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

**AGENDA**
**BOARD OF BENTON COUNTY COMMISSIONERS**
**Regular Board Meeting**
**Tuesday, September 14, 2021**
**Benton County Courthouse, Prosser, WA**

**9:00 AM** **Call to Order**

**Pledge of Allegiance**

**Approval of Minutes**
- **August 31, 2021**
- **August 31, 2021 Special Meeting**

**Review Agenda**

**Consent Agenda**

**Auditor**
a. Engagement Letter w/State Auditor's Office for 2020 Audits
b. Surplus & Disposition of Personal Property

**Commissioners**
c. Organization of Benton County Commissioners – 2021 Appointments
d. Ratify 2nd Amendment to Water Right Purchase & Sale Agreement w/Selah Moxie Irrigation District

**Human Services**
e. Third Amended Contract w/Breanna Zavicar for CPWI Prevention Services
f. Second Amendment w/Michelle Santo for Community Prevention Coordinator Services

**Information Technology**
g. Purchase of Extending Software & Hardware Support From Thornburg Computer Services

h. Purchase of 1-Year Subscription of WebEX Meetings Archiving Services From CompuNet

**Juvenile**

i. Attorney Representation Contract w/Jennifer Azure for Becca Dockets
j. Contract w/Somerset Counseling Center for Outpatient Chemical Dependency Treatment Services
k. First Amended Agreement w/Kennewick School District to Correct Expiration Date

**Office of Public Defense**

l. Line Item Transfer, Fund No. 0000-101, Dept. 136
m. Establishing Percentage Rates by Which to Divide Costs of Juvenile Dependency Public Defense Contracts Between Benton County and Franklin County

**Public Works**

n. Line Item Transfer, Fund No. 0101-101, Dept. 500
o. Award of Crack Seal to Construction Ahead

**Purchasing Dept.**

p. Ratifying Contract Change Order No. 1 w/Western Construction for Crushing & Stockpiling Project
q. First Amended Contract w/Epic Land Solutions for On-Call Right-of-Way Services
r. Purchase of Asphalt Emulsion From Albina Holdings for Bituminous Surface Treatment Projects
s. Declaring French Road Bituminous Surface Treatment Project an "Emergent Project"
t. Ratifying Change Order Nos. 1, 2 & 3 w/Central WA Asphalt for Bituminous Surface Treatment
u. Contract w/FNS Collision Group for Automobile Body Repair for Benton County Vehicle Fleet

**Superior Court**

v. Adopting Franklin County Invoice Process for Blake Related Expenses
w. Line Item Transfer, Fund No. 0156-101, Dept. 000

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

**Public Hearing**

Short Plat Vacation – SPV 2021-003 ~ Michelle Cooke

Continued – Benton County Shoreline Master Program Update ~ G Wendt

Continued - Planning Ordinance Amendment #OA 2021-002 Relating to Critical Areas, General Provisions & Fish & Wildlife Habitat Conservation Areas; Amending Ordinance 609 ~ G Wendt

Adoption of New County Road for Maintenance ~ D D'Hondt

Ordinance Amendment to the County Public Records Policy, BCC 5.14 ~ A Morasch

**Scheduled Business**

Establishing a Provisional Corrections Officer ~ Chief Souza & L Wingfield

- Establish Provisional Corrections Officer Job Description
- Line Item Transfer, Fund No. 0000-101, Dept. 120

**Other Business**

Draft

# MINUTES

# BOARD OF BENTON COUNTY COMMISSIONERS

Regular Board Meeting
Benton County Courthouse, Prosser, WA
Tuesday, August 31, 2021, 9:00 a.m.
*Meeting provided in-person, by Video Live-Broadcast and Telephonically*

**Present**: Chairman Jerome Delvin
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; Alex Garcia, IT; Greg Wendt, Community Development Director; Michelle Cooke, Assistant Planning Manager; Robert Blain, Operations & Capital Programs; County Engineer Doug D'Hondt; Clerk Josie Delvin; Adam Morasch, Risk Manager; Treasurer Ken Spencer; Finance Manager Linda Ivey; DPA Ryan Lukson; Michael McGhan, Road Department; DPA Reid Hay.

## Pledge of Allegiance

The Board recited the Pledge of Allegiance.

## Approval of Minutes

The Minutes of August 24, 2021 were approved.

## Agenda Review

Jerrod MacPherson requested the following items be added to the agenda:

- Juvenile Medical Contract
- Ben-Franklin Board Representative
- Vaccine Incentive
- Governor's Masking Mandate

## Consent Agenda

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

**Commissioners**

a. Line Item Transfer, Fund No. 0305-101, Dept. 000

**Corrections**

b. Line Item Transfer, Fund No. 0000-101, Dept. 120

**Human Services**

c. Contract w/Lourdes Hospital for Prosecutorial Diversion Services
d. Contract w/Lourdes Hospital for Advanced Registered Nurse Practitioner Services
e. Contract w/Domestic Violence Services for Dept. of Commerce Consolidated Homeless Grant Services
f. Agreement w/Tri-Cities Hispanic Chamber of Commerce for the Treasury Rental Assistance Program

**Information Technology**

g. Lease Agreement for Color Copier From Ricoh USA for Human Services Department
h. Line Item Transfer, Fund No. 0132-101, Dept. 000

**Purchasing**

i. Agreement w/Paramount Communications for Additional Fiber Runs @ the Justice Center Campus

**Treasurer**

j. Approval for Use of County Funds for Columbus Day Training

**Public Comment**

Paul Christensen, Benton City, representing his neighborhood, said he previously requested the Board address the farm labor housing issue in his community and the neighborhood was ignored. He referenced a lawsuit in which they prevailed, and that the County accordingly changed the zoning based on losing the lawsuit. He expressed concern that a daycare in the neighborhood required a conditional use permit to operate and care for children so their parents could work but the farm labor housing was allowed. He said their concern was the house and location of the house, not the farm labor. He requested the Board put in a moratorium on the passage of this ordinance and review its affect on the community and then decide if it was in the best interest of the citizens of Benton County.

Michael Hillman, Kennewick, said he was not an expert on migrant worker housing, but this was an agricultural minded community, and a there was a problem finding the appropriate housing. He encouraged the Board to keep the zoning ordinance in place.

**Public Hearing - Surplus of Cessna Aircraft**

Matt Rasmussen said the Board directed him to set a public hearing to consider the aircraft as surplus. The public hearing was advertised as required, and if the aircraft was declared surplus, it would be sold pursuant to the Personal Property Management Policy.

Testimony

Robert Blahht, resident of Benton County, Captain of Sheriff's Posse, pilot of this aircraft (and other professional pilot specialties) said it was his professional opinion this airplane was equipped

for extended operation. He said it was a very efficient aircraft, although the instrumentation was a little dated, but wanted to know why it was not being used for the purposes intended. He said if the County sold it, they would be losing something they could never get back.

He suggested it was more appropriate to allow the new appointed Sheriff to review the capability of the aircraft and see how it could be integrated into the program and determine the needs of the aircraft and whether it should be declared surplus.

Mark Schowalter, pilot, also spoke about the value of the airplane and said once it was sold, you could not get that value back. He said he was also in favor of keeping it until the new Sheriff could evaluate the program.

Commissioner McKay asked about potential savings from selling the aircraft versus maintenance, etc. and the cost if the County required a contract. Mr. Rasmussen said the aircraft was used under 10 hours per year, with some years only two hours. Additionally, insurance had increased, and there were maintenance fees and hangar fees. The cost to contract with someone for the service was $120 to $150 per hour.

Commissioner McKay said he looked at the cost and trying to save the county some money if they could find another plane with the same capabilities. Mr. Schowalter mentioned the problems with renting a plane versus owning a plane and performing your own maintenance.

Chairman Delvin stated that Civil Air Patrol also gave a presentation, and it was available to assist the County.

As there was no one else present to testify, public testimony was closed.

**MOTION**: Commissioner Small moved to approve the Resolution declaring the 1973 Cessna 192P Aircraft surplus and authorize its sale in accordance with the Benton County Personal Property Management Policy. Commissioner McKay seconded and upon vote, the motion carried.

**Preliminary Plat of Mammoth Acres – SUB 2021-004**

Greg Wendt and Michelle Cooke presented the Preliminary Plat of Mammoth Acres for a request to subdivide 71.5 acres into 12 residential lots. These lots would be served by a new public road, individual wells, and septic systems (average lot size is 5.6 acres). The Planning Commission forwarded a positive recommendation.

**MOTION**: Commissioner Small moved to adopt the Planning Commission's Recommendation, Findings of Fact and Conditions as the Board's own and approve the preliminary plat of Mammoth Acres – SUB 2021-004 with the eight findings of fact and 17 conditions of approval as recommended by the Planning Commission. Commissioner McKay seconded and upon vote, the motion carried.

**Award of 2021 Pavement Marking for CE 2123 SMP**

Matt Rasmussen and Douglas D'Hondt said a bid call was scheduled for C.E. 2123 SMP – 2021 Pavement Marking. After the bid opening, language in the call for bids was pointed out that created a dispute among the bidders. The language in question stated that bidders must download the bid documents from an on-line source specified in the call for bids. The apparent low bidder did not download from that source directly. The Board considered how to proceed. The following options were provided:

- Award to Stripe Rite, Inc., and waive the disputed language as an informality
- Determine the bid from Stripe Rite, Inc. non-responsive and award to Construction Ahead, Inc.
- Reject all bids with the option to rebid the project at a later date

Commissioner Small recommend the award of bid go to the second bidder based on the language in the requirements for bidding.

Commissioner McKay said as a contractor, he had been rejected in the past based on the need to comply with the details of bidding requirements. He felt that the use of the word "must" in the relevant language of the call for bids demonstrated that compliance was required. He was in favor of re-bidding the project because this would appear to be the most fair for all bidders. He also asked how re-bidding would affect timing on the project. Mr. D'Hondt said it could take six weeks, and potentially could be a problem with weather, but they would make sure the most urgent projects were done first.

Chairman Delvin said he would prefer to waive the disputed language as an informality but would also accept rebidding the project.

**MOTION**: Commissioner McKay moved to reject all bids with the option to rebid the project at a later date regarding 2021 pavement marking. Chairman Delvin seconded and upon vote, the motion carried with Commissioner Small opposing.

**Request for Public Hearing – Budget Supplement**

Linda Ivey requested the Board go to public hearing on the supplement to transfer cash carry forward in excess of 13% as follows:

- Fiscal Impact to Current Expense - $11,083,700
- Park Development Fund - $115,000
- Capital Projects Fund - $10,098,700
- Sustainable Development Fund - $130,000
- Fairgrounds Operating Fund - $300,000
- Election Reserve Fund - $440,000 (to maintain a fund balance of $500,000)

**MOTION**: Commissioner Small moved to approve to matter to go to public hearing. Commissioner McKay seconded and upon vote, the motion carried.

## Other Business

Juvenile Contract with Ideal Option for Medical Services

Darryl Banks via/WebEx requested the Board authorize the contract as presented. He said that Ideal Option was ready to start on September 1, 2021. Additionally, he would be meeting with Franklin County via/WebEx right after this meeting.

**MOTION**: Commissioner Small moved to approve the contract with Ideal Option to provide medical services to youth in detention as presented. Commissioner McKay seconded and upon vote, the motion carried.

JDAI Grant

Mr. Banks asked the Board if it was ready to move forward on the grant.

The Board discussed the email from Judge Mitchell regarding the grant and training and whether the training could be optional. Commissioner McKay said he was not in favor of the grant, if the Cultures Connecting Group training was optional. He indicated he would reply back to the judges to see if the optional training requirement could be removed from the grant.

Ben Franklin Transit Board

Commissioner Small said he was agreeable to Commissioner McKay being appointed as the representative for the Ben Franklin Transit Board and he would be the alternate. A resolution making that change would be presented at the next regular board meeting.

Vaccine Incentive

Mr. Rasmussen presented ideas on a potential vaccine incentive program for County employees. After consideration, the Board agreed it was not in favor of moving forward at this time.

Masking Update

Mr. Rasmussen said the County updated its reopening plan with the recent state proclamation, but that Benton County's interpretation was a little stronger. The Board indicated it wanted the County policy on masking to mirror the most recent state proclamation and directed staff to update the Benton County Safe Reopening Plan.

The Board recessed, reconvening at 10:11 a.m.

## Executive Session – Pending Litigation

The Board went into executive session at 10:11 a.m. for 10 minutes with DPA Ryan Lukson and Adam Morasch to discuss pending litigation. Also present were Jerrod MacPherson, Matt Rasmussen, and Cami McKenzie.

The Board came out at 10:23 a.m. No decisions were made in executive session.

**MOTION**: Commissioner Small moved to authorize settlement in the amount of $700,000 in the Sanchez matter. Commissioner McKay seconded.

Discussion

Commissioner Small expressed his disappointment that the Risk Pool did not collaborate with the County on this issue. The Board agreed.

Upon vote, the motion carried unanimously.

**Accounts Payable**

Check Date: 08/27/2021

Warrants #: 220962
Total all funds: $20,612.75

Check Date: 08/27/2021

Warrants #: 220820-220961
Total all funds: $1,010,876.01

EFT's #: 1901-1922
Transfers #: 08272101-08272104
Total all funds: $193,945.73

**Resolutions**

2021-647: Line Item Transfer, Fund No. 0305-101, Dept. 000
2021-648: Line Item Transfer, Fund No. 0000-101, Dept. 120
2021-649: Contract w/Lourdes Hospital for Prosecutorial Diversion Services
2021-650: Contract w/Lourdes Hospital for Advanced Registered Nurse Practitioner Services
2021-651: Contract w/Domestic Violence Services for Dept. of Commerce Consolidated Homeless Grant Services
2021-652: Agreement w/Tri-Cities Hispanic Chamber of Commerce for the Treasury Rental Assistance Program
2021-653: Lease Agreement for Color Copier From Ricoh USA for Human Services Department
2021-654: Line Item Transfer, Fund No. 0132-101, Dept. 000
2021-655: Agreement w/Paramount Communications for Additional Fiber Runs @ the Justice Center Campus
2021-656: Approval for Use of County Funds for Columbus Day Training
2021-657: Declaring the 1973 Cessna 182p Aircraft Surplus and Authorizing it for Sale in Accordance with the Benton County Personal Property Management Policy

2021-658: Approve Preliminary Plat Application SUB 2021-004 Mammoth Acres
2021-659: Rejecting Bids for C.E. 2123 SMP 2021 Pavement Marking
2021-660: Awarding Ideal Option a Professional Services Contract to Provide Medical Services Coordination of Services to Youth in Detention

There being no further business before the Board, the meeting adjourned at approximately 10:24 a.m.

_____ _____

Clerk of the Board Chairman

**MINUTES**

**BOARD OF BENTON COUNTY COMMISSIONERS**

Draft

Special Board Meeting
Richland Public Library, Richland, WA
Tuesday, August 31, 2021, 6:00 p.m.
*Meeting provided in-person, by Video Live-Broadcast and Telephonically*

**Present**: Chairman Jerome Delvin
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; Robert Heard, IT Manager; Dan Waggoner, Facilities; Adam Fyall, Sustainable Development Manager; Robert Blain, Operations & Capital Programs; Linda Ivey, Finance Manager; Kyle Sullivan, Human Services Manager.

**Discussion and Potential Decision/Direction to Staff on Property Condition Assessment Report for Trios Auburn Property**

Matt Rasmussen discussed the property assessment performed by Wave Design Group. He said the purpose of the assessment was to make sure there were no unexpected issues, and beyond the HVAC and electrical, which were expected, it was in sound condition. Additionally, it was the opinion of staff and the architect that it was viable for its intended use and the County should consider purchasing the property. It was considerably less expensive than buying land and building new, it was already zoned for this purpose, and the City of Kennewick was agreeable to having it used for this purpose.

Chairman Delvin described the concept of the crisis recovery center that he envisioned to be "no wrong door". Individuals could seek treatment on their own, or fire and police could divert from the jail and/or emergency room and show up at the door. It was his goal to not have an issue deciding who would pay for the first 24 hours in the facility and that would be covered.

Mr. Rasmussen said they had already secured $2.7 million for the architect and engineering to put out an RFP for design of the building. As soon as they were able to secure the site, they were ready to roll into that part of it; additionally, the State was committed to funding this and Benton County would return to them for additional funding.

The Board discussed the condition of the property and agreed it was a good option to move forward. Additionally, they could provide a multitude of services and housing at a future time due to the additional 150,000 square feet available outside of the 40,000 to 50,000 square feet needed for the recovery center.

**Discussion and Potential Decision/Direction to Staff on Creating an Advisory Committee for the Proposed Behavioral Health Crisis Recovery Center**

Mr. Rasmussen said it made sense to engage with regional experts to have an advisory committee regarding the construction and operation of the facility. He provided an initial draft of how the advisory committee would be represented and said they would guide the design and construction of the building and help choose providers so the design would fit their operations. The second purpose of the advisory committee would be to guide ongoing operations and services, so the County was making good decisions and not paying for things they did not need. Ultimately the Commissioners would have the contract with the providers, but it was good to get community input and therefore community support.

**Discussion and Potential Decision/Direction to Staff in Implementing the 0.01% Sales & Use Tax for Chemical Dependency or Mental Health Treatment Services or Therapeutic Courts Authorized in RCW 82.14.460**

Mr. Rasmussen summarized RCW 82.14.460 that authorized the Board of Benton County Commissioners to impose a sales and use tax of 0.01%. Money collected could only be used for chemical dependency and mental health treatment programs and services or for the operation and delivery of therapeutic court services. Supplanting of already budgeted funds was generally not allowed. It required a therapeutic court element, which Benton County already had in place.

The imposition of the tax could be by resolution or ordinance and a referendum or vote was not required, however, there was an appeal process established. They estimated the new tax would generate $5 million annually for Benton County.

Mr. Rasmussen recommended a separate public hearing process if the Board wanted to proceed with imposition of the new tax.

Chairman Delvin said his goal was establishing a process to pay for the first 24 hours so there was not a question about who paid for it.

Commissioner McKay discussed the potential of utilizing the transit tax instead of this new tax. Chairman Delvin said in his opinion, they were not tied together.

Commissioner Small said he was not a fan of raising taxes but was in favor of this tax specifically for mental health.

**Public Comment**

William Waters, via/WebEx, spoke in favor of the proposal, however, had a concern regarding the mental health non-compete clause and said he hoped this could be broadened due to co-occurring illnesses.

Charles Eaton, said he worked in addiction recovery, behavioral health, etc. for 40 years. He asked what problem this facility was meant to be an answer for and why the single location with the

focus on residential detox. Additionally, he asked about the most cost-effective approach to dealing with problems with behavioral health.

Marilyn Dickenson, via/WebEx, said she recognized the facility was needed but was concerned about it being used for the shielding approach put out by CDC and requested the County protect it from this type of takeover.

Bill Jenkins thanked the Board for looking at this issue because it was needed for way too long. He said he was tremendously opposed to new taxes. However, this was a bi-partisan priority during his time in the legislature and he was committed to making this work and would donate his time as needed and lobby the legislature for funding.

Michelle Gerber, President of Benton-Franklin Recovery Coalition, and parent of a child who died, said this was the largest coalition in the state. She said they were all volunteers and would continue to advocate to receive funds for this project. She they launched the push for a recovery center three years ago and supported citizen contribution through the tax. Additionally, they supported the choice of using the KGH building and Benton County ownership and management of the building. She requested the advisory committee be made up of professionals, including:

- Local experts in treatment – who run treatment centers
- Law enforcement personnel
- ER doctors and personnel
- Individuals with lived experience – in recovery or close family members
- Officials elected to run counties and cities
- Not a place for amateurs as these are complicated medical diseases

Bevin Bricks, West Richland, ARNP, said he taught nurse practitioners, and recommended clinicians involved in mental health treatment and prescribing providers be involved in the advisory committee. He also expressed concern about how much would be for addiction recovery, how much could be used for inpatient mental health, and about being able to expand services for juvenile treatment.

Chairman Delvin said he was in favor of juvenile treatment as well.

Pam said she was new to the area and believed it was a very needed project, however, she was in favor of using the $27 million from Transit they were not using. She wanted to put it out to the voters to use the Transit money, at least the first $5 million that would be generated by the new tax.

William Forsyth, via/WebEx, ER doctor, said there was a need for something like this in this area, and agreed with the importance of choosing an advisory committee.

Lee Kerr, Superintendent of Two Rivers Hospital District, agreed with the decision on the location and said the Board was brave to separate the sales tax issue from the Ben Franklin Transit. He recommended utilizing a broad approach with the other counties through an interlocal agreement

with cities and counties to combine statutory authority and financial resources. Additionally, he agreed with the creation of the Citizen Advisory Committee.

Mike, via/WebEx, asked if the Board was moving forward with this process without Franklin County.

Chairman Delvin said that Benton County was interested in being the owner of the facility and to have Franklin County join in the process.

Dana, via/WebEx, thanked the Board and spoke in support of the crisis recovery center.

Chuck Torelli, via/WebEx, thanked the Board for making this decision and suggested the advisory committee not be limited to one, but perhaps more than one (operations, goal, implementation) and to consider the Franklin County element and non-compete issues.

Jim Millbauer via/WebEx, said he was not in favor of new taxes, but this was a good use of funds and he was in support.

The Board agreed to start working on negotiating the purchase of the building, defining the structure of the advisory committee, and next steps for a public hearing to consider implementing the proposed sales tax.

There being no further business before the Board, the meeting adjourned at approximately 7:00 p.m.

_____ _____

Clerk of the Board Chairman

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Engagement Letter with the State Auditor's Office for 2020 audits |
| **Presenter:** | |
| **Prepared By:** | Aileen Coverdell |
| **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:** *(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

Engagement letter from State Auditor's Office (SAO) to begin the following audits for fiscal year 2020:

- Financial Statement Audit
- Federal Single Audit
- Accountability Audit

## Fiscal Impact

These audits are budgeted for each Biennium. There is no fiscal impact on budget.

## Recommendation

Please consider passing on consent agenda

No PA approval required. This letter outlines the responsibilities of the SAO and County for the audits and provides estimated cost and timeline.

## Suggested Motion

N/A – consent agenda

# Office of the Washington State Auditor
# Pat McCarthy

August 31, 2021

Board of Commissioners
Benton County
PO Box 190
Prosser, WA 99350

We are pleased to confirm the audits to be performed by the Office of the Washington State Auditor, in accordance with the provisions of Chapter 43.09 RCW, for Benton County. This letter confirms the nature and limitations of the audits, as well as responsibilities of the parties and other engagement terms.

## Auditor Responsibilities

*Financial Statement Audit*

The Office of the Washington State Auditor agrees to perform an audit of the comprehensive financial report of Benton County as of and for the fiscal year ended December 31, 2020, prepared in accordance with accounting principles generally accepted in the United States of America (GAAP) Our audits will be conducted with the objective of our expressing opinions on these financial statements.

We will perform our audit in accordance with auditing standards generally accepted in the United States of America and the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States. Those standards require that we plan and perform the audit to obtain reasonable, rather than absolute, assurance about whether the financial statements are free from material misstatement. Since we do not review every transaction, our audit cannot be relied upon to identify every potential misstatement. Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material misstatements may not be detected, even though the audit is properly planned and performed in accordance with the standards identified above.

An audit involves performing procedures to obtain audit evidence about the amounts and disclosures in the financial statements. The procedures selected depend on the auditor's judgment, including the assessment of the risks of material misstatement of the financial statements, whether due to fraud or error. In making those risk assessments, the auditor considers relevant internal controls in order to design audit procedures that are appropriate in the circumstances, but not for the purpose of expressing an opinion on the effectiveness of the County's internal control. Accordingly, we will express no such opinion.

Although our audit is not designed to provide an opinion on the effectiveness of internal control over financial reporting, we are required to report any identified significant deficiencies and material

weaknesses in controls. We are also required to report instances of fraud and noncompliance with provisions of laws, regulations, contracts, and grant agreements that could have a direct and material effect on the accuracy of financial statements or any instances of material abuse that come to our attention. Abuse is defined by *Government Auditing Standards* as involving behavior that is deficient or improper, or misuse of authority or position for personal financial interests. As the determination of abuse is subjective, *Government Auditing Standards* do not require auditors to detect instances of abuse.

An audit also includes evaluating the appropriateness of accounting policies used and the reasonableness of significant accounting estimates made by management, as well as evaluating the overall presentation of the financial statements.

All misstatements identified by the audit will be discussed with management. Material misstatements corrected by management and all uncorrected misstatements will be communicated at the exit conference, as required by professional auditing standards.

Our responsibility is to express in a written report an opinion on the financial statements based on the results of our audit. We cannot guarantee an unmodified opinion. We may modify or disclaim an opinion on the financial statements if we are unable to complete the audit or obtain sufficient and appropriate audit evidence supporting the financial statements. If our opinion is other than unmodified, we will fully discuss the reason with you prior to issuing our report. Further, in accordance with professional standards, we may add emphasis-of-matter or other-matter paragraphs to our report to describe information that, in our judgment, is relevant to understanding the financial statements or our audit.

We will also issue a written report (that does not include an opinion) on issues identified during the audit related to the County's internal control over financial reporting and on compliance with the provisions of laws, regulations, contracts, and grant agreements, noncompliance with which could have a material effect on the financial statements as required by *Government Auditing Standards*.

The County prepares supplementary information that accompanies the financial statements, which is required by Generally Accepted Accounting Principles. We agree to perform auditing procedures on this information, with the objective of expressing an opinion as to whether it is fairly stated, in all material respects, in relation to the financial statements taken as a whole.

The County also prepares other information to accompany the financial statements, which is required by accounting standards or is done at its discretion. We will perform limited procedures on this information for the purpose of identifying inconsistencies with the financial statements. However, we will not express an opinion on its fair presentation.

*Federal Single Audit*

We will also perform a federal single audit on compliance with, and report on internal control over compliance for, each major program for the fiscal year ended December 31, 2020, in accordance with auditing standards generally accepted in the United States of America; the standards applicable to financial audits contained in *Government Auditing Standards*, issued by the Comptroller General of the United States; and Title 2 *U.S. Code of Federal Regulations* Part 200, *Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards* (Uniform Guidance). Those standards and the Uniform Guidance require that we plan and perform the audit to obtain reasonable assurance about whether noncompliance with the types of compliance requirements that could have a direct and material effect on a major federal program occurred. An audit includes

examining, on a test basis, evidence about the County's compliance with those requirements and performing such other procedures as we considered necessary in the circumstances. Because of the inherent limitations of an audit, together with the inherent limitations of internal control, an unavoidable risk exists that some material noncompliance may not be detected, even though the audit is properly planned and performed in accordance with these standards and the Uniform Guidance.

In planning and performing the compliance audit, we will consider the County's internal control over compliance in order to determine the appropriate auditing procedures necessary for opining on compliance with each major program, and for testing and reporting on internal control over compliance in accordance with Uniform Guidance, but not for the purpose of expressing an opinion on the effectiveness of internal control over compliance. Accordingly, we will express no such opinion. Although our audit is not designed to provide an opinion on the effectiveness of internal control over compliance, we are required to report any identified significant deficiencies and material weaknesses in controls.

We will express an opinion as to whether the Schedule of Expenditures of Federal Awards is fairly stated, in all material respects, in relation to the financial statements taken as a whole for the fiscal year ended December 31, 2020.

We estimate the federal single audit will cover two federal grant programs, which will be identified at the audit entrance conference. If additional grant programs are audited to satisfy the requirements of the Uniform Guidance, the audit budget discussed below will increase by approximately $6,800 per additional major program.

Upon completion of our audit we will issue a written report containing our opinion on the County's compliance for each major program and a written report on internal control over compliance. We cannot provide assurance that an unmodified opinion will be expressed. Circumstances may arise in which it is necessary for us to modify our opinion, issue a disclaimer of opinion, or add an emphasis-of-matter or other-matter paragraph(s) to the report.

*Accountability Audit*

In accordance with RCW 43.09.260, we will perform an accountability audit for the fiscal year ended December 31, 2020, of the County's compliance with applicable state laws, regulations, policies and procedures, and safeguarding of public resources in areas representing the highest risk of fraud, loss, abuse, or noncompliance.

Areas will be selected for audit using a risk-based approach and will be identified in the audit entrance conference.

Upon completion of our audit, we will issue a written report describing the overall results and conclusions for the areas we examined.

*Data Security*

Our Office is committed to appropriately safeguarding the information we obtain during the course of the audit. We will:

- Avoid, where feasible, including information considered confidential in work papers.
- In cases where inclusion of personal information is unavoidable, we will follow our policy on confidentiality, consistent with applicable federal and state requirements.
- Maintain the confidentiality of personal information in accordance with the law.

- Ensure that confidential information will be encrypted in transmission if we retransmit it to any parties authorized to receive such information.
- Warrant that collection, access, use, storage, disposal and disclosure of confidential information will comply with all applicable federal, state and data protection laws, as well as all other applicable regulations and directives.
- Warrant that administrative, physical, and technical safeguards to protect confidential information are in place that are no less rigorous than accepted industry practices, including the current State of Washington Office of the Chief Information Officer (OCIO) IT Security Standards (OCIO 141.10) relating to Securing Information Technology Assets Standards, and that all such safeguards, including the manner in which confidential information is collected, accessed, used, stored, processed, disposed of and disclosed, comply with applicable data protection and privacy laws.

*Responsibilities specific to this engagement*

Additionally, we will:

- Provide the Board of Commissioners with advance notification if we identify issues that require further audit work and increase audit costs.
- Participate in weekly progress meetings to discuss audit plans for future weeks. At those meetings, we will provide information on the departments we will work in and the audit objectives we will be addressing.
- Safeguard County financial records and documentation from loss, damage, and inadvertent release to unauthorized persons.
- Provide input on accounting standards when requested by County staff as they apply to the County's financial statements and propose adjusting journal entries as necessary.
- Conduct a formal entrance and exit conference with the County
- Interact with County staff professionally and respectfully and communicate needs and issues in a timely manner.
- Provide written correspondence during the course of the audit through email to the audit liaison, Aileen Coverdell, Chief Accountant.
- Allow the County seven days to provide a written response to any findings.

*Reporting levels for audit issues*

Issues identified through the auditing process will be communicated as follows. Failure to appropriately address audit issues may result in escalated reporting levels.

- **Findings** formally address issues in an audit report. Findings report significant deficiencies and material weaknesses in internal controls; misappropriation; and material abuse or non-compliance with laws, regulations, contracts or grant agreements. You will be given the opportunity to respond to a finding, and this response, or a synopsis of it, will be published in the audit report. Professional auditing standards define the issues we must report as findings with regard to non-compliance with a financial statement effect and internal controls over financial reporting. The Uniform Guidance defines the issues we must report as findings with regard to non-compliance and internal controls over compliance with federal grants.
- **Management letters** communicate control deficiencies, non-compliance, abuse, or errors with a less-than-material effect on audit objectives. Management letters are referenced, but not included, in the audit report.
- **Exit items** address control deficiencies, non-compliance, abuse, or errors that have an insignificant effect on audit objectives. These issues are informally communicated to management and are not referenced in the audit report.

**Client's Responsibilities**

Management is responsible for the accuracy and completeness of information provided to the auditor and will provide the Office of the Washington State Auditor with:

- Unrestricted access to people with whom the auditor wishes to speak.
- All information that is requested or relevant to auditor requests.
- Notification when any documents, records, files, or data contain information that is covered by confidentiality or privacy laws, such as HIPAA.
- Adequate workspace and conditions, including interacting with auditors professionally and respectfully and promptly communicating about any issues and concerns.

Moreover, our audit does not relieve management or the governing body of their responsibilities. Management's responsibilities, with oversight from the governing body, include:

- Selecting and applying appropriate administrative and accounting policies.
- Establishing and maintaining effective internal controls over financial reporting, compliance, and safeguarding of public resources.
- Designing and following effective controls to prevent and detect fraud, theft, and loss.
- Promptly reporting to us knowledge of any fraud, allegations of fraud or suspected fraud involving management, employees or others, in accordance with RCW 43.09.185.
- Ensuring compliance with laws, regulations and provisions of contracts and grant agreements.
- Preparation and fair presentation of these financial statements in accordance with accounting principles generally accepted in the United States of America (GAAP).
- Preparing the following supplementary information and providing us with certain written representations concerning the supplementary information:
    - Schedule of Expenditures of Federal Awards (including notes and noncash assistance received) that includes all expenditures from federal agencies and pass-through agencies
    - Combining Statements

- Including the auditor's report on the supplementary information in any document that both contains the supplementary information and indicates that the auditor reported on the supplementary information.
- Either presenting the supplementary information with the audited financial statements or, if the supplementary information will not be presented, making the audited financial statements readily available to users of the supplementary information no later than the date the supplementary information and auditor's report thereon are issued.
- Identifying all federal awards received and government programs.
- Understanding and complying with the provisions of laws, regulations, contracts, and grant agreements, including applicable program compliance requirements.
- Internal control over compliance, including establishing and maintaining effective controls that provide reasonable assurance that the County administers government programs in compliance with the compliance requirements.
- Evaluating and monitoring the County's compliance with the compliance requirements.
- Informing us of the County's relationships with significant vendors who are responsible for program compliance
- Submitting the reporting package and data collection form through the Federal Audit Clearinghouse.

*Responsibilities at the conclusion of the audit*

At the conclusion of our audit, the County will provide us with a letter to confirm in writing certain express and implied representations made during the course of the audit. This letter includes representations regarding legal matters. A separate letter may be needed from the County's legal counsel.

Management and the governing body are also responsible for following up and taking corrective action on all audit findings, including, when applicable, preparing a summary schedule of prior audit findings and a corrective action plan on the County's own letterhead.

*Responsibilities specific to this engagement*

Additionally, the County will:

- Provide our office with documentation of the financial statement review and approval before they were submitted for audit.
- Obtain a clear understanding of accounting standards applied into your audit statements and fully understand adjusting entries recommended by the Office of the Washington State Auditor before approving the entries.
- Revise financial statements and schedules only if agreed to in writing by our office.
- Provide documentation electronically as needed for the audit.
- Interact with auditors professionally and respectfully and promptly communicate issues and concerns.

## Estimated Audit Costs and Timeline

We estimate the cost of the audit work to be $123,000, plus travel costs, and other expenses, if any. Invoices for these services will be prepared and presented each month as our audit work progresses.

We anticipate our reports, which will be addressed to the County's governing body and published on our website www.sao.wa.gov to be available to you and the public as outlined below. These estimates are based on timely access to financial information and no significant audit reporting issues. The estimated cost and completion date may change if unforeseen issues arise or if significant audit issues are identified necessitating additional audit work. We will promptly notify you if this is the case.

| **Report** | **Date*** |
|---|---|
| Independent Auditor's Report on Financial Statements | December 2021 |
| Independent Auditor's Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with *Government Auditing Standards* | December 2021 |
| Independent Auditor's Report on Compliance For Each Major Federal Program and Report on Internal Control Over Compliance in Accordance with Uniform Guidance | December 2021 |
| Independent Auditor's Report on Accountability | December 2021 |

**Report Issuance Dates Are Estimates Only*

The audit documentation for this engagement, which may contain confidential or sensitive information, is the property of SAO and constitutes a public record under Chapter 42.56 RCW. Subject to applicable laws and regulations, appropriate individuals, as well as audit documentation, will be made available upon request and in a timely manner to appropriate auditors and reviewers, County's management and governing body, and federal agencies, for purposes of a public records request, a quality review of the audit, to resolve audit findings, or to carry out oversight responsibilities.

The audit documentation for this engagement will be retained for a minimum of five years after the report release (publish) date in accordance with the public records retention schedule established by the Washington Secretary of State.

**Expected Communications**

During the course of the audit, we will communicate with the County's selected audit liaison, Aileen Coverdell, Chief Accountant, on the audit status, any significant changes in our planned audit scope or schedule and preliminary results or recommendations as they are developed. The audit liaison is responsible for regularly updating the County's management and the governing body on these matters. We may also provide direct communication of these matters to management and the governing body as needed or at the County's request.

Please contact us if, during the audit, any events or concerns come to your attention of which we should be aware. We will expect the audit liaison to keep us informed of any such matters.

*Audit Dispute Process*

Please contact the Audit Manager or Assistant Director to discuss any unresolved disagreements or concerns you have during the performance of our audit. At the conclusion of the audit, we will summarize the results at the exit conference. We will also discuss any significant difficulties or disagreements encountered during the audit and their resolution.

By signing and returning this letter, you acknowledge that the foregoing is in accordance with your understanding. Please contact us with any questions.

We appreciate the opportunity to be of service to you and look forward to working with you and your staff.

Sincerely,

Ginny Waltman

Ginny Waltman, Audit Manager 8/31/2021
Office of the Washington State Auditor

**County Response:**

**This letter correctly sets forth our understanding.**

| | | | |
|---|---|---|---|
| | | Brenda Chilton 09/02/2021 | |
| Commissioner | Date | Brenda Chilton<br>Auditor | Date |

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Declaration of Surplus Property |
| **Presenter:** | |
| **Prepared By:** | Deidra Beck |
| **Reviewed By:** | Lorene Roe |

| **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 |

## Summary / Background Information

As outlined in Resolution 07-752, County departments request personal property items be declared surplus and be disposed of.

## Fiscal Impact

**Amount:** **None**

**Fund:** **N/A**

## Recommendation

The Personal Property Manager has determined that the personal property on the attached exhibit can be declared surplus and disposed of accordingly.

## Suggested Motion

Approve as part of the consent agenda.

D. Beck
L. Roe

D. Beck

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON**

**IN THE MATTER OF SURPLUS AND DISPOSITION OF PERSONAL PROPERTY, IN ACCORDANCE WITH RESOLUTION 07-752**

**WHEREAS,** the County's Personal Property Management Policy, Resolution No. 07-752, sets forth the policies and procedures for surplus and disposition of personal property; and

**WHEREAS,** pursuant to the policy, the Benton County Auditor is the Personal Property Manager for the County; and

**WHEREAS,** various departments have identified items of personal property for which they are no longer in need; and

**WHEREAS,** the Personal Property Manager has determined that no other department desires such property and, therefore, recommends the listed property be declared surplus; and

**WHEREAS,** the Board finds it to be in the best interest of the citizens of Benton County to surplus the property and the Personal Property Manager may dispose of such in accordance with the Personal Property Management Policy; **NOW, THEREFORE,**

**BE IT RESOLVED,** that based on the recommendation of the Personal Property Manager and as supported by the various departments, the listed property in Attachment A is hereby determined to be surplus and will be disposed of in one of the following manners, as may be determined by the Personal Property Manager depending on final condition assessment: public online auction, sealed bid, private negotiation with another governmental agency, surplus sale, waste disposal, or recycled.

Dated this _____day of _____, 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County, Washington

Attest: _____

Clerk of the Board

D. Beck
L. Roe

D. Beck

# SURPLUS

## COMMISSIONERS

- Dictaphone Machine
  - Good condition
  - Tag # 13592
- 2 Filing Cabinets (1 tan, 1 gray)
  - Good condition
  - Tag # 00191, 02049
- Transcriber; recorder
  - Good condition
  - Tag # N/A
- Binder Maker
  - Good condition
  - Tag # N/A
- Paper cutter
  - Good condition
  - Tag # N/A

D. Beck
L. Roe

D. Beck

# DESTROY

## AUDITOR

- Office Chair
  - Condition poor; broken wheel

## ER&R

- Conveyor Box
  - Condition poor
  - Tag #  458

D. Beck
L. Roe

D. Beck

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON**

**IN THE MATTER OF ORGANIZATION OF BENTON COUNTY COMMISSIONERS FOR THE YEAR 2021; RESCINDING RESOLUTION 2021-269**

**WHEREAS,** the Board of Benton County Commissioners desires to make a change to the appointment to the Ben Franklin Transit Board;

**NOW, THEREFORE, BE IT HEREBY RESOLVED** that the following constitutes the organization of the Benton County Commissioners and staff for the Year 2021 effective upon execution of this resolution.

