.) that are important wildlife and game habitat or recreational areas.

SMP-P78. Protect life and property by avoiding inappropriate developments in areas susceptible to natural disasters and hazards, such as floodways and steep slopes.

3. Shoreline Vegetation Conservation Policies

SMP-P79. Where new developments, uses and/or redevelopments are proposed, ensure shoreline vegetation, both upland and waterward of the OHWM, is conserved to maintain shoreline ecological functions and processes.

SMP-P80. Encourage management and control of noxious and invasive weeds. Control of such species should be done in a manner that retains onsite native vegetation, provides for erosion control, and protects water quality.

4. Water Quality, Stormwater, and Nonpoint Pollution Policies

SMP-P81. Maintain and improve the water quality of the Yakima and Columbia Rivers, and preserve surface and groundwater for the beneficial use of the rural area's citizens and wildlife.

SMP-P82. Require that new developments or expansions or retrofits of existing developments assess the effects of additional stormwater runoff volumes and velocities and mitigate potential adverse effects on shorelines through design and implementation of appropriate stormwater management measures.

J. Historic / Cultural Sub-element

SMP-Goal 14. To encourage the protection of areas and sites having historic, cultural, educational or scientific value.

SMP-P83. Ensure development applicants provide protection and restoration of sites, buildings, structures, districts and objects along Benton County shorelines having historic, archaeological, cultural, educational or scientific value consistent with state and federal laws.

SMP-P84. Require development applications along shorelines to consult with professional archaeologists, historians, biologists, Washington State Department of Archaeology and Historic Preservation (DAHP) and affected tribes to screen proposals, identify areas containing potentially valuable data, and to establish procedures for maintaining the area in an undisturbed condition, or salvaging the data.

SMP-P85. Require developers to immediately stop work and notify Benton County, DAHP, and affected tribes, if any archaeological or historic resources are uncovered during excavation to allow for preservation and/or retrieval of data.

K. Flood Hazard Management Sub-element

SMP-Goal 15. To protect life and property and avoid the need for new shoreline stabilization or flood control infrastructure.

SMP-Goal 16. To apply consistent flood hazard regulations to reduce the potential for damage to persons or property.

SMP-P86. Recognize and protect the hydrologic functions of floodplains by limiting the use of structural flood hazard reduction measures.

SMP-P87. Ensure developments subject to damage or that could result in loss of life do not locate in areas of known flood hazards unless it can be demonstrated by the project proponent that the development is sited, designed and engineered for long-term structural integrity, and that life and property on and off-site are not subject to increased hazards as a result of the development.

SMP-P88. Limit new development or uses in shoreline jurisdiction, including subdivision of land that would likely require structural flood hazard reduction measures.

L. Restoration Sub-element

SMP-Goal 17. To upgrade shoreline ecological functions and aesthetics to a level commensurate with their importance to the community and to achievement of regional goals for species and habitat recovery such as through the projects, programs and plans established within the SMP Shoreline Restoration Plan.

SMP-Goal 18. To provide voluntary incentives for restoration by property owners, facilitate the permitting for restoration projects, and coordinate with agencies, tribes, and non-profit

groups to achieve effective restoration of shoreline ecological functions and maximize public funding.

SMP-P89. Promote restoration and enhancement actions that improve shoreline ecological functions and processes and target the needs of sensitive plant, fish and wildlife species as identified by Washington Department of Fish and Wildlife, Washington Department of Natural Resources, affected tribes, National Marine Fisheries Service, and/or U.S. Fish and Wildlife Service.

SMP-P90. Ensure restoration and enhancement of shorelines is designed using principles of landscape and conservation ecology and restores or enhances chemical, physical, and biological watershed processes that create and sustain shoreline habitat structures and functions.

SMP-P91. Seek funding to implement restoration and enhancement projects, particularly those that are identified in the Restoration Plan of this SMP or in other pertinent plans. Funding may be sought by the county or other entities.

SMP-P92. Develop application processing guidelines that will streamline the review of restoration-only projects.

SMP-P93. Allow for the use of tax incentive programs, mitigation banking, grants, land swaps, or other programs, as they are developed, to encourage restoration and enhancement of shoreline ecological functions and to protect habitat for fish, wildlife and plants.

M. Shoreline Process and Administration Sub-element

SMP-Goal 19. To provide a process to update the SMP consistent with the update schedule of the SMA.

SMP-P94. When assigning environment designations and determining permitted uses within the different designations and use categories, consider the ability of the landscape to accommodate planned uses.

SMP-P95. Encourage citizen participation in the implementation of this SMP.

SMP-P96. Protect property rights of landowners from arbitrary and discriminatory actions.

SMP-P97. Develop administrative procedures which will help the applicant, the County, and other interested parties reach a quick and accurate assessment of a proposed development.

SMP-P98. Reconcile conflicting public policy goals by considering the overall needs of the community including public access, infrastructure requirements, utility corridor alignments and facilities, and natural resource protection.

SMP-P99. Implement shoreline improvements as scheduled through the Capital Facilities Element of the County's Comprehensive Plan and Capital Improvement Plan processes.

SHORELINE MASTER PROGRAM REGULATIONS

Reader's Guide

The Shoreline Management Act and Benton County's SMP

Washington State's citizens voted to approve the Shoreline Management Act (SMA) of 1971 in November 1972. The SMA seeks to provide environmental protection for shorelines, preserve and enhance shoreline public access, and encourage appropriate development that supports water-oriented uses. Benton County developed and adopted its first Shoreline Master Program (SMP) in 1974. That SMP was developed almost 40 years ago and since then much has changed along Benton County shorelines. In addition, knowledge of best development and conservation practices has evolved. There have also been changes in State laws and rules. Therefore, in accordance with the SMA, Benton County has prepared this SMP Periodic Update to guide and manage its shorelines.

The Benton County SMP contains goals, policies, regulations, and a use map that guide the development of shorelines in accordance with the SMA (Revised Code of Washington [RCW] 90.58), Washington State Department of Ecology (Ecology) SMP Guidelines (Washington Administrative Code [WAC] 173-26), and Shoreline Management Permit and Enforcement Procedures (WAC 173-27).

Consistent with RCW 36.70A.480, the goals and policies of Benton County's SMP, approved under chapter 90.58 RCW, are considered a sub area plan of the County's *Comprehensive Land Use Plan* (Comprehensive Plan) and are found in the SMP Policy Chapter. The SMP Policy Chapter is a sub area plan of the Benton County Comprehensive Plan and is adopted by reference within the Plan. It provides the framework for future decision making and a guide for future development of lands within the County's SMP jurisdiction boundaries.

All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, are a part of the County's development regulations and are contained in Title 15, Shoreline Master Program.

Shoreline Jurisdiction

In accordance with state laws and rules, the jurisdiction of Benton County's SMP encompasses the Columbia and Yakima Rivers, land within 200 feet of the ordinary high water mark (OHWM) of these waterways, their floodways, contiguous 100-year floodplain extending up to 200 feet inland of the floodway, and associated wetlands.

Applicability and Exemptions

The SMP applies to all proposed uses and development occurring within shoreline jurisdiction. This SMP does not apply to certain activities that do not alter structures or properties, such as interior building changes or routine gardening. It also does not apply to legally established uses already on the land such as existing agriculture, existing residences, and other existing uses, structures, and activities. See Section 15.01 for a complete description of SMP applicability.

There are also activities that are exempt from the Shoreline Substantial Development Permit system. These activities are subject to the standards of the SMP but are not required to submit fees and other materials associated with Shoreline Substantial Development Permits. Common exemptions include, but are not limited to:

- Normal maintenance or repair of existing structures or developments
- Bulkheads common to single-family residences
- Emergency construction necessary to protect property from damage
- Construction and practices normal or necessary for farming, irrigation, and ranching activities including agricultural service roads and utilities, construction of a barn or similar agricultural structure, and the construction and maintenance of irrigation structures
- Construction of a single-family residence

- Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use

Exemptions are fully described and listed in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, as amended. See Section 15.09.040 for additional information on exemptions.

How to Read and Apply this SMP

When reading the SMP, it is useful to consider the definitions of the following terms that are based on definitions in the SMP Guidelines (WAC 173-26-020):

- Shall or must: means a mandate; the action must be done.
- Should: means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and shoreline master program, against taking the action.
- May: means the action is acceptable, provided it conforms to the provisions of this SMP and the Act.

In general, this SMP uses the word "should" in goals, objectives, and policies, and "shall" in the regulations. Additional definitions are located in Section 15.02.

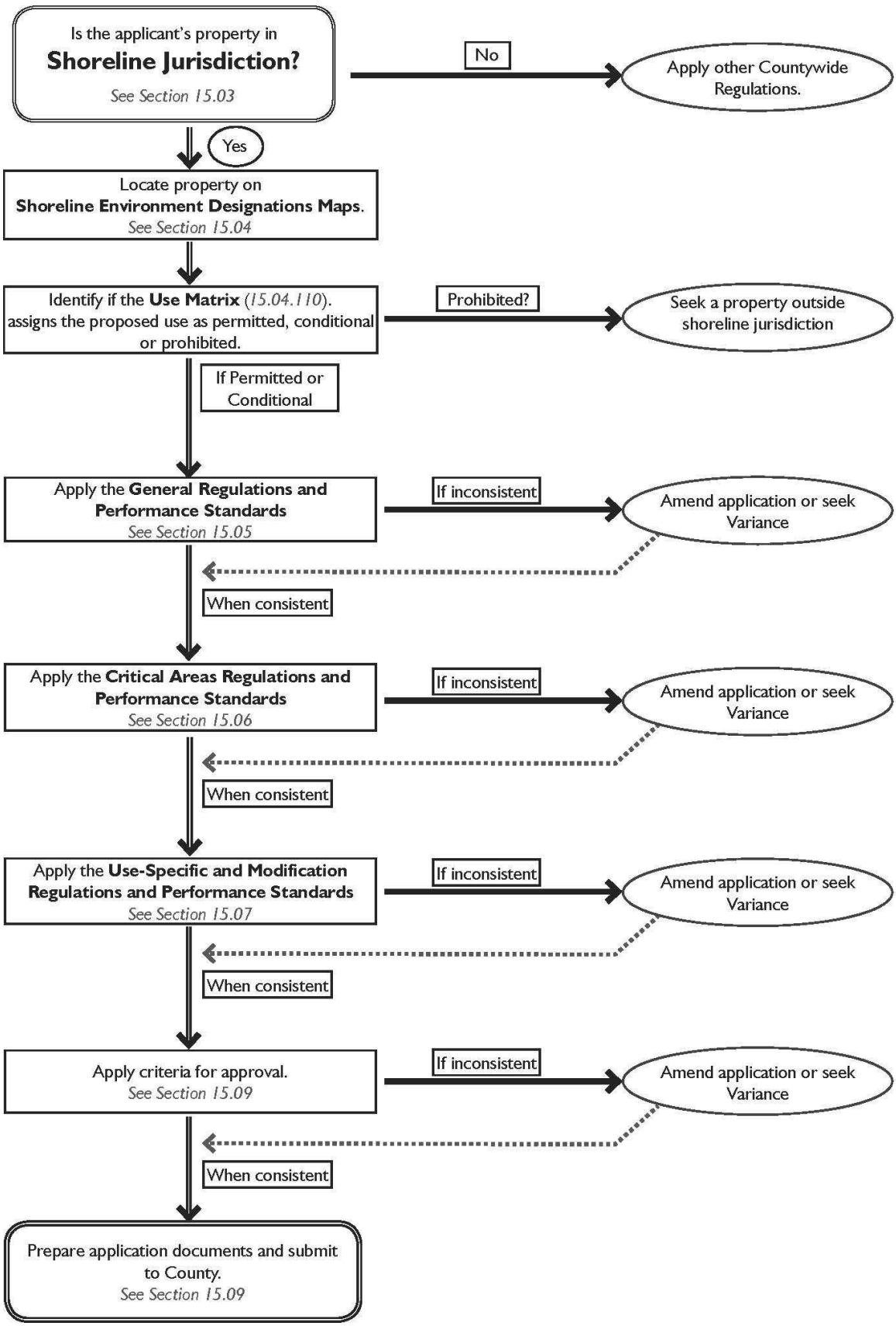
The SMP has a high level of detail for the following reasons: 1) to allow for more shoreline applications to be approved administratively for an efficient and cost-effective process, 2) to cross-reference applicable state and federal laws to help consolidate requirements and be a resource for property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

For informational purposes, the flow chart below illustrates how an applicant could navigate the regulations to determine if and how they apply to a particular project and property. In addition to approval from the Benton County Department (Permitting), any shoreline development or construction project may also require a permit from the U.S. Army Corps of Engineers and/or the Washington Department of Fish and Wildlife, and the Washington Department of Natural Resources, as well as other agencies (please see "Coordination" section below).

Coordination of Permits and Requirements with Other Agencies

Although not required by this SMP, applicants may find it helpful to coordinate early in the project design process with one or more of the following agencies depending on the type and location of the project:

- Washington Department of Fish and Wildlife (any project that may affect upland or aquatic habitats)
- Washington Department of Natural Resources (projects waterward of the OHWM)
- Yakama Nation (any project that may affect upland or aquatic habitats)
- U.S. Army Corps of Engineers (projects waterward of the OHWM on the Columbia River or that involve any fill on the Yakima River)
- Washington Department of Ecology (any project, but particularly those that require a permit from the Corps or may have impacts on wetlands or other waters)
- Benton Conservation District (any project where the applicant is interested in restoration opportunities)


Is the applicant's property in
Shoreline Jurisdiction?
See Section 15.03
No
Apply other Countywide Regulations.
Yes
Locate property on
Shoreline Environment Designations Maps.
See Section 15.04
Identify if the Use Matrix (15.04.110). assigns the proposed use as permitted, conditional or prohibited.
Prohibited?
Seek a property outside shoreline jurisdiction
If Permitted or Conditional
Apply the General Regulations and Performance Standards
See Section 15.05
If inconsistent
Amend application or seek Variance
When consistent
Apply the Critical Areas Regulations and Performance Standards
See Section 15.06
If inconsistent
Amend application or seek Variance
When consistent
Apply the Use-Specific and Modification Regulations and Performance Standards
See Section 15.07
If inconsistent
Amend application or seek Variance
When consistent
Apply criteria for approval.
See Section 15.09
If inconsistent
Amend application or seek Variance
When consistent
Prepare application documents and submit to County.
See Section 15.09

Many projects may also be under the jurisdiction of one or more of the above-listed agencies (particularly for projects located waterward of the OHWM), in which case early consultation is not only advised, but required. The Governor's Office for Regulatory Innovation and Assistance permitting services website is a useful tool for identifying potential jurisdictional agencies and permits.

For residents of the County interested in improving the ecological functions of their shoreline, the County's Shoreline Restoration Plan identifies a number of agencies and organizations that can provide advice or assistance with design and implementation.

Section 15.01 Authority and Purpose

01.010 Authority

This SMP is enacted and administered according to the following state law and rules:

(e) The Shoreline Management Act (SMA) of 1971, Chapter 90.58 RCW;
(f) State master program approval/amendment procedures and master program guidelines, WAC 173-26; and
(g) Shoreline management permit and enforcement procedures, Chapter 173-27 WAC.

01.020 Purpose

The purposes of this SMP are:

(a) To promote the public health, safety, and general welfare of the County by providing comprehensive policies and effective, reasonable regulations for development, use and protection of jurisdictional shorelines; and
(b) To further assume and carry out the local government responsibilities established by RCW 90.58.050 including planning and administering the regulatory program; and
(c) To assure no net loss of ecological functions associated with the shoreline; and
(d) To carry out the policies and use preferences in RCW 90.58.020, described in Section 15.03.

01.030 Applicability

(a) Except as described in Subsection (b) and (c), all proposed uses and development occurring within shoreline jurisdiction must conform to the intent and requirements of the laws and rules cited in Section 15.01.010 and this SMP.
(b) The following are examples of activities that are not considered development and are therefore not subject to this SMP:

    (1) Interior building improvements that do not change the use or occupancy;
    (2) Exterior structure maintenance activities, including painting and roofing, as long as it does not expand the existing footprint of the structure; and,
    (3) Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding.

(c) Consistent with Section 15.02 (Definitions), WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a), as amended, this SMP shall not require modifications of or limit agricultural activities on agricultural lands.

(d) Activities that are exempt from the permit system in Section 15.09.040 shall comply with this SMP whether or not a permit or other form of authorization is required.

(e) The shoreline permit procedures, policies and regulations established in this SMP shall apply countywide to all nonfederal uses, activities, and development.

(f) This SMP applies to lands subject to nonfederal ownership, lease or easement, even though such lands may fall within the external boundaries of a federal ownership.

01.040 Findings

This SMP was developed based on community participation, local shoreline conditions, and the Shoreline Management Act provisions per Resolution 2014-440 dated June 3, 2014. Key findings are highlighted below:

(a) The Benton County SMP Public Participation Plan, adopted by the County Commissioners in June 2012, was followed, and encouraged public involvement and interaction, and provided public forums, open houses and meetings in several venues in the County.
(b) A Shoreline Advisory Committee made up of fourteen volunteers with diverse backgrounds, including, shoreline property owners, residents, agri-business, economic and environmental interests, state and federal agencies and the Yakama Nation, and sanctioned by the Board of County Commissioners, reviewed, interacted and provided input for the SMP and all required documents.
(c) The Benton County Shoreline Analysis Report, Inventory and Channel Migration Maps, Cumulative Impacts Analysis, and voluntary Restoration Plan were utilized for the development of the Benton County SMP update which was prepared in conformance with RCW 90.58 (Shoreline Management Act) and WAC 173-26.
(d) The SMP is appropriately tailored to accommodate Benton County's unique environmental conditions and community needs.
(e) The policies, programs and regulations of the SMP address cumulative impacts of the reasonably foreseeable future development and use of the County's shoreline and further demonstrate through its Cumulative Impacts Analysis that the SMP as prepared will not result in degradation of shoreline ecological functions over the next 20-year planning horizon.
(f) The SMP will help protect water quality for the County's rivers and streams, increase protection of lives and property from flood, protect fish and wildlife habitat, allow preferred uses along the shoreline meeting the needs of the Benton County community, and promote recreational opportunities for County residents consistent with RCW 90.58/WAC 173-26.
(g) The SMP is in the best interest of the public and is consistent with the Benton County Comprehensive Plan and furthers the intent of the Shoreline Management Act (RCW 90.58/WAC 173-26).

01.050 Relationship to Other Codes, Ordinances and Plans

(a) All applicable federal, state, and local laws shall apply to properties in the shoreline jurisdiction.
(b) Consistent with RCW 36.70A.480, the goals and policies of this SMP approved under chapter 90.58 RCW shall be considered a sub area plan of Benton County's Comprehensive Plan. All regulatory elements of this SMP, including, but not limited to, definitions and use regulations, shall be considered a part of Benton County's development regulations.
(c) All local development regulations including, but not limited to, zoning and subdivision rules shall apply in addition to this SMP. This SMP includes critical areas regulations applicable only in shoreline jurisdiction, and shall control within shoreline jurisdiction over other County critical area regulations adopted pursuant to the Growth Management Act.
(d) In the event provisions of this SMP conflict with provisions of federal, state, county or city regulations, the provision that is most protective of shoreline resources shall prevail, when consistent with policies set out in the SMA.

01.060 Liberal Construction

As provided for in RCW 90.58.900, the SMA is exempted from the rule of strict construction; the SMA and this SMP shall therefore be liberally construed to give full effect to the purposes, goals, objectives, and policies for which they were enacted.

01.070 Effective Date

The SMP is hereby adopted on the 3rd of June 2014. This SMP and all amendments thereto shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

Section 15.02 Definitions

Whenever the words and terms set forth in this Section appear in this title, they shall be given the meaning attributed to them by this Section. Definitions established by RCW 90.58.030 and WAC 173 have been incorporated herein and should these definitions in the RCW or WAC be amended, the most current RCW or WAC definition shall apply. Except where specifically defined in this Section, the RCW, the WAC, or the Benton County Code, all words used in this SMP shall carry their customary meanings.

"Abutting" means bordering upon, to touch upon, or in physical contact with. Sites are considered abutting even though the area of contact may be only a point.

"Accessory" means any use or development incidental to and subordinate to a primary use of a shoreline use or development. See also Appurtenance, Residential.

"Adjacent" means to be nearby and not necessarily abutting.

"Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation. See Section 15.05.010 regarding interpretation of agricultural activities.

"Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

A. The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;

B. corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;

C. farm residences and associated equipment, lands, and facilities; and

D. roadside stands and on-farm markets for marketing fruit or vegetables.

"Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program as evidenced by aerial photography or other documentation. After the effective date of the master program, land converted to agricultural use is subject to compliance with the requirements of the master program.

"Agricultural lands of long-term commercial significance" means those lands that are not already characterized by urban growth and that have long-term significance for the commercial production of food or other agricultural products.

"Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of

planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products.

"Agricultural Related Industry" means specifically:

A. Packaging Plants - may include but are not limited to the following activities: washing, sorting, crating, and other functional operations such as drying, field crushing, or other preparation in which the chemical and physical composition of the agriculture product remains essentially unaltered. Does not include processing activities, or slaughterhouses, animal reduction yards, and tallow works.

B. Processing Plants - may include but are not limited to those activities which involve the fermentation or other substantial chemical and physical alteration of the agricultural product. Does not include slaughterhouses or rendering plants.

C. Storage Facilities - may include those activities which involve the warehousing of processed and/or packaged agricultural products.

“Agricultural tourism” or “Agri-tourism” refers to the act of visiting a working farm or any agricultural, horticultural or agribusiness operation for the purpose of enjoyment, education or active involvement in the activities of the farm or operation.

"Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program. “Applicant" means a person, party, firm, corporation, or other legal entity that proposes a development, construction or use on a site.

"Approval" means an official action by a local government legislative body agreeing to submit a proposed SMP or amendments to the Department of Ecology for review and official action pursuant to this chapter; or an official action by the Department of Ecology to make a local government SMP effective, thereby incorporating the approved SMP or amendment into the state master program.

“Appurtenance, residential” is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark and the perimeter of a wetland. Normal appurtenance includes a garage; deck; driveway; utilities; fences; installation of a septic tank and drainfield and grading which does not exceed two hundred fifty cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

"Aquaculture" means the culture and/or farming of fish, shellfish, or other aquatic plants and animals. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Commercial aquaculture is conducted to produce products for market with the objective of earning a profit. Non-commercial aquaculture is conducted for the benefit of native fish recovery, education and interpretation, or other public benefit or use.

"Aquifer" means a body of rock or soil that contains sufficient saturated permeable material to conduct groundwater and to yield economically significant quantities of groundwater to wells and springs.

"Aquifer confined" means groundwater overlain by a confining bed, such as an impermeable layer of clay or rock.

"Aquifer Recharge/Interchange Area" means those natural and man-made land features that hold or convey surface waters having connectivity to groundwater.

"Aquifer unconfined" means groundwater lying between the soil profile and the shallowest impermeable layer (i.e., clay, basalt).

“Archaeologist, professional” means a person who meets qualification standards promulgated by DAHP and the National Park Service and published in 36 CFR Part 61, and which define minimum education and experience required to perform identification, evaluation, registration and treatment activities for archaeological sites. In

some cases, additional areas or levels of expertise may be needed, depending on the complexity of the task and the nature of the properties involved.

"Area of Special Flood Hazard", which designation on the Flood Insurance Rate Maps always includes the letter A or V, means the land in the floodplain within a community subject to a one percent or greater chance of flooding in any given year.

"Base Flood" or "100-year Flood" means the designation on the Federal Emergency Management Act (FEMA) Flood Insurance Maps that denote areas subject to floods having a one (1) percent chance of being equaled or exceeded in any given year. The base flood is determined for existing conditions, unless a basin plan including project flows under future developed conditions has been completed and adopted by Benton County; in these cases, future flow projections shall be used. In areas where the Flood Insurance Study includes detailed base flood calculations, those calculations may be used until projections of future flows are completed and approved by Benton County.

"Best Management Practices" or "BMPs" means physical, structural and/or managerial practices, that, when used singly or in a combination protect the functions and values of critical resources. BMPs are current and evolving conservation practices, systems of practices, management and operational measures, design and construction techniques, or normal and accepted industry standards that are applied to land uses and land use activity in a manner which:

A. controls soil loss and reduces water surface and ground-water quality degradation caused by nutrients, animal wastes, toxins, and sediment; and,

B. mitigates adverse impacts to the natural chemical, physical and biological environment of the County; and,

C. facilitates the utilization of the County's natural resources on a long term, sustainable yield basis.

~~"Board of Adjustment" means the County board which hears applications for variances, conditional use permits, and other quasi-judicial matters assigned to it by the legislative body.~~ "Hearings Examiner" means an examiner appointed by the Board of County Commissioners, authorized to hear and make decisions on variances, land use permits, and certain appeals. Appeals may be taken to the ~~Board~~ Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.

“Boating Facilities” means developments and uses that support access to shoreline waters for purposes of boating, including marinas, community docks serving more than four single-family residences or multi-family units, public piers, and community or public boat launch facilities.

"Breakwater" means a fixed or floating offshore structure that protects the shore from wave action or currents.

"Buffer" means a designated area used to separate incompatible uses or protect resources or development. Buffers are generally undeveloped areas. There are different types of buffers for different purposes:

A. buffers which protect sensitive natural resources (critical areas) from the adverse impacts of development are generally undeveloped open space which are ecologically part of the protected resource;

B. buffers which protect the integrity of development from certain natural hazards such as slope instability, floods or fire prone areas, and which ensure that buildings and development avoid the hazardous condition;

C. buffers to separate incompatible uses, such as residential from industrial, airports, or certain activities common to commercial agriculture, are generally open or sparsely populated.

"Building Setback" means a line which establishes a definite point beyond which the foundation of a building shall not extend; this line is measured from the upland edge of the shoreline buffer.

"Bulkhead" means a vertical or nearly vertical erosion protection structure placed parallel to the shore consisting of concrete, timber, steel, rock, or other permanent material not readily subject to erosion.

"Candidate" means any species officially designated as "Candidate" by the appropriate agency of the federal government or by the Washington State Department of Fish and Wildlife.

"Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

"Clearing" means the cutting or removal of vegetation or other organic plant material by physical, mechanical, chemical, or any other means.

“Commercial” means those activities engaged in commerce and trade and involving the exchange of money, including but not limited to, retail, services, wholesale, or business trade activities. Examples include, but are not limited to, hotels, motels, or other commercial accommodations, grocery stores, restaurants, concessions, shops, commercial recreation facilities such as marinas, boat repair, boat, canoe, or kayak rentals, and offices.

"Comprehensive master program update" means a master program that fully achieves the procedural and substantive requirements of the Department of Ecology’s SMP Guidelines effective January 17, 2004, as now or hereafter amended.

"Comprehensive Plan" means the Benton County Comprehensive Land Use Plan and any amendments, addenda, or supplemental plans that are duly adopted under Chapter 36.70 RCW (as amended), for Benton County or any portion thereof.

"Conditional use" means a use, development, or substantial development which is classified as a conditional use or is not classified within the applicable master program.

"Creeks" mean those areas of Benton County where surface waters form or have formed a defined channel or bed and for which the State Department Fish and Wildlife has Hydraulic Permit Authority. The channel or bed need not contain water year-round. This definition is not meant to include irrigation ditches, channels, storm or surface water runoff devices or other entirely artificial watercourses unless they are, or have been, used by salmonids or used to convey streams naturally occurring prior to construction in such water course.

"Critical Aquifer Recharge/Interchange Areas" means those aquifer recharge/interchange areas that have an effect on, or are associated with, aquifers used for potable water in community water systems.

"Critical Areas" means those specific resources which are subject to protection by regulation under Section 15.07 (e.g., wetlands, geologically hazardous areas, fish and wildlife conservation areas, frequently flooded areas, critical aquifer recharge/interchange areas).

"Critical Areas Overlay Maps" were developed from and are augmented by resource and technical studies, aerial photographs, and other resource maps, such as the:

A. Federal Emergency Management Agency's (FEMA), 100-year flood maps,

B. County and other agency Geologic Hazards Map(s),

C. U.S.D.A. Natural Resources Conservation Service (NRCS) Soils Capabilities Map(s),

D. Slope Stability Map(s),

E. U.S. Fish and Wildlife Service (USFWS) National Wetlands Inventory Map(s),

F. Washington State Department of Fish and Wildlife (WDFW), Priority Habitats and Species Maps (PHS),

G. County Shoreline Management Map(s), and

H. other maps as are appropriate.

“Cumulative impact” means the impact on the environment which results from the incremental impact of the action when added to other past, present, and reasonably foreseeable future actions regardless of what agency or person undertakes such other actions. Cumulative impacts can result from individually minor but collectively significant actions taking place over a period of time.

"Department" means the Benton County Planning Department.

"Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to the act at any stage of water level. See also “Substantial Development.” Development does not include the following activities:

A. Interior building improvements that do not change the use or occupancy;

B. Exterior structure maintenance activities, including painting and roofing as long as it does not expand the existing footprint of the structure;

C. Routine landscape maintenance of established, ornamental landscaping, such as lawn mowing, pruning and weeding; and

D. Maintenance of the following existing facilities that does not expand the affected area: septic tanks (routine cleaning); wells; and individual utility service connections; and,

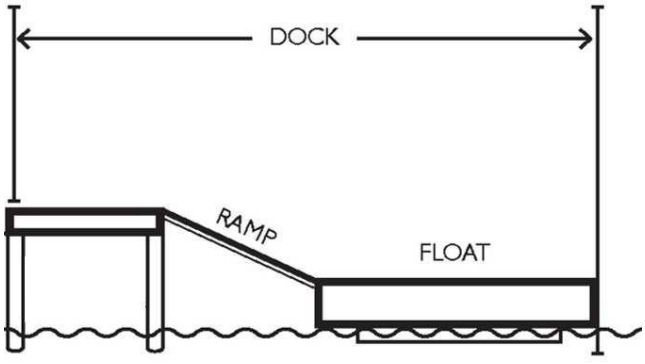
E. Dismantling or removing structures if there is no other associated development or re-development.

"Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a SMP other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

"Development Site" means the legal boundaries of the parcel or parcels of land for which an applicant has applied for authority from Benton County to carry out a development proposal.

"Diversity (ecological)" refers to the variety of species of plants and animals that compose a biotic community or ecosystem, often expressed as total number of different species.

“Dock" means a structure built over or floating upon the water and used as a landing place for boats and other marine transport, fishing, swimming, and other recreational uses. A dock typically consists of the combination of one or more of the following elements: pier, ramp, and/or float.



"Dredging" means removal of earth from the bed of a stream, lake, or pond for the purpose of flood control; navigation; utility installation (excluding on-site utility features serving a primary use, which are “accessory utilities” and shall be considered a part of the primary use); the construction or modification of essential public facilities and regional transportation facilities; restoration (of which the primary restoration element is sediment/soil removal rather than being incidental to the primary restoration purpose); and/or obtaining minerals, construction aggregate, or landfill materials. This definition does not include excavation for mining within a pond created by a mining operation approved under this title or under a local zoning ordinance, or a mining operation in existence before Zoning, Shorelines, or Critical Areas permits were required for such operations. Dredging, as regulated in this SMP under Section 15.07.60, is not intended to cover other excavations waterward of the ordinary high-water mark that are incidental to construction of an otherwise authorized use or

modification (e.g., bulkhead replacements, large woody debris installations, boat launch ramp installation, pile placement).

"Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. Shoreline ecological functions include, but are not limited to hydrologic (transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, nutrient flux, recruitment and transport of large woody debris and other organic material), shoreline vegetation (maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and stabilization; attenuation of high stream flow energy; and provision of woody debris and other organic matter), hyporheic functions (removing excessive nutrients and toxic compounds, water storage, support of vegetation, and sediment storage and maintenance of base flows), and habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish (e.g., space or conditions for reproduction; resting, hiding and migration; and food production and delivery).

"Ecologically intact" means shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent waterbodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

"Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

"Erosion" means the process in which soil particles are mobilized and transported by natural agents such as wind, rain, splash, frost action or stream flow.

"Exempt" developments are those set forth in WAC 173-27-040 and RCW 90.58.030(3)(e), 90.58.140(9), 90.58.147, 90.58.355, and 90.58.515, as hereafter amended, which are not required to obtain a Shoreline Substantial Development Permit, but which must otherwise comply with applicable provisions of the SMA and this Master Program.

"Fair market value" of a development is the open market bid price for conducting the work, using the equipment and facilities, and purchase of the goods, services and materials necessary to accomplish the development. This would normally equate to the cost of hiring a contractor to undertake the development from start to finish, including the cost of labor, materials, equipment and facility usage, transportation and contractor overhead and profit. The fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials.

"Feasible" means that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:

A. The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;

B. The action provides a reasonable likelihood of achieving its intended purpose; and

C. The action does not physically preclude achieving the project's primary intended legal use.

In cases where these Guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the County may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

"Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the OHWM, in wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

"Fish and Wildlife" mean any member of the animal kingdom, including without limitation, any vertebrate, mollusk, crustacean, arthropod, or other invertebrate, and includes any part, product, egg, or offspring thereof, or the dead body parts thereof.

"Fish and Wildlife Conservation Areas" refer to the following:

A. Those areas shown on the Fish and Wildlife Conservation Areas Map in the Benton County Comprehensive Plan;

B. Areas identified on the Washington State Department of Fish and Wildlife (WDFW) Priority Habitats and Species (PHS) Map within which a Priority Species is known to have a Primary Association;

C. Naturally occurring ponds under twenty acres and their submerged aquatic beds that provide fish or wildlife habitat. These do not include ponds deliberately designed and created from dry sites such as canals, detention facilities, wastewater treatment facilities, farm ponds, temporary construction ponds (of less than three years duration) and landscape amenities. However, naturally occurring ponds may include those artificial ponds intentionally created from dry areas in order to mitigate conversion of ponds, if permitted by a regulatory authority;

D. Lakes, ponds, creeks and rivers planted with native fish populations, including fish planted under the auspices of federal, state, local or tribal programs or which supports priority fish species as identified by the Washington State Department of Fish and Wildlife;

E. Washington State Wildlife Areas as identified on Washington Department of Fish and Wildlife maps; and

F. Washington State Natural Area Preserves and Natural Resource Conservation Areas as identified on Washington Department of Natural Resources maps.

“Float” means an anchored (not directly to the shore) floating platform that is free to rise and fall with water levels and is used for water-dependent recreational activities such as boat mooring, swimming or diving. Floats may stand alone with no over-water connection to shore or may be located at the end of a pier or ramp.

“Flood" or "Flooding" means a general and temporary condition of partial or complete inundation of normally dry land areas from:

A. The overflow of inland or tidal waters and/or

B. The unusual and rapid accumulation of runoff of surface waters from any source.

"Flood insurance rate map (FIRM)" means the official map on which the Federal Emergency Management Agency has delineated both the areas of special flood hazards and the risk premium zones applicable to the community.

"Flood Insurance Study" means the official report provided by the Federal Emergency Management Agency that includes flood profiles, the Flood Boundary and Floodway Map (FBFM), and the water surface elevation of the base flood.

"Floodplain" is synonymous with the one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the SMA.

"Floodway" means the area, as identified in this Master Program, that either:

A. Has been established in Federal Emergency Management Agency Flood Insurance Rate Maps or floodway maps; or

B. Consists of those portions of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition, topography, or other indicators of flooding that occurs with reasonable regularity, although not necessarily annually.

Regardless of the method used to identify the floodway, the floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state.

"Frequently Flooded Areas" means those areas of Benton County subject to inundation by a base flood (100-Year Flood) and other flood hazard areas such as creeks, wasteways, wetlands, canyons, and closed depressions which are shown on the County's Geologic Hazards Maps. See also “Area of Special Flood Hazard.”

"Geologically Hazardous Areas" are areas which pose potential threats to life or property because of unstable soil, geologic or hydrologic conditions, or steep slopes. Geologically Hazardous Areas shall include, but are not limited to, all landslide and seismic hazard areas.

"Geotechnical report" or "geotechnical analysis" means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the adequacy of the site to be developed, the impacts of the proposed development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes.

"Grade" means the vertical location of the ground surface. "Natural grade" is the grade as it exists or may have existed in its original undisturbed condition. "Existing grade" is the current grade in either its undisturbed, natural condition or as disturbed by some previous modification. "Rough grade" is a stage where grade conforms approximately to an approved plan. "Finish grade" is the final grade of the site which conforms to an approved plan. “Average grade level” is the average of the natural or existing topography of the portion of the lot, parcel, or tract of real property which will be directly under the proposed building or structure. In the case of structures to be built over water, average grade level shall be the elevation of the ordinary high-water mark.
Calculation of the average grade level shall be made by averaging the ground elevations at the midpoint of all exterior walls of the proposed building or structure.

"Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land

“Groin” means a barrier type of structure that extends from the stream bank into a waterbody for the purpose of the protection of a shoreline and adjacent uplands by influencing the movement of water or deposition of

materials. Groins may serve a variety of functions, including bank protection, pool formation, and increased roughness, and may include rock structures, debris jams, or pilings that collect wood debris. See also “Weir.”

"Groundwater" means the supply of fresh water under the surface of the ground in an aquifer that forms a natural reservoir of potable water.

"Guidelines" means those standards adopted by the Department of Ecology into the Washington Administrative Code (WAC) to implement the policy of Chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards also provide criteria for local governments and the Department of Ecology in developing and amending master programs.

“Hard structural shoreline stabilization” means shoreline erosion control practices using hardened structures that armor and stabilize the shoreline from further erosion. Hard structural shoreline stabilization typically uses concrete, boulders, dimensional lumber or other materials to construct linear, vertical or near-vertical faces. These include bulkheads, rip-rap, and similar structures.

"Height" is measured from average grade level to the highest point of a structure: Provided, that television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of residences on areas adjoining such shorelines, or the SMP specifically requires that such appurtenances be included: Provided further, that temporary construction equipment is excluded in this calculation.

“Houseboat” or “floating home” means a dwelling unit constructed on a float that is moored, anchored, or otherwise secured in the water and is not designed for navigation under its own power.

"Hyporheic" means a groundwater area adjacent to and below channels where water is exchanged with channel water and water movement is mainly in the downstream direction

"Impervious Surface" means any material which reduces or prevents absorption of water into previously undeveloped land.

“Industry” means facilities for processing, manufacturing, and storage of finished or semi-finished goods, wholesale trade or storage, together with necessary accessory uses such as parking, loading, and waste storage and treatment.

“In-stream structures” are structure placed by humans within a stream or river waterward of the OHWM that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, recreation, or other purpose.

"Landslide" means episodic downslope movement of a mass of soil or rock.

"Landslide Hazard Area" refers to those areas of Benton County subject to a severe risk of landslide which include the following:

A. Any areas with a combination of:

    1. Slopes greater than fifteen (15) percent;

    2. Impermeable soils (typically silt and clay) frequently inter-bedded with granular soils (predominately sand and gravel); or,

    3. Springs or ground water seepage.

B. Any area which has shown movement during the Holocene epoch (from ten thousand 10,000 years ago to present) or which is underlain by mass wastage debris of that epoch;

C. Any area potentially unstable as a result of rapid stream incision, stream bank erosion or undercutting by water action, including stream channel migration zones, or surcharge by upslope irrigation district canals or waterworks;

D. Any area located on an alluvial fan, presently subject to or potentially subject to inundation by debris flows or deposition of stream-transported sediments.

“Maintenance, Normal” means those usual acts to prevent a decline, lapse, or cessation from a legally established condition. See “Repair, Normal.”

"Manufactured Home" means a structure, transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term "manufactured home" does not include a recreational vehicle.

"Manufactured Home Park" or "Subdivision" means a parcel (or contiguous parcels) of land divided into two or more manufactured home lots for rent or sale.

"May" means the action is acceptable, provided it conforms to the provisions of this chapter.

“Mining” means the removal of naturally occurring minerals and materials from the earth for commercial value. Mining includes processing and batching. Mining does not include large excavations for structures, foundations, parking areas, etc.

"Mitigation (sequencing)" means the use of any or all of the following actions that are listed in descending order of preference:

A. avoiding the impact altogether by not taking a certain action or parts of an action;

B. minimizing impacts by limiting the degree or magnitude of the action and its implementation, by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

C. rectifying the impact by repairing, rehabilitating or restoring the affected sensitive area;

D. reducing or eliminating the impact over time by preservation or maintenance operations during the life of the development proposal;

E. compensating for the impact by replacing, enhancing or providing substitute sensitive areas and environments;

F. monitoring the impact and taking appropriate corrective measures.

"Monitoring" means the ongoing evaluation of the impacts of a development proposal on the biological, hydrologic and geologic conditions of Critical Areas. Monitoring includes the gathering of baseline data and the assessment of the performance of required mitigation measures through the collection and analysis of data for the purposes of understanding and documenting changes in natural ecosystems and features.

"Moorage facility" means a marina, pier, dock, mooring buoy, or any other similar fixed moorage site.

“Must" means a mandate; the action is required.

"Native vegetation" refers to plant species which are indigenous to the Central Basin region and which reasonably could have been expected to naturally occur on the site. Native vegetation does not include noxious weeds.

"Natural or existing topography" means the topography of the lot, parcel, or tract of real property immediately prior to any site preparation or grading, including excavation or filling.

"New Construction" means structures for which the "start of construction" commenced on or after the effective date of this Title.

“Nonconforming,” when used in reference to a use or structure, means a land use or structure that was lawful when established, but which does not now conform to the use regulations of the zone in which it is located. A use or structure shall be considered established if it conformed to applicable development regulations at any time or if it commenced or was constructed under a permit that has not expired.

"Non water-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

“No net loss of ecological functions” means a public policy goal and requirement to maintain the aggregate total of the County’s shoreline ecological functions at its current level. For purposes of reviewing and approving this SMP, “current” is equivalent to the date of the Final Shoreline Analysis Report (April 2013). As a development standard, it means the result of the application of Mitigation Sequencing, in which impacts of a particular shoreline development and/or use, whether permitted or exempt, are identified and addressed, such that there are no adverse impacts on shoreline ecological functions or processes relative to the legal condition just prior to the proposed development and/or use.

"Ordinary High Water Mark" (OHWM) means that mark on lakes and streams which will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in ordinary years, as to mark upon the soil a character distinct from that of the abutting upland.

"Outcrop" refers to a geologic layer exposed at the earth's surface.

"Permit", for the purposes of this SMP, means any substantial development, variance, conditional use permit, or revision authorized under chapter 90.58 RCW.

“Pier” means a fixed platform above the water and supported by piles, usually perpendicular to the shoreline. See also “Dock.”

“Preferred uses” are those uses which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the shoreline. "Preferred" uses include single-family residences, ports, shoreline recreational uses, water-dependent industrial and commercial developments, and other developments that provide public access opportunities.

“Priority habitat” means a habitat type with unique or significant value to one or more species. An area classified and mapped as priority habitat must have one or more of the following attributes: Comparatively high fish or wildlife density; comparatively high fish or wildlife species diversity; fish spawning habitat; important wildlife habitat; important fish or wildlife seasonal range; important fish or wildlife movement corridor; rearing and foraging habitat; refuge; limited availability; high vulnerability to habitat alteration; unique or dependent species; or shellfish bed. A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife. A priority habitat may also be described by a successional stage. Alternatively, a priority habitat may consist of a specific habitat element (such as talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

“Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below:

A. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the Department of Fish and Wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

B. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

C. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

D. Species listed under the federal Endangered Species Act as either proposed, threatened, or endangered.

"Provisions" means policies, regulations, standards, guideline criteria or environment designations.

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.

“Public access” means the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations.

“Public Trust Doctrine” is a common law principle generally holding that the waters of the state are a public resource owned by and available to all citizens equally for the purposes of navigation, conducting commerce, fishing, recreation and similar uses. While the doctrine protects public use of navigable water bodies below the ordinary high-water mark, the doctrine does not allow the public to trespass over privately owned uplands to access the tidelands.

"Qualified Professional" means an accredited or licensed professional with a combination of education and experience in the discipline appropriate for the subject matter under review, or someone who would qualify as an expert in their field.

"Recharge Area" refers to an area in which water is absorbed and added to the groundwater reservoir.

“Recreation” means an experience or activity in which an individual engages for personal enjoyment and satisfaction. Shore-based outdoor recreation includes but is not limited to fishing; various forms of boating, swimming, hiking, bicycling, horseback riding, picnicking, watching or recording activities such as photography, painting, bird watching or viewing of water or shorelines, nature study and related activities.

“Recreational uses” refers to public, private, or commercial uses which offer activities, pastimes, and experiences that allow for the refreshment of mind and body. Examples include, but are not limited to, parks, viewpoints, trails, public access facilities, public parks, and other low intensity use outdoor recreation areas. Recreational uses that do not require a shoreline location, nor are related to the water, nor provide significant public access, are considered non-water oriented. For example, a recreation use solely offering indoor activities would be considered non-water-oriented.

“Recreational Vehicle” is a vehicle which is a travel trailer, motor home, truck camper, or camping trailer that is designed and used as temporary living quarters or overnight camping, is either self-propelled or mounted on or drawn by another vehicle, has a body length of no more that forty-five (45) feet; or, any structure inspected, approved and designated as a recreational vehicle by an bearing the insignia of the State of Washington or any other state or federal agency having the authority to approve recreational vehicles.

"Regulated Substance" means the toxic or natural substances and dangerous waste which have the potential to cause adverse impacts to ground and surface water quality and are controlled to ensure proper management and handling. Toxic and dangerous substances are listed in but not limited to Washington Administrative Code (WAC) 173-201A-040, and WAC 173-303-080.

“Repair, Normal” means to restore a development or structure to a state comparable to its original, legally established condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the

replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment. See also “Maintenance, Normal.”

“Residential” means buildings, structures or portions thereof that are designed and used as a place for human habitation. Included are single, duplex or multi-family dwellings, manufactured homes, and other structures that serve to house people, as well as the creation of new residential lots through land division. This definition includes accessory uses common to normal residential use, including but not limited to, residential appurtenances, accessory dwelling units, and home occupations.

"Restore," "restoration" or "ecological restoration" means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of intrusive shoreline structures, and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

"Riparian Corridor" means the natural vegetation which lines the sides and tops of banks along rivers, creeks and streams. Typical vegetation includes willows, cottonwood, maples, alder and other brushy understory which transitions into upland vegetation as distance from the bank increases.

"River" means the Yakima and Columbia Rivers.

"Salmonid" means a member of the fish family salmonidae. In Benton County, these include, but are not limited to, coho, Chinook, sockeye, resident rainbow, brown trout, steelhead, and whitefish.

"Seismic Hazard Areas" mean those areas of Benton County that are potentially subject to severe risk of earthquake damage as a result of seismically induced ground shaking, slope failure, settlement, soil liquefaction or surface faulting.

“Setback”. See “Building Setback.”

"Shall" means a mandate; the action must be done

"Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams and lakes which are subject to the provisions of this chapter; the same to be designated as to location by the Department of Ecology.

"Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance;
(ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes.

"Shoreline areas" and "shoreline jurisdiction" means all "shorelines of the state" and "shorelands" as defined in RCW 90.58.030.

"Shorelines of statewide significance" means the following shorelines of the state:

A. Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high-water mark;

B. Those natural rivers or segments east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer; and

C. Those shorelands associated with A and B, above.

"Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state.

“Shoreline environment designations” are a classification of shorelines established by this SMP in order to provide a uniform basis for applying policies and use regulations within distinctively different shoreline areas.

“Shorelines Hearings Board”, a quasi-judicial body within the state Environmental and Land Use Hearings Office, which hears appeals by any aggrieved party on the issuance of a shoreline permit. See RCW 90.58.170 et seq. for the role of the Washington State Shorelines Hearings Board.

"Shoreline modifications" means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

“Shoreline stabilization” means structural or non-structural modifications to the existing shoreline intended to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, wind, or wave action. They are generally located parallel to the shoreline at or near the OHWM.

"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.

"Significant vegetation removal" means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

"Slide" refers to the downward mass movement of soil, rock, or snow resulting from failure of that material under stress.

“Slope” refers to the inclination of the surface of the land from the horizontal.

"SMA" meansthe Washington State Shoreline Management Act, chapter 90.58 RCW.

“Soft structural shoreline stabilization” means shoreline erosion control and restoration practices that contribute to restoration, protection or enhancement of shoreline ecological functions. Soft structural shoreline stabilization typically includes a mix of gravels, cobbles, boulders, logs and native vegetation placed to provide shore stability in a non-linear, generally sloping arrangement. Linear, vertical faces are an indicator of Hard Structural Shoreline Stabilization (see above definition).

“State master program” is the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by Ecology.

“Structure” means a permanent or temporary edifice or building, or any piece of work artificially built or composed of parts joined together in some definite manner, whether installed on, above, or below the surface of the ground or water, except for vessels.

“Substantial development” shall mean any development of which the total cost or fair market value exceeds ~~six thousand, four hundred, and sixteen dollars~~ seven thousand, and forty seven dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold must be adjusted for inflation by the Office of Financial Management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the Bureau of Labor and Statistics, United States Department of Labor.

The Office of Financial Management must calculate the new dollar threshold and transmit it to the Office of the Code Reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. For purposes of determining whether or not a permit is required, the total cost or fair market value shall be based on the value of development that is occurring on shorelines of the state as defined in RCW 90.58.030(2)(c). The total cost or fair market value of the development shall include the fair market value of any donated, contributed or found labor, equipment or materials. See WAC 173-27-040 for a list of developments that are not considered substantial.

"Substantially degrade" means to cause significant ecological impact.

“Transportation” means roads and railways, related bridges and culverts, fills, embankments, causeways, parking areas, and trails.

"Use" means the activity or purpose for which land or structures or combination of land and structures are designed, arranged, occupied, or maintained together with any associated site improvement. This definition includes the construction, erection, placement, movement or demolition of any structure or site improvement and any physical alteration to land itself including any grading, leveling, paving or excavation. Use also means any existing or proposed configuration of land, structures, and site improvements, and the use thereof.

“Utility” means a primary or accessory service or facility that produces, transmits, stores, processes, or disposes of electrical power, gas, water, sewage, communications, oil, and the like.

"Vadose Zone Analysis" means the characterization of the soil profile above the water table.

"Variance" is a means to grant relief from the specific bulk, dimensional or performance standards set forth in this Master Program and not a means to vary a use of a shoreline.

"Vegetation" means any and all organic plant life growing at, below, or above the soil surface.

"Vessel" includes ships, boats, barges, or any other floating craft which are designed and used for navigation and do not interfere with the normal public use of the water.

"Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

"Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

"Water-oriented use" means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

"Water quality" means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term "water quantity" refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

"Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or

B. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

“Weir” means a structure generally built perpendicular to the shoreline for the purpose of diverting water or trapping sediment or other moving objects transported by water.

“Wetland" or "wetlands" means that area inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and under normal circumstances does support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created from non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. However, wetlands may include those artificial wetlands specifically intentionally created from non-wetland areas to mitigate conversion of wetlands.

"Wetland Edge" means the line delineating the outer edge of a wetland established by using the procedures in the currently approved Federal Wetland Delineation Manual.

