AGENDA

I. Public Hearing – 6:00 PM

1. Welcome and review of hearing procedures – Robert Knowles, Hearings Officer;

2. Staff presentation on the limited amendments to the Regional Shoreline Master Program;

3. Public Testimony;

4. Joint planning commission discussion;

5. Formulation of individual recommendations by jurisdiction:
   a. Douglas County
   b. City of Bridgeport
   c. City of East Wenatchee

II. Adjourn
STAFF REPORT

TO: DOUGLAS COUNTY PLANNING COMMISSION
FROM: DOUGLAS COUNTY LAND SERVICES STAFF
DATE: JANUARY 30, 2014

REQUESTED ACTION
Adoption of limited amendments to the Douglas County Regional Shoreline Master Program by Douglas County and the Cities of Bridgeport and East Wenatchee. The City of Rock Island will review the amendments during its 2014 comprehensive plan amendment process. The limited amendments are enclosed as Exhibit A of this staff report:

- Amendment 1: Revisions to Section 5.10 Moorage to remove specific standards for pier, ramp and float construction;
- Amendment 2: Revisions to Section 5.12 to include text incorporating SSB 5451 that authorizes master programs to recognize legally established structures that do not meet the standards of the program as legally conforming;
- Amendment 3: Revisions to Section 5.13 amending common line buffer/setback standards;
- Amendment 4: Revisions to Section 6.7 to include written exemptions for remediation and restoration projects;
- Amendment 5: Revisions to Section 6.18 removing the planning commission from the list of councils/commission that may initiate master program amendment; and
- Amendment 6: Revisions to Appendix H 3.060 to remove references to shoreline access/dock corridors. (Applicable to Douglas County Only)

ENVIRONMENTAL REVIEW

On September 26, 2013 Douglas County issued a Determination of Non-significance and adoption of existing documents pursuant to WAC 197-11 for amendments 1, 3, 4, 5, and 6. On September 26, 2013 Douglas County issued a Determination of Non-significance for amendment number 2.

The City of East Wenatchee issued a Determination of Non-significance and Adoption of Existing Environments Documents with a 14 day comment period on January 21, 2014.

The City of City of Bridgeport issued a Determination of Non-significance and Adoption of Existing Environments Documents with a 14 day comment period.

PUBLIC PROCESS

Notice for the workshops and the public hearing were e-mailed to the individuals on the interested parties list. Notice for the public hearing was published in the Wenatchee
The draft amendments were made available on the Douglas County Website and at the Douglas County Public Services Building in East Wenatchee and Bridgeport City Hall. The public review of draft amendments followed the timeline below:

1. September 26, 2013 - Douglas County and the cities of Bridgeport, East Wenatchee, and Rock Island jointly submitted the limited amendments to the Washington State Departments of Ecology and Commerce in accordance with WAC 173-26-100 and RCW 36.70A.106.
5. January 9, 2014 – City of Rock Island City Council Workshop.

**AGENCY AND PUBLIC COMMENTS:**

The public, agency, and environmental review was initiated on September 26, 2013 and concluded on November 25, 2013. A copy of comment letters and comment response matrix are attached as Exhibit B of this staff report.

**PROJECT ANALYSIS:**

There are six (6) proposed limited amendments to the Regional Shoreline Master Program. Amendment number 6 is only applicable to Douglas County. Each proposed amendment includes a recommendation and specific findings.

**Overview of the Shoreline Management Act and the Douglas County Regional Shoreline Master Program.**

Sections 1.1 through 1.3 of the Regional Shoreline Master Program outline the Shoreline Management Act, the scope of the regional plan, and purpose and intent of the regional plan.

1.1 The Shoreline Management Act

The Washington State Shoreline Management Act (SMA; the Act) was passed by the legislature in 1971 and adopted by a vote of Washington’s citizens in a 1972 referendum (RCW 90.58). The goal of the Shoreline Management Act is “to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.” The Act also recognizes that “shorelines are among the most valuable and fragile” of the state’s resources.
The Act provides for the management and protection of the state’s shoreline resources by requiring planning for their reasonable and appropriate use. The area designated to be regulated under the Act generally includes lands within two hundred (200) feet of the shoreline.

The Shoreline Management Act establishes a balance of authority between local and state government. Cities and counties have the primary review responsibility for development along their shorelines, and the state (through the Department of Ecology) has authority to review local master programs and local shoreline development permit decisions.