CHAIRMAN OF THE BOARD ..... Jerome Delvin

CHAIRMAN PRO TEM ..... Shon Small

COUNTY ADMINISTRATOR ..... Jerrod MacPherson

CLERK OF THE BOARD ..... Cami McKenzie
..... Marilu Flores, Alt.

BENTON COUNTY ENGINEER ..... Douglas D'Hondt, PE

BENTON COUNTY PEST BOARD SUPERINTENDENT ..... Frank Wolf

BENTON COUNTY PURCHASING AGENT ..... Robert Blain

BENTON COUNTY WSU EXTENSION DIRECTOR ..... Gwen-Alyn Hoheisel

ACCESSIBLE COMMUNITIES ADVISORY COMMITTEE ..... Brenda Chilton
..... Shyanne Palmus

BI-PIN ..... Jerrod MacPherson
Matt Rasmussen, Alt.

BENTON-FRANKLIN REGIONAL REVOLVING LOAN FUND BOARD ..... Will McKay
..... Jerome Delvin, Alt.

BEN FRANKLIN TRANSIT BOARD ..... Will McKay
..... Shon Small, Alt.

BENTON CITY LIBRARY CAPITAL FACILITIES AREA BOARD ..... Jerome Delvin
..... Shon Small
..... Will McKay

BENTON CLEAN AIR AUTHORITY ..... Will McKay
..... Jerome Delvin, Alt.

BENTON COUNTY EMERGENCY SERVICES BOARD.....Jerome Delvin
.....Matt Rasmussen, Alt.

BENTON COUNTY FINANCE COMMITTEE (rotate w/chair) .....Jerome Delvin

BENTON COUNTY HISTORICAL PRESERVATION COMMITTEE.....Shyanne Palmus

BENTON COUNTY LEOFF DISABILITY BOARD.....Shon Small

BENTON-FRANKLIN COUNCIL OF GOVERNMENTS ..... Will McKay
.....Shon Small, Alt.

BENTON-FRANKLIN LAW LIBRARY BOARD.....Jerome Delvin

BI-COUNTY HEALTH BOARD .....Shon Small
Jerome Delvin
Will McKay

COLUMBIA REGIONAL ECONOMIC DEVELOPMENT TRUST (CREDIT) ..... Will McKay

ENERGY COMMUNITIES ALLIANCE.....Jerome Delvin
..... Adam Fyall, Alt.

GREATER COLUMBIA BEHAVIORAL HEALTH (ASO).....Shon Small
Kyle Sullivan, Alt.

HANFORD ADVISORY BOARD .....Bob Suyama
..... Pam Larsen, Alt.

HANFORD AREA ECONOMIC INVESTMENT FUND COMMITTEE…. ..... Will McKay

HANFORD COMMUNITIES..... Governing Board – Jerome Delvin
.....Administrative Board – Adam Fyall

HOMELESS HOUSING..... Kyle Sullivan

HUMAN SERVICES ADMINISTRATOR..... Kyle Sullivan

METRO ..... Will McKay
.....Matt Rasmussen, Alt.

NATIONAL ASSOCIATION OF COUNTIES (NACo).....Jerome Delvin

PARK BOARD ..... Adam Fyall

PROSSER ECONOMIC DEVELOPMENT ASSOCIATION (ex-officio).....Shon Small

SOLID WASTE ADVISORY COMMITTEE ..... Will McKay
Blanca Parham, Alt.

TRI-CITIES RIVERSHORE ENHANCEMENT COMMITTEE (TREC)
..... Strategic Committee – Adam Fyall
..... Technical Committee – Shyanne Palmus

TRI-CITY REGIONAL CHAMBER OF COMMERCE (ex-officio) ..... Will McKay

TRI-CITY VISITOR & CONVENTION BUREAU..... Will McKay

TRI-COUNTY METROPOLITAN TRANSPORTATION.....Jerome Delvin
Will McKay, Alt.

TRIDEC..... Will McKay
Jerome Delvin, Alt.

WASHINGTON COUNTIES INSURANCE FUND.....Jerome Delvin
Lexi Wingfield, Alt.

WASHINGTON STATE ASSOCIATION OF COUNTIES (WSAC)
Legislative Steering Committee (LSC) TRANSPORTATION ASSOCIATION.....Jerome Delvin
Board of Directors ..... Will McKay
.....Jerome Delvin, Alt.
Columbia River Caucus.....Jerome Delvin

WEST RICHLAND AREA CHAMBER OF COMMERCE.....Jerome Delvin

WORKFORCE DEVELOPMENT COUNCIL..... Will McKay
Shon Small, Alt.

YAKIMA FISH & WILDLIFE RECOVERY BOARD ..... Will McKay
Adam Fyall, Alt.

YAKIMA BASIN INTEGRATED PLAN..... Will McKay
Adam Fyall, Alt.

Dated this _____ day of September 2021.

_____
Chairman

ATTEST:

_____
Chairman Pro-Tem

_____
Clerk of the Board

_____
Member
Constituting the Board of
Benton County Commissioners

cc: BOCC; Admin; website

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Ratifying 2nd Amendment to Water Right Purchase & Sale Agreement |
| **Presenter:** | n/a |
| **Prepared By:** | C. McKenzie |
| **Reviewed By:** | Jerrod MacPherson |

| **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 |

## Summary / Background Information

On December 10, 2019 Benton County and Selah Moxee Irrigation District entered into a Water Right Purchase and Sale Agreement (PSA) providing for the acquisition by the County of up to 300 acre-feet per year of consumptive use water under SMID's Water Right.

This agreement established October 31, 2020 as the Termination Date for purposes of closing, and the parties subsequently entered into a First Amendment to Water Right Purchase and Sale Agreement dated October 6, 2020 extending the Termination Date to August 31, 2021.

On July 27, 2021, the Board of Benton County Commissioners, via Resolution 2021-572, authorized Jerrod MacPherson, County Administrator, to sign any and all closing documents on behalf of the County, to close the purchase of water rights as reflected in the Purchase and Sale Agreement and Resolution 2019-925.

The parties, as of August 31, 2021 had satisfied all PSA contingencies, but had not yet completed certain closing-related requirements, including the recording of documents and the parties extended the amended Termination Date under the First Amendment to September 3, 2021 by signing the Second Amendment to Water Right Purchase and Sale Agreement.

The County Administrator signed the Second Amendment to Water Right Purchase and Sale Agreement and the Second Amendment needs to be ratified by the Board.

## Fiscal Impact

None.

## Recommendation

Ratify Second Amendment to Water Right Purchase and Sale Agreement Between Benton County and Selah Moxee Irrigation District as signed by Jerrod MacPherson.

## Suggested Motion

Approve as part of Consent Agenda

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF RATIFYING SECOND AMENDMENT TO WATER RIGHT PURCHASE AND SALE AGREEMENT BETWEEN BENTON COUNTY AND SELAH MOXEE IRRIGATION DISTRICT**

**WHEREAS,** on December 10, 2019 the parties entered into a Water Right Purchase and Sale Agreement (PSA) providing for the acquisition by the County of up to 300 acre-feet per year of consumptive use water under SMID's Water Right; and

**WHEREAS**, the PSA established October 31, 2020 as the Termination Date for purposes of closing, and the parties subsequently entered into a First Amendment to Water Right Purchase and Sale Agreement dated October 6, 2020 extending the PSA Termination Date to August 31, 2021; and

**WHEREAS,** on July 27, 2021, the Board of Benton County Commissioners, via Resolution 2021-572, authorized Jerrod MacPherson, County Administrator, to sign any and all closing documents on behalf of the County, to close the purchase of water rights as reflected in the Purchase and Sale Agreement and Resolution 2019-925; and

**WHEREAS**, the parties, as of August 31, 2021 had satisfied all PSA contingencies, but had not yet completed certain closing-related requirements, including the recording of documents and the parties extended the amended Termination Date under the First Amendment to September 3, 2021 by signing the Second Amendment to Water Right Purchase and Sale Agreement; and

**WHEREAS,** the County Administrator signed the Second Amendment to Water Right Purchase and Sale Agreement and the Second Amendment needs to be ratified by the Board; **NOW, THEREFORE,**

**BE IT RESOLVED,** the Board of Benton County Commissioners concurs with the County Administrator's actions in the execution of the Second Amendment to the Water Rights Purchase and Sale Agreement on behalf of Benton County and hereby ratifies the attached Second Amendment to Water Right Purchase and Sale Agreement to extend the Termination Date to September 3, 2021.

**Dated this . . . . . day of . . . . . , 20 . . . .**

**Chairman of the Board**

**Chairman Pro-Tem**

**Member**

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

**Attest: . . . . . .**
**Clerk of the Board**

cc: Admin, Auditor, Planning C. McKenzie

**SECOND AMENDMENT**

**TO**

**WATER RIGHT PURCHASE AND SALE AGREEMENT**

THIS SECOND AMENDMENT TO WATER RIGHTS PURCHASE AND SALE AGREEMENT (the "Amendment") is made and entered into as of this 31st day of August 2021 (the Second Amendment Date"), by and between the Selah Moxee Irrigation District, an irrigation district organized pursuant to Title 87, Revised Code of Washington ("SMID"), and Benton County, a municipal corporation established under the laws and constitution of the State of Washington ("the County"). SMID and the County are collectively referred to herein as the "Parties."

A. WHEREAS, the Parties entered into that certain *Water Right Purchase and Sale Agreement* dated December 10, 2019 (the "PSA"), providing for the acquisition by the County of up to 300 acre-feet per year of consumptive use water under SMID's Water Right, as therein defined; and

B. WHEREAS, the PSA established October 31, 2020, as "Termination Date" for purposes of closing the Parties' purchase-and-sale transaction thereunder, unless otherwise agreed by the Parties in writing; and

C. WHEREAS, the Parties subsequently entered into that certain *First Amendment to Water Right Purchase and Sale Agreement* dated October 6, 2020 (the "First Amendment"), which extended the PSA Termination Date to August 31, 2021; and

D. WHEREAS, the Parties, as of the above Second Amendment Date, have satisfied all PSA contingencies, but have not yet completed certain Closing-related requirements, including the recording of documents; and

E. WHEREAS, the Parties desire to extend the amended Termination Date under the first Amendment, with the expectation of completing and closing the PSA-contemplated transaction on or before September 3, 2021.

NOW, THEREFORE, IN CONSIDERATION of the mutual covenants set forth herein, the receipt of which are hereby acknowledged, the Parties hereby agree as follows:

1. Consistent with requirements under PSA Paragraph 23 (Amendments), Paragraph 10.1.2 of the PSA and Paragraph 1 of the First Amendment are each hereby amended, in their entirety, to read as follows:

> **Place and Time of Closing.** The sale shall be closed in the offices of the Closing Agent not later than September 3, 2021, which shall be the Termination Date, unless the Parties agree to an extension of time in writing.

2. This Second Amendment shall be effective upon its mutual execution and delivery by the Parties. Except as expressly amended and modified hereunder, the PSA is affirmed, confirmed, and ratified by the Parties and shall remain in full force and effect.

3. This Second Amendment may be executed and delivered by original instruments or telephonic or electronic mail facsimiles in any number of counterparts, all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have signed and delivered this Second Amendment to Water Right Purchase and Sale Agreement as of the day and year first written above.

**SELAH MOXEE IRRIGATION DISTRICT:**

By: _____
Michael McGree, Board President

**BENTON COUNTY:**

By: _____
Jerrod McPherson, Benton County Administrator

3. This Second Amendment may be executed and delivered by original instruments or telephonic or electronic mail facsimiles in any number of counterparts, all of which together shall constitute one and the same document.

IN WITNESS WHEREOF, the Parties have signed and delivered this Second Amendment to Water Right Purchase and Sale Agreement as of the day and year first written above.

**SELAH MOXEE IRRIGATION DISTRICT:**

By: _____
Michael McGree, Board President

**BENTON COUNTY:**

By: _____
Jerrod McPherson, Benton County Administrator

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Execute the Third Amendment for PSC-20/21-PREV-ZAVICAR-00 |
| **Presenter:** | |
| **Prepared By:** | Mari Clark, DHS Program Specialist |
| **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:** | **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 purpose of this Third Contract Amendment is to continue CPWI Prevention Services in order to increase capacity to implement direct and environmental substance use disorder prevention services in high need communities qualified to immediately implement identified evidence-based practices and programs to prevent and reduce the misuse and abuse of alcohol, tobacco, marijuana, opioids, and/or other drugs. This Third Amendment increases the compensation section of the contract.

## Fiscal Impact

Funding for the services described in this Third Amendment is provided by the Health Care Authority. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget, for a maximum program agreement amount of $358,846.00.

## Recommendation

- Sign the Third Amendment for PSC-20/21-PREV-ZAVICAR-00, where indicated
- Sign the Resolution to the Third Amendment for PSC-20/21-PREV-ZAVICAR-00, where indicated

## Suggested Motion

Approve on consent agenda.

# BENTON COUNTY RESOLUTION

**BENTON COUNTY RESOLUTION NO. _____**

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;**

**RE: IN THE MATTER OF EXECUTING THE THIRD AMENDMENT OF #PSC-20/21-PREV-ZAVICAR-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND BREANNA ZAVICAR**

**WHEREAS**, Benton County Department of Human Services would like to increase the budget of the Professional Services Contract with Breanna Zavicar for the purpose of being the Community Prevention Coordinator for the Benton City substance abuse prevention coalition, whose goals will be to implement prevention programs and activities designed to prevent the misuse and abuse of alcohol, tobacco, and other drugs; and

**WHEREAS**, the purpose of the amendment is to coordinate and implement prevention programs designed to prevent the misuse and abuse of alcohol, marijuana, tobacco, and other drugs among youth up to the age 18 and young adults ages 19-25; NOW, THEREFORE

**BE IT RESOLVED**, that the Board of County Commissioners hereby accepts the Third Amendment to #PSC-20/21-PREV-ZAVICAR-00, between Breanna Zavicar and Benton County Department of Human Services for a grant in the maximum total amount of three hundred fifty-eight thousand, eight hundred and forty-six dollars and no cents ($358,846.00); and

**BE IT FURTHER RESOLVED,** that Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments to Breanna Zavicar, necessary for the disbursement of funds; and

**BE IT FURTHER RESOLVED**, the term of the attached agreement commences on the August 1, 2020 and ends on September 29, 2021.

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

_____
Chair of Board

_____
Member

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

Attest: _____
Clerk of the Board

CC: Benton County Commissioners, Benton County Dept. Human Services M. Clark

# THIRD CONTRACT AMENDMENT TO GRANT AGREEMENT #PSA-20/21-PREV-ZAVICAR-00

**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, by and for the **BENTON COUNTY DEPARTMENT OF HUMAN SERVICES**, with its principal offices located at 7102 W. Okanogan Avenue, Suite #201, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTY"), and **BREANNA ZAVICAR**, an individual under the laws of the State of Washington, with its principal offices at 57903 E Main PR NE, Benton City, WA 99320, (hereinafter "CONTRACTOR").

**WHEREAS**, per Benton County Resolution No.2020 615, the parties entered into a Grant Agreement beginning August 1, 2020, extending to September 29, 2021 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to assist the COUNTY in coordinating implementation of prevention programs and strategies designed to prevent or delay the misuse and abuse of alcohol, marijuana, tobacco, opioids, and other drugs, increase mental health promotion and prevent suicide in support of the Community Prevention Wellness Initiative Prevention Services Project in our community; and

**WHEREAS**, this Third Amendment is necessary to make agreed-upon, needed amendment to the program's COMPENSATION, the attached budget, and replacing section 5.b; and

**NOW THEREFORE**, the parties agree that all provisions of the CONTRACT remain in full force and effect, except for the following amendments:

1. **COMPENSATION**
   Section 5.b shall be amended and replaced in its entirety with the following:

   The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed one hundred sixteen thousand one hundred eighteen dollars and no cents ($116,118.00) from the 2018 Partnerships for Success (PFS) CFDA 93.243 and one hundred eighty-seven thousand five hundred twenty-eight dollars and no cents ($187,528.00) from the State Opioid Response (SOR), CFDA 93.788 and fifty-five thousand two hundred and no cents ($55,200.00) from the Substance Abuse Block Grant (SABG), CFDA 93.959, during the time period August 1, 2020 through September 29, 2021.

**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 Date

Member Date

Member Date

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

**ATTEST:**

Clerk of the Board

**APPROVED AS TO FORM:**

Benton County Deputy Prosecuting Attorney

**FOR THE CONTRACTOR:**
**Breanna Zavicar, Coordinator**

Signature 8/12/2021 Date

Breanna Zavicar
Name

Coalition Coordinator
Title

**APPROVED AS TO CONTENT:**

Human Services Manager

**Breanna Zavicar**
**PSC-20/21-PREV-ZAVICAR-00**
Benton County
August 1, 2020 to September 29, 2022

**Exhibit B**

| Prevention Grants | SFY20 | SFY21 | SFY22 | SFY23 |
|---|---|---|---|---|
| 2018 PFS: | | | | |
| Year 2 FFY20 (7.1.19-9.29.20) Admin | $ 2,508.00 | $ 840.00 | | |
| Year 2 FFY20 (7.1.19-9.29.20) Direct Costs | $ 28,842.00 | $ 9,660.00 | | |
| Year 3 FFY19 (9.30.20-9.29-.21) Admin | | $ 2,531.00 | $ 844.00 | |
| Year 3 FFY19 (9.30.20-9.29-.21) Direct Costs | | $ 29,106.00 | $ 9,702.00 | |
| Year 4 FFY20 (9.30.21-9.29.22) Admin | | | $ 2,531.00 | $ 844.00 |
| Year 4 FFY20 (9.30.21-9.29.22) Direct Costs | | | $ 29,106.00 | $ 9,702.00 |
| | | | | |
| SOR | | | | |
| Year 2 FFY20 (9.30.19-9.29.20) Admin | $ 4,092.00 | $ 1,364.00 | | |
| Year 2 FFY20 (9.30.19-9.29.20) Direct Costs | $ 47,058.00 | $ 15,686.00 | | |
| | | | | |
| SOR II | | | | |
| Year 1 FFY19 (7.1.20-9.29.21) Admin | | $ 4,069.00 | $ 1,356.00 | |
| Year 1 FFY19 (7.1.20-9.29.21) Direct Costs | | $ 46,794.00 | $ 15,598.00 | |
| Year 2 FFY20 (9.30.21-9.29.22) Admin | | | $ 4,069.00 | $ 1,356.00 |
| Year 2 FFY20 (9.30.21-9.29.22) Direct Costs | | | $ 46,794.00 | $ 15,598.00 |
| | | | | |
| SABG | | | | |
| SABG Prevention (7.1.19-6.30.21) Admin | | $ 1,600.00 | | |
| SABG Prevention (7.1.19-6.30.21) | | $ 18,400.00 | | |
| SABG Prevention (7.1.21-9.29.22) Admin | | | $ 1,600.00 | $ 1,600.00 |
| SABG Prevention (7.1.21-9.29.22) | | | $ 18,400.00 | $ 18,400.00 |
| | | | | |
| Total | $ 82,500.00 | $ 130,050.00 | $ 130,000.00 | $ 47,500.00 |

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Execute the Second Amendment for PSC-20/21-PREV-SANTO-00 |
| **Presenter:** | |
| **Prepared By:** | Mari Clark, DHS Program Specialist |
| **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:** | **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 purpose of this Second Contract Amendment is to continue CPWI Prevention Services in order to increase capacity to implement direct and environmental substance use disorder prevention services in high need communities qualified to immediately implement identified evidence-based practices and programs to prevent and reduce the misuse and abuse of alcohol, tobacco, marijuana, opioids, and/or other drugs. This Second Amendment increases the compensation section of the contract.

## Fiscal Impact

Funding for the services described in this Second Amendment is provided by the Health Care Authority. **There is no impact on the current expense budget.** All revenues and expenditures are from the Fund 0108-101 Human Services Budget, for a maximum program agreement amount of $477,917.00.

## Recommendation

- Sign the Second Amendment for PSC-20/21-PREV-SANTO-00, where indicated
- Sign the Resolution to the Second Amendment for PSC-20/21-PREV-SANTO-00, where indicated

## Suggested Motion

Approve on consent agenda.

# BENTON COUNTY RESOLUTION

## BENTON COUNTY RESOLUTION NO. _____

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON;**

**RE: IN THE MATTER OF EXECUTING THE SECOND AMENDMENT OF #PSC-20/21-PREV-SANTO-00 BETWEEN BENTON COUNTY DEPARTMENT OF HUMAN SERVICES AND MICHELLE SANTO**

**WHEREAS**, Benton County Department of Human Services would like to increase the budget of the Professional Services Contract with Michelle Santo for the purpose of being the Community Prevention Coordinator for the Pasco substance abuse prevention coalition, whose goals will be to implement prevention programs and activities designed to prevent the misuse and abuse of alcohol, tobacco, and other drugs; and

**WHEREAS**, the purpose of the agreement is to coordinate and implement prevention programs designed to prevent the misuse and abuse of alcohol, marijuana, tobacco, and other drugs among youth up to the age 18 and young adults ages 19-25; NOW, THEREFORE

**BE IT RESOLVED**, that the Board of County Commissioners hereby accepts the Second Amendment to #PSC-20/21-PREV-SANTO-00, between Michelle Santo and Benton County Department of Human Services for a grant in the maximum total amount of four hundred seventy-seven thousand, nine hundred seventeen dollars and no cents ($477,917.00); and

**BE IT FURTHER RESOLVED,** that Benton County Department of Human Services is authorized to voucher the County Auditor's office to make such payments to Michelle Santo, necessary for the disbursement of funds; and

**BE IT FURTHER RESOLVED**, the term of the attached agreement commences on the August 1, 2020 and ends on September 29, 2021.

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

_____
Chair of Board

_____
Member

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

Attest: _____
Clerk of the Board

CC: Benton County Commissioners, Benton County Dept. Human Services M. Clark

# SECOND CONTRACT AMENDMENT TO GRANT AGREEMENT #PSC-20/21-PREV-SANTO-00

**THIS SECOND CONTRACT AMENDMENT** (hereinafter "Second 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, by and for the **BENTON COUNTY DEPARTMENT OF HUMAN SERVICES**, with its principal offices located at 7102 W. Okanogan Avenue, Suite #201, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTY"), and **MICHELLE SANTO**, an individual under the laws of the State of Washington, with its principal offices at 4504 Bermuda Dunes Dr., Pasco, WA 99301, (hereinafter "CONTRACTOR").

**WHEREAS**, per Benton County Resolution No.2020 614, the parties entered into a Grant Agreement beginning August 1, 2020, extending to September 29, 2021 (hereinafter the "CONTRACT"), whereby CONTRACTOR agreed to assist the COUNTY in coordinating implementation of prevention programs and strategies designed to prevent or delay the misuse and abuse of alcohol, marijuana, tobacco, opioids, and other drugs, increase mental health promotion and prevent suicide in support of the Community Prevention Wellness Initiative Prevention Services Project in our community; and

**WHEREAS**, this Second Amendment is necessary to make agreed-upon, needed amendment to the program's COMPENSATION, awarding new funds by replacing the budget and section 5.b; and

**NOW THEREFORE**, the parties agree that all provisions of the CONTRACT remain in full force and effect, except for the following amendments:

1. **COMPENSATION**
   Section 5.b shall be amended and replaced in its entirety with the following:

   The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed three hundred ninety-six thousand seven hundred and forty-seven dollars and no cents ($396,747.00) from the 2018 Substance Abuse Block Grant (SABG), CFDA 93.959 and eighty-one thousand one hundred seventy dollars and no cents ($81,170.00) from the Dedicated Marijuana Account (DMA), Fund 315 State fund.

**IN WITNESS WHEREOF**, the parties have caused this Second 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 Date

Member Date

Member Date

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

**FOR THE CONTRACTOR:**
**Michelle Santo, Coordinator**

Michelle Santo 8/12/21
Signature Date

Michelle Santo
Name

Coalition Coordinator
Title

**ATTEST:**

Clerk of the Board

**APPROVED AS TO FORM:**

Benton County Deputy Prosecuting Attorney

**APPROVED AS TO CONTENT:**

Human Services Manager

**Michelle Santo**
**PSC-20/21-PREV-SANTO-00**
Benton County
July 1, 2021-June 30, 2023

**Exhibit B**

| Prevention Grants | SFY20 | SFY21 | SFY22 | SFY23 |
|---|---|---|---|---|
| SABG Prevention (7.1.19-6.30.21) | $ 80,908.00 | $ 99,308.00 | | |
| SABG Prevention (7.1.19-6.30.21) Admin | | $ 1,600.00 | | |
| GF-State-Admin (for SABG Grant) | $ 7,035.00 | $ 7,035.00 | | |
| Substance Abuse Block Grant (SABG) CFDA 93.959 Rollover | $ 17,917.00 | | | |
| | | | | |
| DMA-Fund 315 State Direct Costs | $ 20,292.00 | $ 20,292.00 | | |
| DMA-Fund-315-State Admin | $ 1,765.00 | $ 1,765.00 | | |
| | | | | |
| Total | $ 127,917.00 | $ 130,000.00 | $ - | $ - |

| | | | | |
|---|---|---|---|---|
| SABG Prevention (7.1.21-6.30.23) | | | $ 99,307.00 | $ 99,307.00 |
| SABG Prevention (7.1.21-6.30.23) Admin | | | $ 1,600.00 | $ 1,600.00 |
| GF-State-Admin (for SABG Grant) | | | $ 7,035.00 | $ 7,035.00 |
| | | | | |
| | | | | |
| DMA-Fund 315 State Direct Costs | | | $ 20,293.00 | $ 20,293.00 |
| DMA-Fund-315-State Admin | | | $ 1,765.00 | $ 1,765.00 |
| | | | | |
| Total | $ - | $ - | $ 130,000.00 | $ 130,000.00 |

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Approving the Purchase of Extending Software and CoPilot support for Dell Compellent Storage Area Network |
| **Presenter:** | |
| **Prepared By:** | Alex Garcia |
| **Reviewed By:** | 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

Per Resolution 2016-645, Information Technology replaced the County's Storage Area Network (SAN) with the Dell EqualLogic Compellent Series included with five-year software and Copilot support. Software support for the SAN is ending at the end of September 2021 and will need to be extended to continue getting software updates and technical assistance from Dell. Quotes were received from different vendors to extend software support through the end of December 2022. Information Technology will continue to evaluate the best network storage space before the expiration of this extension.

All funds used to extend Dell Compellent software support will come out of Information Technology approved budget. Software support will be purchased from Thornburg Computer Services, LLC.

## Fiscal Impact

**Amount:** **$30,585.33 excluding WSST.**

**Fund:** **Information Technology approved budget 2021-2022**

## Recommendation

Information Technology recommends that the Board approves the purchase of extending Dell Compellent software support from Thornburg Computer Services, LLC. though the end of December 2022.

## Suggested Motion

Approve as part of the Consent Agenda.

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF APPROVING THE PURCHASE OF EXTENDING SOFTWARE AND HARDWARE SUPPORT FOR DELL COMPELLENT STORAGE AREA NETWORK FROM THORNBURG COMPUTER SERVICES, LLC.**

**WHEREAS**, per Resolution 2016-645, Information Technology replaced the County's Storage Area Network (SAN) with Dell EqualLogic Compellent Series included with five-year software and hardware support; and

**WHEREAS,** software and hardware support for SAN is ending at the end of September 2021; and

**WHEREAS,** Information Technology recommends extending software and hardware support through the end of December 2022 as it continues to evaluate the best network storage space before the new expiration; and

**WHEREAS**, Thornburg Computer Services, LLC is an authorized reseller on the Washington State NASPO ValuePoint Cooperative Contract #05815 Dell Marketing Contract #05815-003 Participating Addendum for Washington State; and

**WHEREAS,** Information Technology has reviewed the proposal and quote received and recommends extending Dell Compellent support through the end of December 2022 from Thornburg Computer Services, LLC as best fit for Benton County; and

**WHEREAS,** the Purchasing Department has reviewed this purchase and found it complies with Procurements, Leasing, and Contracting Policy; **NOW THEREFORE,**

**BE IT RESOLVED,** the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with Information Technology's recommendation and approves the purchase of extending software and hardware support for Dell Compellent SAN in an amount not to exceed $30,585.33 excluding Washington State Sales from Thornburg Computer Services, LLC.

Dated this 14 day of September 2021

Chairman of the Board

Member

Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology
cc: Auditor

Prepared by: A. Garcia

THORNBURG CS

**Date:** June 22, 2021
**Quotation #:** 13655
**Valid Until:** August 30, 2021
**Prepared By:** Brian Wheeler

**Quote For:**
Benton County Information Tech.
620 Market St.
Prosser, WA 99350

**DES NASPO Contract**
**SC-05815-003**

**Proposed Contract Dates: Oct 01, 2021 - Dec 31, 2022**

**System 58660 / 58661 - Prosser, WA**

| Service Tag | Part | Description | Qty | EOS Date | Coverage Dates | Duration: Support \| Parts | Price |
|---|---|---|---|---|---|---|---|
| | **Hardware & Drives** | | | | | | |
| GCVVH82 | CT-SC4020-BASE-MTCH | ProSupport, 24x7, Dell/Compellent | 1 | 8/31/2023 | 10/01/2021 - 12/31/2022 | 15 \| 0 | 4,645.86 |
| J6FJRD2 | EN-SC200-1235-MTCH | ProSupport, 24x7, Enclosure, SC200, | 1 | 11/30/2023 | 11/01/2021 - 12/31/2022 | 14 \| 0 | 2,296.87 |
| 354WHQ2 | EN-SC200-1235-MTCH | ProSupport, 24x7, Enclosure, SC200, | 1 | 11/30/2023 | 11/01/2021 - 12/31/2022 | 14 \| 0 | 2,151.04 |
| CRDD673 | EN-SC400-1235-MTCH | ProSupport, 24x7, Enclosure, SC400, | 1 | 8/31/2026 | 10/01/2021 - 12/31/2022 | 15 \| -15 | 1,736.45 |
| | **Software** | | | | | | |
| | SW-CORE-BASE48-MTCS | Support, 24x7, SW, Storage Center OS Core | 1 | | 10/01/2021 - 12/31/2022 | 15 \| 0 | 1,000.00 |
| | SW-PERF-BASE48-MTCS | Support, 24x7, SW,Storage Optimization Bundle | 1 | | 10/01/2021 - 12/31/2022 | 15 \| 0 | 2,000.00 |
| | SW-RDP-BASE48-MTCS | Support, 24x7, SW, Remote Data | 1 | | 10/01/2021 - 12/31/2022 | 15 \| 0 | 1,666.67 |

| | | **Totals** |
|---|---|---|
| Coverage Type is: Zone 1, ProSupport* 24x7 w/ Priority On-Site (4 hour) | Onsite Support | $10,830.22 |
| | CoPilot Services | $ |
| | Support Center | $4,666.67 |
| Current Agreement Expiration Date: 09/30/2021 | Support Renewal Total | $15,496.89 |

*Taxes Not Included

THORNBURG CS

**Date:** June 22, 2021
**Quotation #:** 13656
**Valid Until:** August 30, 2021
**Prepared By:** Brian Wheeler

**Quote For:**
Benton County Information Tech.
620 Market St.
Prosser, WA 99350

**DES NASPO Contract**
**SC-05815-003**

**Proposed Contract Dates: Oct 01, 2021 - Dec 31, 2022**

**System 59776 / 59777 - Prosser, WA**

| Service Tag | Part | Description | Qty | EOS Date | Coverage Dates | Duration: Support \| Parts | Price |
|---|---|---|---|---|---|---|---|
| | **Hardware & Drives** | | | | | | |
| DKVVH82 | CT-SC4020-BASE-MTCH | ProSupport, 24x7, Dell/Compellent | 1 | 8/31/2023 | 11/01/2021 - 12/31/2022 | 14 \| 0 | 4,336.13 |
| J6FKRD2 | EN-SC200-1235-MTCH | ProSupport, 24x7, Enclosure, SC200, | 1 | 11/30/2023 | 10/01/2021 - 12/31/2022 | 15 \| 0 | 2,460.94 |
| 354XHQ2 | EN-SC200-1235-MTCH | ProSupport, 24x7, Enclosure, SC200, | 1 | 11/30/2023 | 10/01/2021 - 12/31/2022 | 15 \| 0 | 2,315.11 |
| CRDF673 | EN-SC400-1235-MTCH | ProSupport, 24x7, Enclosure, SC400, | 1 | 8/31/2026 | 11/01/2021 - 12/31/2022 | 14 \| -14 | 1,620.70 |
| | **Software** | | | | | | |
| | SW-CORE-BASE48-MTCS | Support, 24x7, SW, Storage Center OS Core | 1 | | 11/01/2021 - 12/31/2022 | 14 \| 0 | 933.33 |
| | SW-PERF-BASE48-MTCS | Support, 24x7, SW,Storage Optimization Bundle | 1 | | 11/01/2021 - 12/31/2022 | 14 \| 0 | 1,866.67 |
| | SW-RDP-BASE48-MTCS | Support, 24x7, SW, Remote Data | 1 | | 11/01/2021 - 12/31/2022 | 14 \| 0 | 1,555.56 |

| | | **Totals** |
|---|---|---|
| Coverage Type is: Zone 1, ProSupport* 24x7 w/ Priority On-Site (4 hour) | Onsite Support | $10,732.88 |
| | CoPilot Services | $ |
| | Support Center | $4,355.56 |
| Current Agreement Expiration Date: 09/30/2021 | Support Renewal Total | $15,088.44 |

*Taxes Not Included

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Approving the purchase of a 1-year subscription for WebEx Meetings archiving service from CompuNet Inc. |
| **Presenter:** | |
| **Prepared By:** | Alex Garcia |
| **Reviewed By:** | 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

After the County's move to Cisco Flex licensing, per Resolution 2020-616, WebEx Teams, now WebEx has been made available to each county user for instant messaging services. On June 8, 2021, per Resolution 2021-443 and to comply with RCW 40.14, Preservation and Destruction of Public Records and RCW 42.56, Public Records Act, IT started archiving WebEx chat messages using Theta Lake's solution at a yearly cost of $29,375 excluding WSST. Initially, IT wanted to add archiving services for WebEx Meetings, but the yearly costs would have added another $62,500 excluding WSST a year which was not in IT's 2021-2022 approved budget. As a precaution, IT turned off WebEx Meetings chat feature to comply with RCW 40.14 and RCW 42.56.

In response to the increasing number of requests for WebEx Meetings chat services, IT reviewed the WebEx Meetings archiving quote and found an error in the total number of archiving users (750). The County is only licensed for 130 WebEx Meeting users which drastically dropped the price of archiving WebEx Meetings to $15,457 excluding WSST. With the adjusted Theta Lake WebEx Meeting archiving cost, IT recommends adding WebEx Meetings archiving service to IT's existing agreement with Theta Lake.

## Fiscal Impact

**Amount:** **$25,000 excluding WSST.**

**Fund:** **Information Technology's approved 2021-2022 budget.**

IT has seen a rise in WebEx Meetings usage as more and more employees are using Meetings for County business. To reduce risk, IT recommends adding a payment ceiling of $25,000 to cover increase usage of county WebEx Meetings.

## Recommendation

Information Technology recommends that the Board approves the purchase of a one-year subscription for Theta Lake's WebEx Meetings archiving from CompuNet, Inc. in an amount not to exceed $15,457 excluding WSST.

## Suggested Motion

Consent Agenda

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF APPROVING THE PURCHASE OF ONE-YEAR SUBSCRIPTION FOR WEBEX MEETINGS ARCHIVING SERVICE FROM COMPUNET, INC.**

**WHEREAS**, after the County's move to Cisco Flex licensing, per Resolution 2020-616, WebEx Teams, now WebEx messaging client has been available to each county user; and

**WHEREAS**, on June 8, 2021, the Board signed Resolution 2021-443, approving Information Technology (IT) to start archiving WebEx chat messages using Theta Lake's archiving service; and

**WHEREAS**, due to 2021-2022 IT budgetary constraints, IT was not able to procure Theta Lake's archiving service for WebEx Meetings; and

**WHEREAS,** for the County to comply with RCW 40.14, Preservation and Destruction of Public Records and RCW 42.56, Public Records Act, IT disabled the WebEx Meetings chat feature; and

**WHEREAS**, after listening to end users of WebEx Meetings, the chat feature would be a benefit to the overall WebEx Meeting experience; and

**WHEREAS**, IT revisited Theta Lake's initial proposal finding an error in the total number of archived users that reduced the WebEx Meeting archive cost to an acceptable budgetary number; and

**WHEREAS**, IT recommends a one-year subscription for Theta Lake's WebEx Meeting archiving service be purchased from CompuNet Inc; and

**WHEREAS**, the Purchasing Department has reviewed this purchase and finds it complies with the Procurement, Leasing, and Contracting Policy; **NOW THEREFORE,**

**BE IT RESOLVED**, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with IT's recommendation and approves the Chairman of the Board to sign a one-year subscription quote for WebEX Meetings archiving service from CompuNet, Inc. in an amount not to exceed $25,000 excluding Washington State Sales Tax.

Dated this 14 day of September , 2021

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners
of Benton County, Washington

Attest: _____
Clerk of the Board

Orig: Information Technology cc: Auditor

Prepared by: A. Garcia

CompuNet, Inc.

# WebEx Meeting – Co-term (9/1/21-6/11/22)

**Bill To:**

**Benton County**

P.O. Box 608
Prosser, WA 99350

**Ship To:**

**Benton County**

620 Market Street
Prosser, WA 99350

**Quote Information:**

**Quote #: MJS172236**

Version: 1
Delivery Date: 08/18/2021
Expiration Date: 09/16/2021

**Prepared by:**

Marilynne Schott
509-795-8275
mschott@compunet.biz

**Prepared for:**

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

## WebEx Meeting (Co-Term)

| Description | | List Price | Price | Qty | Ext. Price |
|---|---|---|---|---|---|
| TL-CS-PLT-MEETINGS | Webex Meetings (platform fee for 100-250 users) | $7,500.00 | $0.00 | 1 | $0.00 |
| TL-CS-USR-MEETINGS | Theta Lake Coverage for Cisco Webex Meeting Users added to annual platform fee, includes coverage for 130 users | $195.00 | $118.90 | 130 | $15,457.00 |
| | | | Subtotal: | | **$15,457.00** |

## Shipping

| Description | | Qty |
|---|---|---|
| Shipping | Free Ground Shipping | 1 |

## Quote Summary

| Description | Amount |
|---|---|
| WebEx Meeting (Co-Term) | $15,457.00 |
| Subtotal: | **$15,457.00** |
| Estimated Tax: | **$1,329.30** |
| Total: | **$16,786.30** |

***Quotes are valid for 30 days unless otherwise noted*** Taxes, shipping, handling and other fees may apply. We reserve the right to cancel any order arising from pricing or other errors. If Customer is purchasing a subscription-based product, Customer agrees to pay all charges for the complete term of the subscription. By signing below or issuing a Purchase Order, Customer agrees to CompuNet's standard terms and conditions, which can be reviewed here. 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 Executive.

Benton County

Signature: _____

Name: _____

Date: _____

PO Number: _____

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | FC 08/31/21 BC 09/14/21 |
| **Subject:** | Personal Services Contract with Jennifer M. Azure |
| **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:** | **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

Jennifer M. Azure wishes to contract with the Benton-Franklin Counties Juvenile Justice Center to provide legal services for Attorney representation of persons in all BECCA dockets.

The attached Personal Services Contract commences on October 1, 2021 and expires on September 30, 2022.

## Fiscal Impact

These are state funds whereby we are reimbursed for services which are incorporated in the Juvenile Court's budget. Amount not to exceed $31,000.00 to be paid out of Fee For Services Dept. 173. No Supplemental required.