"Wetland Functions" refer to the natural processes performed by wetlands and include functions which are important in facilitating food chain production, providing habitat for nesting, rearing and resting site for aquatic, terrestrial or avian species, maintaining the availability and quality of water such as purifying water, acting as recharge and discharge areas for groundwater aquifers and moderating surface water and storm water flows as well as performing other functions including but not limited to those set out in U.S. Army Corps of Engineers regulations at 33 C.R.R. Section 320.4(b)(2) (1988).

Section 15.03 Shoreline Jurisdiction and Use Preferences

03.010 Definition

(a) As defined by the Shoreline Management Act of 1971, shorelines include certain waters of the State plus their associated “shorelands.” The waterbodies designated as shorelines of the State are streams whose mean annual flow is 20 cubic feet per second (cfs) or greater and lakes whose area is greater than 20 acres. In Benton County, only the Yakima River and the Columbia River meet shoreline criteria.

(b) Shorelands, as adopted by Benton County and indicated on the Official Shoreline Maps are available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System, are defined as:

“those lands extending landward for 200 feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter….” (RCW 90.58.030)

(c) The extent of shoreline jurisdiction is indicated on the Official Shoreline Maps available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. The purpose of the Official Shoreline Maps is to identify Environment Designations (Section 15.04 below). The maps only approximately identify or depict the lateral extent of shoreline jurisdiction. The actual lateral extent of the shoreline jurisdiction shall be determined on a site-specific basis based on the location of the ordinary high-water mark (OHWM), floodway, floodplain, and presence of associated wetlands.

(d) In circumstances where shoreline jurisdiction does not include an entire parcel, only that portion of the parcel within shoreline jurisdiction and any use, activity or development proposed within shoreline jurisdiction on that portion of the parcel is subject to this Shoreline Master Program.

03.020 General Shoreline Use Preferences

(a) This SMP adopts the following policy provided in RCW 90.58.020, and fully implements it to the extent of its authority under this SMP:

It is the policy of the State to provide for the management of the shorelines of the State by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the State and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto...

In the implementation of this policy, the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the State shall be preserved to the greatest extent feasible consistent with the overall best interest of the State and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state….

Permitted uses in the shorelines of the State shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

(b) When determining allowable uses and resolving use conflicts on shorelines within jurisdiction consistent with the above policy, the following preferences and priorities as listed in WAC 173-26-201(2)(d) shall be applied in the order presented below:

(1) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
(2) Reserve shoreline areas for water-dependent and associated water related uses … Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.
(3) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
(4) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
(5) Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

03.030 Shorelines of Statewide Significance

03.030.01 Designation Criteria

Certain shoreline waterbodies and their associated shorelands have elevated status under the SMA if they are streams and rivers in Eastern Washington that are *"…*downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range

downstream from the first three hundred square miles of drainage area, whichever is longer" (RCW 90.58.030(2)(e)(v)(B)). These waterbodies are considered to be "shorelines of statewide significance," and have unique supplemental provisions outlined in Sections 15.03.030.02 and 15.03.030.03 below. All of Benton County's shorelines, the Yakima and Columbia Rivers, are Shorelines of Statewide Significance.

03.030.02 Use Preferences

(a) In accordance with RCW 90.58.020, the following management and administrative policies are hereby adopted for all Shorelines of Statewide Significance in the County and UGAs, as defined in RCW 90.58.030(2)(e). Consistent with the policy contained in RCW 90.58.020, preference shall be given to the uses in the following order that are consistent with the statewide interest in Benton County's shorelines. These are uses that:

(1) Recognize and protect the statewide interest over local interest;
(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline;
(5) Increase public access to publicly owned areas of the shorelines;
(6) Increase recreational opportunities for the public in the shoreline;
(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary. (WAC 173-26-251(2))

(b) Uses that are not consistent with these preferences should not be permitted on shorelines of statewide significance.

03.030.03 Policies

Consistent with the use preferences for Shorelines of Statewide Significance contained in RCW 90.58.020 and identified in Section 15.03.030.02, the County will base decisions administering this SMP on the following policies in order of decreasing priority:

(c) Recognize and protect the state-wide interest over local interest.

(1) Solicit comments and opinions from groups and individuals representing state-wide interests by circulating amendments to the Master Program, and any proposed amendments affecting Shorelines of Statewide Significance, to state agencies, affected Tribes, adjacent local governments', citizen's advisory committees and local officials, and state-wide interest groups.
(2) Recognize and take into account state agencies' policies, programs and recommendations in developing and administering use regulations and in approving shoreline permits.
(3) Solicit comments, opinions and advice from individuals with expertise in ecology and other scientific fields pertinent to shoreline management.

(d) Preserve the natural character of the shoreline.

(1) Designate and administer shoreline environments and use regulations to protect and restore the ecology and environment of the shoreline as a result of human intrusions on shorelines.
(2) Restore, enhance, and/or redevelop those areas where intensive development already exists in order to reduce adverse impact on the environment and to accommodate future growth rather than allowing high-intensity uses to extend into low-intensity use or underdeveloped areas.
(3) Protect and restore existing diversity of vegetation and habitat values, wetlands, and riparian corridors associated with shoreline areas.
(4) Protect and restore habitats for State-listed "priority species."

(e) Support actions that result in long-term benefits over short-term benefits.

(1) Evaluate the short-term economic gain or convenience of developments relative to the long-term and potentially costly impairments to the natural shoreline.
(2) Preserve resources and values of Shorelines of Statewide Significance for future generations and restrict or prohibit development that would irretrievably damage shoreline resources.
(3) Ensure the long-term protection of ecological resources of statewide importance, such as anadromous fish habitats and unique environments.

(f) Protect the resources and ecology of the shoreline.

(1) All shoreline development should be located, designed, constructed and managed consistent with mitigation sequencing provisions outlined in Section 15.05.020 to minimize adverse impacts to regionally important wildlife resources, including spawning, nesting, rearing and habitat areas, and migratory routes and result in no net loss of shoreline ecosystems and ecosystem-wide processes.
(2) Actively promote aesthetic considerations when contemplating new development, redevelopment of existing facilities, or general enhancement of shoreline areas.

(g) Increase public access to publicly owned areas of the shoreline.

(1) Give priority to developing paths and trails to shoreline areas and linear access along the shorelines, especially those trail corridors that would be a regional recreational and transportation resource.
(2) Locate development landward of the OHWM so that access is enhanced and opportunities for access are not precluded.
(3) Increase public access opportunities for those with disabilities consistent with the Americans with Disabilities Act.
(4) Provide incentives to landowners that provide shoreline public access, such as development incentives, tax reductions, or other measures.

(h) Increase recreational opportunities for the public on the shoreline.

(1) Plan for and encourage development of facilities for public recreational use of the shoreline, including facilities for boating, swimming, fishing, and other water-oriented activities.
(2) Reserve areas for lodging and related facilities on uplands with provisions for appropriate public access to the shoreline.

Section 15.04 Shoreline Environment Designations

04.010 Urban Transition Area

04.010.01 Purpose:

The purpose of assigning an area to an Urban Transition Area environment designation is to:

(a) Ensure optimum utilization of shorelines occurring within designated Urban Growth Areas by managing development and uses so that they enhance and maintain shorelines for a variety of future urban uses, and
(b) Protect and restore ecological functions of open space, flood plain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

The Urban Transition Area designation also reflects Benton County's coordinated planning with its cities.

04.010.02 Designation Criteria:

Assign an Urban Transition Area environment designation to Urban Growth Areas, where high intensity land-uses, including residential, commercial, recreational and industrial development or supporting utilities and transportation exist or are planned for in the future or where there is existing or planned development that is compatible with maintaining or restoring the ecological functions of the area.

04.010-03 Management Policies:

(c) Recognize the cities' SMP development standards in Urban Transition Area areas. Shoreline regulations should reflect each UGA's unique character. Major Urban Transition Areas are described below:

(1) Richland UGA North: Richland intends this shoreline have a natural character. The shoreline in this area has a low level of human disturbance or has been disturbed in the past but either has been isolated from human activity in the near past or is subject to a restoration program designed to restore natural ecological processes and functions. Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(2) Benton City UGA: UGA lands vary in existing and planned character, allowing a range of residential, suburban agricultural, commercial, recreational, and transportation uses, designed in a manner to achieve no-net-loss of ecological function.

(3) Kennewick UGA: UGA lands are suitable for urban development that is compatible with maintaining or restoring of the ecological functions of the area.

(4) Prosser UGA: The Prosser UGA shorelines are intended for residential, industrial, and other low intensity development compatible with maintaining or restoring of the ecological functions of the area.

(d) In regulating uses in the Urban Transition Area environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non water-oriented uses should be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.

(e) When expanding the Urban Transition Area environment, first consider the availability of existing Urban Transition Area land for water-oriented development.

(f) Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term are encouraged. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(g) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development.

(h) Public access should be required on public lands. Private development that creates a demand for shoreline access should provide visual or physical access unless there are constitutional or legal limitations, safety, security, environment, or other similar factors that limit its feasibility.

04.020 Rural Industrial

04.020.01 Purpose:

The purpose of the Rural Industrial environment designation is to provide for intensive water-oriented commercial, transportation, power production, and industrial uses, while protecting existing ecological functions. This designation will provide the opportunity for the development, redevelopment and infill of existing rural industrial and commercial developments or former industrial or commercial sites consistent with the rural character of Benton County.

04.020.02 Designation Criteria

Assign a Rural Industrial environment designation to shoreline areas in industrial or commercial areas of intensive rural development if they currently support concentrations of commerce, transportation, power production, or navigation; or are suitable and planned for intensive water-oriented uses.

04.020.03 Management Policies:

(a) In regulating uses in the Rural Industrial environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non water-oriented uses should be allowed in limited situations where they do not conflict with or limit opportunities for water-oriented uses or on sites where there is no direct access to the shoreline.
(b) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.
(c) Public access should be required on public lands. Private development that creates a demand for shoreline access should provide visual or physical access unless there are constitutional or legal limitations, safety, security, environment, or other similar factors that limit its feasibility.
(d) Full utilization of existing industrial areas and altered lands should be achieved before further expansion of intensive development is allowed.

04.030 Residential

04.030.01 Purpose:

The purpose of the Residential environment designation is to accommodate residential development and accessory structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

04.030.02 Designation Criteria:

Assign a Residential environment designation to shoreline areas that are predominantly single-family residential development or are planned and platted for residential development.

04.030.03 Management Policies:

(a) Shoreline development standards should ensure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.
(b) Subdivisions and recreational developments should provide public or community access.
(c) Access, utilities, and public services should be available and adequate to serve existing needs and those planned for future development.
(d) Commercial development, including commercial recreation and agri-tourism, should be consistent with underlying rural zoning and limited to water-oriented uses within shoreline jurisdiction.

04.040 Rural

04.040.01 Purpose:

The purpose of assigning an area to a Rural environment designation is to promote agricultural use and activities, including associated irrigation and support facilities, and accommodate low-density rural home sites, function as a separation between urban areas, and maintain an open space character and provide opportunities for recreational uses compatible with agricultural activities.

04.040.02 Designation Criteria:

Assign a Rural environment designation to those areas characterized by:

(a) agricultural lands of long-term commercial significance and low-density rural home sites;
(b) commercial agricultural potential; or
(c) parallel roads, railroads, canals, levees or other alterations in shoreline jurisdiction that limit shoreline ecological functions.

04.040.03 Management Policies:

(d) Promote agricultural activities on agricultural lands.
(e) Allow new agricultural activities and expansions of current agricultural activities on previously un-farmed lands consistent with this SMP.
(f) Non-agricultural uses should be limited to those compatible with agriculture. Shoreline development within or adjacent to designated agricultural resource lands should incorporate measures to reduce compatibility impacts, such as open space landscaped separations or other measures to address impacts to agricultural operations.
(g) Development standards should seek to conserve soils and water resources suitable for agricultural purposes.
(h) Activities and uses should be designed for compatibility with the rural character, including the overall density pattern.

04.050 Hanford

04.050.01 Purpose:

The purpose of the Hanford environment is to recognize and foster the unique economic, environmental, and recreational values of the area as it transitions over time from federal energy purposes to other land uses and management consistent with the Hanford Reach National Monument designation.

04.050.02 Designation Criteria:

Assign a "Hanford" environment designation to shoreline areas located in the U.S. Department of Energy's Hanford site.

04.050.03 Management Policies:

To the extent that this SMP is applicable to federal lands, the following policies should guide uses in shoreline jurisdiction:

(a) Predominant shoreline uses should include preservation of cultural, ecological and natural resources with limited public access where appropriate.
(b) High intensity uses in shoreline jurisdiction should be limited to heavy and light industry, energy generation and transmission, research and development, and environmental cleanup.
(c) High-intensity and low-intensity public access and recreation should be accommodated where consistent with local environmental conditions, and safety and security concerns.
(d) Uses and activities should be consistent with the Benton County Comprehensive Land Use Plan and Benton County zoning regulations.

04.060. Conservancy

04.060.01 Purpose:

The purpose of the Conservancy environment is to:

(a) protect ecological functions of open space, floodplain and other sensitive public or protected lands and conserve existing natural resources and valuable historic and cultural areas while allowing a variety of compatible uses; and

(b) Ensure appropriate management and development of existing and future public parks and recreation areas.

04.060.02 Designation Criteria:

Assign a Conservancy environment designation if any of the following characteristics apply:

(a) They are within existing or planned public parks or public lands intended to accommodate public access and recreational developments;
(b) They are suitable for water-related or water-enjoyment uses;
(c) They are open space, floodplain or other sensitive areas that should not be more intensively developed;
(d) They have potential for ecological restoration;
(e) They retain important ecological functions, even though partially developed; or
(f) They have the potential for development that is compatible with ecological restoration.

04.060.03 Management Policies:

(a) Uses in the Conservancy environment should be limited to those which sustain the shoreline area's physical and biological resources and uses of a non-permanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area.
(b) Except in support of agriculture, aquaculture, and recreation uses, commercial and industrial uses should not be allowed.
(c) Water-oriented uses should be given priority over Non water-oriented uses. Water-dependent and water- enjoyment recreation facilities and uses that do not deplete the resource over time, such as boating facilities, fishing, hunting, wildlife viewing trails, swimming beaches, and scientific, historical, cultural, and educational research uses, are preferred, provided adverse impacts to the shoreline are mitigated.
(d) Shoreline development standards should ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.
(e) Existing uses and development, including roadways and railroads, may be maintained and expanded consistent with provisions of this SMP.
(f) Public access and public recreation objectives on public lands should be implemented when appropriate and when adverse ecological impacts can be mitigated.
(g) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions, and only when mitigation is applied.

04.070. Natural

04.070.01 Purpose:

The purpose of the Natural environment is to protect those public shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low-intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes.

04.070.02 Designation Criteria:

A Natural environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(a) The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process;
(b) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or
(c) The shoreline is a publicly managed portion of the Umatilla National Wildlife Refuge

04.070.03 Management Policies:

(a) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.
(b) The following new uses should not be allowed in the Natural environment:

(1) Commercial uses.
(2) Industrial uses.
(3) Non water-oriented recreation with no relationship to the shoreline and waterbody.
(4) Roads, utility corridors, and parking areas that can be located outside of "Natural" designated shorelines.

(c) Single-family residential development may be allowed as a conditional use within the Natural environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.
(d) Irrigation withdrawals and other agricultural uses of a very low-intensity nature may be consistent with the Natural environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.
(e) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses, including non-motorized trails, may be allowed provided that no significant ecological impact on the area will result.
(f) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.
(g) Consistent with the policies of the designation, the County should include planning for restoration of degraded shorelines within this environment.

04.080 Aquatic

04.080.01 *Purpose:*

The purpose of the Aquatic environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

04.080.02 *Designation Criteria:*

Assign an Aquatic environment designation to lands waterward of the ordinary high-water mark.

04.080.03 *Management Policies:*

(a) Allow new over-water structures only for water-dependent uses, including docks associated with single-family residences; public access; or ecological restoration.
(b) The size of new over-water structures should be limited to the minimum necessary to support the structure's intended use.
(c) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.
(d) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(e) Shoreline uses and modifications should be designed and managed to prevent adverse impacts to ecological functions and ecosystem-wide processes, including degradation of water quality and alteration of natural hydrographic conditions. Adverse impacts should not be allowed except where necessary to achieve the objectives of the Shoreline Management Act, and then only when mitigated as necessary to assure no net loss of ecological functions.

04.090 Environment Designation Interpretation

(a) If disagreement develops as to the exact location of an environment designation boundary line, the Official Shoreline Maps shall prevail consistent with the following rules:

(1) Boundaries indicated as approximately following lot, tract, or section lines shall be so construed.
(2) In cases where boundary line adjustments or subdivisions occur, the designation applied to the parent parcel prior to the boundary line adjustment or subdivision shall not change as a result. The shoreline designation can be re-designated through an SMP amendment.
(3) Boundaries indicated as approximately following roads and railroads shall be respectively construed to follow the nearest right-of-way edge.
(4) Boundaries indicated as approximately parallel to or extensions of features indicated in (1), (2), or (3) above shall be so construed.

(b) In the event of an environment designation mapping error where the SMP update or amendment record, including the public hearing process, is clear in term of the correct environment designation to apply to a property, the Shoreline Administrator shall apply the environment designation approved through the SMP Update or Amendment process and correct the map. Appeals of such interpretations may be filed pursuant to Section 15.09 and the County's appeal procedures referenced in Section 15.09 of this SMP. If the environment designation criteria were misapplied, but the map does not show an unintentional error (e.g. the SMP hearing and adoption record does not indicate another designation was intended), a SMP amendment may be obtained consistent with WAC 173-26-100 and Section 15.09.130.
(c) All shoreline areas waterward of the OHWM shall be designated Aquatic.
(d) Upland environment designations shall apply to shorelands.
(e) Only one environment designation shall apply to a given shoreland area. In the case of parallel designations, designations shall be divided along an identified linear feature and the boundary shall be clearly noted on the map (for example: "boundary is 100 feet upland from the OHWM").

04.100 Official Shoreline Maps and Unmapped or Undesignated Shorelines

(a) The Official Shoreline Maps at the time of SMP adoption, which illustrate the delineation of shoreline jurisdiction and environment designations in the County and UGAs, are available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. The official map shall include the following language: "We hereby certify that this map constitutes the Official Shoreline Map as approved by Ordinance 2014-440 of the Board of County Commissioners and signed by its chairman dated this 3rd day of June 2014." The Official Shoreline Maps may be updated administratively or through an SMP amendment as indicated in 04.100(b), (c) and (d) below. The Department of Ecology will be provided with electronic files of the Official Shoreline Maps when any updates are made. Minor mapping errors corrected administratively shall not be greater than 1.0 acre in size. If greater than 1.0 acre in size, a SMP amendment shall be completed within three years of finding the mapping error.

(b) Any areas within shoreline jurisdiction that are not mapped and/or designated due to minor mapping inaccuracies in the lateral extent of shoreline jurisdiction from the shoreline waterbody related to site- specific surveys of OHWM, floodway, and/or floodplain are automatically assigned the category of the contiguous waterward shoreline environment designation. Where the mapping inaccuracy results in inclusion of an unmapped associated wetland, that wetland shall be assigned a Conservancy designation. Correction of these minor mapping inaccuracies may be made and incorporated into the Official Shoreline Maps without an SMP amendment.

(c) All other areas of shoreline jurisdiction that were neither mapped as jurisdiction nor assigned an environment designation shall be assigned a Conservancy designation until the shoreline can be re-designated through an SMP amendment process conducted consistent with WAC 173-26-100 and SMP Section 15.09.130.

(d) The actual location of the OHWM, floodplain, floodway, and wetland boundaries must be determined at the time a development is proposed. Wetland boundary and OHWM determinations are valid for five years from the date the determination is made. Floodplain and floodway boundaries should be assessed using FEMA maps or the most current technical information available.

(e) In addition, any property shown in shoreline jurisdiction that does not meet the criteria for shoreline jurisdiction (e.g., is more than 200 feet from the OHWM or floodway, is no longer in floodplain as documented by a Letter of Map Revision from FEMA, and does not contain associated wetlands) shall not be subject to the requirements of this SMP. Revisions to the Official Shoreline Maps may be made as outlined in this Section 15.04.100(e) without an SMP amendment.

04.110 Use and Modifications Matrix

(a) Table 04.110-1 indicates which shoreline activities, uses, developments, and modifications may be allowed or are prohibited in shoreline jurisdiction within each shoreline environment designation. Activities, uses, developments, and modifications are classified as follows:

(1) Uses allowed by Shoreline Substantial Development Permit are indicated by an "S" on the use matrix.
(2) Uses allowed by Shoreline Conditional Use Permit are indicated by a "C" on the use matrix.
(3) Prohibited activities, uses, developments, and modifications are not allowed and are shown as an "X" on the use matrix.
(4) Uses or activities not applicable to the shoreline environment designation in question are shown as "N/A" on the matrix.
(5) Uses in the Urban Transition Area shall be allowed subject to the most restrictive of the City or County Shoreline Master Program use allowances.

Table 04.110-1 Use and Modification Matrix

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	**Urban Transition Area**	**Rural Industrial**	**Rural**	**Residential**	**Conservancy**	**Natural**	**Hanford**	**Aquatic**
Agriculture								
Agricultural Activities, Existing and New	S	S	S	S	S	C	X	N/A
Commercial Dairying, Poultry Raising, Commercial Hog Ranches, Animal Feedlots and Stockyards	X	X	X	X	X	X	X	N/A
Agricultural Stands	S	S	S	S	X	X	X	N/A
Agricultural Related Industries	C	S	S	X	X	X	X	N/A
Agri-tourism	C	S	S	X	X	X	X	N/A
Aquaculture								
Commercial	X	C	C	X	X	X	X	see adjacent upland environment
Non-commercial	S	C	S	X	C	C	S	see adjacent upland environment
Boating and Private Moorage Facilities								
Boat Launches								

Pier/Dock

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Public	S	X	S	C	C	X	X	see adjacent upland environment
Commercial/Industrial	C	S	C	X	C	X	X	see adjacent upland environment
Other private	X	X	X	X	X	X	X	X
Residential, including community	S	S	S	S	S	S	X	see adjacent upland environment
Commercial, industrial, aquaculture, recreational or public access use	S	S	S	C	C	C	S	see adjacent upland environment
Marinas	C	C	C	X	X	X	X	see adjacent upland environment
Breakwaters, Jetties, and Groins								
To protect or restore ecological functions	S	S	S	S	S	S	S	S
To maintain existing water-dependent uses	C	C	C	C	C	C	C	see adjacent upland environment
All other purposes	C	C	C	C	X	X	X	see adjacent upland environment
Commercial and Service Uses								
Visitor-serving uses	S	S	S	S	X	X	X	C
Recreation concessions	S	S	S	S	S	S	S	S
Other retail, trade or service	C	C	C	C	X	X	X	C
Dredging and Dredge Material Disposal								
Dredging for water-dependent use and public access	S	S	S	S	C	C	C	see adjacent upland environment
Dredging for existing navigation uses	NA	NA	NA	NA	NA	NA	NA	S
Dredging or disposal of dredged material for habitat restoration	S	S	S	S	S	S	S	S
Dredging, other	NA	NA	NA	NA	NA	NA	NA	C
Disposal of dredged material inside CMZ	C	C	C	C	C	C	C	C
Disposal of dredged material outside CMZ	S	S	C	C	X	X	X	see adjacent upland environment
Implementation of dredging maintenance plan	S	S	S	S	S	S	S	S
Fill								
Waterward of the OHWM - restoration	N/A	N/A	N/A	N/A	N/A	N/A	N/A	S
Waterward of the OHWM	N/A	N/A	N/A	N/A	N/A	N/A	N/A	C
Upland of the OHWM	S	S	S	S	S	C	S	N/A

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Flood Hazard Reduction Measures								
Modification of Existing Flood Hazard Facilities (including relocation farther landward)	S	S	S	S	C	C	C	N/A
New Facilities	S	S	C	C	C	C	C	N/A
Forest Practices								
Forest Practices	X	X	X	X	X	X	X	N/A
Industry / Manufacturing / Storage								
Water-Oriented	S	S	S	X	X	X	S	C
Non-Water-Oriented								
General	X	C	X	X	X	X	C	X
Separated from Shoreline[1]	S	S	S	X	X	X	S	N/A
Mixed-use project that includes a Water-Dependent Use	S	S	S	X	X	X	S	C
In-Stream Structures								
To protect public facilities	S	S	S	S	C	C	S	see adjacent upland environment
To protect, restore, or monitor ecological functions or processes	S	S	S	S	S	S	S	S
To support agriculture	S	S	S	S	S	C	S	see adjacent upland environment
Other	S	S	S	S	C	C	N/A	see adjacent upland environment
Mining								
Mining that creates, restores or enhances habitat for priority species	S	S	S	S	S	S	S	S
Other mining and on-site processing	C	S	C	X	X	X	C	C
All mining in channel migration zone	C	C	C	X	X	X	C	C
Recreational Development								
Water-Oriented	S	S	S	S	S	S	S	S
Non-Water-Oriented								
General	C	C	C	C	C	X	C	X
Sites separated from shoreline	S	S	S	S	S	S	S	N/A
Residential Development								
Single-Family Dwelling	S	X	S	S	S	C	X	N/A
Accessory Dwelling Unit	S	X	S	S	C	X	X	N/A
Duplex	S	X	S	S	X	X	X	N/A
Houseboats and Over-Water Residential Uses	N/A	N/A	N/A	N/A	N/A	N/A	N/A	X

Shoreline Use or Modification Key: S = Shoreline Substantial Development Permit or Exemption C = Shoreline Conditional Use Permit X = Not allowed N/A = Not Applicable	Urban Transition Area	Rural Industrial	Rural	Residential	Conservancy	Natural	Hanford	Aquatic
Shoreline Habitat and Natural Systems Enhancement Projects								
Shoreline Habitat and Natural Systems Enhancement Projects	S	S	S	S	S	S	S	S
Shoreline Stabilization								
New Hard Stabilization	S	S	S	S	C	X	S	see adjacent upland environment
New Soft Stabilization	S	S	S	S	S	C	S	see adjacent upland environment
Repair and Replacement	S	S	S	S	S	S	S	see adjacent upland environment
Transportation and Parking								
Access Roads Serving Permitted Uses	S	S	S	S	S	C	S	N/A
Highways, Freeways, Arterials & Collectors	S	S	S	S	C	C	S	N/A
Bridges	S	S	S	S	C	C	S	C
Railways	S	S	S	S	C	C	S	C
Airstrips	S	S	C	X	X	X	S	N/A
Trails	S	S	S	S	S	C	S	N/A
Parking for Authorized Use	S	S	S	S	S	C	S	N/A
Park and Ride lots and Similar Stand-Alone Parking	C	C	C	X	X	X	C	N/A
Utilities								
Utility Services Accessory to Individual Shoreline Projects	S	S	S	S	S	C	S	C
Utility Services to Projects outside Shoreline Jurisdiction	S	S	S	C	C	X	S	C
Power Generating Facilities	S	S	C	X	C	X	C	C
Wind Turbine and Related Support Structures (Zoning Code)	S	S	C	C	C	X	C	C
Utility Transmission Lines	S	S	S	S	S	C	S	C
Utility Services, General	S	S	S	S	S	C	S	C
Wastewater Treatment Facility	S	S	C	X	C	X	C	C

[1] Applies when a proposed development is physically separated from the shoreline by another property or public right of way.

04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews

(a) Requirements to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other review to implement the Shoreline Management Act do not apply to the following:

(1) Remedial actions. Pursuant to RCW 90.58.355, any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW.

(2) Boatyard improvements to meet NPDES permit requirements. Pursuant to RCW 90.58.355, any person installing site improvements for storm water treatment in an existing boatyard facility to meet requirements of a national pollutant discharge elimination system storm water general permit

(3) WSDOT facility maintenance and safety improvements. Pursuant to RCW 90.58.356, Washington State Department of Transportation projects and activities meeting the conditions of RCW 90.58.356 are not required to obtain a substantial development permit, conditional use permit, variance, letter of exemption, or other local review.

(4) Projects consistent with an environmental excellence program agreement pursuant to RCW 90.58.045.

(5) Projects authorized through the Energy Facility Site Evaluation Council process, pursuant to chapter 80.50 RCW.

04.130 Development Standards

(a) There shall be a thirty-five (35) foot maximum building height for all structures, except that utility facilities and bridges are not required to meet this standard. To exceed 35 feet, an applicant must apply for a Shoreline Variance, and comply with the following criteria in addition to standard Shoreline Variance criteria:

(1) Demonstrate overriding considerations of the public interest will be served, and

(2) Demonstrate that the proposal will not obstruct the view of a substantial number of residences on areas adjoining such shorelines or impair views from public lands or impair scenic vistas.

(b) Minimum shoreline lot frontage shall be consistent with underlying zoning and be no less in width than the following by shoreline environment:

(1) Urban Transition Area: 70 feet

(2) Rural Industrial: 70 feet

(3) Rural: 90 feet

(4) Residential: 70 feet

(5) Conservancy: 90 feet

(6) Natural: 90 feet

(7) Hanford: 90 feet

(c) Shoreline buffers: See Section 15.06.030(a).

(d) Minimum structure setbacks from side property lines in shoreline jurisdiction shall be consistent with the underlying zoning and no less than 5 feet.

Section 15.05 General Regulations and Performance Standards

05.010 Archaeological and Historic Resources

(a) The County shall require development applicants to consult with DAHP to access data so that every proposal can be screened, and archaeological sites are not disturbed. Review of data and other consultation may occur directly with DAHP or through a professional archaeologist recognized by the State of Washington. Permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist. Auger tests may be required before construction and representatives of the DAHP and affected tribes may be invited to observe any tests and construction work, or the County may send results of the test to affected tribes. If auger or historical data indicate probable presence of cultural resources which may be disturbed by excavation, the County shall inform the shoreline permit applicant and may impose conditions on any shoreline permit to assure that such resources are protected, preserved or collected.

(b) Developers and property owners shall immediately stop work and notify the County, DAHP, and affected tribes if archaeological resources are uncovered during excavation. Following such notification, the County shall require a developer or property owner follow the provisions of Subsection (c).

(c) Where a professional archaeologist or historian, recognized by the State of Washington, has identified an area or site as having significant value, or where an area or site is listed in, or determined eligible for listing in, national, state or local historical registers, or where through the development application state data has identified the potential for cultural resources, the County shall, with additional DAHP consultation, require a development application to provide an evaluation of the resource, and appropriate conditions, which may include preservation and/or retrieval of data, proposal modifications to reduce impacts, or other mitigation authorized through the State Environmental Policy Act, or other local, state, or federal laws.

(d) Applicants shall be required to follow applicable provisions of federal and state laws, including but not limited to: Chapter 27.44 RCW Indian Graves and Records and Chapter 27.53 RCW Archaeological Sites and Resources.

05.020 Environmental Protection

(a) Ecological Functions. Uses and developments on Benton County shorelines must be designed, located, sized, constructed and maintained to achieve no net loss of shoreline ecological functions necessary to sustain shoreline natural resources. New uses and developments must not have an unmitigated adverse impact on other shoreline functions fostered by this SMP.

(b) Protection of Critical Areas and Buffers. Critical areas, critical areas buffers, and shoreline buffers must be protected in accordance with the provisions of SMP Section 15.06, Critical Areas in Shoreline Jurisdiction.

(c) Mitigation Requirement. If a proposed shoreline use or development is entirely addressed by specific, objective standards (such as setback distances, pier dimensions, or materials requirements) contained in this SMP, then the mitigation sequencing analysis described in Section 15.05.020(d) is not required. In the following circumstances, the applicant must provide a mitigation sequencing analysis as described in Section 15.05.020(d):

(1) if a proposed shoreline use or development is addressed in any part by discretionary standards (such as standards requiring a particular action “if feasible” or requiring the minimization of development size) contained in this Chapter, then the mitigation sequencing analysis is required for the discretionary standard(s); or

(2) when an action requires a Shoreline Conditional Use Permit or Shoreline Variance Permit; or

(3) when specifically required by regulations contained in Sections 15.05, 15.06, 15.07 or 15.08 of this SMP.

(d) Mitigation Sequence. In order to ensure that development activities contribute to meeting the no net loss provisions by avoiding, minimizing, and mitigating for adverse impacts to ecological functions or ecosystem-wide processes, an applicant required to complete a mitigation analysis pursuant to Section 15.05.020(c) must describe how the proposal will follow the sequence of mitigation as defined below:

(1) Avoid the impact altogether by not taking a certain action or parts of an action;

(2) Minimize the impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology, or by taking affirmative steps to avoid or reduce impacts;

(3) Rectify the impact by repairing, rehabilitating, or restoring the affected environment to the conditions existing at the time of the initiation of the project or activity;

(4) Reduce or eliminate the impact over time by preservation and maintenance operations during the life of the action;

(5) Compensate for the impact by replacing, enhancing, or providing substitute resources or environments; and

(6) Monitor the impact and the compensation projects and take appropriate corrective measures.

(e) Adverse Impacts. Example of common actions that may result in adverse ecological impacts include, but are not limited to, the following:

(1) Removal of native plant communities in shoreline jurisdiction,
(2) Removal of native or non-native trees that overhang the water,
(3) Removal of native or non-native vegetation on slopes if that vegetation supports maintenance of slope stability and prevents surface erosion,
(4) Removal or alteration of priority habitats or habitat for priority species,
(5) Construction of new or expanded in- and over-water structures,
(6) Construction of new or expanded shoreline stabilizations,
(7) New discharges of water into the Yakima or Columbia Rivers that may introduce pollutants,
(8) Construction of new impervious surfaces whose discharges are not infiltrated and thus may alter hydrologic conditions of shoreline waterbodies,
(9) Changes in grading or fill that reduce floodplain capacity.

(f) Mitigation Plan. All proposed alterations to shoreline jurisdiction that may have adverse effects on ecological functions require mitigation sufficient to provide for and maintain the functions and values of the shoreline area or to prevent risk from a critical areas hazard. The applicant must develop and implement a mitigation plan prepared by a qualified professional. Mitigation in excess of that necessary to ensure that development will result in no net loss of ecological functions will not be required by Benton County, but may be voluntarily performed by an applicant. In addition to any requirements found in Section 15.07, Critical Areas in Shoreline Jurisdiction, a mitigation plan must include:

(1) An inventory and assessment of the existing shoreline environment including relevant physical, chemical and biological elements;
(2) A discussion of any federal, state, or local management recommendations which have been developed for critical areas or other species or habitats located on the site;
(3) A discussion of proposed measures which mitigate the adverse impacts of the project to ensure no net loss of shoreline ecological functions;
(4) A discussion of proposed management practices which will protect fish and wildlife habitat both during construction, and after the project site has been fully developed;
(5) Scaled drawings of existing and proposed conditions, materials specifications, and a minimum three-year maintenance and monitoring plan, including performance standards;
(6) A contingency plan if mitigation fails to meet established success criteria; and
(7) Any additional information necessary to determine the adverse impacts of a proposal and mitigation of the impacts.

(g) Alternative Mitigation. When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions on site and in kind. To provide for flexibility in the administration of the ecological protection provisions of this SMP, alternative mitigation approaches may be approved within shoreline jurisdiction where such approaches provide increased protection of shoreline ecological functions and processes over the standard provisions of this SMP and are scientifically supported, or are consistent with the Shoreline Restoration Plan or watershed-level management plans. Potential alternative mitigation tools include in-lieu-fee, advance mitigation, and mitigation banking. Authorization of alternative compensatory mitigation measures may require appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions and may require approval by other state or federal agencies.

05.030 Shoreline Vegetation Conservation

(a) Vegetation conservation standards do not apply retroactively to existing legally established uses and developments. Vegetation associated with existing structures, uses and developments may be maintained within shoreline jurisdiction.

(b) Vegetation within shoreline buffers, other stream buffers, wetlands and wetland buffers, WDFW-mapped priority habitats and species areas, and other critical areas must be managed consistent with Section 15.06, Critical Areas in Shoreline Jurisdiction. Regulations specifying establishment and management of shoreline buffers (buffers associated with the Yakima and Columbia Rivers) are located in Section 15.06.030, Rivers and Creeks.

(c) Other vegetation within shoreline jurisdiction, but outside of shoreline buffers, creek buffers, wetlands and wetland buffers, and other WDFW-mapped priority habitats and species areas must be managed according to Section 15.05.020, Environmental Protection, and any other regulations specific to vegetation management contained in this SMP and Benton County Code.

(d) Vegetation clearing must be limited to the minimum necessary to accommodate approved shoreline development that is consistent with all other provisions of this SMP and Benton County Code. Mitigation sequencing per Section 15.05.020(d), Environmental Protection, must be applied unless specifically excluded by this SMP, so that the design and location of the structure or development, including septic drainfields, minimizes short- and long-term vegetation removal. The County may approve modifications or require minor site plan alterations to achieve maximum tree retention.

(e) Where vegetation removal conducted consistent with this Section results in adverse impacts to shoreline ecological function, new developments or site alterations are required to develop and implement a supplemental mitigation plan. Examples of actions that may result in adverse impacts include:

(1) Removal of native trees, shrubs or groundcovers;
(2) Removal of non-native trees or shrubs that overhang aquatic areas or stabilize slopes; or
(3) Removal of native or non-native trees or shrubs that disrupts an existing vegetation corridor connecting the property to other critical areas or buffers.

Mitigation plans must be prepared by a qualified professional and must contain information required in Section 15.05.020(e). Performance standards shall require 100 percent survival in Year 1, with 100 percent tree survival and 80 percent shrub and groundcover survival at the end of the monitoring period. Mitigation measures must be maintained over the life of the use or development.

(f) Shoreline vegetation may be removed to accommodate a temporary staging area when necessary to implement an allowed use or modification, but mitigation sequencing must be utilized and the area must be immediately stabilized and restored with native vegetation once its use as a staging area is complete.

(g) Native tree removal in shoreline jurisdiction must be mitigated by installation of a similar native tree at a 1:1 impact to mitigation ratio. Non-native tree removal in shoreline buffers must be mitigated by installation of a native or suitable non-native tree at a 1:1 impact to mitigation ratio. All mitigation trees shall be preferentially placed in the shoreline buffer, unless the trees provide connectivity to upland habitats or other critical areas and shall be held to a 100% survival standard at the end of threeyears.

(h) Where a tree poses a safety hazard, it may be removed or converted to a wildlife snag if the hazard cannot be eliminated by pruning, crown thinning, or other technique that maintains some habitat function. If a safety hazard cannot be easily determined by the County, a written report by a certified arborist or other qualified professional is required to evaluate potential safety hazards.

(i) Selective pruning of trees for views is allowed. Selective pruning of trees for views does not include removal of understory vegetation and must not compromise the health of the tree.

(j) Hand removal or spot-spraying of invasive species (such as Russian olive) or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is encouraged.

(k) Mechanical removal or large-scale chemical treatment of invasive species.

(1) Mechanical removal or large-scale chemical treatment of invasive species (such as Russian olive) or noxious weeds included on the Washington State Noxious Weed List as a Class A, B or C weed on shorelands outside of steep or unstable slope areas is encouraged.

(2) Coordination with Benton Conservation District is encouraged prior to undertaking invasive or noxious weed removal projects to ensure that the control and disposal technique is appropriate.
(3) Where noxious weeds and invasive species removal results in bare soils that may be subject to erosion or recolonization by invasive or noxious species, the area must be stabilized using best management practices and replanted with native plants (in or outside of shoreline or critical area buffers) or suitable non-native plants (outside of shoreline or critical area buffers). The replanted vegetation must be similar in size and structure at maturity to the removed vegetation.
(4) Invasive species removal efforts that exceed one-quarter acre should be phased if feasible to minimize potential erosion and sedimentation impacts.

(l) Aquatic weed control must only be permitted where the presence of aquatic weeds will adversely affect native plant communities, fish and wildlife habitats, or an existing water-dependent recreational use. Aquatic weed control efforts must comply with all applicable laws and standards.

05.040 Water Quality, Stormwater, and Nonpoint Pollution

(a) Do not degrade ecological functions. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that there is no net loss of ecological functions.
(b) Do not degrade views and recreation opportunities. Design, construction and operation of shoreline uses and developments shall incorporate measures to protect and maintain surface and groundwater quantity and quality in accordance with all applicable laws, so that significant impacts to aesthetic qualities or recreational opportunities do not occur. A significant impact to aesthetics or recreation would occur if a stormwater facility and appurtenant structures such as fences or other features have the potential to block or impair a view of shoreline waters from public land or from a substantial number of residences per RCW 90.58.320, or if water quality were visibly degraded such that the color and character were unattractive and discouraged normal uses such as swimming, fishing, boating, or viewing.
(c) Requirements for new development.

(1) New development and re-development shall manage short-term and long-term stormwater runoff to avoid and minimize potential adverse effects on shoreline ecological functions through compliance with the latest edition of the Benton County Hydrology Manual or approved equivalent. If certain thresholds are not met by a development that trigger compliance with the Benton County Hydrology Manual or approved equivalent, best management practices (BMPs) must still be employed to avoid and minimize potential adverse effects.
(2) When the Benton County Hydrology Manual applies, deviations from the standards may be approved where it can be demonstrated that off-site facilities would provide better treatment, or where common retention, detention and/or water quality facilities meeting such standards have been approved as part of a comprehensive stormwater management plan.

(d) Sewage management. To avoid water quality degradation, sewer service is subject to the requirements outlined below.

(1) Any existing septic system or other on-site system that fails or malfunctions will be required to connect to an existing municipal sewer service system if feasible or make system corrections approved by Benton-Franklin Health District.
(2) Any new development, business, single-family or multi-family unit in an Urban Growth Area will be required to connect to an existing municipal sewer service system if feasible, or install an on-site septic system approved by Benton-Franklin Health District.

(e) Materials requirements. All materials that may come in contact with water shall be untreated or approved treated wood, concrete, approved plastic composites or steel, that will not adversely affect water quality or aquatic plants or animals.

05.050 Public Access

(a) Efforts to implement the public access provisions of this Section shall be consistent with all relevant constitutional and other legal limitations on regulation of private property and the principles of nexus and proportionality.

(b) Public access does not include the right to enter upon or cross private property, except on dedicated public rights-of-way or easements or where development is specifically designed to accommodate public access.

(c) The County adopts the following policies and plans as collectively constituting a shoreline public access plan for Benton County shorelines:

(1) Benton County Comprehensive Plan Parks and Recreation Element
(2) Benton County Comprehensive Parks Plan
(3) Hanford Site Comprehensive Land Use Plan Map

(d) The Shoreline Administrator may approve a public access plan not otherwise listed in Subsection (c) if it:

(1) Meets the requirements of WAC 173-26-221(4); and
(2) Is developed through an open public process as provided in WAC 173-26-201(3)(b)(i).

(e) Shoreline development shall not interfere with public access and enjoyment of any nearby publicly owned land areas.

(f) The County shall not vacate any road, street, or alley abutting a body of water except as provided under RCW 36.87.130 County Roads.

(g) Shoreline public access shall be required for the following shoreline uses and activities, unless excepted by Subsection (h):

(1) Shoreline recreation pursuant to Section 15.07.110;
(2) New structural public flood hazard reduction measures, such as dikes and levees;
(3) Shoreline development proposed or financed by public entities, including local governments, port districts, state agencies, and public utility districts;
(4) New marinas when water-enjoyment uses are associated with the marina;
(5) Where commercial use is proposed on land in public ownership;
(6) Where the nature of the proposed use, activity or development will likely generate a public demand for one or more forms of physical or visual access to the shoreline;
(7) When the proposed use, activity or development is not a water-oriented or other preferred shoreline use, activity or development under the SMA, such as a Non water-oriented commercial or industrial use; or
(8) When the proposed use, activity or development will interfere with the public use, activity and enjoyment of shoreline areas or waterbodies subject to the public trust doctrine (see Section 15.02).

(h) Notwithstanding the applicability of Subsection (g), an applicant shall not be required to provide public access where the County determines that one or more of the following conditions apply:

(1) Reasonable, safe and convenient public access to the shoreline is accessible within one-quarter mile (1,320 feet) of the site;
(2) The County's shoreline public access plan defined in Subsection (c) does not indicate a need for public access at the property;
(3) The site is within or part of an overall development which has previously provided public access through other application processes;
(4) The economic cost of providing for public access upon the site is unreasonably disproportionate to the total long-term economic value of the proposed use, activity or development;

(5) The proposed use, activity or development only involves the construction of four or fewer single-family or multifamily dwellings;
(6) The proposed use, activity or development only involves agricultural activities;
(7) The proposal consists of a new or expanded road or utility crossing through shoreline jurisdiction serving development located outside of shoreline jurisdiction;
(8) The nature of the use, activity or development or the characteristics of the site make public access requirements inappropriate due to health, safety or environmental hazards based on evidence provided in the proposed application;
(9) The proposed use, activity or development has security requirements that are not feasible to address through the application of alternative design features or other measures;
(10) Significant and unmitigable harm to the shoreline environment would be likely to result from an increase, expansion or extension of public access upon the site; or
(11) Public access is deemed detrimental to threatened and/or endangered species under the Endangered Species Act.

(i) Public Access Standards. When public access is provided, the following standards shall apply.

(1) Physical public access is preferred to solely visual access. Where physical public access is not feasible, the applicant shall incorporate visual public access. Visual public access may consist of view corridors, viewpoints, or other means of visual approach to public waters. Physical public access may consist of a dedication of land or easement and a physical improvement in the form of a trail, park, or other area serving as a means of physical approach to public waters.
(2) Physical public access shall be designed to connect to existing or future public access features on adjacent or abutting properties or shall connect to existing public rights-of-way or access easements, consistent with design and safety standards.
(3) Public access proposals shall be designed consistent with parks and recreation standards or plans contained in applicable County, State, or Federal codes or approved plans.

(j) Shared community access may be allowed if there is no existing or planned public access along the shoreline as determined by a review of adopted parks and recreation plans. Where provided, community access is subject to all applicable development standards of this Section. Preference shall be given for consolidated community access over individual lot by lot access in new multi-lot or multi-unit development.

(k) Where public access is required pursuant to Subsection (g) and not exempt through Subsection (h), an applicant may request that the public access requirement be fulfilled through developing public access on another site – otherwise called off-site public access or by payment of a fee in lieu.

(1) Off-site public access, either physical or visual, may be permitted by the County where it results in an equal or greater public benefit than on-site public access, or when on-site limitations of security, environment, or feasibility are present. Off-site public access is preferred where it implements adopted County shoreline public access plans defined in Subsection (c). Off-site public access may include, but is not limited to, enhancing a nearby public property (e.g. existing public recreation site; existing public access; road, street or alley abutting a body of water; or similar) in accordance with County standards; providing, improving or enhancing public access on another property under the control of the applicant/proponent; or another equivalent measure.
(2) Instead of on-site or off-site public access improvements, the County may require, or an applicant may propose a fee-in-lieu. A fee-in-lieu may be assessed where the off-site improvement is best accomplished by the County or another agency at a later date or better implements the County Public Access Plans listed in Section 15.05.050. The cost of providing the off-site public access shall be

proportionate to the total long-term cost of the proposed development or use. The fee-in-lieu agreements, conditions of approval, or mitigation measures shall address the responsibility and cost for operation and maintenance.

(l) The County may condition public access proposals to ensure compatibility with existing public access or transportation facilities, address environmental conditions or environmental impacts, and/or address compatibility with adjacent properties. Public access facilities shall be made compatible with adjacent private properties through the use of techniques to define the separation between public and private space, including but not limited to, fencing, vegetation, and elevation separations.

05.060 Flood Hazard Reduction

(a) Development in floodplains shall avoid significantly or cumulatively increasing flood hazards. Development shall be consistent with this SMP, including Section 15.06.050, as well as applicable guidelines of the Federal Emergency Management Agency and an approved flood hazard management plan.

(b) The channel migration zone (CMZ) is considered to be that area of a stream channel which may erode as a result of normal and naturally occurring processes and has been mapped consistent with WAC 173-26-221(3)(b). The Channel Migration Zone Maps are available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. Applicants for shoreline development or modification may submit a site-specific CMZ study if they believe these conditions do not exist on the subject property and the map is in error. The CMZ study must be prepared consistent with WAC 173-26-221(3)(b), and may include, but is not limited to, historic aerial photographs, topographic mapping, flooding records, and field verification. The CMZ study must be prepared by a licensed geologist or engineer with at least five years of applied experience in assessing fluvial geomorphic processes and channel response.

(c) The following uses and activities may be authorized within the CMZ or floodway, provided they are also consistent with Section 15.06.050:

(1) Actions that protect or restore the ecosystem-wide processes or ecological functions or development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.

(2) New development or redevelopment landward of existing legal structures, such as levees, that prevent active channel movement and flooding.

(3) Existing and ongoing agricultural activities provided that no new restrictions to channel movement are proposed.

(4) Development of new or expansion or redevelopment of existing bridges, utility lines, public stormwater facilities and outfalls, and other public utility and transportation structures, including trails, where no other feasible (see definition in Section 15.02) alternative exists or the alternative would result in unreasonable and disproportionate costs[1]. Where such structures are allowed, mitigation shall address adversely impacted functions and processes in the affected shoreline.

(5) New or redeveloped measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measures do not interfere with fluvial hydrological and geo-morphological processes normally

[1] For the purposes of this Section "unreasonable and disproportionate" means that locations outside of the floodway or CMZ would add more than 20% to the total project cost. Other methods to determine unreasonable and disproportionate cost may be used on a case-by-case basis with approval of the Shoreline Administrator. [20% has been used as a threshold by WSDOT and the Federal Department of Justice for ADA standards]

acting in natural conditions, and that the measures include appropriate mitigation of adverse impacts on ecological functions associated with the river or stream.

(6) Water-dependent installations which by their very nature must be in the floodway.

(7) Modifications or additions to an existing nonagricultural legal use, provided that channel migration is not further limited and that the modified or expanded development includes appropriate protection of ecological functions.

(8) Repair and maintenance of existing legally established use and developments, provided that channel migration is not further limited, flood hazards to other uses are not increased, and significant adverse ecological impacts are avoided.

(9) Uses and developments allowed in the floodway under BCC 3.26, provided they are otherwise consistent with all provisions of this SMP.

(d) Flood hazard reduction measures shall not result in channelization of normal stream flows, interfere with natural hydraulic processes such as channel migration, or undermine existing structures or downstream banks.

(e) New development in shoreline jurisdiction, including the subdivision of land, shall not be permitted if it is reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway.

(f) New public and private structural flood hazard reduction measures:

(1) shall not be approved, unless a scientific and engineering analysis demonstrates the following:

a. that they are necessary to protect existing development;

b. that nonstructural measures, such as buffers and setbacks, land use controls, wetland restoration, dike removal, use or structure removal or relocation, biotechnical measures, and stormwater management programs are not feasible;

c. that adverse effects upon adjacent properties will not result relative to increased floodwater depths and velocities during the base flood or other more frequent flood occurrences;

d. that the ability of natural drainage ways to adequately drain floodwaters after a flooding event is not impaired;

e. that the proposal has been coordinated through the appropriate diking district where applicable, and that potential adverse effects upon other affected diking districts have been documented; and,

f. that adverse impacts on ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss.

(2) shall be consistent with an approved comprehensive flood hazard management plan.