1.2 Scope and jurisdiction of the Douglas County Regional Shoreline Master Program
The SMA applies to all 39 counties and more than 200 cities of Washington State that have "shorelines of the state" (see RCW 90.58.030(2)) within their jurisdictional boundaries. These shorelines are defined as:

- All marine waters;
- Streams with greater than 20 cubic feet per second mean annual flow;
- Lakes 20 acres or larger;
- Upland areas called shorelands that extend 200 feet landward, in all directions on a horizontal plane, from the edge of the ordinary high water mark of these waters; and
- The following areas when they are associated with one of the above:
  - Wetlands and river deltas; and
  - Floodways and contiguous floodplain areas landward 200' from such floodways.

The Act recognizes that certain waters are so important to citizens as to necessitate a special status for classification and protection. These are “shorelines of statewide significance.” WAC 173-18-040 further clarifies streams and rivers in Eastern Washington are considered "shorelines of statewide significance." The Columbia River is a shoreline of Statewide Significance. The SMA also states that "the interests of all the people shall be paramount in the management of shorelines of statewide significance." These shorelines of statewide significance are defined in the SMA as:

- Pacific Coast, Hood Canal and certain Puget Sound shorelines;
- All waters of Puget Sound and the Strait of Juan de Fuca;
- Lakes or reservoirs with a surface area of 1,000 acres or more;
- Larger rivers (1,000 cubic feet per second or greater for rivers in Western Washington, 200 cubic feet per second and greater east of the Cascade crest);
- Wetlands associated with any of the above; and
- Those “shorelands” associated with the water bodies identified above.
Specifically in Eastern Washington, the Act lists the following criteria for defining “shorelines of statewide significance”:

Any 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.

Douglas County, and the Cities of Bridgeport, East Wenatchee and Rock Island, the participating jurisdictions, originally adopted a regional shoreline master program in 1975, which was not revised, with the exception of the City of Bridgeport in the early 1990s, until now (2008). Within the County there were 16 lakes, 6 reservoirs, the Columbia River (which contains 5 of those reservoirs) and Douglas Creek/Rattlesnake Creek drainages within the Moses Coulee watershed that were listed under the Shoreline Management Act. The jurisdictional areas of this updated regional program have changed. A set of maps is included in Chapter 9 that depict the jurisdictional areas. Those removed are included at the end of Appendix A.

1.3 Purpose and intent
The purpose and intent of this SMP are to:

1. To promote the public health, safety and general welfare of the community by providing long range, comprehensive policies and effective, reasonable regulations for development and use of shorelines within Douglas County and it's applicable jurisdictions;
2. To manage shorelines in a positive, effective and equitable manner; and
3. To further assume and carry out the responsibilities established by the Act for the participating jurisdictions, and to adopt and foster the following policy contained in RCW 90.58.020 for shorelines of the State:

   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...

   The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:
(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.

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, 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 the water.

Douglas County and the Cities of Bridgeport, East Wenatchee, and Rock Island each adopted the Regional Shoreline Master Program in 2008. The Department of Ecology reviewed the RSMP, made required changes, recommended other changes, and issued their approval letter in the summer of 2009. The effective date of the Douglas County Regional Shoreline Master Program for the County and City of Bridgeport is August 27, 2009 and January 28, 2010 for the City of East Wenatchee.

**Limited amendments to a Shoreline Master Program and review process.**
The Shoreline Management Act implementing guidelines in WAC 173-26 outlines to process to adopt or amend a shoreline master program. A limited amendment to a shoreline master program may be approved by the Department of Ecology if found to meet the six specific criteria (i-vi) as provided for in WAC 173-26-201(1)(c):

(c) Limited master program amendments may be approved by the department provided the department concludes:
(i) The amendment is necessary to:

(A) Comply with state and federal laws and implementing rules applicable to shorelines of the state within the local government jurisdiction;

(B) Include a newly annexed shoreline of the state within the local government jurisdiction;

(C) Address the results of the periodic master program review required by RCW 90.58.080(4), following a comprehensive master program update;

(D) Improve consistency with the act's goals and policies and its implementing rules; or

(E) Correct errors or omissions.