## 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 Jennifer M. Azure and the 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 CONTRACT BETWEEN BENTON-FRANKLIN COUNTIES JUVENILE JUSTICE CENTER AND JENNIFER M. AZURE A PERSONAL SERVICES CONTRACT FOR ATTORNEY REPRESENTATION OF PERSONS IN ALL BECCA DOCKETS**

**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-Franklin Counties Juvenile Justice Center would like to enter into a Personal Services Contract with Jennifer M. Azure for Attorney Representation of persons in all BECCA dockets; and

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

**BE IT RESOLVED,** that the Board of Benton County Commissioners, Benton County, Washington; and the Board of Franklin County Commissioners, Franklin County, Washington, concurs with the Juvenile Administrator's recommendation and hereby awards the Personal Services Contract to Jennifer M. Azure in an amount not to exceed $31,000.00; and

**BE IT FURTHER RESOLVED,** that the Chair is authorized to sign the attached Personal Services Contract; and

**BE IT FURTHER RESOLVED**, the term of the attached contract commences October 1, 2021 and expires on September 30, 2022.

**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-Azure, 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 W. Canal Place, Suite 106, Kennewick, WA 99336 (hereinafter "COUNTIES"), and **Jennifer M. Azure**, Azure Law Office, PLLC attorney at law, Washington State Bar Association #30494 with her principal office at 7135 West Hood Place, Kennewick, WA 99336 (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 October 1, 2021 and shall expire on September 30, 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.

## 2. SERVICES PROVIDED

a. The CONTRACTOR shall provide legal services for Attorney representation of persons in all Youth At Risk/Child In Need of Services (CHINS) petitions.

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 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:

| | |
|---|---|
| Name: | **Jennifer M. Azure** |
| Address: | **7135 West Hood Place** |
| | **Kennewick, WA 99336** |
| Phone: | **(509) 491-3941** |
| Email: | **jennifer@azurelawoffice.com** |

b. For COUNTIES:

| | |
|---|---|
| Name: | **Darryl Banks, Administrator** |
| Address: | **5606 W. Canal Place, Suite 106** |
| | **Kennewick, WA 99336** |
| Phone: | **(509) 222-2316** |
| Email: | **Darryl.Banks@co.benton.wa.us** |

## 4. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid as professional service attorney fees, the sum of $200.00 per case upon appointment for Attorney's representation of persons in all Youth At Risk/CHINS petitions under this contract.

1. Contractor agrees to provide own coverage at own expense for any scheduled Youth At Risk/CHINS petition Contractor is not able to attend.

2. Any additional coverage due to the size of dockets will be provided at expense of Counties.

b. In the event that BECCA funding for Youth At Risk/CHINS petitions is lost or reduced the parties will renegotiate in good faith adjustment compensations.

c. The maximum total amount payable by the COUNTIES to the CONTRACTOR under this CONTRACT shall not exceed $31,000.00.

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

e. 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.

f. 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.

g. 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.

h. 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. 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

The CONTRACTOR shall obtain and maintain continuously the following 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 must 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 the 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.

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 activities 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. 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. 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 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 and Franklin Counties 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 Professional Liability, 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 cancelled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES 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 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 and Franklin Counties Risk Manager, 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 determine in its sole discretion that such termination is in the best interests of the COUNTIES. Either party may terminate this Contract upon giving ten (10) days written notice by certified mail to the other party. 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.

## 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 the 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 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. 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 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 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 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.

**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, and make available to the COUNTIES 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 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 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 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 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 3 of this Contract. Notice may also be given via e-mail to the Contract Representatives' e-mail addresses identified in Section 3 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 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 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 **October 1, 2021.**

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

| **Azure Law Office, PLLC** | **Benton-Franklin Counties Juvenile Justice Center** |
|---|---|
| 8/17/21 | 8-19-21 |
| **Jennifer M. Azure** **Date** | **Darryl Banks** **Date**<br>**Juvenile Court Administrator** |
| **BENTON COUNTY APPROVAL** | **FRANKLIN COUNTY APPROVAL** |
| Approved as to Form: | Approved as to Form: |
| 08/19/21 | |
| Stephen Hallstrom, Deputy Prosecuting Attorney Date | Civil Deputy Prosecuting Attorney Date |
| By: | By: |
| Name: | Name: |
| Title: | Title: |
| Date: | Date: |
| Attest: | Attest: |
| Clerk of the Board: | Clerk of the Board: |

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | FC 08/31/21 BC 09/14/21 |
| **Subject:** | Personal Services Contract with Somerset Counseling Center |
| **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:** | **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-Franklin Counties Juvenile Justice Center has contracted with Somerset Counseling Center for several years to provide chemical dependency assessment and treatment to youth as ordered by the Court. The attached Personal Services Contract with Somerset Counseling Center has been written to provide for the services as outlined in the CDDA (Chemical Dependency Disposition Alternative) portion of the Consolidated Juvenile Services contract between the Juvenile Court and the State of Washington.

Somerset Counseling Center's current contract expired June 30, 2021. The Benton-Franklin Counties Juvenile Justice Center wishes to continue contracting with Somerset Counseling Center. The attached Personal Services Contract commences on July 1, 2021 and expires on June 30, 2023.

## Fiscal Impact

The fiscal amount is not to exceed $32,000.00. These services are paid from state funds. 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 Somerset Counseling Center and the 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 SOMERSET COUNSELING CENTER, A PERSONAL SERVICES CONTRACT TO PROVIDE YOUTH OUTPATIENT CHEMICAL DEPENDENCY TREATMENT SERVICES**

**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 had a contract with Somerset Counseling Center to provide outpatient treatment services through the Chemical Dependency Disposition Alternative (CDDA) from July 1, 2019 through June 30, 2021 via Benton County Resolution numbered 2019-486 and Franklin County Resolution numbered 2019-195; 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 Somerset Counseling Center in an amount not to exceed $32,000.00; 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-Somerset, 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 W. Canal Place STE 106, Kennewick, WA 99336 (hereinafter collectively referred to as "COUNTIES"), and **Somerset Counseling Center**, a corporation organized under the laws of the State of Washington with its principal office at 1305 Mansfield Street, Suite 6, Richland, WA 99352 (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 - Specific Terms and Conditions;
b. Exhibit B - Scope of Services;
c. Exhibit C - CDDA Services Reimbursement Rates;
d. Exhibit D - CDDA/Drug Court Referral Response Form;
e. Exhibit E - CDDA Evaluation Report and Treatment Plan; and
f. Exhibit F - Treatment Progress Report.

## 2. 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.

## 3. SERVICES PROVIDED

a. The Contractor shall provide youth outpatient chemical dependency treatment services. A detailed description of the services to be performed by the Contractor is set forth in Exhibit A, "Specific Terms and Conditions" and Exhibit B, "Scope of Services", which are 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 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.

## 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: Jaime Carson
Executive Director
1305 Mansfield Street Suite 6
Richland WA 99352
Phone: (509) 942-1624
Email: jaime@somersetcounseling.org

b. For COUNTIES: Darryl Banks
Administrator
5606 W. Canal Place, Suite 106
Kennewick, WA 99336
Phone: (509) 222-2316
Email: Darryl.banks@co.benton.wa.us

## 5. COMPENSATION

a. For the services performed under this Contract, the CONTRACTOR shall be paid as follows: A detailed description of the procedures for reimbursement, limitations on reimbursement, and compensation to be paid by the Counties is set forth in Exhibit A, "Specific Terms and Conditions," Exhibit B, "Scope of Services," and Exhibit C, "CDDA Services Reimbursement Rates", which are attached hereto and incorporated herein by reference.

b. The maximum total amount payable by the Counties to the Contractor under this Contract shall not exceed Thirty-Two Thousand Dollars ($32,000.00).

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 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.

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 COUNTIES.

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 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.

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 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.

## 7. 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 [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. **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. 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 COUNTIES for recovery of damages to the extent they are covered by workers compensation and employer's liability.

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 **[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

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. 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. All liability insurance required under this Contract, except for professional liability under Section **[8(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, Auto Liability, and Workers' Compensation, 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 cancelled without thirty (30) days prior written notice to the COUNTIES. Any insurance or self-insurance maintained by the COUNTIES 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 COUNTIES' 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 COUNTIES' Contract Representative referenced in Section 4(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-Franklin Counties Risk Manager to the following address: 5606 West Canal Place, Suite 106 Kennewick WA 99336.

**9. TERMINATION**

a. The COUNTIES may terminate this Contract in whole or in part whenever the COUNTIES determine, 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 cost 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.

## 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 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.

## 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 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.

**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 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 **[5]** 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.

**13. COMPLIANCE WITH LAWS**

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

**14. OTHER PROVISIONS**

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

a. Background Check/Criminal History

1. 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.

2. 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 W Canal Place, Suite 106, Kennewick WA 99336-1388.

## 15. 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.

## 16. 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.

## 17. 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.

## 18. PATENT/COPYRIGHT INFRINGEMENT

The CONTRACTOR shall hold harmless, indemnify and defend the COUNTIES, 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.

## 19. 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.

## 20. 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.

## 21. 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.

## 22. 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.

## 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 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.

## 24. 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.

## 25. 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.

## 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, indemnification provisions (Sections **[7]** and **[18]**); extended reporting period requirements for professional liability insurance (Section **[8(a)]**); inspection and keeping of records and books (Section **[15]**); litigation hold notice (Section **[27]**); Public Records Act (Section **[28]**) and confidentiality (Section **[20]**).

## 27. 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 **[15]** 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 **[15]** of this Contract.

## 28. 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 **8** are mutually negotiated.

| **Somerset Counseling Center** | **Benton Franklin Counties Juvenile Justice Center** |
|---|---|
| Ollie Clark for 8/9/21 | Darryl Banks 8-16-21 |
| **Jaime Carson** Date<br>**Executive Director** | **Darryl Banks** Date<br>**Juvenile Court Administrator** |
| **BENTON COUNTY APPROVAL** | **FRANKLIN COUNTY APPROVAL** |
| Approved as to Form: Stephen Hallstrom 08/15/21 | Approved as to Form: |
| Stephen Hallstrom, Deputy Prosecuting Attorney Date | Civil Deputy Prosecuting Attorney Date |
| By: _____<br>Name: _____<br>Title: _____<br>Date: _____ | By: _____<br>Name: _____<br>Title: _____<br>Date: _____ |
| Attest: | Attest: |
| Clerk of the Board: _____ | Clerk of the Board: _____ |

# EXHIBIT A

## SPECIFIC TERMS AND CONDITIONS

## CDDA Youth Outpatient Treatment Services

## I. DEFINITION OF TERMS

A. **ASAM**: acronym for "American Society of Addiction Medicine". ASAM Patient Placement Criteria provides guidelines based on a medical model for placement, continued stay and discharge of patients with alcohol and other drug problems covering all levels of treatment including detoxification, outpatient treatment and inpatient services.

B. **BFJJC**: Benton-Franklin Counties Juvenile Justice Center.

C. **Assessment**: the formal diagnostic procedure to determine the presence of chemical dependency.

D. **Case Management**: activities aimed at linking the service system to a consumer and coordinating the various system components in order to achieve a successful outcome. The objective of case management is continuity of services. Case management is essentially a problem-solving function designed to ensure continuity of services and to overcome systems rigidity, fragmented services and inaccessibility of services. - **OR** - Case finding, case planning, case consultation, and referral services for youth, including intensive case management for adolescents for the purpose of linking them to assessment and treatment, or maintaining them in treatment and other support services. Does not include direct treatment services in this sub-element.

E. **CDDA**: Chemical Dependency Disposition Alternative, a statutory provision (RCW 13.40.165).

F. **DASA**: acronym for "Washington State Department of Social and Health Services Division of Alcohol and Substance Abuse".

G. **DSHS**: acronym for "Washington State Department of Social and Health Services."

H. **Examination**: the report that is submitted which will be used by the court to determine if the youth is chemically dependent and amenable to treatment and includes all components as defined in RCW 13.40.165.

I. **JPC:** acronym for Juvenile Probation Counselor

J. **TARGET**: acronym for "Treatment, Assessment Report Generation Tool".

K. **Title XIX**: Title XIX of the Social Security Act.

L. **Youth Patient**: youth and young adults age thirteen (13) through twenty (20) years of age.

## II. PERFORMANCE STANDARDS AND LICENSING

Somerset Counseling Center (hereinafter the Contractor) shall maintain certification as an "Approved Treatment Facility" as set forth by DASA. The Contractor shall maintain a Chemical Dependency Treatment Title XIX contract with DSHS. A copy of the certification shall be submitted to the Counties upon request.

## III. COMPLIANCE WITH SPECIFIC LAWS AND REGULATIONS

All services provided under this contract shall meet the standards for program operation set forth in chapter 70.96A RCW, RCW 13.40.165, and chapter 388-805 WAC. Fiscal management of this contract shall be in accordance with DASA Budgeting, Accounting and Reporting System (BARS) Manual and fiscal policies.

## IV. REIMBURSEMENT PROCEDURES

Services rendered under this contract shall be reimbursed on a FEE FOR SERVICES basis. Services shall be provided per the attached **Scope of Services (Exhibit B)**. Compensation rates shall be per **Exhibit C, CDDA Services Reimbursement Rates**.

The Contractor shall submit an invoice, on a format approved by BFJJC, for the services provided under this contract. Back up documentation with the invoice shall include a detailed monthly **Treatment Progress Report (Exhibit F)** for each child, which shall be submitted no later than the 5th of the month following the month during which services were performed under this contract. The invoice shall be submitted by the 4th day of the month following the month during which services were performed under this contract. BFJJC shall process claims for reimbursement after all supporting documentation is provided in correct and proper form. Claims for reimbursement received after said date will be processed in the succeeding month's claims for reimbursement. Payment shall be made for services included in claims submitted within forty (40) days following the month during which services were performed under this contract. Payment will be made when insurance or Title XIX claims have been disapproved and are submitted within 120 days following the month during which services were performed under this contract.

## V. REIMBURSEMENT LIMITATION

The total amount of reimbursement requested shall not exceed the total contract award.

## VII. RECORDS RETENTION

The Contractor shall retain all fiscal and clinical books, records, documents and other materials relevant to this contract in accordance with WAC 388-805-320 and the WAC Implementation Guide. The Contractor shall comply with all state and federal requirements regarding the confidentiality of patient records including, but not limited to, the federal Regulations for the Confidentiality of Alcohol and Drug Patient Records, 42 CFR Part 2.

## VIII. TREATMENT SERVICES, CONTACT, AND REPORTING REQUIREMENTS

The Contractor shall promptly forward all required reporting forms, completed in the prescribed detail and submitted on the dates set forth by BFJJC. Required case contacts and reports, with the applicable date due, are as follows:

The Contractor will provide the following Chemical Dependency Disposition Alternative (CDDA) services to Drug Court Youth and CDDA eligible youth referred by the BFJJC:

A. The Somerset Counseling Center will provide outpatient treatment to chemically dependent CDDA youth, which will emphasize enhancing linkages with community-based services to provide a comprehensive continuum of care.

Treatment needs will be determined prior to sentencing through the use of a statewide risk assessment. The risk assessment is used as a screening tool to refer potentially eligible youth to the CDDA program for a more thorough evaluation of chemical dependency and related problems. Somerset Counseling Center will complete a DASA certified youth assessment on those youth referred for a CDDA evaluation who have not been assessed by the Benton-Franklin Counties Substance Abuse Assessment Center. Levels of care will be determined by the ASAM Placement Criteria.

**Track I** (May serve both Committable and Locally Sanctioned Youth)

Services provided by CDDA Contracted Inpatient Providers and DASA Certified Inpatient Providers:

- Assessment
- Interim Treatment
- Intensive Inpatient
- Community Based Intensive Outpatient
- Phase II Outpatient

**Track II** (May serve both Committable and Locally Sanctioned Youth)

Services provided by Somerset Counseling Center:

- Prescreen
- Assessment
- Pre-Treatment
- Community Based Intensive Outpatient
- Phase II Outpatient

***NOTE: Random Urinalysis Testing will be applied throughout each track.***

B. The CDP or CDPT will have weekly telephone contact or face-to-face contact, as needed, with the Case Manager to review the treatment plan and the status/progress of the youth, including information about transition to another phase of treatment.

C. The CDP or CDPT will submit a written "progress" report to the Court on a monthly basis.

D. The CDP or CDPT will attend the multi-disciplinary staffing, including youth and family, scheduled seven to ten days before the CDDA youth's initial transition into the next phase of treatment and every other month thereafter as scheduled by the Case Manager.

E. Somerset Counseling Center will maintain a partnership with the Counties' Crisis Response Center, Lourdes Counseling Center, Lutheran Social Services, and Sunderland Family Services to determine mental health issues and needed treatment, including medication management. The CDP or CDPT will make referrals and will integrate any required medication into all phases of treatment.

F. The CDP or CDPT will discuss the need for an inpatient bed with the CDDA Case Manager or CDDA/Drug Court Case Manager following assessment, but prior to sentencing. The CDP or CDPT will make the referral and contact the inpatient facility for availability. The CDDA youth will receive Phase I Intensive Outpatient for 90 days within the community once he/she has returned from Intensive Inpatient Treatment. If no inpatient beds are available, then an interim treatment program will be provided by Somerset Counseling Center until a treatment bed becomes available.

G. The CDDA/Drug Court Case Manager or will notify Somerset Counseling Center of the need for a DASA certified youth assessment. If the youth is residing in the community prior to the disposition, he/she will be given an appointment day and time for the assessment at Somerset Counseling Center. If the youth is in Detention pending disposition, Somerset Counseling Center will complete the CDDA assessment in Detention. Priority will be given to requests for a CDDA assessment due to the Court's time constraints.

H. Somerset Counseling Center will enter data into the DASA Target System after completion of the CDDA assessment. If the youth is given the CDDA sentencing option and is referred for local treatment through Somerset Counseling Center, that agency will input all data into the Target System.

I. Somerset Counseling Center CDP or CDPT staff will have/have had cultural awareness/diversity training and will utilize the expertise and assistance from a DASA Certified Interpreter, when needed.

J. Somerset Counseling Center will participate in weekly Drug Court Team case staffing as requested by the Drug Court Coordinator or CDDA Drug/Court Case Manager.

K. The involvement of the family in a youth's recovery is recognized as an important part of the treatment and after-care process. The CDP or CDPT and Case Manager will meet with the youth, family and probation counselor as soon as possible after the youth is identified as a CDDA client. The CDP or CDPT will work closely with the Case Manager to assist in maintaining ongoing contact with the family support system, unless they are unavailable, with the hope of building rapport and developing a positive support system for the CDDA youth.

L. Reports are due, are as follows:

| REPORT | DATE DUE |
|---|---|
| Weekly Treatment Progress Report | Wednesday before 5:00 p.m. for each youth in treatment under this contract (Exhibit F) |
| Monthly Invoice for CDDA funded Payment and Service Data Report | 4th of each month following service provision |
| Copy of CDDA Youth portion of the documentation Title XIX Services | 4th of each month following service provision |

## IX. SUBCONTRACTING

The Contractor is prohibited from subcontracting any funding and/or services contained within this contract with the exception of personal services' contracts with individual substance abuse professionals.

## X. MONITORING AND EVALUATION

The Contractor shall cooperate with BFJJC in evaluation activities deemed appropriate by BFJJC.

## XI. LOCATION OF SERVICES

Services provided under this contract shall be made available within Benton and Franklin Counties. The Contractor shall not deny services to eligible patients based upon county of residence.

## XII. PATIENT ELIGIBILITY

The Contractor shall determine at time of intake if the patient has medical insurance that covers chemical dependency treatment services. If the patient has medical insurance that provides coverage for chemical dependency treatment services, the medical insurance must be used to pay for the treatment services, regardless of income. The Contractor shall consult with the BFJJC CDDA Case Manager for unclear or unusual situations.

The Contractor shall develop and employ policies and procedures to screen all patients for possible Title XIX eligibility and assure that patients receiving services supported by Title XIX funds meet the eligibility requirements in accordance with the billing instructions for Chemical Dependency Title XIX contractors.

## EXHIBIT B

## SCOPE OF SERVICES

## CDDA/DRUG COURT YOUTH COMMUNITY OUTPATIENT TREATMENT SERVICES

### I. SERVICE DEFINITION

CDDA/Drug Court Youth Community Outpatient Treatment Services provides substance abuse assessment and treatment services according to a prescribed plan in a non-residential setting. Youth and their families, who have been referred from BFJJC and identified as a part of the CDDA/Drug Court program, are eligible for subsidized services under this contract.

### II. LICENSING AND PROGRAM STANDARDS

A. The Contractor shall be reimbursed on a fee for service basis. A unit of service is defined as one hour of outpatient counseling provided by a chemical dependency professional (sometimes referred to herein as a counselor) or a chemical dependency professional trainee under supervision of a chemical dependency professional as provided in chapter 388-805 WAC.

B. The Contractor and the BFJJC will collaboratively develop protocol for maintaining linkages with juvenile courts, JRA offices, the youth's family, mental health services, residential youth treatment programs and other related individuals or organizations who may be involved in providing support services for patients.

C. The Contractor shall submit weekly treatment status reports on the CDDA/Drug Court patient's progress in treatment to the CDDA/Drug Court Coordinator or monthly treatment status reports on the CDDA patient's progress in treatment to the CDDA Coordinator, per RCW 13.40.165(6).

D. The Contractor shall develop a staff training plan and make training available to assure treatment staff receive information/education for addressing the specific issues related to youth and participate in ongoing training with the medical, health, and social service providers in the community.

E. The Contractor will develop a treatment plan for each CDDA/Drug Court youth that is specific to the gender, ethnicity, cultural and developmental needs of that youth.

### III. ELIGIBILITY

Services shall be provided to court-referred chemically dependent youth patients only, in accordance with this contract and applicable state laws, rules and regulations.

## IV. REIMBURSEMENT POLICIES

The Contractor shall be reimbursed for treatment services that meet the definition of medical necessity as determined by ASAM Patient Placement criteria or are court ordered by Benton and Franklin Counties Juvenile Court.

## V. REIMBURSEMENT LIMITATION

A. The Contractor shall bill according to the following sequence:

1. Contractor will vigorously pursue insurance coverage first. If a CDDA/Drug Court youth has insurance coverage, Contractor will work with the youth and family to obtain the full value of that coverage.

2. Contractor will obtain financial information from all CDDA/Drug Court youth and parents and advocate for and facilitate enrollment of all youth eligible for Title XIX. The Contractor shall make every effort to maximize the use of federal funds provided through Title XIX as a second source of treatment revenue, by identifying those patients who qualify for Title XIX, by billing Title XIX for treatment services for such patients and maximizing the use of state funding as match for Title XIX services. Charging non-Title XIX expenditures for services rendered to Title XIX eligible patients shall constitute an overpayment.

3. CDDA funds will be used first for assessment and urinalysis costs.

B. The Contractor shall assure that a unit of service is billed to only one contract and that these funds are not used to supplement for the difference in rates between funders allowed for units of service.

## VI. CDDA EVALUATION

A. CDDA examinations, upon request from BFJJC, shall be conducted by a chemical dependency professional supervised by the Contractor. The examination shall include a chemical dependency assessment, a proposed treatment plan, and the availability of treatment as well as all other components identified in RCW 13.40.165. The evaluation report shall be provided to the CDDA /Drug Court Case Manager or CDDA Case Manager on the **CDDA or Drug Court Referral Response Form (Exhibit D)** and the **CDDA Evaluation Report and Treatment Plan (Exhibit E).** These forms may be amended as required by written mutual agreement of the Contractor and the Juvenile Probation Counselor (JPC).

B. When requested, the **CDDA/Drug Court Evaluation Report and Treatment Plan** shall contain at a minimum the following:

1. The respondent's version of the facts and the official version of the facts, the respondent's offense history, an assessment of drug-alcohol problems and previous treatment attempts, the respondent's social educational, and employment situation, and other evaluation measures used.

2. The respondent's amenability to treatment and relative risk to the community. A proposed treatment plan shall be provided and shall include, at a minimum:

    a. Whether inpatient and/or outpatient treatment is recommended;
    b. Availability of appropriate treatment;
    c. Monitoring plans, including any requirements regarding living conditions, lifestyle requirements, and monitoring by family members, legal guardians, or others;
    d. Anticipated length of treatment;
    e. Recommended crime-related prohibitions; and
    f. Whether the respondent is amenable to treatment.

C. The Contractor shall use the DASA approved Dependency Assessment Tool to administer all assessment referrals from JPC related to the CDDA program.

D. The Contractor shall document efforts to involve the parents or other family members in the assessment process.

E. The Contractor shall provide a completed **CDDA or Drug Court Referral Response Form (Exhibit D)** within 72 hours of receiving the referral for in-custody juveniles or of the assessment interview for out-of-custody juveniles. The Contractor shall provide the completed **CDDA Evaluation Report and Treatment Plan (Exhibit E)** to BFJJC within seven (7) days of completing the assessment.

## VII. TREATMENT PLANNING

A. Services shall be delivered in accordance with the individualized treatment plan developed for every youth served in this program. ASAM Patient Placement criteria shall be used in developing and regularly updating the individualized treatment plan. Each treatment plan shall contain a goal of abstinence from alcohol or other drug usage. Each treatment plan shall contain original signatures of patient and counselor.

B. The treatment plan shall identify those services to which the patient and his/her family will be referred for medical, mental health and other forms of assistance. The Contractor will consult with the Juvenile Probation Counselor to provide one integrated plan of service including chemical dependency treatment, juvenile court provided programs and other

community services that address the youth's specific gender, ethnicity, cultural and developmental needs.

C. Individualized progress notes shall be completed for each patient participating in individual counseling sessions and in-group counseling sessions. Progress notes shall also be completed for family members receiving services. The individualized progress notes shall document date of session, duration of session, summary of discussion occurring during the session, indication of the patient's commitment to treatment, and description of problem addressed in relation to treatment plan, and shall be signed by the counselor. In addition, sign-in sheets shall be maintained for all group-counseling sessions.

## VIII. SERVICE SPECIFICS

A. The Contractor shall assure that services are designed and delivered in a manner sensitive to the needs of all ethnic minorities.

B. The Contractor shall attempt to gain participation of the families of patients in treatment. All interactions with families of patients shall be documented in respective patient files. Services to family members may be provided in either individual counseling sessions or group counseling sessions, as outlined in the individualized treatment plan of each patient

C. Youth needing a mental health assessment or medications will be referred to a mental health and/or medical provider.

D. Minimum Program Requirements

1. Utilize a DASA approved assessment process. Currently, the DASA Adolescent Biopsychosocial Diagnostic Intake ASAM assessment is preferred.

2. Utilize the "Case Management Standards for Chemically Dependent Youth". Provide case management by either provider or court whichever agency is performing the standards.

3. Conduct random urinalysis testing

4. Provide a signed letter of agreement between the Juvenile Court Administrator and County Drug and Alcohol Coordinator, describing the plan, other funding resources and vendor partnerships.

5. Each project must be consistent with proven effective elements detailed in **The Effectiveness Standards for Treatment of Chemical Dependency in Juvenile Offenders: A Review of the Literature** (UW, January 1998).

6. Treatment should be delivered in the least restrictive setting, while considering issues of community safety.

7. Treatment must be comprehensive and address the problems identified by the evaluation process (e.g., psychiatric disturbance, and sexual abuse).

8. Treatment must involve family, or a family substitute, in all aspects of planning, discharge recommendations, and continuing care.

9. Cognitive-behavioral therapy with youth and families should be the primary therapeutic techniques. The 2002 University of Washington CDDA Report cites Function Family Therapy as an effective program for a family intervention and recommends family therapy services for improved outcomes with CDDA youth.

10. General life skills, decision-making, and coping-skills education and training should be provided.

11. Relapse prevention must be stressed.

12. Treatment must be a continuum of care. Upon discharge from a program, additional services are provided and coordinated in decreasing frequency, so that each adolescent will have services available for at least 12 months.

13. Courts utilizing a deferred disposition order or stipulated order of continuance for CDDA eligible youth shall ensure that youth meet all statutory eligibility, treatment, and case management standards.

## EXHIBIT C

## CDDA SERVICES REIMBURSEMENT RATES
## July 1, 2021 – June 30, 2023

**A.** **Assessment**. The maximum fee payable for a CDDA assessment is **One Hundred Seventy-Eight Dollars and Eighty-One Cents ($178.81)**. Services shall be documented and billed monthly on the invoice and the Treatment Progress Report as attached in Exhibit F.

**B.** **Treatment**. The Contractor shall bill the Counties at the rate contained in subsection C, below in accordance with the Plan/Alternative Plan as ordered by the Court including reasonable charges for consultations with collateral contacts and report writing. Appointments missed or canceled by the client less than twenty-four (24) hours prior to the appointment time may be billed; however, the Contractor may bill the Counties for only one "no show" (failure to appear) missed appointment per client for any six-month period of time. The Contractor shall immediately notify the JPC of said unexcused absence and shall schedule no further appointments for the client until the problem that caused the "no show" has been resolved. If the Contractor is late or the session is shortened, the appointment shall be charged to the nearest one-half.

**C.** **Rates/Fees**. The rates and/or fees charged to the Counties by the Contractor shall be:

**1.** **Intensive Outpatient Treatment**

a. At least 6 hours but not more than 8 hours of Group Counseling/week **@ $52.68/hour, maximum per client per month $2,107.20**

b. 1 hour of Individual Counseling/week @ **$140.40/hour, maximum per client per month $702.00**

c. Random urinalysis (4/month) @ **$30.59 each, $122.36/month**

**2.** **Phase I Structured Outpatient Continuing Care**

a. At least 3 hours but not more than 6 hours of Group Counseling/week **@ $52.68/hour, maximum per client per month $1,580.40**

b. 1 hour of Individual Counseling/week @ **$140.40/hour, maximum per client per month $702.00**

c. Random urinalysis (4/month) @ **$30.59 each, $122.36/month**

3. **Community-Based Outpatient or Phase II-Outpatient Continuing Care**

   a. 1 hour of Support Group/week @ **$52.68/hour, maximum per client per month $263.40**

   b. 1 hour of Individual Counseling/week @ **$140.40/hour, maximum per client per month $702.00**

   c. Random urinalysis (3/month) @ **$30.59 each, $91.77/month**

4. **Pre-Treatment (within a 14-day period only)**

   a. Individual Counseling Brief @ **$43.23/hour, $86.46 maximum per client per month**

   b. Urinalysis 1 only @ **$30.59**

# EXHIBIT D

## CDDA OR DRUG COURT REFERRAL RESPONSE FORM

**YOUTH NAME:** _____

( ) **Youth eligible for CDDA**

( ) **Youth eligible for Drug Court CDDA**

( ) **Youth is not eligible for CDDA**

- **a. Is not chemically dependent**
- **b. Is chemically dependent but not amenable**

( ) **Youth needs:**

- ( ) **Inpatient Treatment**
- ( ) **Outpatient Treatment**

**Probation Counselor** _____

**Assessment Counselor** _____

# EXHIBIT E

## CDDA Evaluation Report and Treatment Plan

**Name:** _____

**Address:** _____

**SCOMIS No:** _____

On _____, _____ was evaluated for a Chemical Dependency Disposition Alternative. Administered were the Adolescent Drug Abuse Diagnosis Interview Instrument and the K-SADS Interview. Based upon the information gathered and comparison with the DSM IV, _____ meets the criteria for _____ Dependency.

1. **DSM IV Rationale**

   A. **Pattern of established use:**

   B. **Impairment of social or occupational functioning:**

   C. **Tolerance or withdrawal:**

   D. **Continued use despite adverse consequences and failed treatment attempts:**

2. **Substance Use History:**

3. **Social History:**

4. **Offense History:**

5. **Education and Employment History:**

6. **Client's version of the facts:**

7. **Official version of the facts:**

8. **Amenability to Treatment:**

9. **Community Risk:**

**Recommendations:** Based on the information gathered and diagnostic impression,____ _____ meets the criterion for a Chemical Dependency Disposition Alternative. Please see attached treatment plan.

# EXHIBIT F
## Treatment Progress Report
### (Circle) CDDA/Drug Court/ARY Drug Court/Probation

CLIENT NAME: _____ **TX Agency: Northwest Alternatives**

Review Period Month — Next Court Date:

From: _____ To: _____ _____ / _____ / _____ / _____ / _____

**Probation Counselor** _____ **TX Phase: 1 2 3**

**Group and Individual Attendance:**

| A = Absent | P = Present | I = Intake | E = Evaluation |
|---|---|---|---|

| **Date:** | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Group:** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Individual:** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

**Drug Testing:**

| RP = Results Pending | + = Positive | - = Negative | M = Missed | AL = Alcohol | C = Cocaine |
|---|---|---|---|---|---|
| ME = Methamphetamine | OP = Opiate | THC = Marijuana | Oth = Other | | |

| **Date:** | 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 | 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 | 21 | 22 | 23 | 24 | 25 | 26 | 27 | 28 | 29 | 30 | 31 |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| **Code:** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |
| **Positive Drug Code:** | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | | |

**Number of sober support meetings** **RECOMMENDED** ____ **ATTENDED** _____ **VERIFIED** ____

**Progress Notes:**

**Week 1:** _____

Progress in TX: Fair Good Excellent Poor Non-compliant Relapsing

**Week 2:** _____

Progress in TX: Fair Good Excellent Poor Non-compliant Relapsing

**Week 3:** _____

Progress in TX: Fair Good Excellent Poor Non-compliant Relapsing

**Week 4:** _____

Progress in TX: Fair Good Excellent Poor Non-compliant Relapsing

**Week 5:** _____

Progress in TX: Fair Good Excellent Poor Non-compliant Relapsing

**Recommendations:** _____

**Employed:** **Yes** **No** **Employer:** _____

**Attending School:** **Yes** **No** **School Name:** _____

**Counselor Signature** **Date:** _____

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | FC 08/24/21 BC 09/14/21 |
| **Subject:** | Execute the First Amendment to Correct Expiration Date of Interlocal Agreement Between JJC & KSD Detention Alternative School Program |
| **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:** | **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 purpose is to correct expiration date on Benton County Res. No. 2021-597 and Franklin County Res. No. 2021-154, to appropriately refelct the Interlocal Agreement shall expire on August 31, 2023.

## Fiscal Impact

There is no fiscal impact to either county nor the BFJJC.

## Recommendation

We recommend that the Boards of County Commissioners of Benton and Franklin Counties sign the resolution to accept purposed correction.

## 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 EXECUTING THE FIRST AMENDMENT TO INTERLOCAL AGREEMENT EXECUTED BY BENTON COUNTY RES. NO. 2021-597 AND FRANKLIN COUNTY RES. NO. 2021-154 BETWEEN THE JUVENILE JUSTICE CENTER AND KENNEWICK SCHOOL DISTRICT**

**WHEREAS,** the purpose of this First Amendment is to correct expiration date on the Benton County Res. No. 2021-597 and Franklin County Res. No. 2021-154; and

**WHEREAS,** Section 6 "General Terms", subsection 6.1 "Duration" of Interlocal Agreement accurately reflects duration of agreement as two (2) years and "in effect for the 2022-2023 school year"; **NOW, THEREFORE**

**BE IT RESOLVED,** that the Board of Benton County Commissioners and the Board of Franklin County Commissioner hereby accepts the purposed First Amendment to correct resolution expiration date to August 31, 2023;

**BE IT RESOLVED,** that the Chair of the Board of Benton County Commissioners and the Chair of the Board of Franklin County Commissioners approve First Amendment to Benton County Res. No. 2021-597 and Franklin County Res. No. 2021-154 of the Interlocal Agreement between Juvenile Justice Center and Kennewick School District; and

**BE IT FURTHER RESOLVED**, the term of the First Amendment shall commence September 1, 2021 and expires on August 31, 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-KSD-Amend #1, 1-Juvenile

R. Garcia

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN FUND NUMBER 0000101, DEPARTMENT NUMBER 136

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor, File,

Prepared by: E Hsu

EXHIBIT "A"

# BENTON COUNTY LINE ITEM TRANSFER

Dept Name: Office of Public Defense  Dept Nbr: 136

Fund Name: Current Expense  Fund Nbr: 0000-101

TRANSFER FROM: Dept 136  TRANSFER TO: Dept 136

| BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT | BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT |
|---|---|---|---|---|---|---|---|
| 515.919 | 4103 | Professional Services | $36 | 515.910 | 3503 | Computer Software | $36 |
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| TOTAL | | | $36 | TOTAL | | | $36 |

Explanation:

Addiitonal funding needed for e-signature software costs. OPD staff attorneys need the ability to address a large backlog of cases primarily resulting from COVID factors.

Prepared by: Eric Hsu  Date: 30-Aug-2021

Approved ☐  Denied ☐  Date: _____

_____
Chairman

_____
Member

_____
Member

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14 ,2021 |
| **Subject:** | Bi-County Juvenile Dependency Cost Division for 2022 |
| **Presenter:** | None |
| **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 and Franklin Counties split the cost of providing legally mandated public defense services to children involved in dependency cases filed in either of the two counties. The terms of the arrangement were established in Benton County Resolution 2018-730 (bi-county resolution). Resolution 2018-730 requires that the exact percentage amounts of the cost share be established every year via bi-county resolution. The proposed resolution establishes the share rate for calendar year 2022 using the formula in Resolution 2018-730.

## Fiscal Impact

None – this resolution addresses the allocation of costs between the counties only.

## Recommendation

Adopt resolution to establish the cost division between Benton and Franklin Counties for dependency and termination of parental rights cases filed in the counties that are eligible for public defense. Pursuant to Benton County Resolution 2018-730 and Franklin County Resolution 2018-298, the percentage rates by which to divide the costs of juvenile dependency public defense contracts between Benton and Franklin Counties for the year 2022 is 67% allocated to Benton County and 33% allocated to Franklin County.

## Suggested Motion

N/A – Consent Agenda

# BI-COUNTY RESOLUTION

**BENTON COUNTY RESOLUTION**

**FRANKLIN COUNTY RESOLUTION** 2021-172

**BEFORE THE BOARDS OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON & FRANKLIN COUNTY, WASHINGTON.**

**IN THE MATTER OF ESTABLISHING THE PERCENTAGE RATES BY WHICH TO DIVIDE THE COSTS OF JUVENILE DEPENDENCY PUBLIC DEFENSE CONTRACTS BETWEEN BENTON AND FRANKLIN COUNTIES FOR YEAR 2022.**

**WHEREAS,** Benton County and Franklin County ("Counties") are obligated by law to provide indigent defense services ("Services") in Benton and Franklin County Juvenile Court to affected children in dependency cases ("Cases"); and

**WHEREAS,** the Counties use the same group of attorneys, under contract separately with each County to provide Services on Cases and, by and through Benton County Resolution 2018-730 and Franklin County Resolution 2018-298, have established a formula to establish the percentage rates by which to divide the costs of juvenile dependency public defense contracts for each calendar year; and

**WHEREAS,** based on the formula established in Benton County Resolution 2018-730 and Franklin County Resolution 2018-298, and as shown in Exhibit A, the correct percentage rates by which to divide the costs of juvenile dependency public defense contracts between Benton and Franklin Counties for the year 2022 is 67% allocated to Benton County and 33% allocated to Franklin County, **NOW, THEREFORE**

**BE IT RESOLVED** that pursuant to Benton County Resolution 2018-730 and Franklin County Resolution 2018-298, the percentage rates by which to divide the costs of juvenile dependency public defense contracts between Benton and Franklin Counties for the year 2022 is 67% allocated to Benton County and 33% allocated to Franklin County.

Dated this . . . . . day of . . . . . , 20 . . . .

_____
Chairman of the Board

_____
Chairman Pro-Tem

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

Attest: . . . . . .
Clerk of the Board

Dated this 10 day of August, 2021.