(3) shall be placed landward of associated wetlands and designated shoreline buffers, except for actions that increase ecological functions, such as wetland restoration, or when no other alternative location to reduce flood hazard to existing development is feasible as determined by the Shoreline Administrator.

(g) New public structural flood hazard reduction measures, such as levees, shall dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and unmitigable significant adverse ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(h) In those instances where management of vegetation as required by this SMP conflicts with vegetation provisions included in state, federal or other flood hazard agency documents governing County-authorized, legal flood hazard reduction measures, the vegetation requirements of this SMP will not

apply. However, the applicant shall submit documentation of these conflicting provisions with any shoreline permit applications and shall comply with all other provisions of this Section and this SMP that are not strictly prohibited by the approving flood hazard agency.

(i) The removal of gravel or other riverbed material for flood management purposes shall be consistent with Section 15.07.060, Dredging and Dredge Material Disposal, and be allowed only after a biological and geo-morphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

Section 15.06 Critical Areas in Shoreline Jurisdiction

06.010 General

(a) Applicability. This chapter applies to any real property located within the shoreline jurisdiction of unincorporated Benton County.

(b) Purpose. The purpose of this chapter is to meet the minimum requirements of the Washington State Growth Management Act, Chapter 36.70A RCW, and the Shoreline Management Act, Chapter 90.58 RCW, by designating the Critical Areas located in unincorporated Benton County and providing, through the use of the best science available, for the protection of the functions and values of those resources from incompatible and injurious use, encouraging the development of strategies to conserve and protect such resources, and preventing cumulative adverse environmental impacts to ground and surface water availability, to water quality, and to wetlands and streams, thereby ensuring the public health, safety, and general welfare while attempting to minimize public expenditures and efforts in response to floods, geological activity, and other natural disasters.

(c) Identification of Critical Areas - Maps.

(1) The Critical Areas Overlay Maps for critical areas are used as a general guide to the location, type and extent of critical areas. If present, whether mapped or not, critical areas are protected under all the provisions of this title and all related titles.

(2) The Critical Areas Overlay Maps are available for review in the Planning Department as either hard copy or computer-generated images of the County's Geographic Information System. The maps will be amended over time to accurately reflect improvements in the accuracy of the data base.

(3) The Critical Areas Overlay Maps are also intended to alert the development community, appraisers, and current and prospective property owners of the potential encounter with natural site constraints due to critical areas, which may limit or cause alterations of development plans.

(4) If the SMP Administrator has reason to believe that the property proposed for development contains a critical resource based on other map or data sources or review of aerial photographs, then the SMP Administrator may require that additional information be provided prior to the County's acceptance of a development application as complete and ready for processing under current Benton County Codes.

(5) When any other title of the Benton County Code conflicts with this chapter, the more restrictive provision will apply.

(d) Initial Review. The SMP Administrator shall perform an initial Critical Areas Review of any application for development or use. The initial review shall accomplish the following:

(1) identify which critical areas or their buffers are present on the site;

(2) determine whether or not the development falls within the potential critical area(s) and potential buffer(s);

(3) in the case of a wetland, determine if it is subject to review under this chapter and if a delineation and wetland rating are necessary to establish whether a development may affect the wetland or its buffer;

(4) determine if the development is likely to have an adverse impact on the functions and values of the critical area(s). Development consisting of new construction or a related activity connected with an existing single-family residence shall not be considered an adverse impact to, or displacement of, the functions and values of a critical area if ground coverage is not increased by more than twenty (20) percent, native vegetation is not altered, and no portion of any new construction is located closer to a critical area than the existing principal structure;

(5) refer the applicant to such mitigating measures sufficient to protect the functions and values of the critical area and shall assist the applicant in the modification of the development to include specific measures, and appropriate monitoring strategy (where necessary), which meet the title's standards for the protection of the resource(s); and

(6) determine if a Critical Areas Special Study is required.

(e) Critical Areas Special Study - Requirements.

(1) The SMP Administrator may require an applicant to conduct a "Critical Areas Special Study" if the Administrator determines that the development could have adverse impacts on a critical area. The purpose of a Critical Areas Special Study is to adequately evaluate the proposal and all potential adverse impacts on a critical area. The study may be included as part of the environmental review process under SEPA as administrated by the County, in accordance with the provisions of this title.

(2) The study shall be performed by a professional who is licensed or qualified as an expert in the critical areas at issue. The study shall include the following where applicable:

a. the resume of the principal author(s) which disclose(s) their technical training and experience and demonstrates their stature as a qualified professional;
b. identification and characterization of the critical area;
c. an assessment of any potential hazards associated with the proposed development;
d. an assessment of the impacts of the development proposal on any critical area; and
e. a mitigation plan which specifies maintenance, monitoring and bonding measures (where necessary).

(f) Buffer Requirements.

(1) For any development or use subject to the requirements to provide a buffer around critical areas, the SMP Administrator may allow buffer width averaging when the project proponent can demonstrate application of mitigation sequencing and that project elements would provide an equal or greater contribution to permanent critical resource protection than would the application of the standard buffer. The maximum reduction allowed in any location is 25 percent.

(2) The SMP Administrator may require a wider than standard buffer when analysis of impacts by qualified individuals indicates that the standard requirement will not protect a critical area's functions and values.

(3) Where a legally established road or railway crosses a shoreline or critical area buffer, the SMP Administrator may approve a modification of the minimum required buffer width to the waterward edge of the improved road if a study submitted by the applicant and prepared by a qualified professional demonstrates that the part of the buffer on the upland side of the road sought to be reduced:

a. does not provide additional protection of the shoreline waterbody; and
b. provides insignificant biological, geological or hydrological buffer functions relating to the waterward portion of the buffer adjacent to the shoreline waterbody.

If the improved roadway corridor is wider than 20 feet, a study is not required.

(g) Critical Areas Resource Mitigation Fund. There is hereby created a Critical Areas Resource Mitigation Fund which shall be administered by the Benton County Treasurer's Office. All funds derived from payments received in-lieu of on/off-site mitigation shall be deposited in the fund which shall be used for off-site critical area enhancement or critical area lands acquisition. Monies in said fund not needed for immediate expenditure shall be invested for the benefit of the Critical Areas Resource Mitigation Fund pursuant to RCW 36.29.020. For investment purposes, the Benton County Treasurer is hereby designated the fund manager.

(h) Permit Issuance.

(1) The SMP Administrator may issue, issue with conditions, or deny the issuance of a permit, or its extension, in order to comply with and carry out the goals, purposes, objectives and requirements of this chapter. The permit shall include the findings listed in Section 15.06.010(h)(2).

(2) A permit may be issued if:

a. after consideration of all feasible Best Management Practices, including alternative designs, scale (size), locations, and management plans, the proposed development meets the standards of this title, protects the functions and values of critical areas, and that required mitigation reduces impacts to insignificant levels on an individual and/or cumulative project basis; or,

b. adverse impacts to critical area functions and values are both unavoidable and necessary because of public health and safety, or if specific local or regional economic considerations override the public interest in the protection of the critical areas, or because all reasonable economic uses for the property would be denied as a result of circumstances peculiar to the subject property; and all unavoidable adverse impacts are offset by enhancement of other critical areas on or off-site.

06.020 Wetlands

(a) Applicability. This chapter applies to wetlands and all development activities within or adjacent to such wetlands located within the shoreline jurisdiction of unincorporated Benton County. The following activities are subject to permitting if they occur in a regulated wetland or its buffer:

(1) The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind.

(2) The dumping of, discharging of, or filling with any material.

(3) The draining, flooding, or disturbing the water level or water table.

(4) Pile driving.

(5) The placing of obstructions.

(6) The construction, reconstruction, demolition, or expansion of any structure.

(7) The destruction or alteration of wetland vegetation through clearing, harvesting, shading, intentional burning, or planting of vegetation that would alter the character of a regulated wetland.

(8) Activities that result in:

a. A significant change of water temperature.

b. A significant change of physical or chemical characteristics of the sources of water to the wetland

c. A significant change in the quantity, timing or duration of the water entering the wetland.

d. The introduction of pollutants.

(b) Developments Permitted. Developments within wetlands or their buffers as set forth in this chapter are permitted when sited, designed, and operated in a manner which protects the functions and values of the wetland when such developments meet the requirements of this title.

(c) Identification and Delineation. Wetlands shall be identified and delineated by a qualified professional in accordance with WAC 173-22-035 and designated based on the definitions, methods, and standards set forth in the currently approved Federal Wetland Delineation Manual and applicable regional supplement.

(d) Categories. Criteria for categorizing a wetland are those specified in the Washington State Department of Ecology's Washington State Wetland Rating System for Eastern Washington, or as revised (Publication #14-06-030).

(1) Category I Wetlands are: 1) alkali wetlands; 2) wetlands that are identified by scientists of the Washington Natural Heritage Program/DNR as wetlands of high conservation value; 3) bogs; 4) mature and old-growth forested wetlands over ¼ acre with slow-growing trees; 5) forests with stands of aspen; and 6) wetlands that perform many functions very well. These wetlands are those that 1) represent a unique or rare wetland type; or 2) are more sensitive to disturbance than most wetlands; or 3) are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime; or 4) provide a high level of function.

(2) Category II Wetlands are: 1) forested wetlands in the floodplains of rivers; 2) mature and old-growth forested wetlands over ¼ acre with fast-growing trees; 3) vernal pools; and 4) wetlands that perform functions well.

(3) Category III Wetlands are: 1) vernal pools that are isolated and 2) wetlands with a moderate level of functions. These wetlands generally have been disturbed in some ways and are often less diverse or more isolated from other natural resources in the landscape than Category II wetlands.

(4) Category IV Wetlands are wetlands that should be able to be replaced, and in some cases improved. However, experience has shown that replacement cannot be guaranteed in any specific case. These wetlands may provide some important functions and also need to be protected.

(e) Buffer Requirements for Designated Wetlands.

(1) Vegetative buffers shall be measured from the wetland edge. The width of the buffer shall be determined according to the wetland type. The standard buffer widths are provided in Table 06.020-1 below.

(2) The use of the standard buffer widths requires the implementation of the measures in Table 06.020-2, where applicable, to minimize the impacts of the adjacent land uses.

(3) If an applicant chooses not to apply the minimization measures in Table 06.020-2, then a 33% increase in the width of all buffers is required. For example, a 75-foot standard buffer would become a 100-foot buffer if the minimization measures are not implemented.

(4) The standard buffer widths assume that the buffer is vegetated with a native plant community appropriate for the ecoregion. If the buffer is unvegetated, sparsely vegetated, or vegetated with invasive species that do not perform needed functions, the buffer should either be planted to create the appropriate plant community or the buffer should be widened to ensure that adequate functions of the buffer are provided.

Table 06.020 – 1. Wetland Buffers

Wetland Category	Standard Buffer Width Scores 3-4 habitat points	Additional buffer width if wetland scores 5 habitat points*	Additional buffer width if wetland scores 6-7 habitat points*	Additional buffer width if wetland scores 8-9 habitat points*
Category I: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category I: Bogs	190 ft	NA	NA	NA
Category I: Alkali	150 ft	N/A	NA	NA
Category I: Natural Heritage Wetlands	190 ft	N/A	NA	NA
Category II: Based on total score	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Category II: Vernal pool	150	NA	NA	NA
Category II: Forested	75 ft	Add 15 ft	Add 45 ft	Add 75 ft
Wetland Category	**Standard Buffer Width Scores 3-4 habitat points**	**Additional buffer width if wetland scores 5 habitat points***	**Additional buffer width if wetland scores 6-7 habitat points***	**Additional buffer width if wetland scores 8-9 habitat points***
Category III (all)	60 ft	Add 30 ft	Add 60 ft	NA
Category IV (all)	40 ft	NA	NA	NA

* When the Department of Ecology updates its Wetland Rating Forms, these point ranges should be modified using Ecology's conversion table once developed.

Table 06.020-2. Required measures to minimize impacts to wetlands

(Measures are required, where applicable to a specific proposal)

Disturbance	Required Measures to Minimize Impacts
Lights	Direct lights away from wetland
Noise	▪ Locate activity that generates noise away from wetland ▪ If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source ▪ For activities that generate relatively continuous, potentially disruptive noise, such as certain heavy industry or mining, establish an additional 10' heavily vegetated buffer strip immediately adjacent to the outer wetland buffer
Toxic runoff	▪ Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered ▪ Establish covenants limiting use of pesticides within 150 ft of wetland ▪ Apply integrated pest management
Stormwater runoff	▪ Retrofit stormwater detention and treatment for roads and existing adjacent development ▪ Prevent channelized flow from lawns that directly enters the buffer ▪ Use Low Intensity Development techniques (per PSAT publication on LID techniques)

Change in water regime	Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	▪ Use privacy fencing OR plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion. ▪ Place wetland and its buffer in a separate tract or protect with a conservation easement
Dust	Use best management practices to control dust
Disruption of corridors or connections	▪ Maintain connections to offsite areas that are undisturbed ▪ Restore corridors or connections to offsite habitats by replanting

(5) Increased Wetland Buffer Width. Buffer widths shall be increased on a case-by-case basis as determined by the SMP Administrator when a larger buffer is necessary to protect wetland functions and values. This determination shall be supported by appropriate documentation showing that it is reasonably related to protection of the functions and values of the wetland. The documentation must include but not be limited to the following criteria:

a. The wetland is used by a plant or animal species listed by the federal government or the state as endangered, threatened, candidate, sensitive, monitored or documented priority species or habitats, or essential or outstanding habitat for those species or has unusual nesting or resting sites such as heron rookeries or raptor nesting trees; or
b. The adjacent land is susceptible to severe erosion, and erosion-control measures will not effectively prevent adverse wetland impacts; or
c. The adjacent land has minimal vegetative cover or slopes greater than 30 percent.

(6) Buffer averaging to *improve wetland protection* may be permitted when all of the following conditions are met:

a. The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded emergent component or a "dual-rated" wetland with a Category I area adjacent to a lower-rated area.
b. The buffer is increased adjacent to the higher-functioning area of habitat or more-sensitive portion of the wetland and decreased adjacent to the lower-functioning or less-sensitive portion as demonstrated by a critical areas special study from a qualified wetland professional.
c. The total area of the buffer after averaging is equal to the area required without averaging.
d. The buffer at its narrowest point is never less than either ¾ of the required width or 75 feet for Category I and II, 50 feet for Category III and 25 feet for Category IV, whichever is greater.

(7) All other proposals to reduce a wetland buffer may only be approved through the Shoreline Variance process.

(f) Protection of Water Quality. The following provisions shall be followed to ensure the protection of the quality of water.

(1) New surface water discharged to wetlands from developments, including retention/detention facilities, pre-settlement ponds, or other surface water management structures may be allowed provided that the discharge does not decrease the water quality of the wetland;
(2) Category I and II wetlands may be used for regional retention/detention facilities only when the use will employ the use of pre-settlement ponds and the use will not lower the wetland's level of function and value, or its category;
(3) Use of wetland buffers for surface water management activities other than retention/detention facilities, such as energy dissipators and associated pipes, may be allowed only if:

a. no practicable alternative exists; and,
b. the functions of the buffer or the wetland are not adversely impacted.

(g) Subdivisions. The subdivision and/or short subdivision of land in wetlands and associated buffers are subject to the following:

(1) Land that is located wholly within a wetland or its buffer may not be subdivided.
(2) Land that is located partially within a wetland or its buffer may be subdivided provided that an accessible and contiguous portion of each new lot is:

a. Located outside of the wetland and its buffer; and
b. Meets the minimum lot size requirements of the underlying zoning district.

(h) Allowed Uses in Wetlands and Buffers

(1) Buffers and application of the normal mitigation sequencing process in Section 05.020, Environmental Protection, is not required of isolated Category III and IV wetlands less than 1,000 square feet that are not associated with a riparian area or buffer, are not part of a wetland mosaic, do not contain habitat identified as essential for local populations of priority species, and are not a vernal pool or alkali wetland. They may be filled if impacts are fully mitigated based on provisions in Section 15.06.020(i). If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, a critical area special study for wetlands meeting the requirements in Section 15.06.010(e) must be submitted.
(2) Activities Allowed in Wetlands and Buffers. The activities listed below are allowed in wetlands and buffers without submission of a Critical Areas Special Study, except where such activities result in a loss of the functions and values of a wetland or wetland buffer. These activities include:

a. Conservation or preservation of soil, water, vegetation, fish, shellfish, and/or other wildlife that does not entail changing the structure or functions of the existing wetland or buffer.
b. The harvesting of wild crops in a manner that is not injurious to natural reproduction of such crops and provided the harvesting does not require tilling of soil, planting of crops, chemical applications, or alteration of the wetland or buffer by changing existing topography, water conditions, or water sources.
c. Passive recreation. Passive recreation facilities, including:

1. Walkways and trails, provided that those pathways are limited to minor crossings having no adverse impact on water quality. They should be generally parallel to the perimeter of the wetland, located only in the outer twenty-five percent (25%) of the wetland buffer area except for crossings and infrequent viewpoints, and located to avoid removal of significant trees. They should be limited to pervious surfaces no more than five (5) feet in width for pedestrian use only. In wetlands, raised boardwalks utilizing non-treated pilings may be acceptable.
2. Wildlife-viewing structures.

d. Drilling for utilities/utility corridors under a wetland or wetland buffer, with entrance/exit portals located completely outside of the wetland buffer, provided that the drilling does not interrupt the groundwater connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the groundwater connection to the wetland or percolation of surface water down through the soil column will be disturbed.

e. Enhancement of a wetland or wetland buffer through the removal of non-native invasive plant species. Removal of invasive plant species shall be restricted to hand removal unless permits from the appropriate regulatory agencies have been obtained for approved biological or chemical treatments. All removed plant material shall be taken away from the site and appropriately disposed of. Plants that appear on the Washington State Noxious Weed Control Board list of noxious weeds must be handled and disposed of according to a noxious weed control plan appropriate to that species. Re-vegetation with appropriate native species at natural densities is allowed in conjunction with removal of invasive plant species.

f. Educational and scientific research activities

g. Normal and routine maintenance and repair of any existing public or private facilities within an existing right-of-way, provided that the maintenance or repair does not expand the footprint or use of the facility or right-of-way.

(3) Stormwater management facilities. Stormwater management facilities are limited to stormwater dispersion outfalls and bioswales. They may be allowed within the outer twenty-five percent (25%) of the wetland buffer of Category III or IV wetlands only, provided that:

a. No other location is feasible; and

b. The location of such facilities will not degrade the functions or values of the wetland; and

c. Stormwater management facilities are not allowed in buffers of Category I or II wetlands.

(i) Compensatory Mitigation.

(1) Projects that propose compensation for wetland acreage and/or functions are subject to State and Federal regulations. Compensatory mitigation for alterations to wetlands shall provide for no net loss of wetland functions and values and must be consistent with the mitigation plan requirements of Section 15.05.020(f). The following documents were developed to assist applicants in meeting the above requirements.

a. Compensatory mitigation for alterations to wetlands shall be used only for impacts that cannot be avoided or minimized and shall achieve equivalent or greater biologic functions. Compensatory mitigation plans shall be consistent with Wetland Mitigation in Washington State – Part 2: Developing Mitigation Plans--Version 1, (Ecology Publication #06-06-011b, Olympia, WA, March 2006 or as revised), and Selecting Wetland Mitigation Sites Using a Watershed Approach (Eastern Washington) (Publication #10-06-07, November 2010).

b. Wetland mitigation ratios shall be consistent with Table 06.020-3.

Table 06.020-3. Wetland Mitigation Ratios

Category and Type of Wetland	Creation or Re-establishment	Rehabilitation	Enhancement
Category I: Bog, Natural Heritage site	Not considered possible	Case by case	Case by case
Category I: Mature Forested	6:1	12:1	24:1
Category I: Based on functions	4:1	8:1	16:1
Category II	3:1	6:1	12:1
Category III	2:1	4:1	8:1
Category IV	1.5:1	3:1	6:1

c. To more fully protect functions and values, and as an alternative to the mitigation ratios in Table 06.020-3, 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 revised).

d. Impacts to wetland buffers shall be mitigated at a 1:1 ratio. Compensatory buffer mitigation shall replace those buffer functions lost from development.

(2) Wetland Mitigation Banks.

a. Credits from a wetland mitigation bank may be approved for use as compensation for unavoidable impacts to wetlands when:

1. The bank is certified under RCW Ch. 90.84 or WAC Ch. 173-700,
2. The SMP Administrator determines that the wetland mitigation bank can provide appropriate compensation for the authorized impacts, and
3. The proposed use of credits is consistent with the terms and conditions of the bank's certification.

b. Replacement ratios for projects using bank credits shall be consistent with replacement ratios specified in the bank's certification.

c. Credits from a certified wetland mitigation bank may be used to compensate for impacts located within the service area specified in the bank's certification. In some cases, bank service areas may include portions of more than one adjacent drainage basin for specific wetland functions.

(3) Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal rules, State policy on advance mitigation, and State water quality regulations. If the project with impacts would take place in shoreline jurisdiction, it must also be evaluated via the appropriate shoreline permit process.

(4) Monitoring. Mitigation monitoring shall be required for a period necessary to establish that performance standards have been met, but not for a period less than five years. If a scrub-shrub or forested vegetation community is proposed, monitoring may be required for ten years or more. The project mitigation plan shall include monitoring elements that ensure certainty of success for the project's natural resource values and functions. If the mitigation goals are not obtained within the initial five-year period, the applicant remains responsible for restoration of the natural resource values and functions until the mitigation goals agreed to in the mitigation plan are achieved.

06.030 Rivers and Creeks

(a) Buffer and building setback requirements. The minimum buffers for above ground development located in the vicinity of rivers and creeks are as follows:

Table 06.030 – 1. River and Creek Buffers

Environment Designation	Columbia River	Yakima River	Other Creeks
Urban Transition Area	Consistent with interlocal agreement to apply city SMP. If no agreement is in place: • Water-dependent: 0 • Water-related: 50 • Other: 50	Consistent with interlocal agreement to apply city SMP. If no agreement is in place: • Water-dependent: 0 • Water-related: 50 • Other: 50	Consistent with interlocal agreement to apply city SMP. If no agreement is in place: • Fish-bearing: 100 • Non-fish-bearing: 50

Rural Industrial	• Water-dependent: 0 • Water-related: 50 • Non water-oriented: 100	NA	Fish-bearing: 100 Non-fish-bearing: 50
Residential	50 buffer + 50 building setback	75 buffer + 25 building setback	Fish-bearing: 100 Non-fish-bearing: 50
Rural	• Water-dependent: 0 • Water-related: 50 • Other: 100	• Water-dependent: 0 • Water-related: 75 • Other: 100	Fish-bearing: 100 Non-fish-bearing: 50
Hanford	200	NA	Fish-bearing: 100 Non-fish-bearing: 50
Conservancy	• Water-dependent: 0 • Other water-oriented: see Section 15.06.030(e)(4) • Non water-oriented: 200	• Water-dependent: 0 • Other water-oriented: see Section 15.06.030(e)(4) • Non water-oriented: 150	Fish-bearing: 100 Non-fish-bearing: 50
Natural	200	NA	Fish-bearing: 100 Non-fish-bearing: 50

*All dimensions measured in feet horizontally upland of the ordinary high water mark.

(b) The introduction of any vegetation or wildlife which is not indigenous to the Central Basin region into any river or creek or its nearshore riparian area is prohibited unless authorized by a State of Washington or a federal license or permit. This provision does not apply to vegetation alterations to existing landscaped or agricultural areas.

(c) Alterations to buffers that occur incidental to construction of an approved use or structure upland of the buffer must be restored to the condition prior to the construction activity once construction is concluded.

(d) Use of river and creek buffers for surface water management activities other than retention/detention facilities, such as energy dissipators and associated pipes, may be allowed only if the applicant demonstrates that no practicable alternative exists.

(e) The following uses are allowed in river and creek buffers and building setbacks provided that mitigation sequencing (see Section 15.05.020(d)) is demonstrated and any adverse impacts to ecological functions are mitigated.

(1) Water-dependent uses. Consistent with the use allowances for each environment designation, water-dependent uses, modifications and activities may be located in shoreline buffers at the water's edge.

(2) Accessories to water-dependent uses. Uses, developments and activities accessory to water-dependent uses should be located outside any applicable standard or reduced shoreline buffer unless at least one of the following is met:

a. proximity to the water-dependent project elements is critical to the successful implementation of the facility's purpose and the elements are supportive of the water-dependent use and have no other utility (e.g., a road to a boat launch facility, facilities that support non-commercial aquaculture);

b. in parks or on other public lands where high-intensity recreational development is already legally established and whose use is primarily related to access to, enjoyment and use of the water, they do not conflict with or limit opportunities for other water-oriented uses; or

c. the applicant's lot/site has topographical constraints where no other location of the development is feasible (e.g., the water-dependent use or activity is located on a parcel entirely or substantially encumbered by the required buffer).

In these circumstances, uses and modifications accessory to water-dependent uses must be designed and located to minimize intrusion into the buffer. All other accessory uses, developments and activities proposed to be located in a shoreline buffer must obtain a Shoreline Variance unless otherwise allowed by other regulations in this Section or in this SMP.

(3) In the Residential environment, the shoreline building setback may contain lawn, landscaping, decks, patios and other alterations that are no taller than 36 inches in height. Minor non-permanent structures taller than 36 inches that are normal residential accessories, such as play structures, picnic tables and benches, or trellises, may also be located in the shoreline building setback. All alterations in shoreline jurisdiction, including the shoreline buffer and the building setback, must also comply with requirements of Section 15.05.030 (Shoreline Vegetation Conservation).

(4) Water-oriented public access and recreation facilities.

a. In recognition of the existing condition of current and planned public shoreline parks and recreation facilities located in the Conservancy environment designation, the following standards shall guide new development and redevelopment of water-oriented public access and recreation facilities in lieu of shoreline buffers. Applicants shall submit a management plan that addresses compliance with each of the following applicable standards and principles, and contains additional information listed in Subsection (4)b below. The County may review and condition the project to more fully implement the principles below.

Table 06.030 – 2. Water-Oriented Public Access and Recreation Facilities: Design and Management Standards in Lieu of Shoreline Buffers

Design Element	Design and Management Standards
i. Category of Use	The following use preferences apply in priority order: • Water-dependent uses located waterward, at or immediately upland of the OHWM • Water-related and/or water-enjoyment uses located upland of water-dependent uses. Water-related and water-enjoyment uses shall not displace existing or planned water-dependent uses. If water-dependent uses are not feasible, then water-related or water-enjoyment uses are allowed consistent with applicable performance standards. • Non water-oriented recreation uses located upland of water-oriented recreation uses. The preference is that Non water-oriented uses occupy existing structures upland of water-oriented recreation uses rather than be established in new structures. Where new Non water-oriented uses are proposed upland of water-oriented uses, but will not occupy existing structures, they shall avoid native and riparian vegetation consistent with Subsection iv below. • Accessory, Non water-oriented uses located upland of water-oriented uses. However, parking for those with disabilities, when no other location is feasible, may be located per “iii” below. • Existing primary Non water-oriented uses may only expand if they are located upland of water-oriented uses and if the expansion does not displace water-oriented uses. • Water-enjoyment recreational uses may be expanded. • Existing water-oriented uses may not be converted to a Non water-oriented use except when the existing water-oriented use is separated from the OHWM by another property.

Design Element	Design and Management Standards
ii. Impervious Surface and Stormwater Management	• New and expanded pollution-generating impervious surfaces (e.g., surfaces used predominantly by vehicles, such as parking areas, roads) must provide water quality treatment before discharging stormwater through use of oil-water separators, bioswales, or other approved technique. This provision does not apply to boat launches. • Treated runoff from pollution-generating impervious surfaces and runoff from non-pollution-generating impervious surfaces shall be infiltrated if feasible. • New or expanded pollution-generating impervious surfaces within 50 feet of the OHWM or within already disturbed areas shall be limited to those necessary to provide vehicle access to boat launches, to improve existing informal parking areas, to expand existing parking, or to provide ADA parking as outlined below under iii. Parking. • New or expanded trail systems shall avoid existing riparian areas and comply with vegetation management requirements below. Existing trail systems may only be expanded in response to increased demand and shall be expanded landward of existing trail where feasible. Parallel trails shall be placed at least 50 feet upland of the OHWM in the Conservancy environment, when feasible. Parallel portions of trails may be constructed closer to the aquatic area if the trail is located on or upland of previously disturbed rights-of-way, access and/or utility easements, and legally altered sites. Viewing platforms and crossings are allowed in buffers, provided they are also located to avoid significant vegetation removal.
iii. Parking	• New parking accessory to shoreline parks shall be at least 100 feet upland of the OHWM, except where a minimum number of parking spaces are provided closer than 100 feet to accommodate those with disabilities or where parking is provided on existing impervious surfaces. • Existing parking closer than 100 feet upland of the OHWM may only be expanded in response to increased demand. Expanded parking shall be expanded in the following order of preference, with 1) being the most preferred: 1) landward of existing parking and 2) laterally of the existing parking, if it is serving a previously existing authorized use and is located on existing impervious surface. Parking shall not be located closer than 50 feet upland of the OHWM unless the proposed expansion area is already an impervious surface or is necessary to accommodate those with disabilities.
iv. Vegetation Management	• New and expanded uses in shoreline jurisdiction shall be located to avoid and minimize intrusion into riparian areas, as well as avoid tree and shrub removal. • New and expanded uses in shoreline jurisdiction shall comply with Section 15.05.030, Shoreline Vegetation Conservation. • Landscape designs for new and modified recreation facilities in shoreline jurisdiction shall incorporate the following. ▪ Select species that are suitable to the local climate, having minimal demands for water, minimal vulnerability to pests, and minimal demands for fertilizers. Native species shall comprise 50 percent of the landscaped area, not counting lawn area. Redevelopment of lawn areas shall be no closer than 20 feet from the OHWM. Native grasses may be used within the first 20 feet landward of the OHWM. If lawn areas are not currently established within 50 feet of the OHWM, the existing riparian vegetation within 50 feet of the OHWM shall be maintained, unless a mitigation plan demonstrates improved ecological function.

Design Element	Design and Management Standards
	▪ Preserve existing soil and vegetation (especially trees) where possible. Amend disturbed soils with compost. Mulch existing and proposed landscapes regularly with wood chips, coarse bark, leaves or compost. ▪ Group plants by water need, use more efficient irrigation methods like drip and soakers under mulch, and design and maintain irrigation systems to reduce waste. ▪ Place vegetation to maximize the following benefits: – development or supplementation of a native vegetated wildlife corridor, – development or supplementation of riparian vegetation adjacent to the water's edge, – screening parking areas from views from the water or the park, and/or – discouragement of wildlife that may directly or indirectly interfere with park use or human health (e.g., geese), • While a specified buffer is not required for certain water-oriented recreational uses and developments in public access and recreation areas, recreational improvement projects shall place an emphasis on shoreline restoration/enhancement within 50 feet of the OHWM. This emphasis shall not require the removal of existing lawn areas, but should place an emphasis on incorporation of riparian plantings if the public access area is underutilized or public access would not be impaired by the plantings.
v. Chemical Applications	A lawn and landscape management strategy for any allowed uses in shoreline jurisdiction shall be developed that incorporates the following: • A site-specific plan for use of integrated pest management technique, if applicable. • A detailed plan identifying anticipated use of fertilizers, herbicides and pesticides, to include method of application that ensures these materials will not enter the water. Phosphorus-containing fertilizer treatments shall not be applied to turf or landscaping within 50 feet of the OHWM. Natural applications and hand removal are preferred over synthetic applications.
vi. Lighting	• Outdoor lighting fixtures and accent lighting must be shielded and aimed downward and shall be installed at the minimum height necessary. The shield must mask the direct horizontal surface of the light source. The light must be aimed to ensure that the illumination is only pointing downward onto the ground surface, with no escaping direct light permitted to contribute to light pollution by shining upward into the sky. • Outdoor lighting fixtures and accent lighting shall not directly illuminate the shoreline waterbody, unless it is a navigational light subject to state or federal regulations.
vii. Campgrounds	Proposed new campgrounds and their associated parking areas shall be a minimum of 50 feet from the OHWM, unless buffer averaging or reduction is applied.

b. Application requirements:

1. Drawings of existing park facilities, including a narrative that identifies area (sq. feet) and description of trails, parking, riparian vegetation, campsites, recreational facilities (ball parks, picnic table, grilling areas), upland vegetation and lawn areas.
2. Drawings of proposed park facilities, including a narrative that identifies area (sq. feet) and description of trails, parking, riparian vegetation, campsites, recreational facilities (ball parks, picnic table, grilling areas), upland vegetation and lawn areas.

3. Any increases in impervious surfaces (trail size, parking facilities, recreational facilities, etc.) shall include an explanation as part of the application that addresses the requirement for increased public facilities, what size facilities are needed by existing and projected park users, and the nearest locations of similar facilities.
4. Expansion of public/park facilities shall be accompanied by a mitigation plan that addresses the design elements and the design and management standards above, addresses any critical area impacts, addresses mitigation sequencing, and demonstrates no net loss of shoreline ecological functions.

(5) Shoreline residential access.

(a) A private access pathway constructed of pervious materials may be installed, a maximum of four (4) feet wide, through the shoreline buffer to the OHWM. Impervious materials may be used only as needed to comply with ADA requirements to construct a safe, tiered pathway down a slope. A railing may be installed on one edge of the pathway, a maximum of 36 inches tall and of open construction. Pathways to the shoreline should take the most direct route feasible consistent with any applicable ADA standards.

06.040 Critical Aquifer Recharge Areas

(a) Permitted Development. Developments are permitted when sited, designed, and operated in a manner which protects the functions and values of critical aquifer recharge/interchange areas and when such developments meet the requirements of this title.

(b) Site Analysis Required. An additional site analysis is required for the following types of activities if such activities have the potential to impact recharge/interchange areas:

(1) divisions of land;
(2) commercial, industrial, manufacturing, and multiple residential projects in excess of four (4) units; or
(3) projects or land use activities which process, stockpile, store, receive, transport, discharge, or produce any chemical or organic product or by-product which may contaminate ground or surface water, except where those projects have the primary purpose of water conservation.

(c) General Information Requirements for Unconfined Aquifers. The SMP Administrator may require some or all ofthe following information relative to any unconfined aquifer in order to conduct the site analysis:

(1) depth to groundwater;
(2) hydro-geological susceptibility to contamination and contamination loading potential;
(3) hydraulic conductivity and gradient on-site and for relevant adjacent land;
(4) soil permeability and contamination attenuation;
(5) a vadose zone analysis including permeability and attenuation properties;
(6) existing aquifer water quality analysis; and
(7) a summary of the proposed activity's potential effect on the water quality of any unconfined aquifer.

(d) General Information Requirements for Regulated Substances. The SMP Administrator may require any of the following where regulated substances are associated with a development which has potential to impact an aquifer:

(1) a description of operations and an identification of regulated substances associated with the project;

(2) a list of names and volumes of toxic or concentrated organic substances which will be used on the property;
(3) a list of all substances to be monitored;
(4) a detailed description of how substances are to be handled at the site;
(5) a description of the containment devices to be used to comply with the requirements of this chapter and other applicable state and federal requirements;
(6) a proposed "Regulated Substance Management Plan" or a "Site Management Plan";
(7) a description of the procedures for inspection and maintenance to assure the proper functioning of containment devices and systems;
(8) a site map showing the location of the facility and property boundaries and the locations within the facility where regulated substances in containers larger than five (5) gallons or forty (40) pounds are stored, unloaded, tested, used, and/or produced. The location of each containment device (system if there is one) shall also be shown.

(e) Protection of Water Quality.

(1) The contamination of groundwater by surface water use, discharge, or runoff shall be prevented.
(2) New developments, during both construction and operational phases, which generate surface drainage or runoff to ground or surface water shall:

a. assure that the use, handling, discharge, or disposal of regulated substances be accomplished in a manner which prevents their entry into ground or surface waters;
b. retain and clean, to current state discharge standards, runoff prior to its discharge into ground or surface water; and
c. ensure that runoff or stormwater drainage will not result in soil erosion or water quality degradation.

(3) Water quality standards for critical aquifer re-charge/interchange areas shall correspond with appropriate State and Federal standards.

06.050 Frequently Flooded Areas

Benton County Code 3.26 BCC (Flood Hazard Prevention, adopted 1987, revised 2010) and 15.~~30~~30 BCC (Frequently Flooded Areas, adopted 1994, revised 1997) are adopted by reference.

06.060 Geologically Hazardous Areas

(a) Applicability. This chapter applies to development activities within or adjacent to geologically hazardous areas in shoreline jurisdiction, including steep slopes, channel migration zones, or hillsides located in unincorporated Benton County. A steep slope is defined as one with a slope of fifteen (15) percent or more or where Critical Areas Overlay Maps indicate potentially hazardous conditions.
(b) Permitted Development. Development as set forth in this chapter is permitted when sited, designed, and operated in a manner which protects life, property, and the public welfare and when such development meets the requirements of this title.
(c) Prohibited Development. New development and creation of new lots that would cause foreseeable risk from geological conditions during the life of the development or would require structural shoreline stabilization over the life of the development (except as allowed under ~~BCC~~ Section 15.07.140) is prohibited.
(d) Minimum hazard setback requirements. For the purposes of this chapter, a minimum hazard setback for development within or adjacent to a Geologically Hazardous Area shall be the hazard setback recommended in the Site Analysis and/or by the Building Department.
(e) Site Analysis – General Requirements. A site analysis is required within geologically hazardous areas and within 200 feet of geologically hazardous areas. In order to complete an analysis, the SMP Administrator may require any of the following:

(1) the physical features of the site, including identification of surface and subsurface soil types, vegetation, streams, canyons, alluvial fans, and drainage ways. Topography shall be shown in five (5) foot contours unless prior approval is received for contours greater than five (5) feet;
(2) lot and parcel sizes, proposed lot coverage, type of dwelling units, square footage, dimensions, general type of construction and location of all structures, the existing and proposed utility systems including wells, sanitary sewers, electric, gas, and telephone, and other pertinent information requested by the SMP Administrator;
(3) the general location and different circumstances that might be expected to precipitate a geological event;
(4) the geologic, topographic, and hydrologic factors that might contribute to slope instability and the location of the site susceptible to instability;
(5) suitable buildable areas taking into consideration the long-term stability and maintenance of access roads and all other permanent infrastructure needs that would be affected by both the underlying geology and soils;
(6) recommended hazard setbacks to protect the geologic and topographic features;
(7) relying on existing data, areas with known or potential for seismic hazard;
(8) the rate and extent of any potential hazards such as erosion, sliding, slumping etc., must be analyzed in light of the potential to impact the public health, safety and welfare;
(9) the potential impact of residential landscape irrigation, drain-fields, upslope and off-site irrigation activities, storm water generation from upslope properties and proposed impervious surfaces on-site, and the influence of street conveyance on slope stability;
(10) proposed access, parking, and basic internal vehicle/pedestrian circulation system;
(11) the proposed system for retention and release (detention) of storm and surface water runoff generated from the site;
(12) general landscaping plan indicating the type and placement of materials used around all structures, parking areas and other cleared portions of the site;
(13) the relationship between the proposed development and existing and proposed adjacent areas;
(14) where development is proposed downslope of lands in, or with the potential for agriculture, analysis of the impact of surface and subsurface movement of waste irrigation water on the proposed development site shall be provided. The analysis shall include descriptions of the relevant soils, geologic, and hydrologic conditions of the project site and the upslope lands;
(15) for public buildings and facilities: identification of minimum design standards where seismic activity has the potential to occur.

(f) Required Plans.

(1) A site development and grading plan which meets the requirements of ~~BCC~~ Section 06.060(e) and accomplishes the following objectives shall be developed and submitted to the SMP Administrator for projects within 200 feet of geologically hazardous areas:

a. assure long term structural integrity of all development;
b. protect the public health, safety, and welfare by minimizing the potential for public expenditures for post-project geologic, soils, and hydrology hazards remediation;
c. avoid documented seismic and landslide hazard areas as locations for building construction, roads or utility systems where mitigation is not feasible;
d. eliminate as completely as practicable, any public or private exposure to landslide hazards or to abnormal maintenance or repair costs through the application of post construction slope stabilization and appropriately upgraded road construction specifications where appropriate;
e. minimize storm water runoff and soil erosion impacts;

f. control dust during all construction phases;
g. achieve maximum feasible retention, in their natural condition, of existing topographic features such as drainage swales, streams, slopes, structurally important ridge lines and rock outcroppings; and
h. minimize grading where it will adversely impact slope stability.

(2) All development and grading plans shall be approved by the appropriate County departments in order to ensure compliance with the current application of the County's Side Hill Development Standards.
(3) All development and grading plans shall adhere to the requirements of the Benton-Franklin Health District.
(4) In areas of steep slopes and natural drainages, when construction will extend into the rainy season and potentially cause eroded sediments to move offsite, the storm and surface water runoff retention and detention system must be completed before other phases of site development are begun so that it can serve as a sediment trap during the remainder of the construction.

06.070 Fish and Wildlife Conservation Areas

(a) Applicability. The provisions of this chapter shall apply within unincorporated Benton County to upland Priority Species and Priority Habitats of Priority Species. While wetlands, rivers and creeks, and their buffers may also be considered Fish and Wildlife Conservation Areas, other provisions of this SMP and Section 15.06 provide specific standards for study, protection and application of mitigation sequencing to those types of Fish and Wildlife Conservation Areas.
(b) Permitted Development. Developments adjacent to upland Priority Species or adjacent to or within Priority Habitats of Priority Species and their buffers are permitted when sited, designed, and operated in a manner which protects the functions and values of upland Priority Species and their Priority Habitats, and when such development meets the requirements of this title.
(c) Minimum Buffer Requirements. Buffers for upland Priority Species and Priority Habitats shall be determined by the SMP Administrator based upon Washington Department of Fish and Wildlife recommendations after consultation with the applicant, state, and where appropriate, federal agencies and the Yakama Nation.
(d) Site Analysis Required.

(1) Where a regulated development or use is proposed on a parcel containing a mapped upland Priority Species or wholly or partially within a mapped upland Priority Habitat, the parcel shall be surveyed to determine if the following are associated with the parcel:

a. federal and state listed endangered, threatened, sensitive, or candidate species; and
b. any listed plant or animal species on the Washington Department of Natural Resources Natural Heritage Program lists.

(2) A Critical Area Special Study shall be performed if the resources identified in ~~BCC~~ Section 15.06.070(d)(1) are found to be associated with the parcel. The following shall be identified:
a. the nature and extent of the species' primary association with the habitat area;
b. the relative density and species richness, breeding, habitat, seasonal range dynamics and movement corridors;
c. the relative tolerance of species to human activities;
d. the influence of the project, individually and cumulatively, on the wildlife and associated habitats;
e. mitigative measures for any project element that would potentially threaten baseline populations and reproduction rates over the long term; and
f. information about the presence of migratory species and any migratory patterns.

(e) General Standards for Habitat Management. The maintenance of sufficient habitat to support baseline populations for all species identified in BCC 15.06.070(d)(1) shall be the objective pursued through the application of flexible site planning and timing of construction, Best Management Practices, and habitat management programs.

Section 15.07 Use-Specific and Modification Regulations and Performance Standards

07.010 Agriculture

(a) For Shoreline purposes, Section 15.02 (Definitions), WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a)(ii) (Agriculture) shall determine the need for shoreline review for agricultural activities.

(b) The provisions of this SMP do not limit or require modification of agricultural activities on agricultural lands as of the date of adoption of the SMP. In determining whether lands meet the definition of agricultural activities, the Shoreline Administrator shall consider laws and rules included in Subsection (a) and information regarding typical agricultural practices for the subject agricultural use, current use taxation records, conservation easements, farm plans, and other relevant information. Examples of agricultural practices that could vary by the type of agriculture include but are not limited to: rotations of fields for grazing, cultivation, production, and harvests; animal breeding, feeding, or forage activities; type and frequency of maintenance, repair and replacement of agricultural facilities; and other typical practices.

(c) SMP provisions shall apply in the following cases:

(1) new agricultural activities on land not meeting the definition of agricultural land;
(2) expansion of agricultural activities on non-agricultural lands, or conversion of non-agricultural lands to agricultural activities;
(3) conversion of agricultural lands to other uses;
(4) other development on agricultural land that does not meet the definition of agricultural activities; and
(5) agricultural development and uses not specifically excluded by the SMA and WAC 173-26-020 (Definitions), and WAC 173-26-241(3)(a)(ii).

(d) Feed lots and stockyards are prohibited in shoreline jurisdiction.

(e) New agricultural activities and facilities subject to the SMP in Section 15.07.010(c) shall comply with water quality provisions of Section 15.05.040 and Shoreline Vegetation Conservation provisions in Section 15.05.030.

(f) Vegetative buffers consistent with Section 15.06.030 shall be maintained between the ordinary high-water mark and cultivated ground for purposes of erosion control and riparian vegetation protection, and shall apply to uses and activities subject to the SMP in Section 15.07.010(c).

(g) Diversion of water for agricultural purposes shall be consistent with federal and state water rights laws and rules.

(h) No equipment or material shall be abandoned or disposed of in shoreline jurisdiction.

(i) Development in support of agricultural uses shall be consistent with the environment designation intent and management policies, located and designed to assure no net loss of ecological functions, and shall not have a significant adverse impact on other shoreline resources and values.

07.020 Aquaculture

(a) Aquacultural facilities must be designed and located to avoid:

(1) The spreading of disease, especially to native aquatic life;
(2) Introducing new non-native species which cause significant ecological impacts;

(3) Significantly conflicting with navigation and other water-dependent uses;
(4) A net loss of ecological functions; or
(5) Significantly impacting the aesthetic qualities of the shoreline.

(b) Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, and commercial navigation. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Therefore, some latitude in the development of this use shall be given, while the potential impacts on existing uses and natural systems are recognized.
(c) Aquaculture structures and activities that do not require a waterside location must be located landward of the shoreline buffers required by this SMP.

07.030 Boating Facilities and Private Moorage Structures

(a) Applicability.

(1) This Section applies to all over- and in-water structures and uses that facilitate as their primary purpose the launching or mooring of vessels or serve some other water-dependent purpose.
(2) Uses and modifications covered in this Section include private residential docks (including community docks); docks for commercial, industrial, aquaculture, recreational or public access use; marinas; and boat launches.

(b) General regulations.

(1) New docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single-family residence is a water-dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this SMP.
(2) No single-use residential docks may be authorized unless the applicant can demonstrate that reasonable community dock options have been investigated and found infeasible.
(3) For all new residential development of two or more waterfront dwelling units or subdivisions or other divisions of land occurring after the effective date of this SMP, only community docks may be allowed.
(4) No more than one private, noncommercial dock is permitted per platted or subdivided shoreline lot or unplatted shoreline tract owned for residential or recreational purposes.
(5) Floating and other over-water homes, including liveaboards, are prohibited.
(6) Extended moorage on waters of the state without a lease or permission is prohibited except as allowed by applicable state regulations. When allowed per state regulations and this SMP, mitigation of any adverse impacts to navigation and public access is required.
(7) Overwater structure design, construction, and use must:

a. Minimize degradation of aquatic habitats.
b. Not impede any juvenile or adult salmonid life stage, including migration, rearing, and spawning.
c. Not enhance habitats used by potential salmonid predators (especially fishes and birds).
d. Be engineered or use proven methods to maximize human safety and minimize potential for flood-related detachment of the facility from shore.

(8) Consistent with requirements for mitigation sequencing, all boating facilities and private moorage structures must be the minimum size necessary and designed to avoid and then minimize potential adverse impacts. All unavoidable adverse impacts must be mitigated, and a mitigation plan submitted.

(c) General location regulations. New and expanded boating facilities and private moorage structures must be located to:

(1) Minimize hazards and obstructions to public navigation rights.
(2) Avoid blocking or obstructing lawfully existing or planned public shoreline access.
(3) Minimize the need for new or maintenance dredging.
(4) Eliminate the need for new shoreline stabilization, if feasible. Where the need for stabilization is unavoidable, only the minimum necessary shoreline stabilization to adequately protect facilities, users, and watercraft may be allowed.

(d) General materials regulations.

(1) Boating facilities and private moorage structures shall be built with materials that do not leach preservatives or other chemicals.
(2) No treated wood of any kind shall be used on any boating facilities and private moorage structures.
(3) No paint, stain, or preservative shall be applied to boating facilities and private moorage structures.

(e) General design and operation regulations.

(1) Piers and ramps.

a. To prevent damage to shallow-water habitat, piers and/or ramps shall extend at least 40 feet perpendicular from the OHWM on the Columbia River and as needed to reach acceptable float conditions on the Yakima River, unless determined to be impractical due to specific site considerations.
b. Piers and ramps shall be the minimum size necessary to achieve their intended purpose.
c. The bottom of both the pier or landward edge of the ramp shall be elevated at least 2 feet above the plane of OHWM.
d. Grating shall cover the entire pier and ramp for residential structures, and as much area as practicable for other structures. Open areas of grating shall be at least 50 percent, as rated by the manufacturer, unless determined to be infeasible due to specific site or project considerations.

(2) Floats.

a. Floats shall not be located in shallow-water habitat where they could ground or impede the passage or rearing of any salmonid life stage.
b. To prevent damage to shallow-water habitat, floats on the Columbia River shall be positioned at least 40 feet horizontally from the OHWM but no more than 100 feet from the OHWM, as measured from the landward-most edge of the float, unless determined to be impractical due to specific site considerations. Floats on the Yakima River must be located to maintain clearance of at least 18 inches between the riverbed and the bottom of the float between April 15 and July 15 in all years.
c. Grating shall cover the entire surface area of the float(s) not underlain by float tubs or other material that provides buoyancy. The open area of the grating shall be a minimum of 50 percent, as rated by the manufacturer, or as otherwise required by state or federal agencies during permit review unless determined to be infeasible due to specific site or project considerations.
d. Functional grating will cover no less than 50 percent of the float, or as otherwise required by state or federal agencies during permit review, unless determined to be infeasible due to specific site or project considerations.
e. Floating docks shall be designed or seasonally removed to prevent the dock from resting on the riverbed during periods of lower flow.
f. Flotation materials shall be permanently encapsulated to prevent breakup into small pieces and dispersal in water.

(3) No new skirting is allowed on any structure.
(4) Protective bumper material will be allowed along the outside edge of the float as long as the material does not extend below the bottom edge of the float frame or impede light penetration.
(5) Safety railings, if proposed, must meet International Building Code requirements and must be an open framework that does not unreasonably interfere with shoreline views.
(6) Boating facilities and private moorage structures must be marked with reflectors, or otherwise identified to prevent unnecessarily hazardous conditions for water surface users during the day or night.
(7) Exterior finish of all structures must be generally non-reflective, to reduce glare.
(8) New covered moorage is prohibited, except when necessary for operation of a water-dependent use at commercial, industrial, or transportation-related facilities.
(9) Shoreline armoring (i.e. bulkheads, riprap, and retaining walls) shall not occur in association with installation of the overwater structure, if feasible.
(10) Nothing shall be placed long term on the overwater structure that will reduce natural light penetration through the structure.
(11) Pilings.

a. New piling for residential docks shall not exceed 8 inches in diameter, except where larger pilings are required for safety or site-specific engineering reasons. New piling for other docks must be the smallest diameter necessary.
b. All pilings shall be fitted with devices to prevent perching by piscivorous (fish-eating) birds.