(ii) The local government is not currently conducting a comprehensive shoreline master program update designed to meet the requirements of RCW 90.58.080, unless the limited amendment is vital to the public interest;

(iii) The proposed amendment will not foster uncoordinated and piecemeal development of the state’s shorelines;

(iv) The amendment is consistent with all applicable policies and standards of the act;

(v) All procedural rule requirements for public notice and consultation have been satisfied; and

(vi) Master program guidelines analytical requirements and substantive standards have been satisfied, where they reasonably apply to the limited amendment. All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.

The purpose of the limited amendment process is for local jurisdictions to address minor changes as a result of master program implementation, changes in legislation, changes due to annexations, implement master program consistency with the Shoreline Management Act, or to correct errors. Many issues relating to shorelines are very complex due to their basis in scientific studies and analysis.

During the public workshops, numerous comments were made to the planning commissions regarding shoreline matters that are not within the scope of a limited amendment. These matters are important and should be addressed in the correct forum and to the correct governing bodies. Some of these issues included:

• The vesting of shoreline buffers/setbacks in subdivisions. Concern and frustration was been expressed by several property owners in the Beebe Orchard Tracts subdivision. The Beebe Orchard Tracts subdivision was recorded on January 10, 2006. On that date and in accordance with RCW 58.17.170, which establishes the period of validity for recorded plats, the subdivision became a valid land use and was governed by the statues, ordinances and regulations in effect at the time of approval for a period of five years.

In 2010, 2012, and 2013 the state legislature amended RCW 58.17.170 to extend this period of validity from five years to seven years from the date of
final approval for subdivisions recorded on or before December 31, 2014. This change gave property owners an additional two (2) years to develop their property according to the regulations in place at the time of final plat approval.

The Shoreline Management Act, RCW 90.58, does not govern subdivision vesting. As such, amendments to the Regional Shoreline Master program cannot vest subdivisions any additional period of time beyond that which is authorized by RCW 58.17.170. Citizens interested in this issue are encouraged to address this matter with their respective state legislative representatives. The planning commissions, the Board of Commissioners, the City Councils nor the Department of Ecology have the authority to amend the legislative timeframes established in RCW 58.17.170.

- Several property owners addressed the planning commissions regarding the enforcement of the Regional Shoreline Master Program and the issuance of violation letters. The RSMP enforcement process is not an issue that is within the authorities delegated to a planning commission. This matter is not before the planning commissions and is not within the scope of the limited amendments.

- Property owners have addressed the planning commissions at their workshops and in written commentary regarding establishing a statute of limitations for violations of the SMA and the RSMP. The SMA does not have a statute of limitations provision for violations. The RSMP cannot establish this statute of limitations that is inconsistent with the SMA. The Department of Ecology cannot approve amendments to the RSMP that are contrary to the SMA.

- Property owners have addressed the planning commissions at their workshops and in written commentary regarding revisions to shoreline environment designations and buffer widths. Amendments to buffers or shoreline environment designations are not within the scope authorized for limited amendments. Amendments to environment designations and/or buffers must be handled through a more comprehensive amendment and require scientific analysis to justify the change in buffer widths. The cities and the county will be developing a more detailed docketing process that may provide an avenue for applying for environmental amendments.

Analysis and recommendations on the proposed limited amendments.

Amendment #1
Revisions to Section 5.10 Moorage
Staff Analysis:
An amendment to Section 5.10, regulation 9 would help to avoid potentially conflicting federal or state standards/regulations with the Douglas County Regional SMP. Various federal and state agency regulations and permit conditions are relevant to construction of piers and docks and other structures. During the application process for moorage facilities, conflict could occur should state or federal moorage standards be different or contrary to section 5.10 as currently adopted. The draft amendment would require piers, ramps, and floats to be consistent with state and federal standards without including specific local requirements.

The amendment does not reduce or diminish the local review of moorage facilities. Policy number 9 in Section 5.10 states: “Multiple agencies have permitting standards, requirements or limitations for the use and development of moorage facilities. Many of these agencies have specific ownership or easement rights. The county and cities should coordinate with federal, tribal, state and local agencies during the review of shoreline permits. The granting of a shoreline permit does not relieve a project from compliance with the standards of other agencies.” Local critical area standards for each jurisdiction, Appendix H of the RSMP, remain unaltered. The draft amendment ensures no net loss of ecological functions through the submittal and implementation of a fish and wildlife management and mitigation plan.