Chairman of the Board

Chairman Pro-Tem

Member
Constituting the Board of County Commissioners, Franklin County Washington

Attest: Karin Mitham
Clerk of the Board

cc: Originals – Benton County OPD; Franklin County OPD
Copy – Auditor, Juvenile Court

# Exhibit A

## Proportion of Juvenile Dependency and Termination of Parental Rights Cases by County

| Filings | Benton | Franklin |
|---|---|---|
| 2016 | 114 | 54 |
| 2017 | 88 | 66 |
| 2018 | 78 | 56 |
| 2019 | 112 | 40 |
| 2020 | 138 | 45 |
| **TOTAL** | **530** | **261** |
| **Proportion** | **0.67** | **0.33** |

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN COUNTY ROAD FUND NUMBER 0101101, DEPARTMENT NUMBER 500

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto .

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept., Auditor

Prepared by: S. Berry

EXHIBIT "A"

# BENTON COUNTY LINE ITEM TRANSFER

Dept Name: ROAD  Dept Nbr: 500

Fund Name: County Road  Fund Nbr: 0101101

TRANSFER FROM:  TRANSFER TO:

| BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT | BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT |
|---|---|---|---|---|---|---|---|
| 544.200 | 4100 | Professional Services | $3,500 | 544.200 | 3503 | Computer Software | $3,500 |
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| TOTAL | | | $3,500 | TOTAL | | | $3,500 |

Explanation:

This LIT is necessary to purchase (5) Bluebeam Revu Standard licenses, the maintenance annual subscription and annual licensing. This software will be used to supplement the new intergov permitting software.

Prepared by: Shela Berry  Date: 25-Aug-2021

Approved ❑  Denied ❑  Date: _____

_____
Chairman

_____
Member

_____
Member

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14th, 2021 |
| **Subject:** | Award the contract for 2021 Crack Seal Project to Construction Ahead INC. |
| **Presenter:** | N/A |
| **Prepared By:** | Cristina Woods |
| **Reviewed By:** | Douglas D'Hondt |

**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 2021-604 a call for bids was advertised for C.E. 2122 SMP – 2021 Crack Seal (CB21-10). On September 2nd, 2021 four bids were received and opened in the amounts shown on the attached tabulation. Construction Ahead, INC. was the lowest bidder at $365,287.00. The County Engineer recommends award of the bid to Construction Ahead, INC.

A contract will be brought back to the Board at a later date.

## Fiscal Impact

**Amount:** $365,287.00

**Fund:** Road Fund (0101101)

## Recommendation

It is recommended by the County Engineer that the Board concur and award the contract for C.E. 2122 SMP – 2021 Crack Seal to Construction Ahead, INC.

## Suggested Motion

Approve as part of the Consent Agenda.

**RESOLUTION**

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF AWARDING C.E. 2122 SMP – 2021 CRACK SEAL TO CONSTRUCTION AHEAD, INC, KENNEWICK, WASHINGTON**

**WHEREAS,** the County Engineer scheduled a bid call for C.E. 2122 SMP – 2021 Crack Seal; and

**WHEREAS,** four bids were received and opened on September 2, 2021, and are as set forth on the attached tabulation

| | |
|---|---|
| Construction Ahead, INC. (CONSTA1083L5)<br>Kennewick, Washington | $ 365,287.00 |
| Central Paving, LLC (CENTRPL856RJ)<br>Ellensburg, Washington | $ 481,025.00 |
| C.R. Contracting, LLC (CRCONRC896DG)<br>Bend, Oregon | $ 490,447.00 |
| Stripe Rite, INC. (STRIPRI121JM)<br>Kennewick, Washington | $ 640,404.00 |

**WHEREAS,** the County Engineer recommends award of the bid to Construction Ahead, INC., Kennewick, Washington as the lowest bidder; **NOW, THEREFORE,**

**BE IT RESOLVED** the Board of County Commissioners concurs with the County Engineer's recommendation and awards the bid for C.E. 2122 SMP – 2021 Crack Seal to Construction Ahead, INC., Kennewick, Washington in the amount of $365,287.00; and

**BE IT FURTHER RESOLVED** the Board of Benton County Commissioners direct staff to prepare a contract with Construction Ahead, INC. to be brought back to the Board for approval at a later date.

Dated this 14th day of September, 2021.

_____
Chairman.

_____
Chairman Pro-Tem.

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

Attest:_____
Clerk of the Board

Orig.: Public Works C. Woods

| **PROJECT: CE 2122 SMP - 2021 CRACK SEAL-BST AREA 6** | | | | **Construction Ahead Inc.** | | **Central Paving, LLC** | | **C.R. Contracting, LLC** | | **Stripe Rite Inc** | | **ENGINEER'S** | |
|---|---|---|---|---|---|---|---|---|---|---|---|---|---|
| LOCATION: BENTON COUNTY | | | | **Pavement Surface Control** | | **140 W Dolarway Rd** | | **64435 Strickler Ave Ste 100** | | **723 W. Deschutes Ave** | | **ESTIMATE** | |
| LET BY: BOARD OF COUNTY COMMISSIONERS | | | | 9312 W 10th Ave | | **Ellensburg** | | **Bend** | | **Kennewick** | | | |
| DATE: September 2, 2021; 10:30 a.m., Local Time | | | | **Kennewick, WA 99336** | | **WA 98926** | | **OR 97703** | | **WA 99336** | | | |
| ITEM NO | ITEM DESCRIPTION | QTY | UNIT | UNIT PRICE | BID AMOUNT | PRICE | BID AMOUNT | PRICE | BID AMOUNT | UNIT PRICE | BID AMOUNT | UNIT PRICE | BID AMOUNT |
| 1 | CRACK SEALING-TON | 123.00 | TONS | 2,435.00 | 299,505.00 | 3,175.00 | 390,525.00 | 3,485.00 | 428,655.00 | 4,268.00 | 524,964.00 | 3,000.00 | 369,000.00 |
| 2 | PROJECT TEMPORARY TRAFFIC CONTROL | 1.00 | L.S. | 65,000.00 | 65,000.00 | 90,000.00 | 90,000.00 | 59,842.00 | 59,842.00 | 114,940.00 | 114,940.00 | 30,000.00 | 30,000.00 |
| 3 | SPCC PLAN | 1.00 | L.S. | 782.00 | 782.00 | 500.00 | 500.00 | 1,950.00 | 1,950.00 | 500.00 | 500.00 | 500.00 | 500.00 |
| **TOTAL BID** | | | | **$** | **365,287.00** | **$** | **481,025.00** | **$** | **490,447.00** | **$** | **640,404.00** | **$** | **399,500.00** |

PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned, (insert name of company) Construction Ahead Inc, dba Pavement Surface Control hereby certifies that they have examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

**CE 2122 SMP – 2021 CRACK SEAL PROJECT**

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

| ITEM NO. | QTY. | UNIT | ITEM DESCRIPTION | PRICE PER UNIT | | AMOUNT | |
|---|---|---|---|---|---|---|---|
| | | | | Dollars | Cts. | Dollars | Cts. |
| 1 | 123 | TONS | CRACK SEALING - TON | 2435 | 00 | 299505 | 00 |
| 2 | 1 | L.S. | PROJECT TEMPORARY TRAFFIC CONTROL | 65,000 | 00 | 65,000 | 00 |
| 3 | 1 | L.S. | SPCC PLAN | 782 | 00 | 782 | 00 |
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| | **TOTAL** | | | | | 365 287 | 00 |

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

| | | |
|---|---|---|
| Cashier's Check | _____ | In the Amount of _____ |
| Certified Check | _____ | ($_____) Payable to the County Treasurer of Benton County, Washington. |
| Proposal Bond | X | In the amount of 5% of the Bid. |

Receipt is hereby acknowledged of Addendum No(s). 1, 2, & —.

## PUBLIC WORKS TRAINING

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

## ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

## NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

PROPOSAL
(Cont.')

## NOTICE TO ALL BIDDERS

To report bid rigging activities call:

**1-800-424-9071**

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

CONTRACTOR'S REGISTRATION NO. CONSTA108365

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 745532007

FIRM NAME: Construction Ahead Inc, dba Pavement Surface Control

Dorothy J McDaniel

SIGNATURE OF AUTHORIZED OFFICIAL

Dorothy J McDaniel, President

(PRINT NAME AND TITLE)

SIGNATURE OF AUTHORIZED OFFICIAL

(PRINT NAME AND TITLE)

PROPOSAL MUST BE SIGNED

DATED this 2nd day of September, 2021.

ADDRESS OF BIDDER: 9312 W 10th Avenue, Kennewick, WA 99336

PRINCIPAL PLACE OF BUSINESS: 9312 W 10th Avenue, Kennewick WA 99336

TELEPHONE NO.: (509) 586-1969 EMAIL: dorothy@pavementsurface.com

NOTE: (1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.

(2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, Construction Ahead, Inc. dba Pavement Surface Control

of Kennewick, Washington

as principal, and the The Ohio Casualty Insurance Company, a corporation

duly organized under the laws of the State of New Hampshire, and authorized

to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

CE 2122 SMP – 2021 CRACK SEAL PROJECT

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of **ten (10) days** from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be

signed and sealed this 2nd day of September, 2021.

Construction Ahead, Inc. dba Pavement Surface Control

(Principal)

The Ohio Casualty Insurance Company

(Surety)

(Attorney-in-fact) Kirsten K. Jordan

This Power of Attorney limits the acts of those named herein, and they have no authority to bind the Company except in the manner and to the extent herein stated.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

Certificate No: 8206154-974308

# POWER OF ATTORNEY

**KNOWN ALL PERSONS BY THESE PRESENTS:** That The Ohio Casualty Insurance Company is a corporation duly organized under the laws of the State of New Hampshire, that Liberty Mutual Insurance Company is a corporation duly organized under the laws of the State of Massachusetts, and West American Insurance Company is a corporation duly organized under the laws of the State of Indiana (herein collectively called the "Companies"), pursuant to and by authority herein set forth, does hereby name, constitute and appoint, Charles E. Hudon; Jacqueline F. Hernandez; Jodi Clayton; Kimberley A. Fall; Kirsten K. Jordan; Kristina Schrader

all of the city of Pasco state of WA each individually if there be more than one named, its true and lawful attorney-in-fact to make, execute, seal, acknowledge and deliver, for and on its behalf as surety and as its act and deed, any and all undertakings, bonds, recognizances and other surety obligations, in pursuance of these presents and shall be as binding upon the Companies as if they have been duly signed by the president and attested by the secretary of the Companies in their own proper persons.

**IN WITNESS WHEREOF,** this Power of Attorney has been subscribed by an authorized officer or official of the Companies and the corporate seals of the Companies have been affixed thereto this 17th day of August, 2021.

Liberty Mutual Insurance Company
The Ohio Casualty Insurance Company
West American Insurance Company

By: _____
David M. Carey, Assistant Secretary

State of PENNSYLVANIA
County of MONTGOMERY ss

On this 17th day of August, 2021 before me personally appeared David M. Carey, who acknowledged himself to be the Assistant Secretary of Liberty Mutual Insurance Company, The Ohio Casualty Company, and West American Insurance Company, and that he, as such, being authorized so to do, execute the foregoing instrument for the purposes therein contained by signing on behalf of the corporations by himself as a duly authorized officer.

**IN WITNESS WHEREOF,** I have hereunto subscribed my name and affixed my notarial seal at King of Prussia, Pennsylvania, on the day and year first above written.

Commonwealth of Pennsylvania - Notary Seal
Teresa Pastella, Notary Public
Montgomery County
My commission expires March 28, 2025
Commission number 1126044
Member, Pennsylvania Association of Notaries

By: _____
Teresa Pastella, Notary Public

This Power of Attorney is made and executed pursuant to and by authority of the following By-laws and Authorizations of The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company which resolutions are now in full force and effect reading as follows:

**ARTICLE IV – OFFICERS:** Section 12. Power of Attorney.
Any officer or other official of the Corporation authorized for that purpose in writing by the Chairman or the President, and subject to such limitation as the Chairman or the President may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Corporation to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact, subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Corporation by their signature and execution of any such instruments and to attach thereto the seal of the Corporation. When so executed, such instruments shall be as binding as if signed by the President and attested to by the Secretary. Any power or authority granted to any representative or attorney-in-fact under the provisions of this article may be revoked at any time by the Board, the Chairman, the President or by the officer or officers granting such power or authority.

**ARTICLE XIII – Execution of Contracts:** Section 5. Surety Bonds and Undertakings.
Any officer of the Company authorized for that purpose in writing by the chairman or the president, and subject to such limitations as the chairman or the president may prescribe, shall appoint such attorneys-in-fact, as may be necessary to act in behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations. Such attorneys-in-fact subject to the limitations set forth in their respective powers of attorney, shall have full power to bind the Company by their signature and execution of any such instruments and to attach thereto the seal of the Company. When so executed such instruments shall be as binding as if signed by the president and attested by the secretary.

**Certificate of Designation** – The President of the Company, acting pursuant to the Bylaws of the Company, authorizes David M. Carey, Assistant Secretary to appoint such attorneys-in-fact as may be necessary to act on behalf of the Company to make, execute, seal, acknowledge and deliver as surety any and all undertakings, bonds, recognizances and other surety obligations.

**Authorization** – By unanimous consent of the Company's Board of Directors, the Company consents that facsimile or mechanically reproduced signature of any assistant secretary of the Company, wherever appearing upon a certified copy of any power of attorney issued by the Company in connection with surety bonds, shall be valid and binding upon the Company with the same force and effect as though manually affixed.

I, Renee C. Llewellyn, the undersigned, Assistant Secretary, The Ohio Casualty Insurance Company, Liberty Mutual Insurance Company, and West American Insurance Company do hereby certify that the original power of attorney of which the foregoing is a full, true and correct copy of the Power of Attorney executed by said Companies, is in full force and effect and has not been revoked.

**IN TESTIMONY WHEREOF,** I have hereunto set my hand and affixed the seals of said Companies this 2nd day of September, 2021.

By: _____
Renee C. Llewellyn, Assistant Secretary

Not valid for mortgage, note, loan, letter of credit, currency rate, interest rate or residual value guarantees.

For bond and/or Power of Attorney (POA) verification inquiries, please call 610-832-8240 or email HOSUR@libertymutual.com.

COUNTY OF
BENTON
WASHINGTON

## Proposal for Incorporating Recycled Materials into the Project

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E. Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: 0 percent.

*Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.*

Bidder: Construction Ahead Inc, dba Pavement Surface Control

Signature: [signature]

Date: September 2 2021

**This form must be submitted with the Bid Proposal or as a Supplement to the Bid no later than 24 hours after the time for delivery of the Bid Proposal, as provided for in Section 1-02.9 of the Contract Provisions.**

# Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date, August 26th, 2021, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

**I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.**

Construction Ahead Inc. dba Pavement Surface Control
Bidder's Business Name

Signature of Authorized Official*

Dorothy J McDaniel
Printed Name

President
Title

9/2/2021 | Kennewick | WA
Date | City (where signed) | State

*Check One:*

Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☒

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington

If a co-partnership, give firm name under which business is transacted:

_____

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

# PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned, (insert name of company) Central Paving, LLC hereby certifies that they have examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

## CE 2122 SMP – 2021 CRACK SEAL PROJECT

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

| ITEM NO. | QTY. | UNIT | ITEM DESCRIPTION | PRICE PER UNIT | | AMOUNT | |
|---|---|---|---|---|---|---|---|
| | | | | Dollars | Cts. | Dollars | Cts. |
| 1 | 123 | TONS | CRACK SEALING - TON | $3,175 | 00 | $390,525 | 00 |
| 2 | 1 | L.S. | PROJECT TEMPORARY TRAFFIC CONTROL | $90,000 | 00 | $90,000 | 00 |
| 3 | 1 | L.S. | SPCC PLAN | $500 | 00 | $500 | 00 |
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| | | | | | | | |
| | **TOTAL** | | | | | $481,025 | 00 |

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

| | | |
|---|---|---|
| Cashier's Check | _____ | In the Amount of _____ |
| Certified Check | _____ | ($_____) Payable to the County Treasurer of Benton County, Washington. |
| Proposal Bond | X | In the amount of 5% of the Bid. |

Receipt is hereby acknowledged of Addendum No(s). 1, 2, & _____.

## PUBLIC WORKS TRAINING

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

## ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

## NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

PROPOSAL
(Cont.')

## NOTICE TO ALL BIDDERS

To report bid rigging activities call:

**1-800-424-9071**

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

CONTRACTOR'S REGISTRATION NO. CENTRPL856RJ

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 075285-00-0

FIRM NAME: Central Paving, LLC

SIGNATURE OF AUTHORIZED OFFICIAL — Joel Greear, Managing Member (PRINT NAME AND TITLE)

SIGNATURE OF AUTHORIZED OFFICIAL — (PRINT NAME AND TITLE)

PROPOSAL MUST BE SIGNED

DATED this 1 day of September, 20 21.

ADDRESS OF BIDDER: 1410 W Dolarway Rd, Ellensburg WA 98926

PRINCIPAL PLACE OF BUSINESS: 1410 W Dolarway Rd, Ellensburg WA 98926

TELEPHONE NO.: (509) 929-1044 EMAIL: team@centralpavingllc.com

NOTE: (1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.

(2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, Central Paving, LLC

of Ellensburg, WA

as principal, and the North American Specialty Insurance Company, a corporation

duly organized under the laws of the State of NH, and authorized

to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

CE 2122 SMP – 2021 CRACK SEAL PROJECT

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of **ten (10) days** from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be

signed and sealed this 1st day of September, 2021.

Central Paving, LLC

(Principal)

North American Specialty Insurance Company

(Surety)

(Attorney-in-fact) Lori McKimmy, Attorney-in-Fact

**SWISS RE CORPORATE SOLUTIONS**

NORTH AMERICAN SPECIALTY INSURANCE COMPANY
WASHINGTON INTERNATIONAL INSURANCE COMPANY

# GENERAL POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, THAT North American Specialty Insurance Company, a corporation duly organized and existing under laws of the State of New Hampshire, and having its principal office in the City of Overland Park, Kansas, and Washington International Insurance Company, a corporation organized and existing under the laws of the State of New Hampshire and having its principal office in the City of Overland Park, Kansas, each does hereby make, constitute and appoint:

KENNETH J. FRICK, LORI McKIMMY,
DONNA MARTINEZ, AARON McCOY, and RODNEY C. LEWIS
JOINTLY OR SEVERALLY

Its true and lawful Attorney(s)-in-Fact, to make, execute, seal and deliver, for and on its behalf and as its act and deed, bonds or other writings obligatory in the nature of a bond on behalf of each of said Companies, as surety, on contracts of suretyship as are or may be required or permitted by law, regulation, contract or otherwise, provided that no bond or undertaking or contract or suretyship executed under this authority shall exceed the amount of:

FIFTY MILLION ($50,000,000.00) DOLLARS

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Boards of Directors of both North American Specialty Insurance Company and Washington International Insurance Company at meetings duly called and held on the 9th of May, 2012:

"RESOLVED, that any two of the Presidents, any Managing Director, any Senior Vice President, any Vice President, any Assistant Vice President, the Secretary or any Assistant Secretary be, and each or any of them hereby is authorized to execute a Power of Attorney qualifying the attorney named in the given Power of Attorney to execute on behalf of the Company bonds, undertakings and all contracts of surety, and that each or any of them hereby is authorized to attest to the execution of any such Power of Attorney and to attach therein the seal of the Company; and it is

FURTHER RESOLVED, that the signature of such officers and the seal of the Company may be affixed to any such Power of Attorney or to any certificate relating thereto by facsimile, and any such Power of Attorney or certificate bearing such facsimile signatures or facsimile seal shall be binding upon the Company when so affixed and in the future with regard to any bond, undertaking or contract of surety to which it is attached."

NORTH AMERICAN SPECIALTY INSURANCE COMPANY CORPORATE SEAL 1973 NEW HAMPSHIRE

By _____
Steven P. Anderson, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company

By _____
Michael A. Ito, Senior Vice President of Washington International Insurance Company
& Senior Vice President of North American Specialty Insurance Company

WASHINGTON INTERNATIONAL INSURANCE COMPANY CORPORATE SEAL NEW HAMPSHIRE

IN WITNESS WHEREOF, North American Specialty Insurance Company and Washington International Insurance Company have caused their official seals to be hereunto affixed, and these presents to be signed by their authorized officers this 26 day of JANUARY, 2018.

**North American Specialty Insurance Company**
**Washington International Insurance Company**

State of Illinois
County of Cook ss:

On this 26 day of JANUARY, 2018, before me, a Notary Public personally appeared Steven P. Anderson, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company and Michael A. Ito, Senior Vice President of Washington International Insurance Company and Senior Vice President of North American Specialty Insurance Company, personally known to me, who being by me duly sworn, acknowledged that they signed the above Power of Attorney as officers of and acknowledged said instrument to be the voluntary act and deed of their respective companies.

OFFICIAL SEAL
M. KENNY
Notary Public - State of Illinois
My Commission Expires
12/04/2021

_____
M. Kenny, Notary Public

I, Jeffrey Goldberg, the duly elected Assistant Secretary of North American Specialty Insurance Company and Washington International Insurance Company, do hereby certify that the above and foregoing is a true and correct copy of a Power of Attorney given by said North American Specialty Insurance Company and Washington International Insurance Company, which is still in full force and effect.

IN WITNESS WHEREOF, I have set my hand and affixed the seals of the Companies this 1st day of September, 2021.

_____
Jeffrey Goldberg, Vice President & Assistant Secretary of
Washington International Insurance Company & North American Specialty Insurance Company

COUNTY OF BENTON WASHINGTON

**Proposal for Incorporating Recycled Materials into the Project**

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E. Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: 0 percent.

*Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.*

Bidder: Central Paving, LLC

Signature:

Date: 09/01/2021

BENTON COUNTY WASHINGTON

**This form must be submitted with the Bid Proposal or as a Supplement to the Bid no later than 24 hours after the time for delivery of the Bid Proposal, as provided for in Section 1-02.9 of the Contract Provisions.**

# Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date September 2, 2021, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

**I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.**

Central Paving, LLC
Bidder's Business Name

Signature of Authorized Official*

Joel Greear
Printed Name

Managing Member
Title

09/01/2021 | Ellensburg | WA
Date | City (where signed) | State

*Check One:*

Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☒

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington

If a co-partnership, give firm name under which business is transacted:

_____

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

# PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned, (insert name of company) C.R. Contracting, LLC hereby certifies that they have examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

## CE 2122 SMP – 2021 CRACK SEAL PROJECT

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

| ITEM NO. | QTY. | UNIT | ITEM DESCRIPTION | PRICE PER UNIT | | AMOUNT | |
|---|---|---|---|---|---|---|---|
| | | | | Dollars | Cts. | Dollars | Cts. |
| 1 | 123 | TONS | CRACK SEALING - TON | 3,485 | 00 | 428,655 | 00 |
| 2 | 1 | L.S. | PROJECT TEMPORARY TRAFFIC CONTROL | 59,842 | 00 | 59,842 | 00 |
| 3 | 1 | L.S. | SPCC PLAN | 1,950 | 00 | 1,950 | 00 |
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| | **TOTAL** | | | | | 490,447 | 00 |

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

| | | |
|---|---|---|
| Cashier's Check | _____ | In the Amount of _____ |
| Certified Check | _____ | ($_____) Payable to the County Treasurer of Benton County, Washington. |
| Proposal Bond | ✓ | In the amount of 5% of the Bid. |

Receipt is hereby acknowledged of Addendum No(s). 1, 2, & _____.

## PUBLIC WORKS TRAINING

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

## ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

## NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

## NOTICE TO ALL BIDDERS

To report bid rigging activities call:

**1-800-424-9071**

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

CONTRACTOR'S REGISTRATION NO. CRCONRC896DG

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. N/A - Oregon Company

FIRM NAME: C.R. Contracting, LLC

Russell Davis, President
SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

SIGNATURE OF AUTHORIZED OFFICIAL (PRINT NAME AND TITLE)

PROPOSAL MUST BE SIGNED

DATED this 31st day of August, 2021.

ADDRESS OF BIDDER: 64435 Strickler Ave Ste 100 Bend, OR 97703

PRINCIPAL PLACE OF BUSINESS: 64435 Strickler Ave Ste 100 Bend, OR 97703

TELEPHONE NO.: (541)306-6216 EMAIL: estimating@crcontract.com

NOTE: (1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.

(2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, C.R. Contracting, LLC dba C.R. Contracting

of Bend, OR

as principal, and the Everest Reinsurance Company, a corporation

duly organized under the laws of the State of Delaware, and authorized

to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

CE 2122 SMP – 2021 CRACK SEAL PROJECT

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of **ten (10) days** from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be

signed and sealed this 2nd day of September, 2021.

C.R. Contracting, LLC dba C.R. Contracting

(Principal)

Everest Reinsurance Company

(Surety)

(Attorney-in-fact) Gloria Bruning

EVEREST

**POWER OF ATTORNEY**
**EVEREST REINSURANCE COMPANY**
***DELAWARE***

KNOW ALL PERSONS BY THESE PRESENTS: That Everest Reinsurance Company, a corporation of the State of Delaware ("Company") having its principal office located at 477 Martinsville Road, Liberty Corner, New Jersey 07938, do hereby nominate, constitute, and appoint:

***Philip O. Forker, Vicki Mather, Gloria Bruning, Richard W. Kowalski, Brent Olson, J. Patrick Dooney, Joel Dietzman, Christopher A. Reburn, Gail A. Price, Justin Cumnock, Andrew Choruby, Casey J. Geske, Sterling Drew Roddan, Scott Willis, Amanda J. Lee***

its true and lawful Attorney(s)-in-fact to make, execute, attest, seal and deliver for and on its behalf, as surety, and as its act and deed, where required, any and all bonds and undertakings in the nature thereof, for the penal sum of no one of which is in any event to exceed UNLIMITED, reserving for itself the full power of substitution and revocation.

Such bonds and undertakings, when duly executed by the aforesaid Attorney(s)-in-fact shall be binding upon the Company as fully and to the same extent as if such bonds and undertakings were signed by the President and Secretary of the Company and sealed with its corporate seal.

This Power of Attorney is granted and is signed by facsimile under and by the authority of the following Resolutions adopted by the Board of Directors of Company ("Board") on the 28th day of July 2016:

***RESOLVED**, that the President, any Executive Vice President, and any Senior Vice President and Anthony Romano are hereby appointed by the Board as authorized to make, execute, seal and deliver for and on behalf of the Company, any and all bonds, undertakings, contracts or obligations in surety or co-surety with others and that the Secretary or any Assistant Secretary of the Company be and that each of them hereby is authorized to attest to the execution of any such bonds, undertakings, contracts or obligations in surety or co-surety and attach thereto the corporate seal of the Company.*

***RESOLVED, FURTHER**, that the President, any Executive Vice President, and any Senior Vice President and Anthony Romano are hereby authorized to execute powers of attorney qualifying the attorney named in the given power of attorney to execute, on behalf of the Company, bonds and undertakings in surety or co-surety with others, and that the Secretary or any Assistant Secretary of the Company be, and that each of them is hereby authorized to attest the execution of any such power of attorney, and to attach thereto the corporate seal of the Company.*

***RESOLVED, FURTHER**, that the signature of such officers named in the preceding resolutions and the corporate seal of the Company may be affixed to such powers of attorney or to any certificate relating thereto by facsimile, and any such power of attorney or certificate bearing such facsimile signatures or facsimile seal shall be thereafter valid and binding upon the Company with respect to any bond, undertaking, contract or obligation in surety or co-surety with others to which it is attached.*

**IN WITNESS WHEREOF**, Everest Reinsurance Company has caused their corporate seals to be affixed hereto, and these presents to be signed by their duly authorized officers this 28th day of July 2016.

Everest Reinsurance Company

Everest Reinsurance Company CORPORATE SEAL 1973 DELAWARE

Attest: Nicole Chase, Assistant Secretary

By: Anthony Romano, Vice President

On this 28th day of July 2016, before me personally came Anthony Romano, known to me, who, being duly sworn, did execute the above instrument; that he knows the seal of said Company; that the seal affixed to the aforesaid instrument is such corporate seal and was affixed thereto; and that he executed said instrument by like order.

**LINDA ROBINS**
**Notary Public, State of New York**
**No 01R06239736**
**Qualified in Queens County**
**Term Expires April 25, 2023**

Linda Robins, Notary Public

**IN WITNESS WHEREOF**, I have hereunto set my hand and affixed the seal of said Company, at the Liberty Corner, this 2nd day of September 2021.

ES 00 01 04 16

COUNTY OF
BENTON
WASHINGTON

**Proposal for Incorporating Recycled Materials into the Project**

In compliance with a new law that went into effect January 1, 2016 (SHB1695), the Bidder shall propose below, the total percent of construction aggregate and concrete materials to be incorporated into the Project that are recycled materials. Calculated percentages must be within the amounts allowed in Section 9-03.21(1)E. Table on Maximum Allowable Percent (By weight) of Recycled Material, of the Standard Specifications.

Proposed total percentage: 0 percent.

*Note: Use of recycled materials is highly encouraged within the limits shown above, but does not constitute a Bidder Preference, and will not affect the determination of award, unless two or more lowest responsive Bid totals are exactly equal, in which case proposed recycling percentages will be used as a tiebreaker, per the APWA GSP in Section 1-03.1 of the Special Provisions. Regardless, the Bidders stated proposed percentages will become a goal the Contractor should do its best to accomplish. Bidders will be required to report on recycled materials actually incorporated into the Project, in accordance with the APWA GSP in Section 1-06.6 of the Special Provisions.*

Bidder: C.R. Contracting, LLC

Signature:

Date: August 31, 2021

BENTON COUNTY WASHINGTON

**This form must be submitted with the Bid Proposal or as a Supplement to the Bid no later than 24 hours after the time for delivery of the Bid Proposal, as provided for in Section 1-02.9 of the Contract Provisions.**

# Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date September 2, 2021, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

**I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.**

C.R. Contracting, LLC
Bidder's Business Name

Russell Davis
Signature of Authorized Official*

Russell Davis
Printed Name

President
Title

| August 31, 2021 | Bend | Oregon |
|---|---|---|
| Date | City (where signed) | State |

*Check One:*

Sole Proprietorship ☑ Partnership ☐ Joint Venture ☐ Corporation ☐
(Limited Liability Company)

State of Incorporation, or if not a corporation, State where business entity was formed:

Oregon

If a co-partnership, give firm name under which business is transacted:

_____

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

# PROPOSAL
# FOR BIDDING PURPOSES

**For Construction of:**

## 2021 Crack Seal Project
## BST Area 6

**CE 2122 SMP**

PUBLIC WORKS DEPARTMENT

COUNTY OF BENTON WASHINGTON

Bid No: 21-10

OFFICE OF THE COUNTY ENGINEER
BENTON COUNTY
(CB NO. 21-10)

# CALL FOR BIDS

Sealed bids for C.E. 2122 SMP – 2021 Crack Seal, shall be received by the Benton County Engineer, Benton County Public Services Building, 102206 East Wiser Parkway, Kennewick, Washington 99338 until 10:30 a.m., Local Time, Thursday, September 2, 2021. NO BIDS WILL BE ACCEPTED AFTER THAT DATE AND TIME. Bids are to be opened on Thursday, September 2, 2021 at 10:30 a.m., Local Time, in the Public Works Conference Room, Public Services Building Kennewick, Washington. Contractor's Bid Proposal shall include the complete Proposal, and the proposal bond all enclosed in a sealed envelope marked, "BID FOR 2021 Crack Seal – CE 2122 SMP".

All bid proposals shall be accompanied by a bid proposal deposit as certified check, cashier check or proposal bond in an amount equal to five percent (5%) of the amount of such bid proposal. Should the successful bidder fail to enter into such contract and furnish satisfactory performance bond within the time stated in the specifications, the bid proposal deposit shall be forfeited to Benton County. The Board reserves the right to reject any or all bids and to waive informalities in the bidding. The award of contract, if made, will be approved by the Board of Benton County Commissioners, Benton County, Washington.

"NOTE: This document and the materials enclosed herewith constitute an invitation to submit bid proposals only and do not represent an offer by Benton County or the Benton County Engineer. Bid proposals submitted in response hereto shall constitute offers to contract with Benton County, and only upon the County's acceptance of such offer by bid award as provided herein, shall any contractual relations be created."

Complete digital project bidding documents are available at www.questcdn.com. Interested bidders may view the plans and specifications at no charge by signing up for an account and inputting Quest Project # **7963264** on the website's Projects Search Page. Firms who intend to submit a bid must download the digital plan documents, specifications, contract documents and bid proposal for fifteen dollars ($15.00). Please contact QuestCDN.com at 952-233-1632 or info@questcdn.com for assistance in free membership, registration, downloading, and working with this digital project information.

The following is applicable to all Benton County projects:

"Benton County, in accordance with Title VI of the Civil Rights Act of 1964, 78 Stat. 252, 42 USC 2000d to 2000d-4 and Title 49, Code of Federal Regulations, Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Nondiscrimination in Federally-Assisted Programs of the Department of Transportation issued pursuant to such Act, hereby notifies all bidders that it will affirmatively ensure that in any contract entered into pursuant to this advertisement, disadvantaged business enterprises as defined at 49 CFR Part 26 will be afforded full opportunity to submit bids in response to this invitation and will not be discriminated against on the grounds of race, color, national origin, or sex in consideration for an award."

# PROPOSAL

TO: THE BOARD OF COUNTY COMMISSIONERS
BENTON COUNTY
PROSSER, WASHINGTON 99350

Gentlemen:

The undersigned, (insert name of company) Stripe Rite Inc hereby certifies that they have examined the location of the public works project outlined in these attached special provisions, specifications and plans, and has read and thoroughly understands the plans, specifications and contract governing the work embraced in this improvement, and the method by which payment will be made for said work, and hereby proposes to undertake and complete the work embraced in this improvement, or as much thereof as can be completed with the money available, in accordance with the said plans, specifications and contract, and the following schedule of rates and prices:

## CE 2122 SMP – 2021 CRACK SEAL PROJECT

(NOTE: Unit prices for all items, all extensions, and total amount of bid, shall be shown.)

| ITEM NO. | QTY. | UNIT | ITEM DESCRIPTION | PRICE PER UNIT | | AMOUNT | |
|---|---|---|---|---|---|---|---|
| | | | | Dollars | Cts. | Dollars | Cts. |
| 1 | 123 | TONS | CRACK SEALING - TON | 4268 | 00 | 524964 | 00 |
| 2 | 1 | L.S. | PROJECT TEMPORARY TRAFFIC CONTROL | 114940 | 00 | 114940 | 00 |
| 3 | 1 | L.S. | SPCC PLAN | 500 | 00 | 500 | 00 |
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| | TOTAL | | | | | 640404 | 00 |

Public Works Department

PO Box 1001
Prosser, WA 99350
Phone (509) 786-5611
www.co.benton.wa.us

ADDENDUM NO. 1
2021 CRACK SEAL
CE 2122 SMP

August 17, 2021

NOTICE TO PLANHOLDERS:

Please note the following changes, corrections and/or additions to the bid documents for the 2021 Crack Seal, C.E. 2122 SMP.

Remember to acknowledge receipt of Addendum No. 1 on Page 2 of the Proposal.

1. The Bid Opening Date has been moved from August 26th, 2021 to September 2nd, 2021.
2. Replace page 3 "Call for Bids" with attached "Call for Bids" to reflect the updated Bid Opening date.
3. Replace Appendix A "Wage Rates" with attached "Wage Rates" to reflect the updated effective date.
4. Within the Proposal Replace "Certification of Compliance with Wage Payment Statutes" with attached "Certification of Compliance with Wage Payment Statutes" to reflect the updated Bid Opening date.

Douglas P. D'Hondt, P.E.
County Engineer

BY: _____
Jeff Liner
Project Manager

PROPOSAL
(Cont.')

The undersigned hereby agrees to pay to labor not less than the hourly minimum rates of wages as set forth in these special provisions.

A proposal guaranty in an amount of five percent (5%) of the total bid, based upon the approximate estimate of quantities at the above prices and in the form as indicated below, is attached hereby:

| | | |
|---|---|---|
| Cashier's Check | _____ | In the Amount of _____ |
| Certified Check | _____ | ($_____) Payable to the County Treasurer of Benton County, Washington. |
| Proposal Bond | ✓ | In the amount of 5% of the Bid. |

Receipt is hereby acknowledged of Addendum No(s). 1, _____, _____, & _____.

## PUBLIC WORKS TRAINING

The undersigned hereby certifies that the contractor has received L & I training, per RCW 39.04.350, or has completed three or more public works projects and has had a valid business license in Washington for three or more years and therefore are exempt from training.

## ASSURANCE OF NON-DISCRIMINATION

The undersigned hereby agrees that he shall comply with Benton County's Non-Discrimination Policy and Plan, which is consistent with Titles VI and VII of the 1964 Civil Rights Act as amended in 1972; Executive Order 11246 as amended by Executive Order 11375; Sections 503 and 504 of the Rehabilitation Act of 1975 and the Age Discrimination in Employment Act of 1967; the 1974 Vietnam Era Veteran Readjustment Assistance Act; and the Washington State Laws Against Discrimination, Chapter 49.60 RCW. The policy reads as follows:

It is the policy of Benton County that no person shall be subjected to discrimination in the County or by its subcontractors because of race, color, national origin, sex, age, religion, creed, marital status, disabled or Vietnam era veteran status, or the presence of any physical, mental or sensory handicap.

## NON-COLLUSION DECLARATION

I, by signing the proposal, hereby declare, under penalty of perjury under the laws of the United States that the following statement is true and correct:

That the undersigned person(s), firm, association or corporation has (have) not, either directly or indirectly, entered into any agreement, participated in any collusion, or otherwise taken any action in restraint of free competitive bidding in connection with the project for which this proposal is submitted.

PROPOSAL
(Cont.')

**NOTICE TO ALL BIDDERS**

To report bid rigging activities call:

**1-800-424-9071**

The U. S. Department of Transportation (USDOT) operates the above toll-free "hotline" Monday through Friday, 8:00 a.m. to 5:00 p.m., Eastern time. Anyone with knowledge of possible bid rigging, bidder collusion, or other fraudulent activities should use the "hotline" to report such activities.

The "hotline" is part of USDOT's continuing effort to identify and investigate highway construction control fraud and abuse and is operated under the direction of the USDOT Inspector General. All information will be treated confidentially, and caller anonymity will be respected.

CONTRACTOR'S REGISTRATION NO. STRIPRI*JSM

CONTRACTOR'S EMPLOYMENT SECURITY DEPARTMENT NO. 603514300 9

FIRM NAME: Stripe Rite Inc

SIGNATURE OF AUTHORIZED OFFICIAL

Frank Artz Branch Mgr
(PRINT NAME AND TITLE)

SIGNATURE OF AUTHORIZED OFFICIAL

(PRINT NAME AND TITLE)

PROPOSAL MUST BE SIGNED

DATED this 1st day of September, 2021.

ADDRESS OF BIDDER: 7231 W Deschutes Ave Kennewick WA 99336

PRINCIPAL PLACE OF BUSINESS: S/A

TELEPHONE NO.: (509) 585-0181 EMAIL: frank@striperite.com

NOTE: (1) This proposal form is not transferable, and any alteration of the firm name entered hereon without prior permission from the Board of County Commissioners will be sufficient cause for considering the proposal irregular and consequent rejection of the bid.

(2) Should it be necessary to modify this proposal in writing, please make reference to the project number.

BENTON COUNTY
WASHINGTON

This form must be submitted with the Bid Proposal or as a Supplement to the Bid no later than 24 hours after the time for delivery of the Bid Proposal, as provided for in Section 1-02.9 of the Contract Provisions.

# Certification of Compliance with Wage Payment Statutes

The bidder hereby certifies that, within the three-year period immediately preceding the bid solicitation date September 2, 2021, the bidder is not a "willful" violator, as defined in RCW 49.48.082, of any provision of chapters 49.46, 49.48, or 49.52 RCW, as determined by a final and binding citation and notice of assessment issued by the Department of Labor and Industries or through a civil judgment entered by a court of limited or general jurisdiction.