(f) General construction regulations.

(1) Construction of overwater structures shall be completed during allowed in-water work windows.
(2) Construction impacts shall be confined to the minimum area needed to complete the project.
(3) The boundaries of clearing limits associated with site access and construction shall be flagged to prevent ground disturbance of riparian vegetation, wetlands, and other sensitive sites. This action shall be completed before any significant alteration of the project area.
(4) All temporary erosion controls shall be in place and appropriately installed downslope of project activities until site restoration is complete.
(5) Any large wood, native vegetation, topsoil, and/or native channel material displaced by construction shall be stockpiled for use during site restoration.
(6) No existing habitat features (i.e., wood, substrate materials) shall be removed from the shoreland or aquatic environment without approval.
(7) If native vegetation is moved, damaged, or destroyed, it shall be replaced with a functionally equivalent native species during site restoration.
(8) Project construction shall cease under high flow conditions that could result in inundation of the project area, except for efforts to avoid or minimize resource damage.
(9) Temporary moorages are allowed for vessels used in the construction of boating facilities provided:
a. Upon termination of the project, the aquatic habitat in the affected area is returned to its pre-construction condition within one year.
b. Construction vessels may not ground or otherwise disturb substrates.
c. Temporary moorage is located to minimize shading of aquatic vegetation.

(g) Private residential dock (including community dock) regulations.

(1) No boat lifts or watercraft lifts of any type will be placed on, or in addition to, the overwater structure unless the applicant can demonstrate that the proposed boat lift meets the intent of the criteria to minimize structure, maximize light penetration, and maximize depth.

(2) No electricity shall be provided to, or on, the overwater structure.
(3) Piers and ramps shall be no more than 4 feet in width.
(4) Shoreline concrete anchors must be placed at least 10 feet landward from the OHWM, if feasible. Shoreline concrete anchors must be sized no larger than 4 feet wide by 4 feet long unless demonstrated insufficient. The maximum anchor height shall be only what is necessary to elevate the bottom of either the pier or landward edge of the ramp at least 2 feet above the plane of OHWM. Alternate anchoring methods may be allowed if approved in advance by WDFW for application on the Yakima River.
(5) Float components for private docks shall not exceed the dimensions of 8 feet by 20 feet, or an aggregate total of 160 square feet. Float components for community docks shall not exceed the dimensions of 8 feet by 40 feet, or an aggregate total of 320 square feet, for all float components.
(6) Piling and float anchors.

a. Pilings shall be spaced at least 18 feet apart on the same side of any component of the overwater structure. The pier/ramp and float are separate components.
b. Each overwater structure shall utilize no more than 4 piles total for the entire project. A combination of two piles and four helical anchors may be used in place of four piles.
c. Submerged float anchors will be constructed from concrete; and shall be horizontally compressed in form, by a factor of 5 or more, for a minimum profile above the stream bed (the horizontal length and width will be at least 5 times the vertical height).

(7) No in-water fill material (including uncured concrete or its by-products) will be allowed, with the exception of pilings and float anchors.

(h) Docks for commercial, industrial, aquaculture, recreational or public access use.

(1) The amounts of overwater cover, including length and width; the number of in-water structures; and the extent of any necessary shoreline stabilization or modification must be minimized.
(2) Accessory development may include, but is not limited to, parking, non-hazardous waste storage and treatment, stormwater management facilities, and utilities where these are necessary to support the water-oriented use. Non water-dependent accessory uses must be located outside of shoreline jurisdiction or outside of the shoreline buffer whenever possible.
(3) Garbage or litter receptacles must be provided and maintained by the operator at locations convenient to users.

(i) Marinas.

(1) No part of a marina may be wider than 8 feet, except that components up to 10 feet wide may be approved administratively if justified in documentation.
(2) New marinas must provide physical and/or visual public access for as many water-oriented recreational uses as possible, commensurate with the scale of the proposal.
(3) New marinas must provide adequate restroom and sewage disposal facilities.
(4) New or enlarged marinas must provide facilities and procedures for receiving, storing, dispensing, and disposing of oil or hazardous products, as well as a spill response plan.
(5) Marina operators must post all regulations pertaining to handling, disposal and reporting of waste, sewage, fuel, oil or toxic materials where all users may easily read them. Rules for spill prevention and response must also be posted on site.

(j) Boat launch ramps.

(1) New public, commercial, or industrial boat launch ramps may be approved only if they provide public access to waters that are not adequately served by existing access facilities, if use of existing facilities is documented to exceed the designed capacity, or the ramp is necessary to serve the water-oriented commercial or industrial use.
(2) New private boat launches not for commercial or industrial use are prohibited.
(3) New public or commercial boat launch facilities must provide adequate restroom facilities.
(4) Boat launch ramps must be located where there is adequate water mixing and flushing and where water depths are adequate to eliminate or minimize the need for dredging or filling. Boat launch ramps must be located to minimize the obstruction of currents, alteration of sediment transport, and the accumulation of drift logs and debris.

(k) Replacement of existing boating facilities and private moorage structures. If any of the following are proposed during a five-year period, the project is considered a new facility and must comply with applicable standards for new facilities.

(1) Replacement of the entire facility.
(2) Replacement of 75 percent or more of support piles.
(3) Replacement of 75 percent or more of a boat launch, by area.

(l) Modification or enlargement of existing boating facilities and private moorage structures.

(1) Applicants must demonstrate that there is a need for modification or enlargement due to increased or changed use or demand, safety concerns, or inadequate depth of water.
(2) Enlarged portions of existing boating facilities and private moorage structures must comply with applicable standards for new facilities.

(m) Repair of existing boating facilities and private moorage structures.

(1) Repairs to existing legally established boating facilities and private moorage structures are permitted consistent with all other applicable codes and regulations.
(2) All repairs must utilize any material standards specified for new facilities.

(n) Mitigation.

(1) Consistent with mitigation sequencing, new or expanded boating facilities and private moorage structures shall be designed to avoid and then minimize impacts, prior to pursuing mitigation.
(2) Mitigation proposals must provide impact mitigation at a minimum one-to-one ratio, by area, using one or more of the potential mitigation measures listed below. The ratio should be increased if the measure will take more than one year to provide equivalent function or if the measure does not have a high success rate. Applicants should consult with other permit agencies, such as Washington Department of Fish and Wildlife and/or U.S. Army Corps of Engineers, for additional specific mitigation requirements.

(3) For all new or expanded boating facilities and private moorage structures, appropriate mitigation may include one or more of the following measures. In-kind measures are preferred over out-of-kind measures when consistent with the objective of compensating for adverse impacts to ecological function. Mitigation may not include measures that are already required by regulations.

a. Removal of any legal existing over- or in-water structures that are not the subject of the application.
b. Replacement of areas of existing solid over-water cover with grated material or use of grating on altered structures.
c. Planting of native vegetation along the shoreline immediately landward of the OHWM consisting of a density and composition of trees and shrubs typically found in undisturbed areas adjacent to the subject waterbody.
d. Removal or ecological improvement of hardened shoreline. Improvement may consist of softening the face and toe of the hardened shoreline with soil, gravel and/or cobbles, and/or incorporating vegetation or large woody debris.
e. Removal of man-made debris waterward of the OHWM.
f. Placement of large woody material if consistent with local, state and federal regulations.
g. Participation in an approved mitigation program.

(o) Submittal requirements.

(1) For all new or expanded boating facilities and private moorage structures, applicants must provide:

a. An assessment of potential impacts to existing ecological processes, including but not limited to sediment transport, hydrologic patterns, and vegetation disturbance.
b. A mitigation plan for unavoidable adverse impacts to ecological functions or processes, if applicable.

(2) For all new or expanded boating or private moorage facilities other than private residential moorage facilities and commercial or industrial structures, applicants must additionally provide an assessment of need and demand. At a minimum, the assessment shall include the following:

a. Existing approved facilities, or pending applications, within the service range of the proposed new facility and relevant characteristics of those facilities, such as level of use and condition.
b. The expected service population and relevant characteristics of the population, including any characteristics that justify specific design elements of the proposed facility.
c. An assessment of existing water-dependent uses in the vicinity and potential impacts to those uses, and a description of proposed mitigation measures, if applicable.

07.040 Breakwaters, Jetties, Groins, and Weirs

(a) New, expanded or replacement structures shall only be allowed if it can be demonstrated that they will not result in a net loss of shoreline ecological functions and that they support water-dependent uses, public access, shoreline stabilization, or other specific public purpose.
(b) Breakwaters, jetties, and groins shall be limited to the minimum size necessary.
(c) Breakwaters, jetties, and groins must be designed to protect critical areas, and shall implement mitigation sequencing to achieve no net loss of ecological functions.
(d) Proposed designs for new or expanded structures shall be designed by qualified professionals, including both an engineer and a biologist.

07.050 Commercial Development

(a) Commercial development in shoreline areas shall be designed, located, and constructed to achieve no net loss of ecological functions.

(b) Preference shall be given to water-dependent commercial uses over non-water-dependent commercial uses. Water-related uses and water-enjoyment uses shall be given priority over Non water-oriented uses.

(c) Commercial development that is not water-dependent shall not be allowed over water except where it is located within the same building and is accessory to a water-dependent use.

(d) Non-water-oriented commercial development shall not be allowed unless:

(1) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to provision of public access or ecological restoration; or

(2) Navigability is severely limited at the proposed site, and the commercial use provides a significant public benefit with respect to provision of public access or ecological restoration.

(e) In areas of the shoreline designated for commercial uses, non-water-oriented commercial uses may be allowed on sites physically separated from the shoreline by another property or public right-of-way.

(f) New commercial developments shall provide public access to the shorelines, subject to Section 15.05.050, Public Access.

07.060 Dredging and Dredge Material Disposal

(a) As regulated in this SMP, dredging is the removal of bed material from below the OHWM or wetlands using other than unpowered, hand-held tools for one of the allowed dredging activities listed in Section (d) below. This Section is not intended to cover other removals of bed material waterward of the OHWM or wetlands that are incidental to the construction of an otherwise authorized use or modification (e.g. shoreline crossings, bulkhead replacements). These in-water substrate modifications should be conducted pursuant to applicable general and specific use and modification regulations of this SMP.

(b) New development must be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging.

(c) Dredging and dredge material disposal must be done in a manner that avoids or minimizes significant ecological impacts. Impacts that cannot be avoided must be mitigated in a manner that assures no net loss of shoreline ecological functions.

(d) Dredging may only be permitted for the following activities:

(1) Development of new or expanded wet moorages, harbors, ports or water-dependent industries of economic importance to the region only when there are no feasible alternatives or other alternatives may have a greater ecological impact.

(2) Development of essential public facilities when there are no feasible alternatives.

(3) Maintenance of irrigation reservoirs, drains, canals, or ditches for agricultural purposes.

(4) Restoration or enhancement of shoreline ecological functions and processes benefiting water quality and/or fish and wildlife habitat.

(5) Trenching to allow the installation of necessary underground utilities if no alternative, including boring, is feasible; impacts to fish and wildlife habitat are avoided to the maximum extent possible; and the installation does not alter the natural rate, extent, or opportunity of channel migration.

(6) Establishing, expanding, relocating or reconfiguring navigation channels where necessary to assure safe and efficient accommodation of existing navigational uses.

(7) Maintenance dredging of established navigation channels and basins when restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

(e) Dredging for the primary purpose of obtaining fill material is prohibited, except when the material is necessary for the restoration of ecological functions. The site where the fill is to be placed must be located waterward or the OHWM. The project must be either associated with a Model Toxics Control Act or Comprehensive Environmental Response, Compensation, and Liability Act habitat restoration project or, if approved through a Shoreline Conditional Use Permit, any other significant habitat enhancement project.

(f) Dredge material disposal within shoreline jurisdiction is permitted under the following conditions:

(1) Shoreline ecological functions and processes will be preserved, restored or enhanced, including protection of surface and groundwater; and
(2) Erosion, sedimentation, floodwaters or runoff will not increase adverse impacts to shoreline ecological functions and processes or property.

(g) Dredge material disposal in open waters may be approved only when authorized by applicable state and federal agencies, and when one of the following conditions apply:

(1) Land disposal is infeasible, less consistent with this SMP, or prohibited by law.
(2) Nearshore disposal as part of a program to restore or enhance shoreline ecological functions and processes is not feasible.

(h) All applications for dredging or dredge material disposal shall include the following information, in addition to other application requirements:

(1) A description of the purpose of the proposed dredging activities.
(2) A site plan outlining the perimeter of the area proposed to be dredged and the dredge material disposal area, if applicable.
(3) A description of proposed dredging operations, including, but not limited to:

a. The method of removal.
b. The length of time required.
c. The quantity of material to be initially removed.
d. The frequency and quantity of projected maintenance dredging.

(4) A description of proposed dredge material disposal, including, but not limited to:

a. Size and capacity of disposal site.
b. Means of transportation to the disposal site.
c. Future use of the site and conformance with land use policies and regulations, if applicable.

(5) Plans for the protection and restoration of the shoreline environment during and after dredging operations.
(6) An assessment of potential impacts to ecological functions or processes from the proposal.
(7) A mitigation plan to address identified impacts, if necessary.

07.070 Fill

(a) All fills shall be located, designed and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. Any adverse impacts to shoreline ecological functions must be mitigated.
(b) Fills in wetlands, floodways, channel migration zones or waterward of the OHWM may be allowed only when necessary to support one or more of the following:

(1) Water-dependent uses.
(2) Public access.
(3) Cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan.
(4) Disposal of dredged material considered suitable under, and conducted in accordance with, the Dredged Material Management Program of the Department of Natural Resources and/or the Dredged Material Management Office of the U.S. Army Corps of Engineers.
(5) Expansion or alteration of transportation facilities of statewide significance currently located on the shoreline where alternatives to fill are infeasible.

(6) Ecological restoration or enhancement when consistent with an approved restoration plan.
(7) Maintenance or installation of flood hazard reduction measures consistent with a comprehensive flood hazard management plan and this SMP.
(8) Protection of cultural resources when fill is the most feasible method to avoid continued degradation, disturbance or erosion of a site. Such fills must be coordinated with any affected Indian tribes.

(c) Upland fills not located within wetlands, floodways, or channel migration zones may be allowed provided they are:

(1) Part of an allowed shoreline use or modification, or necessary to provide protection to cultural resources.
(2) Located outside applicable buffers, unless specifically allowed in buffers.

(d) All fills, except fills for the purpose of shoreline restoration, must be designed:

(1) To be the minimum size necessary to implement the allowed use or modification.
(2) To fit the topography so that minimum alterations of natural conditions will be necessary.
(3) To not adversely affect hydrologic conditions or increase the risk of slope failure, if applicable.

(e) Unless site characteristics dictate otherwise, fill material within surface waters or wetlands shall be sand, gravel, rock, or other clean material with a minimum potential to degrade water quality and shall be obtained from a state-authorized source.
(f) A temporary erosion and sediment control (TESC) plan, including BMPs, consistent with the latest edition of the Benton County Hydrology Manual or approved equivalent, shall be provided for all proposed fill activities. Disturbed areas shall be immediately protected from erosion using mulches, hydroseed, or similar methods, and revegetated, as applicable.

07.080 Industry

(a) Over-water construction associated with industrial development that is not water-dependent shall not be permitted. Docks, piers, and boating facilities necessary for operation of ports and water-related or water-dependent uses shall be permitted in accordance with the provisions of this SMP.
(b) Industrial and port development shall be located, designed, constructed, and operated in a manner that minimizes impacts to the shoreline, provides for no-net-loss of shoreline ecological function, and avoids unnecessary interference with shoreline use by adjacent property owners.
(c) In the review of shoreline developments, the County shall preference first to water-dependent uses, then to water-oriented industrial uses.
(d) Non-water-related industrial development shall be prohibited in the shoreline environment, except when:

(1) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to public access or ecological restoration; or
(2) Water navigability is severely limited, and the industrial use provides a significant public benefit with respect to public access or ecological restoration.

(e) Non water-oriented industrial uses may be allowed in shoreline jurisdiction on sites that are physically separated from the shoreline by: 1) another property, 2) public right-of-way, or 3) a levee system maintained by or under license from the federal government, State of Washington, or a local government.
(f) Industrial and port facilities proposed in areas of the shoreline already characterized by industrial or port development shall be given priority over such facilities proposed in shoreline areas not currently developed for industrial or port uses.
(g) In the consideration of shoreline environment designation amendments, and in the review of shoreline permits, the County shall encourage Industrial uses and redevelopment to locate where environmental cleanup and restoration can be accomplished.

(h) New industrial developments shall provide public access to the shorelines, subject to Section 15.05.050, Public Access; exceptions include safety or operational considerations, or other significant impediments as described in Section 15.05.050, Public Access.

07.090 In-Stream Structures

(a) In-stream structures must provide for the protection and preservation of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, priority habitats and species, other wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas.
(b) New in-stream structures shall not interfere with existing water-dependent uses, including recreation.
(c) In-water structures shall not be a safety hazard or obstruct water navigation.
(d) In-stream structures shall be designed by a qualified professional.
(e) Natural in-water features, such as snags, uprooted trees, or stumps, shall be left in place unless it can be demonstrated that they are actually causing bank erosion or higher flood stages or pose a hazard to navigation or human safety.

07.100 Mining

(a) All mining proposals in shoreline jurisdiction must demonstrate that the mining is dependent on a shoreline location by evaluating geologic factors such as the distribution and availability of mineral resources in the County, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors.
(b) Mining proposals shall be consistent with the Washington Department of Natural Resources Surface Mine Reclamation standards (WAC 332-18, RCW 78.44).
(c) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Meeting the no net loss of ecological functions standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation.
(d) Mining waterward of the OHWM of rivers and streams will not be allowed unless:

    (1) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the system as a whole;
    (2) the mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.
    (3) Determinations required by the above requirements must be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (RCW 43.21C) and the SEPA rules (WAC 197-11).
    (4) In considering renewal, extension, or reauthorization of other mining operations waterward of the OHWM in locations where they have previously been conducted, the County must require compliance with this Subsection to the extent that no such review has previously been conducted. Where there has been prior review, the County must review previous determinations comparable to the requirements of this Section to assure compliance with this Subsection under current site conditions.

(e) The proposed subsequent use of mined property must be consistent with the environment designation in which the property is located, and the reclamation of disturbed shoreline areas must provide appropriate ecological functions consistent with the setting.

07.110 Recreational Development

The following provisions apply to any development, construction, or use of land or water for recreational purposes within Shoreline jurisdiction, whether public or commercial.

(a) Recreational development shall demonstrate achievement of no-net-loss of ecological functions.
(b) Recreational activities must be compatible with existing or proposed uses in the area and must be consistent with County development standards regarding parking, traffic, noise, building location and size, and others.
(c) The location, design, and operation of recreational facilities shall be consistent with the purpose of the environmental designation.
(d) Recreational uses and facilities located within shoreline jurisdiction shall include features that relate to access, enjoyment and use of the water and shorelines of the state. Access to recreational areas should emphasize both consolidated park or open space areas and trail access.
(e) Commercial components of the use that are not explicitly related to the recreational operation must also conform to the Commercial use standards of Section 15.07.050, Commercial Development.

07.120 Residential Development

(a) Residential development shall be consistent with applicable environment designations and standards and comply with all applicable subdivision, critical area, and zoning regulations.
(b) Residential development shall include facilities for water supply, wastewater, stormwater, solid waste, access, utilities and other support facilities in conformance with County standards and which do not result in harmful effects on the shoreline or waters.
(c) Applications for new shoreline residences shall ensure that shoreline stabilization and flood control structures are not necessary to protect proposed residences.
(d) New residential developments of five or more units shall provide public access to the shorelines, subject to Section 15.05.050, Public Access.
(e) Parking areas shall be located upland of the uses they serve.
(f) Residential development shall be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses.
(g) Residential development shall be designed, configured and developed in a manner that assures that no net loss of ecological functions results from division of land at full build-out of all lots and throughout all phases of development.
(h) Single-family residences are considered a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment.
(i) In the Natural environment, subdivision of property is not allowed if it will require significant vegetation removal or shoreline modification that adversely impacts ecological functions.
(j) New floating residences and over-water residential structures shall be prohibited in shoreline jurisdiction.

07.130 Shoreline Habitat and Natural Systems Enhancement Projects

(a) Applicability. Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring or enhancing habitat for priority species in shorelines. Such projects may include shoreline modification actions such as modification of vegetation, removal of non-native or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. This Section does not apply to mitigation.

(b) Shoreline restoration and enhancement projects must be designed using the best available scientific and technical information and implemented using best management practices.
(c) All shoreline restoration and enhancement projects must protect the integrity of adjacent natural resources, including aquatic habitats and water quality.
(d) Shoreline restoration and enhancement shall not significantly interfere with the normal public use of the navigable waters of the state without appropriate mitigation.
(e) Long-term maintenance and monitoring shall be included in restoration or enhancement proposals.
(f) Relief for OHWM shifts. Applicants seeking to perform restoration projects are advised to work with the County to assess whether and how the proposed project is allowed relief under RCW 90.58.580, in the event that the project shifts the OHWM landward.

07.140 Shoreline Stabilization

(a) New development must be located and designed to avoid the need for future shoreline stabilization, if feasible.

(1) Land subdivisions must be designed based on a geotechnical report to assure that future development of the created lots will not require shore stabilization for reasonable development to occur.
(2) New development adjacent to steep slopes or bluffs must be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated in a geotechnical report.

(b) New development that would require shoreline stabilization that would cause significant impacts to adjacent or down-current properties and shoreline areas is prohibited.
(c) All proposals for shoreline stabilization structures, both individually and cumulatively, must not result in a net loss of ecological functions, and must be the minimum size necessary. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
(d) New or enlarged structural shoreline stabilization measures shall not be allowed, except as follows

(1) To protect an existing primary structure, including residences, when conclusive evidence, documented by a geotechnical analysis, is provided that the structure is in danger from shoreline erosion caused by currents or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis must evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering hard or soft structural shoreline stabilization.
(2) In support of new Non water-dependent development, including single-family residences, when all of the conditions below apply:

a. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
b. Nonstructural measures, such as placing the development farther from the shoreline, reducing the size or scope of the proposal, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as currents or waves.

(3) In support of water-dependent development when all of the conditions below apply:

a. The erosion is not being caused by upland conditions, such as loss of vegetation and drainage.
b. Nonstructural measures, such as planting vegetation, or installing on-sitedrainage improvements, are not feasible over time or sufficient.

c. The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report.

(4) To protect projects for the restoration of ecological functions or for hazardous substance remediation projects pursuant to Chapter 70.105D RCW when nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient to adequately address erosion causes or impacts.

(e) New hard structural shoreline stabilization measures shall not be authorized, except when a report confirms that that there is a significant possibility that a primary structure will be damaged within three years as a result of shoreline erosion in the absence of such hard structural shoreline stabilization measures, or where waiting until the need is immediate results in the loss of opportunity to use measures that would avoid impacts on ecological functions. Where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

(f) An existing shoreline stabilization structure, hard or soft, may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents or waves. While replacement of shoreline stabilization structures may meet the criteria for exemption from a Shoreline Substantial Development Permit, such activity is not exempt from the policies and regulations of this SMP.

(1) For purposes of this Section, "replacement" means the construction of new structure to perform a shoreline stabilization function of existing structure that can no longer adequately serve its purpose. Any additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.

(2) Replacement shall be regulated as a new shoreline stabilization measure, except for the requirement to prepare a geotechnical analysis. A geotechnical analysis is not required for replacements of existing hard or soft structural shoreline stabilization with a similar or softer measure if the applicant demonstrates need to protect principal uses or structures from erosion caused by waves or other natural processes operating at or waterward of the OHWM.

(3) Replacement hard structural shoreline stabilization measures shall not encroach waterward of the OHWM or waterward of the existing shoreline stabilization measure unless the residence was occupied prior to January 1, 1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. All other replacement hard structural shoreline stabilization measures shall be located at or landward of the existing shoreline stabilization structure.

(4) Hard and soft shoreline stabilization measures may allow some fill waterward of the OHWM to provide enhancement of shoreline ecological functions through creation of nearshore shallow-water habitat and shoreline rearing habitat for salmonids.

(g) Repair and maintenance of existing shoreline stabilization measures may be allowed, subject to the following standards. While repair and maintenance of shoreline stabilization structures may meet the criteria for exemption from a Shoreline Substantial Development Permit, such activity is not exempt from the policies and regulations of this SMP.

(1) Repair and maintenance includes modifications to an existing shoreline stabilization measure that are designed to ensure the continued function of the measure by preventing failure of any part. Limitations on repair and maintenance include:

(2) If within a three-year time period, more than 50 percent of the length of an existing structure is removed, including its footing or bottom course of rock, prior to placement of new stabilization materials, such work will not be considered repair and maintenance and shall be considered replacement. Work that only involves the removal of material above the footing or bottom course of rock does not constitute replacement.

(3) Any additions to or increases in the size of existing shoreline stabilization measures shall be considered new structures.

(4) The placement of a new shoreline stabilization structure landward of a failing shoreline stabilization structure shall be considered a new structure, not maintenance or repair.

(5) Areas of temporary disturbance within the shoreline buffer shall be expeditiously restored to their pre-project condition or better.

(h) Structural shoreline stabilization design and construction standards:

(1) Structural shoreline stabilization measures shall not extend waterward more than the minimum amount necessary to achieve effective stabilization, except for those elements that enhance shoreline ecological functions and minimize impacts.

(2) Stairs or other water access measures may be incorporated into shoreline stabilization measures, but shall not extend waterward of the measure or the OHWM.

(3) All structural shoreline stabilization measures must minimize and mitigate any adverse impacts to ecological functions resulting from short-term construction activities. Techniques may include compliance with timing restrictions, use of best management practices, and stabilization of exposed soils following construction.

(i) In addition to other submittal requirements, the applicant shall submit the following as part of a request to construct a new, enlarged, or replacement shoreline stabilization measure:

(1) For a new or enlarged hard or soft structural shoreline stabilization measure, a geotechnical report prepared by a qualified professional with a Washington state engineering license. The report shall include the following:

a. An assessment of the necessity for structural shoreline stabilization by estimating time frames and rates of erosion and reporting on the urgency associated with the specific situation.

b. An assessment of the cause of erosion, looking at processes occurring both waterward and landward of the OHWM, and documentation of the OHWM field determination.

c. An assessment of alternative measures to shoreline stabilization.

d. Where structural shoreline stabilization is determined to be necessary, the assessment must evaluate the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.

e. Design recommendations for minimum sizing of hard structural or soft structural shoreline stabilization materials, including gravel and cobble beach substrates necessary to dissipate wave energy, eliminate scour, and provide long-term shoreline stability.

(2) For replacements of existing hard structural shoreline stabilization measures with a similar measure, the applicant shall submit a written narrative providing a demonstration of need. The narrative must be prepared by a qualified professional. The demonstration of need shall consist of the following:

a. An assessment of the necessity for continued structural shoreline stabilization, considering site-specific conditions such as water depth, orientation of the shoreline, wave fetch or flow velocities, and location of the nearest primary structure.

b. An assessment of erosion potential resulting from the action of waves or other natural processes operating at or waterward of the OHWM in the absence of the hard-structural shoreline stabilization, and documentation of the OHWM field determination.
c. An assessment of alternative measures to shoreline stabilization.
d. An assessment of the feasibility of using soft shoreline stabilization measures in lieu of hard structural shoreline stabilization measures.
e. Design recommendations for minimizing impacts of any necessary hard structural shoreline stabilization.
f. The demonstration of need may be waived when an existing hard structural shoreline stabilization measure is proposed to be repaired or replaced using soft structural shoreline stabilization measures, resulting in significant restoration of shoreline ecological functions or processes.

(3) For all structural shoreline stabilization measures, including soft structural shoreline stabilization, detailed construction plans, including, but not limited to, the following:

a. Plan and cross-section views of the existing and proposed shoreline configuration, showing accurate existing and proposed topography and OHWMs.
b. Detailed construction sequence and specifications for all materials, including gravels, cobbles, boulders, logs, and vegetation.

07.150 Transportation

This Section addresses all forms of transportation including systems for pedestrian, bicycle, and public transportation as well as roads, railroads, and parking.

(a) Where other options are available and feasible, new roads, road expansions or railroads shall not be built within shoreline jurisdiction. If subdivisions are being proposed, new road placement shall be evaluated at the time of the plat application, or site development planning.
(b) When railroads, roads or road expansions are unavoidable in the shoreline jurisdiction, proposed transportation facilities shall be planned, located, and designed to achieve the following:

(1) Mitigate possible adverse effects on unique or fragile shoreline features;
(2) Maintain no net loss of shoreline ecological functions;
(3) Avoid adverse impacts on existing or planned water-dependent uses; and
(4) Set back from the OHWM to the maximum feasible to allow for a usable shoreline area for vegetation conservation and planned shoreline uses unless infeasible, standards for ADA accessibility and functionality cannot be met, or the cost is disproportionate to the cost of the proposal.
(5) Be consistent with critical areas regulations in Section 15.06.

(c) Public roads within shoreline jurisdiction shall, where possible, provide and maintain visual access to scenic vistas. Visual access may include, but is not limited to, turn-outs, rest areas, and picnic areas.
(d) Shoreline crossings and culverts shall be designed to mitigate impact to riparian and aquatic habitat and shall allow for fish passage. Crossings shall occur as near to perpendicular with the waterbody as possible, unless an alternate path would minimize disturbance of native vegetation or result in avoidance of other critical areas such as wetlands.
(e) Crossings that are to be used solely for access to private property shall be designed, located, and constructed to provide access to more than one lot or parcel of property, where feasible, to minimize the number of crossings.
(f) The provisions of Section 15.06.050, Frequently Flooded Areas shall be addressed in the design of transportation facilities.

(g) Transportation proposals shall be consistent with circulation system plans for roads, railroads, pedestrian, bicycle, and public transportation. The SMP Administrator shall condition transportation proposals to be consistent with applicable county, city, state, or federal plans and construction standards, as appropriate.

(h) Public access standards shall be met in Section 15.05.050.

(i) Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use and when minimizing environmental and visual impacts. For the purposes of this Section, authorized means a use or activity included in the use matrix in Section 15.04.110 and associated definitions in Section 15.02. New or expanded parking areas shall:

(1) Be sited outside of shoreline jurisdiction unless no feasible alternative location exists, for example where a property does not extend outside jurisdiction;

(2) Be planted or landscaped to provide a visual and noise buffer for adjoining dissimilar uses or scenic areas; and

(3) Observe critical area and shoreline buffers.

(j) If an applicant proposes to pave a roadway or parking area, the proposal shall comply with applicable water quality, stormwater, landscaping, and other applicable requirements of this SMP and the Benton County Code.

(k) A driveway for an individual single-family home is considered a residential appurtenance and is considered part of the primary use, and subject to Section 15.07.120. Private driveways or private roads serving more than one home are subject to the standards of Section 15.07.150.

(l) When a new or expanded roadway or new or expanded parking facility is proposed, the County may condition the proposal to provide a maintenance plan that promotes best management practices to achieve no-net-loss of shoreline ecological function. For example, maintenance standards may include restrictions on the use of herbicides, hazardous substances, sealants or other liquid oily substances, or de-icing practices adjacent to shoreline buffers or critical areas and their buffers.

(m) Pursuant to RCW 47.01.485, the County permit review time shall have a target of 90 days for projects on a state highway.

07.160 Utilities

(a) Utility projects within shoreline jurisdiction shall be designed to achieve no-net-loss of shoreline ecological function.

(b) If an underwater location is necessary, the design, installation and operation of utilities shall minimize adverse ecological impacts.

(c) Where utility corridors must cross shoreline jurisdiction, such crossings shall be designed to take the shortest, most direct route feasible, unless such a route would result in loss of ecological function, disrupt public access to the shoreline, or obstruct visual access to the shoreline.

(d) Utility projects within shoreline jurisdiction shall be located within existing transportation or utility corridors or existing cleared areas to the greatest extent feasible.

(e) Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities that are non-water-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.

(f) Upon completion of utility system installation, and any maintenance project, the disturbed area shall be regraded to compatibility with the natural terrain and replanted to prevent erosion and provide appropriate vegetative cover.

(g) The presence of existing utilities shall not justify more intense development. Rather the development shall be consistent with the County Comprehensive Plan, zoning code, and this SMP, and shall be supported by adequate utilities.

Section 15.08 Nonconforming Uses, Structures, and Lots

Nonconforming uses or developments are shoreline uses or development which were lawfully constructed or established prior to the effective date of this Master Program, or approved amendments to the Master Program, but which do not conform to present regulations or standards of the Master Program. The intent of this chapter is to provide regulations regarding nonconforming uses, structures, and lots as well as to establish residences as pre-existing legal uses, conforming to the Master Program as allowed by the SMA.

08.010 Non-Conforming Uses and Structures: Continuance and Discontinuance

(a) Lots, structures, and uses that were legally established prior to adoption of this Master Program or that were in compliance with the Master Program at the time of initial establishment but, due to revision or amendment of the Master Program, have become noncompliant are nonconforming uses that may continue, without regard to ownership changes, so long as in compliance with this chapter. A use of property that is unlawful under other local, state, or federal laws shall not be deemed a nonconforming use.

(b) Any use which existed prior to adoption of this Master Program or applicability of this Master Program to the property and which is not listed as a permitted use shall be considered a nonconforming use.

(c) If a nonconforming use is replaced by a conforming use for any length of time, use of the property shall not revert to the nonconforming use. The mere presence of a structure shall not constitute the continuance of a nonconforming use. When a nonconforming use is discontinued for a period of one (1) year or more without replacement by a conforming use, legal conforming use status expires and further use of the structure or lot must be in compliance with the provisions of this Master Program.

08.020 Alteration, Expansion, or Restoration of Nonconforming Uses and Structures

Alteration, expansion, or restoration of nonconforming structures and uses are not allowed except as set forth in this Subsection.

(a) Single Family Dwelling Units. See ~~BCC~~ Section 15.08.040.

(b) Other Structures or Uses – Legally Required Alterations or Expansions. Alteration or expansion of a nonconforming use or structure is allowed if necessary, to accommodate handicapped accessibility requirements, fire code, or other life safety related requirements mandated by local, state, or federal law.

(c) Other Structures or Uses – Dimensional Nonconformities. Legally established structures used for a conforming use but which are nonconforming with regard to setbacks, buffers, or yards; area; bulk; height or density may be maintained and repaired and may be enlarged or expanded, provided that said enlargement does not increase the extent of nonconformity by further encroaching upon or extending into areas where construction or use would not be allowed for new development or uses. For example, vertical, lateral or anterior expansions that do not intrude into a required buffer and which are consistent with the maximum height of this SMP and underlying zoning may be allowed.

(d) Structures Subject to Variances. A structure for which a variance has been issued shall be considered a legal nonconforming structure, and the requirements of this Section shall apply as they as they apply to pre-existing nonconformities.

(e) Movement of a Structure. A nonconforming structure which is moved any distance must be brought into conformance with this Title and the SMA.

(f) Other Non-conforming Structures. Except as set forth above, nonconforming structures may not be altered or expanded. Such other structures may be restored if less than fifty (50) percent of the gross floor area in flood hazard areas and seventy-five (75) percent of the gross floor area in the remainder of shoreline jurisdiction has been unintentionally destroyed or damaged if:

(1) All other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied, including but not limited to setback requirements;

(2) The nonconforming use resumes within such structure within one (1) year from the destroying or damaging event; and

(3) The restoration of the nonconforming structure does not increase the gross floor area that existed immediately prior to the destruction or damaging event. Structures intentionally destroyed or damaged and those with fifty (50) percent or more of the gross floor area in flood hazard areas and seventy-five (75) percent or more of their gross floor area in the remainder of shoreline jurisdiction unintentionally destroyed or damaged may not be restored or reconstructed.

08.030 Nonconforming Lots

(a) In any district, any permitted use or structure may be erected on any existing lot or parcel. This provision shall apply even though such lot fails to meet the minimum dimensional requirements of this Title, provided that such structure is allowed within the shoreline environment and all uses of the nonconforming lot shall comply with all other provisions this Master Program, underlying zoning requirements including setbacks, dimensional standards, and lot coverage requirements and the Benton- Franklin Health District .

(b) Structures and customary accessory buildings on non-conforming lots shall be set back from the OHWM to the greatest extent feasible. Development proposed inside required buffers shall go through mitigation sequencing and shall require a mitigation plan.

08.040 Pre-Existing Legal Residential Uses – Conforming Legal Residential Structures

Notwithstanding Sections 15.08.010 to 15.08.030, the following shall apply only to pre-existing legal residential structures constructed prior to the effective date of this Title.

(a) Residential structures and appurtenant structures that were legally established and are used for a conforming use, but that do not meet standards for the following shall be considered a conforming structure: Setback, buffers, or yards; area; bulk; height; or density.

(b) The County shall allow redevelopment, expansion, or change with the class of occupancy, of the residential structure if it is consistent with the SMP, including requirements for no net loss of shoreline ecological functions. For example, vertical, lateral or anterior expansions that do not intrude farther into a required buffer and which are consistent with the maximum height allowed by this SMP and underlying zoning may be allowed.

(c) Pre-existing legal residential structures that are damaged or destroyed may be replaced to their prior size and location subject to:

(1) all other requirements of the Benton County Code and the Benton-Franklin Health District are satisfied; and

(2) to restore a damaged dwelling unit, a complete application for a building permit shall be submitted within one (1) year of the act causing damage or destruction to the dwelling unit.

(d) For purposes of this Section, “appurtenant structures” means garages, sheds, and other legally established structures. “Appurtenant structures” does not include bulkheads and other shoreline modifications or over-water structures.

(e) Nothing in this Section shall:

(1) Restrict the ability of this Title to limit development, expansion, or replacement of over-water structures located in hazardous areas, such as floodplains and geologically hazardous areas; or

(2) Affect the application of other federal, state, or county requirements to residential structures.

Section 15.09 Administration, Permits, and Enforcement

09.010 Purpose

(a) RCW 90.58.140(3) requires local governments to establish a Program, consistent with the rules adopted by the Washington Department of Ecology, for the administration and enforcement of shoreline development. Also, in accordance with RCW 90.58.050, Benton County has the primary responsibility for administering the regulatory program and Ecology acts primarily in a supportive and review capacity.

(b) Pursuant to the Shoreline Management Act at RCW 90.58.080 and the Growth Management Act at RCW 36.70A.130, local governments must periodically review, and where appropriate, amend their SMP. Consistent with state laws, Benton County has established a process to evaluate and consider amendments to this SMP.

(c) The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The SMP Administrator must give adequate consideration to mitigation measures, dimensional variances, and other possible methods to prevent undue or unreasonable hardships upon property owners.

09.020 Administrative Responsibilities

(a) The County shall designate a SMP Administrator. The SMP Administrator in Benton County is the Planning Manager and shall have overall administrative responsibility of this SMP. The SMP Administrator or his/her designee is hereby vested with the authority to:

(1) Administrate this SMP.
(2) Grant or deny exemptions from Shoreline Substantial Development Permit requirements of this SMP.
(3) To grant, grant with conditions, or deny Shoreline Substantial Development Permits and time extensions to shoreline permits and their revisions.
(4) Make field inspections as needed and prepare or require reports on shoreline permit applications.
(5) Make written recommendations to the Hearings Examiner, Planning Commission and Board of County Commissioners as appropriate. The SMP Administrator shall make recommendations to the Hearings Examiner regarding Shoreline Variances and Shoreline Conditional Use Permits. The SMP Administrator shall recommend SMP amendments to the Planning Commission and Board of County Commissioners.
(6) Advise interested persons and prospective applicants as to the administrative procedures and related components of this SMP.
(7) Determine and collect fees for all necessary permits as provided in County ordinances or resolutions. The determination of which fees are required shall be established by resolution of the Board of County Commissioners.
(8) Make administrative decisions and interpretations of the policies and regulations of this SMP and the SMA.

(b) The responsible SEPA official or his/her designee is authorized to conduct environmental review of all use and development activities subject to this SMP, pursuant to WAC 197-11 and RCW 43.21C. The responsible official is designated in accordance with the Benton County Code.

(c) The Hearing Examiner is authorized to:

(1) Grant or deny Shoreline Variances, and Shoreline Conditional Use Permits under this SMP.
(2) Decide on appeals of administrative decisions issued by the Administrator of this SMP.

(d) The Planning Commission is authorized to:

(1) Review the SMP as part of regular SMP updates required by RCW 90.58.080 as a major element of each County's planning and regulatory program and make recommendations for amendments thereof to the Board of County Commissioners.

(e) The Board of County Commissioners is vested with authority to:

(1) Initiate an amendment to this SMP according to the procedures prescribed in WAC 173-26-100.
(2) Adopt all amendments to this SMP, after consideration of the recommendation of the planning commission, where established. Amendments shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

09.030 Noticing Requirements

(a) Applicants shall follow the noticing requirements of the County. At a minimum, the County shall provide notice in accordance with WAC 173-27-110, and shall be consistent with noticing requirements in BCC Title 17.
(b) Per WAC 173-27-120 the County shall comply with special procedures (public notice timelines, appeal periods, etc.) for limited utility extensions and bulkheads.

09.040 Exemption from Permit Requirements

(a) An exemption from the Shoreline Substantial Development Permit process is not an exemption from compliance with the SMA or this SMP, or from any other regulatory requirements. To be authorized, all uses, and development must be consistent with the policies, requirements and procedures of this SMP and the SMA.
(b) Exemptions shall be construed narrowly. Only those developments that meet the precise terms of one or more of the listed exemptions may be granted exemption from the Shoreline Substantial Development Permit process.
(c) A development or use that is listed as a conditional use pursuant to this SMP or is an unlisted use, must obtain a Shoreline Conditional Use Permit even though the development or use does not require a Shoreline Substantial Development Permit. When a development or use is proposed that does not comply with the bulk, dimensional and performance standards of this SMP, such development or use can only be authorized by approval of a Shoreline Variance.
(d) The burden of proof that a development or use is exempt from the permit process is on the applicant.
(e) If any part of a proposed development is not eligible for exemption, then a Shoreline Substantial Development Permit is required for the entire proposed development project.
(f) The County may attach conditions to the approval of exempted developments and/or uses as necessary to assure consistency of the project with the SMA and this SMP. Additionally, nothing shall interfere with the County's ability to require compliance with all other applicable laws and plans.
(g) The County shall exempt the shoreline developments listed in WAC 173-27-040 and RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, as amended, or successor laws, from the Shoreline Substantial Development Permit requirement.
(h) Letters of exemption shall be issued by the County when a development application is determined to meet the listed criteria for an exemption and when a letter of exemption is required by the provisions of WAC 173-27-050, as amended.

09.050 Interpretations

(a) The SMP Administrator shall provide administrative interpretations in accordance with the SMA, the SMP Guidelines and with BCC 17.10.170.
(b) The application of this SMP is intended to be consistent with constitutional and other legal limitations on the regulation of private property. The SMP Administrator shall give adequate consideration to mitigation

measures, dimensional variances, and other possible methods to prevent undue or unreasonable hardships upon property owners.

(c) The County shall consult with Ecology to ensure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and 173-26 WAC.

09.060 Permit Applications

(a) Shoreline applications are classified as follows:

(1) Substantial Development Permit
(2) Conditional Use Permit
(3) Variance
(4) Shoreline Exemption

(b) Permits for Substantial Development, Shoreline Conditional use, or Shoreline Variance shall be in a form prescribed and used by the County including a combined permit application form. Such forms will be supplied by the County.

(c) The contents of permit applications must be consistent with WAC 173-27-180 and Benton County Code.

(d) Where this SMP requires more information than the minimum required by WAC 173-27-180, the SMP Administrator may vary or waive requirements beyond WAC 173-27-180 if the information is unnecessary to process the application.

(e) The SMP Administrator may require additional specific information if required by the nature of the proposal or the presence of sensitive ecological features, to ensure compliance with other local requirements or the provisions of this SMP.

(f) At the time of application, the applicant must pay the application fee.

09.070 Procedures applicable to all shoreline permits

(a) All applications for a permit or a permit revision shall be submitted by the County to Ecology upon a final decision by the County. Final decision by the County shall mean the order or ruling, whether it be an approval or denial, which is established after all local administrative appeals related to the permit have concluded or the opportunity to initiate such appeals have lapsed. Filing shall occur consistent with WAC 173-27-130.

(b) As set forth in WAC 173-27-190, each Substantial Development Permit, Conditional Use Permit, or Variance, issued by the County must contain a provision that construction pursuant to the permit may not begin and is not authorized until twenty-one days from the date of filing as defined in RCW 90.58.140(6) and WAC 173-27-130, or until all review proceedings initiated within twenty-one days from the date of such filing have terminated; except as provided in RCW 90.58.140(5)(a) and (b).

(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.

(d) After the County's approval of a conditional use or variance permit, the County shall submit the permit to the department for Ecology's approval, approval with conditions, or denial. Ecology shall render and transmit to the County and the applicant its final decision approving, approving with conditions, or disapproving the permit within thirty days of the date of submittal by the County pursuant to WAC 173-27-110.

(e) Ecology shall review the complete file submitted by the County on conditional use and 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.

(f) The County shall provide appropriate notification of the Ecology's final decision to those interested persons having requested notification from local government pursuant to WAC 173-27-130.

(g) All requests for review of any final permit decisions under chapter 90.58 RCW and chapter 173-27 WAC are governed by the procedures established in RCW 90.58.180 and chapter 461-08 WAC, the rules of practice and procedure of the Shorelines Hearings Board.
(h) Except as specified in 09.110, Revisions to Permits, the applicant must comply with all aspects of an approval granted under this Chapter, including conditions and restrictions.
(i) Construction and activities authorized by a Shoreline Substantial Development Permit are subject to the time limitations of WAC 173-27-090.

09.080 Procedures applicable to Substantial Development Permits

(a) A Shoreline Substantial Development Permit shall be required for all development of shorelines, unless the proposal is specifically exempt per Section 09.040 or is not subject to the SMP per Section 01.030, Applicability.
(b) Shoreline Substantial Development permits shall be processed consistent with this SMP and BCC Chapter 17.10, Permit Review Process.
(c) A substantial development permit shall be granted only when the development proposed is consistent with:
    (1) The policies and procedures of the SMA;
    (2) The provisions of WAC 173-27; and
    (3) This SMP.
(d) The County may attach conditions to the approval of permits as necessary to assure consistency of the project with the SMA and this SMP.
(e) Nothing shall interfere with the County's ability to require compliance with all other applicable plans and laws.

09.090 Procedures Applicable to Shoreline Conditional Use Permits

(a) Uses specifically classified or set forth in this SMP as conditional uses shall be subject to review and condition by the Hearing Examiner and by Ecology. Shoreline Conditional Use Applications shall be processed consistent with this SMP and BCC Chapter 17.10, Permit Review Process.
(b) Other uses which are not classified or listed or set forth in this SMP may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this Section and the requirements for conditional uses contained in this SMP.
(c) Uses which are specifically prohibited by this SMP may not be authorized as a conditional use.
(d) Uses which are classified or set forth in this SMP as conditional uses may be authorized provided that the applicant demonstrates all of the following:
    (1) That the proposed use is consistent with the policies of RCW 90.58.020 and the SMP;
    (2) That the proposed use will not interfere with the normal public use of public shorelines;
    (3) That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP;
    (4) That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located; and
    (5) That the public interest suffers no substantial detrimental effect.
(e) In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

09.100 Procedures Applicable to Shoreline Variances

(a) The purpose of a variance is to grant relief to specific bulk or dimensional requirements set forth in this SMP where there are extraordinary or unique circumstances relating to the property such that the strict implementation of this SMP would impose unnecessary hardships on the applicant or thwart the policies set forth in RCW 90.58.020. Variances from the use regulations of the SMP are prohibited. Shoreline Variance Applications shall be processed consistent with this SMP and BCC Chapter 17.10, Permit Review Process.

(b) Variance permits should be granted in circumstances where denial of the permit would conflict with the goals of the SMA as listed in RCW 90.58.020. In all instances the applicant must demonstrate that extraordinary circumstances shall be shown, and the public interest shall suffer no substantial detrimental effect.

(c) Variance permits for development and/or uses that will be located landward of the OHWM, as defined in RCW 90.58.030 (2)(b), and/or landward of any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in the SMP precludes, or significantly interferes with, reasonable use of the property;
(2) That the hardship described in criterion (1) of this Subsection is specifically related to the property, and is the result of unique conditions such as irregular lot shape, size, or natural features and the application of the SMP, and not, for example, from deed restrictions or the applicant's own actions;
(3) That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and SMP and will not cause adverse impacts to the shoreline environment;
(4) That the variance will not constitute a grant of special privilege not enjoyed by the other properties in the area;
(5) That the variance requested is the minimum necessary to afford relief; and
(6) That the public interest will suffer no substantial detrimental effect.

(d) Variance permits for development and/or uses that will be located waterward of the OHWM, as defined in RCW 90.58.030 (2)(b), or within any wetland as defined in RCW 90.58.030 (2)(h), may be authorized provided the applicant can demonstrate all of the following:

(1) That the strict application of the bulk, dimensional or performance standards set forth in the applicable SMP precludes all reasonable use of the property;
(2) That the proposal is consistent with the criteria established under Subsection (c); and
(3) That the public rights of navigation and use of the shorelines will not be adversely affected.

(e) In the granting of all variance permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if variances were granted to other developments and/or uses in the area where similar circumstances exist the total of the variances shall also remain consistent with the policies of RCW 90.58.020 and shall not cause substantial adverse effects to the shoreline environment.

09.110 Revisions to Permits

(a) When an applicant seeks to revise a shoreline substantial development permit, conditional use permit, or variance, whether such permit or variance was granted under this SMP, or under the prior effective SMP the SMP Administrator shall request from the applicant detailed plans and text describing the proposed changes to the project. If the Administrative Official determines that the proposed changes are within the general scope and intent of the original substantial development permit, conditional use permit or variance, as the case may be, the revision may be approved by the Shoreline Administrator, without the

need for the applicant to file a new Substantial Development Permit application, provided the development is consistent with the SMA, WAC 173-27-100 (Revisions to Permits), and the SMP.

(b) Within the "scope and intent" of the original permit as referenced in Subsection (a) means the following:

(1) No additional over-water construction will be involved, except that pier, dock, or float construction may be increased by 500 square feet or 10 percent from the provisions of the original permit, whichever is less.
(2) Lot coverage and height may be increased a maximum of 10 percent from the provisions of the original permit,
(3) Additional or revised landscaping is consistent with the conditions attached to the original permit and with the SMP.
(4) The use authorized pursuant to the original permit is not changed.
(5) No adverse environmental impact will be caused by the project revision.
(6) The revised permit shall not authorize development to exceed height, lot coverage, setback, or any other requirements of the SMP except as authorized under a variance granted as the original permit or a part thereof.

(c) If the revision, or the sum of the revision and any previously approved revisions, will violate the criteria specified above, the SMP Administrator shall require the applicant to apply for a new shoreline substantial development or conditional use permit or variance, as appropriate, in the manner provided for herein.

(d) If proposed revisions to the original permit involve a conditional use or variance, the County shall submit the proposed revision to Ecology for review. Ecology shall respond with its final decision on the proposed revision request within 15 days of the date of receipt by Ecology per WAC 173-27-100(6).