**I certify under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct.**

Stripe Rite Inc
Bidder's Business Name

Signature of Authorized Official*

Frank Artz
Printed Name

Branch Mgr
Title

9/1/21 | Kennewick | WA
Date | City (where signed) | State

*Check One:*

Sole Proprietorship ☐ Partnership ☐ Joint Venture ☐ Corporation ☒

State of Incorporation, or if not a corporation, State where business entity was formed:

Washington

If a co-partnership, give firm name under which business is transacted:

N/A

** If a corporation, proposal must be executed in the corporate name by the president or vice-president (or any other corporate officer accompanied by evidence of authority to sign). If a co-partnership, proposal must be executed by a partner.*

**PROPOSAL BOND**

KNOW ALL MEN BY THESE PRESENTS, That we, Stripe Rite, Inc.

of Sumner, Washington

as principal, and the Merchants Bonding Company (Mutual), a corporation

duly organized under the laws of the State of Iowa, and authorized

to do business in the State of Washington, as surety, are held and firmly bound unto Benton County in the full and penal sum of five (5) percent of the total amount of the bid proposal of said principal for the work hereinafter described, for the payment of which, well and truly to be made, we bind our heirs, executors, administrators and assigns, and successors and assigns, firmly by these presents.

The condition of this bond is such, that whereas the principal herein is herewith submitting his or its sealed proposal for the following highway construction, to wit:

CE 2122 SMP – 2021 CRACK SEAL PROJECT

said bid and proposal, by reference thereto, being made a part hereof.

NOW, THEREFORE, If the said proposal bid by said principal be accepted, and the contract be awarded to said principal, and if said principal shall duly make and enter into and execute said contract and shall furnish bond as required by Benton County within a period of **ten (10) days** from and after said award, exclusive of the day of such award, then this obligation shall be null and void, otherwise it shall remain and be in full force and effect.

IN TESTIMONY WHEREOF, The principal and surety have caused these presents to be

signed and sealed this 2nd day of September, 2021.

Stripe Rite, Inc.

(Principal)

Merchants Bonding Company (Mutual)

(Surety)

(Attorney-in-fact) Katharine J Snider

MERCHANTS BONDING COMPANY

# POWER OF ATTORNEY

Know All Persons By These Presents, that MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., both being corporations of the State of Iowa (herein collectively called the "Companies") do hereby make, constitute and appoint, individually,

Aliceon A Keltner; Alyssa J Lopez; Amelia G Burrill; Annelies M Richie; Brandon K Bush; Brent E Heilesen; Carley Espiritu; Christopher Kinyon; Cynthia L Jay; Eric A Zimmerman; Erica E Mosley; Heather L Allen; Holli Albers; James B Binder; Jamie L Marques; Katharine J Snider; Kyle Joseph Howat

their true and lawful Attorney(s)-in-Fact, to sign its name as surety(ies) and to execute, seal and acknowledge any and all bonds, undertakings, contracts and other written instruments in the nature thereof, on behalf of the Companies in their business of guaranteeing the fidelity of persons, guaranteeing the performance of contracts and executing or guaranteeing bonds and undertakings required or permitted in any actions or proceedings allowed by law.

This Power-of-Attorney is granted and is signed and sealed by facsimile under and by authority of the following By-Laws adopted by the Board of Directors of Merchants Bonding Company (Mutual) on April 23, 2011 and amended August 14, 2015 and adopted by the Board of Directors of Merchants National Bonding, Inc., on October 16, 2015.

"The President, Secretary, Treasurer, or any Assistant Treasurer or any Assistant Secretary or any Vice President shall have power and authority to appoint Attorneys-in-Fact, and to authorize them to execute on behalf of the Company, and attach the seal of the Company thereto, bonds and undertakings, recognizances, contracts of indemnity and other writings obligatory in the nature thereof."

"The signature of any authorized officer and the seal of the Company may be affixed by facsimile or electronic transmission to any Power of Attorney or Certification thereof authorizing the execution and delivery of any bond, undertaking, recognizance, or other suretyship obligations of the Company, and such signature and seal when so used shall have the same force and effect as though manually fixed."

In connection with obligations in favor of the Florida Department of Transportation only, it is agreed that the power and aut hority hereby given to the Attorney-in-Fact includes any and all consents for the release of retained percentages and/or final estimates on engineering and construction contracts required by the State of Florida Department of Transportation. It is fully understood that consenting to the State of Florida Department of Transportation making payment of the final estimate to the Contractor and/or its assignee, shall not relieve this surety company of any of its obligations under its bond.

In connection with obligations in favor of the Kentucky Department of Highways only, it is agreed that the power and authority hereby given to the Attorney-in-Fact cannot be modified or revoked unless prior written personal notice of such intent has been given to the Commissioner-Department of Highways of the Commonwealth of Kentucky at least thirty (30) days prior to the modification or revocation.

In Witness Whereof, the Companies have caused this instrument to be signed and sealed this 19th day of May , 2020 .

MERCHANTS NATIONAL BONDING, INC. -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) -o- 1933

MERCHANTS BONDING COMPANY (MUTUAL)
MERCHANTS NATIONAL BONDING, INC.

By Larry Taylor
*President*

STATE OF IOWA
COUNTY OF DALLAS ss.
On this 19th day of May 2020 , before me appeared Larry Taylor, to me personally known, who being by me duly sworn did say that he is President of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC.; and that the seals affixed to the foregoing instrument are the Corporate Seals of the Companies; and that the said instrument was signed and sealed in behalf of the Companies by authority of their respective Boards of Directors.

NOTARIAL SEAL IOWA

**POLLY MASON**
Commission Number 750576
My Commission Expires
January 07, 2023

Polly Mason
*Notary Public*

(Expiration of notary's commission
does not invalidate this instrument)

I, William Warner, Jr., Secretary of MERCHANTS BONDING COMPANY (MUTUAL) and MERCHANTS NATIONAL BONDING, INC., do hereby certify that the above and foregoing is a true and correct copy of the POWER-OF-ATTORNEY executed by said Companies, which is still in full force and effect and has not been amended or revoked.

In Witness Whereof, I have hereunto set my hand and affixed the seal of the Companies on this 2nd day of September ,2021 .

MERCHANTS NATIONAL BONDING, INC. -o- 2003

MERCHANTS BONDING COMPANY (MUTUAL) -o- 1933

William Warner Jr.
*Secretary*

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Ratifying Change Order No. 1 to Western Construction of Lewiston, Inc.'s contract for the 2021 Crushing and Stockpiling project |
| **Presenter:** | |
| **Prepared By:** | Shannon Christen |
| **Reviewed By:** | Doug D'Hondt |

**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

On April 27, 2021 the Board of County Commissioners approved Resolution 2021-345 and executed a contract with Western Construction of Lewiston, Inc. for the 2021 Crushing and Stockpiling project C.E. 2119 in the amount of $1,631,900.00.

Two modifications are included in Change Order No. 1.

The first change consists of adding 25 working days to the contract time. The initial project was set up with the assumption the contractor would be running two shifts each day but was not a written requirement. Western has chosen to run one 10-hour shift per day. This will avoid having inspectors on night shifts with our limited staff. Adding 25 working days to the contract will allow for the project to continue at its current pace. There is no additional cost.

The second change consists of changing the 1/4" minus non-spec rock to a 5/8" minus non-spec rock. This will reduce the need for County crews to mix top course and clay mixtures. There is no additional cost.

These changes are combined into Change Order No. 1 at no change in cost with the total contract amount to remain at $1,631,900.00 and will increase the contract time by 25 days to a total of 85 days.

The Deputy County Administrator has signed Change Order No. 1 as allowed by the Benton County Procurement, Leasing and Contracting Policy (Resolution 2021-233). The Board of County Commissioners needs to ratify the change order.

## Fiscal Impact

**Amount:** N/A
**Fund:**

## Recommendation

Ratify Change Order No. 1 to the Western Construction of Lewiston, Inc. contract for the 2021 Crushing and Stockpiling project as signed by the Deputy County Administrator.

## Suggested Motion

Approve as part of the Consent Agenda.

# RESOLUTION

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:**

**IN THE MATTER OF RATIFYING CONTRACT CHANGE ORDER NO. 1 WITH WESTERN CONSTRUCTION OF LEWISTON, INC. FOR THE 2021 CRUSHING AND STOCKPILING PROJECT – C.E. 2119**

**WHEREAS,** on April 27, 2021 the Board of County Commissioners approved Resolution 2021-345 and executed a contract with Western Construction of Lewiston, Inc. for the 2021 Crushing and Stockpiling project in the amount of $1,631,900.00; and

**WHEREAS,** additional items have arisen that require changes in the work to complete the project; and

**WHEREAS,** no additional costs were involved in the change order, but 25 working days were added to the contract due to the contractor running one shift per day instead of two; and

**WHEREAS,** the Deputy County Administrator has approved and signed Change Order No. 1; and

**WHEREAS,** the Benton County Procurement, Leasing and Contracting Policy (Resolution 2021-233) requires Board of County Commissioners ratify change orders approved by the Deputy County Administrator; **NOW THEREFORE,**

**BE IT RESOLVED,** the Board of Benton County Commissioners hereby ratifies Change Order No. 1, attached hereto, to the contract executed by Resolution 2021-345 with Western Construction of Lewiston, Inc. for the 2021 Crushing and Stockpiling project; and

**BE IT FURTHER RESOLVED,** the total contract amount will remain at $1,631,900.00 and 25 days will be added to the contract time for a total of 85 days.

Dated this 14th day of September 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Purchasing
c: Auditor

S. Christen

# Change Order

| Contract Number | Contract Title | Federal Aid Number |
|---|---|---|
| CE 2119 | 2021 CRUSHING AND STOCKPILING | N/A |
| Change Order Number<br>1 | Change Description<br>INCREASED WORKING DAYS FOR SINGLE SHIFT AND 1/4"-MINUS TO 5/8" – MINUS AT OWENS PIT (NO COST) | Date<br>6-15-2021 |
| Prime Contractor/Design-Builder<br>WESTERN CONSTRUCTION INC. | | |

☐ Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

☐ Change proposed by Contractor/Design-Builder

**Additional Working Days**

The initial projects working days where set up with the assumption that the contractor would be running two shifts each day, but it was not written as a requirement. Western has chosen two run one 10-hour shift per day. This will avoid having inspectors on night shifts with our limited staff. The crusher has been processing approximately 3,000 tons a day. Adding 25 working days to the contract will allow for the project to continue at its current pace.

184,000 tons left to crush / 3,000 tons a day = 61.33 working days – 39 working days remaining on contract = 22.33 needed extra days

**Rounding up to 25 days to allow for mobilization to multiple sites and hydroseeding at the end of the project.**

---

**Change 1/4" to 5/8"**

After an onsite meeting with the contractor over the rock spec, the decision was made to change the 1/4" Minus non-Spec Rock to a 5/8" Minus non-Spec. This will reduce the need for County crews to mix top course and clay mixtures. This is a no cost change.

**Change Bid Item 7 from 1/4" Minus Non-Spec to 5/8" Minus Non-Spec.**

| Verbal Approval Date | | Working Days | |
|---|---|---|---|
| 5-21-21 | | +25 | |
| Original Contract Amount<br>$1,631,900.00 | Current Contract Amount<br>$1,631,900.00 | Est. Net Change This C.O.<br>$0.00 | Est. Contract Amount<br>$1,631,900.00 |

| | | | |
|---|---|---|---|
| ☑ Approval Recommended<br>Jeff Irwin<br>Project Engineer | 6-16-21<br>Date | ☑ Approved<br>Jerod MacLean<br>County Administrator | 06/29/2021<br>Date |
| ☑ Approval Recommended<br>By Prime Contractor | 6/21/2021<br>Date | ☑ Approved<br>County Engineer | 06/24/21<br>Date |

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Executing First Amendment to the Personal Services Contract with Epic Land Solutions, Inc. for On-Call Right-of-Way Services |
| **Presenter:** | |
| **Prepared By:** | S. Christen |
| **Reviewed By:** | D. D'Hondt |

**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

Per Resolution 2020-656 dated September 22, 2020 the Board of Benton County Commissioners entered into a contract with Epic Land Solutions, Inc. for On-Call Right-of-Way Services. The original contract had the option of being renewed for an additional one-year period, extending the expiration date to October 1, 2022, and updating the billing rates. An Amendment has been prepared, reviewed and approved by our departmental Deputy Prosecuting Attorney and signed by Epic Land Solutions, Inc.

## Fiscal Impact

**Amount:** Contract remains at a not to exceed amount of $200,000.00

**Fund:** Road Fund (0101101)

## Recommendation

The County Engineer recommends approving the First Amendment to the Personal Services Contract with Epic Land Solutions, Inc., to extend the expiration date to October 1, 2022 and update Exhibit A-Billing Rates.

## Suggested Motion

Approve as part of the Consent Agenda.

## RESOLUTION

## BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

**IN THE MATTER OF THE FIRST AMENDMENT TO THE PERSONAL SERVICES CONTRACT FOR ON-CALL RIGHT-OF-WAY SERVICES WITH EPIC LAND SOLUTIONS, INC.**

**WHEREAS,** per Resolution 2020-656 dated September 22, 2020 the Board of Benton County Commissioners entered into a contract with Epic Land Solutions, Inc. for On-Call Right-of-Way Services; and

**WHEREAS,** the original contract had the option of renewing the contract for an additional one-year period and updating the billing rates; and

**WHEREAS**, this First Amendment is necessary to extend the current Contract another year, to October 1, 2022, and update Exhibit A-Billing Rates; **NOW THEREFORE,**

**BE IT RESOLVED,** the Board of Benton County Commissioners hereby approves the attached First Amendment to the Personal Services Contract between Benton County and Epic Land Solutions, Inc., to amend Section 2 - Duration of Contract, which extends the expiration date to October 1, 2022, and update Exhibit A-Billing Rates; and

**BE IT FURTHER RESOLVED,** all other terms and conditions of said Contract remain the same.

Dated this 14th day of September 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Dept.
cc: Auditors; PA; Contract Management

S. Christen

DocuSign Envelope ID: 5AB78E76-4CA7-4CC3-8E3F-A1F08D5AD2AD

# FIRST CONTRACT AMENDMENT
# to the
# PERSONAL SERVICES CONTRACT

**THIS FIRST CONTRACT AMENDMENT** made and entered into this _____ day of _____, 2021 by and between **BENTON COUNTY,** a political subdivision, with its principal offices at 620 Market Street, Prosser, Washington 99350 (hereinafter "COUNTY") and **EPIC LAND SOLUTIONS, INC.,** a corporation organized under the laws of the State of California, with its principal offices at 2601 Airport Drive, Suite 115, Torrance, CA 90505 (hereinafter "CONSULTANT").

**Whereas,** the parties entered into a Personal Services Contract dated September 22, 2021 (the "CONTRACT") for the purpose of providing as-needed right-of-way services.

**Whereas,** this First Amendment is necessary to extend the contract for an additional year and update Exhibit A.

The parties agree that all provisions of the contract remain in effect except for the following amendments:

**2. DURATION OF CONTRACT:** is hereby deleted and replaced in its entirety with the following:

The term of this Contract shall begin on the date last signed and shall expire on October 1, 2022. The CONSULTANT shall complete all work by the time(s) specified herein, or if no such time is otherwise specified, no later than the expiration date.

Exhibit A attached to the contract shall be replaced with the updated Exhibit A-Billing Rates which is attached to this Amendment.

**IN WITNESS WHEREOF,** the parties have caused this First Contract Amendment to be signed by their duly constituted legal representatives, and it is effective upon signature of both Parties.

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:

_____
Reid Hay, Civil Deputy Prosecuting Attorney

Dated: 9/3/2021

**FOR: EPIC LAND SOLUTIONS, INC.**

DocuSigned by:
Dianna Nausley-McKeon
9517DD5652FD40C...
Signature

Regional Manager
Title:

Dianna Nausley-McKeon
Print Name

DocuSign Envelope ID: 5AB78E76-4CA7-4CC3-8E3F-A1F08D5AD2AD



# Actuals Not To Exceed Table (ANTE)

## WSDOT Agreement:
Epic Land Solutions, Inc.
2601 Airport Drive, Suite 115
Torrance, CA 90505

| Job Classifications | Direct Labor Hourly Billing Rate NTE | Overhead NTE 159.15% | Fixed Fee NTE 25.00% | All Inclusive Hourly Billing Rate NTE |
|---|---|---|---|---|
| Principal in Charge | $84.59 | $134.63 | $21.15 | $240.36 |
| Advisory Manager | $71.27 | $113.43 | $17.82 | $202.51 |
| Project Manager | $61.63 | $98.09 | $15.41 | $175.13 |
| Assistant Project Manager | $48.69 | $77.48 | $12.17 | $138.34 |
| Senior ROW Agent | $48.44 | $77.09 | $12.11 | $137.64 |
| ROW Agent | $32.63 | $51.94 | $8.16 | $92.73 |
| ROW Development Manager | $58.06 | $92.41 | $14.52 | $164.99 |
| Assistant ROW Development Manager | $39.59 | $63.01 | $9.90 | $112.49 |
| Appraisal Manager | $87.11 | $138.63 | $21.78 | $247.51 |
| Senior Appraiser | $57.01 | $90.73 | $14.25 | $161.99 |
| Appraiser | $48.95 | $77.90 | $12.24 | $139.08 |
| Budget & Financial Controls | $50.89 | $80.99 | $12.72 | $144.61 |
| Contract Manager | $43.28 | $68.89 | $10.82 | $122.99 |
| Project Support | $43.28 | $68.89 | $10.82 | $122.99 |
| QA/QC | $60.71 | $96.62 | $15.18 | $172.52 |

NOTE ABOUT WSDOT RATES: The rates used will reflect the direct salary rates for individuals that participate in work under this contract. The actual rate billed shall be based on the direct salary of the individual having performed the work, plus overhead and profit. These rates will be re-calculated at the beginning of each calendar year. Staff billing rates provided include the Federal Acquisition Regulation (FAR) approved overhead rate for Epic Land Solutions, Inc. and are suitable for state and federally funded projects.

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Authorization to purchase asphalt emulsion from Albina Asphalt utilizing State Contract No. 04419 |
| **Presenter:** | |
| **Prepared By:** | Shannon Christen |
| **Reviewed By:** | Doug D'Hondt |

**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

The Public Works Department needs asphalt emulsion to be used on Bituminous Surface Treatment projects. Washington State Contract No. 04419 allows for the purchase of asphalt emulsion (CRS-2P) from Albina Holdings, Inc. dba Albina Asphalt.

## Fiscal Impact

**Amount:** Not to exceed $40,000.00 including WSST

**Fund:** Road Fund (0101-101)

## Recommendation

The County Engineer recommends purchasing the asphalt emulsion from Albina Asphalt utilizing State Contract No. 04419 in an amount not to exceed $40,000.00.

## 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 ASPHALT EMULSION FOR BITUMINOUS SURFACE TREATMENT PROJECTS FROM ALBINA HOLDINGS, INC. DBA ALBINA ASPHALT UTILIZING WASHINGTON STATE CONTRACT NO. 04419 BY THE BENTON COUNTY PUBLIC WORKS DEPARTMENT**

**WHEREAS,** by Resolution 2013-431 dated June 11, 2013, the Board of County Commissioners approved the Master Contract Usage Agreement for the purpose of purchasing or acquiring goods and services under contracts entered into by the Department of Enterprise Services; and

**WHEREAS,** Washington State Contract No. 04419 allows for the purchase of asphalt emulsion (CRS-2P) from Albina Holdings, Inc. dba Albina Asphalt; and

**WHEREAS,** the Public Works Department is in need of asphalt emulsion to be used on Bituminous Surface Treatment projects; and

**WHEREAS,** the County Engineer recommends purchasing the asphalt emulsion from Albina Holdings, Inc. dba Albina Asphalt; **NOW, THEREFORE**

**BE IT RESOLVED**, the Board of Benton County Commissioners, Benton County, Washington, hereby concurs with the County Engineer's recommendation and authorizes the purchase of asphalt emulsion utilizing Washington State Contract No. 04419 from Albina Holdings, Inc. dba Albina Asphalt at the current State Contract rate plus freight in an amount not to exceed $40,000.00 including WSST.

Dated this 14th day of September, 2021.

_____
Chairman of the Board

_____
Chairman ProTem

_____
Member

Constituting the Board of Commissioners
of Benton County, Washington

Attest _____
Clerk of the Board

Original: Purchasing Dept.
cc: Auditor

S. Christen

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Declaring C.E. 2127 CRP-French Road Bituminous Surface Treatment project an Emergent Project |
| **Presenter:** | |
| **Prepared By:** | Shannon Christen |
| **Reviewed By:** | Doug D'Hondt |

**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

French Road, from Old Inland Empire Highway south to Hess Road (MP 0.01 to MP 0.49), is gravel and connects at both ends to paved roads. See attached map. There are no other gravel roads in the vicinity and moving equipment in for maintenance, on this approximately half mile of road, is costly. It has been determined it would be more cost effective and efficient to put a bituminous surface treatment on the gravel section making French Road a paved surface. This work will be done by our County road crew.

In the One Year Road Program there are dollars budgeted for unforeseen capital projects. These are listed as "Emergent Projects". The French Road project was not included in the 2021 One Year Road Program and needs to be declared an "Emergent Project".

## Fiscal Impact

**Amount:** $80,000.00

**Fund:** Road Fund (0101-101)

## Recommendation

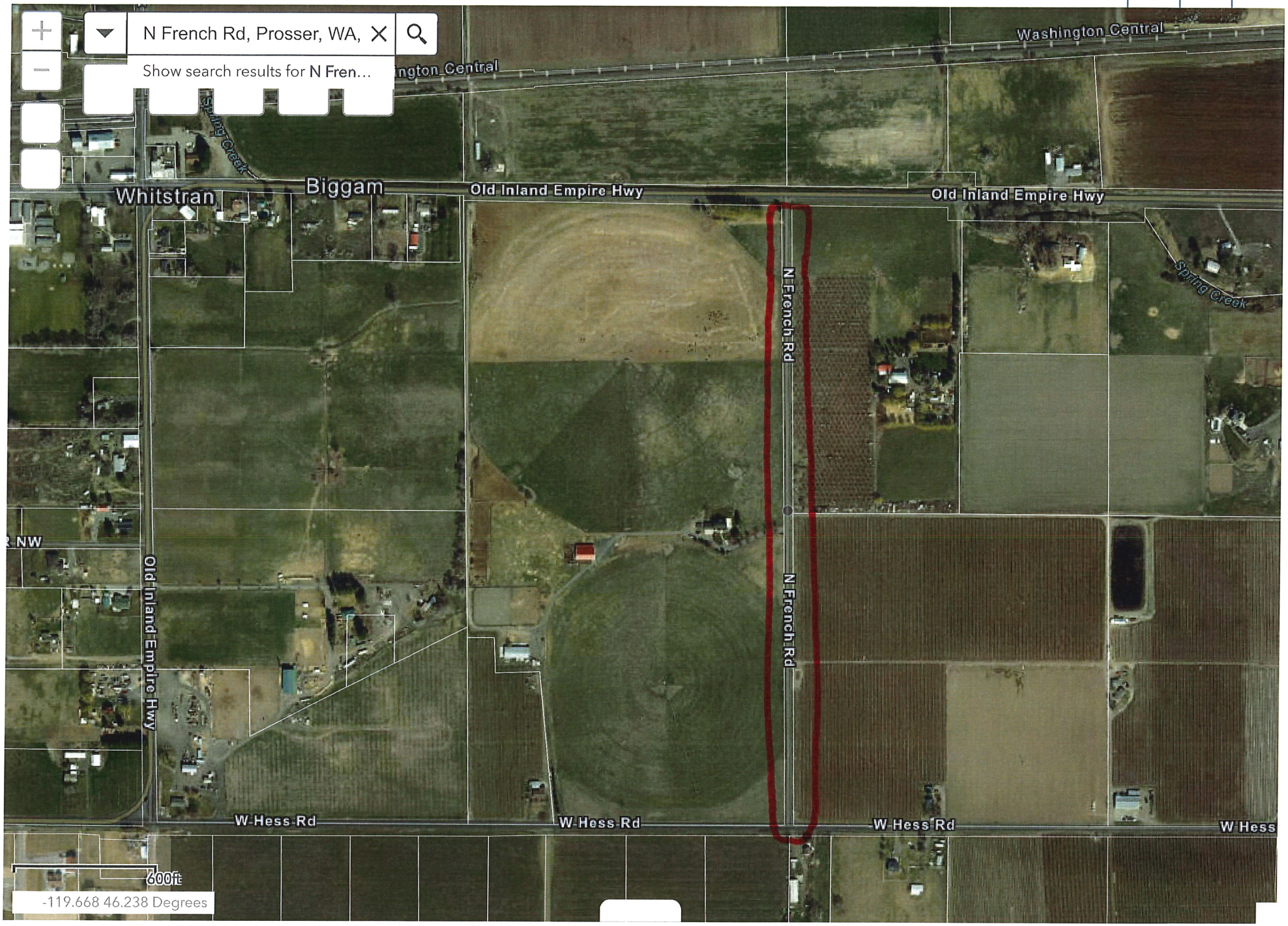
The County Engineer recommends the Board declare C.E. 2127 CRP – French Road Bituminous Surface Treatment project as an "Emergent Project" in the 2021 One Year Road Program.

## Suggested Motion

Approve as part of the Consent Agenda.

# Public Works Department

*Created and maintained by the Benton County GIS Department



# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF DECLARING C.E. 2127 CRP – FRENCH ROAD BITUMINOUS SURFACE TREATMENT PROJECT AN "EMERGENT PROJECT"**

**WHEREAS,** it is the intention of the Board of County Commissioners to preserve County road infrastructure by applying a bituminous surface treatment on French Road; and

**WHEREAS,** this project was not included in the 2021 One Year Road Program; **NOW, THEREFORE,**

**BE IT RESOLVED** that the Board hereby declares C.E. 2127 CRP – French Road Bituminous Surface Treatment project, in an estimated amount of $80,000.00, as an "Emergent Project" in the 2021 One Year Road Program.

Dated this 14th day of September 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig: Purchasing Dept.

S. Christen

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Ratifying Change Order Nos. 1, 2 & 3 to Central Washington Asphalt's contract for the 2021 BST Area 5 and Edge Repair project |
| **Presenter:** | |
| **Prepared By:** | Shannon Christen |
| **Reviewed By:** | Douglas D'Hondt |

**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

On March 16, 2021 the Board of County Commissioners approved Resolution 2021-240 and executed a contract with Central Washington Asphalt, Inc. for the 2021 Bituminous Surface Treatment Area 5 and Edge Repair project – C.E. 2118 SMP in the amount of $1,692,556.92.

Three Change Orders have been authorized and are as follows.

Change Order No. 1 changed the type of paint that was being used due to availability. There was no cost to this change.

Change Order No. 2 incorporated two increases and two decreases in the quantities of 4 bid items. The total for these changes is an increase of $194,915.00.

Change Order No. 3 added edge repair work to some of the City of Richland's roads that were included in the BST portion of the contract. The cost was an increase of $17,715.75. The City of Richland will reimburse the County for this portion.

These 3 Change Orders combined increased the contract amount by $212,630.75 for a total contract amount of $1,905,187.67 and will not increase the contract time.

The County Administrator has signed Change Order No. 1 and the Deputy County Administrator has signed Change Order Nos. 2 & 3 as allowed by the Benton County Procurement, Leasing and Contracting Policy (Resolution 2021-233). The Board of County Commissioners needs to ratify the Change Orders.

## Fiscal Impact

**Amount:** $212,630.75
**Fund:** Road Fund

## Recommendation

Ratify Change Order Nos. 1, 2 & 3 to Central Washington Asphalt's contract for the 2021 BST Area 5 and Edge Repair project as signed by the County Administrator and the Deputy County Administrator.

## Suggested Motion

Approve as part of the Consent Agenda.

# RESOLUTION

**BEFORE THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY WASHINGTON:**

**IN THE MATTER OF RATIFYING CHANGE ORDER NOS. 1, 2 & 3 TO CENTRAL WASHINGTON ASPHALT, INC.'S CONTRACT FOR THE 2021 BITUMINOUS SURFACE TREATMENT AREA 5 AND EDGE REPAIR PROJECT**

**WHEREAS,** on March 16, 2021 the Board of County Commissioners approved Resolution 2021-240 and executed a contract with Central Washington Asphalt, Inc. for the 2021 BST Area 5 and Edge Repair project – C.E. 2118 SMP in the amount of $1,692,556.92.00; and

**WHEREAS,** the County Engineer has negotiated a fair and reasonable price for Change Order Nos. 1, 2 and 3 for a total contract increase of $212,630.75; and

**WHEREAS,** the County Administrator has approved and signed Change Order No. 1 and the Deputy County Administrator has approved and signed Change Order Nos. 2 & 3; and

**WHEREAS,** the Benton County Procurement, Leasing and Contracting Policy (Resolution 2021-233) requires Board of County Commissioners ratify change orders approved by the County Administrator and the Deputy County Administrator; **NOW THEREFORE,**

**BE IT RESOLVED,** the Board of Benton County Commissioners hereby ratifies Change Order Nos. 1, 2 & 3, attached hereto, to the contract executed by Resolution 2021-240 with Central Washington Asphalt for the 2021 Bituminous Surface Treatment Area 5 and Edge Repair – C.E. 2118 SMP project; and

**BE IT FURTHER RESOLVED,** the total contract amount will increase $212,630.75 for a new contract amount not to exceed $1,905,187.67 and no additional days will be added to the contract time of 50 days.

Dated this 14th day of September 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Original: Purchasing Dept.
c: Auditor

S. Christen

# Change Order

| Contract Number | Contract Title | Federal Aid Number |
|---|---|---|
| CE 2118 | 2021 BST Area 5 and Edge Repair | N/A |
| **Change Order Number** | **Change Description** | **Date** |
| 1 | Change of Paint Material Due to Availability | 7-16-2021 |
| Prime Contractor/Design-Builder<br>CENTRAL WASHINGTON ASPHALT | | |

[ ] Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

[x] Change proposed by Contractor/Design-Builder

Accepting Paint Alternative

Due to availability issues the contractor has proposed to replace the Low VOC Solvent based paint with a Low VOC waterborne paint.

- Delete line 2 in section 8-22.2 of the special provisions that reads:

  *2. Paint lines shall be Low VOC (volatile organic compounds) solvent paint.*

**This change in material will not change the original bid item price.**

| Verbal Approval Date | | Working Days | |
|---|---|---|---|
| 7-16-21 | | N/A | |
| **Original Contract Amount** | **Current Contract Amount** | **Est. Net Change This C.O.** | **Est. Contract Amount** |
| $1,692,556.92 | $1,692,556.92 | $0.00 | $1,692,556.92 |

| | | | |
|---|---|---|---|
| [x] Approval Recommended<br>Project Engineer | Date 7/16/21 | [x] Approved<br>County Administrator | Date 07/22/2021 |
| [x] Approval Recommended<br>By Prime Contractor | Date 7/16/21 | [x] Approved<br>County Engineer | Date 07/16/21 |

# Change Order

| Contract Number | Contract Title | Federal Aid Number |
|---|---|---|
| CE 2118 | 2021 BST Area 5 and Edge Repair | N/A |
| **Change Order Number** | **Change Description** | **Date** |
| 2 | Over Under for Quantities | 8-11-2021 |
| Prime Contractor/Design-Builder<br>Central Washington Asphalt | | |

■ Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

☐ Change proposed by Contractor/Design-Builder

**Bid Item # 3 Emulsified Asphalt CRS-2P Overrun**
Original plan quantity was estimated at 1,436 Tons of CRS-2P Oil using a 0.35 gallons per Sq. Yd. application. Standard Specifications allows a range of 0.35 to 0.55 gallons per Sq. Yd. The contractor averaged 0.45 gallons per Sq. Yd. increasing the quantity by 335 Tons with a Unit Price of $525.00 per Ton.

335 Tons X $525.00 = $175,875.00 Increase (10% of original contract)

**Bid Item # 4 Emulsified Asphalt HFE-150 Underrun**
Original plan quantity was estimated at 155 Tons and Actual Quantity was 151 Tons. A decrease of 4 tons.

4 Tons X $525 = $2,100.00 Decrease (0.1% of original contract)

**Bid Item # 5 Furnishing and Placing Crushed 3/8 Inch – No. 4 Underrun**
Original plan quantity was estimated at 14,774 Tons and Actual Quantity was 14,222 Ton. A decrease of 552 Tons

552 Tons X $30.00 = $16,560.00 Decrease (1% of original contract)

**Bid Item # 6 Furnishing and Placing Crushed Surfacing Top Course for Edge Repair Overrun**
Original plan quantity was estimated at 1,238 Tons and Actual Quantity was 1,963 Ton. The Contractors is allowed a range between 30 to 35 lbs. per Sq. Yd. Plan quantity was estimated on the lower end while the actual application was on the higher end.

725 Tons X $52.00 = $37,700.00 Increase (2% of original contract)

| Verbal Approval Date | | Working Days | |
|---|---|---|---|
| N/A | | N/A | |
| Original Contract Amount | Current Contract Amount | Est. Net Change This C.O. | Est. Contract Amount |
| $1,692,556.92 | $1,692,556.92 | $194,915.00 | $1,887,471.92 |

| | | | |
|---|---|---|---|
| ☑ Approval Recommended<br>Jeff Kuhn<br>Project Engineer | 8/11/21<br>Date | ☑ Approved<br>County Administrator | 8/18/2021<br>Date |
| ☑ Approval Recommended<br>By Prime Contractor | 8/12/2021<br>Date | ☑ Approved<br>County Engineer | 08/16/21<br>Date |

# Change Order

| Contract Number | Contract Title | Federal Aid Number |
|---|---|---|
| CE 2118 | 2021 BST Area 5 and Edge Repair | N/A |
| Change Order Number | Change Description | Date |
| 3 | City of Richland Edge Work and Paint Line | 8-11-2021 |
| Prime Contractor/Design-Builder<br>Central Washington Asphalt | | |

■ Ordered by Engineer under the terms of Section 1-04.4 of the Standard Specifications

☐ Change proposed by Contractor/Design-Builder

**City of Richland Request to add Edge Repair**
Central Washington's Quote for Edge Repair work included the following and was agreed to by the City of Richland on 4-26-21

- 16 additional Tons to Bid Item # 12 Emulsified Asphalt CRS-2P
  - 16 Tons X $550 = $8,800 Increase
- 115 additional Tons to Bid Item # 13 Furnishing and Placing Crushed 3/8 Inch – No 4.
  - 115 Tons X $50 = $5,750 Increase
- Additional Traffic Control at a Lump Sum Amount of $3,000
  - This will be added as new Bid Item # 16 Additional Traffic Control

**City of Richland Request to add Paintline**
Central Washington's Quote for Paint line work included the following and was agreed to by the City of Richland on 6-15-21

- Paint Line at a Lump Sum Amount of $165.75
  - This will be added as new Bid Item # 17 Paint line

**The overall Increase for this Change Order is $17,715.75**

| Verbal Approval Date | | Working Days | |
|---|---|---|---|
| 4-26-21 Edge Repair & 6-15-21 Paint | | N/A | |
| Original Contract Amount | Current Contract Amount | Est. Net Change This C.O. | Est. Contract Amount |
| $1,692,556.92 | $1,887,471.92 | $17,715.75 | $1,905,187.67 |

| | | | |
|---|---|---|---|
| ☑ Approval Recommended | | ☑ Approved | |
| Project Engineer | Date 8/11/21 | County Administrator | Date 8/18/2021 |
| ☑ Approval Recommended | | ☑ Approved | |
| By Prime Contractor | Date 8/12/2021 | County Engineer | Date 08/18/21 |

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Awarding Personal Services Contract for Auto Body Repairs to FSN Collision Group, Inc. dba FNS Collision |
| **Presenter:** | N/A |
| **Prepared By:** | S. Christen |
| **Reviewed By:** | Michael McGhan |

**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

There is a need to have auto body repair services on fleet vehicles managed by ER&R throughout the year. When the service is needed staff obtains quotes from at least 3 auto body repair shops and evaluates each for cost and timely service. Contracts need to be in place with the auto body shops in order to expeditiously have the repairs made.

Jack's Superior Auto Body, who the County had a contract with, was sold to FNS Collision. Therefore, we need to get a contract in place with the new owners.

A service contract has been prepared with FNS Collision, has been reviewed and approved by our departmental Deputy Prosecuting Attorney from the Civil Division, and has been signed by FNS Collision.

## Fiscal Impact

**Amount:** In an amount not to exceed $40,000

**Fund:** ER&R Fund
The ER&R Fund will be reimbursed by the repaired vehicle's office or department.

## Recommendation

The Fleet Superintendent recommends entering into the service contract with FNS Collision for "as-needed" auto body repair on fleet motor vehicles from this date until December 31, 2022 in an amount not to exceed $40,000.00.

## 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 PERSONAL SERVICES CONTRACT TO FNS COLLISION GROUP, INC dba FNS COLLISION FOR "AS NEEDED" AUTOMOBILE BODY REPAIR ON BENTON COUNTY FLEET MOTOR VEHICLES**

**WHEREAS,** during the year Benton County is in need of auto body repair service on fleet vehicles; and

**WHEREAS,** per Benton County Resolution 2021-233, Section 5.3.2 General Services "The County need not advertise or follow a formal competitive bidding procedure for service contracts (except for architectural, engineering, or design 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 Fleet Superintendent recommends entering into a personal services contract with FNS Collision for "as needed" automobile body repair on Benton County fleet motor vehicles; and

**WHEREAS,** our departmental assigned Deputy Prosecuting Attorney from the Civil Division has reviewed and approved as to form said contract and the contract has been signed by FNS Collision; **NOW, THEREFORE**

**BE IT RESOLVED,** the Board of Benton County Commissioners, Benton County, Washington hereby concurs with the recommendation and awards the attached personal services contract to FNS Collision Group, Inc. dba FNS Collision for "as needed" automobile body repair on Benton County fleet motor vehicles in an amount not to exceed $40,000.00; and

**BE IT FURTHER RESOLVED,** the Board is authorized to sign said personal services contract which shall commence on this date and shall expire December 31, 2022.

Dated this 14th day of September 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

Orig.: Purchasing Dept.
c: Auditor, Sonia-PA

S. Christen

**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 **FNS COLLISION GROUP. INC. dba FNS COLLISION**, a corporation organized under the laws of the State of Washington with its principal offices at 310 W, Columbia Drive, Kennewick, WA 99336 (hereinafter "CONTRACTOR").

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

## 1. CONTRACT DOCUMENTS

This Contract consists of the following documents:

a. Terms and Conditions (this document)

## 2. DURATION OF CONTRACT

The term of this Contract shall begin on the last date signed 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. "As needed" automobile body repair for Benton County fleet motor vehicles.

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:
Abe Ruiz
310 W. Columbia Dr.
Kennewick, WA 99336
Phone: 509-586-4511
Email: abe.r@fnscollision.com

b. For COUNTY:
Michael McGhan
102808 Wiser Parkway
Kennewick, WA 99336
Phone: 509-786-5611
Email: michael.mcghan@co.benton.wa.us

## 5. COMPENSATION

a. Service Rates and Parts/Equipment Cost: Rates and costs will be determined at the time services are needed in a form of a written quote that will be submitted to the COUNTY prior to commencement of work on a particular vehicle.

b. The maximum total amount payable by the COUNTY to the CONTRACTOR under this Contract shall not exceed forty thousand dollars and zero cents ($40,000.00) including Washington State Sales Tax. The COUNTY does not guarantee any amount of work under this contract. The COUNTY reserves the right to contract with other vendors to perform the same or similar services provided under this 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 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. **Garage Liability:** The CONTRACTOR shall maintain, during the life of the Contract, Garage Liability Insurance in the amount of at least $1,000,000 each occurrence and $2,000,000 general aggregate to protect CONTRACTOR from claims which may arise from the performance of this Contract, whether such operations be by the CONTRACTOR or by anyone directly or indirectly employed by the CONTRACTOR.

e. **Garagekeepers Liability:** The CONTRACTOR shall maintain, during the life of the Contract, Garagekeepers Liability Insurance with Direct Primary coverage in the amount that the CONTRACTOR deems appropriate to cover the CONTRACTOR'S exposure for all vehicles in the CONTRACTOR'S care for repair, service or installing equipment.

f. **On-Hook Towing Coverage:** The CONTRACTOR shall maintain, during the life of the Contract, On-Hook Towing coverage in the amount of at least $50,000 to cover the cost to replace or repair any damages that results from the CONTRACTOR's towing or hauling of customer's vehicles.

g. **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.

h. **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 thirty (30) 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.

**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.

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

_____
Reid Hay, Civil Deputy Prosecuting Attorney

Dated: 8/11/21

**FOR: FNS COLLISION GROUP, INC.**
**dba FNS COLLISION**

_____
Signature

President
Title:

Sean Markussen
Print Name

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | 9/14/2021 |
| **Subject:** | Bi-County Resolution Adopting a Process for All Blake Related Expenses per Franklin County's Pro Rata Share. |
| **Presenter:** | N/A |
| **Prepared By:** | Tiffany Deaton |
| **Reviewed By:** | Judge Alexander Ekstrom |

**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

During the 2021 Legislative Session, the Washington State Administrative Office of the Courts was allocated $72,500,000.00 by the Legislature to address the aftereffects of the State v. Blake decision. The Washington State Administrative Office of the Courts has issued a Blake Disbursement Plan which outlines their distribution plan for a one-year allocation of $44,500,000.00, as identified in ESSB 5092 Sec. 115(5), to assist counties with the costs of resentencing and vacating the sentences of defendants affected by the Blake decision.

## Fiscal Impact

None – All expenses to be reimbursed by the Washington State Administrative Office of the Courts under the Blake Disbursement Plan.

## Recommendation

Recommend approval of Bi-County Resolution.

## Suggested Motion

N/A – Consent Agenda.

# JOINT RESOLUTION

**BENTON COUNTY RESOLUTION _____**

**FRANKLIN COUNTY RESOLUTION 2021-196**

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

**IN THE MATTER OF ADOPTING A PROCESS FOR ALL BLAKE RELATED EXPENSES TO BE INVOICED TO FRANKLIN COUNTY PER THEIR PRO-RATA SHARE;**

**WHEREAS**, during the 2021 Legislative Session, the Washington State Administrative Office of the Courts was allocated $72,500,000.00 by the Legislature to address the aftereffects of the State v. Blake decision; and

**WHEREAS**, the Washington State Administrative Office of the Courts has issued a Blake Disbursement Plan which outlines their distribution plan for a one-year allocation of $44,500,000.00, as identified in ESSB 5092 Sec. 115(5), to assist counties with the costs of resentencing and vacating the sentences of defendants affected by the Blake decision; and

**WHEREAS**, the Washington State Administrative Office of the Courts will allocate funds to the counties based on a county's current Department of Corrections Blake in-custody and supervision population and will allocate funds to counties by the end of the month; and

**WHEREAS**, the county's Blake related expenses shall be invoiced and paid consistent with Joint Resolution - Benton County 2017-080 and Franklin County 2017-11 and Joint Resolution - Benton County 2020-985 and Franklin County 2020-277; **NOW THEREFORE,**

**BE IT RESOLVED**, Benton County shall invoice Franklin County monthly for the County's pro rata share of the Blake related expenses consistent with Joint Resolution - Benton County 2017-080 and Franklin County 2017-11 and Joint Resolution - Benton County 2020-985 and Franklin County 2020-277; and

**BE IT FURTHER RESOLVED,** Franklin County's payment to the Benton County Treasurer shall be no later than 20 days of the date of each invoice thereafter (February 15th invoice, for the month of January expenses, payment due March 6th), and so forth; and

**BE IT FURTHER RESOLVED**, Franklin County Resolution 2021-169 is hereby rescinded.

**Dated this ..... day of..... 2021.**

**BENTON COUNTY BOARD OF COMMISSIONERS**

_____

**Chair of the Board**

_____

**Chair Pro Tem**

**Dated this 31 day of Aug. 2021.**

**FRANKLIN COUNTY BOARD OF COMMISSIONERS**

_____

**Chair of the Board**

_____

**Chair Pro Tem**

cc: BC Commissioners, FC Commissioners, Auditor, Treasurer

Brad Peck
Approved Telephonically

**Member**

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

**ATTEST:**

**Clerk of the Board**

**Member**

**Constituting the Board of County Commissioners of Franklin County, Washington**

**ATTEST:**

**Clerk of the Board**

Prepared by: T. Deaton

cc: BC Commissioners, FC Commissioners, Auditor, Treasurer

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN TRIAL COURT IMPROVEMENT FUND NUMBER 0156101, DEPT 000

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Commissioners; Auditor; File; Superior Court

Prepared by: T. Deaton

EXHIBIT "A"

# BENTON COUNTY LINE ITEM TRANSFER

Dept Name: | Dept Nbr: 000

Fund Name: Trial Court Improvement | Fund Nbr: 0156101

TRANSFER FROM: **Dept.** Trial Court Improvement | TRANSFER TO: **Dept.** Trial Court Improvement

| BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT | BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT |
|---|---|---|---|---|---|---|---|
| 512.214 | 4103 | Professional Services | $222,000 | 512.214 | 3501 | Minor Equipment and Small Tools | $10,000 |
| | | | | 512.214 | 3503 | Computer Software | $50,000 |
| | | | | 512.214 | 3508 | Computer Replacement | $90,000 |
| | | | | 512.214 | 4102 | Contract Services | $50,000 |
| | | | | 512.214 | 4301 | Travel | $6,000 |
| | | | | 512.214 | 4805 | Support/Maintenance Agreements | $10,000 |
| | | | | 512.214 | 4905 | Training | $6,000 |
| | | | | | | | |
| TOTAL | | | $222,000 | TOTAL | | | $222,000 |

Explanation:

2021-2022 Budget. Transfer of funds to accurately cover the costs incurred consistent with the Auditor's coding.

Prepared by: Tiffany Deaton, Superior Court Administrtor | Date: 8/30/21

Approved ❑ | Denied ❑ | Date: _____

_____
Chairman

_____
Member

_____
Member

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 **Memo Date:** August 30, 2021 |
| **Subject:** | Short Plat Vacation– SPV 2021-003 Douglas Rybarski |
| **Presenter:** | Michelle Cooke, Assistant Planning Manager |
| **Prepared By:** | Andrea Watts |
| **Reviewed By:** | Michelle Cooke |

**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

On November 17, 1992, Short Plat 1866 was recorded under Auditor's File Number 1992-028723, creating three residential lots off West 10th Avenue in the Kennewick area of unincorporated Benton County. The short plat also created a five (5) foot irrigation easement running north to south along the west property line of the short plat. A Boundary Line Adjustment was completed in 2020 under Auditor File Number 2020-029827 and subsequently the property was re-platted in 2021 under Short Plat 3702 with the same irrigation easement shown on both the survey and short plat.

The applicant, Douglas Rybarski, is requesting the vacation of a portion of the five (5) foot irrigation easement that runs along the western property lines of Lots 1-3 of Short Plat 1866 and Short Plat 3702 except for the southernmost 10 feet of Lot 1 of Short Plat 1866 and subsequent Lot 3 of Short Plat 3702. The Kennewick Irrigation District Board of Directors approved the applicant's request on August 17, 2021 to pursue the vacation of the irrigation easement. Owners of property within 300 feet of the subject parcel and all concerned agencies, including Kennewick Irrigation District, and the City of Kennewick were notified of the proposed vacation and no objections or concerns have been received to date.

## Fiscal Impact

**Amount: None**

**Fund: None**

## Recommendation

It is the recommendation of the Planning Division that the Board of County Commissioners conduct a public hearing, and based on the testimony received, either approve or deny the request. The Planning Division, based on the information received thus far, is recommending approval of the proposed vacation of a portion of the five (5) foot irrigation easement that runs along the western property line of Lots 1-3 of Short Plat 1866 and Short Plat 3702 except for the southernmost 10 feet of Lot 1.

## Suggested Motion

I move to approve SPV 2021-003 for the vacation of a portion of the five (5) foot irrigation easement that runs along the western property lines of Lots 1-3 of Short Plat 1866 and Short Plat 3702 except for the southernmost 10 feet of Lot 1.

Return to
Benton County Commissioners
P.O. Box 190
Prosser WA 99350

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON
IN THE MATTER OF COUNTY PLANNING REGARDING THE PROPOSED VACATION OF THE FIVE (5) FOOT IRRIGATION EASEMENT RUNNING ALONG THE WEST PROPERTY LINES OF LOTS 1 THROUGH 3 OF SHORT PLAT 1866 AND OF LOTS 1 THROUGH 3 OF SHORT PLAT 3702, SECTION 12, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M. APPLICANT: DOUGLAS RYBARSKI, PARENT PARCEL NUMBERS 1-1288-201-1866-005, 1-1288-201-1866-006, AND 1-1288-201-1866-007, FILE NUMBER - SPV 2021-003

WHEREAS the Board of County Commissioners did conduct a public hearing on Tuesday, September 14, 2021 at 9:00 a.m. in the Commissioners Meeting Room, Third Floor Courthouse, Prosser, Washington; and,

WHEREAS the signature of the property owners of said application includes all properties affected by these easements; and,

WHEREAS, upon due notice as provided in RCW 58.17.080 and 58.17.090, the hearing before the Board of County Commissioners was held on such petition as indicated above; and,

WHEREAS the Board of County Commissioners agrees with the summary report from the Benton County Planning Division, retained in File No. SPV 2021-003; and,

WHEREAS a portion of a five (5) foot irrigation easement which runs along the western property lines of Lots 1-3 of Short Plat 1866 and Short Plat 3702 except for the southernmost 10 feet of Lot 1 is proposed to be vacated (see Exhibit A attached hereto); and,

WHEREAS it further appears that the vacation of the above-mentioned easement would not unduly jeopardize the health, safety, welfare and public good; NOW THEREFORE,

BE IT RESOLVED that the vacation a five (5) foot irrigation easement which runs along the western property lines of Lots 1-3 of Short Plat 1866 and Short Plat 3702 except for the southernmost 10 feet of Lot 1 of Section 12, Township 8 North, Range 28 East, W.M., as legally described on Exhibit A attached hereto, is hereby approved.

Dated this 14th day of September 2021.

_____
Chairman of the Board

_____
Member

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

Attest.....
Clerk of the Board

AW

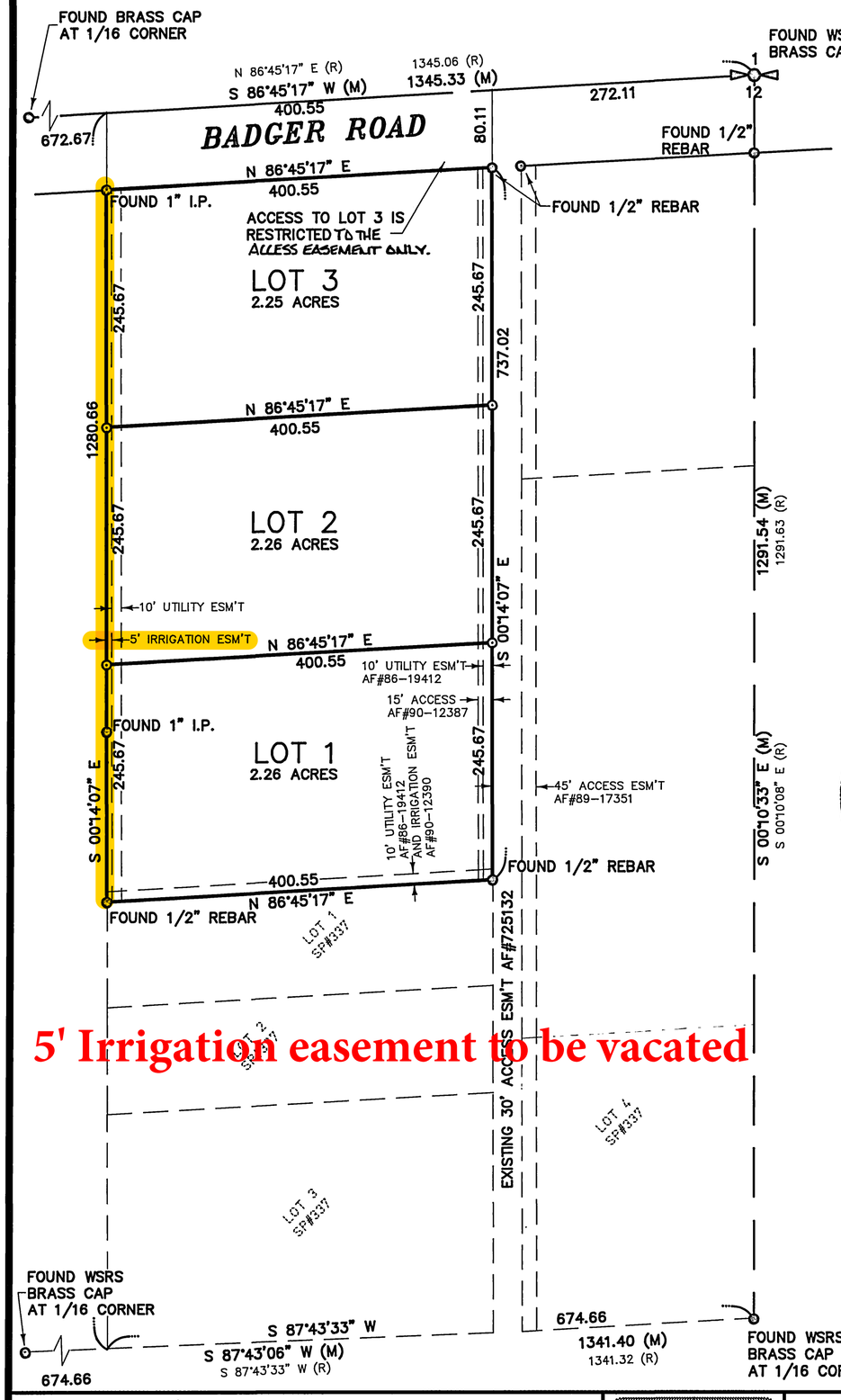
copies to BOCC, PLN

12-8-28 92-54.

# SHORT PLAT NO. 186b

N.E.¼, N.W.¼, SEC. 12, T.8 N., R.28 E., W.M.

BENTON COUNTY, WASHINGTON




5' Irrigation easement to be vacated

## DESCRIPTION – DEED

THE WEST 400.00 FEET OF THE NORTH 816.00 FEET OF THE EAST HALF OF THE NORTHEAST QUARTER OF THE NORTHWEST QUARTER IN SECTION 12, TOWNSHIP 8 NORTH, RANGE 28 EAST, W.M., EXCEPT ROADS.

## OWNER'S CERTIFICATE

WE, THE UNDERSIGNED, HEREBY CERTIFY THAT WE ARE THE OWNERS OF THE TRACT OF LAND DESCRIBED HEREON, THAT WE HAVE CAUSED SAID LAND TO BE SURVEYED AND SHORT PLATTED INTO LOTS AS SHOWN AND THAT THE EASEMENTS ON THE SHORT PLAT ARE HEREBY GRANTED FOR THE USES AS SHOWN THEREON.

Edwin R. Rybarski — EDWIN R. RYBARSKI

Ruth F. Rybarski — RUTH F. RYBARSKI

## ACKNOWLEDGMENT

STATE OF Washington
COUNTY OF Benton

I CERTIFY THAT I KNOW OR HAVE SATISFACTORY EVIDENCE THAT EDWIN R. RYBARSKI AND RUTH F. RYBARSKI, HUSBAND AND WIFE, SIGNED THIS PLAT AND ACKNOWLEDGED IT TO BE THEIR FREE AND VOLUNTARY ACT FOR THE USES AND PURPOSES MENTIONED ON THIS PLAT.

Sharon Woodbury — NOTARY PUBLIC, MY APPOINTMENT EXPIRES 4-20-95

DATE 11-12-92

SHARON WOODBURY NOTARY PUBLIC STATE OF WASHINGTON

## APPROVALS

THE ANNEXED SHORT PLAT IS HEREBY APPROVED BY AND FOR THE COUNTY OF BENTON, WASHINGTON.

Robert L. Wright for Terry D. Haden — BENTON COUNTY SUBDIVISION ADMINISTRATOR — DATE 11/17/92

I HEREBY CERTIFY THAT THE TAXES ON THE LAND DESCRIBED HEREON HAVE BEEN PAID TO AND INCLUDING THE YEAR 1992. 1-1288-200-0003-000.

Claude L. Oliver by Tammi McKernan — TREASURER, BENTON COUNTY — DATE 11-17-92

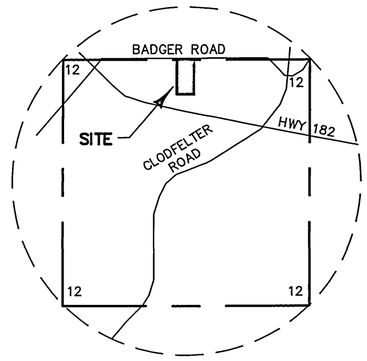
## IRRIGATION APPROVAL

THE PROPERTY DESCRIBED HEREIN IS LOCATED WHOLLY OR IN PART WITHIN THE BOUNDARIES OF THE KENNEWICK IRRIGATION DISTRICT. I HEREBY CERTIFY THAT THE IRRIGATION EASEMENTS AND RIGHT-OF-WAY SHOWN ON THIS PLAT ARE ADEQUATE TO SERVE ALL LOTS LOCATED WITHIN THIS PLAT WHICH ARE OTHERWISE ENTITLED TO IRRIGATION WATER UNDER THE OPERATING RULES AND REGULATIONS OF THE DISTRICT. I FURTHER CERTIFY, THIS PLAT CONTAINS COMPLETED IRRIGATION DISTRIBUTION FACILITIES IN ACCORDANCE WITH THIS DISTRICTS STANDARDS, AND RCW 58.17.310, AND THE IRRIGATION ASSESSMENTS HAVE BEEN PAID TO AND INCLUDING THE YEAR 1993

James K. Eddy — KENNEWICK IRRIGATION DISTRICT — Engineering Assistant — TITLE — 11/12/92 — DATE

## NOTE

1. BENTON COUNTY IS NOT RESPONSIBLE FOR CONSTRUCTION AND/OR MAINTENANCE OF ANY PRIVATE ACCESS EASEMENTS.
2. NO BUILDING PERMIT CAN BE ISSUED FOR A STRUCTURE REQUIRING POTABLE WATER UNTIL EVIDENCE OF AN APPROVED POTABLE WATER SUPPLY IS SUBMITTED TO THE BENTON COUNTY PLANNING AND BUILDING DEPARTMENT.
3. NO BUILDING PERMIT OR MOBILE HOME PLACEMENT PERMIT WILL BE ISSUED UNTIL THE ACCESS EASEMENT FROM THE COUNTY ROAD TO THE LOT FOR WHICH THE PERMIT IS REQUESTED HAS BEEN IMPROVED TO THE FOLLOWING STANDARDS: GRADING AND COMPACTING WITH 2 INCHES OF CRUSHED GRAVEL 20 FEET WIDE.




VICINITY MAP

NOT TO SCALE

## LEGEND

⊙ = SET 5/8" REBAR LS14120
O = FOUND AS INDICATED
B.O.B. = BASIS OF BEARING

SCALE 1" = 100'

0 100 200 300

BASIS OF BEARING
SHORT PLAT NO. 337
EQUIPMENT USED
A FIVE-SECOND TOTAL STATION

## SURVEYOR'S CERTIFICATE

I, ROBERT H. STRATTON, A LICENSED LAND SURVEYOR IN THE STATE OF WASHINGTON, HEREBY CERTIFY THAT THIS MAP CORRECTLY REPRESENTS AN ACTUAL FIELD SURVEY CONDUCTED BY ME, IN CONFORMANCE WITH THE SURVEY RECORDING ACT, AT THE REQUEST OF E.R. RYBARSKI, AND ALL BEARINGS AND DISTANCES ARE CORRECT.

Robert H. Stratton — ROBERT H. STRATTON LS 14120

10 NOV 1992 — DATE

ROBERT H. STRATTON STATE OF WASHINGTON 14120 REGISTERED PROFESSIONAL LAND SURVEYOR
EXPIRES: 07/30/94

## SURVEY FOR

*EDWIN R. RYBARSKI*

## INDEX

| ¼ ¼ | SEC | T. | R. |
|---|---|---|---|
| | 12 | 8 N | 28E |
| | | | |

## AUDITOR'S CERTIFICATE

FILED FOR RECORD THIS 17th DAY OF November, 1992 AT 34 MINUTES PAST 3 P.M. AND RECORDED IN VOLUME / OF SHORT PLAT PAGE 186, AT THE REQUEST OF ROBERT H. STRATTON, R.L.S.

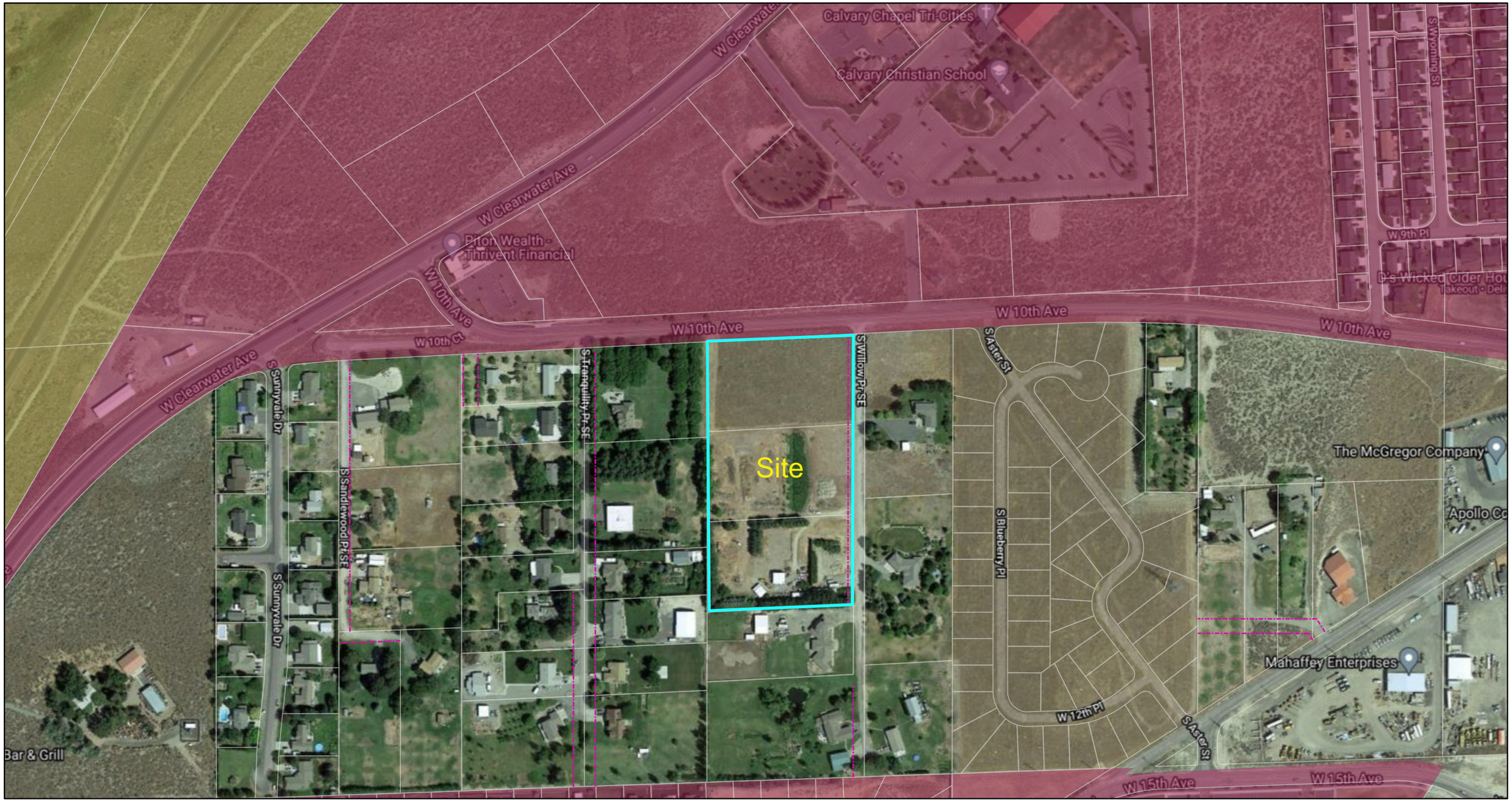
Bobbi Haynes by Linda Hyland — BENTON COUNTY AUDITOR

INDEX NO. 92-28723
FEE NO.


BOB STRATTON SURVEYING
1350 GRANDRIDGE BLVD. SUITE 101A
KENNEWICK, WASHINGTON 99336
(509) 735-7364


| | |
|---|---|
| 1244SP-1.DWG | 1244PT-1.L3D |
| DATE: 11/10/92 | SHT. 1 OF 1 |
| DRAWN BY: K.K. | JOB # 1244 |

# SPV 2021-003 Rybarski Vicinity Map




7/22/2021, 8:43:26 AM

Access_Easement

Parcels_and_Assess

City Limits

Kennewick

Richland

1:4,514

0 0.04 0.07 0.15 mi

0 0.05 0.1 0.2 km

© OpenStreetMap (and) contributors, CC-BY-SA

Benton County Planning
Google Inc |

**Planning Department**
P.O. Box 910
1002 Dudley Avenue
Prosser, WA 99350

Phone (509) 786-5612
Fax (509) 786-5629
planning.department@co.benton.wa.us
co.benton.wa.us

RECEIVED
JUL 20 2021
Benton Co. Planning Dept.

# SHORT PLAT VACATION APPLICATION

*Application No.* SPV 2021-003

## APPLICANT INFORMATION

*Please check the box indicating primary contact person for this application*

☐ **Applicant/Agent**: DOUGLAS S. RYBARSKI

Mailing Address: 1122 S. WILLOW AVE. SE. City: KENNEWICK

State: WA ZIP: 99338 Phone: 509-539-4777 Work: _____

Email Address: dougrybarski@gmail.com

Signature: Doug Rybarski Date: 7-20-2021

☐ **Property Owner(s)** *(if different)*: SEE ABOVE

Mailing Address: _____ City: _____

State: _____ ZIP: _____ Phone: _____ Work: _____

Email Address: _____

Signature: _____ Date: _____

**Signatures of Persons with Additional Ownership Interest**:

| Print Name | Signature | Date |
|---|---|---|
| | | |
| Print Name | Signature | Date |
| | | |
| Print Name | Signature | Date |

***If the property is owned by a corporation, trust, partnership or LLC please complete the entity signature block below showing that the person signing has the authority to sign on behalf of the company.***

## ENTITY SIGNATURE BLOCK

**Applicant/Legal Owner**: _____

Officer name: _____

Title: _____

Signature: _____ Date: _____

THE ABOVE SIGNED OFFICER OF _____ *(name of entity)*

WARRANTS AND REPRESENTS THAT ALL NECESSARY LEGAL AND CORPORATE ACTIONS HAVE BEEN DULY UNDERTAKEN TO PERMIT _____ *(name of applicant)* TO SUBMIT THIS APPLICATION AND THAT THE ABOVE SIGNED OFFICER HAS BEEN DULY AUTHORIZED AND INSTRUCTED TO EXECUTE THIS APPLICATION.

Any information submitted to the Benton County Planning Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

## PARCEL INFORMATION

1. **Subject property address:** 1122 S. WILLOW PR SE

   **City:** KENNEWICK **State:** WA **ZIP:** 99338

2. **Parcel number:** 1-1288-201-1866-004 **3. Acreage:** 6.77

4. **Present use of property:** HOME / NURSERY

5. **Access:** ☐ County Road ☐ State Road/Highway ☒ Private Road ☒ CITY STREET

6. **Utilities:** *Power:* ☐ Benton PUD ☐ Benton REA

   *Sewer:* ☒ Septic Tank ☐ City Sewer: *(Provider)* _____

   *Water:* ☐ Individual Wells ☒ One well serving 2-4 lots ☐ One well serving 5+ lots

   ☒ Private System *(Provider & Address)* DOUG RYBARSKI

   ☐ City System *(Provider)* _____

   *Gas:* ☐ No ☐ Yes: *(Provider)* _____

   *Cable:* ☐ No ☐ Yes: *(Provider)* _____

   *Phone:* ☐ No ☐ Yes: *(Provider)* _____

   *Irrigation:* ☐ No ☐ Private ☒ District: *(Provider)* KID

## REQUEST DESCRIPTION

7. **Describe the proposed portion of the plat to be vacated:** ALL THAT PORTION OF THE 5-FOOT IRRIGATION EASEMENT AS DEDICATED ALONG THE WEST LINES OF LOTS 1 TO 3 OF SHORT PLAT NO. 1866.

8. **List other parcels that may be affected by this request:** 1130 AND 1218 S. WILLOW PR SE (AKA LOTS 1-3 OF SP # 337)

9. **Give a detailed explanation for the vacation request:** PLANNED DEVELOPMENT OF PROPERTY WILL INCLUDE ACCESS ROAD ALONG WEST SIDE OF PROPERTY. PROPOSAL IS TO VACATE THIS 5-FOOT EASEMENT AND DEDICATE NEW EASEMENT ALONG EAST SIDE OF ACCESS, BETTER SERVING PROPOSED DEVELOP.

***(FOR STAFF USE ONLY)*** *Application Complete:* Y N

*Critical Areas:* N Y: _____ *Zoning:* _____

*Reviewed by:* _____ *Date:* _____

Any information submitted to the Benton County Planning Department is subject to public records disclosure law for the State of Washington (RCW Chapter 42.17) and all other applicable law that may require the release of the documents to the public.

**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 PUBLIC HEARING

NOTICE OF HEARING BEFORE THE BENTON COUNTY BOARD OF COMMISSIONERS in the matter of County Planning:

**SPV 2021-003 -** A Short Plat Vacation application by Doug Rybarski to vacate a portion of an irrigation easement that runs along the west 5 feet of Lots 1-3 of Short Plat 1866, except the southernmost 10 feet of Lot 1. The property is located approximately 750 feet west of the intersection of Aster St and 10th Avenue in Section 12, Township 8 North, Range 28 East, W.M.

NOTICE IS HEREBY GIVEN that the Board of County Commissioners will hold a public hearing on September 14, 2021 at 9:00 a.m. in the Commissioners Meeting Room, Third Floor, Courthouse, Prosser WA. Due to the ongoing and unprecedented COVID-19 emergency, participation in this meeting will be offered in person and virtually. All concerned persons may attend the meeting in person or virtually appear and present any support for or objection to the application or provide written testimony to the Board of County Commissioners in care of the Planning Division before the date of the hearing. **Written testimony will need to be submitted to the Benton County Planning Division PO Box 910 Prosser, WA 99350 by 3 p.m. Monday September 13, 2021.**

**To find information regarding testifying and on virtual attendance options please use this link.** https://www.co.benton.wa.us/agendalist.aspx?categoryid=1181

Further information regarding these files and copies of the proposals are available at no cost from the Benton County Planning Division, P.O. Box 910, Prosser, WA 99350. Telephone: Prosser (509) 786-5612; Tri-Cities (509) 736-3086 or on our website at https://tinyurl.com/BCpublicnotice.

BASED ON THE TESTIMONY presented at the public hearing, the Board of County Commissioners may approve, disapprove or they may make changes to the short plat vacation application. Any information submitted to the Benton County Planning Division is subject to public records disclosure law for the State of Washington (RCW Chapter 42.56) and all other applicable law that may require the release of the documents to the public.

DATED this 25th day of August 2021.

JEROME DELVIN, Chairman
BENTON COUNTY COMMISSIONERS

Michelle Cooke, Assistant Planning Manager
Benton County Planning Division

PUBLISH: September 1, 2021

## Andrea Watts

**From:** Brett Flippo <BFlippo@kid.org>
**Sent:** Tuesday, August 17, 2021 11:15 AM
**To:** Andrea Watts
**Subject:** RE: [EXTERNAL] RE: SPV 2021-003 Agency Review

Hi Andrea,

In regards to the subject short plat vacation application, our July 29, 2021 letter contained two conditions of approval (see below), which have now been satisfied.

1. *Receipt by KID of payment made by the Applicant of an Easement Vacation Request fee.*
    a. **This has been paid.**
2. *Approval by the KID Board of Directors during a regularly scheduled KID board meeting.*
    a. **Approved at the 8/17/2021 KID Board meeting.**

Please let me know if you have any questions, or need anything further from the District.

Thanks,

**Brett Flippo, PLS, CFedS**
Kennewick Irrigation District
2015 S. Ely Street| Kennewick, WA | 99337
Phone: 509.460.5425 | Fax: 509.586.7663
Email: bflippo@kid.org
Website: www.kid.org

KENNEWICK IRRIGATION DISTRICT

---

**From:** Brett Flippo
**Sent:** Monday, August 2, 2021 3:15 PM
**To:** Andrea Watts <Andrea.Watts@co.benton.wa.us>
**Subject:** RE: [EXTERNAL] RE: SPV 2021-003 Agency Review

Hi Andrea,

The application has been placed on the Board's August 17th consent agenda. I can follow up with you after that meeting.

Thanks,

Brett Flippo, PLS, CFedS
Kennewick Irrigation District

---

**From:** Andrea Watts [mailto:Andrea.Watts@co.benton.wa.us]
**Sent:** Monday, August 2, 2021 2:36 PM
**To:** Brett Flippo <BFlippo@kid.org>
**Subject:** RE: [EXTERNAL] RE: SPV 2021-003 Agency Review

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hi Brett,

I'm still working on getting the Rybarski vacation sorted and have another question for you.

Have the conditions of approval been met for the vacation? We want to make sure that the KID board has approved and fees paid before we put the issue in front of the county commissioners.

Thank you!

Andrea Watts
*Associate Planner*
Benton County Community Development Department - Planning Division
Andrea.watts@co.benton.wa.us
(509) 786-5612

**From:** Brett Flippo <BFlippo@kid.org>
**Sent:** Thursday, July 29, 2021 4:16 PM
**To:** Andrea Watts <Andrea.Watts@co.benton.wa.us>
**Subject:** [EXTERNAL] RE: SPV 2021-003 Agency Review

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 Andrea,

Please see the attached review comment letter containing KID's comments for the subject application.

Thanks,

Brett Flippo, PLS, CFedS
Kennewick Irrigation District

**From:** Andrea Watts [mailto:Andrea.Watts@co.benton.wa.us]
**Sent:** Friday, July 23, 2021 4:20 PM
**To:** Cristina Woods <Cristina.Woods@co.benton.wa.us>; Jordyn Reimer <Jordyn.Reimer@co.benton.wa.us>; Rod Worthington <Rod.Worthington@co.benton.wa.us>; lonnie@bentonone.org; Rick Dawson <Rickd@bfhd.wa.gov>; Development <development@kid.org>; Shanna Everson <eversons@bentonpud.org>; Tina Glines <glinest@bentonpud.org>; Brenda Webb <webbb@bentonpud.org>; Joe Seet <Joe.Seet@ci.kennewick.wa.us>; Greg.McCormick@ci.kennewick.wa.us; Planning Department <Planning.Department@co.benton.wa.us>
**Subject:** SPV 2021-003 Agency Review

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Hello,

Please see attached application for a short plat vacation involving the removal of a 5 foot irrigation easement. Can you please review and send me your comments by **Friday July 30th?**

Thank you and have a great weekend!

Best,

Andrea Watts
*Associate Planner*
Benton County Community Development Department - Planning Division
Andrea.watts@co.benton.wa.us
(509) 786-5612

**2015 South Ely Street**
**Kennewick, WA 99337**
**Customer Service 509-586-9111**
**Business 509-586-6012**
**FAX 509-586-7663**
**www.kid.org**

July 29, 2021

Andrea Watts, Associate Planner
**Benton County Community Development Department – Planning Division**
P.O. Box 910
Prosser, WA 99350

Subject: SPV 2021-003 – Short Plat Vacation Application

Andrea:

This letter is provided in response to a Short Plat Vacation Application received by the Kennewick Irrigation District (KID). The application was made by Douglas Rybarski (Applicant) for the vacation of an existing 5-foot irrigation easement as shown on that certain Short Plat 1866, across Assessor Parcel Number 112882011866004 (comprised of 3 separate parcels), located in NE ¼, NW ¼, Section 12, Township 8 North, Range 28 East, W.M.

KID has reviewed the subject application, and has determined that KID has no current or planned future use of the subject easement.

KID hereby gives its consent and **conditional approval** to the **partial** vacation of said easement, described more particularly as follows:

> A PORTION OF THAT CERTAIN 5' IRRIGATION EASEMENT AS DEPICTED ON SHORT PLAT NO. 1866, RECORDED IN VOLUME 1 OF SHORT PLATS, PAGE 1866, UNDER AUDITOR FILE NO. 1992-028723, RECORDS OF BENTON COUNTY, WASHINGTON, BEING THE WEST 5.00 FEET OF LOTS 1, 2 AND 3 OF SAID SHORT PLAT.
>
> **EXCEPT** THE SOUTH 10.00 FEET OF SAID LOT 1.

This consent and approval is conditional, subject to:

1. Receipt by KID of payment made by the Applicant of an Easement Vacation Request fee.
2. Approval by the KID Board of Directors during a regularly scheduled KID board meeting. KID board meetings are held on the first and third Tuesdays of each month.

All conditions must be satisfied prior to any request for final approval.

If you have any questions regarding these comments, please contact me at the address/phone number listed above.

Sincerely,

Brett Flippo, PLS, CFedS
Professional Land Surveyor

cc: LB\correspondence\File: [12-08-28]
Applicant via mail – Douglas Rybarski, 1122 S. Willow PR. SE., Kennewick, WA 99338

## Andrea Watts

**From:** Cristina Woods
**Sent:** Wednesday, July 28, 2021 3:39 PM
**To:** Andrea Watts
**Subject:** RE: SPV 2021-003 Agency Review

Good afternoon

Public Works has no comments.

Thank you

Cristina Woods, MS • *Engineering Associate II*
Benton County Public Works
102206 Wiser Parkway , WA, 99338
cristina.woods@co.benton.wa.us
(509) 786-5611

---

**From:** Andrea Watts <Andrea.Watts@co.benton.wa.us>
**Sent:** Friday, July 23, 2021 4:20 PM
**To:** Cristina Woods <Cristina.Woods@co.benton.wa.us>; Jordyn Reimer <Jordyn.Reimer@co.benton.wa.us>; Rod Worthington <Rod.Worthington@co.benton.wa.us>; lonnie@bentonone.org; Rick Dawson <Rickd@bfhd.wa.gov>; development@kid.org; Shanna Everson <eversons@bentonpud.org>; Tina Glines <glinest@bentonpud.org>; Brenda Webb <webbb@bentonpud.org>; Joe Seet <Joe.Seet@ci.kennewick.wa.us>; Greg.McCormick@ci.kennewick.wa.us; Planning Department <Planning.Department@co.benton.wa.us>
**Subject:** SPV 2021-003 Agency Review

Hello,

Please see attached application for a short plat vacation involving the removal of a 5 foot irrigation easement. Can you please review and send me your comments by **Friday July 30th?**

Thank you and have a great weekend!