09.120 Enforcement Authority

The County shall apply 173-27 WAC Part II, Shoreline Management Act Enforcement, to enforce the provisions of this SMP.

09.130 Amendments to SMP

(a) This SMP carries out the policies of the Shoreline Management Act for Benton County. It shall be reviewed and amended as appropriate in accordance with the review periods required in the SMA and in order to:

(1) Assure that this SMP complies with applicable law and guidelines in effect at the time of the review; and
(2) Assure consistency of this SMP with the County's Comprehensive Plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(b) This SMP and all amendments thereto shall become effective 14 days from the date of the Washington Department of Ecology's written notice of final approval.

(c) The SMP may be amended annually or more frequently as needed pursuant to the Growth Management Act, RCW 36.70A.130(2)(a)(iii).

(d) Future amendments to this SMP may be initiated by any of the following: The Benton County Shoreline Administrator, Planning Commission, or Board of County Commissioners. The following persons may petition the Planning Commission and Benton County Commissioners to support an amendment:

(1) Any owner of property in unincorporated Benton County, when such request is for an amendment that would affect only that person's property;
(2) Any resident of unincorporated Benton County supported by ten (10) signatures of persons also residing in unincorporated Benton County; and
(3) Any local governmental or non-governmental agency operating in Benton County.

(e) Applications for SMP amendments shall specify the changes requested and any and all reasons therefore. Applications shall be made on forms specified by the County. Such applications shall contain information specified in the County's procedures for Comprehensive Plan and development regulation amendments pursuant to RCW 36.70A, the Growth Management Act, and information necessary to meet minimum public review procedures in Subsection C.

(f) The County shall accomplish the amendments in accordance with the procedures of the Shoreline Management Act, Growth Management Act, and implementing rules including, but not limited to, RCW 90.58.080, WAC 173-26-100, RCW 36.70A.106 and 130, and Part Six, Chapter 365-196 WAC.

(g) Proposals for amendment of this SMP shall be heard by the Planning Commission in an open record hearing. After conducting a hearing and evaluating testimony regarding the application, including a recommendation from the Shoreline Administrator, the Planning Commission shall submit its recommendation to the Board of County Commissioners, who shall approve or deny the proposed amendment following their open record hearing.

(h) Prior to approval, the County shall make a finding that the amendment would accomplish #1 or #2, and must accomplish #3:

(1) The proposed amendment would make this Program more consistent with the SMA and/or any applicable Department of Ecology SMP Guidelines; or

(2) The proposed amendment would make this Program more equitable in its application to persons or property due to changed conditions in an area; and

(3) This Program and any future amendment hereto shall ensure no net loss of shoreline ecological functions and processes on a programmatic basis in accordance with the baseline functions present as of April 2013 (the *Final Shoreline Analysis Report*).

(i) After approval or disapproval of a SMP amendment by the Department of Ecology as provided in RCW 90.58.090, the County shall publish a notice that the SMP amendment has been approved or disapproved by Ecology pursuant to the notice publication requirements of RCW 36.70A.290.

09.140 Monitoring

(a) The County will track all shoreline permits and exemption activities to evaluate whether the SMP is achieving no net loss of shoreline ecological functions. Activities to be tracked using the County's permit system include development, conservation, restoration and mitigation, such as:

(1) New shoreline development
(2) Shoreline Variances and the nature of the variance
(3) Compliance issues
(4) Net changes in impervious surface areas, including associated stormwater management
(5) Net changes in fill or armoring
(6) Net change in linear feet of flood hazard structures
(7) Net changes in vegetation (area, character)

(b) Using the information collected in Subsection (a) a no net loss report shall be prepared every eight years as part of the County's SMP evaluation or Comprehensive Plan Amendment process. Should the no net loss report show degradation of the baseline condition documented in the County's Shoreline Analysis Report, changes to the SMP and/or Shoreline Restoration Plan shall be proposed at the time of the eight-year update to prevent further degradation and address the loss in ecological functions.

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.co.benton.wa.us

Planning Division
(509) 786-5612
P.O. Box 910, Prosser, WA 99350
planning.department@co.benton.wa.us

Benton County and the Department of Ecology
Notice of Open Record Joint Hearing and Comment Period

NOTICE IS GIVEN that Benton County and the Department of Ecology will be holding a joint local/state Public Comment Period and Public Hearing on Benton County's Shoreline Master Program Periodic Review on April 13, 2021 at 6 p.m. via a virtual meeting platform (see below for more information).

Benton County and Washington Dept. of Ecology are accepting comments on a periodic review of the county's shoreline master program under RCW 90.58.080(4). The county has prepared draft SMP amendments to keep the SMP current with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

The proposed amendments consist of housekeeping edits to reflect updated code sections, dates, etc. Deleting the definition for Board of Adjustment and adding text for Hearing Examiner, adding text to the definition for "Development", amending the definition for "Substantial development" by updating the dollar amount for exceeding the fair market value, adding text to Section 15.04.120 regarding "Developments not required to obtain shoreline permits or local reviews", adding text to 15.06.030 for external or internal retrofitting of an existing structure for compliance with ADA, amending 15.07.030 by adding language to Substantial Development Permit exception applying to dock construction, and amending 15.07.150 to add a language regarding County permit review time

Public comment will be accepted from March 24th to April 23, 2021 at 5 p.m. A joint local/state public hearing is set for April 13, 2021 via a virtual meeting format (see below for information on attending the meeting). Send comments to the Benton County Planning Division at P.O. Box 910, Prosser WA or by email to planning.department@co.benton.wa.us. Comments sent to the county will be forwarded to the Dept. of Ecology.

Proposed amendments to the county shoreline master program are available for review at https://tinyurl.com/SMP2021update and at the County Planning Division Office within the Public Services Building at 102206 E. Wiser Parkway, Kennewick WA 99338.

NOTICE IS FURTHER GIVEN that the Shoreline Master Plan has been reviewed under the requirements of the State Environmental Policy Act and a Determination of Non-Significance (DNS) was issued on February 24, 2021 and accordingly an Environmental Impact Statement was not required. Any comments regarding this determination and the environmental impacts of the proposal can be made at the Planning Commission Hearing using the method noted below or in writing to the Benton County Planning Department by 5 p.m. on Monday April 13, 2021.

Due to Governor's "Stay Home, Stay Healthy" order the County Offices are closed to in person visits from the public at this time. To continue to provide public access to the Planning Commission meetings, Benton County will be providing telephonic and video access for the public to view and provide testimony at the Planning Commission meetings. If you choose to join the meeting telephonically, we ask that you please limit background noise or mute your line to prevent any

unnecessary interruption to the meeting. To find information on virtual attendance options, including streaming video, WebEx video conferencing and telephone, please visit www.tinyurl.com/BCPublicNotice.

If you wish to provide comments on any action before the Planning Commission, we ask that you please fill out our online form (found at https://tinyurl.com/testifyform) and submit your request to our office. **You must submit a request form to participate for each hearing that you wish to attend.** If you prefer to make the request by phone, please call our office at 786-5612 and we can add you to the list for providing testimony. At the meeting the names of those wishing to testify will be called out and at that time you will be able to present your comments/concerns regarding the specific agenda item.

At this hearing, the Planning Commission may recommend approval, conditional approval, or disapproval of the Shoreline Master Plan to the Benton County Board of Commissioners. All parties concerned may present any support or objections for the Plan per the phone in instructions above. Information concerning the Plan can be obtained at the Benton County Planning Department, by calling 736-3086 (Tri-Cities) or 786-5612 (Prosser).

Dated at Prosser, Washington on this 19th day of March 2021.

Martin Sheeran, Chairman
BENTON COUNTY PLANNING COMMISSION

Greg Wendt, Director
COMMUNITY DEVELOPMENT DEPT.

PUBLISH ON: March 24, 2021

EA 2021-003

ENVIRONMENTAL CHECKLIST

A. BACKGROUND

1. Name of proposed project, if applicable:

   a. 2021 Periodic Update to the Benton County Shoreline Master Program
   b. Amendment to the Benton County Code - Title 15 - Environment .

2. Name of applicant:
   Benton County, WA

RECEIVED
FEB 4 2021
Benton Co. Planning Dept.

3. Address and phone number of applicant and contact person:
   Greg Wendt, Director of Community Development
   Planning Division
   P.O. Box 910
   Prosser WA 99350

4. Date checklist prepared:
   January 19, 2021

5. Agency requesting checklist:
   Benton County, WA

6. Proposed timing or schedule (including phasing, if applicable):
   Benton County proposes to locally adopt the 2021 Periodic update to the Shoreline Master Program (SMP) in May/June 2021 after which the SMP and supporting documentation will be delivered to the Washington State Dept. of Ecology for its formal review and approval. The County is also proposing an amendment to Benton County Code Title 15 - Environment (critical areas regulations), which will adopted by the Board of County Commissioners in May/June 2021.

7. Do you have any plans for future additions, expansion, or further activity related to or connected with this proposal?
   None at this time.

8. List any environmental information you know about that has been prepared, or will be prepared, directly related to this proposal.
   The County used best available science in the updating of the development regulations, including a science report developed by Anchor QEA on riparian conditions in Benton County streams and guidance documents from the Washington State Department of Ecology and Washington Department of Fish and Wildlife.

9. Do you know whether applications are pending for governmental approvals of other proposals directly affecting the property covered by your proposal? If yes, explain.
   Current development applications are being processed under the current development regulations until the updated ordinances are in effect.

10. List any government approvals or permits that will be needed for your proposal, if known.

Board of County Commissioners are the final decision-making body for a text amendment to the Benton County Code Title 15-Environment (critical areas regulations), and the Board of County Commissioners and Washington State Department of Ecology (Ecology) are both decision-makers for the SMP amendments.

11. Give brief, complete description of your proposal, including the proposed uses and the size of the project and site. There are several questions later in this checklist that ask you to describe certain aspects of your proposal. You do not need to repeat those answers on this page. (Lead agencies may modify this form to include additional specific information on project description.)

    a. *2021 Periodic Update to the Benton County Shoreline Master Program (SMP), as approved on Feb 16, 2015 by Ecology to ensure consistency with the State SMP Checklist and associated laws and regulations established since 2015 pursuant to SMP Grant Agreement SEASMP-1921-BeCOPD-00012.*

    b. *Amendment to the Benton County Code, BCC Title 15- Environment (critical areas regulations): Revise Title 15, Chapters 15.02 and 15.14 to address consistency with the SMP, apply additional science for Benton County stream buffers and address minor clarifications.*

12. Location of the proposal. Give sufficient information for a person to understand the precise location of your proposed project, including a street address, if any, and section, township, and range, if known. If a proposal would occur over a range of area, provide the range or boundaries of the site(s). Provide a legal description, site plan, vicinity map, and topographic map, if reasonably available. While you should submit any plans required by the agency, you are not required to duplicate maps or detailed plans submitted with any permit applications related to this checklist.

    The *2021 Periodic Update to the SMP will apply to shoreline jurisdiction within Benton County's unincorporated areas. The amendment to Benton County Code Title 15, Chapters 15.02 and 15.14 applies to those areas within the unincorporated portions of Benton County.*

B. ENVIRONMENTAL ELEMENTS

1. Earth

a. General description of the site (circle one): Flat, rolling, hilly, steep slopes, mountainous, other:
General topographic characteristics vary greatly within Benton County and environmental evaluations for future site-specific projects will need to be conducted if a site-specific project is proposed.

b. What is the steepest slope on the site (approximate percent slope)?
Not applicable, this is not a site-specific project.

c. What general types of soils are found on the site (for example, clay, sand, gravel, peat, muck)? If you know the classification of agricultural soils, specify them and note any prime farmland.

Not applicable, this is not a site-specific project.

d. Are there surface indications or history of unstable soils in the immediate vicinity? If so, describe.
Not applicable, this is not a site-specific project.

e. Describe the purpose, type, and approximate quantities of any filling or grading proposed. Indicate source of fill.
Not applicable, this is not a site-specific project.

f. Could erosion occur as a result of clearing, construction, or use? If so, generally describe.
Not applicable, this is not a site-specific project.

g. About what percent of the site will be covered with impervious surfaces after project construction (for example, asphalt or buildings)?
Not applicable, this is not a site-specific project.

h. Proposed measures to reduce or control erosion, or other impacts to the earth, if any:
Not applicable, this is not a site-specific project.

2. **Air**

a. What types of emissions to the air would result from the proposal (i.e., dust, automobile, odors, industrial, wood smoke) during construction and when the project is completed? If any, generally describe and give approximate quantities if know.
Not applicable, this is not a site-specific project.

b. Are there any off-site sources of emissions or odor that may affect your proposal? If so, generally describe.
Not applicable, this is not a site-specific project.

c. Proposed measures to reduce or control emissions or other impacts to air, if any:
Not applicable, this is not a site-specific project

3. **Water**

a. Surface:

1) Is there any surface water body on or in the immediate vicinity of the site (including year-round and seasonal streams, saltwater, lakes, ponds, wetlands)? If yes, describe type and provide names. If appropriate, state what stream or river it flows into.
Not applicable, this is not a site-specific project.

2) Will the project require any work over, in, or adjacent to (within 200 feet) the described waters? If yes, please describe and attach available plans.
Not applicable, this is not a site-specific project.

3) Estimate the amount of fill and dredge material that would be placed in or removed from surface water, or wetlands, and indicate the area of the site that

would be affected. Indicate the source of ill material.
Not applicable, this is not a site-specific project.

4) Will the proposal require surface water withdrawals or diversions? Give general description, purpose, and approximate quantities if know.
Not applicable, this is not a site-specific project.

5) Does the proposal lie within a 100-year floodplain? If so, note location on the site plan.
Not applicable, this is not a site-specific project.

6) Does the proposal involve any discharge of waste materials to surface waters? If so, describe the type of waste and anticipated volume of discharge.
Not applicable, this is not a site-specific project.

b. Ground:

1) Will ground water be withdrawn, or will water be discharged to ground water? Give general description, purpose, and approximate quantities if know.
Not applicable, this is not a site-specific project

2) Describe waster material that will be discharged into the ground from septic tanks or other sources, if any (for example: Domestic sewage, industrial, containing the following chemicals . . . agricultural, etc.). Describe the general size of the system, the number of such systems, the number of houses to be served (if applicable), or the number of animals or humans the system(s) are expected to serve.
Not applicable, this is not a site-specific project.

c. Water Runoff (including storm water):

1) Describe the source of runoff (including storm water) and method of collection and disposal, if any (include quantities, if known). Where will this water flow? Will this water flow into other waters? If so, describe.
Not applicable, this is not a site-specific project.

2) Could waste materials enter ground or surface waters? If so, generally describe.
Not applicable, this is not a site-specific project.

d. Proposed measures to reduce or control surface, ground, and runoff water impacts, if any:
Not applicable, this is not a site-specific project.

4. **Plants**

a. Circle types of vegetation found on the site: deciduous tree: alder, maple, aspen, other; evergreen tree: fir, cedar, pine, other; shrubs; grass; pasture' crop or grain; wet soil plants: cattail, buttercup, bulrush, skunk cabbage, other; water plants: water lily, eelgrass, milfoil, other; other types of vegetation.
Not applicable, this is not a site-specific project

b. What kind and amount of vegetation will be removed or altered?
Not applicable, this is not a site-specific project.

c. List threatened or endangered species known to be on or near the site.
Not applicable, this is not a site-specific project.

d. Proposed landscaping, use of native plants, or other measures to preserve or enhance vegetation on the site, if any:
Not applicable, this is not a site-specific project.

5. **Animals**

a. Circle any birds and animals which have been observed on or near the site or are known to be on or near the site: Birds: hawk, heron, eagle, songbirds, other:
Mammals: deer, bear, elk, beaver, other:
Fish: bass, salmon, trout, herring, shellfish, other:
Not applicable, this is not a site-specific project.

b. List any threatened or endangered species known to be on or near the site.
Not applicable, this is not a site-specific project.

c. Is the site part of a migration route? If so, explain.
If any threatened or endangered species are found for site-specific projects, compliance with Benton County Code Title 15 - Environment (critical areas regulations) and the Benton County SMP will be required.

d. Proposed measures to preserve or enhance wildlife, if any:
Not applicable, this is not a site-specific project.

6. **Energy and Natural Resources**

a. What kinds of energy (electric, natural gas, oil, wood stove, solar) will be used to meet the completed project's energy needs? Describe whether it will be used for heating, manufacturing, etc.
Not applicable, this is not a site-specific project.

b. Would your project affect the potential use of solar energy by adjacent properties? If so, generally describe.
Not applicable, this is not a site-specific project.

c. What kinds of energy conservation features are included in the plans of this proposal? List other proposed measures to reduce or control energy impacts, if any:
Not applicable, this is not a site-specific project.

7. **Environmental Health**

a. Are there any environmental health hazards, including exposure to toxic chemicals, risk of fire and explosion, spill, or hazardous waste, which could occur as a result of this proposal? If so, describe.
Not applicable, this is not a site-specific project.

1) Describe special emergency services that might be required.
Not applicable, this is not a site-specific project.

2) Proposed measures to reduce or control environmental health hazards, if any:
Not applicable, this is not a site-specific project.

b. **Noise**

1) What types of noise exist in the area which may affect your project (for example: traffic, equipment, operation, other)?
Not applicable, this is not a site-specific project.

2) What types and levels of noise would be created by or associate with the project on a short-term or a long-term basis (for example: traffic, construction, operation, other)? Indicate what hours noise would come from the site.
Not applicable, this is not a site-specific project.

3) Proposed measures to reduce or control noise impacts, if any:
Not applicable, this is not a site-specific project.

8. **Land and Shoreline Use**

a. What is the current use of the site and adjacent properties?
Not applicable, this is not a site-specific project.

b. Has the site been used for agriculture? If so, describe.
Not applicable, this is not a site-specific project.

c. Describe any structures on the site.
Not applicable, this is not a site-specific project.

d. Will any structures be demolished? If so, what?
Not applicable, this is not a site-specific project.

e. What is the current zoning classification of the site?
Not applicable, this is not a site-specific project.

f. What is the current comprehensive plan designation for the site?
Not applicable, this is not a site-specific project.

g. If applicable, what is the current shoreline master program designation of the site?
Not applicable, this is not a site-specific project.

h. Has any part of the site been classified as an "environmentally sensitive" area? If so, specify.
Not applicable, this is not a site-specific project.

I. Approximately how many people would reside or work in the completed project?
Not applicable, this is not a site-specific project.

j. Approximately how many people would the completed project displace?

Not applicable, this is not a site-specific project.

k. Proposed measures to avoid or reduce displacement impacts, if any:
Not applicable, this is not a site-specific project.

l. Proposed measures to ensure the proposal is compatible with existing and projected land uses and plans, if any:
The regulations are consistent with the Benton County Comprehensive Plan policies and guidelines.

9. **Housing**

a. Approximately how many units would be provided, if any? Indicate whether high, middle, or low-income housing.
None

b. Approximately how many units, if any, would be eliminated? Indicate whether high, middle, or low-income housing.
None

c. Proposed measures to reduce or control housing impacts, if any:
Not applicable, this is not a site-specific project.

10. **Aesthetics**

a. What is the tallest height of any proposed structures(s) not including antennas; what is the principal exterior building material(s) proposed?
Not applicable, this is not a site-specific project.

b. What views in the immediate vicinity would be altered or obstructed?
Not applicable, this is not a site-specific project.

c. Proposed measures to reduce or control aesthetic impacts, if any:
Not applicable, this is not a site-specific project.

11. **Lights and Glare**

a. What type of light or glare will be the proposal produce? What time of day would it mainly occur?
Not applicable, this is not a site-specific project.

b. Could light or glare from the finished project be a safety hazard or interfere with views?
Not applicable, this is not a site-specific project.

c. What existing off-site sources of light or glare may affect your proposal?
Not applicable, this is not a site-specific project.

d. Proposed measures to reduce or control light and glare impacts, if any:
Not applicable, this is not a site-specific project.

12. **Recreation**

a. What designated and informal recreational opportunities are in the immediate vicinity?
Not applicable, this is not a site-specific project.

b. Would the proposed project displace any existing recreational uses? If so, describe.
Not applicable, this is not a site-specific project.

c. Proposed measures to reduce or control impacts or recreation, including recreation opportunities to be provided by the project or applicant, if any:
Not applicable, this is not a site-specific project.

13. **Historic and Cultural Preservation**

a. Are there any places or objects listed on, or proposed for, national, state, or local preservation registers known to be on or next to the site? If so, generally describe.
Not applicable, this is not a site-specific project.

b. Generally describe any landmarks or evidence of historic, archeological, scientific, or cultural importance known to be on or next to the site.
Not applicable, this is not a site-specific project.

c. Proposed measures to reduce or control impacts, if any:
Not applicable, this is not a site-specific project.

14. **Transportation**

a. Identify public streets and highways serving the site and describe proposed access to the existing street system. Show on site plan, if any.
Not applicable, this is not a site-specific project.

b. Is the site currently served by public transit? If not, what is the approximate distance to the nearest transit stop?
Not applicable, this is not a site-specific project.

c. How many parking spaces would the completed project have? How many would the project eliminate?
Not applicable, this is not a site-specific project.

d. Will the proposal require any new roads or streets, or improvements to existing roads or streets, not including driveways? If so, generally describe (indicate whether public or private).
Not applicable, this is not a site-specific project.

e. Will the project use (or occur in the immediate vicinity of) water, rail, or air transportation? If so, generally describe.
Not applicable, this is not a site-specific project.

f. How many vehicular trips per day would be generated by the completed project? If know, indicate when peak volumes would occur.
Not applicable, this is not a site-specific project.

g. Proposed measures to reduce or control transportation impacts, if any:
Not applicable, this is not a site-specific project.

15. **Public Services**

a. Would the project result in an increased need for public services (for example, fire protection, police protection, health care, schools, etc.)? If so, generally describe.
Not applicable, this is not a site-specific project.

b. Proposed measures to reduce or control direct impacts on public services, if any.
Not applicable, this is not a site-specific project.

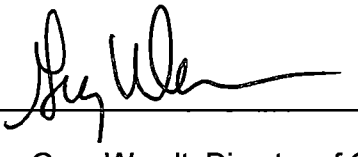
16. **Utilities**

a. Circle utilities currently available at the site: electricity, natural gas, water, refuse service, telephone, sanitary sewer, septic system, other.
Not applicable, this is not a site-specific project.

b. Describe the utilities that are proposed for the project, the utility providing the service, and the general construction activities on the site or in the immediate vicinity which might be needed.
Not applicable, this is not a site-specific project.

C. **SIGNATURE**

The above answers are true and complete to the best of my knowledge. I understand that the lead agency is relying on them to make its decision.

Signature: 

Print Name: Greg Wendt, Director of Community Development
Benton County Community Development Department

Date Submitted: February 4, 2021

D. SUPPLEMENTAL SHEET FOR NON-PROJECT ACTIONS
(do not use this sheet for project actions)

Because these questions are very general, it may be helpful to read them in conjunction with the list of the elements of the environment.

When answering these questions, be aware of the extent the proposal, or the types of activities likely to result from the proposal would affect the item at a greater intensity or at a faster rate than if the proposal were not implemented. Respond briefly and in general terms.

1. How would the proposal be likely to increase discharge to water; emissions to air; production, storage, or release of toxic or hazardous substances; or production of noise?
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed.

   Proposed measurers to avoid or reduce such increases are:
None.

2. How would the proposal be likely to affect plants, animals, fish or marine life?
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed. The intent of BCC Title 15 is to protect environmentally sensitive areas and the SMP does so as well, to achieve no-net-loss of ecological functions.

   Proposed measures to protect or conserve plants, animals, fish or marine life are:
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed. The development regulations follow state regulations and guidelines as it relates to protecting vegetation, fish, and wildlife, and protecting shorelines.

3. How would the proposal be likely to deplete energy or natural resources?
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed.

   Proposed measurers to protect or conserve energy and natural resources are:
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed. The development regulations protect natural resources from incompatible development and land uses.

4. How would the proposal be likely to use or affect environmentally sensitive areas or areas designated (or eligible or under study) for governmental protection; such as parks, wilderness, wild and scenic rivers, threatened or endangered species habitat, historic or cultural sites, wetlands, flood plains, or prime farmlands?
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed. Benton County Code Title 15-Environment is a regulatory document designed to protect environmentally sensitive areas. The SMP also protects

environmentally sensitive areas, wetlands and other natural features.

Proposed measures to protect such resources or to avoid or reduce impacts are:
Not applicable, this is not a site-specific project. However, mitigation measures may be required as a condition of approval for future site-specific projects through the SEPA review process if determined necessary. The development regulations protect the natural resources by requiring buffers and disallowing incompatible development or land uses.

5. How would the proposal be likely to affect land and shoreline use, including whether it would allow or encourage land or shoreline uses incompatible with existing plans?
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed. The development regulations protect streams and shorelines by requiring buffers and disallowing incompatible development or land uses.

Proposed measures to avoid or reduce shoreline and land use impacts are:
Not applicable, this is not a site-specific project. However, mitigation measures may be required as a condition of approval for future site-specific projects through the SEPA review process if determined necessary.

6. How would the proposal be likely to increase demands on transportation or public services and utilities?
Not applicable, this is not a site-specific project. However, environmental evaluations for future site-specific projects will need to be conducted at the time a site-specific project is proposed.

Proposed measures to reduce or respond to such demands(s) are:
Not applicable, this is not a site-specific project. However, mitigation measures may be required as a condition of approval for future site-specific projects through the SEPA review process if determined necessary.

7. Identify, if possible, whether the proposal may conflict with local, state or federal laws or requirements for the protection of the environment.
Not applicable, this is not a site-specific project. However, if any threatened or endangered species are found during the review of a site-specific project, compliance with Benton County Code, Title 15 - Environment (critical areas regulations) and the Benton County SMP is required. The site-specific project would be required to be developed in accordance with all local, state and federal laws. Additionally, the development regulations rely on best available science from state agencies and qualified experts/professionals. None of the proposed regulations conflict with local, state, or federal laws.

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.co.benton.wa.us

Planning Division
(509) 786-5612
P.O. Box 910, Prosser, WA 99350
planning.department@co.benton.wa.us

PCM 1.6

DETERMINATION OF NON-SIGNIFICANCE

Proponent: Benton County Community Development
Dept. - Planning Division
P.O. Box 910, Prosser WA 99350

File No **EA 2021-003**

Project Description: *Benton County is proposing the following:*

1) *2021 Periodic Update to the Benton County Shoreline Master Program (SMP), as approved on Feb 16, 2015 by Ecology to ensure consistency with the State SMP Checklist and associated laws and regulations established since 2015 pursuant to SMP Grant Agreement SEASMP-1921-BeCOPD-00012.*

2) *Amendment to the Benton County Code, BCC Title 15- Environment (critical areas regulations): Revise Title 15, Chapters 15.02 and 15.14 to address consistency with the SMP, apply additional science for Benton County stream buffers and address minor clarifications.*

Project Location: Countywide
Jurisdiction: Benton County, Washington
Lead Agency: Benton County Community Development Dept. - Planning Division

Threshold Determination: The lead agency for this proposal has determined that it will not have a probable significant adverse impact on the environment. An environmental impact statement (EIS) is not required under RCW 43.21C.030(2)(c). The decision was made after review of a completed environmental checklist and other information on file with the lead agency. The environment threshold determination is based on an analysis of information contained in the following documents or the applicable regulations and restrictions of various agencies:

1. Benton County, BCC Title 6.35 Environmental Policy (SEPA)
2. Benton County, BCC Title 11, Zoning
3. Benton County Comprehensive Plan
4. Benton County, BCC Title 15 Environment (Critical Area Ordinance)

5. Regulations of the Washington State Department of Fish and Wildlife, Department of Transportation, Department of Ecology, Department of Natural Resources and Department of Archaeology and Historic Preservation

6. Benton County 2015 Shoreline Master Plan

This DNS is issued under WAC197-11-340(2); the lead agency will not act on this proposal for 14 days from the date below. Comments must be submitted by **March 3, 2021**.

SEPA Responsible Official: Greg Wendt, Director
Position/Title: Benton County Community Development Dept.
Mailing Address: P.O. Box 910, Prosser WA 99350

Date: **February 24, 2021** Signature

Greg Wendt, Director

DISTRIBUTION:

Applicant
News Media (Encl. map or plot plan)
Benton County Building Office
Dept. of Natural Resources-Olympia
Dept. of Natural Resources -Ellensburg
Benton Clean Air Authority
Bureau of Reclamation
Benton County Public Works
City of Kennewick
City of Richland
City of Benton City
City of Prosser
City of West Richland
Benton-Franklin Dist. Health Dept.
Kennewick Irrigation District
Kiona Irrigation District
Benton Irrigation District
Badger Mountain Irrigation District
Columbia Irrigation District
Sunnyside Valley Irrigation District
Roza Irrigation District
Department of Transportation
Dept. of Transportation-Aviation Division
Port of Benton
Port of Kennewick
Washington State Department of Health
Department of Ecology - Olympia
Department of Ecology - Yakima
Corps of Engineers
Yakama Indian Nation
Fire District 1
Fire District 2
Fire District 3
Fire District 4
Fire District 5
Fire District 6
Fire Marshal
Tom Price, Environmental Review Inc.
Dept. of Agriculture
Conf. Tribes of the Umatilla Indian Reservation
Bureau of Land Management
Department of Fish and Wildlife
Office of Arch. & Historic Preservation
Futurewise
Dept. of Commerce
Bonneville Power Admin.
Dept. of the Navy
FFA
Department of Corrections
Washington State Conservation Commission

COMMISSIONERS' AGENDA ACTION SHEET

Meeting Date:	June 22, 2021 **Memo Date: June 6, 2021**
Subject:	**Public Hearing** on File No. OA 2021-002 an amendment relating to BCC Title 15 critical areas, general provisions and fish and wildlife habitat conservation areas;
Presenter:	Greg Wendt and Ben Floyd, White Bluffs Consulting
Prepared By:	Donna Hutchinson
Reviewed By:	Greg Wendt

PA Review, Approval to Form: ☒ Yes ☐ No ☐ N/A *(If no, include reasoning for no approval)*

Type of Agenda Item:	**Type of Action Needed:** *(Multiple boxes can be checked, if necessary)*	
☐ Consent Agenda	☐ Discussion Only	☒ Pass Motion
☒ Public Hearing	☒ Decision / Direction	☒ Pass Resolution
☐ Scheduled Business	☐ Sign Letter / Document	☒ Pass Ordinance
		☐ Execute Contract

Summary / Background Information

The Planning Division and the Planning Commission are forwarding an ordinance amendment to the Board of County Commissioners with a recommendation for approval. The proposed ordinance amendment updates the regulations in the Benton County Critical Area Ordinance.

The amendment includes updates to the following:

1. BCC 15.02.120 (a) Applicability.

   An update to the references associated with Voluntary Stewardship Program.

2. BCC 15.14.040(g) Performance Standards-General Requirements.

   An update to the minimum standard buffer widths for creeks and streams.

3. Appendix- General References and Best Available Science.

   An update to the County's Best Available Science listing.

Ben Floyd, White Bluffs Consulting, has assisted the County with the development of the CAO update, including a Riparian Buffer Analysis which included the development of stream and riparian buffer protections. The analysis includes data for 29 stream segments in the County along with stream buffer recommendations.

The stream analysis and buffer recommendations were developed in consultation with the Washington State Department of Fish and Wildlife representatives. To address public comments, a comment response matrix has been developed to specifically address each comment or potential concern.

The Planning Commission held a public hearing on April 13, 2021 and continued the hearing to May 11, 2021 to ensure all public comments were addressed in the response matrix. The Planning Commission, after taking testimony and discussion among the Commission members, voted to forward a recommendation for approval of the proposed amendments subject to thirteen (13) findings of fact.

Fiscal Impact

None known at this time.

Recommendation

It is the recommendation of the Benton County Planning Department and the Planning Commission that Planning Casefile Application OA 2021-002, be approved with the suggested thirteen (13) Findings of Fact.

Suggested Motion

I move that the Board of County Commissioners adopt the Planning Commission's Findings and Conclusions as their own and approve the proposed amendments relating to critical areas, general provisions and fish and wildlife habitat conservation areas; amending Ordinance 609, Section 13; BCC 15.02.120; Section 54, BCC 15.14.040; and Section 56 as noted in Casefile OA 2021-002.

Benton County CAO Update – Comment Response Matrix (June 8, 2021)

Comment No.	Commenter	Reference	Comment	Response
1	Debbie Berkowitz	General	My primary concern is that the proposed revised riparian buffers do not take into account the vitally important wildlife protection function of the riparian ecosystem. My second main concern is that the proposed buffers do not provide for sufficient removal of certain pollutants and do not allow for buffer adjustments because of steep slopes, poorly vegetated buffers, disturbed soils, or adjacent high intensity land use. Details follow. Five ecological functions examined: The memo provided to the County by White Bluffs Consulting and QEA Anchor on Jan. 29, 2021 considered the extent of the riparian ecosystem as the area that provides full ecological function for bank stability, shade, pollution removal, contributions of detrital nutrients, and recruitment of large woody debris. Based on these parameters alone they recommended a riparian buffer of 50 ft for streams in Benton County. The memo states that "Recommendations in this document are generally supported by the extended analysis for the Columbia Plateau in Quinn et al (2020)1 ," and, indeed, much of the other literature cited in the memo deals with these parameters as well. Benton County's proposed revisions to its CAO bases its riparian buffers on this memo. One other important ecological function not considered: Riparian ecosystems in the County provide the essential ecological function of fish and wildlife habitat and yet the riparian buffer zones required for wildlife are not even considered in the above-mentioned Jan. 29, 2021 memo to the County. The riparian areas provide critical connectivity for wildlife in the County, a vital function of FWHCAs. "Riparian ecosystems are priority habitats in part because wildlife occurs more often and in greater variety in riparian areas than in any other habitat type… Although riparian ecosystems constitute a small portion of the surface landscape, approximately 85% of Washington's wildlife species are known to use riparian areas associated with rivers and streams." (Quinn (2020)1 , P. 5). However, as stated in Quinn et al (2020)1, p. iv, "[Riparian Ecosystems Volume 1] is a partial update because it addresses only aquatic species. Riparian needs of terrestrial species will be updated in the future. Until that update is complete…. consult the 1997 document [Knutson and Naef, Management Recommendations for Washington's Priority Habitats: Riparian] for information about riparian ecosystems and terrestrial species." This 1997 document is, in fact, the document that was referenced in the 2018 CAO update in Benton County leading to a riparian buffer of 200 ft for fish-bearing streams (Type F) and 150 ft for non-fish bearing streams (Type Np and Ns). Other documents discuss recommended buffer widths for various birds, mammals, and amphibians. The minimum effective protection zone is typically 100 ft to 700 ft wide, depending on the species (Southeastern Wisconsin Regional Planning Commission (2010)2 (see figure at end). For example, Fischer (2000)3 states that for birds, the riparian zone should be at least 300 ft wide (for larger river systems) or 150 ft wide (for lower-order streams and rivers). While these documents are not based on data from eastern WA, many of the species are similar and have similar habitat needs. (It should be noted that many of the references in the Jan. 29 memo also include studies done in different parts of the U.S.)	Thank you for the thoughtful and thorough review of the draft updated Benton County Critical Areas code and for the comments. WDFW priority habitats and species (PHS) is a very detailed approach for identifying and protecting various habitats and species. The Anchor QEA Best Available Science review along with the supporting GIS analysis and field work conducted by AC GeoSpatial was primarily focused on the riparian areas and their associated functions, as you noted. However, the identified buffers also provide for quite an area on both sides of streams for wildlife habitat and protection. As noted in the AC GeoSpatial memo, as referenced in the Anchor QEA memo, review of the measured streams in Benton County "had an average buffer width of 20 feet per side. The average stream channel width was 7 feet, and the average total riparian area width was 47 feet." For the streams receiving a 50 foot buffer, this would provide an average of 25 – 30 feet per stream side of non-riparian habitat available for wildlife habitat. For the streams receiving a 75 foot buffer, this would provide an average of 50 – 55 feet per stream side of non-riparian habitat available for wildlife habitat. Additionally, riparian wetlands are regulated by the wetland provisions of the code, and wetland buffers would apply in these sections. Other priority habitats and species potentially impacted by a development proposal would also require additional protection requirements, on top of riparian and wetland protections, such as nesting areas for sensitive bird species. The critical areas code provides for applying the specific WDFW management recommendations for these species and habitats. (See Section 53.c.3 and Section 54.g.1).

Comment No.	Commenter	Reference	Comment	Response
			A qualified professional with a degree in wildlife biology should be consulted to look at this important aspect of riparian buffers before new buffer widths are adopted. Or better, the County should wait until the WDFW updates its consideration of the riparian needs of terrestrial species in a document comparable to Quinn (2020)1 which is a good example of the best available science.	The updated buffers have been reviewed by several qualified professionals, including those with expertise in wildlife biology. See also comment 11, from WDFW and their concurrence with these buffers. Also, the proposed buffers are consistent with the buffer widths provided in the County SMP, which also went through extensive discussion with qualified professionals before there were applied.
2		Upland Vegetation	Other issues of concern that need to be addressed in the CAO: 1. Based on the diagrams in the Riparian Buffer Analysis summary memorandum (May 2020, included in the Planning Commission packet), only riparian vegetation appears to have been mapped but the upland vegetation 'zone of influence' wasn't included. This zone of influence is considered part of the Riparian Management Zone (RMZ) in the Columbia plateau (Quinn (2020)1, P. 6). The zone of influence includes areas where ecological processes significantly influence the stream and can be fairly wide. The (desired future condition) zone of influence in the Columbia Plateau is often native shrub-steppe or prairie vegetation. Also explicitly excluded from the Riparian Buffer Analysis were wetlands which are part of riverine systems and should be considered in that context (as well as a wetlands critical area).	See response to Comment 1,3rd and 4th paragraphs
3		Water Quality	2. In dryland ecoregions, the pollution removal function may determine the width of the zone of influence for aquatic species. In Windrope (2020)4. WDFW recommends that the RMZ width (based on the needs of aquatic species) be delineated at a minimum of 100 ft, as this provides the width necessary for 95% pollution removal target for most pollutants (~85% for surface nitrogen); this buffer width is also justified by Table 5.4 in Quinn (2020)1. Quinn (2020)1 (p. 222) also states that because soils in arid ecoregions may be less permeable and vegetation tends to be less dense, especially in the upland zone of influence, the meta-analyses for pollution removal in forested regions may underestimate buffer widths needed for a given level of removal efficiency. Much of Benton County is occupied by irrigated farmland, dryland wheat farms, or rangelands or has rural development, so pollution sources exist in many riparian areas (and the Voluntary Stewardship Program, while not regulatory, follows the guidance in the CAO). The Windrope (2020) document, which is based on the best available science in Quinn (2020)1 , also comments that this minimum buffer of 100 ft should be increased if (a) upland uses contribute nitrogen (p. 22), (b) location has steep slopes, (c) location has poorly drained soils, (d) high intensity land uses are located adjacent to riparian areas, or (e) riparian or upland area is disturbed ("disturbed soils often don't have the same vegetative density or root structure as the native population, thereby altering riparian area efficacy in pollutant removal" (Quinn, P. 118)). Since one or more of the conditions listed in Windrope exist in many riparian areas in the County, the CAO should accommodate the potential need to increase buffers according to the conditions and allowance should be made in the CAO for future changes in land use – which is not currently the case in the proposed revised CAO. In addition, buffers should be increased to support wildlife connectivity and/or to protect riparian adjacent priority habitats.	Updating buffer recommendation to be 100 feet for streams with slopes 10 percent or greater, regardless of stream type. The County is relying on the Voluntary Stewardship Program for agricultural land conservation practices to protect both critical areas and upland habitats
4		Stream Types	3. Non-fish bearing and fish-bearing streams should have the same level of protection. Many of the ecological functions of both types of stream are similar.	Many of the streams identified as non-fish bearing are merely topographic lows without even defined bed and bank, or riparian areas as defined by vegetation that is different from the typical upland shrub steppe. The

Comment No.	Commenter	Reference	Comment	Response
				budget for this effort did not provide for more detailed field verification of each of the topo lows and/or actual streams (with defined bed and bank) in the County, but would expect that many of the identified streams would not in reality meet the stream definition but are still receiving a level of protection. Those streams with a bed and bank, and some regularly recurring flow, have the functions adequately protected, as noted above. Also, the additional protection of 100 feet when adjacent to slopes 10 percent or greater will provide an even greater level of protection.
5		Channel migration	4. Re CAO section 15.14.040(g)(4)(1): Please add: For streams in Benton County with a channel migration zone, the riparian buffer should be measured from the outer edge of the CMZ.	The only documented water body with a channel migration zone in Benton County is the lower Yakima River, which is regulated under shoreline jurisdiction. Additionally, flows in other streams are regulated by irrigation returns or spill that has defined channels with limited floodplain and some occasional riparian wetland areas. The floodplain areas are protected by the riparian buffer and the wetlands are protected through the other provisions of the critical areas code, as noted in other responses.
6		Flooding	5. Peak flows are not always controlled by irrigation practices, especially in winter when flooding does occur. Buffers need to be sufficient to protect the streams from the effects of flooding.	As the buffers provide for significant area outside of the riparian vegetated areas. Additionally, peak natural flows are typically much less than what returns through irrigation.
7		Buffer Averaging	6. Buffer averaging. State guidelines state that the buffer area width is not to be reduced by more than 25% in any location. What is the scientific justification for potentially reducing the width to 15 ft if this results in a buffer that is less than the 25% reduction?	Sorry for the confusion of the language. This is meant to say reduction cannot be more than 25 percent of the buffer, or 15 feet, whichever is smaller. Language will be updated and clarified.
8		Sources	7. The Quinn (2020)1 and Windrope (2020)4 references should be included in the FWHCA references section of the CAO.	Update as suggested.

Comment No.	Commenter	Reference	Comment	Response
9		Notice and sources	8. Legal notices should not just be in the Prosser Record Bulletin. They should also be placed in the Tri-City Herald which serves a larger portion of the population of Benton County. If Benton County does indeed value its open spaces and hillsides, as stated in its response to the Scout wind energy project, it presumably also values its wildlife (as numerous citizens stated who expressed their concerns about the potential loss of bird life). Since habitat losses are even more detrimental to birds and wildlife than the wind turbines, the County needs to provide buffers that are reasonably protective of these populations. The proposed buffers are not. References: 1. Quinn, T., G.F. Wilhere, and K.L. Krueger, technical editors (2020), Riparian Ecosystems, Vol 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia. WDFW01987. 2. Southeastern Wisconsin Regional Planning Commission (2010), Managing the Water's Edge. 3. Fischer, R.A. (2000), Width of riparian zones for birds. EMRRP Technical Notes Collection, TN EMRRPSI-09, U.S. Army Engineer Research and Development Center, Vicksburg, MS. 4. Windrope, A. T. Rentz, K. Folkerts, and J. Azerrad (2020), Riparian Ecosystems, Vol. 2: Management Recommendations. A priorityHabitats and Species Document of the Washington Department of Fish and Wildlife	Thank you for the suggestion.
10	Elizabeth Torrey, WDFW	Sources	WDFW has two updated volumes of the Riparian Ecosystems guidelines. Volume 1 was updated in July 2020. Volume 2 was updated in December 2020. WDFW recommends that these two newest documents be reviewed, utilized, and referenced as part of the literature review and Best Available Science for code updates.	Will update BAS references to notes these sources were considered.
11		Buffers	Within these documents, a 100-foot Riparian Management Zone is recommended as being protective of the functions and values of riparian ecosystems and their adjacent waterbodies within the Columbia Plateau. This is what guided my original comments regarding RMZ/buffer sizing. However, I was made aware that Area Habitat Biologist Mike Ritter had previously reviewed and considered Benton County's proposed buffers, and concurred that the buffer sizing of 50-feet for type N and 75-feet for type F is appropriate and protective. Therefore, **I defer to Mike Ritter's original assessment, and agree that what Benton County has proposed is sufficient and acceptable. WDFW requests no changes to the proposed buffers.**	Thank you for the follow up clarifications, and please note that we are including a 100-foot buffer in areas where slopes 10 percent or greater, regardless of stream type.
12	Patrick Paulson Laurie Ness	Riparian Areas	We feel the proposed riparian buffer widths for the County's Critical Area Ordinance (CAO) are not sufficient to preserve the functions and values of riparian areas. Riparian areas are a Priority Habitat and Species (PHS) habitat recognized by the Washington Department of Fish and Wildlife (WDFW). As PHS habitat, riparian areas should be protected using the latest science and management recommendations provided by WDFW.[1] We appreciate efforts the County has made to consult science and to inventory its riparian areas, but note that the recommended buffers do not conform with recommendations from WDFW.	See response to Comment 1, 5th paragraph. Additionally other PHS habitats including shrub steppe, cliffs and bluffs, along with other critical areas such as wetlands and frequently flooded areas all work together to protect both riparian and upland habitats. Riparian buffers are just one piece of this multi-layered protection approach.

[1] The recommendations include Volumes 1 (Quinn, Wilhere, and Krueger 2020) and 2 (Windrope et al. 2020) of WDFW's *Riparian Ecosystems* (hereafter referred to as *Quinn* and *Windrope).* For protection of riparian habitat for terrestrial species WDFW recommends the 1997 version of the recommendations for riparian (Knutson and Naef 1997) be used (Hereafter referred to as *Knutson*).

Comment No.	Commenter	Reference	Comment	Response
13		Buffers	We note the 150-foot buffer proposed for non-fish-bearing streams is the minimum buffer width consistent with recommendations from WDFW for protection of both aquatic functions and terrestrial species. We don't understand, though, why fish bearing streams have a smaller buffer than non-fish-bearing streams. It may have been intended that non-fish-bearing streams are to have a buffer-width of fifty feet, as proposed in the Best Available Science (BAS) review provided by Anchor QEA. While normally this could be considered a minor error and updated before approval, RCW 36.70A.035.2.a states that … if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change While the statute provides an exception for typographical errors, it only applies if the change can be made "without changing the effect" of the statute. Changing the proposed riparian buffer width from 150 feet to 50 feet without an additional comment period will violate this RCW.	See response to Comment 4. Benton County has followed the state and County requirements for providing public comment ahead of action by the County Commission. The comment period ~~was even continued through to the upcoming May Planning Commission~~ended at the April 13 Planning Commission hearing ~~meeting~~.
14		Best Available Science and Water Quality	Although completed in January, 2021, the BAS Review does not consider recommendations given in Windrope, which state WDFW's guidance for the protection and restoration of healthy, intact, and fully functioning riparian ecosystems and for how land managers and land use regulators can utilize best available science to protect these ecosystems within the scope of their authority and/or ability. In this document, WDFW recommends where the width of the riparian vegetative community is less than 100 feet, we recommend that RMZ width [area requiring protection] be delineated at a minimum of 100 feet, as this provides the width necessary for 95% pollution removal target for most pollutants (approximately 85% for surface nitrogen.) [our emphasis]. WDFW also recommendation is to "Apply the recommended RMZ delineation steps to all streams, whether or not they are fish-bearing". This would lead to the same buffer width for all riparian areas. WDFW … found no evidence that full riparian ecosystem functions along non-fish- bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams. Furthermore, the BAS Review states that In specific cases where slopes into the stream are greater than 10% and adjacent to cultivated agricultural ground. A buffer up to 100 feet would be needed, but these conditions are too atypical in the county to warrant applying this buffer in all cases. By having Riparian buffers of at least 100 feet, we can ensure that these conditions remain atypical and our streams are protected. We also note the Voluntary Stewardship Program (VSP) used to protect critical areas within agricultural areas looks to the CAO for guidelines for buffer widths, so it is doubly important that buffer widths are adequate to protect our waters. Again, we appreciate efforts the County has made to review this science, but it's surprising that the BAS Review concluded that 50 ft buffers are adequate when WDFW concluded that a minimum buffer	See responses to Comments 4, 11, and WDFW comment #11.

Comment No.	Commenter	Reference	Comment	Response
			width would be 100 ft. Given this disparity, the BAS Review should be updated to consider WDFW's latest guidance.	
15		BAS Review Document	We haven't the time for a detailed review of the BAS Review, but note here some examples of how its conclusions are not supported by the science it references. On page 13, the BAS Review ignores multiple sources that suggest that nitrogen removal requires buffers of 80 to 150 ft, instead citing one paper which they claim states that all nitrogen is removed with buffers of 65 ft; in fact this same paper recommends a minimum buffer width of 20m (65 ft) for nitrogen and phosphorus; this paper also states that buffers may need to be as much as 40m wide for nitrogen removal. The BAS Review also cites Buffler to support the statement that "3 to 10 meter-wide grass buffer was found to be sufficient to remove most particulates from overland flow". We note first that in Benton County there are very few places where a "grass buffer" can naturally exist.	The science has a wide range of findings when it comes to protecting streams from various water quality parameters. We have updated the buffer to be 100 feet for areas where slopes are 10 percent or greater~~,~~, and regardless of stream type.
16		SMP and CAO	These new CAO buffer values will not be consistent with those in the SMP. Both documents should be based on either the BAS or the most recent and best data, so the buffer widths should be the same, maybe higher for the SMP.	See response to Comment 1, last paragraph
17		Buffer averaging	Paragraph 3.iv is nonsensical: "The buffer width is not reduced at any point to less than seventy-five (75) percent of the standard width or fifteen (15) feet, whichever is less." 75% of 75 ft (the smallest specified buffer) is 56 ft; a specified minimum of 15 ft seems to be non-operational. Should this be 50 ft?	See response to Comment 7
18	Alison Cable, FutureWise	General	Thank you for sending the Riparian Buffer Analysis memo. I reviewed the memo along with the staff report for tonight's public hearing on the critical areas ordinance. I understand from speaking with other interested residents that you expect that the comment period for the CAO will close today. I also have reviewed and support the comments from Debbie Berkowitz and Patrick Paulson and look forward to the County's response to their comments related to buffers and protection of ecological function of the County's critical areas. The Growth Management Act "requires that the regulations for critical areas must protect the 'functions and values' of those designated [critical] areas. This means all functions and values." Furthermore, Critical areas are to be protected by at least "maintaining existing conditions." Please See: Whidbey Env't Action Network v. Island Cty. (WEAN), 122 Wn. App. 156, 174–75, 93 P.3d 885, 894 (2004); and Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd., 161 Wn.2d 415, 430, 166 P.3d 1198, 1206 (2007), as corrected (Nov. 28, 2007), as corrected (Apr. 3, 2008).	Thank you for this comment. The County feels that the updates being made to the CAO will strengthen the protection of critical areas functions and values.