Best,

Andrea Watts
*Associate Planner*
Benton County Community Development Department - Planning Division
Andrea.watts@co.benton.wa.us
(509) 786-5612

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 Memo Date: September 8, 2021 |
| **Subject:** | Public Hearing: Benton County's Shoreline Master Program Periodic Review |
| **Presenter:** | Greg Wendt, Director, Community Development Department<br>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

On June 22, 2021 the Board of County Commissioners held a public hearing on the Periodic Update to the Shoreline Master Plan (SMP) for Benton County. 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 public hearing was open for public testimony but there was no one present who wished to testify so the public portion of the hearing was closed, and a motion was then made to continue the public hearing decision making process until August 17, 2021 and then continued from August 17, 2021 to September 14, 2021 (BCCM 2.1). This was done in order to obtain Initial approval of the SMP from the Dept. of Ecology.

On September 7, 2021, Ecology submitted a formal written statement of initial concurrence of the proposed amendments. The County's next step in this process is to formally adopt the Periodic Update to the Shoreline Master Program and submit the final SMP for formal Ecology approval as outlined in WAC 173-26-110.

## Fiscal Impact

None known at this time.

## Recommendation

It is the recommendation of the Benton County Planning Department and the Planning Commission that the Board approve the Shoreline Master Plan as presented and as initially approved by the Dept. of Ecology and that:

1. The Board of County Commissioners accepts the Washington State Department of Ecology's change, as outlined in Ecology's letter dated September 7, 2021.

2. The Board of County Commissioners authorizes the Chairman to sign and send a letter to Washington State Department of Ecology accepting Ecology's changes to the Benton County Shoreline Master Program,

3. The Board of County Commissioners directs the Benton County Planning Department to make the changes to Benton County Shoreline Master Program as provided in Ecology's letter dated September 7, 2021.

## 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 locally approve the Periodic Update to the Shoreline Master Program in accordance with the Department of Ecology's submitted statement of initial concurrence.

# 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 on June 22, 2021 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 public hearing was open for public testimony but there was no one present who wished to testify so the public portion of the hearing was closed, and a motion was then made to continue the public hearing decision making process until August 17, 2021; and,

WHEREAS, the Open Record Hearing was continued until August 17, 2021 due to the need to obtain Initial Approval by the Dept. of Ecology; and was then further continued until September 14, 2021; and,

WHEREAS, on September 7, 2021, the Washington Department of Ecology approved the Benton County Shoreline Master Program subject to the one recommended change listed in their initial approval letter; and,

WHEREAS, the Board of County Commissioners conducted an Open Record Hearing on September 14, 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 September 14, 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 locally approves the Shoreline Master Program, it will be sent to the State of Washington Department of Ecology for final 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's final approval, the County will adopt the Shoreline Master Program by resolution; and,

WHEREAS, the Board of County Commissioners has reviewed the change proposed by the Washington State Department of Ecology and finds it to be consistent with the goals and policies of the Benton Shoreline Master Program; NOW THEREFORE,

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS that:

Section 1. The Board of County Commissioners accepts the Washington State Department of Ecology's change, as outlined in Ecology's letter dated September 7, 2021.

Section 2. The Board of County Commissioners authorizes the Chairman to sign and send a letter to Washington State Department of Ecology accepting Ecology's changes to the Benton County Shoreline Master Program,

Section 3. The Board of County Commissioners directs the Benton County Planning Department to make the changes to Benton County Shoreline Master Program as provided in Ecology's letter dated September 7, 2021.

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 14th day of September 2021.

_____
Chairman of the Board

_____
Member

_____
Member

Constituting the Board of County Commissioners of Benton County Washington.

Attest_____
Clerk of the Board

GW/djh

**TO:** Greg Wendt, Director of Community Development, Benton County
**CC:** Jackie Chandler, Shoreline Administrator, WA Department of Ecology
**FROM**: Chelsea Benner, Shoreline Planner, Ecology
**Date:** September 7, 2021
**Subject: SMP Periodic Review -** Initial Determination of Consistency
**Sent via email to:** Greg.Wendt@co.benton.wa.us

## Use of this Document

Ecology's *Determination of Initial Concurrence* provides Ecology's review of the proposed amendment to the Benton County (County) Shoreline Master Program (SMP). This document is divided into two sections: **Findings of Fact**, which provides findings related to the County's proposed amendment, amendment history, and the review process and **Initial Determination** of the proposed amendment with next steps.

**Attachment 1** itemizes issues that can be addressed prior to Ecology's final approval of the proposed amendment.

## Brief Description of Proposed Amendment

Benton County is undergoing a statutorily required periodic review of their Shoreline Master Program (SMP) and has submitted their draft SMP amendment to Ecology for an initial determination as required by the joint review process and consistent with WAC 173-26-104(3). The SMP regulates shoreline uses and activities along the Columbia and Yakima Rivers within the County.

# FINDINGS OF FACT

## Need for amendment

Benton County comprehensively updated their master program in 2015. This current amendment is needed to comply with the statutory deadline for a periodic review of the SMP pursuant to RCW 90.58.080(4).

## SMP provisions to be changed by the amendment as proposed

The County prepared a checklist and an analysis documenting the proposed amendment. The amendment will bring the SMP into compliance with requirements of the Shoreline Management Act, or state rules that have been added or changed since the last SMP amendment, ensure the SMP remains consistent with amended comprehensive plans and regulations, and incorporate revisions deemed necessary to reflect changed circumstances, new information, or improved data. Locally initiated changes include provisions incorporating comments received throughout the public participation process.

In addition to needed general formatting and citation corrections, the following amendments to the SMP are proposed:

### Section 15.02 Definitions

The following definitions have either been removed, added, or revised: Board of Adjustment, Hearings Examiner, Development, Qualified Professional, and Substantial Development.

### Section 15.04 Shoreline Environment Designations

Section 04.120 Developments Not Required to Obtain Shoreline Permits or Local Reviews had been added.

### Section 15.05 General Regulations and Performance Standards

Replant treated area with native riparian vegetation added to 05.030(j)

### Section 15.06 Critical Areas in Shoreline Jurisdiction

06.010 (e)(2) Language has been revised to require that critical area studies performed for a project include identification of all critical areas adjacent to the proposed project area.

06.020 (d) Definitions for categories of wetlands have been removed.

### Section 15.07 Use-Specific and Modification Regulations and Performance Standards

07.150 (m) Language added for a 90 day timeline for permits associated with state highway projects

## Amendment History, Review Process

The County prepared a public participation program in accordance with WAC 173-26-090(3)(a) to inform, involve and encourage participation of interested persons and private entities, tribes, and applicable agencies having interests and responsibilities relating to shorelines. An important element of the public participation plan is the County's SMP Periodic Review project website. The County developed draft documents in collaboration with Ecology. Due to the COVID-19 pandemic, the County held public meetings in a virtual format, including a public Open House held December 21, 2020 and Planning Commission meetings addressing this topic.

The County used Ecology's Periodic Review checklist of legislative and rule amendments to review amendments to chapter 90.58 RCW and department guidelines, that have occurred since the master program was last amended, and determine if local amendments were needed to maintain compliance in accordance with WAC 173-26-090(3)(b)(i). The County also reviewed changes to the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them in accordance with WAC 173-26-090(3)(b)(ii). The County considered whether to incorporate any amendments needed to reflect changed circumstances, new information or improved data in accordance with WAC 173-26-090(3)(b)(iii). The County consulted with Ecology and solicited comments throughout the review process.

### *State Local Joint comment period under WAC 173-26-104*

Ecology and the County held a joint state/local public comment period on the proposed SMP amendment following the procedures outlined in WAC 173-26-104. The comment period began on March 24, 2021 and continued through April 23, 2021. Ecology and the County held a joint public hearing before the Planning Commission on April 13, 2021. Due to the Governor's "Stay Home Order" the Public Hearing was held via video conferencing.

INITIAL DETERMINATION

The County provided notice of the Joint comment period and hearing, including a statement that the hearing was intended to address the periodic review in accordance with WAC 173-26-090(3)(c)(ii). Affidavits of publication provided by the City indicate notice of the joint comment period and hearing was published on March 24, 2021 in *The Prosser Record Bulletin*. The City also sent out notice of comment period and hearing to an interested parties list via email on March 23, 2021.

Ecology distributed notice of the joint local/state comment period to state interested parties on March 22, 2021. The Confederated Tribes of the Yakama Nation were notified on March 22, 2021 by email and letter. No comments were received from the Confederated Tribes of the Yakama Nation during this process.

During the joint comment period, a public comment letter was received from two individuals, Patrick Paulson and Laurie Ness. The comment letter contained concerns around existing provisions and how those provisions ensure no net loss, and consistency between the critical area ordinance and the SMP. The comment letter also provided suggestions to improve language around wetland categories and the use of critical area reports for clarity and improved protection.

It is of note that after the joint comment period closed, the City received a comment letter from Futurewise dated June 21, 2021. The letter expressed concern that the riparian buffers in the existing SMP do not adequately protect the associated critical areas. Future wise suggests using new Department of Fish and Wildlife guidance which includes site potential tree height for determining appropriate buffers.

City staff reviewed and summarized both comments received, and provided responses in the form of staff recommendations. The City ultimately made the following changes in response to comments.

- 05.030(j) Addition of language requiring treated areas be replanted with native riparian vegetation.
- 06.010 (e)(2) Language has been revised to require that critical area studies performed for a project include identification of all critical areas adjacent to the proposed project area.
- 06.020 (d) Removal of definitions for categories of wetlands.

These changes have been formally incorporated into the proposed draft.

The proposed SMP amendments were received by Ecology on June 30, 2021 for initial state review. The submittal was supplemented on July 19, 2021 and verified as complete on July 19, 2021. This began Ecology's review and initial determination.

### *Ecology consideration of comments*

The comments received requested that the County revise riparian buffers in shoreline jurisdiction. The buffers in the CAO apply to streams not identified as shorelines. The CAO[1] specifically refers to the SMP for identification of shoreline buffers. Therefore the buffers in which the comment letter request to be changed are those non-shoreline streams that lie within shoreline jurisdiction.

As part of the comprehensive update, local governments had to weigh many considerations in balancing the policies of the SMA. To that end, the County's SMP includes appropriate use allowances and restrictions, stream buffers, vegetation management standards, and the requirement for projects to demonstrate mitigation sequencing. As a package the SMP provides for ecological protection and

[1] Benton County Code 15.14.040(g)(2)

INITIAL DETERMINATION

requires appropriate mitigation to achieve no net loss of shoreline ecological functions, while prioritizing water-oriented uses and increasing public access in the public interest as required by the SMA (RCW 90.58.020).

Ecology has reviewed the comments received during the Benton County Periodic Review process and we concur with the changes the county has made in response to comments.

Ecology finds the County's responses are consistent with the statutory obligations for conducting periodic reviews[2]. Ecology finds the County considered whether to incorporate any amendments to reflect changed circumstances, new information, or improved data, as provided or raised during the comment period. Ecology finds that the County's approach to protecting riparian buffers approved in 2015 as part of the comprehensive update, continues to achieve no net loss of shoreline ecological function and remain consistent with the SMA and SMP Guidelines.

The County determined, and Ecology concurs, that no additional amendments are warranted at this time based upon the significance of this information and the existing SMP provisions.

## Ecology recommended change

Ecology has identified one recommended change to the SMP amendment for consideration by the City.

Definitions

1. The SMP currently organizes definitions in alphabetical order. One of the proposed changes made to the SMP is delete the definition for "Board of Adjustment" and replace with "Hearing Examiner." We would recommend that the definition for "Hearing Examiner" be relocated to the appropriate location following the alphabetical organization.

Ecology finds that the recommended change, set forth above would be consistent with the policy and standards of RCW 90.58 and the applicable guidelines if implemented.

# INITIAL DETERMINATION

**The following constitutes Ecology's written statement of initial concurrence, consistent with WAC 173-26-104(3)(b)(ii):**

After review by Ecology of the complete record submitted and all comments received, Ecology has determined that the City's proposed amendment is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

# Next Steps

Consider the changes identified by Ecology. Please let me know if you would like to discuss our recommended changes. We anticipate being able to approve your SMP Periodic Review amendment after formal submittal is provided consistent with WAC 173-26-110.

[2] WAC 173-26-090(3)(b)(iii))

INITIAL DETERMINATION

**BCCM 3.4**

Benton County

# DRAFT 2021 PERIODIC SHORELINE MASTER PROGRAM UPDATE

Locally Approved ~~June 3, 2014~~ _____

Ecology Initial Approval ~~February 16, 2015~~September 7, 2021

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
# 2014 21

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~~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.~~

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# 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.

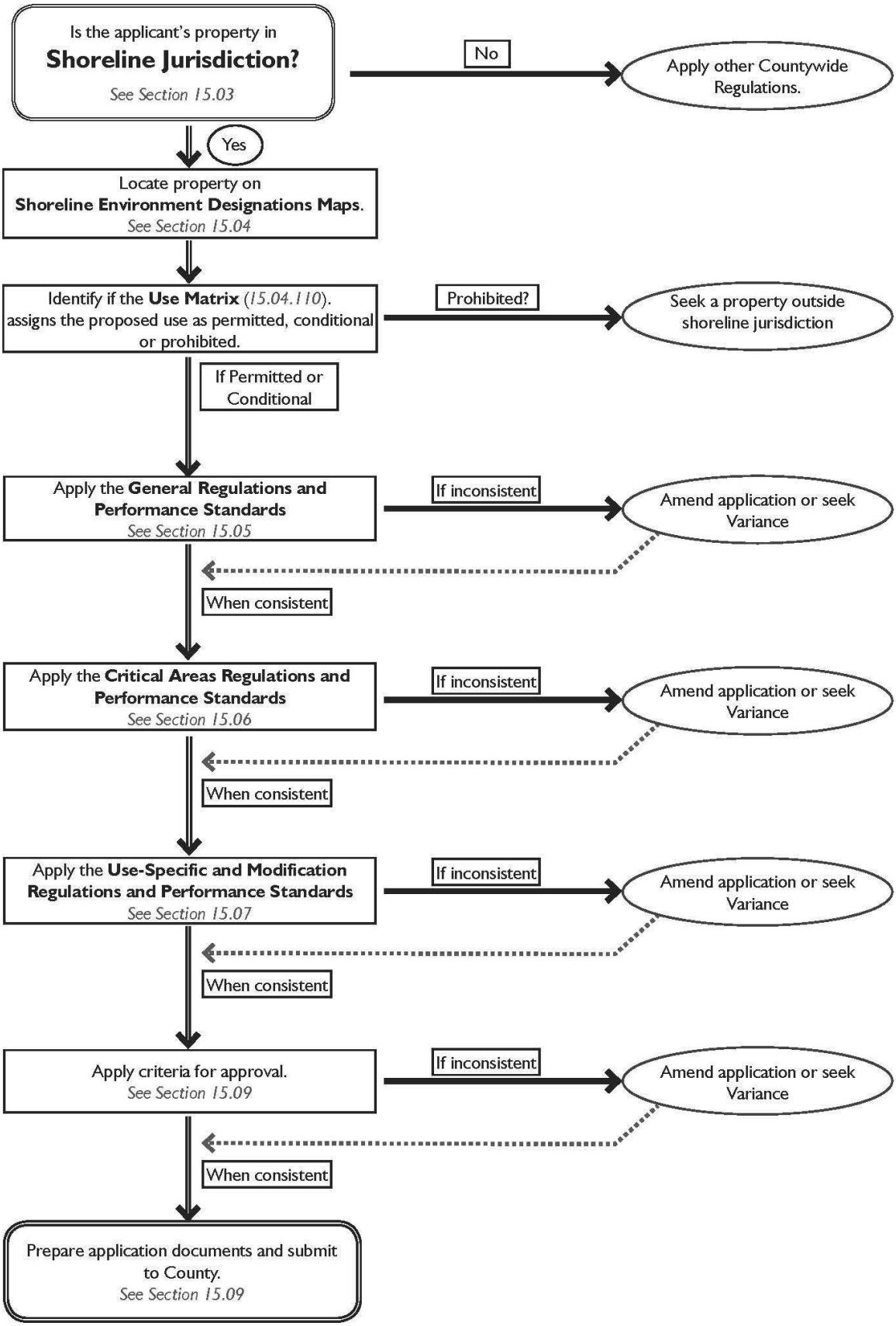
The SMP has a high level of detail for the following reasons: 1) to allow for more shoreline applications to be approved administratively for an efficient and cost-effective process, 2) to cross-reference applicable state and federal laws to help consolidate requirements and be a resource for property 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. Appeals may be taken to the Board 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,

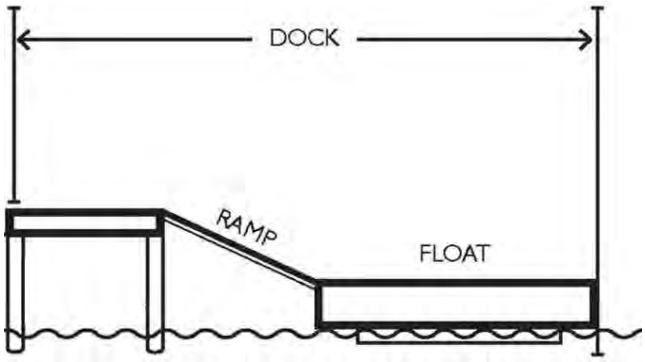
E. Dismantling or removing structures if there is no other associated development or re-development.

"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.

“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 Hearings Examiner by any person aggrieved, or by any officer, department, board or bureau of the county affected by appealable decisions of the director.

"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<br><br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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 |

| Shoreline Use or Modification<br>---<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>X = Not allowed N/A = Not Applicable | Urban Transition Area | Rural Industrial | Rural | Residential | Conservancy | Natural | Hanford | Aquatic |
|---|---|---|---|---|---|---|---|---|
| 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 |
| **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**<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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**<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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 three years.

(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.

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[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:<br>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<br>▮ If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source<br>▮ 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<br>▮ Establish covenants limiting use of pesticides within 150 ft of wetland<br>▮ Apply integrated pest management |
| Stormwater runoff | ▮ Retrofit stormwater detention and treatment for roads and existing adjacent development<br>▮ Prevent channelized flow from lawns that directly enters the buffer<br>▮ 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.<br>▮ 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<br>▮ 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.<br>If no agreement is in place:<br>• Water-dependent: 0<br>• Water-related: 50<br>• Other: 50 | Consistent with interlocal agreement to apply city SMP.<br>If no agreement is in place:<br>• Water-dependent: 0<br>• Water-related: 50<br>• Other: 50 | Consistent with interlocal agreement to apply city SMP.<br>If no agreement is in place:<br>• Fish-bearing: 100<br>• Non-fish-bearing: 50 |
| Rural Industrial | • Water-dependent: 0<br>• Water-related: 50<br>• Non water-oriented: 100 | NA | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Residential | 50 buffer + 50 building setback | 75 buffer + 25 building setback | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Rural | • Water-dependent: 0<br>• Water-related: 50<br>• Other: 100 | • Water-dependent: 0<br>• Water-related: 75<br>• Other: 100 | Fish-bearing: 100<br>Non-fish-bearing: 50 |

| | | | |
|---|---|---|---|
| Hanford | 200 | NA | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Conservancy | • Water-dependent: 0<br>• Other water-oriented: see Section 15.06.030(e)(4)<br>• Non water-oriented: 200 | • Water-dependent: 0<br>• Other water-oriented: see Section 15.06.030(e)(4)<br>• Non water-oriented: 150 | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Natural | 200 | NA | Fish-bearing: 100<br>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:<br>• Water-dependent uses located waterward, at or immediately upland of the OHWM.<br>• 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.<br>• 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.<br>• 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.<br>• 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.<br>• Water-enjoyment recreational uses may be expanded.<br>• 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. |

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| 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.<br>• Treated runoff from pollution-generating impervious surfaces and runoff from non-pollution-generating impervious surfaces shall be infiltrated if feasible.<br>• 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.<br>• 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.<br>• 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.<br>• New and expanded uses in shoreline jurisdiction shall comply with Section 15.05.030, Shoreline Vegetation Conservation.<br>• Landscape designs for new and modified recreation facilities in shoreline jurisdiction shall incorporate the following.<br>▪ 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.<br>▪ 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.<br>▪ Place vegetation to maximize the following benefits:<br>– development or supplementation of a native vegetated wildlife corridor,<br>– development or supplementation of riparian vegetation adjacent to the water's edge,<br>– screening parking areas from views from the water or the park, and/or<br>– 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:<br>• A site-specific plan for use of integrated pest management technique, if applicable.<br>• 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.<br>• 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.

# 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 Submitted 4/1/21 | SMP – | Introduction and Overview<br>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.<br><br>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**)**<br>Paragraphs (b) and (c) state:<br>(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.<br><br>(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.<br><br>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**<br>(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….<br><br>(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.<br><br>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 |
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| | | | | and regulations in many other sections also identify no net loss as the standard. Here are a few examples.<br><br>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.<br><br>***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:<br>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.<br><br>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.<br><br>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 |
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| | | | | Excessive vegetation removal is not allowed and is an enforceable violation of the SMP, when discovered by the County.<br><br>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<br>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.<br>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.<br><br>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.<br><br>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 |
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| | | | | 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.<br>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.<br><br>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 |
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| 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<br>3.4.1 General (Draft SMP Section 06.010)<br>3.4.1.1 Critical Area Reports, Qualified Professionals<br>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.<br>4 Required by WAC 173-26-201(2)(a)<br>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 |
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| 12 | | 6.020 | 3.4.2 Wetlands (06.020)<br>3.4.2.1 Paragraph d, Categories<br>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.<br><br>The critical area report for wetlands requirements given CASJ 06.010 fail to adequately define any qualifications of the individual preparing the report.<br><br>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.<br>------<br>Section 06.020 c and d includes these provisions:<br>(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.<br><br>(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).<br><br>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.<br>-----<br>Regarding qualifications, see response to Comment 10 |
| 13 | | 6.070 | 3.4.3 Fish and Wildlife Conservation Areas (06.070)<br>3.4.4 Paragraph d, Site Analysis<br>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).<br><br>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.<br>https://wdfw.wa.gov/sites/default/files/publications/01371/wdfw01371.pdf<br>7 Hruby, T. 2014. Washington State Wetland Rating System for Eastern Washington: 2014 Update. (Publication #14-06-030). Olympia, WA: Washington Department of Ecology.<br>https://apps.ecology.wa.gov/publications/documents/1406030.pdf4 Summary | Regarding qualifications, see response to Comment 10<br><br>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.<br>" 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 |
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| 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 | Futurewise Comments Submitted June 21, 2021 | Buffers | Futurewise appreciates that Benton County is conducting an update to the Shoreline Master Program (SMP) and generally supports the update. However, we are concerned the that riparian buffers in the existing SMP and proposed for Ordinance Amendment OA 2021-002 are too narrow to protect these areas. The reasons for our concerns are explained below.<br><br>**I. Update the Riparian Buffers in Table 06.030 – 1, River and Creek Buffers, on page 67 of the Shoreline Master Program (SMP) update to reflect the new management recommendations prepared since the current Shoreline Master Program (SMP) was adopted**<br><br>The Shoreline Master Program (SMP) Guidelines, in WAC 173-26-186(8)(b), requires that: "(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions[.]"1 The SMP Guidelines in WAC 173-26-221(3)(c) provide in part that "[i]n establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington state department of fish and wildlife where applicable." The State of Washington Department of Fish and Wildlife updated the Priority Habitat and Species management recommendations for riparian areas after the State of Washington Department of Ecology approved existing Shoreline Master Program on February 16, 2015. According to the updated the Priority Habitat and Species management recommendations for riparian areas 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. 2 "[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."3 Black Cottonwood, typically the largest riparian species in the Columbia Basin attain an average size of 70 feet tall at age 150 years. 4 Buffer widths for pollution removal are wider. The standard for these buffers is no net loss of ecological functions. 5 For rivers, streams, and associated flood plains shoreline ecological functions include, but are not limited to shoreline vegetation sufficient to maintain temperature; remove excessive nutrients and toxic compounds, and sediment removal and stabilization. 6 Buffer widths necessary to remove 99 percent of sediment must be 153 feet wide.7 Buffer widths necessary to remove 99 percent of the surface nitrogen must be 200 feet wide.8 Buffer widths necessary to remove 99 percent of the subsurface nitrogen must be 322 feet wide.9 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.10 These recommendations should be applied to all streams whether they are fish bearing or not.11 None of the | **Response to Comment I.**<br><br>The buffers that were established in the SMP were developed based on the Shoreline Analysis Report for Shorelines in Benton County (Watershed Company 2013), prepared to support the 2015 County SMP Update process.<br><br>This report identified existing conditions along all shoreline jurisdiction water bodies in the County, including both the natural and built environment, in a much more detailed and site-specific way than is covered in the more general WDFW riparian science review and updated riparian management recommendations (WDFW Volumes 1 and 2). This information, along with the environment designations that were developed and applied to the various shoreline areas, provided the basis for the buffers included in the County's 2015 SMP, which range from 50 to 200 feet, along with building setbacks, as applicable.<br><br>Any impacts to riparian buffers from proposed shoreline development must comply with these buffers and mitigate for any impacts to achieve no net loss of existing ecological function, as characterized in the Shoreline Analysis report and any additional site-specific information. The County will consider the key functions of shade, wood recruitment and detrital nutrients, bank stability, pollutant removal and alluvial water storage and other information as part of mitigation requirements, as applicable, as identified in |

| Comment No. | Commenter | Section No. | Comment | Response |
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| | | | riparian buffers the current SMP are wide enough to perform these functions and so the buffers violate the SMP Guidelines. Consequently, they need to be updated to comply with the SMP Guidelines. | the WDFW Volume I and II documents, which provide general guidance and supporting information, along with the documented Benton County and site-specific information.<br><br>Based upon our review of the entire body of information we do not believe buffer adjustments are necessary or required. |

# 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*

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[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

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[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

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[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).

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[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

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**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
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Mailing Address:
Benton County Community Develoment Department
PO Box 910, Prosser, WA 99350

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**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

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**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.

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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

**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<br>Benton County and the Department of Ecology<br>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<br>~~"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<br>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<br>(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<br>~~"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

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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.~~

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# 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.

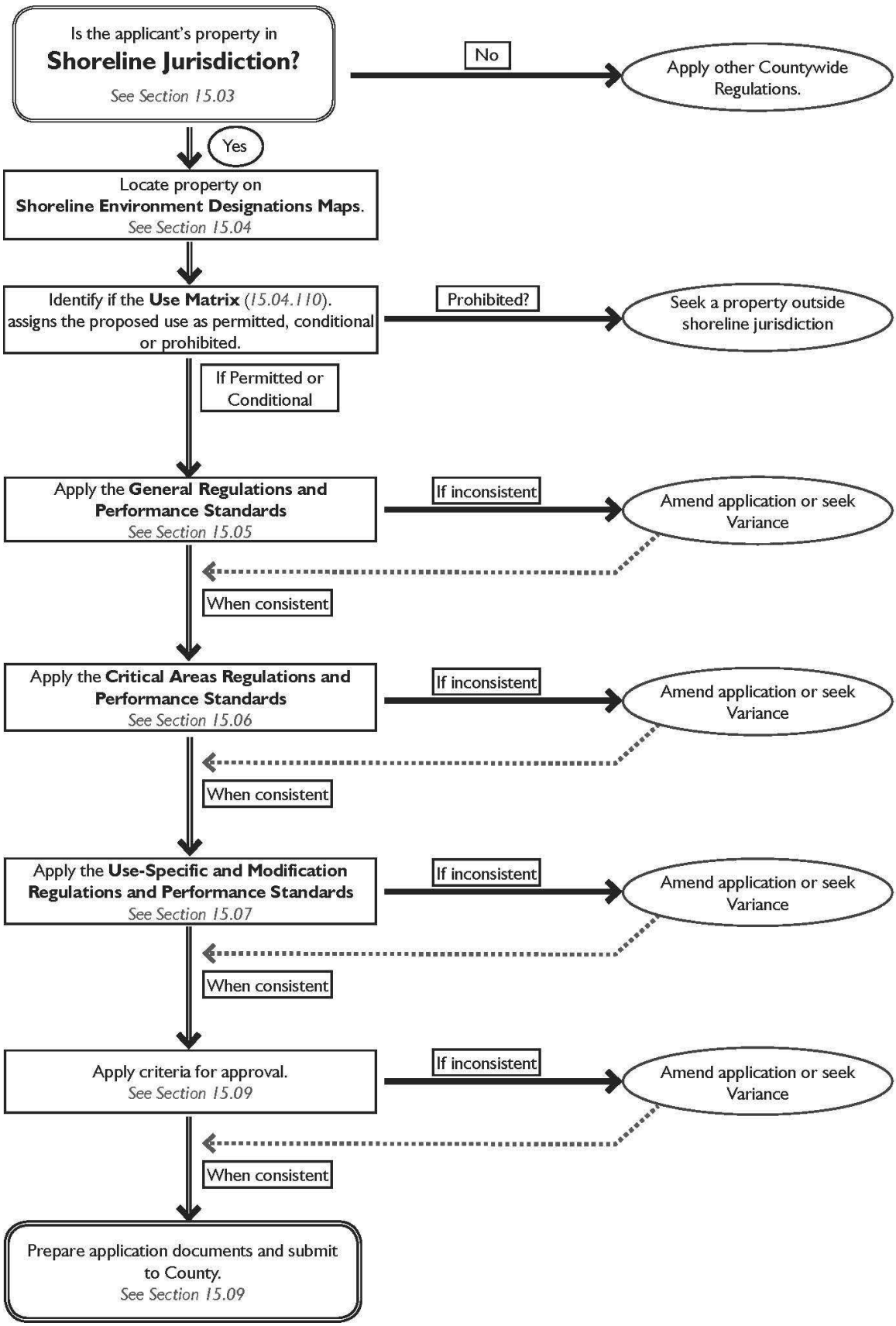
The SMP has a high level of detail for the following reasons: 1) to allow for more shoreline applications to be approved administratively for an efficient and cost-effective process, 2) to cross-reference applicable state and federal laws to help consolidate requirements and be a resource for property 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,

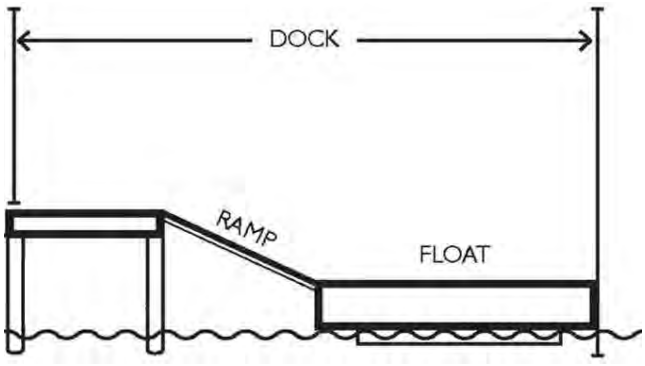
E. Dismantling or removing structures if there is no other associated development or re-development.

"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**<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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<br><br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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<br>Key:<br>S = Shoreline Substantial Development Permit or Exemption<br>C = Shoreline Conditional Use Permit<br>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<br>▪ If warranted, enhance existing buffer with native vegetation plantings adjacent to noise source<br>▪ 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<br>▪ Establish covenants limiting use of pesticides within 150 ft of wetland<br>▪ Apply integrated pest management |
| Stormwater runoff | ▪ Retrofit stormwater detention and treatment for roads and existing adjacent development<br>▪ Prevent channelized flow from lawns that directly enters the buffer<br>▪ 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.<br>▪ 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<br>▪ 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.<br>If no agreement is in place:<br>• Water-dependent: 0<br>• Water-related: 50<br>• Other: 50 | Consistent with interlocal agreement to apply city SMP.<br>If no agreement is in place:<br>• Water-dependent: 0<br>• Water-related: 50<br>• Other: 50 | Consistent with interlocal agreement to apply city SMP.<br>If no agreement is in place:<br>• Fish-bearing: 100<br>• Non-fish-bearing: 50 |

| | | | |
|---|---|---|---|
| Rural Industrial | • Water-dependent: 0<br>• Water-related: 50<br>• Non water-oriented: 100 | NA | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Residential | 50 buffer + 50 building setback | 75 buffer + 25 building setback | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Rural | • Water-dependent: 0<br>• Water-related: 50<br>• Other: 100 | • Water-dependent: 0<br>• Water-related: 75<br>• Other: 100 | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Hanford | 200 | NA | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Conservancy | • Water-dependent: 0<br>• Other water-oriented: see Section 15.06.030(e)(4)<br>• Non water-oriented: 200 | • Water-dependent: 0<br>• Other water-oriented: see Section 15.06.030(e)(4)<br>• Non water-oriented: 150 | Fish-bearing: 100<br>Non-fish-bearing: 50 |
| Natural | 200 | NA | Fish-bearing: 100<br>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:<br>• Water-dependent uses located waterward, at or immediately upland of the OHWM<br>• 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.<br>• 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.<br>• 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.<br>• 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.<br>• Water-enjoyment recreational uses may be expanded.<br>• 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.<br>• Treated runoff from pollution-generating impervious surfaces and runoff from non-pollution-generating impervious surfaces shall be infiltrated if feasible.<br>• 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.<br>• 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.<br>• 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.<br>• New and expanded uses in shoreline jurisdiction shall comply with Section 15.05.030, Shoreline Vegetation Conservation.<br>• Landscape designs for new and modified recreation facilities in shoreline jurisdiction shall incorporate the following.<br>▪ 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.<br>▪ 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.<br>▪ Place vegetation to maximize the following benefits:<br>– development or supplementation of a native vegetated wildlife corridor,<br>– development or supplementation of riparian vegetation adjacent to the water's edge,<br>– screening parking areas from views from the water or the park, and/or<br>– discouragement of wildlife that may directly or indirectly interfere with park use or human health (e.g., geese),<br>• 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:<br>• A site-specific plan for use of integrated pest management technique, if applicable.<br>• 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.<br>• 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*

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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.*

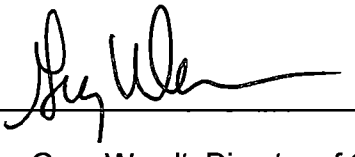
16. **Utilities**

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:** | September 14, 2021 **Memo Date:** September 8, 2021 |
| **Subject:** | **Continued 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, Director and Ben Floyd, White Bluffs Consulting |
| **Prepared By:** | Donna Hutchinson |
| **Reviewed By:** | Michelle Cooke |

**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

On June 22, 2021 the Board of County Commissioners held a public hearing on an Ordinance Amendment relating to BCC Title 15, Critical Areas, General Provisions and Fish and Wildlife Habitat Conservation Areas for Benton County.

The public hearing was opened for public testimony and after receiving all testimony, the public portion of the hearing was closed, and a motion was made by the Board to continue the public hearing decision making process until August 17, 2021 and then to September 14, 2021 so that the ordinance amendment could be processed consistent with the SMP Periodic Update.

On September 7, 2021, The Washington State Department of Ecology made an initial determination as part of the SMP update process, so the CAO ordinance amendment is now ready for Board approval.

### RECOMMENDATION

It is the recommendation of the Benton County Planning Division that the Board of County Commissioner's approve OA 2021-002 as presented, adopt the Comment Matrix dated June 8, 2021 and also adopt the Planning Commission Findings and Recommendation as their own.

## Suggested Motion

I move that the Board of County Commissioners adopt the Planning Commission's Findings and Conclusions as our own and the ordinance amendment comment matrix dated June 8, 2021 and OA 2021-002 an ordinance amendment to BCC Title 15 relating to Critical Areas.

# 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 public hearing was opened for public testimony and after receiving all testimony, the public portion of the hearing was closed, and a motion was made by the Board to continue the public hearing decision making process until August 17, 2021; and,

WHEREAS, the Board on August 17, 2021 opened the public hearing and made a motion to continue the public hearing decision making process until September 14, 2021; and,

WHEREAS, at the public hearing on September 14, 2021, 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 14th day of September 2021.

_____
Chairman of the Board

_____
Member

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

Attest.....
Clerk of the Board

GW/djh

# 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.<br><br>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.<br><br>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).<br><br>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.<br><br>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.<br><br>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.<br><br>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:<br>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.<br><br>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.<br><br>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.<br><br>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.<br><br>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.<br>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.<br><br>While normally this could be considered a minor error and updated before approval, RCW 36.70A.035.2.a states that<br>… 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<br>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.<br><br>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.<br><br>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.<br><br>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].<br><br>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<br>… 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.<br>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.<br><br>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 |
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| | | | 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.<br><br>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.<br><br>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 |
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| 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).<br>• 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.<br><br>• 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.<br>• 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.<br><br>• The language about buffer width reductions in buffer averaging wasn’t clarified.<br><br>• There is still no option to increase buffer widths without buffer averaging in stream segments that are especially sensitive.<br><br>• 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).<br>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:<br>• 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<br>• Regarding wildlife, please see response to Comments 1 and 2<br>• Regarding average riparian widths, in areas that are wider than the average these are riparian wetlands and would protected through wetlands regulations<br>• Regarding buffer averaging, see response to Comment 7<br>• 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.<br>• 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 |
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| 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<br><br>Unfortunately, the F, NP, and NS buffers fail to comply with these legal requirements.<br><br>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<br><br>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.<br><br>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.<br><br>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. |

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| | | | 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<br><br>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.<br><br>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."<br><br>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.<br><br>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.<br><br>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 |
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| | | | | 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.<br><br>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. |

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p. (206) 343-0681
futurewise.org

**BCCM 3.4**

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

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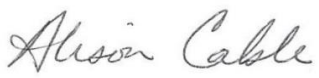
[4] *Whidbey Env't Action Network v. Growth Mgmt. Hearings Bd.*, 14 Wn. App. 2d 514, 524 – 25, 471 P.3d 960, 967 (2020).
[5] Timothy Quinn, George F. Wilhere, and Kirk L. Krueger, technical editors, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* p. 224 (A Priority Habitat 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.

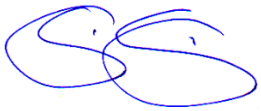
Some local governments believe that if they convince a particular Department of Fish and Wildlife staffer to accept a smaller buffer that they are complying with the GMA. They are not. The requirement is to substantively incorporate best available science, not to push back on a state agency staffer until 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

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[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**
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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
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Mailing Address:
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**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**
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**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

**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:

Ryan K Brown
_____
Deputy Prosecuting Attorney

Constituting the Board of
County Commissioners of
Benton County, Washington

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
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**BCCM 3.9**

## 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

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**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. |

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## 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.<br><br>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.<br><br>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).<br><br>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.<br><br>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.<br><br>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.<br><br>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 |
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| | | | 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:<br>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.<br><br>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 |
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| | | | | 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.<br><br>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.<br><br>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 |
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| 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.<br><br>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 |
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| 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.<br>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.<br><br>While normally this could be considered a minor error and updated before approval, RCW 36.70A.035.2.a states that<br>… 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<br>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.<br><br>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.<br><br>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.<br><br>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].<br><br>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<br>… 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.<br>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.<br><br>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 |
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| | | | 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.<br><br>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.<br><br>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

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Petition to Establish a County Road |
| **Presenter:** | Douglas D'Hondt |
| **Prepared By:** | Douglas D'Hondt |
| **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 owners of the property located at 84009 West Old Inland Empire Highway, RQ Bradley LLC, submitted a petition to establish a new County road across their property. The road is intended to serve a future subdivision starting at Old Inland Empire Highway to south of the Chandler Canal. The United States Bureau of Reclamation who owns the canal requires all roadways crossing their canal system be owned and operated by a public agency, in this case the County. The Board accepted the petition and ordered the County Engineer to prepare a report of the feasibility for road establishment. Conditions for establishment are specified in the report.

## Fiscal Impact

The county road department is estimated to increase the annual tax revenue by approximately $8,000 per year. No costs to design or construct will be borne by the county.

## Recommendation

Staff recommends that the Board establish a County Road for maintenance upon final construction and county engineer approval of the road and bridge construction.

## Suggested Motion

Move to approve the Resolution and authorize the County Engineer to proceed with the design and construction approval for adoption of the proposed road for county maintenance.

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF REQUESTING THE ADOPTION OF A NEW COUNTY ROAD FOR MAINTENANCE OFF OLD INLAND EMPIRE HIGHWAY**

**WHEREAS,** on June 15, 2021 the Board of County Commissioners resolved the County Engineer prepare a feasibility report to consider adopting a road for on-system maintenance; and

**WHEREAS,** the feasibility study determined road construction and associated land development will be beneficial to the county; and

**WHEREAS,** the county engineer recommends the Board of County Commissioners adopt the road for county maintenance upon design approval and construction approval by the county engineer; **NOW, THEREFORE,**

**BE IT RESOLVED** that the County Engineer is authorized to proceed with the design and construction approval for adoption of the proposed road for county maintenance.

Dated this 14th day of September, 2021.

_____
Chairman

_____
Chairman Pro-Tem

_____
Member

Attest:_____
Clerk of the Board

Constituting the Board of County Commissioners of Benton County, Washington

cc: Public Works

Douglas P. D'Hondt
County Engineer

COUNTY OF BENTON WASHINGTON

**BENTON COUNTY PUBLIC WORKS DEPARTMENT**

# Report on the Viability of the Local Access Road off OIE

**September 14, 2021**

**Prepared by:** _____
**Douglas D'Hondt, P.E.**
**County Engineer**

## OVERVIEW:

This report is written to consider of whether to construct a new local access road from Old Inland Empire Highway (OIE) per Board of County Commissioners (BOCC). The proposed project would involve the construction of approximately 1,600 feet of new roadway.

The Public Works Department (PW) received a petition from a developer the for the proposed project. It was requested the roadway be constructed with the stated purpose of creating access to a future subdivision. Per RCW 36.81.020, the petition, being deemed valid, was taken before the BOCC on June 15, 2021. The BOCC subsequently requested a feasibility study.

This report, aiming to function as the requested study, will highlight the background of this project, along with its engineering, right-of-way, and safety aspects. The report will also address the current and potential future uses of this construction. It will conclude with a proposal of what, in the determination of the County Engineer, is the preferred method of action with respect to this proposed construction.

## BACKGROUND:

PW received a petition signed by the developer requesting the proposed construction of approximately 1,600 feet of new road located near Mile Post 11.44 of OIE east of Case Rd. The road is proposed to eventually serve 11 parcels of land. This road will cross over the Chandler Canal which is owned by the Bureau of Reclamation (BOR). BOR requires the county approve the bridge design before they approve construction over the canal. BOR also requires the bridge and associated road be maintained by the county. PW received and reviewed plan sets for the proposed construction. PW offered review comments to the developer.

Upon its appraisal by the BOCC, the petition was accepted pending a feasibility study completed by the County Engineer.

## ENGINEERING CONSIDERATION:

The road will be a total width of 28 feet with two 12-foot lanes with two 2-foot shoulders. Travel lanes will be paved with hot-mix asphalt. There will be two horizontal curves with the road ending with a cul-de-sac. Two vertical curves located at the bridge over the canal along with guardrail will be needed. Access to the canal roads shall be maintained. The design speed will be 25 miles per hour. Construction includes a bridge to be built over the Chandler canal. The road will not likely be extended as a railroad crossing will be required for access to additional parcels. All construction will comply with Benton County standards.

## RIGHT-OF-WAY CONSIDERATION:

Currently, no right-of-way is owned along the proposed route. In accordance with RCW 36.86.010, a minimum of 60 feet of right-of-way would be required for the length of the road (30 feet each side of the proposed centerline), with additional right-of-way at the cul-de-sac. Right-of-way would be dedicated to the county upon completion of the road and adoption by the BOCC for maintenance. The dedication would be at no cost to the county. All costs would be borne by the developer.

## SAFETY CONSIDERATION:

The road will be constructed to a 25 mile per hour speed limit. The sites are all residential with virtually no large truck traffic at any time. Therefore, the safety risk associated with this proposed road is expected to be minimal.

## FISCAL CONSIDERATION

All construction and design costs will be paid for by the developer. Right-of-way will also be donated by the developer. Therefore, no costs related to design and construction will be incurred by the county. Current assessed values for the properties total $220,090. Assuming homes are built of similar to what is currently being built in the area, assessed values could total $4,325,000. Current tax revenue for roads is estimated to be $153 annually. Estimated tax revenue upon full build out is $8,262 annually.

## RECOMMENDATIONS:

There is no cost to the county to build the road. Subsequent development along this road will result in additional real estate revenues for the county. Therefore, it is the opinion of the County Engineer that the proposed construction is viable. The conditions for the County accepting the roadway as a County road follows:

1. The petitioner shall donate all required right of way at no cost to the County prior to acceptance of the roadway. The petitioner is responsible for all costs including surveying, preparing dedication documents, recording fees and monumentation of the roadway.
2. The petitioner shall provide a complete set of engineering roadway plans and specifications for review and approval by the County. The plans shall be in accordance with County standards, the WSDOT Standard Specifications and the WSDOT Design manual. Plan approval is at the sole discretion of the County Engineer.
3. The petitioner shall provide a complete set of plans and specifications for the construction of the proposed bridge. Bridge design and load rating shall be in accordance with the AASHTO LRFD Bridge Design Specifications and the WSDOT Bridge Design Manual. Plan approval is at the sole discretion of the County Engineer.
4. The petitioner shall complete all required construction at their sole cost and expense. Petitioner shall provide all required materials testing, by an accredited testing facility acceptable to the County, at their sole cost and expense.
5. Petitioner shall also be responsible to reimburse the County for the cost of required inspections by County staff. The petitioner shall also reimburse the county for expenses incurred by county staff related to management of the design approval, construction and administrative work associated with bringing the road on county system.

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | September 14, 2021 |
| **Subject:** | Ordinance Amendment to the County Public Records Policy, BCC 5.14 |
| **Presenter:** | Adam Morasch; Mary Christen |
| **Prepared By:** | Mary Christen |
| **Reviewed By:** | Adam Morasch |

**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 proposing an amendment to Benton County Code 5.14 Public Records, Ordinance 442, Ordinance 526, and Ordinance 582 with a focus on the following:

a. Chapter 5.14 Public Records, amending BCC 5.14.070 (a), (b), (c), (d), and (e) removing fax numbers from departments' contact information;

b. Chapter 5.14 Public Records, amending BCC 5.14.070 (b) removing Benton County Sheriff Bureau of Corrections and adding Benton County Corrections Department;

c. Chapter 5.14 Public Records, amending BCC 5.14.080 (a) adding the option to make public records requests online;

d. Chapter 5.14 Public Records, amending BCC 5.14.080 (d) removing recommendation that a requester make a written request on a request form and adding recommendation that a requester use the public records portal;

e. Chapter 5.14 Public Records, amending BCC 5.14.110 (d) adding exclusion of redaction of audio or video in the fee exemption section;

f. Chapter 5.14 Public Records, amending BCC 5.14.120 adding option for online payments for copies of public records;

g. Chapter 5.14 Public Records, amending BCC 5.14.120 Table 5.14-1 Fee Schedule adding fees for online payments for copies of public records and third-party vendor costs for audio or video redactions;

h. Chapter 5.14 Public Records, amending BCC 5.14.170 removing reference to the request form being maintained by the Prosecuting Attorney's Office;

i. Exhibit A of BCC 5.14 removing information from Request for Public Records Form;

j. Chapter 5.14 Public Records adding one new section adopting the Benton County Public Records Portal.

The proposed changes are as follows:

**Chapter 5.14 Public Records.** The proposed amendment removes fax numbers from county contacts, includes reference to the new online Public Records Portal, excludes redaction of audio or video in the fee exemption section, allows for online payments for copies of public records, deletes reference to the request form being maintained by the Prosecuting Attorney's Office, and deletes information from Exhibit A-Request for Public Record Form.

The changes impact BCC 5.14.070 removing fax numbers from county department contacts.

The changes impact BCC 5.14.070 as shown:

(b) ((~~Benton County Sheriff Bureau of Corrections~~))
Benton County Corrections Department

The changes impact BCC 5.14.080 as shown:

(a) All requests for public records shall be directed to the Public Records Officer for the office of the County where the record is located or online at the Benton County Public Records Portal. If the location of the record is unknown, then the request should be made to the Public Records Officer for the Board of County Commissioners.

(d) It is encouraged ((~~that the requester make a written request)~~) to use the Benton County Public Records Portal for public records requests ((~~on the "public records request" form provided by the County~~)), though no official format is required to make a records request. A uniform form is available from the Public Records Officer. The form is also available at the County's internet site as provided in BCC 5.14.170. The requester may also submit a written request via e-mail or letter to the Public Records Officer that contains the information listed in BCC 5.14.080(e).

The changes impact BCC 5.14.110 as shown:

(d) redacting portions of the record which are exempt from disclosure, except audio or video redactions (see Table 5.14-1 Fee Schedule)

The changes impact BCC 5.14.120 as shown:

FEES--COPIES OF PUBLIC RECORDS. (a) Except as otherwise allowed in BCC 5.14.130, a reasonable fee shall be charged to reimburse the County for the costs of providing copies of public records, including any mailing, delivery, or transmission costs. Payment shall be made by cash, check, or money order payable to "Benton County Treasurer." Online payments are accepted pursuant to the Elected Official's policy.

The changes impact BCC 5.14.120 Table 5.14-1 Fee Schedule adding fees for online payments for copies of public records, and audio or video redaction costs charged by third party vendors.

The changes impact BCC 5.14.170 as shown:

ADOPTION OF FORM--REQUEST FOR PUBLIC RECORDS. The County hereby adopts for use by all persons requesting inspection and/or copies of records of any official or department of the County the form entitled "Request for Public Records." See attached Exhibit A.–((~~The form will be maintained by the Benton County Prosecuting Attorney.~~))

The changes impact Exhibit A deleting information from the Request for Public Records Form.

The changes impact BCC 5.14 adding a new section as shown:

ADOPTION OF BENTON COUNTY PUBLIC RECORDS PORTAL. The County hereby adopts for use by all persons requesting inspection and/or copies of records of any official or department of the County the public records request portal at the County's website: https://bentoncountywa.nextrequest.com/

## Fiscal Impact

N/A

## Recommendation

It is the recommendation of the Benton County Risk Manager that the proposed amendment be approved by the Board of Benton County Commissioners and that the ordinance and resolution be signed.

## Suggested Motion

I move that the Board of County Commissioners approve the proposed public records amendment amending Ordinances 442, 526, and 582, and Benton County Code Chapter 5.14.

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:**

**IN THE MATTER OF ADOPTION OF ORDINANCE NO._____ RELATING TO PUBLIC RECORDS; AMENDING ORDINANCE 442, SECTION 7, ORDINANCE 526, SECTION 3 AND BCC 5.14.070; AMENDING ORDINANCE 442, SECTION 8 AND BCC 5.14.080; AMENDING ORDINANCE 442, SECTION 11 AND BCC 5.14.110; AMENDING ORDINANCE 442, SECTION 12, ORDINANCE 582, SECTION 7 AND BCC 5.14.120; AMENDING ORDINANCE 442, SECTION 17 AND BCC 5.14.170; AMENDING EXHIBIT A OF BCC 5.14; AND ADDING ONE NEW SECTION TO CHAPTER 5.14 BCC**

**WHEREAS,** Benton County consulted the advisory model rules on public records compliance, Chapter 44-14 WAC, adopted by the Washington State Office of the Attorney General in developing the above-mentioned amendments of County ordinances, in accordance with RCW 42.56.570(4); and

**WHEREAS,** a public hearing was advertised and held on September 14, 2021 at 9:00 A.M. in the Commissioners' Meeting Room on the third floor of the Benton County Courthouse in Prosser, Washington to consider the above-mentioned amendments of County ordinances relating to public records; and

**WHEREAS,** at said hearing, the Board of Benton County Commissioners provided an opportunity for testimony both for and against the adoption of Ordinance No._____ and considered its affect in amending Ordinances 442, 526, and 582; and

**WHEREAS,** there was no testimony opposing adoption of the proposed ordinance amendments; and

**WHEREAS,** the Board of Benton County Commissioners is satisfied that it appears to be in the best interest of the public to adopt an ordinance to amend Ordinances 442, 526, and 582;

**NOW, THEREFORE, BE IT RESOLVED** that the Benton County Board of Commissioners adopts Ordinance No._____; and

**BE IT FURTHER RESOLVED** that said ordinance shall take effect upon its passage and adoption.

Org: Risk Management
cc: Commissioners, S Godinez A. Morasch

**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**

Org: Risk Management
cc: Commissioners, S Godinez

A. Morasch

**ORDINANCE NO._____**

AN ORDINANCE relating to public records; amending Ordinance 442, Section 7, Ordinance 526, Section 3 and BCC 5.14.070; amending Ordinance 442, Section 8 and BCC 5.14.080; amending Ordinance 442, Section 11 and BCC 5.14.110; amending Ordinance 442, Section 12, Ordinance 582, Section 7 and BCC 5.14.120; amending Ordinance 442, Section 17 and BCC 5.14.170; amending Exhibit A of BCC 5.14; and adding one new section to Chapter 5.14 BCC.

BE IT ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

SECTION 1. Ordinance 442, Section 7, Ordinance 526, Section 3 and BCC 5.14.070 are hereby amended to read as follows:

PUBLIC RECORDS OFFICER CONTACT INFORMATION. Each office of an elected official, department, board, and committee shall have a Public Records Officer with an office at the address set forth below. Any person wishing to request access to public records, or seeking assistance in making a request should contact the Public Records Officer whose name shall be posted at such address or on the County internet site:

https://www.co.benton.wa.us

(a) The Administrator of the Board of County Commissioners is the Public Records Officer for the Board of County Commissioners, unless otherwise specified by resolution. If a Public Records Officer for any other elected office, department, board or committee is unavailable, the Public Records Officer for the Board of County Commissioners may be contacted for assistance. The contact information is:

Public Records Officer
Benton County Board of Commissioners
620 Market Street
Prosser, WA 99350

Phone: (509) 786-5600 or
(509) 736-3080
((~~Fax: (509) 786-5625~~))

(b) The elected official is the Public Records Officer for that official's office, unless the elected official designates in writing another person as the Public Records Officer for that official's office. Contact information is:

[**NOTE**: This section is continued on the following page.]

Benton County Assessor
Public Records Officer
620 Market Street
P. O. Box 902
Prosser, WA 99350

Phone: (509) 786-2046
((~~Fax: (509) 786-5657~~))

or

5600-A West Canal Drive, A101
Kennewick, WA 99336

Phone: (509) 735-2394
((~~Fax: (509) 736-2736~~))

Benton County Auditor
Public Records Officer
620 Market Street
P. O. Box 470
Prosser, WA 99350

Phone: (509) 786-5620 or
(509) 736-2707
((~~Fax: (509) 786-5528 or (509) 736-2738~~))

Benton County Coroner
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 222-3720
((~~Fax: (509) 222-3711~~))

Benton County Prosecuting Attorney
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 735-3591
((~~Fax: (509) 222-3705~~))

Benton County Superior Court Clerk
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 735-8388 ((~~or (509) 783-1058 Fax: (509) 783-1058~~))

Benton County Treasurer
Public Records Officer
620 Market Street
P. O. Box 630
Prosser, WA 99350

Phone: (509) 786-2255 or
(509) 736-3087
((~~Fax: (509) 786-5628~~))

Benton County Sheriff
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 735-6555
((~~Fax: (509) 783-5852~~))

((~~Benton County Sheriff Bureau of Corrections~~))
Benton County Corrections Department
Public Records Officer
7122 West Okanogan Place, Bldg B
Kennewick, WA 99336

Phone: (509) 783-1451
((~~Fax: (509) 222-3784~~))

(c) The Public Records Officer of the Superior Court Judges is the Superior Court Administrator. Contact information is:

Public Records Officer
Benton County Superior Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Phone: (509) 736-3071, Ext. 4
((~~Fax: (509) 736-3057~~))

(d) The Public Records Officer of the District Court Judges is the District Court Administrator. Contact information is:

Public Records Officer
Benton County District Court Administrator
7122 West Okanogan Place, Building A
Kennewick, WA 99336

Phone: (509) 735-8476
((~~Fax: (509) 736-3069~~))

(e) Each department head reporting to the Board of County Commissioners is the Public Records Officer for that department, unless the department head designates in writing another person as the Public Records Officer for that department. Contact information is:

Director of Benton-Franklin Counties Human Services Department
Public Records Officer
7102 West Okanogan Place, Suite 201
Kennewick, WA 99336

Phone: (509) 783-5284
((~~Fax: (509) 783-5981~~))

Director of Benton-Franklin Counties Juvenile Justice Center
Public Records Officer
5606 West Canal Drive, A106
Kennewick, WA 99336

Phone: (509) 783-2151
((~~Fax: (509) 736-2728~~))

Benton County Board of Equalization
Public Records Officer
5600-C West Canal Drive, A105
Kennewick, WA 99336

Phone: (509) 786-5604
((~~Fax: (509) 786-5625 or (509) 736-3089~~))

Director of Benton County Information Technology
Public Records Officer
620 Market Street
P. O. Box 509
Prosser, WA 99350

Phone: (509) 786-5603 or (509) 736-3083
((~~Fax: (509) 786-5601 or (509) 736-2737~~))

Benton County Civil Service Commission
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 783-5880
((~~Fax: (509) 737-2778~~))

Benton County Noxious Weed Control
Public Records Officer
1215 Dudley Avenue
P. O. Box 311
Prosser, WA 99350

Phone: (509) 786-6988
((~~Fax: (509) 786-6990~~))

Benton County Personnel Resources Manager
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 737-2777
((~~Fax: (509) 737-2278~~))

Director of Benton County Planning Department
Public Records Officer
1002 Dudley Avenue
Prosser, WA 99350

Phone: (509) 786-5612
((~~Fax: (509) 786-5629~~))

Director of Benton County Building Department
Public Records Officer
5600 West Canal Drive, Ste C
Kennewick, WA 99336

Phone: (509) 735-3500
((~~Fax: (509) 736-2732~~))

Director of Benton County Road Department
Public Records Officer
620 Market Street
P. O. Box 1001
Prosser, WA 99350-0954

Phone: (509) 786-5611
((~~Fax: (509) 786-5627~~))

Director of Benton County
Facilities and Parks Department
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 783-3118
((~~Fax: (509) 736-2708~~))

Director of Benton County
Sustainable Development
Public Records Officer
7122 West Okanogan Place, Bldg A
Kennewick, WA 99336

Phone: (509) 736-3053
((~~Fax: (509) 736-2708~~))

Benton County Fairgrounds
Public Records Officer
1500 S. Oak
Kennewick, WA 99337

Phone: (509) 586-9211
((~~Fax: (509) 582-1894~~))

Washington State University
Benton County Extension
Public Records Officer
1121 Dudley Avenue
Prosser, WA 99350

Phone: (509) 786-5609
((~~Fax: (509) 786-5525~~))

Benton County Horticultural and
Pest Disease Control Board
Public Records Officer
1121 Dudley Avenue
Prosser, WA 99350

Phone: (509) 785-5609
((~~Fax: (509) 786-5525~~))

or

7102 W. Okanogan Place, Suite 102
Kennewick, WA 99336

Phone: (509) 735-3551
((~~Fax: (509) 736-2731~~))

(f) The Administrator of the Board of County Commissioners is the Public Records Officer for every board or committee not listed herein that is appointed by and reports to the Board of County Commissioners, unless otherwise specified by resolution.

SECTION 2. Ordinance 442, Section 8 and BCC 5.14.080 are hereby amended to read as follows:

REQUESTS FOR PUBLIC RECORDS. In accordance with requirements of Chapter 42.56 RCW that agencies prevent unreasonable invasions of privacy, protect public records from damage or disorganization, and prevent excessive interference with essential functions of the agency, public records may be inspected or copies of such records may be obtained, by members of the public, upon compliance with the following procedures:

(a) All requests for public records shall be directed to the Public Records Officer for the office of the County where the record is located or online at the Benton County Public Records Portal. If the location of the record is unknown, then the request should be made to the Public Records Officer for the Board of County Commissioners.

(b) Many requests for public records can be handled quickly and informally without the need for a formal written request. For simple requests to look at a document or get a copy of a particular document, the Public Records Officer may respond to a verbal request. All responses to verbal requests shall be documented by the Public Records Officer. A Public Records Officer may request that any verbal request be put in writing if there is any uncertainty regarding the request. If a requester fails to put the request in writing, the Public Records Officer must still timely respond to the verbal request and document it.

(c) The Public Records Officer should request a signed, written request for:

(1) all requests in which the response may exceed twenty-five (25) pages or one (1) gigabyte of data;

(2) any request for oversized documents;

(3) any request that is not for a specifically identified document;

(4) any request for a document that has portions that may be exempt from disclosure;

(5) any request for a list of names; and

(6) any request concerning a topic that is the subject of a current or anticipated claim or litigation.

A written request helps the County make sure that the requester gets all the records he or she has requested, and assists the Public Records Officer in assuring that any decision to withhold records is properly made and that the copying charges are accurate. Refusal to submit a written request may delay the process by necessitating additional correspondence to clarify the request.

(d) It is encouraged ((~~that the requester make a written request~~)) to use the Benton County Public Records Portal for public records requests ((~~on the "public records request" form provided by the County~~)), though no official format is required to make a records request. A uniform form is available from the Public Records Officer. The form is also available at the County's internet site as provided in BCC 5.14.170. The requester may also submit a written request via e-mail or letter to the Public Records Officer that contains the information listed in BCC 5.14.080(e).

(e) A requester's written request should include the following information:

(1) The requestor's name, address, and other contact information, including telephone number and any e-mail address.

(2) The date and time the requestor submits the request.

(3) A clear indication that the requestor is requesting public records pursuant to the Public Records Act, such as by heading or titling the request "A Public Records Request", to help make sure that the request is handled properly. Requests for public records should not be combined with communications for other purposes. An e-mail request should contain the subject line "Public Records Request."

(4) Whether the requester wants to inspect the public records, get copies, or both.

(5) A clear description of the public records wanted so that the Public Records Officer and staff can find the records. The description should, if possible, include the date or time period of creation of the records, if known, and the departments of the County or office of the County official who may have the public records.

(6) If the request is for a list of names and/or addresses, a signed statement, under the penalty of perjury, that the list will not be used for any commercial purposes.

(f) The Public Records Officer will make a reasonable effort

to assist in identifying and describing the filing systems of the County to assist the requester in describing the requested documents.

(g) A request for inspection of public records in data-bases that are maintained by the State of Washington or any other governmental agency, will be subject to such additional rules and regulations of that agency. As an example, the Judicial Information Services (JIS) assembled information available through the County Clerk. The forms required for inspection and the fees charged for inspection or copying are set by the state agency, not by this chapter.

(h) There is no obligation to provide duplicate copies of a public record.

(i) Public records are available for inspection and copying during normal business hours of Benton County offices. Though some offices may operate different hours, the generally applicable normal business hours are:

| | |
|---|---|
| Monday - Friday | 8:30 a.m. - 4:30 p.m. |
| except from | 12:00 p.m. - 1:00 p.m. and |
| except | legal holidays |

SECTION 3. Ordinance 442, Section 11 and BCC 5.14.110 are hereby amended to read as follows:

FEES--NO FEE REQUIRED IN CERTAIN INSTANCES. No fee may be charged for the following activities:

(a) inspection of a public record;

(b) locating public records and making them available for copying;

(c) searching for public records;

(d) redacting portions of the record which are exempt from disclosure, except audio or video redactions (see Table 5.14-1 Fee Schedule);

(e) preparing an index of exempt documents; or

(f) communicating with any individual(s) pursuant to BCC 5.14.090(a)(3), BCC 5.14.090(d), BCC 5.14.090(e) or BCC 5.14.090(f).

SECTION 4. Ordinance 442, Section 12, Ordinance 582, Section 7 and BCC 5.14.120 are hereby amended to read as follows:

FEES--COPIES OF PUBLIC RECORDS. (a) Except as otherwise allowed in BCC 5.14.130, a reasonable fee shall be charged to reimburse the County for the costs of providing copies of public records, including any mailing, delivery, or transmission costs. Payment shall be made by cash, check, or money order payable to "Benton County Treasurer." Online payments are accepted pursuant to the Elected Official's policy.

(b) Pursuant to RCW 42.56.120 and Benton County Resolution 2017-538, the County has determined that calculating the County's actual

costs of copying public records is unduly burdensome. Accordingly, the County's adopted fee schedule provides for the fees authorized in RCW 42.56.120 for copying and providing public records. The following fee schedule is applicable to public records requests unless the copying is done by a third person for hire or a different fee is fixed by this chapter or federal or state law.

**TABLE 5.14-1 FEE SCHEDULE**

| | |
|---|---|
| Photocopies of public records | $0.15 per page |
| Printed copies of electronic public records printed at the request of the requestor | $0.15 per page |
| Use by the requestor of County equipment to photocopy public records | $0.15 per page |
| Public records scanned into an electronic format | $0.10 per page |
| Use by the requestor of County equipment to scan the public records | $0.10 per page |
| Electronic files or attachments uploaded to e-mail, cloud-based data storage service, or other means of electronic delivery | $0.05 per each four (4) files or attachments |
| Transmission of public records in an electronic format | $0.10 per gigabyte |
| Use by the requestor of County equipment to send public records electronically | $0.10 per gigabyte |
| Digital storage media or device provided by the County | Actual Cost |
| Container or envelope used to mail copies of public records to requestor | Actual Cost |
| Postage or Delivery Charge | Actual Cost |
| Audio or Video redactions | Actual Cost charged by third party vendor |
| Online Credit Card Payment | Processing and convenience fee in accordance with vendor software |

The charges in the above fee schedule may be combined to the extent that more than one type of charge applies to copies produced in response to a particular request.

(c) Any request for physical copies of more than twenty-five (25) pages of documents, any oversized documents, physical copies of photographs, recorded images or sounds, or computer disks or any other record that cannot be copied, duplicated, or redacted with the County's equipment may be sent by the County to a private vendor for copying or duplication, in which case the fee shall be the actual charge imposed by the private vendor for copying, plus applicable taxes and shipping costs. The Public Records Officer may require that all charges be paid in advance of the release of the copies.

(d) The fee for providing a copy of public records may be set by state statute or federal law. Where the state or federal law sets a fee for providing a copy of a record, that fee will be charged.

Examples of fees set by state law are the fees for:

(1) death certificates (RCW 70.58.107);
(2) court papers (RCW 3.62.060) (RCW 36.18 and CR 17(4));
(3) duplication of electronic tapes of a court proceeding (RCW 3.62.060);
(4) traffic accident reports (RCW 46.52.085); and
(5) criminal history information (RCW 10.97.100).

(e) Before beginning to copy the requested records, the Public Records Officer or designee may require the requestor to pay a deposit of up to ten (10) percent of the estimated copying costs of all records selected for copying by the requester. The Public Records Office can require payment of the deposit before copying an installment of the records or the entire request. When copying is completed, the Public Records Officer or designee may require payment of the remainder of the copying costs before providing the records. No sales tax may be charged.

(f) If a Public Records Officer provides records in installments, the Public Records Officer may charge and collect all applicable copying fees for each installment prior to providing the installment to the requestor.

(g)(1) In addition to other charges that may be assessed, the Public Records Office may impose a customized service charge for providing records. A customized service charge may be imposed for public records requests requiring the use of information technology expertise to prepare data compilations or to provide customized electronic access services, when such compilations or services are not used by the County for other County purposes. A customized service charge may be used to reimburse the County up to the actual cost of providing the compilations or services.

(2) Prior to imposing a customized service charge, the Public Records Officer must notify the requestor of the customized service charge applicable to the request. The notice to the requestor must include: an explanation of why the customized service charge applies; a description of the specific expertise involved; a reasonable estimate cost of the charge; and notice to the requestor that he or she may amend the request in order to avoid or reduce

the cost of the customized service charge and an opportunity to do so.

(h) A requestor may ask the Public Records Officer to provide a summary of the charges applicable to his or her request before any copies are made, and the requestor may revise the request to reduce the number of copies to be made and the applicable charges. The Public Records Officer shall provide such a summary upon request.

SECTION 5. Ordinance 442, Section 17 and BCC 5.14.170 are hereby amended to read as follows:

ADOPTION OF FORM--REQUEST FOR PUBLIC RECORDS. The County hereby adopts for use by all persons requesting inspection and/or copies of records of any official or department of the County the form entitled "Request for Public Records." See attached Exhibit A. ((~~The form will be maintained by the Benton County Prosecuting Attorney.~~))

The form is available at the County's general website at:

**https://www.co.benton.wa.us**

SECTION 6. Exhibit A of BCC 5.14. is hereby amended to read as follows:

**EXHIBIT A**
**BENTON COUNTY**
**REQUEST FOR PUBLIC RECORDS**

**TO BE COMPLETED BY REQUESTOR:**

**DATE OF REQUEST:** _____ **TIME:** _____
NAME: _____ PHONE NUMBER: _____
ADDRESS: _____
STREET CITY STATE ZIP CODE
E-MAIL/OTHER CONTACT INFORMATION: _____

I WOULD LIKE TO (mark all that apply): ☐ Inspect the public records *(Free)*
☐ Obtain copies of the public records *(Subject to applicable fees and costs)*

DESCRIBE THE RECORDS YOU ARE REQUESTING: _____

CASE NUMBER, PARCEL NUMBER, OR OTHER APPLICABLE KEYWORD(S) OR NUMBER(S): _____

**NOTE**: If the request is for a list of names and/or addresses, please attach a signed statement, under the penalty of perjury, that the list will not be used for any commercial purposes.

**TO BE COMPLETED BY RECORDS OFFICER:**

DATE RECEIVED: _____ TIME: _____

OFFICE/DEPARTMENT/COMMISSION/BOARD: _____

RECORDS OFFICER: _____

((~~Request:~~ ☐ ~~was forwarded to Prosecuting Attorney's Office for assistance.~~
_____ ☐ ~~was NOT forwarded to Prosecuting Attorney's Office for assistance.~~

~~Records:~~ ☐ ~~are available for inspection or copying (attach copy of letter to requestor required by BCC 5.14.090(a)(1) or BCC 5.14.090(a)(2)).~~

_____ ☐ ~~are not identifiable and a request for clarification was made on this date_____ by e-mail or letter (attach copy of email or letter to requestor BCC 5.14.090(a)(4))~~

_____ ☐ ~~may be available, but more time is needed to respond (attach copy of letter to requestor required by BCC 5.14.090(a)(3));~~

_____ ☐ ~~are not available because they are exempt (attach copy of letter to requestor required by BCC 5.14.090(a)(5));~~

_____ ☐ ~~partially available for inspection or copying as some portion of the records are exempt and have been withheld and/or redacted (attach copy of letter to requestor required by BCC 5.14.090(a)(5));~~

_____ ☐ ~~are not available because no responsive records exist (attach copy of letter to requestor required by BCC 5.14.090(a)(5)).~~

~~Signature of Records Officer~~ _____ ~~Date~~

~~Request closed because:~~ ☐ ~~copies were inspected or provided to requestor;~~
☐ ~~no response was received to request for clarification and requestor was notified request has been closed (attach copy of closure letter to requestor required by BCC 5.14.090(e));~~
☐ ~~records were exempt in their entirety and requestor was notified of exemptions;~~
☐ ~~no payment was received from requestor and requestor was notified that the request has been closed (attach copy of closure letter to requestor BCC 5.14.090(f)).~~

~~Signature of Records Officer (or Prosecuting Attorney if request handled by PA's office)~~ _____ ~~Date~~
)))

SECTION 7. The section which follows is hereby added to Chapter 5.14 BCC:

ADOPTION OF BENTON COUNTY PUBLIC RECORDS PORTAL. The County hereby adopts for use by all persons requesting inspection and/or copies of records of any official or department of the County the public records request portal at the County's website:

**https://bentoncountywa.nextrequest.com/**

SECTION 8. 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 9. 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.

Constituting the Board of
County Commissioners of
Benton County, Washington

Approved as to Form:

_____
Deputy Prosecuting Attorney

Attest: _____
Clerk of the Board

# COMMISSIONERS' AGENDA ACTION SHEET

| | |
|---|---|
| **Meeting Date:** | 9/14/2021 |
| **Subject:** | Establish a Provisional Corrections Officer |
| **Presenter:** | S. Souza and L. Wingfield |
| **Prepared By:** | L. Wingfield |
| **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

In an effort to find ways to reduce mandatory overtime for our Corrections staff while staying within our budget, the Chief of Corrections and the HR Manager worked with Administration to develop a Provisional Corrections Officer. This position would offset the costs and mandatory overtime on current Corrections staff on an as needed basis. This position would be utilized when current staff take vacation, utilized their protected leaves such as sick, FMLA, PFML, and to ultimately help reduce mandatory overtime.

The cost of this position will offset the overtime budget and it is suggested that the position be initially advertised as a non-bargaining relief position starting at the lowest step Corrections Officer hourly rate. Since this will be a relief type position, employees in this role will not receive full benefits. This position is new for Benton County and with the continued work to establish the program between the Corrections Department, HR, and Administration, has the potential to be highly successful.

## Fiscal Impact

No supplement required.

## Recommendation

Recommend the Board of Benton County Commissioners establish the Provisional Corrections Officer by signing the resolutions to establish the job description and the LIT to initially fund the position.

## Suggested Motion

I move to approve the Provisional Corrections Officer job description as presented.

I move to approve the LIT to fund the Provisional Corrections Officer within Department 120.

cc: HR, Auditor, Corrections

Prepared by: L Wingfield

# RESOLUTION

**BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON**

**IN THE MATTER OF ESTABLISHING A PROVISIONAL CORRECTIONS OFFICER CLASSIFICATION DESCRIPTION.**

**WHEREAS**, the Human Resources Manager worked with the Chief of Corrections to create a classification description for a Provisional Corrections Officer; **THEREFORE**,

**BE IT RESOLVED,** that the Board of Benton County Commissioners hereby approves the recommended Provisional Corrections Officer classification description; and

**BE IT FURTHER RESOLVED,** that the Board of Benton County Commissioners retains the right to modify or repeal this determination at their discretion and without prior notification; and

**BE IT FURTHER RESOLVED,** that this Resolution is not intended nor shall be interpreted as limiting or compromising the County's "at will" employer status.

Dated this_____ day of _____, 2021.

_____

Chairman of the Board

_____

Member

_____

Member

Constituting the Board of Commissioners

of Benton County, Washington

Attest.....

Clerk of the Board

cc: HR, Auditor, Corrections

Prepared by: L Wingfield

**TITLE:** Provisional Corrections Officer

**DEPARTMENT:** Corrections

**REPORTS TO:** Corrections Sergeants

**FLSA:** Non-Exempt

## SUMMARY:

Assists Corrections Officers with all activities in the receipt, booking, custody, transport and care of inmates of the Benton County Jail in accordance with established policies and procedures. Assures the fair and reasonable treatment of inmates and the maintenance and operation of a safe, secure and sanitary corrections facility, placing a primary concern for the health, welfare, safety, and security of inmates, staff, and visitors.

## DISTINGUISHING FEATURES

Positions in the Provisional Corrections Officer classification are distinguished by the responsibility for providing for the care and security of the inmates on an as needed basis.

## EXAMPLES OF JOB DUTIES: (Any one position may not include all of the duties listed nor do the listed examples include all tasks which may be found in positions of this class.)

Inputs and updates computer and manual files to complete incident, general, arrest, inmate and statistical reports to ensure legal requirements are met.

Escorts or assures custody of inmates in transit.

Monitors electronic surveillance equipment and observes inmate, trustee, and visitor movement, programs, and activities within facility to control over-all security of and access to the facility.

Performs searches of inmates and facility for contraband.

Inspects jail facilities for security and cleanliness to assure facilities are maintained in accordance with established procedures.

Prepares and submits written reports concerning inmate population and jail functions in accordance with established procedures.

Provides for inmate comfort and health by serving meals and dispensing medications as authorized.

Performs or ensures distribution of commissary items purchased by inmates such as candy, snacks, and toilet articles.

Responds to inquiries, complaints or requests for information regarding area of assignment from

inmates, other staff and the general public, providing information within scope of knowledge and authority, or refers to appropriate individual.

Maintains current knowledge and skills in area of assignment by attending seminars and job-related training courses.

Performs other related duties as assigned.

## WORKING CONDITIONS:

Work is performed primarily at the jail. It is occasionally necessary to drive inmates to other locations. Physical hazard is present from potentially hostile inmates.

## KNOWLEDGE, SKILLS, AND ABILITIES:

Knowledge of principles and techniques of modern inmate care, custody and control and related aspects of law enforcement.

Ability to acquire skill in the use and care of firearms and the conditions under which they may be employed in accordance with department regulations.

Ability to physically handle and control inmates resisting detention.

Ability to maintain composure and self-control under adverse conditions, e.g., inmate harassment, ridicule, critical injuries, death.

Ability to hold self in readiness at all times to effectively respond to abnormal jail conditions and situations.

Ability to establish and maintain effective working relationships with other employees and the general public.

Ability to hold self in readiness at all times to effectively respond to abnormal jail conditions and situations.

Ability to establish and maintain effective working relationships with other employees and the general public.

Ability to perform duties and maintain personal conduct, attitude and appearance that conform to strict policies, procedures, and discipline.

Ability to communicate effectively, both orally and in writing.

## EDUCATION AND EXPERIENCE:

High school diploma, or G.E.D; or any combination of education and experience which would provide the applicant with the desired skills, knowledge and ability required to perform the job.

## LICENSES, CERTIFICATES & OTHER REQUIREMENTS:

Must possess or obtain state certification from the Washington State Law Enforcement Training Commission with 12 months of employment.

Valid Washington State Driver's License.

Must be at least 21 years of age.

First Aid Certificate.

Must meet required physical and mental standards.

# RESOLUTION

BEFORE THE BOARD OF COMMISSIONERS OF BENTON COUNTY, WASHINGTON:

IN THE MATTER OF COUNTY FUNDS RE: TRANSFER OF FUNDS WITHIN CURRENT EXPENSE FUND NUMBER 0000101 DEPARTMENT NUMBER 120

BE IT RESOLVED, by the Board of Benton County Commissioners, that funds shall be transferred as outlined in Exhibit "A", attached hereto.

Dated this _____ day of _____, _____

_____
Chairman of the Board

_____
Member

_____
Member

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

Attest: _____
Clerk of the Board

cc: Dept, Auditor, File

prepared by: L. Wingfield

EXHIBIT "A"

# BENTON COUNTY BUDGET ADJUSTMENT

Dept Name: Corrections  Dept Nbr: 120

Fund Name: Current Expense  Fund Nbr: 0000101

TRANSFER FROM: **Dept. 120**  TRANSFER TO: **Dept.** 120

| BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT | BASE SUB (6 digit) | LINE ITEM (4 digit) | LINE ITEM NAME | AMOUNT |
|---|---|---|---|---|---|---|---|
| 523.620 | 1905 | Temporary Help | $5,000 | 523.620 | 1130 | Provisional Corrections Officer | $5,000 |
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| | | | | | | | |
| | | | | | | | |
| | | | | | | | |
| TOTAL | | | $5,000 | TOTAL | | | $5,000 |

Explanation:

Funding a Provisional Corrections Officer which is needed to support successful jail operations and reduce the costly expense of overtime due to employee leave use. The position will be initially funded utilizing Temporary Help funds, and re-evaluated during the 2022-2023 budget.

Prepared by: L. Wingfield  Date: 9/3/21

Approved ❑  Denied ❑  Date: _____

_____
Chairman

_____
Member

_____
Member