Comment No.	Commenter	Reference	Comment	Response
19	Patrick Paulson	Buffers	Note that the buffers identified are “minimum” buffers.	Update buffers description to note these are the minimum buffers.
20	Debbie Berkowitz		I disagree that the proposed riparian buffers in the CAO follow best available science as described in WDFW documents, Quinn (2020), Windrope (2020), and Knutson and Naef(1997, as cited in Quinn). • The proposed buffer widths still do not take into account the pollution removal function that requires a minimum buffer of 100 ft- and more than 100 ft on steep slopes. • The buffer widths do not take into account the riparian priority habitat needs for wildlife. The non-riparian areas cited are too small for wildlife protection. • Average riparian vegetation widths along the creeks are cited, but the riparian vegetation is double that in some segments that were measured; and the riparian vegetation width alone isn’t an adequate buffer. • The language about buffer width reductions in buffer averaging wasn’t clarified. • There is still no option to increase buffer widths without buffer averaging in stream segments that are especially sensitive. • I would think that naturally occurring stream beds, even if they are intermittent and influenced by irrigation flows, do meander and therefore have CMZs (Amon Creek being an example). For more details, please see my original comments that were submitted on April 12.	No additional changes are planned for the following reasons, corresponding to your bulleted items: • The buffers provide adequate water quality protection in light of the soils, precipitation and other protections and programs in place, such as VSP in agriculture areas and stormwater management measures • Regarding wildlife, please see response to Comments 1 and 2 • Regarding average riparian widths, in areas that are wider than the average these are riparian wetlands and would protected through wetlands regulations • Regarding buffer averaging, see response to Comment 7 • Regarding increasing buffer widths, the draft code states in the stream buffers section: “Larger buffers may be required and activities may be further restricted during the specified season.” This language provides flexibility for increasing protection requirements, as needed. • Regarding stream meander, channels in the county are defined by topographic lows, irrigation management/spills (as occur on Amon) and groundwater returns. Our understanding is that these channels are well established based on the consistent range of flows that are delivered through them during irrigation seasons. There are sometimes multiple channels and wetlands that fill and drain based on these returns, and the buffer is applied from the outer edge of these channels, where two or more might exist.

Comment No.	Commenter	Reference	Comment	Response
21	Alison Cable, Tim Trohimovich	Buffers	"Local governments must review and update their critical areas ordinances every eight years to ensure they continue to meet the [Growth Management Act's] GMA's standards. RCW 36.70A.130(5)(b)."1 As our previous email to the County on April 13, 2021 states, the GMA "requires that the regulations for critical areas must protect the 'functions and values' of those designated [critical] areas. This means all functions and values."2 Furthermore, critical areas are to be protected by at least "maintaining existing conditions."3 In addition: The GMA requires local governments to use "best available science" when designating and protecting critical areas. RCW 36.70A.172(1). "No precise definition of 'best available science' is found in the statutes or in case law, but the phrase is generally interpreted to require local governments to analyze valid scientific information in a reasoned process." Kitsap All. of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 160 Wn. App. 250, 267, 255 P.3d 696 (2011). The record must show that the County considered the best available science substantively in its designation and protection of a critical area. Id. "By RCW 36.70A.172(1), 'the Legislature left the cities and counties with the authority and obligation to take scientific evidence and to balance that evidence among the many goals and factors to fashion locally appropriate regulations based on the evidence not on speculation and surmise.' " Ferry County v. Growth Mgmt. Hr'gs Bd., 184 Wn. App. 685, 734, 339 P.3d 478 (2014) (quoting Honesty in Envtl. Analysis & Legislation (HEAL) v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd., 96 Wn. App. 522, 531, 979 P.2d 864 (1999)). "Mere inclusion of scientific sources in a critical areas ordinance is not sufficient. To demonstrate that [best available science] has been included, counties and cities should address the [best available science] on the record." Id. at 735-36, 339 P.3d 478 (citation omitted [by the court]). The GMA "does not require the county to follow [best available science]; rather, it is required to include [best available science] in its record. Thus, a county may depart from [best available science] if it provides a reasoned justification for such a departure." Id. at 740, 339 P.3d 478. However, that "departure from [best available science] in a critical areas ordinance should be rare." Id. The relevant regulations expressly establish that the Department's [of Fish and Wildlife's priority habitat and species information includes the best available science. WAC 365-190-130(4)(b); Ferry County, 184 Wn. App. at 734, 339 P.3d 478; see also Olympic Stewardship Found. v. W. Wash. Growth Mgmt. Hr'gs Bd., 166 Wn. App. 172, 193, 274 P.3d 1040 (2012) ("[The GMA's] regulations are the proper starting point for determining whether a county has complied with RCW 36.70A.172(1)'s 'best available science' requirement.").4 Unfortunately, the F, NP, and NS buffers fail to comply with these legal requirements. According to the Department of Fish and Wildlife's priority habitat and species information there are five key ecological functions of riparian areas in the Columbia Plateau: shade, wood recruitment into rivers and streams and detrital nutrients for aquatic habitats, bank stability, pollutant removal, and alluvial water storage. 5 "[W]ith respect to aquatic habitats, full function for five of the key riparian ecological functions is typically provided by an area that is one site potential tree height wide."6 Black Cottonwood, typically the largest riparian species in the Columbia Basin attain an average size of 70 feet tall at age 150 years. 7 Buffer widths necessary to remove 99 percent of sediment, remember the standard is maintaining existing conditions including water quality, must be 153 feet wide. 8 Buffer widths necessary to remove 99 percent of the surface nitrogen must be 200 feet wide.9 Buffer widths necessary to remove 99 percent of the subsurface nitrogen must be 322 feet wide.10 These buffers should be measured from the	Buffers in the draft Benton County code have been designed, as noted in your comments, to protect existing ecological functions and values. The County has considered and applied Best Available Science to the various functions provided by riparian areas, based on the conditions found in Benton County, as provided in the Anchor QEA Best Available Science (BAS) document, which is included as part of the administrative record. Stream-specific analysis was conducted in the County and findings applied based on the existing conditions characterized. In doing so, the County has supplemented and improved the BAS information relied upon to identify associated riparian buffers. The maximum height of a black cottonwood may be an average of 70 feet at 150 years but the average tree heights within a riparian area along the streams reviewed in Benton County are much less – and while not specifically measured – were observed to be more along the lines of 15 to 50 feet tall, where trees existed along the streams reviewed. Most riparian areas did not have woody vegetation higher than 10 – 15 feet. The buffers prescribed protect the existing conditions for wood recruitment on the streams in Benton County. In semi-arid west environments, large woody vegetation can be rare and its presence decreases rapidly with increasing distance of the stream channel from flow patterns of the water table (Malanson 1993 as cited in Buffler 2005). Instream wood used to be more abundant in semi-arid areas, but this is no longer the case (Quinn et al. 2020). Shrub density has increased along streambanks where trees or woodier species may have been in the past. Riparian buffer widths in Benton County on non-shoreline streams average 20 feet, with very limited tree cover as most of the habitat is shrub-steppe. Because most recruitment happens within the adjacent 49 feet of the stream, a buffer of 50 feet would be sufficient to provide wood recruitment in these conditions.

Comment No.	Commenter	Reference	Comment	Response
			outer edge of the floodplain or the channel migration zone if the water body has a channel migration zone.11 These recommendations should be applied to all streams whether they are fish bearing or not.12 None of the riparian buffers the county is proposing are wide enough to perform these functions and so the buffers violate the GMA. Some local governments believe that if they convince a particular Department of Fish and Wildlife staffer to accept a smaller buffer that they are complying with the GMA. They are not. The requirement is to substantively incorporate best available science, not to push back on a state agency staffer until they give up.13	The water quality and buffers information reviewed in the BAS report indicates that to protect stream water quality from erosion a vegetative buffer of 40 to 50 feet should provide adequate protection, for any stream regardless of stream type. This achieves, for example, approximately 90% reduction in sediment for slopes up to 5%, and 80% reduction for slopes between 5 and 15%. This should be viewed as a conservative protection value, based upon the higher rainfall, intensity of rainfall and runoff potential in the geographic areas where most of the referenced studies were conducted. Semi-arid and arid areas experience significantly less precipitation (3 to 15 inches per year) than most of the study areas referenced (e.g., 20 inches [Nebraska] to 45 inches [Georgia]) per year. Additionally, Leeds et al. (1994) reviewed several studies finding a range of efficacy from 66% (15-foot buffer) to 97% (30-foot buffer). Yuan et al. (2009) found that, "Overall, the sediment trapping efficiency to buffer width relationship can be best fitted with logarithm models. According to this relationship, a 5 m buffer can trap about 80% of incoming sediment." USDA-NRCS (2000) recommends that pollutants like pesticides and organic compounds could be diffused between 35 and 65 feet. Quinn et al. (2020) found in a re-analysis of Zhang et al. (2010) that 99% average removal efficacy of pesticides occurs at 68 feet, and that 95% removal occurs at 59 feet, based on a meta-analysis for 49 studies. A buffer of 50 feet would be sufficient to support a majority pollutant removal function in most riparian areas. A minimum buffer of 40 feet would effectively intercept pollutants and minimize sediment input from upland sources. A 50-foot buffer could be justified by applying BAS for all the streams outside of shoreline jurisdiction in

Comment No.	Commenter	Reference	Comment	Response
				Benton County. However, because of anadromous species considerations, the County added 25 additional feet to the buffer for those streams that are utilized by these species, as an added level of protection. Additionally, the proposed riparian buffers do not stand in isolation as other measures such as protection of wetland habitats and other habitats and species, building setbacks of a minimum of 10 feet from buffers, conservation practices for agricultural lands through the County's Voluntary Stewardship program are also being implemented, stormwater management, regulation of septic systems and other measures that work with and complement the County's riparian buffer protections to protect existing ecological functions and values.

816 Second Ave, Suite 200, Seattle, WA 98104
p. (206) 343-0681
futurewise.org

BCCM 1.3

May 11, 2021

Mr. Martin Sheeran, Chairman
Benton County Planning Commission
Benton County Planning Department
P.O. Box 910
1002 Dudley Avenue
Prosser, Washington 99320

Dear Chair Sheeran and Planning Commissioners:

Subject: Comments on the Ordinance Amendment - OA 2021-002 an ordinance relating to critical areas, general provisions and fish and wildlife habitat conservation areas
Sent via email to: planning.department@co.benton.wa.us; Greg.Wendt@co.benton.wa.us; Donna.Hutchinson@co.benton.wa.us

Thank you for the opportunity to comment on Ordinance Amendment - OA 2021-002 -an ordinance relating to critical areas, general provisions and fish and wildlife habitat conservation areas. Futurewise works throughout the State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members across Washington State including Benton County.

"Local governments must review and update their critical areas ordinances every eight years to ensure they continue to meet the [Growth Management Act's] GMA's standards. RCW 36.70A.130(5)(b)."[1] As our previous email to the County on April 13, 2021 states, the GMA "requires that the regulations for critical areas must protect the 'functions and values' of those designated [critical] areas. This means all functions and values."[2] Furthermore, critical areas are to be protected by at least "maintaining existing conditions."[3] In addition:

> The GMA requires local governments to use "best available science" when designating and protecting critical areas. RCW 36.70A.172(1). "No precise definition of 'best available science' is found in the statutes or in case law, but the phrase is generally interpreted to require local governments to analyze valid

[1] *Whidbey Env't Action Network v. Growth Mgmt. Hearings Bd.*, 14 Wash. App. 2d 514, 522 – 23, 471 P.3d 960, 966 (2020).
[2] *Whidbey Env't Action Network v. Island Cty. (WEAN)*, 122 Wn. App. 156, 174 – 75, 93 P.3d 885, 894 (2004); and
[3] *Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd.*, 161 Wn.2d 415, 430, 166 P.3d 1198, 1206 (2007), as corrected (Nov. 28, 2007), as corrected (Apr. 3, 2008).

> scientific information in a reasoned process." *Kitsap All. of Prop. Owners v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 160 Wn. App. 250, 267, 255 P.3d 696 (2011). The record must show that the County considered the best available science substantively in its designation and protection of a critical area. *Id.*
>
> "By RCW 36.70A.172(1), 'the Legislature left the cities and counties with the authority and obligation to take scientific evidence and to balance that evidence among the many goals and factors to fashion locally appropriate regulations based on the evidence not on speculation and surmise.' " *Ferry County v. Growth Mgmt. Hr'gs Bd.*, 184 Wn. App. 685, 734, 339 P.3d 478 (2014) (quoting *Honesty in Envtl. Analysis & Legislation (HEAL) v. Cent. Puget Sound Growth Mgmt. Hr'gs Bd.*, 96 Wn. App. 522, 531, 979 P.2d 864 (1999)). "Mere inclusion of scientific sources in a critical areas ordinance is not sufficient. To demonstrate that [best available science] has been included, counties and cities should address the [best available science] on the record." *Id.* at 735-36, 339 P.3d 478 (citation omitted [by the court]).
>
> The GMA "does not require the county to follow [best available science]; rather, it is required to include [best available science] in its record. Thus, a county may depart from [best available science] if it provides a reasoned justification for such a departure." *Id.* at 740, 339 P.3d 478. However, that "departure from [best available science] in a critical areas ordinance should be rare." *Id.*
>
> The relevant regulations expressly establish that the Department's [of Fish and Wildlife's priority habitat and species information includes the best available science. WAC 365-190-130(4)(b); *Ferry County*, 184 Wn. App. at 734, 339 P.3d 478; see also *Olympic Stewardship Found. v. W. Wash. Growth Mgmt. Hr'gs Bd.*, 166 Wn. App. 172, 193, 274 P.3d 1040 (2012) ("[The GMA's] regulations are the proper starting point for determining whether a county has complied with RCW 36.70A.172(1)'s 'best available science' requirement.").[4]

Unfortunately, the F, NP, and NS buffers fail to comply with these legal requirements.

According to the Department of Fish and Wildlife's priority habitat and species information there are five key ecological functions of riparian areas in the Columbia Plateau: shade, wood recruitment into rivers and streams and detrital nutrients for aquatic habitats, bank stability, pollutant removal, and alluvial water storage.[5] "[W]ith respect to aquatic habitats, full function for five of the key riparian ecological functions is typically provided by an area that is one site-potential tree height wide."[6] Black Cottonwood, typically the largest riparian species in the

---

[4] *Whidbey Env't Action Network v. Growth Mgmt. Hearings Bd.*, 14 Wn. App. 2d 514, 524 – 25, 471 P.3d 960, 967 (2020).
[5] Timothy Quinn, George F. Wilhere, and Kirk L. Krueger, technical editors, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* p. 224 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia, WA: Updated July 2020) last accessed on May 7, 2021 at: https://wdfw.wa.gov/publications/01987/ and at this Dropbox link https://www.dropbox.com/sh/4coipsntku4tu31/AADkldZBiFS7LFTWz7BDTiUEa?dl=0 with the filename: "wdfw01987.pdf." This report was peer-reviewed. *Id.* pp. 11 – 12.
[6] *Id.*

Columbia Basin attain an average size of 70 feet tall at age 150 years.[7] Buffer widths necessary to remove 99 percent of sediment, remember the standard is maintaining existing conditions including water quality, must be 153 feet wide.[8] Buffer widths necessary to remove 99 percent of the surface nitrogen must be 200 feet wide.[9] Buffer widths necessary to remove 99 percent of the subsurface nitrogen must be 322 feet wide.[10] These buffers should be measured from the outer edge of the floodplain or the channel migration zone if the water body has a channel migration zone.[11] These recommendations should be applied to all streams whether they are fish bearing or not.[12] None of the riparian buffers the county is proposing are wide enough to perform these functions and so the buffers violate the GMA.

Some local governments believe that if they convince a particular Department of Fish and Wildlife staffer to accept a smaller buffer that they are complying with the GMA. They are not. The requirement is to substantively incorporate best available science, not to push back on a state agency staffer until they give up.[13]

Thank you for considering our comments. If you require additional information, please contact Alison Cable at telephone (206) 343 0681 Ext. 114 and email: alison@futurewise.org or Tim Trohimovich at telephone (206) 343-0681 Ext. 118 and email: tim@futurewise.org.

Very Truly Yours,

Alison Cable
Tri-Cities Program Manager

Tim Trohimovich, AICP
Director of Planning & Law

Enclosures at this Dropbox link:
https://www.dropbox.com/sh/4coipsntku4tu31/AADkldZBiFS7LFTWz7BDTiUEa?dl=0

---

[7] *Id.* p. 206, p. 216.
[8] *Id.* p. 150, p. 225.
[9] *Id.*
[10] *Id.*
[11] Amy Windrope, Terra Rentz, Keith Folkerts, and Jeff Azerrad, *Riparian Ecosystems, Volume 2: Management Recommendations A Priority Habitats and Species Document of The Washington Department of Fish and Wildlife* p. 6 (Dec. 2020) last accessed on May 7, 2021 at: https://wdfw.wa.gov/publications/01988 and at this Dropbox link https://www.dropbox.com/sh/4coipsntku4tu31/AADkldZBiFS7LFTWz7BDTiUEa?dl=0 with the filename: wdfw01988.
[12] *Id.*
[13] *Whidbey Env't Action Network v. Growth Mgmt. Hearings Bd.*, 14 Wn. App. 2d 514, 524 – 25, 471 P.3d 960, 967 (2020).

Greg Wendt

From: Berkowitz <cdandrb@charter.net>
Sent: Tuesday, May 11, 2021 12:15 PM
To: Greg Wendt
Cc: Planning Department; Donna Hutchinson
Subject: [EXTERNAL] additional comments re: OA 2021-002, Critical Areas Ordinance for the May 11 Planning Commission meeting and the Board of County Commissioners meeting

EXTERNAL EMAIL WARNING!!!: This email originated from outside of Benton County. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Hello Greg,

Now that I've had a chance to read the County's responses to my comments as well as to those from Patrick Paulson/Laurie Ness, and Alison Cable, I do have the following additional comments to submit to the Planning Commission (if the comment period is still open) and to the BOCC. I am sorry that we did not have the opportunity to have the discussion you suggested after we received the responses but the timeframe was short.

I disagree that the proposed riparian buffers in the CAO follow best available science as described in WDFW documents, Quinn (2020), Windrope (2020), and Knutson and Naef (1997, as cited in Quinn).

- The proposed buffer widths still do not take into account the pollution removal function that requires a minimum buffer of 100 ft – and more than 100 ft on steep slopes.
- The buffer widths do not take into account the riparian priority habitat needs for wildlife. The non-riparian areas cited are too small for wildlife protection.
- Average riparian vegetation widths along the creeks are cited, but the riparian vegetation is double that in some segments that were measured; and the riparian vegetation width alone isn't an adequate buffer.
- The language about buffer width reductions in buffer averaging wasn't clarified.
- There is still no option to increase buffer widths without buffer averaging in stream segments that are especially sensitive.
- I would think that naturally occurring stream beds, even if they are intermittent and influenced by irrigation flows, do meander and therefore have CMZs (Amon Creek being an example).

For more details, please see my original comments that were submitted on April 12.

Thank you for considering these additional comments.

Debbie Berkowitz

Greg Wendt

From: Greg Wendt
Sent: Tuesday, May 11, 2021 11:17 AM
To: Patrick Paulson
Subject: 'Minimum'- CAO Draft

Patrick,
Thank you for the call earlier and your patience explaining to me your concerns. I appreciate that.
I added the word 'minimum' in red text below. Just wanted to ensure the addition of the language meets the intent of your message and the concern we discussed.
I always appreciate your thoughts and time.
Thanks again,
Greg

(g) Buffers.

(1) Establishment of Buffers. ((~~The Planning Administrator shall require the establishment of~~)) Required buffer areas for activities adjacent to habitat conservation areas ((~~when needed~~)) to protect habitat conservation areas are as set forth in this section (g). Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths ((~~shall~~)) reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife.

(2) Rivers, Lakes, Ponds, and Streams. Waterbodies classified by the water typing system specified in WAC 222-16-030 have the following **minimum** riparian buffer requirements consistent with State Department of Fish and Wildlife recommendations:

(i) Type S (Shorelines of the State) Standard Buffer Width: Type S waters are protected by the Benton County Shoreline Master Program, as existing and hereafter amended, rather than this chapter.

(ii) Type F (Fish) Standard Buffer Width: ((~~200 ft~~)) Seventy-five (75) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.

(iii) Type Np (Non-Fish Perennial) and type Ns (Non-Fish Seasonal) Standard Buffer Width: ((~~150 ft~~)) Fifty (50) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten

percent (10%) or greater the buffer shall be one hundred (100) feet.

((~~(iv) Type Ns (Non-Fish Seasonal) Standard Buffer Width: 150 ft.~~

Greg Wendt
Director of Community Development
Benton County Public Services Building
102206 E Wiser Parkway
Kennewick, WA 99336
(509) 786-5612

Mailing Address:
Benton County Community Develoment Department
PO Box 910, Prosser, WA 99350

Greg Wendt

From: Greg Wendt
Sent: Tuesday, May 11, 2021 3:15 PM
To: 'Patrick Paulson'
Cc: 'Benjamin Floyd'
Subject: RE: [EXTERNAL] additional comments re: OA 2021-002, Critical Areas Ordinance for the May 11 Planning Commission meeting and the Board of County Commissioners meeting

Patrick,

Thank you for finding that in the matrix.

For the CAO:
The public comment portion of the hearing for the CAO was closed by the Planning Commission at the end of the April 13 hearing; and
For the SMP:
The public comment portion of the hearing for the SMP (verbal) was closed by the Planning Commission at the end of the April 13 hearing, although written comments were still able to be submitted through April 23.

Thank you for bringing the error in the matrix to our attention- will correct that.

Thanks,
Greg

Greg Wendt
Director of Community Development
Benton County Public Services Building
102206 E Wiser Parkway
Kennewick, WA 99336
(509) 786-5612

Mailing Address:
Benton County Community Develoment Department
PO Box 910, Prosser, WA 99350

From: Patrick Paulson <patrick@3rivers-ashtanga.org>
Sent: Tuesday, May 11, 2021 3:03 PM
To: Greg Wendt <Greg.Wendt@co.benton.wa.us>
Cc: Laurie Ness <pennifurs.mom@gmail.com>; Alison Cable <alison@futurewise.org>; Berkowitz <cdandrb@charter.net>
Subject: Re: [EXTERNAL] additional comments re: OA 2021-002, Critical Areas Ordinance for the May 11 Planning Commission meeting and the Board of County Commissioners meeting

The response matrix for the CAO, in response #13, states "Benton County has followed the state and County requirements for providing public comment ahead of action by the County Commission. *The comment period was even continued through to the upcoming May Planning Commission meeting.*" (My emphasis). Both Debbie Berkowitz and I submitted comments today expecting them to be included in the record.

On May 11, 2021, at 2:53 PM, Berkowitz <cdandrb@charter.net> wrote:

From: Greg Wendt [mailto:Greg.Wendt@co.benton.wa.us]
Sent: Tuesday, May 11, 2021 2:08 PM
To: Berkowitz
Subject: RE: [EXTERNAL] additional comments re: OA 2021-002, Critical Areas Ordinance for the May 11 Planning Commission meeting and the Board of County Commissioners meeting

Thank you Debbie!

Appreciate the comments. Hope things are well.

The public comments section of the PC Hearing is closed, but we will address these and other comments as we get closer to the BOCC meeting in June.

Thanks!

Greg

<image003.jpg>**Greg Wendt**
Director of Community Development
Benton County Public Services Building
102206 E Wiser Parkway
Kennewick, WA 99336
(509) 786-5612

Mailing Address:
Benton County Community Develoment Department
PO Box 910, Prosser, WA 99350

From: Berkowitz <cdandrb@charter.net>
Sent: Tuesday, May 11, 2021 12:15 PM
To: Greg Wendt <Greg.Wendt@co.benton.wa.us>
Cc: Planning Department <Planning.Department@co.benton.wa.us>; Donna Hutchinson <Donna.Hutchinson@co.benton.wa.us>
Subject: [EXTERNAL] additional comments re: OA 2021-002, Critical Areas Ordinance for the May 11 Planning Commission meeting and the Board of County Commissioners meeting

EXTERNAL EMAIL WARNING!!!: This email originated from outside of Benton County. DO NOT click links or open attachments unless you recognize the sender and know the content is safe.

Hello Greg,

Now that I've had a chance to read the County's responses to my comments as well as to those from Patrick Paulson/Laurie Ness, and Alison Cable, I do have the following additional comments to submit to

RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON

IN THE MATTER OF COUNTY PLANNING AN ORDINANCE RELATING TO CRITICAL AREAS, GENERAL PROVISIONS AND FISH AND WILDLIFE HABITAT CONSERVATION AREAS; AMENDING THE SECTIONS RELATING TO APPLICABILITY AND PERFORMANCE STANDARDS-GENERAL REQUIREMENTS; AMENDING ORDINANCE 609, SECTION 13 AND BCC 15.02.120; AMENDING ORDINANCE 609, SECTION 54 AND BCC 15.14.040; AND AMENDING ORDINANCE 609, SECTION 56.

WHEREAS, the Benton County Planning Commission after conducting an open record hearing and review on June 8th, 2021 and a continued hearing on May 11, 2021 has forwarded the proposed amendment(s) to the Board of County Commissioners with a positive recommendation; and,

WHEREAS, the Board did review the Planning Commission record, and staff recommendations, the testimony, and the proposed ordinance; and,

WHEREAS, the Planning Commission recommendation of approval is set forth in the Planning Commission's Recommendation, Findings of Fact and Conclusions that are found in File # OA 2021-002 in the Planning Department; and,

WHEREAS, Notice of Open Record Hearing before the Board of County Commissioners was published in the Prosser Record Bulletin on June 9 ,2021; and,

WHEREAS, the Board of County Commissioners did conduct an open record hearing on Tuesday, June 22, 2021, at 9.00 a.m. in the Commissioners Meeting Room, Third Floor, Courthouse, Prosser Washington both virtually and in person to consider the above proposed ordinance amendment; and,

WHEREAS, the Board of County Commissioners did adopt the Planning Commission's Findings of Fact and Conditions of Approval as their own (which are kept in File No. OA 2021-002 in the Planning Department records) and adopted the Public Response Comment Matrix dated June 8, 2021 which includes County responses to the comments received during the 30 day comment period; and,

WHEREAS, after consideration of the above-mentioned request and review of the Planning Commission record, staff analysis and memos, and all written and oral comments submitted at the public hearing, the Board of County Commissioners are satisfied that it appears to be in the best interest of the public to adopt Planning

Application OA 2020-002, amendment to BCC Title 15, Ordinance 609, BCC 15.02.120, 15.14.040, and Section 56; NOW THEREFORE

BE IT RESOLVED that Ordinance No._____ an ordinance relating to critical areas, general provisions and fish and wildlife habitat conservation areas; amending the sections relating to applicability and performance standards-general requirements; amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56 is hereby adopted and will take effect and be in full force immediately upon its passage and adoption.

Dated this 22nd day of June 2021.

_____
Chairman of the Board

_____
Member

_____
Member
Constituting the Board of County
Commissioners of Benton County
Washington.

Attest.....
Clerk of the Board

GW/djh

ORDINANCE NO._____

AN ORDINANCE relating to critical areas, general provisions and fish and wildlife habitat conservation areas; amending the sections relating to applicability and performance standards-general requirements; amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 609, Section 13 and BCC 15.02.120 are hereby amended to read as follows:

APPLICABILITY.

(a) The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in unincorporated Benton County, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the unincorporated portion of the County, except agricultural activities on agricultural lands, as those terms are defined by RCW 36.70A.703(1) and RCW 90.58.065 as now existing or as hereafter amended, are regulated as set forth below. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.

(1) Benton County has opted into the Voluntary Stewardship Program (VSP), an alternative to the regulatory protection of critical areas on agricultural lands. A working group comprised of agricultural groups, environmental groups, and tribes ((~~is developing~~)) developed and approved a work plan that identifies goals and benchmarks to protect critical areas while maintaining the viability of agriculture through voluntary, incentive based measures (WAC 365-1919-010(1) as now existing and hereafter amended).

(i) ((~~If~~)) ((~~t~~))The work plan developed and approved by the VSP working group ((~~is~~)) was approved by the Washington State Conservation Commission in April 2018, and the provisions ((~~or standards~~)) of this chapter will not apply to agricultural activities on agricultural lands, as those terms are defined ((~~in~~)) by RCW 36.70A.703(1) and RCW 90.58.065, as now existing ((~~and~~)) or as hereafter amended.

(ii) If the ((~~work plan is not approved by the~~)) Washington State Conservation Commission withdraws its approval of the work plan or determines that it ((~~, or~~)) fails to meet goals and benchmarks, the provisions and policies of the chapter will apply to agricultural activities ((~~(RCW 36.70A.735 as now existing and hereafter amended)~~)) on agricultural lands.

(2) The Benton County Shoreline Master Program, adopted pursuant to RCW 90.58 as now existing and hereafter amended, shall apply to all land use and development activities occurring within shoreline jurisdiction. Within shoreline jurisdiction, if critical areas are present where the

activities are to take place, compliance with the SMP is required. No further evaluation under this chapter is required.

(b) The County shall not approve any permit or otherwise issue any authorization not expressly exempted by this chapter to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this chapter.

(c) Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

SECTION 2. Ordinance 609, Section 54 and BCC 15.14.040 are hereby amended to read as follows:

PERFORMANCE STANDARDS—GENERAL REQUIREMENTS.

(a) Alterations shall not degrade the functions and values of habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with this chapter.

(b) Nonindigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

(c) Mitigation and Contiguous Corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(d) Approvals of Activities. The Planning Administrator shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

(1) Establishment of buffer zones;

(2) Preservation of critically important vegetation and/or habitat features such as snags and downed wood;

(3) Limitation of access to the habitat area, including fencing to deter unauthorized access;

(4) Seasonal restriction of construction activities;

(5) Establishment of a duration and timetable for periodic review of mitigation activities; and

(6) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(e) Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per-function basis.

(f) Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

(g) Buffers.

(1) Establishment of Buffers. ((~~The Planning Administrator shall require the establishment of~~)) Required buffer areas for activities adjacent to habitat conservation areas ((~~when needed~~)) to protect habitat conservation areas are as set forth in this section (g). Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths ((~~shall~~)) reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife.

(2) Rivers, Lakes, Ponds, and Streams. Waterbodies classified by the water typing system specified in WAC 222-16-030 have the following minimum riparian buffer requirements consistent with State Department of Fish and Wildlife recommendations:

(i) Type S (Shorelines of the State) Standard Buffer Width: Type S waters are protected by the Benton County Shoreline Master Program, as existing and hereafter amended, rather than this chapter.

(ii) Type F (Fish) Standard Buffer Width: ((~~200 ft~~)) Seventy-five (75) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.

(iii) Type Np (Non-Fish Perennial) and type Ns (Non-Fish Seasonal) Standard Buffer Width: ((~~150 ft~~)) Fifty (50) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.

((~~(iv) Type Ns (Non-Fish Seasonal) Standard Buffer Width: 150 ft.~~

~~(3) Buffer modification. To manage for site specific conditions, buffer widths established in section (2) (ii-iv) above may be modified, provided:~~

~~(i) The buffer width modification is no greater than 33%;~~

~~(ii) The critical area study shall demonstrate that the proposed buffer width will continue to protect the integrity, functions, and values of the riparian area and habitat;~~

~~(iii) The critical area study shall include a field verification that evaluates actual river, lake, pond, and stream conditions. This shall be completed by a qualified professional and comply with WAC 365-190-130(4)(f)(ii), as existing or hereafter amended; and~~

~~(iv) Applicant shall complete a request for consultation with the State Department of Fish and Wildlife consistent with BCC 15.14.030(c)(7).~~))

(3) Buffer Width Averaging. With written approval of the Planning Administrator, riparian buffer widths may be modified at various points in accordance with an approved critical area report and the best available science on a case-by-case basis by requesting buffer widths be applied on an averaging basis. Averaging of buffer widths may only be allowed where a qualified professional demonstrates that:

(i) It will not reduce riparian functions or functional performance;

(ii) The riparian area contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the riparian area would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

(iii) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer under subsection (g)(2) above; and

(iv) The buffer width is not reduced more than twenty five percent of the standard width or fifteen (15) feet, whichever is less.

(4) Measurement.

(i) Buffers for rivers, lakes, ponds, and streams shall be measured in all directions from the ordinary high-water mark (OHWM) as identified in the field; and

(ii) Buffers for other habitat types shall be measured in all directions from the habitat boundary, as mapped by the Washington State Department of Fish and Wildlife or a qualified professional pursuant to BCC 15.14.030(a).

(5) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

SECTION 3. Ordinance 609, Section 56 is hereby amended to read as follows and will now be known as "APPENDIX A—GENERAL REFERENCES AND BEST AVAILABLE SCIENCE" but will not be codified:

General References and Best Available Science Sources for Benton County Critical Area Regulations.

This document serves as the General References and Best Available Science produced for the Benton County Critical Area Regulations.

Benton County is mandated by the Growth Management Act of Washington (GMA) to review and update its comprehensive plan and development regulations according to a schedule established in RCW 36.70A.130(5). This review and update includes the critical area regulations per RCW 36.70A.130(1)(c). The review of critical area regulations under RCW 36.70A.172(1) requires the inclusion of best available science (BAS) and consideration given to anadromous fisheries.

The following documents represent a partial list of general references, data and best available science. This list is not meant to be exhaustive, and may be added to in the future. This document is intended to provide an index of the science and data that may be reviewed by Benton County in the development of the County's Critical Area Ordinance.

GENERAL REFERENCES

Municipal Research and Services Center of Washington. 2018. Website. City and county codes for Washington State jurisdictions available at URL- http://mrsc.org/Home/Research-Tools/Washington-County-Codes.aspx

Washington State Department of Community, Trade, and Economic Development. 2007.

Critical Areas Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act.

Benton County Codes, as existing or hereafter amended.

Natural Resource Conservation Service, Field Office Technical Guides. Latest Editions.

RCW 36.70A. Growth Management Act

RCW 36.70A.172 Critical Areas – Designation and Protection – Best Available Science.

WAC 365-190 Critical Areas.

WAC 365-195 Best Available Science.

WAC 222-16-030 Water Typing System

WAC 173-22 Designation of Shorelands and Wetlands

RCW 90.58 Shoreline Management Act

RCW 43.21C State Environmental Policy

RCW 90.44 Regulation of Public Groundwaters

RCW 90.48.020 Waters of the State

RCW 77. Department of Fish and Wildlife

BEST AVAILABLE SCIENCE SOURCES

WETLANDS

Azous, A. and Homer, R. 2010. Wetlands and urbanization: implications for the future. Washington State Department of Ecology; King County Water and Land Resources Division; and University of Washington.

Brinson, M. M. 1993. A hydrogeomorphic classification for wetlands. Technical Report WRP-DE-4, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS. NTIS No. AD A270 053.

Bunten, D., A. McMillan, R. Mraz, and J. Sikes. 2012. Wetlands and CAO Updates: Guidance for Small Cities Eastern Washington Version: 2012 Update. Washington State Department of Ecology. Publication #10-06-001. Olympia, WA.

Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service. Publ. # FWS/OBS-79/31. 131p.

Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S; Stanley, E. Stockdale. April 2005. Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA.

Hattermann, F. Krysanova, V., Hesse, C. 2008. Modelling wetland processes in regional applications. Hydrological Sciences Journal 53(5):1001-1012.

Hogan, D. M., and M. R. Walbridge. 2007. Urbanization and nutrient retention in freshwater riparian wetlands. Ecological Applications 17(4):1142-1155.

Hruby, T. 2013.Update on Wetland Buffers: The State of the Science, Finial Report, October 2013: Washington State Department of Ecology Publication #13-06-11. Olympia, WA.

Hruby, T. 2014. Washington State Wetland Rating System for Eastern Washington: 2014 Update. Washington State Department of Ecology. Publication #14-06-030. Olympia, WA.

Hunt, R., D. Krabbenhoft, and M. Anderson . 1996. Groundwater inflow measurements in wetland systems. Water Resour. Res. 32(3): 495-507.

Mitsch, W.J. and J. G. Gosselink. 2000. Wetlands, Third Edition. John Wiley & Sons, Inc. New York, New York.

Sheldon, 0., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. 2005. Wetlands in Washington State - Volume 1:A Synthesis of the Science. Washington State Department of Ecology. Publication #05-06-006. Olympia, WA.

U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). Environmental Laboratory ERDC/EL TR-08-13, Wetlands Regulatory Assistance Program, U.S. Army Corps of Engineers Engineer Research and Development Center, Vicksburg, Mississippi.

U.S. Army Corps of Engineers. 1987. Corps of Engineers Wetland Delineation Manual: Wetlands Research Program Technical Report Y-87-1 (on-line edition).

U.S. Fish and Wildlife Service. 2018. National Wetlands Inventory. Washington, D.C.: Available at: http://www.fws.gov/wetlands/.

Washington State Department of Ecology, 1997. Washington State Wetlands Identification and Delineation Manual. Ecology Publication No. 96-94.

Washington State Department of Ecology. 2016. Wetland Guidance for CAO Updates, Eastern Washington Version. Publication No. 16-06-002.

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. 2006a. Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance (Version 1). Washington State Department of Ecology Publication #06-06-0lla. Olympia, WA.

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. 2006b. Wetland Mitigation in Washington State - Part 2: Developing Mitigation Plans (Version 1). Washington State Department of Ecology Publication #06-06-0llb. Olympia, WA.

Washington State Department of Natural Resources. 2018. Wetlands of High Conservation Value- Map Viewer [computer file]. Olympia, WA. Available at: https://www.dnr.wa.gov/NHPwetlandviewer

Zedler, J. B., and S. Kercher .2004. Causes and Consequences of Invasive Plants in Wetlands: Opportunities, Opportunists, and Outcomes. Critical Reviews in Plant Sciences 23(5):431-452.

CRITICAL AQUIFER RECHARGE AREAS

Bauer, H.H. and Vaccarro, J.J. 1987. Documentation of a Deep Percolation Model for Estimating Ground-Water Recharge. A contribution of the Regional Aquifer- System Analysis Program. U.S. Geological Survey. Open-File Report 86-536. Tacoma, WA.

Bauer, H.H. and Vaccarro, J.J. 1989. Estimates of Ground-Water Recharge to the Columbia Plateau Regional Aquifer System, Washington, Oregon, and Idaho, for Predevelopment and Current Land-Use Conditions. U.S. Geological Survey. Water Resources Investigations Report 88-4108. Tacoma, WA.

Cook, Kirk V. 2000. Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances. Washington State Department of Ecology. Water Quality Program. Publication 97-30. Version 4.0. Olympia, WA.

Drost, B.W. and Whiteman, KJ. 1986. Surficial Geology, Structure, and Thickness of Selected Geohydrologic Units in the Columbia Plateau, Washington. U.S. Geological Survey. Water-Resources Investigations Report84-4326. 11sheets. Tacoma, WA.

Drost, B.W. et al. 1989. Well Data, Surface Water Discharges, arid Nitrate Concentrations, February 1986 - September, 1987, in Parts of the Pasco Basin, Washington. U.S.
Geological Survey. Open-File Report 89-38. Tacoma, WA.

Drost, B.W., J.C. Ebbert, and S.E. Cox. 1993. Long-Term Effects of Irrigation with Imported Water on Water Levels and Water Quality. 1993. U.S. Geological Survey. Water-Resources Investigations Report 93-4060. Tacoma, WA

Drost, B.W., KM. Schurr, and W.E. Lum II. 1989. Selected Ground-Water Information for the Pasco Basin and Adjacent Areas, Washington, 1986-1989. U.S. Geological Survey. Open-File Report 89-228. Tacoma, WA.

Drost, B.W., S.E. Cox, and KM. Schurr. 1997. Changes in Ground-Water Levels and Ground-Water Budgets, from Predevelopment to 1986, in Parts of the Pasco Basin, Washington. U.S. Geological Survey. Water-Resources Investigations Report 96-4086. Tacoma, WA.

Hermanson, Ronald, et al. 2000. Nitrogen Use by Crops .and the Fate of Nitrogen in the Soil and Vadose Zone. A Literature Search. Washington State University. By Interagency Agreement with the Washington Department of Ecology. Publication 00-10-015. Olympia, WA.

Jenkins, Olaf P. 1922. Underground Water Supply of the Region About White Bluffs and Hanford. State of Washington Department of Conservation and Development. Division of Geology. Bulletin No. 26. Olympia, WA.

Kinnison, Hallard B. and Jack E. Sceva. 1963. Effects of Hydraulic and Geologic Factors on Streamflow of the Yakima River Basin, Washington. U.S. Geological Survey. Water Supply Paper 1595. U.S. Government Printing Office. Washington, D.C.

Liveray, D.M. 1986. The Hydrogeology of the Upper Wanapum Basalt, Upper Cold Creek Valley, Washington. Washington State University. M.S. Thesis. Pullman, WA.

Molenaar, Dee. 1961. Flowing Artesian Wells in Washington State. State of Washington Department of Conservation. Division of Water Resources, Water Supply Bulletin 16. Olympia, WA.

Molenaar, Dee. 1982. Water In The Horse Heaven Hills, South-Central Washington. State of Washington Department of Ecology. Prepared in cooperation with the U.S. Geological Survey. Water Supply Bulletin 51. Olympia, WA.

Molenaar, Dee. 1985. Water in the Lower Yakima River Basin, Washington. State of Washington Department of Ecology. Prepared in cooperation with the U.S. Geological Survey. Water Supply Bulletin 53. Olympia, WA.

Morgan, Laurie. 2005. Critical Aquifer Recharge Areas. Guidance Document. Washington Department of Ecology. Publication 05-10-028. Olympia, WA.

Pacific Groundwater Group. 2011. Request for Identification. Lower Yakima Valley Groundwater Management Area. Project Report prepared for Yakima County. Yakima, WA.

Packard, F.A., A.J. Hansen, Jr. and H.H. Bauer. 1996. Hydrogeology and Simulation of Flow and the Effects of Development Alternatives on the Basalt Aquifers of the Horse-Heaven Hills, South-Central Washington. Report including Plates I and II.

U.S. Geological Survey. Water-Resources Investigations Report 94-4068. Tacoma, WA.

Phillips, Earl L. 1970. Washington Climate For These Counties Asotin, Benton, Columbia, Franklin, Garfield, and Walla Walla. Cooperative Extension Service. College of Agriculture. Washington State University. EM 3127. Pullman, WA.

Rasmussen, Jack J. 1971.Soil Survey of Benton County Area, Washington. United States Department of Agriculture, Soil Conservation Service. In cooperation with the Washington Agricultural Experiment Station. Washington, D.C.

Sell, Ron and L. Knutson. 2002. Quality of Ground Water in Private Wells in the Lower Yakima Valley 2001-2002. Valley Institute of Research and Education. Re-issued by Washington Department of Ecology. Publication 02-10-074. Olympia, WA.

U.S. Bureau of Reclamation. 2011. Yakima River Basin Study. Groundwater Infiltration Appraisal-Level Study Technical Memorandum. Golder Assoc. and HOR, Inc. Yakima, WA

Washington State Department of Ecology. 1974. Inventory and Reconnaissance of Irrigation Districts in the State of Washington. Part I. Summary Report. URS Co. Olympia, WA

Washington State Department of Ecology. 2005. Critical Aquifer Recharge Areas: Guidance Document. Publication 05-10-028. Olympia, WA

Washington State Department of Ecology. 2010. Lower Yakima Valley Groundwater Quality. Publication 10-10-009. Olympia, WA

Yakima River Basin Watershed Planning Unit and Tri-County Water Resources Agency. 2003. Watershed Management Plan Yakima River Basin. Economic and Engineering Services, Inc. and others. Funded by Washington Department of Ecology. Olympia, WA.

FREQUENTLY FLOODED AREAS

Bolton, S. and J. Shellberg. 2001. Ecological Issues in Floodplains and Riparian Corridors. Report to Washington Dept. of Transportation, Olympia.

Federal Emergency Management Agency. 1994. Flood Insurance Study, Benton County, Washington and Unincorporated Areas.

Washington State Department of Ecology. 1991. Comprehensive Planning for Flood Hazard Management. Ecology Publication No. 91-44.

GEOLOGICALLY HAZARDOUS AREAS

Advanced Engineering Consultants. 1979. Benton County. Excerpts From The Side Hill Development Standards Report. Project E-78022. Olympia, WA.

Galster, Richard W. 1989. Engineering Geology in Washington. Volume I. Washington Division of Geology and Earth Resources. Washington Department of Natural Resources, In cooperation with the Washington State Section of the Association of Engineering Geologists. Bulletin 78. Olympia, WA

Phillips, Earl L. 1970. Washington Climate For These Counties Asotin, Benton, Columbia, Franklin, Garfield, and Walla Walla. Cooperative Extension Service. College of Agriculture. Washington State University. EM 3127. Pullman, WA.

Rasmussen, Jack J. 1971.Soil Survey of Benton County Area, Washington. United States Department of Agriculture, Soil Conservation Service. In cooperation with the Washington Agricultural Experiment Station. Washington, D.C.

The Watershed Company and BERK. 2013. Final Shoreline Analysis Report for Shorelines in Benton County: Yakima and Columbia Rivers. Appendix D Channel Migration Zone Memo. Prepared for the Benton County Planning Department. Prosser, WA.

Thorson, Gerald W. 1989. Landslide Provinces in Washington. Washington Division of Geology and Earth Resources. Bulletin 78. Olympia, WA.

United States Geological Survey. 2015. Geologic Units in Benton County, Washington. Mineral Resources On-Line Spatial Data. Washington Geology. www.mrdata.usgs/gov/geology/state/

Washington State Department of Natural Resources. Interactive Maps. Natural Hazards. http://www.dnr.wa.gov/programs-and-services/geology/publications-and-data/geologic-information-portal

FISH AND WILDLIFE CONSERVATION AREAS

AC Geospatial, 2020. Riparian Buffer Analysis Summary Memorandum. Prepared for Benton County, May 2020.

Alexander R.B., E.W. Boyer, RA. Smith, et al. 2007. The role of headwater streams in downstream water quality. J. Am. Water Resour. 43:41-59.

Allan, J.D., M.S. Wipfli, J.P. Caouette, A. Prussian, J. Rodgers. 2003. Influence of streamside vegetation on inputs of terrestrial invertebrates to salmonid food webs. Canadian Journal of Fisheries and Aquatic Sciences 60(3):309-320.

Anchor QEA. 2021. Proposed Riparian Buffers within the Benton County Critical Areas Code Update. Prepared for Benton County, January 30,2021.

Anchor QEA. 2013. Final Draft Semi-Arid Riparian Functions and Associated Regulatory Protections to Support Shoreline Master Program Updates. Prepared for Grant County.

Anchor QEA and HOR. 2011. Yakima River Basin Study: Mainstem Floodplain Restoration Technical Memorandum. Prepared for the U.S. Bureau of Reclamation and Washington Department of Ecology.

Appel, M., R. Little, H. Wendt, M. Nielson. 2011. Assessment of the Lower Yakima River in Benton County, Washington. Produced in cooperation with the Yakima Basin Fish and Wildlife Recovery Board.

Arnold, C.L. and C.J. Gibbons. 1996. Impervious Surface Coverage: The Emergence of a Key Environmental Indicator. American Planners Association Journal 62:243- 258.

Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Management recommendations for Washingtons priority habitats: managing shrub-steppe in developing landscapes. Washington Department of Fish and Wildlife, Olympia, Washington.

Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Long-range planning: considering the shrub-steppe landscape. Washington Department of Fish and Wildlife, Olympia, Washington.

Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Site-specific management: how to avoid and minimize impacts of development to shrub-steppe. Washington Department of Fish and Wildlife, Olympia, Washington.

Beier, P. and R.F. Noss. 1998. Do habitat corridors provide connectivity? Conserv. Bio. 12:1241-1252

Beschta, R.L. 1997. Restoration of riparian and aquatic systems for improved aquatic habitats in the Upper Columbia River Basin. In: Strouder DJ, Bisson PA, Naiman RJ (eds) Pacific salmon and their ecosystems: status and future options. Chapman and Hall, New York, NY, pp 475-491.

Beschta, R. L., Bilby, R. E., Brown, G. W., Holtby, L. B., and Hofstra, T. D. 1987. Stream temperature and aquatic habitat: Fisheries and forestry interactions. Pages 191- 232 in E.0. Salo, and T. W. Cundy, editors. Streamside management: Forestry and Fishery Interactions. University of Washington, Seattle, WA.

Beeson, C. and P.Doyle. 1995. Comparison of Bank Erosion and Vegetated and Non-Vegetated Channel Bends. Journal of American Water Resources Association 31(6):983-990.

Belsky, A.J., A. Matzke, S.Uselman. 1999. "Survey of Livestock Influences on Stream and Riparian Ecosystems in the Western United States". Journal of Soil and Water Conservation. 54:419-431.

Benton County. 2008. Benton County Comprehensive Plan. Available:

http://www.co.benton.wa.us/pView. aspx?id=1450&ca tid=45. [Accessed: August 2015].

Bilby, R. E., and P. A. Bisson. 1998. Function and distribution of large woody debris. R. J.

Naiman and R. E. Bilby, editors. River ecology and management: lessons from the Pacific coastal ecoregion. Springer-Verlag, New York, N.Y ., USA.

Bisson, P. A., S.M. Claeson, S.M. Wondzell, A.D. Foster, and A. Steel. 2013. Evaluating Headwater Stream Buffers: Lessons Learned from Watershed- scale Experiments in Southwest Washington. Pgs. 165-184. In: Anderson, P. D. and Ronnenberg, K.L. (eds.). Density Management in the 21st Century: West Side Story. General Technical Report, PNW-GTR-880. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

Blair, R. 1999. Birds and butterflies along an urban gradient: surrogate taxa for assessing biodiversity? Ecol. Appl. 9:164-170.

Booth, D.B. and C.R. Jackson. 1997. Urbanization of aquatic systems-- degradation thresholds, stormwater detention, and the limits of mitigation. Journal of American Water Resources Association 22.

Booth, D. B.,J. R. Karr, S. Schauman, C. P. Komad, S. A. Morley, M. G. Larson, and S. J. Burges. 2004. Reviving urban streams: land use, hydrology, biology, and human behavior. Journal of the American Water Resources Association, 40:1351-1364.

Braatne. J.H., Jamieson, R., Gill, K.M. and SB. Rood. 2007. Instream Flows and the Decline of Riparian Cottonwoods along the Yakima River, Washington, USA. River Research and Applications 23:247-267.

Bradley CE, Smith DG. 1986. Plains cottonwood recruitment and survival on a prairie meandering river floodplain, Milk River, Southern Alberta and Northern Montana. Canadian Journal of Botany 64:1433-1442.

Bragg, DC. 2000. Simulating Catastrophic and Individualistic Large Woody Debris Recruitment for a Small Riparian System. Ecology 81(5):1383-1394.

Brosofske, K.D., J. Chen, R.J. Naiman, J.F. Franklin 1997. Harvesting effects on microclimatic gradients from small streams to uplands in western Washington. Ecol. Appl. 7, 1188-1200.

Buffle, S., C. Johnson, J. Nicholson, and N. Mesner. 2005. Synthesis of design guidelines and experimental data for water quality function in agricultural landscapes in the Intermountain West. USDA Forest Service/UNL Faculty Publications, 13.

Burges, S. J., M. S. Wigmosta, and J.M. Meena. 1998. Hydrological effects of land-use change in a zero-order catchment. Journal of Hydrologic Engineering.

Chatters. J.C., D.A. Neitzel. M.J Scott and S.A. Schankle. 1991. The effect of climate change on stream environments; the salmonid resource of the Columbia River Basin. Northwest Environ. J.

Chescheir C.M., J.W. Gilliam, R.W. Skaggs & R.G. Broadhead. 1991. Nutrient and sediment removal in forested wetlands receiving pumped agricultural drainage water. Wetlands 11:87-103.

Cristea, N. and J. Janisch. 2007. Modeling the effects of riparian buffer width on effective shade and stream temperature. Publication No. 07-03-028. Washington Department of Ecology.

Danehy, R.J. and B.J. Kirpes. 2000. Relative humidity gradients across riparian areas in eastern Oregon and Washington forests. Northwest Sci. 74:224-233.

Daniels, R.B., and J.W. Gilliam. 1996. Sediment and Chemical Load Reduction by Grass and Riparian Filters. Soil Sciences 60:246-251.

Dillaha TA, RB Reneau, S Mostaghimi, D Lee. 1989. Vegetative filter strips for agricultural nonpoint source pollution control. Transactions of the ASAE 32(2):513-519.

Dosskey, M.G., K.D. Hoagland, and J.R. Brandle 2007. Change in filter strip performance over ten years. J Soil Water Conserv 62(1):21-32.

Dosskey, M. G., M. J. Helmers, and D. E. Eisenhauer. 2008. A design aid for determining width of filter strips. Journal of Soil and Water Conservation 63(4):232-241.

Dwire, K.A. and JB. Kauffman, 2003. Fire and riparian ecosystems in landscapes of the western USA. Forest Ecology and Management 178:61-74.

Ebbert, J .C., S.S. Embrey, and J.A. Kelley. 2003. Concentrations and Loads of Suspended Sediment and Nutrients in Surface Water of the Yakima Basin, Washington, 1999-2000 - With an Analysis of Trends in Concentrations, Water-Resources Investigations Report 03-4026, U .S. Geological Survey.

Forest Ecosystem Management Assessment Team (FEMAT). 1993. Forest ecosystem management: an ecological, economic, and social assessment. Portland, OR: U.S. Department of Agriculture; U.S. Department of the Interior [and others].

Fullerton, A. H., T. J. Beechie, S. E. Baker, J. E. Hall, and K. A. Barnas. 2006. Regional patterns of riparian characteristics in the interior Columbia River basin, northwestern USA: Application for restoration planning. Landscape Ecology 21: 1347-1360.

Gorni, T., R. Sidle, and J. Richardson. 2002. Understanding processes and downstream linkages of headwater systems. Bioscience 52(10):905-16.

Gregory, S.V., F. J. Swanson, W. A. McKee, and K W. Cummins, 1991. An ecosystem perspective of riparian zones. BioScience 41:540-551.

Gurnell, A.M., H. Piegay, F.J. Swanson, and S.V. Gregory. 2002. Large wood and fluvial processes. Freshwater Biology, 47(4), 601-619. Haring, D. 2001. Habitat Limiting Factors Yakima River Watershed, Water Resources Inventory Areas 37-39, Final Report. Prepared by the Washington State Conservation Commission. 364 pp.

Harding, J. S., K Claassen, and N. Evers. 2006. Can forest fragments reset physical and water quality conditions in agricultural catchments and act as refugia for forest stream invertebrates? Hydrobiologia 568:391-402.

HDR Engineering, Anchor QEA, ECONorthwest, Natural Resource Economics, and ESA. 2012. Yakima River Basin Integrated Water Resource Management Plan: Framework for Implementation Report. Prepared for U.S. Department of the

Interior, Bureau of Reclamation, Pacific Northwest Region, Columbia-Cascades Area Office and Washington Department of Ecology, Office of Columbia River.

Hecht, S.A., D.H. Baldwin, C.A. Mebane, T. Hawkes, S.J. Gross, and N.L. Scholz. 2007. An overview of sensory effects on juvenile salmonids exposed to dissolved copper: applying a benchmark concentration approach to evaluate sublethal neurobehavioral toxicity. NOAA Technical Memorandum NMFS-NWFSC-83 .

Helmers, M.J., D.E. Eisenhauer, M.G. Dosskey, T.G. Franti, J.M. Brothers, and M.C. McCullough. 2005. Flow pathways and sediment trapping in a field-scale vegetative filter. Transactions of the ASAE 48:955-968.

Inter-Fluve. 2013. Columbia River Shoreline Project Identification. Mainstem Columbia River- Klickitat Lead Entity Area, WA. Prepared for Mid-Columbia Fisheries Enhancement Group, White Salmon, WA. April, 2013.

Jensen, D.W., E.A. Steel, A.H. Fullerton, G.R. Pess. 2009. Impact of Fine Sediment on Egg-To-Fry Survival of Pacific Salmon: A Meta-Analysis of Published Studies. Reviews in Fisheries Science.

Jin, C.X. and M.J.M. Romkens. 2001. Experimental studies of factors in determining sediment trapping in vegetative filter strips. Trans. ASAE 44:277-288.

Johnson, D.H. and T.A. O'Neil. 2001. Wildlife-Habitat Relationships in Oregon and Washington. Oregon State Universify Press. Corvallis, Oregon. 736 pp.

Jordan, N'. R., D.L. Larson, and S.C. Huerd. 2008. Soil modification by invasive plants: effects on native and invasive species of mixed-grass prairies. Biological Invasions 10(2):177-190.

Joy, J. and B. Patterson. 1997. A Suspended Sediment and DDT Total Maximum Daily Load Evaluation Report for the Yakima River, Publication No. 97-321, Washington State Department of Ecology.

Kershner, J. L., & B. B. Roper. 2010. An evaluation of management objectives used to assess stream habitat conditions on Federal lands within the Interior Columbia Basin. Fisheries 35(6):269-278.

Kinnison, H.B. and J. E. Sceva. 1963. Effects of Hydraulic and Geologic Streamflow of the Yakima River Basin Washington. Geological Survey Water-Supply Paper 1595. U.S. Department of the Interior.

Knight, K., 2009. Land Use Planning for Salmon, Steelhead and Trout. Washington State Department of Fish and Wildlife. Olympia, Washington.

Larsen, E., J. M. Azerrad, N. Nordstrom, editors. 2012. Management Recommendations for Washington's Priority Species, Volume IV: Birds. Washington Department of Fish and Wildlife, Olympia, Washington, USA.

Lautz, K. 2000. Salmon and Steelhead Limiting Factors Water Resource Area 31. Washington State Conservation Commission. 50 pp.

Mahoney JM, Rood SB. 1998. Streamflow requirements for cottonwood seedling recruitment- an integrative model. Wetlands 18:6345.

Marriott, D., and 27 contributors. 2002. Lower Columbia River and Columbia River Estuary Subbasin Summary. Report Prepared for the Northwest Power Planning Council, dated May 17, 2002. (Available at: http://www.cbfwa.org/)

Mastin, M., 2008, Effects of potential future warming on runoff in the Yakima River Basin, Washington, Scientific Investigations Report 2008-5124, U.S. Geological Survey.

Mayer, P.M., S.K. Reynolds, J. Marshall, D. McCutchen, and T.J. Canfield. 2007. Meta- Analysis of Nitrogen Removal in Riparian Buffers. Journal of Environmental Quality 36: 1172-1180.

Mcintosh, B.A., Sedell, J.R., Smith, J.E., Wissmar, R.C., Clarke, S.E., Reeves, G.H. and L.A. Brown. 1994. Historical Changes in Fish Habitat for Select River Basins of Eastern Oregon and Washington. Northwest Science 68:36-52.

Mcintyre, J. K., D. H.Baldwin, J. P. Meador, and N. L. Scholz. 2008. Chemosensory deprivation in juvenile coho salmon exposed to dissolved copper under varying water chemistry conditions. Environmental Science & Technology 42:1352-1358.

Mcintyre, J. K., D.H. Baldwin, D.Beauchamp, and N.L. Scholz. 2012. Low-level copper exposures increase visibility and vulnerability of juvenile coho salmon to cutthroat trout predators. Ecological applications: a publication of the Ecological Society of America. 22(5):1460-71.

Moore, A.A. and M.A. Palmer. 2005. Invertebrate biodiversity in agricultural and urban headwater streams: Implications for conservation and management. Ecological Applications 15:1169-1177.

Morace, J.M., G.J. Fuhrer, J.F. Rinella, S.W. McKenzie, and others. 1999. Surface-Water- Quality Assessment of the Yakima River Basin in Washington: Overview of Major Findings, 1987-91. Water-Resources Investigations Report 98-4113. U.S. Geological Survey.

Naiman, Robert J., and Henri Decamps, 1997. The ecology of interfaces: riparian zones. Annual review of Ecology and Systematics 1997: 621-658.

Naiman, Decamps, and McClain, 2005.Riparia-- Ecology, Conservation, and Management of Streamside Communities. Elsevier Academic Press.

Natural Resources Conservation Service. 2015. Benton County Rare Plants. http://www.nrcs.usda.gov/lnternet/FSE_PLANTMATERIALS/publications/wapmsmtl1979.pdf.

National Marine Fisheries Service (NMFS). 2009. Middle Columbia River Steelhead Distinct Population Segment ESA Recovery Plan. National Marine Fisheries Service Northwest Region.

Neal, V. 1972. Physical aspects of the Columbia River and its Estuary. In The Columbia River Estuary and Adjacent Ocean Waters: Bioenvironmental Studies, edited by A. T. Pruter and D. L. Alverson (Seattle: University of Washington Press), pp. 19- 70.

Newbold, J.D., S. Herbert, B.W. Sweeney, P. Kiry, and S.J. Alberts. 2010. Water Quality Functions of a 15-Year-Old Riparian Forest Buffer System. JAWRA Journal of the American Water Resources Association 46:299-310.

Northwest Power Planning Council (NPPC). 2001. Yakima Subbasin Summary. Laura Berg, editor. Portland, OR. 376 pp.

Osborne, L.L. and D.A. Kovacic. 1993. Riparian vegetated buffer strips in water quality restoration and stream management. Freshwater Biology 29:243-258.

Otto S., M. Vianello, A. Infantino, G. Zanin, and A. Di Guardo. 2008. Effect of a full- grown vegetative filter strip on herbicide runoff: Maintaining of filter capacity over time. Chemosphere 71(1):74-82.

Patten, D. T. 1998. Riparian ecosytems of semi-arid North America: Diversity and human impacts. Wetlands 18(4):498-512.

Pacific Northwest Laboratory, Ecology Group, Earth and Environmetal Sciences Center. No date. Field Guide to Species of Concern on the Hanford Site. Prepared under U.S. Departinent of Energy contract DE-AC06-76RLO 1830.

Patton, G.W. 2009. Surface-Water and Sediment Monitoring in Hanford Site Environmental Report. Pacific Northwest National Laboratory. Prepared of the U.S. Department of Energy.

Peterjohn W.T. & Correll D.L., 1986. The effect of riparian forest on the volume and chemical composition of baseflow in an agricultural watershed. Watershed Research Perspectives, (ed. D. L. Correll), pp. 244-262. Smithsonian Press, Washington, DC.

Qiu, Z. 2009. Assessing Critical Source Areas in Watersheds for Conservation Buffer Planning arid Riparian Restoration. Environmental Management 44:968-980.

Quinn, T., G.F. Wilhere, and K.L. Krueger, technical editors, 2020. Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

Rinella, J.F., S.W. McKenzie, and G.J. Fuhrer. 1992. Surface-Water-Quality Assessment of the Yakima River Basin in Washington: Analysis of Available Water-Quality Data through 1985 Water Year, Open-File Report 91-453, U.S. Geological Survey.

Smith, D.L., G. Johnson, and T. Williams. 2006. Natural Streamflow Estimates for Watersheds in the Lower Yakima River, S.P. Cramer and Associates.

Stinson, D.W. 2016. Periodic status review for the Greater Sage-grouse in Washington. Washington Department of Fish and Wildlife, Olympia, Washington.

The Watershed Company and BERK. 2013. Final Shoreline Analysis Report for Shorelines in Benton County: Yakima and Columbia Rivers. Prepared for the Benton County Planning Department, Prosser, WA.

U.S. Bureau of Reclamation. 2008. Sediment Transport Modeling of the Yakima Basin, A Component of Yakima River Basin Water Storage Feasibility Study, Washington, Technical Series No. TS-YSS-17.

U.S. Bureau of Reclamation. 2002. Interim Comprehensive Basin Operating Plan (IOP) for the Yakima Project, Washington. 434 pp.

U.S. Bureau of Reclamation and Washington State Department of Ecology. 2012. Yakima River Integrated Water Resource Management Plan Final Programmatic Environmental Impact Statement, Benton, Kittitas, Klickitat and Yakima Counties.

Vaccaro, J.J. 2011. River-Aquifer Exchanges in the Yakima River Basin, Washington, Scientific Investigations Report 2011-5026. U.S. Geological Survey.

Vaccaro, J.J. and T.D. Olsen. 2007. Estimates of Ground-Water Recharge to the Yakima River Basin Aquifer System, Washington, for Predevelopment and Current Land- Use and Land-Cover Conditions. Scientific Investigations Report 2007-5007, U.S. Geological Survey.

Voss, F.D, C.A. Curran, and M.C. Mastin, 2008, Modeling Water Temperature in the Yakima River, Washington, from Roza Diversion Dam to Prosser Dam, 2005-06, Scientific Investigations Report 2008-5070, U.S. Geological Survey.

Ward, D. and 19 contributors. 2001. Draft Mainstem Columbia River Subbasin Plan. Prepared for Northwest Power and Conservation Council. 169 pp.

Washington State Department of Ecology. 2012. Focus On Mitigation in the Yakima Basin. Publication No. 12-11-024.

Water Quality Assessment 2008. (WQA) 305(b) Report for Benton County, WA [computer file]. Olympia, WA: Available at: http://www.ecy.wa.gov/services/gis/data/data.htm

Washington State Department of Fish and Wildlife (WDFW). 2018. Priority Habitats and Species [computer file]. Olympia, WA. Available at: http://wdfw.wa.gov/conservat:ion/phs/list/.

Washington State Department of Fish and Wildlife (WDFW). 2015. Washington State. Wildlife Action Plan: 2015 Update. Washington Department of Fish and Wildlife, Olympia, Washington.

Washington State Department of Fish and Wildlife (WDFW). 2009. Landscape Planning for Washingtons Wildlife: Managing for Biodiversity in Developing Areas.

Washington State Department of Fish and Wildlife (WDFW). 1997. Management Recommendations for Washington's Priority Habitats-Riparian.

Washington State Department of Natural Resources. 2011. Field Guide to the Rare Plants of Washington. Natural Heritage Program.

Washington State Department of Natural Resources. 2018. Wetlands of High Conservation Value- Map Viewer [computer file]. Olympia, WA. Available at: https://www.dnr.wa.gov/NHPwetlandviewer

Wigington, Jr., P.J., J.L. Ebersole, M.E. Colvin, et al. 2006. Coho salmon dependence on intermittent streams. Front. Ecol. Environ. 10:513-18.

Windrope, Amy, Terra Rentz, Keith Folkerts, and Jeff Azerrad. Riparian Ecosystems, Volume 2: Management Recommendations. 2020. A Priority Habitats and Species Document of the Washington Department of Fish and Wildlife, Olympia, Washington.

Wipfli M.S., J.S. Richardson, and R.J. Naiman. 2007. Ecological linkages between headwaters and downstream ecosystems: Transport of organic matter, invertebrates, and wood down headwater channels. J Am Water Resour Assoc 43(1):72-85.

Wipfli, M. S. 2005. Trophic linkages between headwater forests and downstream fish habitats: implications for forest and fish management. Landscape and Urban Planning 72:205-213.

Wipfli, M.S. and D.P. Gregovich. 2002. Export of invertebrates and detritus from fishless headwater streams in southeastern Alaska: implications for downstream salmonid production. Freshwater Biology 47:957-969.

Wise, D.R., M.L. Zuroske, K.D. Carpenter, and R.L. Kiesling. 2009. Assessment of Eutrophication in the Lower Yakima River Basin, Washington, 2004-07. Scientific Investigations Report 2009-5078. U.S. Geological Survey.

Yakima Basin Fish and Wildlife Recovery Board (Yakima Basin Recovery Board). 2009. 2009 Yakima Steelhead Recovery Plan-Extracted from the 2005 Yakima Subbasin Recovery Plan with Updates.

Yakima Subbasin Fish and Wildlife Planning Board (Yakima Subbasin Planning Board). 2004. Yakima Subbasin Plan. Prepared for Northwest Power and Conservation Council. 1038 pp.

Zhang, X., X. Liu, M. Zhang, and RA. Dahlgren. 2010. A review of vegetated buffers and a meta-analysis of their mitigation efficacy in reducing nonpoint source pollution. Journal of Environmental Quality 39:76-84.

SECTION 4. Severability. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 5. Effective Date. This Ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Approved as to Form:

Constituting the Board of
County Commissioners of
Benton County, Washington

_____
Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.co.benton.wa.us

Planning Division
(509) 786-5612
P.O. Box 910, Prosser, WA 99350
planning.department@co.benton.wa.us

BCCM 1.9

Notice of Open Record Hearings

NOTICE IS GIVEN that Board of County Commissioners will be holding Public Hearings on Benton County's Shoreline Master Program Periodic Review and on an Ordinance amendment to BCC 15-Environment (Critical Areas) on June 22, 2021 at 9:00 a.m., in the Commissioners Meeting Room, Third Floor, Courthouse, Prosser, **in person and via a virtual meeting format** (see below for more information). Benton County is accepting comments on the periodic review of the County's Shoreline Master Program and on the ordinance amendment to BCC 15.02 and 15.14.

Shoreline Master Plan - The county has prepared draft SMP amendments to keep the SMP current with changes in state law, changes in other county plans and regulations, and other changed local circumstances.

The proposed amendments within the Plan consist of housekeeping edits to reflect updated code sections, dates, etc. Deleting the definition for Board of Adjustment and adding text for Hearing Examiner, adding text to the definition for "Development", amending the definition for "Substantial development" by updating the dollar amount for exceeding the fair market value, adding text to Section 15.04.120 regarding "Developments not required to obtain shoreline permits or local reviews", adding text to 15.06.030 for external or internal retrofitting of an existing structure for compliance with ADA, amending 15.07.030 by adding language to Substantial Development Permit exception applying to dock construction, and amending 15.07.150 to add a language regarding County permit review time

OA 2021-002 -AN ORDINANCE relating to critical areas,· general provisions and fish and wildlife habitat conservation areas; amending the sections relating to applicability and performance standards-general requirements;·amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56. This amendment updates references within the Applicability portion of the ordinance; amends the buffer requirements; and amends and changes the title to Section 56 to read "Appendix A - General References and Best Available Science" and adds the words "general references" when referring to the list of data and best available science.

Proposed amendments to the county shoreline master program are available for review at https://tinyurl.com/SMPUpdate2021 and at the County Planning Division Office within the Public Services Building at 102206 E. Wiser Parkway, Kennewick WA 99338. The Ordinance amendments will also be available for review at https://tinyurl.com/pubnotice.

NOTICE IS FURTHER GIVEN that the Shoreline Master Plan and the proposed ordinance amendment have been reviewed under the requirements of the State Environmental Policy Act and Determinations of Non-Significance (DNS) for both proposals were issued on February 24, 2021 and accordingly Environmental Impact Statements were not required. Any comments regarding these determinations and the environmental impacts of the proposals can be made at the Board of County Commissioners Hearing or in writing to the Benton County Planning Division by 3 p.m. on Monday June 21, 2021.

To continue to provide citizens access to public meetings, Benton County **in addition to in person attendance**, will also be providing telephonic and video access for the public to view and provide testimony at public meetings. If you choose to join the meeting telephonically, we ask that you please limit background noise or mute your line to prevent any unnecessary interruption to the meeting. To find information on virtual attendance options, including streaming video, WebEx video conferencing and telephone, please visit https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181.

Comments regarding the proposed ordinance amendment, Shoreline Master Plan or SEPA determinations of the proposals may also be submitted in writing to the Benton County Planning Division; P.O. Box 910, Prosser, WA 99350 or via email to planning.department@co.benton.wa.us by 3 p.m. Monday, June 21, 2021. No individual with a disability shall be denied the benefit of participating in such meetings. If you wish to use auxiliary aids or require assistance to comment at a public meeting, please contact the Benton County Planning Division at least ten days prior to the meeting date to make arrangements for special needs.

At this hearing, the Board of County Commissioners may approve, or disapprove the amendments. Information concerning the applications can be obtained at the Benton County Planning Division, by calling 736-3086 (Tri-Cities) or 786-5612 (Prosser).

Dated at Prosser, Washington on this 4th day of June 2021.

JEROME DELVIN, Chairman
BENTON COUNTY
Board of County Commissioners

Greg Wendt, Director
COMMUNITY DEVELOPMENT DEPT.

PUBLISH ON: June 9, 2021

RECOMMENDATION OF THE BENTON COUNTY PLANNING COMMISSION

RE: In the Matter of County Planning: relating to an Ordinance Amendment to Benton County Critical Area Regulations- amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56

RECOMMENDATION, FINDINGS OF FACT AND CONCLUSIONS
Planning File #OA-2021-002

RECOMMENDATION

An ordinance amendment to Benton County Critical Area Regulations- Planning File #OA-2021-002 amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56 be APPROVED subject to the ten (10) findings of fact.

RESOLUTION

WHEREAS, the legal notification for the open record public hearing was given pursuant to RCW 36.70.590 on March 30, 2021;

WHEREAS, a virtual public hearing was held on April 13, 2021 at 6:00 p.m. The Planning Commission was available to receive public testimony, exhibits, and answer questions in the public portion of the hearing with the public being able to attend and comment through telephonic access to the meeting. The meeting was also broadcast through video access to allow the public to view the meeting; and,

WHEREAS, after receiving public input and comments on the amendments, the public portion of the public hearing was closed and the hearing was continued to May 11, 2021. This continuation provides time for staff and the Planning Commission to review the public input and comments provided; and,

WHEREAS, the following members attended the meeting, including, Lloyd Coughlin, Brian Skeels, Marjorie Kaspar, Tammy McKeirnan, Leo Perales, and Martin Sheeran with one member absent; and,

WHEREAS, all those who testified and those public hearing exhibits that were received into evidence are identified in the minutes for the hearing on April 13, 2021; and,

WHEREAS, the Planning Commission at the continued open record public hearing on May 11, 2021 considered the evidence submitted and voted to recommend approval with the

findings of fact as outlined in the staff memo dated May 7, 2021; and,

WHEREAS, the Planning Commission is entering its written findings of fact, conclusions and recommendations concerning this matter, and is forwarding the same to the Board of County Commissioners and,

FINDINGS OF FACT

1. Benton County is proposing a text amendment to the County Critical Area Regulations, **Ordinance 609** with a focus on the following:

   a. BCC 15.02.120 Applicability. When the Critical Area Ordinance was adopted in 2018 the Voluntary Stewardship Program (VSP) had yet to be finalized and adopted. The proposed amendment clarifies that the VSP for Benton County has been approved by the State:

   b. BCC 15.14.040 Fish and Wildlife Conservation Areas- Performance Standards-General Requirements. When the Critical Area Ordinance was adopted in 2018 the County adopted the state recommended riparian buffer standards for those rivers, lakes, and streams not located with an SMA shoreline environment. In 2020, the County hired White Bluff Consulting (with Anchor QEA) to evaluate riparian buffers in Benton County and propose draft riparian buffer widths based upon Best Available Science (BAS). This amendment proposes new riparian buffer standards, removes the buffer modification requirement, and adds buffer width averaging standards consistent with state requirements as follows:

   c. APPENDIX- General References and Best Available Science. Amend the Appendix to include the new Best Available Science, specifically the 2021 document prepared by Anchor QEA knowns the "Proposed Riparian Buffers within the Benton Critical Aeras Code Update".

2. Planning Casefile Application OA 2021-001 is found to be in conformance with the intent of the **Ordinance 611, Section 221** for zoning text amendments.

3. Planning Casefile Application OA 2021-001 is found to be in conformance with the intent of the Benton County Comprehensive Plan.

4. Planning Casefile Application OA 2021-001 was submitted by email to the State of Washington's Department of Commerce on February 24, 2021 for review in compliance with WAC 365-196-630.

5. The legal notification for Planning Casefile Application OA 2021-001 was given on March 30, 2021 pursuant to RCW 36.70.590.

6. Planning Casefile Application OA 2021-001 appeared in an open record virtual public hearing before the County Planning Commission on April 13, 2021 at the Public Services Building, 102206 E. Wiser Parkway, Kennewick WA.

7. At the April 13, 2021 open record hearing, the Planning Commission was available to receive public testimony, exhibits, and answer questions in the public portion of the hearing.

8. The April 13, 2021 public hearing was continued to May 11, 2021 to give staff and the Planning Commission an opportunity to review the public comments.

9. All those who testified and those public hearing exhibits that were received into evidence are identified in the minutes and are contained in the official record;

10. The Planning Commission received the Staff Memo, dated May 7, 2021, that includes the CAO Comment Response Matrix and agrees with the information found in the staff memo and comment matrix;

N**OW, THEREFORE BE IT RESOLVED BY THE BENTON COUNTY PLANNING COMMISSION**, through its chairman as authorized by motion of the Board, that these findings of fact for the aforementioned Ordinance Amendment Application OA-2021-0012 to amend the Benton County Critical Area Regulations- amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56 be approved for transmittal to the Board of County Commissioners, with a recommendation to adopt the amendments.

Martin Sheeran 5/4/2021

Martin Sheeran, Chairman DATE
BENTON COUNTY PLANNING COMMISSION

Community Development Department
Prosser Office: 620 Market Street, 1st Floor
Kennewick Office: 102206 East Wiser Parkway
www.co.benton.wa.us

Planning Division
(509) 786-5612
P.O. Box 910, Prosser, WA 99350
planning.department@co.benton.wa.us

PCM 1.1

STAFF REPORT TO THE
BENTON COUNTY PLANNING COMMISSION

FILE NO:	**OA 2021-002** (Ordinance Amendment to Critical Area Regulations)
MEMO DATE:	May 7, 2021
HEARING DATE:	May 11, 2021 (**Continued from April 13, 2021**)
APPLICANT:	Benton County Planning Department
OWNER:	N/A
LOCATION:	Unincorporated Benton County
PROPERTY SIZE:	N/A
AREA TO BE USED:	N/A
LAND USE:	N/A
COMP. PLAN:	N/A
ZONING:	N/A
SUGGESTED STAFF RECOMMENDATION:	Positive recommendation subject to seven findings of fact.

APPLICATION DESCRIPTION

The public hearing for OA 2021-002 has been continued from April 13, 2021. After receiving public input and comments on the amendments, the public portion of the public hearing was closed. Planning Commission discussion and potential motion(s) has been continued to May 11, 2021 regular Planning Commission hearing. This continuance will allow Planning staff and the Planning Commission time to review all public comments associated with the proposed application.

Background:

Since the adoption of the 2018 Critical Area Ordinance (CAO), the County has wanted to further analyze the best available science (BAS) for riparian buffer widths associated with the County's streams, creeks, and portions of rivers that are not within Washington State Shoreline Management Act jurisdiction.

Currently, the County's adopted BAS for riparian buffer widths is from the management recommendations of the Washington State Department of Fish and Wildlife. While beneficial and useful, these recommendations are not site specific or drainage specific recommendations.

In conjunction with the update to the Shoreline Master Program, the County hired Ben Floyd, White Bluffs Consulting, to assist with analyzing the County riparian buffer widths. On September 30, 2020, Ben Floyd's team submitted a Memorandum proposing new riparian widths for the Benton County Critical Areas Code Update.

The Riparian Buffer Analysis memo assesses the riparian conditions in the County and provides a scientific foundation for determining applicable stream buffers for each stream segment. With the development of the Riparian Buffer Analysis, the County now has site specific analysis for each stream segment to use in development of stream buffer widths that are scientifically appropriate.

Ben Floyd of White Bluffs Consulting will be available, remotely to discuss the Riparian Buffer Analysis and subsequent update to the Critical Area Regulations.

Application:

Benton County is proposing a text amendment to the Critical Area Regulations (Ordinance 609). The amendment involves the following:

BCC 15.02.120 Applicability.
When the Critical Area Ordinance was adopted in 2018 the Voluntary Stewardship Program (VSP) had yet to be finalized and adopted. The proposed amendment clarifies that the VSP for Benton County has been approved by the State:

(a) The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in unincorporated Benton County, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the unincorporated portion of the County, except agricultural activities on agricultural lands, as those terms are defined by RCW 36.70A.703(1) and RCW 90.58.065 as now existing or as hereafter amended, are regulated as set forth below. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.

> (1) Benton County has opted into the Voluntary Stewardship Program (VSP), an alternative to the regulatory protection of critical areas on agricultural lands. A working group comprised of agricultural groups, environmental groups, and tribes ((~~is developing~~)) developed and approved a work plan that identifies goals and benchmarks to protect critical areas while maintaining the viability of agriculture through voluntary, incentive based measures (WAC 365-1919-010(1) as now existing and hereafter amended).

(i) ((~~If~~)) ((~~t~~))The work plan developed and approved by the VSP working group ((~~is~~)) was approved by the Washington State Conservation Commission in April 2018, and the provisions ((~~or standards~~)) of this chapter will not apply to agricultural activities on agricultural lands, as those terms are defined ((~~in~~)) by RCW 36.70A.703(1) and RCW 90.58.065, as now existing ((~~and~~)) or as hereafter amended.

(ii) If the ((~~work plan is not approved by the~~)) Washington State Conservation Commission withdraws its approval of the work plan or determines that it ((~~, or~~)) fails to meet goals and benchmarks, the provisions and policies of the chapter will apply to agricultural activities ((~~(RCW 36.70A.735 as now existing and hereafter amended)~~)) on agricultural lands.

(2) The Benton County Shoreline Master Program, adopted pursuant to RCW 90.58 as now existing and hereafter amended, shall apply to all land use and development activities occurring within shoreline jurisdiction. Within shoreline jurisdiction, if critical areas are present where the activities are to take place, compliance with the SMP is required. No further evaluation under this chapter is required.

(b) The County shall not approve any permit or otherwise issue any authorization not expressly exempted by this chapter to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this chapter.

(c) Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

BCC 15.14.040 Fish and Wildlife Conservation Areas- Performance Standards-General Requirements.

When the Critical Area Ordinance was adopted in 2018 the County adopted the state recommended riparian buffer standards for those rivers, lakes, and streams not located with a SMA shoreline environment. In 2020, the County hired White Bluff Consulting (with Anchor QEA) to evaluate riparian buffers in Benton County and propose draft riparian buffer widths based upon Best Available Science (BAS).

This amendment proposes new riparian buffer standards, removes the buffer modification requirement, and adds buffer width averaging standards consistent with state requirements as follows:

(g) Buffers.

(1) Establishment of Buffers. ((~~The Planning Administrator shall require the establishment of~~)) Required buffer areas for activities adjacent to habitat conservation areas ((~~when needed~~)) to protect habitat conservation areas are as set forth in this section (g). Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths ((~~shall~~)) reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife.

(2) Rivers, Lakes, Ponds, and Streams. Waterbodies classified by the water typing system specified in WAC 222-16-030 have the following riparian buffer requirements consistent with State Department of Fish and Wildlife recommendations:

(i) Type S (Shorelines of the State) Standard Buffer Width: Type S waters are protected by the Benton County Shoreline Master Program, as existing and hereafter amended, rather than this chapter.

(ii) Type F (Fish) Standard Buffer Width: ((~~200 ft~~)) Seventy-five (75) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.

(iii) Type Np (Non-Fish Perennial) and type Ns (Non-Fish Seasonal) Standard Buffer Width: ((~~150 ft~~)) Fifty (50) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100)

feet.

((~~(iv) Type Ns (Non-Fish Seasonal) Standard Buffer Width: 150 ft.~~

~~(3) Buffer modification. To manage for site specific conditions, buffer widths established in section (2) (ii-iv) above may be modified, provided:~~

~~(i) The buffer width modification is no greater than 33%;~~

~~(ii) The critical area study shall demonstrate that the proposed buffer width will continue to protect the integrity, functions, and values of the riparian area and habitat;~~

~~(iii) The critical area study shall include a field verification that evaluates actual river, lake, pond, and stream conditions. This shall be completed by a qualified professional and comply with WAC 365-190-130 (4)(f)(ii), as existing or hereafter amended; and~~

~~(iv) Applicant shall complete a request for consultation with the State Department of Fish and Wildlife consistent with BCC 15.14.030(c)(7).~~))

(3) Buffer Width Averaging. With written approval of the Planning Administrator, riparian buffer widths may be modified at various points in accordance with an approved critical area report and the best available science on a case-by-case basis by requesting buffer widths be applied on an averaging basis. Averaging of buffer widths may only be allowed where a qualified professional demonstrates that:

(i) It will not reduce riparian functions or functional performance;

(ii) The riparian area contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the riparian area would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

(iii) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer under subsection (g)(2) above; and

(iv) The buffer width is not reduced at any point to less than seventy-five (75) percent of the standard width or fifteen (15) feet, whichever is less.

(4) Measurement.

(i) Buffers for rivers, lakes, ponds, and streams shall be measured in all directions from the ordinary high-water mark (OHWM) as identified in the field; and

(ii) Buffers for other habitat types shall be measured in all directions from the habitat boundary, as mapped by the Washington State Department of Fish and Wildlife or a qualified professional pursuant to BCC 15.14.030(a).

(5) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

APPENDIX- General References and Best Available Science.
Amend the Appendix to include the new Best Available Science, specifically the 2021 document prepared by Anchor QEA knowns the "Proposed Riparian Buffers within the Benton Critical Aeras Code Update".

SECTION 56. The following section will be known as "APPENDIX A—GENERAL REFERENCES AND BEST AVAILABLE SCIENCE" and will be part of the new Benton County Code Title known as "Environment" but will not be codified.

General References and Best Available Science Sources for Benton County Critical Area Regulations.

This document serves as the General References and Best Available Science produced for the Benton County Critical Area Regulations.

Benton County is mandated by the Growth Management Act of Washington (GMA) to review and update its comprehensive plan and development regulations according to a schedule established in

RCW 36.70A.130(5). This review and update includes the critical area regulations per RCW 36.70A.130(1)(c). The review of critical area regulations under RCW 36.70A.172(1) requires the inclusion of best available science (BAS) and consideration given to anadromous fisheries.

The following documents represent a partial list of general references, data and best available science. This list is not meant to be exhaustive and may be added to in the future. This document is intended to provide an index of the science and data that may be reviewed by Benton County.

FISH AND WILDLIFE CONSERVATION AREAS

AC Geospatial, 2020. Riparian Buffer Analysis Summary Memorandum. Prepared for Benton County, May 2020.

Anchor QEA. 2021. Proposed Riparian Buffers within the Benton County Critical Areas Code Update. Prepared for Benton County, January 30,2021.

PUBLIC NOTICE

1. A Notice of Public Hearing was published in the Prosser Record on March 30, 2021 and was put on the County's website on March 26, 2020.

2. The Planning Staff mailed out review packets to Technical Agencies on February 24, 2020.

APPLICABLE STANDARDS/ORDINANCES

1. Comprehensive Plan: 2018 Benton County Comprehensive Plan.

2. Zoning Code: Benton County Code, Title 11, Zoning.

AGENCY COMMENTS

None.

RECOMMENDATION

Benton County Planning Staff will assist the Planning Commission with the determination of findings of fact for - File OA 2020-000.

The Benton County Planning Department recommends that the Planning Commission forward a **recommendation of approval** to the Benton County Board of Commissioners for application OA 2020-000 with the following suggested findings of fact and motion.

SUGGESTED FINDINGS OF FACT:

1. Benton County is proposing a text amendment to the County Critical Area Regulations, **Ordinance 609** with a focus on the following:

    a. BCC 15.02.120 Applicability. When the Critical Area Ordinance was adopted in 2018 the Voluntary Stewardship Program (VSP) had yet to be finalized and adopted. The proposed amendment clarifies that the VSP for Benton County has been approved by the State:

    b. BCC 15.14.040 Fish and Wildlife Conservation Areas- Performance Standards-General Requirements. When the Critical Area Ordinance was adopted in 2018 the County adopted the state recommended riparian buffer standards for those rivers, lakes, and streams not located with an SMA shoreline environment. In 2020, the County hired White Bluff Consulting (with Anchor QEA) to evaluate riparian buffers in Benton County and propose draft riparian buffer widths based upon Best Available Science (BAS). This amendment proposes new riparian buffer standards, removes the buffer modification requirement, and adds buffer width averaging standards consistent with state requirements as follows:

    c. APPENDIX- General References and Best Available Science. Amend the Appendix to include the new Best Available Science, specifically the 2021 document prepared by Anchor QEA knowns the "Proposed Riparian Buffers within the Benton Critical Aeras Code Update".

2. Planning Casefile Application OA 2021-001 is found to be in conformance with the intent of the **Ordinance 611, Section 221** for zoning text amendments.

3. Planning Casefile Application OA 2021-001 is found to be in conformance with the intent of the Benton County Comprehensive Plan.

4. Planning Casefile Application OA 2021-001 was submitted by email to the State of Washington's Department of Commerce on February 24, 2021 for review in compliance with WAC 365-196-630.

5. The legal notification for Planning Casefile Application OA 2021-001 was given on March 30, 2021 pursuant to RCW 36.70.590.

6. Planning Casefile Application OA 2021-001 appeared in an open record virtual public hearing before the County Planning Commission on April 13, 2021 at the Public Services Building, 102206 E. Wiser Parkway, Kennewick WA.

7. At the April 13, 2021 open record hearing, the Planning Commission was available to

receive public testimony, exhibits, and answer questions in the public portion of the hearing.

8. The April 13, 2021 public hearing was continued to May 11, 2021 to give staff and the Planning Commission an opportunity to review the public comments.

9. All those who testified and those public hearing exhibits that were received into evidence are identified in the minutes and are contained in the official record;

10. The Planning Commission received the Staff Memo, dated May 7, 2021, that includes the CAO Comment Response Matrix and agrees with the information found in the staff memo and comment matrix;

SUGGESTED MOTION-

I move that the Chairman, in conjunction with the Secretary of the Planning Commission, prepare and adopt written findings and conclusions reflecting the Commission's recommendation for approval of the proposed zoning amendment, Casefile OA 2021-001 relating to critical areas, amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56., that articulate and are consistent with the findings, conclusions and recommendations made by the Planning Commission tonight.

Benton County CAO Update – Comment Response Matrix

Comment No.	Commenter	Reference	Comment	Response
1	Debbie Berkowitz	General	My primary concern is that the proposed revised riparian buffers do not take into account the vitally important wildlife protection function of the riparian ecosystem. My second main concern is that the proposed buffers do not provide for sufficient removal of certain pollutants and do not allow for buffer adjustments because of steep slopes, poorly vegetated buffers, disturbed soils, or adjacent high intensity land use. Details follow. Five ecological functions examined: The memo provided to the County by White Bluffs Consulting and QEA Anchor on Jan. 29, 2021 considered the extent of the riparian ecosystem as the area that provides full ecological function for bank stability, shade, pollution removal, contributions of detrital nutrients, and recruitment of large woody debris. Based on these parameters alone they recommended a riparian buffer of 50 ft for streams in Benton County. The memo states that "Recommendations in this document are generally supported by the extended analysis for the Columbia Plateau in Quinn et al (2020)1 ," and, indeed, much of the other literature cited in the memo deals with these parameters as well. Benton County's proposed revisions to its CAO bases its riparian buffers on this memo. One other important ecological function not considered: Riparian ecosystems in the County provide the essential ecological function of fish and wildlife habitat and yet the riparian buffer zones required for wildlife are not even considered in the above-mentioned Jan. 29, 2021 memo to the County. The riparian areas provide critical connectivity for wildlife in the County, a vital function of FWHCAs. "Riparian ecosystems are priority habitats in part because wildlife occurs more often and in greater variety in riparian areas than in any other habitat type… Although riparian ecosystems constitute a small portion of the surface landscape, approximately 85% of Washington's wildlife species are known to use riparian areas associated with rivers and streams." (Quinn (2020)1 , P. 5). However, as stated in Quinn et al (2020)1 , p. iv, "[Riparian Ecosystems Volume 1] is a partial update because it addresses only aquatic species. Riparian needs of terrestrial species will be updated in the future. Until that update is complete…. consult the 1997 document [Knutson and Naef, Management Recommendations for Washington's Priority Habitats: Riparian] for information about riparian ecosystems and terrestrial species." This 1997 document is, in fact, the document that was referenced in the 2018 CAO update in Benton County leading to a riparian buffer of 200 ft for fish-bearing streams (Type F) and 150 ft for non-fish bearing streams (Type Np and Ns). Other documents discuss recommended buffer widths for various birds, mammals, and amphibians. The minimum effective protection zone is typically 100 ft to 700 ft wide, depending on the species (Southeastern Wisconsin Regional Planning Commission (2010)2 (see figure at end). For example, Fischer (2000)3 states that for birds, the riparian zone should be at least 300 ft wide (for larger river systems) or 150 ft wide (for lower-order streams and rivers). While these documents are not based on data from eastern WA, many of the species are similar and have similar habitat needs. (It should be noted that many of the references in the Jan. 29 memo also include studies done in different parts of the U.S.)	Thank you for the thoughtful and thorough review of the draft updated Benton County Critical Areas code and for the comments. WDFW priority habitats and species (PHS) is a very detailed approach for identifying and protecting various habitats and species. The Anchor QEA Best Available Science review along with the supporting GIS analysis and field work conducted by AC GeoSpatial was primarily focused on the riparian areas and their associated functions, as you noted. However, the identified buffers also provide for quite an area on both sides of streams for wildlife habitat and protection. As noted in the AC GeoSpatial memo, as referenced in the Anchor QEA memo, review of the measured streams in Benton County "had an average buffer width of 20 feet per side. The average stream channel width was 7 feet, and the average total riparian area width was 47 feet." For the streams receiving a 50 foot buffer, this would provide an average of 25 – 30 feet per stream side of non-riparian habitat available for wildlife habitat. For the streams receiving a 75 foot buffer, this would provide an average of 50 – 55 feet per stream side of non-riparian habitat available for wildlife habitat. Additionally, riparian wetlands are regulated by the wetland provisions of the code, and wetland buffers would apply in these sections. Other priority habitats and species potentially impacted by a development proposal would also require additional protection requirements, on top of riparian and wetland protections, such as nesting areas for sensitive bird species. The critical areas code provides for applying the specific WDFW management recommendations for these species and habitats. (See Section 53.c.3 and Section 54.g.1).

Comment No.	Commenter	Reference	Comment	Response
			A qualified professional with a degree in wildlife biology should be consulted to look at this important aspect of riparian buffers before new buffer widths are adopted. Or better, the County should wait until the WDFW updates its consideration of the riparian needs of terrestrial species in a document comparable to Quinn (2020)1 which is a good example of the best available science.	The updated buffers have been reviewed by several qualified professionals, including those with expertise in wildlife biology. See also comment 11, from WDFW and their concurrence with these buffers. Also, the proposed buffers are consistent with the buffer widths provided in the County SMP, which also went through extensive discussion with qualified professionals before there were applied.
2		Upland Vegetation	Other issues of concern that need to be addressed in the CAO: 1. Based on the diagrams in the Riparian Buffer Analysis summary memorandum (May 2020, included in the Planning Commission packet), only riparian vegetation appears to have been mapped but the upland vegetation 'zone of influence' wasn't included. This zone of influence is considered part of the Riparian Management Zone (RMZ) in the Columbia plateau (Quinn (2020)1, P. 6). The zone of influence includes areas where ecological processes significantly influence the stream and can be fairly wide. The (desired future condition) zone of influence in the Columbia Plateau is often native shrub-steppe or prairie vegetation. Also explicitly excluded from the Riparian Buffer Analysis were wetlands which are part of riverine systems and should be considered in that context (as well as a wetlands critical area).	See response to Comment 1,3rd and 4th paragraphs
3		Water Quality	2. In dryland ecoregions, the pollution removal function may determine the width of the zone of influence for aquatic species. In Windrope (2020)4. WDFW recommends that the RMZ width (based on the needs of aquatic species) be delineated at a minimum of 100 ft, as this provides the width necessary for 95% pollution removal target for most pollutants (~85% for surface nitrogen); this buffer width is also justified by Table 5.4 in Quinn (2020)1. Quinn (2020)1 (p. 222) also states that because soils in arid ecoregions may be less permeable and vegetation tends to be less dense, especially in the upland zone of influence, the meta-analyses for pollution removal in forested regions may underestimate buffer widths needed for a given level of removal efficiency. Much of Benton County is occupied by irrigated farmland, dryland wheat farms, or rangelands or has rural development, so pollution sources exist in many riparian areas (and the Voluntary Stewardship Program, while not regulatory, follows the guidance in the CAO). The Windrope (2020) document, which is based on the best available science in Quinn (2020)1 , also comments that this minimum buffer of 100 ft should be increased if (a) upland uses contribute nitrogen (p. 22), (b) location has steep slopes, (c) location has poorly drained soils, (d) high intensity land uses are located adjacent to riparian areas, or (e) riparian or upland area is disturbed ("disturbed soils often don't have the same vegetative density or root structure as the native population, thereby altering riparian area efficacy in pollutant removal" (Quinn, P. 118)). Since one or more of the conditions listed in Windrope exist in many riparian areas in the County, the CAO should accommodate the potential need to increase buffers according to the conditions and allowance should be made in the CAO for future changes in land use – which is not currently the case in the proposed revised CAO. In addition, buffers should be increased to support wildlife connectivity and/or to protect riparian adjacent priority habitats.	Updating buffer recommendation to be 100 feet for streams with slopes 10 percent or greater, regardless of stream type. The County is relying on the Voluntary Stewardship Program for agricultural land conservation practices to protect both critical areas and upland habitats
4		Stream Types	3. Non-fish bearing and fish-bearing streams should have the same level of protection. Many of the ecological functions of both types of stream are similar.	Many of the streams identified as non-fish bearing are merely topographic lows without even defined bed and bank, or riparian areas as defined by vegetation that is different from the typical upland shrub steppe. The

Comment No.	Commenter	Reference	Comment	Response
				budget for this effort did not provide for more detailed field verification of each of the topo lows and/or actual streams (with defined bed and bank) in the County, but would expect that many of the identified streams would not in reality meet the stream definition but are still receiving a level of protection. Those streams with a bed and bank, and some regularly recurring flow, have the functions adequately protected, as noted above. Also, the additional protection of 100 feet when adjacent to slopes 10 percent or greater will provide an even greater level of protection.
5		Channel migration	4. Re CAO section 15.14.040(g)(4)(1): Please add: For streams in Benton County with a channel migration zone, the riparian buffer should be measured from the outer edge of the CMZ.	The only documented water body with a channel migration zone in Benton County is the lower Yakima River, which is regulated under shoreline jurisdiction. Additionally, flows in other streams are regulated by irrigation returns or spill that has defined channels with limited floodplain and some occasional riparian wetland areas. The floodplain areas are protected by the riparian buffer and the wetlands are protected through the other provisions of the critical areas code, as noted in other responses.
6		Flooding	5. Peak flows are not always controlled by irrigation practices, especially in winter when flooding does occur. Buffers need to be sufficient to protect the streams from the effects of flooding.	As the buffers provide for significant area outside of the riparian vegetated areas. Additionally, peak natural flows are typically much less than what returns through irrigation.
7		Buffer Averaging	6. Buffer averaging. State guidelines state that the buffer area width is not to be reduced by more than 25% in any location. What is the scientific justification for potentially reducing the width to 15 ft if this results in a buffer that is less than the 25% reduction?	Sorry for the confusion of the language. This is meant to say reduction cannot be more than 25 percent of the buffer, or 15 feet, whichever is smaller. Language will be updated and clarified.
8		Sources	7. The Quinn (2020)1 and Windrope (2020)4 references should be included in the FWHCA references section of the CAO.	Update as suggested.

Comment No.	Commenter	Reference	Comment	Response
9		Notice and sources	8. Legal notices should not just be in the Prosser Record Bulletin. They should also be placed in the Tri-City Herald which serves a larger portion of the population of Benton County. If Benton County does indeed value its open spaces and hillsides, as stated in its response to the Scout wind energy project, it presumably also values its wildlife (as numerous citizens stated who expressed their concerns about the potential loss of bird life). Since habitat losses are even more detrimental to birds and wildlife than the wind turbines, the County needs to provide buffers that are reasonably protective of these populations. The proposed buffers are not. References: 1. Quinn, T., G.F. Wilhere, and K.L. Krueger, technical editors (2020), Riparian Ecosystems, Vol 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia. WDFW01987. 2. Southeastern Wisconsin Regional Planning Commission (2010), Managing the Water's Edge. 3. Fischer, R.A. (2000), Width of riparian zones for birds. EMRRP Technical Notes Collection, TN EMRRPSI-09, U.S. Army Engineer Research and Development Center, Vicksburg, MS. 4. Windrope, A. T. Rentz, K. Folkerts, and J. Azerrad (2020), Riparian Ecosystems, Vol. 2: Management Recommendations. A priorityHabitats and Species Document of the Washington Department of Fish and Wildlife	Thank you for the suggestion.
10	Elizabeth Torrey, WDFW	Sources	WDFW has two updated volumes of the Riparian Ecosystems guidelines. Volume 1 was updated in July 2020. Volume 2 was updated in December 2020. WDFW recommends that these two newest documents be reviewed, utilized, and referenced as part of the literature review and Best Available Science for code updates.	Will update BAS references to notes these sources were considered.
11		Buffers	Within these documents, a 100-foot Riparian Management Zone is recommended as being protective of the functions and values of riparian ecosystems and their adjacent waterbodies within the Columbia Plateau. This is what guided my original comments regarding RMZ/buffer sizing. However, I was made aware that Area Habitat Biologist Mike Ritter had previously reviewed and considered Benton County's proposed buffers, and concurred that the buffer sizing of 50-feet for type N and 75-feet for type F is appropriate and protective. Therefore, **I defer to Mike Ritter's original assessment, and agree that what Benton County has proposed is sufficient and acceptable. WDFW requests no changes to the proposed buffers.**	Thank you for the follow up clarifications, and please note that we are including a 100-foot buffer in areas where slopes 10 percent or greater, regardless of stream type.
12	Patrick Paulson Laurie Ness	Riparian Areas	We feel the proposed riparian buffer widths for the County's Critical Area Ordinance (CAO) are not sufficient to preserve the functions and values of riparian areas. Riparian areas are a Priority Habitat and Species (PHS) habitat recognized by the Washington Department of Fish and Wildlife (WDFW). As PHS habitat, riparian areas should be protected using the latest science and management recommendations provided by WDFW.[1] We appreciate efforts the County has made to consult science and to inventory its riparian areas, but note that the recommended buffers do not conform with recommendations from WDFW.	See response to Comment 1, 5th paragraph. Additionally other PHS habitats including shrub steppe, cliffs and bluffs, along with other critical areas such as wetlands and frequently flooded areas all work together to protect both riparian and upland habitats. Riparian buffers are just one piece of this multi-layered protection approach.

[1] The recommendations include Volumes 1 (Quinn, Wilhere, and Krueger 2020) and 2 (Windrope et al. 2020) of WDFW's *Riparian Ecosystems* (hereafter referred to as *Quinn* and *Windrope).* For protection of riparian habitat for terrestrial species WDFW recommends the 1997 version of the recommendations for riparian (Knutson and Naef 1997) be used (Hereafter referred to as *Knutson*).

Comment No.	Commenter	Reference	Comment	Response
13		Buffers	We note the 150-foot buffer proposed for non-fish-bearing streams is the minimum buffer width consistent with recommendations from WDFW for protection of both aquatic functions and terrestrial species. We don't understand, though, why fish bearing streams have a smaller buffer than non-fish-bearing streams. It may have been intended that non-fish-bearing streams are to have a buffer-width of fifty feet, as proposed in the Best Available Science (BAS) review provided by Anchor QEA. While normally this could be considered a minor error and updated before approval, RCW 36.70A.035.2.a states that … if the legislative body for a county or city chooses to consider a change to an amendment to a comprehensive plan or development regulation, and the change is proposed after the opportunity for review and comment has passed under the county's or city's procedures, an opportunity for review and comment on the proposed change shall be provided before the local legislative body votes on the proposed change While the statute provides an exception for typographical errors, it only applies if the change can be made "without changing the effect" of the statute. Changing the proposed riparian buffer width from 150 feet to 50 feet without an additional comment period will violate this RCW.	See response to Comment 4. Benton County has followed the state and County requirements for providing public comment ahead of action by the County Commission. The comment period was even continued through to the upcoming May Planning Commission meeting.
14		Best Available Science and Water Quality	Although completed in January, 2021, the BAS Review does not consider recommendations given in Windrope, which state WDFW's guidance for the protection and restoration of healthy, intact, and fully functioning riparian ecosystems and for how land managers and land use regulators can utilize best available science to protect these ecosystems within the scope of their authority and/or ability. In this document, WDFW recommends where the width of the riparian vegetative community is less than 100 feet, we recommend that RMZ width [area requiring protection] be delineated at a minimum of 100 feet, as this provides the width necessary for 95% pollution removal target for most pollutants (approximately 85% for surface nitrogen.) [our emphasis]. WDFW also recommendation is to "Apply the recommended RMZ delineation steps to all streams, whether or not they are fish-bearing". This would lead to the same buffer width for all riparian areas. WDFW … found no evidence that full riparian ecosystem functions along non-fish- bearing streams are less important to aquatic ecosystems than full riparian ecosystem functions along fish-bearing streams. Furthermore, the BAS Review states that In specific cases where slopes into the stream are greater than 10% and adjacent to cultivated agricultural ground. A buffer up to 100 feet would be needed, but these conditions are too atypical in the county to warrant applying this buffer in all cases. By having Riparian buffers of at least 100 feet, we can ensure that these conditions remain atypical and our streams are protected. We also note the Voluntary Stewardship Program (VSP) used to protect critical areas within agricultural areas looks to the CAO for guidelines for buffer widths, so it is doubly important that buffer widths are adequate to protect our waters. Again, we appreciate efforts the County has made to review this science, but it's surprising that the BAS Review concluded that 50 ft buffers are adequate when WDFW concluded that a minimum buffer	See responses to Comments 4, 11, and WDFW comment #11.

Comment No.	Commenter	Reference	Comment	Response
			width would be 100 ft. Given this disparity, the BAS Review should be updated to consider WDFW's latest guidance.	
15		BAS Review Document	We haven't the time for a detailed review of the BAS Review, but note here some examples of how its conclusions are not supported by the science it references. On page 13, the BAS Review ignores multiple sources that suggest that nitrogen removal requires buffers of 80 to 150 ft, instead citing one paper which they claim states that all nitrogen is removed with buffers of 65 ft; in fact this same paper recommends a minimum buffer width of 20m (65 ft) for nitrogen and phosphorus; this paper also states that buffers may need to be as much as 40m wide for nitrogen removal. The BAS Review also cites Buffler to support the statement that "3 to 10 meter-wide grass buffer was found to be sufficient to remove most particulates from overland flow". We note first that in Benton County there are very few places where a "grass buffer" can naturally exist.	The science has a wide range of findings when it comes to protecting streams from various water quality parameters. We have updated the buffer to be 100 feet for areas where slopes are 10 percent or greater,, and regardless of stream type.
16		SMP and CAO	These new CAO buffer values will not be consistent with those in the SMP. Both documents should be based on either the BAS or the most recent and best data, so the buffer widths should be the same, maybe higher for the SMP.	See response to Comment 1, last paragraph
17		Buffer averaging	Paragraph 3.iv is nonsensical: "The buffer width is not reduced at any point to less than seventy-five (75) percent of the standard width or fifteen (15) feet, whichever is less." 75% of 75 ft (the smallest specified buffer) is 56 ft; a specified minimum of 15 ft seems to be non-operational. Should this be 50 ft?	See response to Comment 7
18	Alison Cable, FutureWise	General	Thank you for sending the Riparian Buffer Analysis memo. I reviewed the memo along with the staff report for tonight's public hearing on the critical areas ordinance. I understand from speaking with other interested residents that you expect that the comment period for the CAO will close today. I also have reviewed and support the comments from Debbie Berkowitz and Patrick Paulson and look forward to the County's response to their comments related to buffers and protection of ecological function of the County's critical areas. The Growth Management Act "requires that the regulations for critical areas must protect the 'functions and values' of those designated [critical] areas. This means all functions and values." Furthermore, Critical areas are to be protected by at least "maintaining existing conditions." Please See: Whidbey Env't Action Network v. Island Cty. (WEAN), 122 Wn. App. 156, 174–75, 93 P.3d 885, 894 (2004); and Swinomish Indian Tribal Cmty. v. W. Washington Growth Mgmt. Hearings Bd., 161 Wn.2d 415, 430, 166 P.3d 1198, 1206 (2007), as corrected (Nov. 28, 2007), as corrected (Apr. 3, 2008).	Thank you for this comment. The County feels that the updates being made to the CAO will strengthen the protection of critical areas functions and values.

ORDINANCE NO._____

AN ORDINANCE relating to critical areas, general provisions and fish and wildlife habitat conservation areas; amending the sections relating to applicability and performance standards-general requirements; amending Ordinance 609, Section 13 and BCC 15.02.120; amending Ordinance 609, Section 54 and BCC 15.14.040; and amending Ordinance 609, Section 56.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 609, Section 13 and BCC 15.02.120 are hereby amended to read as follows:

APPLICABILITY.

(a) The provisions of this chapter shall apply to all lands, all land uses and development activity, and all structures and facilities in unincorporated Benton County, whether or not a permit or authorization is required, and shall apply to every person, firm, partnership, corporation, group, governmental agency, or other entity that owns, leases, or administers land within the unincorporated portion of the County, except agricultural activities on agricultural lands, as those terms are defined by RCW 36.70A.703(1) and RCW 90.58.065 as now existing or as hereafter amended, are regulated as set forth below. No person, company, agency, or applicant shall alter a critical area or buffer except as consistent with the purposes and requirements of this chapter.

(1) Benton County has opted into the Voluntary Stewardship Program (VSP), an alternative to the regulatory protection of critical areas on agricultural lands. A working group comprised of agricultural groups, environmental groups, and tribes ((~~is developing~~)) developed and approved a work plan that identifies goals and benchmarks to protect critical areas while maintaining the viability of agriculture through voluntary, incentive based measures (WAC 365-1919-010(1) as now existing and hereafter amended).

(i) ((~~If~~)) ((~~t~~))The work plan developed and approved by the VSP working group ((~~is~~)) was approved by the Washington State Conservation Commission in April 2018, and the provisions ((~~or standards~~)) of this chapter will not apply to agricultural activities on agricultural lands, as those terms are defined ((~~in~~)) by RCW 36.70A.703(1) and RCW 90.58.065, as now existing ((~~and~~)) or as hereafter amended.

(ii) If the ((~~work plan is not approved by the~~)) Washington State Conservation Commission withdraws its approval of the work plan or determines that it ((~~, or~~)) fails to meet goals and benchmarks, the provisions and policies of the chapter will apply to agricultural activities ((~~(RCW 36.70A.735 as now existing and hereafter amended)~~)) on agricultural lands.

(2) The Benton County Shoreline Master Program, adopted pursuant to RCW 90.58 as now existing and hereafter amended, shall apply to all land use and development activities occurring within shoreline jurisdiction. Within shoreline jurisdiction, if critical areas are present where the

activities are to take place, compliance with the SMP is required. No further evaluation under this chapter is required.

(b) The County shall not approve any permit or otherwise issue any authorization not expressly exempted by this chapter to alter the condition of any land, water, or vegetation, or to construct or alter any structure or improvement in, over, or on a critical area or associated buffer, without first ensuring compliance with the requirements of this chapter.

(c) Approval of a permit or development proposal pursuant to the provisions of this chapter does not discharge the obligation of the applicant to comply with the provisions of this chapter.

SECTION 2. Ordinance 609, Section 54 and BCC 15.14.040 are hereby amended to read as follows:

PERFORMANCE STANDARDS—GENERAL REQUIREMENTS.

(a) Alterations shall not degrade the functions and values of habitat. A habitat conservation area may be altered only if the proposed alteration of the habitat or the mitigation proposed does not degrade the quantitative and qualitative functions and values of the habitat. All new structures and land alterations shall be prohibited from habitat conservation areas, except in accordance with this chapter.

(b) Nonindigenous Species. No plant, wildlife, or fish species not indigenous to the region shall be introduced into a habitat conservation area unless authorized by a state or federal permit or approval.

(c) Mitigation and Contiguous Corridors. Mitigation sites shall be located to preserve or achieve contiguous wildlife habitat corridors in accordance with a mitigation plan that is part of an approved critical area report to minimize the isolating effects of development on habitat areas, so long as mitigation of aquatic habitat is located within the same aquatic ecosystem as the area disturbed.

(d) Approvals of Activities. The Planning Administrator shall condition approvals of activities allowed within or adjacent to a habitat conservation area or its buffers, as necessary to minimize or mitigate any potential adverse impacts. Conditions shall be based on the best available science and may include, but are not limited to, the following:

(1) Establishment of buffer zones;

(2) Preservation of critically important vegetation and/or habitat features such as snags and downed wood;

(3) Limitation of access to the habitat area, including fencing to deter unauthorized access;

(4) Seasonal restriction of construction activities;

(5) Establishment of a duration and timetable for periodic review of mitigation activities; and

(6) Requirement of a performance bond, when necessary, to ensure completion and success of proposed mitigation.

(e) Mitigation and Equivalent or Greater Biological Functions. Mitigation of alterations to habitat conservation areas shall achieve equivalent or greater biologic and hydrologic functions and shall include mitigation for adverse impacts upstream or downstream of the development proposal site. Mitigation shall address each function affected by the alteration to achieve functional equivalency or improvement on a per-function basis.

(f) Approvals and the Best Available Science. Any approval of alterations or impacts to a habitat conservation area shall be supported by the best available science.

(g) Buffers.

(1) Establishment of Buffers. ((~~The Planning Administrator shall require the establishment of~~)) Required buffer areas for activities adjacent to habitat conservation areas ((~~when needed~~)) to protect habitat conservation areas are as set forth in this section (g). Buffers shall consist of an undisturbed area of native vegetation or areas identified for restoration established to protect the integrity, functions, and values of the affected habitat. Required buffer widths ((~~shall~~)) reflect the sensitivity of the habitat and the type and intensity of human activity proposed to be conducted nearby and shall be consistent with the management recommendations issued by the Washington State Department of Fish and Wildlife.

(2) Rivers, Lakes, Ponds, and Streams. Waterbodies classified by the water typing system specified in WAC 222-16-030 have the following riparian buffer requirements consistent with State Department of Fish and Wildlife recommendations:

(i) Type S (Shorelines of the State) Standard Buffer Width: Type S waters are protected by the Benton County Shoreline Master Program, as existing and hereafter amended, rather than this chapter.

(ii) Type F (Fish) Standard Buffer Width: ((~~200 ft~~)) Seventy-five (75) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.

(iii) Type Np (Non-Fish Perennial) and type Ns (Non-Fish Seasonal) Standard Buffer Width: ((~~150 ft~~)) Fifty (50) feet on parcels without streams with adjacent slopes of ten percent (10%) or greater. For parcels that have streams with adjacent slopes of ten percent (10%) or greater the buffer shall be one hundred (100) feet.

((~~(iv) Type Ns (Non-Fish Seasonal) Standard Buffer Width: 150 ft.~~

~~(3) Buffer modification. To manage for site specific conditions, buffer widths established in section (2) (ii-iv) above may be modified, provided:~~

~~(i) The buffer width modification is no greater than 33%;~~

~~(ii) The critical area study shall demonstrate that the proposed buffer width will continue to protect the integrity, functions, and values of the riparian area and habitat;~~

~~(iii) The critical area study shall include a field verification that evaluates actual river, lake, pond, and stream conditions. This shall be completed by a qualified professional and comply with WAC 365-190-130(4)(f)(ii), as existing or hereafter amended; and~~

~~(iv) Applicant shall complete a request for consultation with the State Department of Fish and Wildlife consistent with BCC 15.14.030(c)(7).~~))

(3) Buffer Width Averaging. With written approval of the Planning Administrator, riparian buffer widths may be modified at various points in accordance with an approved critical area report and the best available science on a case-by-case basis by requesting buffer widths be applied on an averaging basis. Averaging of buffer widths may only be allowed where a qualified professional demonstrates that:

(i) It will not reduce riparian functions or functional performance;

(ii) The riparian area contains variations in sensitivity due to existing physical characteristics or the character of the buffer varies in slope, soils, or vegetation, and the riparian area would benefit from a wider buffer in places and would not be adversely impacted by a narrower buffer in other places;

(iii) The total area contained in the buffer area after averaging is no less than that which would be contained within the standard buffer under subsection (g)(2) above; and

(iv) The buffer width is not reduced more than twenty five percent of the standard width or fifteen (15) feet, whichever is less.

(4) Measurement.

(i) Buffers for rivers, lakes, ponds, and streams shall be measured in all directions from the ordinary high-water mark (OHWM) as identified in the field; and

(ii) Buffers for other habitat types shall be measured in all directions from the habitat boundary, as mapped by the Washington State Department of Fish and Wildlife or a qualified professional pursuant to BCC 15.14.030(a).

(5) Seasonal Restrictions. When a species is more susceptible to adverse impacts during specific periods of the year, seasonal restrictions may apply. Larger buffers may be required and activities may be further restricted during the specified season.

SECTION 3. Ordinance 609, Section 56 is hereby amended to read as follows and will now be known as "APPENDIX A—GENERAL REFERENCES AND BEST AVAILABLE SCIENCE" but will not be codified:

General References and Best Available Science Sources for Benton County Critical Area Regulations.

This document serves as the General References and Best Available Science produced for the Benton County Critical Area Regulations.

Benton County is mandated by the Growth Management Act of Washington (GMA) to review and update its comprehensive plan and development regulations according to a schedule established in RCW 36.70A.130(5). This review and update includes the critical area regulations per RCW 36.70A.130(1)(c). The review of critical area regulations under RCW 36.70A.172(1) requires the inclusion of best available science (BAS) and consideration given to anadromous fisheries.

The following documents represent a partial list of general references, data and best available science. This list is not meant to be exhaustive, and may be added to in the future. This document is intended to provide an index of the science and data that may be reviewed by Benton County in the development of the County's Critical Area Ordinance.

GENERAL REFERENCES

Municipal Research and Services Center of Washington. 2018. Website. City and county codes for Washington State jurisdictions available at URL- http://mrsc.org/Home/Research-Tools/Washington-County-Codes.aspx

Washington State Department of Community, Trade, and Economic Development. 2007.

Critical Areas Handbook: Protecting Critical Areas within the Framework of the Washington Growth Management Act.

Benton County Codes, as existing or hereafter amended.

Natural Resource Conservation Service, Field Office Technical Guides. Latest Editions.

RCW 36.70A. Growth Management Act

RCW 36.70A.172 Critical Areas – Designation and Protection – Best Available Science.

WAC 365-190 Critical Areas.

WAC 365-195 Best Available Science.

WAC 222-16-030 Water Typing System

WAC 173-22 Designation of Shorelands and Wetlands

RCW 90.58 Shoreline Management Act

RCW 43.21C State Environmental Policy

RCW 90.44 Regulation of Public Groundwaters

RCW 90.48.020 Waters of the State

RCW 77. Department of Fish and Wildlife

BEST AVAILABLE SCIENCE SOURCES

WETLANDS

Azous, A. and Homer, R. 2010. Wetlands and urbanization: implications for the future. Washington State Department of Ecology; King County Water and Land Resources Division; and University of Washington.

Brinson, M. M. 1993. A hydrogeomorphic classification for wetlands. Technical Report WRP-DE-4, U.S. Army Engineer Waterways Experiment Station, Vicksburg, MS. NTIS No. AD A270 053.

Bunten, D., A. McMillan, R. Mraz, and J. Sikes. 2012. Wetlands and CAO Updates: Guidance for Small Cities Eastern Washington Version: 2012 Update. Washington State Department of Ecology. Publication #10-06-001. Olympia, WA.

Cowardin, L.M., V. Carter, F.C. Golet, and E.T. LaRoe. 1979. Classification of Wetlands and Deepwater Habitats of the United States. U.S. Fish and Wildlife Service. Publ. # FWS/OBS-79/31. 131p.

Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S; Stanley, E. Stockdale. April 2005. Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA.

Hattermann, F. Krysanova, V., Hesse, C. 2008. Modelling wetland processes in regional applications. Hydrological Sciences Journal 53(5):1001-1012.

Hogan, D. M., and M. R. Walbridge. 2007. Urbanization and nutrient retention in freshwater riparian wetlands. Ecological Applications 17(4):1142-1155.

Hruby, T. 2013.Update on Wetland Buffers: The State of the Science, Finial Report, October 2013: Washington State Department of Ecology Publication #13-06-11. Olympia, WA.

Hruby, T. 2014. Washington State Wetland Rating System for Eastern Washington: 2014 Update. Washington State Department of Ecology. Publication #14-06-030. Olympia, WA.

Hunt, R., D. Krabbenhoft, and M. Anderson . 1996. Groundwater inflow measurements in wetland systems. Water Resour. Res. 32(3): 495-507.

Mitsch, W.J. and J. G. Gosselink. 2000. Wetlands, Third Edition. John Wiley & Sons, Inc. New York, New York.

Sheldon, 0., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale. 2005. Wetlands in Washington State - Volume 1:A Synthesis of the Science. Washington State Department of Ecology. Publication #05-06-006. Olympia, WA.

U.S. Army Corps of Engineers. 2010. Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (Version 2.0). Environmental Laboratory ERDC/EL TR-08-13, Wetlands Regulatory Assistance Program, U.S. Army Corps of Engineers Engineer Research and Development Center, Vicksburg, Mississippi.

U.S. Army Corps of Engineers. 1987. Corps of Engineers Wetland Delineation Manual: Wetlands Research Program Technical Report Y-87-1 (on-line edition).

U.S. Fish and Wildlife Service. 2018. National Wetlands Inventory. Washington, D.C.: Available at: http://www.fws.gov/wetlands/.

Washington State Department of Ecology, 1997. Washington State Wetlands Identification and Delineation Manual. Ecology Publication No. 96-94.

Washington State Department of Ecology. 2016. Wetland Guidance for CAO Updates, Eastern Washington Version. Publication No. 16-06-002.

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. 2006a. Wetland Mitigation in Washington State - Part 1: Agency Policies and Guidance (Version 1). Washington State Department of Ecology Publication #06-06-0lla. Olympia, WA.

Washington State Department of Ecology, U.S. Army Corps of Engineers Seattle District, and U.S. Environmental Protection Agency Region 10. 2006b. Wetland Mitigation in Washington State - Part 2: Developing Mitigation Plans (Version 1). Washington State Department of Ecology Publication #06-06-0llb. Olympia, WA.

Washington State Department of Natural Resources. 2018. Wetlands of High Conservation Value- Map Viewer [computer file]. Olympia, WA. Available at: https://www.dnr.wa.gov/NHPwetlandviewer

Zedler, J. B., and S. Kercher .2004. Causes and Consequences of Invasive Plants in Wetlands: Opportunities, Opportunists, and Outcomes. Critical Reviews in Plant Sciences 23(5):431-452.

CRITICAL AQUIFER RECHARGE AREAS

Bauer, H.H. and Vaccarro, J.J. 1987. Documentation of a Deep Percolation Model for Estimating Ground-Water Recharge. A contribution of the Regional Aquifer- System Analysis Program. U.S. Geological Survey. Open-File Report 86-536. Tacoma, WA.

Bauer, H.H. and Vaccarro, J.J. 1989. Estimates of Ground-Water Recharge to the Columbia Plateau Regional Aquifer System, Washington, Oregon, and Idaho, for Predevelopment and Current Land-Use Conditions. U.S. Geological Survey. Water Resources Investigations Report 88-4108. Tacoma, WA.

Cook, Kirk V. 2000. Guidance Document for the Establishment of Critical Aquifer Recharge Area Ordinances. Washington State Department of Ecology. Water Quality Program. Publication 97-30. Version 4.0. Olympia, WA.

Drost, B.W. and Whiteman, KJ. 1986. Surficial Geology, Structure, and Thickness of Selected Geohydrologic Units in the Columbia Plateau, Washington. U.S. Geological Survey. Water-Resources Investigations Report84-4326. 11sheets. Tacoma, WA.

Drost, B.W. et al. 1989. Well Data, Surface Water Discharges, arid Nitrate Concentrations, February 1986 - September, 1987, in Parts of the Pasco Basin, Washington. U.S.
Geological Survey. Open-File Report 89-38. Tacoma, WA.

Drost, B.W., J.C. Ebbert, and S.E. Cox. 1993. Long-Term Effects of Irrigation with Imported Water on Water Levels and Water Quality. 1993. U.S. Geological Survey. Water-Resources Investigations Report 93-4060. Tacoma, WA

Drost, B.W., KM. Schurr, and W.E. Lum II. 1989. Selected Ground-Water Information for the Pasco Basin and Adjacent Areas, Washington, 1986-1989. U.S. Geological Survey. Open-File Report 89-228. Tacoma, WA.

Drost, B.W., S.E. Cox, and KM. Schurr. 1997. Changes in Ground-Water Levels and Ground-Water Budgets, from Predevelopment to 1986, in Parts of the Pasco Basin, Washington. U.S. Geological Survey. Water-Resources Investigations Report 96-4086. Tacoma, WA.

Hermanson, Ronald, et al. 2000. Nitrogen Use by Crops .and the Fate of Nitrogen in the Soil and Vadose Zone. A Literature Search. Washington State University. By Interagency Agreement with the Washington Department of Ecology. Publication 00-10-015. Olympia, WA.

Jenkins, Olaf P. 1922. Underground Water Supply of the Region About White Bluffs and Hanford. State of Washington Department of Conservation and Development. Division of Geology. Bulletin No. 26. Olympia, WA.

Kinnison, Hallard B. and Jack E. Sceva. 1963. Effects of Hydraulic and Geologic Factors on Streamflow of the Yakima River Basin, Washington. U.S. Geological Survey. Water Supply Paper 1595. U.S. Government Printing Office. Washington, D.C.

Liveray, D.M. 1986. The Hydrogeology of the Upper Wanapum Basalt, Upper Cold Creek Valley, Washington. Washington State University. M.S. Thesis. Pullman, WA.

Molenaar, Dee. 1961. Flowing Artesian Wells in Washington State. State of Washington Department of Conservation. Division of Water Resources, Water Supply Bulletin 16. Olympia, WA.

Molenaar, Dee. 1982. Water In The Horse Heaven Hills, South-Central Washington. State of Washington Department of Ecology. Prepared in cooperation with the U.S. Geological Survey. Water Supply Bulletin 51. Olympia, WA.

Molenaar, Dee. 1985. Water in the Lower Yakima River Basin, Washington. State of Washington Department of Ecology. Prepared in cooperation with the U.S. Geological Survey. Water Supply Bulletin 53. Olympia, WA.

Morgan, Laurie. 2005. Critical Aquifer Recharge Areas. Guidance Document. Washington Department of Ecology. Publication 05-10-028. Olympia, WA.

Pacific Groundwater Group. 2011. Request for Identification. Lower Yakima Valley Groundwater Management Area. Project Report prepared for Yakima County. Yakima, WA.

Packard, F.A., A.J. Hansen, Jr. and H.H. Bauer. 1996. Hydrogeology and Simulation of Flow and the Effects of Development Alternatives on the Basalt Aquifers of the Horse-Heaven Hills, South-Central Washington. Report including Plates I and II.

U.S. Geological Survey. Water-Resources Investigations Report 94-4068. Tacoma, WA.

Phillips, Earl L. 1970. Washington Climate For These Counties Asotin, Benton, Columbia, Franklin, Garfield, and Walla Walla. Cooperative Extension Service. College of Agriculture. Washington State University. EM 3127. Pullman, WA.

Rasmussen, Jack J. 1971.Soil Survey of Benton County Area, Washington. United States Department of Agriculture, Soil Conservation Service. In cooperation with the Washington Agricultural Experiment Station. Washington, D.C.

Sell, Ron and L. Knutson. 2002. Quality of Ground Water in Private Wells in the Lower Yakima Valley 2001-2002. Valley Institute of Research and Education. Re-issued by Washington Department of Ecology. Publication 02-10-074. Olympia, WA.

U.S. Bureau of Reclamation. 2011. Yakima River Basin Study. Groundwater Infiltration Appraisal-Level Study Technical Memorandum. Golder Assoc. and HOR, Inc. Yakima, WA

Washington State Department of Ecology. 1974. Inventory and Reconnaissance of Irrigation Districts in the State of Washington. Part I. Summary Report. URS Co. Olympia, WA

Washington State Department of Ecology. 2005. Critical Aquifer Recharge Areas: Guidance Document. Publication 05-10-028. Olympia, WA

Washington State Department of Ecology. 2010. Lower Yakima Valley Groundwater Quality. Publication 10-10-009. Olympia, WA

Yakima River Basin Watershed Planning Unit and Tri-County Water Resources Agency. 2003. Watershed Management Plan Yakima River Basin. Economic and Engineering Services, Inc. and others. Funded by Washington Department of Ecology. Olympia, WA.

FREQUENTLY FLOODED AREAS

Bolton, S. and J. Shellberg. 2001. Ecological Issues in Floodplains and Riparian Corridors. Report to Washington Dept. of Transportation, Olympia.

Federal Emergency Management Agency. 1994. Flood Insurance Study, Benton County, Washington and Unincorporated Areas.

Washington State Department of Ecology. 1991. Comprehensive Planning for Flood Hazard Management. Ecology Publication No. 91-44.

GEOLOGICALLY HAZARDOUS AREAS

Advanced Engineering Consultants. 1979. Benton County. Excerpts From The Side Hill Development Standards Report. Project E-78022. Olympia, WA.

Galster, Richard W. 1989. Engineering Geology in Washington. Volume I. Washington Division of Geology and Earth Resources. Washington Department of Natural Resources, In cooperation with the Washington State Section of the Association of Engineering Geologists. Bulletin 78. Olympia, WA

Phillips, Earl L. 1970. Washington Climate For These Counties Asotin, Benton, Columbia, Franklin, Garfield, and Walla Walla. Cooperative Extension Service. College of Agriculture. Washington State University. EM 3127. Pullman, WA.

Rasmussen, Jack J. 1971.Soil Survey of Benton County Area, Washington. United States Department of Agriculture, Soil Conservation Service. In cooperation with the Washington Agricultural Experiment Station. Washington, D.C.

The Watershed Company and BERK. 2013. Final Shoreline Analysis Report for Shorelines in Benton County: Yakima and Columbia Rivers. Appendix D Channel Migration Zone Memo. Prepared for the Benton County Planning Department. Prosser, WA.

Thorson, Gerald W. 1989. Landslide Provinces in Washington. Washington Division of Geology and Earth Resources. Bulletin 78. Olympia, WA.

United States Geological Survey. 2015. Geologic Units in Benton County, Washington. Mineral Resources On-Line Spatial Data. Washington Geology. www.mrdata.usgs/gov/geology/state/

Washington State Department of Natural Resources. Interactive Maps. Natural Hazards. http://www.dnr.wa.gov/programs-and-services/geology/publications-and-data/geologic-information-portal

FISH AND WILDLIFE CONSERVATION AREAS

AC Geospatial, 2020. Riparian Buffer Analysis Summary Memorandum. Prepared for Benton County, May 2020.

Alexander R.B., E.W. Boyer, RA. Smith, et al. 2007. The role of headwater streams in downstream water quality. J. Am. Water Resour. 43:41-59.

Allan, J.D., M.S. Wipfli, J.P. Caouette, A. Prussian, J. Rodgers. 2003. Influence of streamside vegetation on inputs of terrestrial invertebrates to salmonid food webs. Canadian Journal of Fisheries and Aquatic Sciences 60(3):309-320.

Anchor QEA. 2021. Proposed Riparian Buffers within the Benton County Critical Areas Code Update. Prepared for Benton County, January 30,2021.

Anchor QEA. 2013. Final Draft Semi-Arid Riparian Functions and Associated Regulatory Protections to Support Shoreline Master Program Updates. Prepared for Grant County.

Anchor QEA and HOR. 2011. Yakima River Basin Study: Mainstem Floodplain Restoration Technical Memorandum. Prepared for the U.S. Bureau of Reclamation and Washington Department of Ecology.

Appel, M., R. Little, H. Wendt, M. Nielson. 2011. Assessment of the Lower Yakima River in Benton County, Washington. Produced in cooperation with the Yakima Basin Fish and Wildlife Recovery Board.

Arnold, C.L. and C.J. Gibbons. 1996. Impervious Surface Coverage: The Emergence of a Key Environmental Indicator. American Planners Association Journal 62:243- 258.

Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Management recommendations for Washingtons priority habitats: managing shrub-steppe in developing landscapes. Washington Department of Fish and Wildlife, Olympia, Washington.

Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Long-range planning: considering the shrub-steppe landscape. Washington Department of Fish and Wildlife, Olympia, Washington.

Azerrad, J. M., K. A. Divens, M. F. Livingston, M. S. Teske, H. L. Ferguson, and J. L. Davis. 2011. Site-specific management: how to avoid and minimize impacts of development to shrub-steppe. Washington Department of Fish and Wildlife, Olympia, Washington.

Beier, P. and R.F. Noss. 1998. Do habitat corridors provide connectivity? Conserv. Bio. 12:1241-1252

Beschta, R.L. 1997. Restoration of riparian and aquatic systems for improved aquatic habitats in the Upper Columbia River Basin. In: Strouder DJ, Bisson PA, Naiman RJ (eds) Pacific salmon and their ecosystems: status and future options. Chapman and Hall, New York, NY, pp 475-491.

Beschta, R. L., Bilby, R. E., Brown, G. W., Holtby, L. B., and Hofstra, T. D. 1987. Stream temperature and aquatic habitat: Fisheries and forestry interactions. Pages 191- 232 in E.0. Salo, and T. W. Cundy, editors. Streamside management: Forestry and Fishery Interactions. University of Washington, Seattle, WA.

Beeson, C. and P.Doyle. 1995. Comparison of Bank Erosion and Vegetated and Non-Vegetated Channel Bends. Journal of American Water Resources Association 31(6):983-990.

Belsky, A.J., A. Matzke, S.Uselman. 1999. "Survey of Livestock Influences on Stream and Riparian Ecosystems in the Western United States". Journal of Soil and Water Conservation. 54:419-431.

Benton County. 2008. Benton County Comprehensive Plan. Available:

http://www.co.benton.wa.us/pView. aspx?id=1450&ca tid=45. [Accessed: August 2015].

Bilby, R. E., and P. A. Bisson. 1998. Function and distribution of large woody debris. R. J.

Naiman and R. E. Bilby, editors. River ecology and management: lessons from the Pacific coastal ecoregion. Springer-Verlag, New York, N.Y ., USA.

Bisson, P. A., S.M. Claeson, S.M. Wondzell, A.D. Foster, and A. Steel. 2013. Evaluating Headwater Stream Buffers: Lessons Learned from Watershed- scale Experiments in Southwest Washington. Pgs. 165-184. In: Anderson, P. D. and Ronnenberg, K.L. (eds.). Density Management in the 21st Century: West Side Story. General Technical Report, PNW-GTR-880. Portland, OR: U.S. Department of Agriculture, Forest Service, Pacific Northwest Research Station.

Blair, R. 1999. Birds and butterflies along an urban gradient: surrogate taxa for assessing biodiversity? Ecol. Appl. 9:164-170.

Booth, D.B. and C.R. Jackson. 1997. Urbanization of aquatic systems-- degradation thresholds, stormwater detention, and the limits of mitigation. Journal of American Water Resources Association 22.

Booth, D. B.,J. R. Karr, S. Schauman, C. P. Komad, S. A. Morley, M. G. Larson, and S. J. Burges. 2004. Reviving urban streams: land use, hydrology, biology, and human behavior. Journal of the American Water Resources Association, 40:1351-1364.

Braatne. J.H., Jamieson, R., Gill, K.M. and SB. Rood. 2007. Instream Flows and the Decline of Riparian Cottonwoods along the Yakima River, Washington, USA. River Research and Applications 23:247-267.

Bradley CE, Smith DG. 1986. Plains cottonwood recruitment and survival on a prairie meandering river floodplain, Milk River, Southern Alberta and Northern Montana. Canadian Journal of Botany 64:1433-1442.

Bragg, DC. 2000. Simulating Catastrophic and Individualistic Large Woody Debris Recruitment for a Small Riparian System. Ecology 81(5):1383-1394.

Brosofske, K.D., J. Chen, R.J. Naiman, J.F. Franklin 1997. Harvesting effects on microclimatic gradients from small streams to uplands in western Washington. Ecol. Appl. 7, 1188-1200.

Buffle, S., C. Johnson, J. Nicholson, and N. Mesner. 2005. Synthesis of design guidelines and experimental data for water quality function in agricultural landscapes in the Intermountain West. USDA Forest Service/UNL Faculty Publications, 13.

Burges, S. J., M. S. Wigmosta, and J.M. Meena. 1998. Hydrological effects of land-use change in a zero-order catchment. Journal of Hydrologic Engineering.

Chatters. J.C., D.A. Neitzel. M.J Scott and S.A. Schankle. 1991. The effect of climate change on stream environments; the salmonid resource of the Columbia River Basin. Northwest Environ. J.

Chescheir C.M., J.W. Gilliam, R.W. Skaggs & R.G. Broadhead. 1991. Nutrient and sediment removal in forested wetlands receiving pumped agricultural drainage water. Wetlands 11:87-103.

Cristea, N. and J. Janisch. 2007. Modeling the effects of riparian buffer width on effective shade and stream temperature. Publication No. 07-03-028. Washington Department of Ecology.

Danehy, R.J. and B.J. Kirpes. 2000. Relative humidity gradients across riparian areas in eastern Oregon and Washington forests. Northwest Sci. 74:224-233.

Daniels, R.B., and J.W. Gilliam. 1996. Sediment and Chemical Load Reduction by Grass and Riparian Filters. Soil Sciences 60:246-251.

Dillaha TA, RB Reneau, S Mostaghimi, D Lee. 1989. Vegetative filter strips for agricultural nonpoint source pollution control. Transactions of the ASAE 32(2):513-519.

Dosskey, M.G., K.D. Hoagland, and J.R. Brandle 2007. Change in filter strip performance over ten years. J Soil Water Conserv 62(1):21-32.

Dosskey, M. G., M. J. Helmers, and D. E. Eisenhauer. 2008. A design aid for determining width of filter strips. Journal of Soil and Water Conservation 63(4):232-241.

Dwire, K.A. and JB. Kauffman, 2003. Fire and riparian ecosystems in landscapes of the western USA. Forest Ecology and Management 178:61-74.

Ebbert, J .C., S.S. Embrey, and J.A. Kelley. 2003. Concentrations and Loads of Suspended Sediment and Nutrients in Surface Water of the Yakima Basin, Washington, 1999-2000 - With an Analysis of Trends in Concentrations, Water-Resources Investigations Report 03-4026, U .S. Geological Survey.

Forest Ecosystem Management Assessment Team (FEMAT). 1993. Forest ecosystem management: an ecological, economic, and social assessment. Portland, OR: U.S. Department of Agriculture; U.S. Department of the Interior [and others].

Fullerton, A. H., T. J. Beechie, S. E. Baker, J. E. Hall, and K. A. Barnas. 2006. Regional patterns of riparian characteristics in the interior Columbia River basin, northwestern USA: Application for restoration planning. Landscape Ecology 21: 1347-1360.

Gorni, T., R. Sidle, and J. Richardson. 2002. Understanding processes and downstream linkages of headwater systems. Bioscience 52(10):905-16.

Gregory, S.V., F. J. Swanson, W. A. McKee, and K W. Cummins, 1991. An ecosystem perspective of riparian zones. BioScience 41:540-551.

Gurnell, A.M., H. Piegay, F.J. Swanson, and S.V. Gregory. 2002. Large wood and fluvial processes. Freshwater Biology, 47(4), 601-619. Haring, D. 2001. Habitat Limiting Factors Yakima River Watershed, Water Resources Inventory Areas 37-39, Final Report. Prepared by the Washington State Conservation Commission. 364 pp.

Harding, J. S., K Claassen, and N. Evers. 2006. Can forest fragments reset physical and water quality conditions in agricultural catchments and act as refugia for forest stream invertebrates? Hydrobiologia 568:391-402.

HDR Engineering, Anchor QEA, ECONorthwest, Natural Resource Economics, and ESA. 2012. Yakima River Basin Integrated Water Resource Management Plan: Framework for Implementation Report. Prepared for U.S. Department of the

Interior, Bureau of Reclamation, Pacific Northwest Region, Columbia-Cascades Area Office and Washington Department of Ecology, Office of Columbia River.

Hecht, S.A., D.H. Baldwin, C.A. Mebane, T. Hawkes, S.J. Gross, and N.L. Scholz. 2007. An overview of sensory effects on juvenile salmonids exposed to dissolved copper: applying a benchmark concentration approach to evaluate sublethal neurobehavioral toxicity. NOAA Technical Memorandum NMFS-NWFSC-83 .

Helmers, M.J., D.E. Eisenhauer, M.G. Dosskey, T.G. Franti, J.M. Brothers, and M.C. McCullough. 2005. Flow pathways and sediment trapping in a field-scale vegetative filter. Transactions of the ASAE 48:955-968.

Inter-Fluve. 2013. Columbia River Shoreline Project Identification. Mainstem Columbia River- Klickitat Lead Entity Area, WA. Prepared for Mid-Columbia Fisheries Enhancement Group, White Salmon, WA. April, 2013.

Jensen, D.W., E.A. Steel, A.H. Fullerton, G.R. Pess. 2009. Impact of Fine Sediment on Egg-To-Fry Survival of Pacific Salmon: A Meta-Analysis of Published Studies. Reviews in Fisheries Science.

Jin, C.X. and M.J.M. Romkens. 2001. Experimental studies of factors in determining sediment trapping in vegetative filter strips. Trans. ASAE 44:277-288.

Johnson, D.H. and T.A. O'Neil. 2001. Wildlife-Habitat Relationships in Oregon and Washington. Oregon State Universify Press. Corvallis, Oregon. 736 pp.

Jordan, N'. R., D.L. Larson, and S.C. Huerd. 2008. Soil modification by invasive plants: effects on native and invasive species of mixed-grass prairies. Biological Invasions 10(2):177-190.

Joy, J. and B. Patterson. 1997. A Suspended Sediment and DDT Total Maximum Daily Load Evaluation Report for the Yakima River, Publication No. 97-321, Washington State Department of Ecology.

Kershner, J. L., & B. B. Roper. 2010. An evaluation of management objectives used to assess stream habitat conditions on Federal lands within the Interior Columbia Basin. Fisheries 35(6):269-278.

Kinnison, H.B. and J. E. Sceva. 1963. Effects of Hydraulic and Geologic Streamflow of the Yakima River Basin Washington. Geological Survey Water-Supply Paper 1595. U.S. Department of the Interior.

Knight, K., 2009. Land Use Planning for Salmon, Steelhead and Trout. Washington State Department of Fish and Wildlife. Olympia, Washington.

Larsen, E., J. M. Azerrad, N. Nordstrom, editors. 2012. Management Recommendations for Washington's Priority Species, Volume IV: Birds. Washington Department of Fish and Wildlife, Olympia, Washington, USA.

Lautz, K. 2000. Salmon and Steelhead Limiting Factors Water Resource Area 31. Washington State Conservation Commission. 50 pp.

Mahoney JM, Rood SB. 1998. Streamflow requirements for cottonwood seedling recruitment- an integrative model. Wetlands 18:6345.

Marriott, D., and 27 contributors. 2002. Lower Columbia River and Columbia River Estuary Subbasin Summary. Report Prepared for the Northwest Power Planning Council, dated May 17, 2002. (Available at: http://www.cbfwa.org/)

Mastin, M., 2008, Effects of potential future warming on runoff in the Yakima River Basin, Washington, Scientific Investigations Report 2008-5124, U.S. Geological Survey.

Mayer, P.M., S.K. Reynolds, J. Marshall, D. McCutchen, and T.J. Canfield. 2007. Meta- Analysis of Nitrogen Removal in Riparian Buffers. Journal of Environmental Quality 36: 1172-1180.

Mcintosh, B.A., Sedell, J.R., Smith, J.E., Wissmar, R.C., Clarke, S.E., Reeves, G.H. and L.A. Brown. 1994. Historical Changes in Fish Habitat for Select River Basins of Eastern Oregon and Washington. Northwest Science 68:36-52.

Mcintyre, J. K., D. H.Baldwin, J. P. Meador, and N. L. Scholz. 2008. Chemosensory deprivation in juvenile coho salmon exposed to dissolved copper under varying water chemistry conditions. Environmental Science & Technology 42:1352-1358.

Mcintyre, J. K., D.H. Baldwin, D.Beauchamp, and N.L. Scholz. 2012. Low-level copper exposures increase visibility and vulnerability of juvenile coho salmon to cutthroat trout predators. Ecological applications: a publication of the Ecological Society of America. 22(5):1460-71.

Moore, A.A. and M.A. Palmer. 2005. Invertebrate biodiversity in agricultural and urban headwater streams: Implications for conservation and management. Ecological Applications 15:1169-1177.

Morace, J.M., G.J. Fuhrer, J.F. Rinella, S.W. McKenzie, and others. 1999. Surface-Water- Quality Assessment of the Yakima River Basin in Washington: Overview of Major Findings, 1987-91. Water-Resources Investigations Report 98-4113. U.S. Geological Survey.

Naiman, Robert J., and Henri Decamps, 1997. The ecology of interfaces: riparian zones. Annual review of Ecology and Systematics 1997: 621-658.

Naiman, Decamps, and McClain, 2005.Riparia-- Ecology, Conservation, and Management of Streamside Communities. Elsevier Academic Press.

Natural Resources Conservation Service. 2015. Benton County Rare Plants. http://www.nrcs.usda.gov/lnternet/FSE_PLANTMATERIALS/publications/wapmsmtl1979.pdf.

National Marine Fisheries Service (NMFS). 2009. Middle Columbia River Steelhead Distinct Population Segment ESA Recovery Plan. National Marine Fisheries Service Northwest Region.

Neal, V. 1972. Physical aspects of the Columbia River and its Estuary. In The Columbia River Estuary and Adjacent Ocean Waters: Bioenvironmental Studies, edited by A. T. Pruter and D. L. Alverson (Seattle: University of Washington Press), pp. 19- 70.

Newbold, J.D., S. Herbert, B.W. Sweeney, P. Kiry, and S.J. Alberts. 2010. Water Quality Functions of a 15-Year-Old Riparian Forest Buffer System. JAWRA Journal of the American Water Resources Association 46:299-310.

Northwest Power Planning Council (NPPC). 2001. Yakima Subbasin Summary. Laura Berg, editor. Portland, OR. 376 pp.

Osborne, L.L. and D.A. Kovacic. 1993. Riparian vegetated buffer strips in water quality restoration and stream management. Freshwater Biology 29:243-258.

Otto S., M. Vianello, A. Infantino, G. Zanin, and A. Di Guardo. 2008. Effect of a full- grown vegetative filter strip on herbicide runoff: Maintaining of filter capacity over time. Chemosphere 71(1):74-82.

Patten, D. T. 1998. Riparian ecosytems of semi-arid North America: Diversity and human impacts. Wetlands 18(4):498-512.

Pacific Northwest Laboratory, Ecology Group, Earth and Environmetal Sciences Center. No date. Field Guide to Species of Concern on the Hanford Site. Prepared under U.S. Departinent of Energy contract DE-AC06-76RLO 1830.

Patton, G.W. 2009. Surface-Water and Sediment Monitoring in Hanford Site Environmental Report. Pacific Northwest National Laboratory. Prepared of the U.S. Department of Energy.

Peterjohn W.T. & Correll D.L., 1986. The effect of riparian forest on the volume and chemical composition of baseflow in an agricultural watershed. Watershed Research Perspectives, (ed. D. L. Correll), pp. 244-262. Smithsonian Press, Washington, DC.

Qiu, Z. 2009. Assessing Critical Source Areas in Watersheds for Conservation Buffer Planning arid Riparian Restoration. Environmental Management 44:968-980.

Quinn, T., G.F. Wilhere, and K.L. Krueger, technical editors, 2020. Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications. Habitat Program, Washington Department of Fish and Wildlife, Olympia.

Rinella, J.F., S.W. McKenzie, and G.J. Fuhrer. 1992. Surface-Water-Quality Assessment of the Yakima River Basin in Washington: Analysis of Available Water-Quality Data through 1985 Water Year, Open-File Report 91-453, U.S. Geological Survey.

Smith, D.L., G. Johnson, and T. Williams. 2006. Natural Streamflow Estimates for Watersheds in the Lower Yakima River, S.P. Cramer and Associates.

Stinson, D.W. 2016. Periodic status review for the Greater Sage-grouse in Washington. Washington Department of Fish and Wildlife, Olympia, Washington.

The Watershed Company and BERK. 2013. Final Shoreline Analysis Report for Shorelines in Benton County: Yakima and Columbia Rivers. Prepared for the Benton County Planning Department, Prosser, WA.

U.S. Bureau of Reclamation. 2008. Sediment Transport Modeling of the Yakima Basin, A Component of Yakima River Basin Water Storage Feasibility Study, Washington, Technical Series No. TS-YSS-17.

U.S. Bureau of Reclamation. 2002. Interim Comprehensive Basin Operating Plan (IOP) for the Yakima Project, Washington. 434 pp.

U.S. Bureau of Reclamation and Washington State Department of Ecology. 2012. Yakima River Integrated Water Resource Management Plan Final Programmatic Environmental Impact Statement, Benton, Kittitas, Klickitat and Yakima Counties.

Vaccaro, J.J. 2011. River-Aquifer Exchanges in the Yakima River Basin, Washington, Scientific Investigations Report 2011-5026. U.S. Geological Survey.

Vaccaro, J.J. and T.D. Olsen. 2007. Estimates of Ground-Water Recharge to the Yakima River Basin Aquifer System, Washington, for Predevelopment and Current Land- Use and Land-Cover Conditions. Scientific Investigations Report 2007-5007, U.S. Geological Survey.

Voss, F.D, C.A. Curran, and M.C. Mastin, 2008, Modeling Water Temperature in the Yakima River, Washington, from Roza Diversion Dam to Prosser Dam, 2005-06, Scientific Investigations Report 2008-5070, U.S. Geological Survey.

Ward, D. and 19 contributors. 2001. Draft Mainstem Columbia River Subbasin Plan. Prepared for Northwest Power and Conservation Council. 169 pp.

Washington State Department of Ecology. 2012. Focus On Mitigation in the Yakima Basin. Publication No. 12-11-024.

Water Quality Assessment 2008. (WQA) 305(b) Report for Benton County, WA [computer file]. Olympia, WA: Available at: http://www.ecy.wa.gov/services/gis/data/data.htm

Washington State Department of Fish and Wildlife (WDFW). 2018. Priority Habitats and Species [computer file]. Olympia, WA. Available at: http://wdfw.wa.gov/conservat:ion/phs/list/.

Washington State Department of Fish and Wildlife (WDFW). 2015. Washington State. Wildlife Action Plan: 2015 Update. Washington Department of Fish and Wildlife, Olympia, Washington.

Washington State Department of Fish and Wildlife (WDFW). 2009. Landscape Planning for Washingtons Wildlife: Managing for Biodiversity in Developing Areas.

Washington State Department of Fish and Wildlife (WDFW). 1997. Management Recommendations for Washington's Priority Habitats-Riparian.

Washington State Department of Natural Resources. 2011. Field Guide to the Rare Plants of Washington. Natural Heritage Program.

Washington State Department of Natural Resources. 2018. Wetlands of High Conservation Value- Map Viewer [computer file]. Olympia, WA. Available at: https://www.dnr.wa.gov/NHPwetlandviewer

Wigington, Jr., P.J., J.L. Ebersole, M.E. Colvin, et al. 2006. Coho salmon dependence on intermittent streams. Front. Ecol. Environ. 10:513-18.

Windrope, Amy, Terra Rentz, Keith Folkerts, and Jeff Azerrad. Riparian Ecosystems, Volume 2: Management Recommendations. 2020. A Priority Habitats and Species Document of the Washington Department of Fish and Wildlife, Olympia, Washington.

Wipfli M.S., J.S. Richardson, and R.J. Naiman. 2007. Ecological linkages between headwaters and downstream ecosystems: Transport of organic matter, invertebrates, and wood down headwater channels. J Am Water Resour Assoc 43(1):72-85.

Wipfli, M. S. 2005. Trophic linkages between headwater forests and downstream fish habitats: implications for forest and fish management. Landscape and Urban Planning 72:205-213.

Wipfli, M.S. and D.P. Gregovich. 2002. Export of invertebrates and detritus from fishless headwater streams in southeastern Alaska: implications for downstream salmonid production. Freshwater Biology 47:957-969.

Wise, D.R., M.L. Zuroske, K.D. Carpenter, and R.L. Kiesling. 2009. Assessment of Eutrophication in the Lower Yakima River Basin, Washington, 2004-07. Scientific Investigations Report 2009-5078. U.S. Geological Survey.

Yakima Basin Fish and Wildlife Recovery Board (Yakima Basin Recovery Board). 2009. 2009 Yakima Steelhead Recovery Plan-Extracted from the 2005 Yakima Subbasin Recovery Plan with Updates.

Yakima Subbasin Fish and Wildlife Planning Board (Yakima Subbasin Planning Board). 2004. Yakima Subbasin Plan. Prepared for Northwest Power and Conservation Council. 1038 pp.

Zhang, X., X. Liu, M. Zhang, and RA. Dahlgren. 2010. A review of vegetated buffers and a meta-analysis of their mitigation efficacy in reducing nonpoint source pollution. Journal of Environmental Quality 39:76-84.

SECTION 4. Severability. If any provision of this Ordinance is declared unconstitutional, or the applicability thereof to any person or circumstance is held invalid, the constitutionality of the remainder of the Ordinance and the applicability thereof to other persons and circumstances shall not be affected thereby.

SECTION 5. Effective Date. This Ordinance shall take effect and be in full force upon its passage and adoption.

ADOPTED AND PASSED this _____ day of _____.

_____
Chairman of the Board.

_____
Chairman Pro-Tem.

_____
Member.

Approved as to Form:

Constituting the Board of
County Commissioners of
Benton County, Washington

_____
Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board