This limited amendment is allowable under WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.

Public comments: None

Recommendation:
Staff recommends approval of amendment 1 based on the suggested findings of fact and conclusions.

Amendment 2
Revisions to Section 5.12 Residential

Staff Analysis:
Legally established structures that do not meet the current bulk and dimensional standards of the Regional Shoreline Master Program are considered legal nonconforming structures. The RSMP has adopted the non-conforming standards of WAC 173-27-080. Structures with nonconforming status often create uncertainty for property owners and possibly financial lenders with issues such as repair and maintenance of structures, homeowners' insurance costs, and obtaining loans for repairs or new/refinanced mortgages.

To address some of these concerns, the State Legislature in 2011 approved SSB 5451, codified as RCW 90.58.620, that authorizes new or amended SMPs approved by Ecology after September 1, 2011 to include provisions that allow:
(a) Legally established residential structures and appurtenant structures that are used for a conforming use to be considered a conforming structure even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density;
(b) Redevelopment, expansion, change with the class of occupancy or replacement of the residential structure if consistent with the SMP, including the provisions for no net loss of shoreline ecological functions.

The definition of appurtenant structures, in RCW 90.58.620, includes garages, sheds and other legally established structures, but does not include bulkheads and other shoreline modifications or over-water structures. Landscaping and lawn grasses are not included in the definition of an appurtenant structure. The term “yard” as used in RCW 90.58.620 is synonymous with the term setback. The RSMP defines “side yard” as “…the distance from the structure, such as a residence, to the parcel line.”

Adoption of this amendment will allow nonconforming structures to be considered as conforming structures and outlines a means for expansion or alteration. One of the primary provisions of the Shoreline Management Act is no net loss of ecological functions. The RSMP accomplishes this by requiring submittal of a management and mitigation plan prepared by a qualified professional biologist. The plan establishes the ecological baseline for the property, identifies impacts proposed by the development, and any mitigation to address the impacts and ensure no net loss of ecological functions.

In order to be more consistent with the language of the legislative bill and RCW 90.58.620, a suggested revision has been included in Appendix A. The revision clarifies that structures that do not meet the standards of the current RSMP with respect to setbacks, buffers, area, bulk, height or density may be considered conforming.

This limited amendment is allowable under subsection 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.

Public comments: Comment letter submitted by John M. Groen. See Exhibit B, public comment and response matrix.

Recommendation:
Staff recommends approval of amendment 2 based on the suggested findings of fact and conclusions.

Amendment 3
Revisions to regulation number 7 in Section 5.13 Shoreline bulk and dimensional standards.

Staff Analysis:
The common line buffer/setback tool is currently available in the RSMP for the development of a single-family structure under the following circumstances:
- The lot is a legal lot of record at the time of adoption of the RSMP (2009);
- The lot is located adjacent to existing residential dwelling units on both adjacent shoreline lots;
- The lot is located within an urban growth area, planned development, Rural Service Center, or Rural Recreation zoning district, or is a cluster lot;
- The elevation of adjacent structures on adjacent lots is not 15’ higher or lower from the natural grade on the vacant center lot.
- Neither of the adjacent lots has been developed since the date of adoption of this Program (2009), or
- Greater than 250 cubic yards of grade or fill needs to occur in order to accommodate utilizing the common line buffer/setback.

Since the adoption of the RSMP in 2009, this tool has not been used as there are very few properties that meet all of the criteria. A revision could expand opportunities to take advantage of the common line setback. The proposed revisions to this tool protect the visual shoreline access of property owners by allowing the development of single family residences on the shoreline at similar setbacks but not necessarily equal to adjacent lots.

Several jurisdictions, both in eastern and western Washington, have adopted Shoreline Master Programs with common line buffer/setback standards that ensure no net loss of ecological functions, preserve and protect shoreline views and allow the tool to be used on lots that are bounded on one side with another vacant lot. The draft amendments to this section include allowing existing vacant lots with residences on either side or only on one side, re-evaluate the shoreline environments where the tool is available, and remove the elevation, fill threshold, and timeframe of adjacent developments restrictions.

The common line buffer/setback tool is of particular importance to property owners in developments where the vesting timeframe established by RCW 58.17.170 has expired or is nearing expiration. This tool provides these property owners with a means to develop their properties similarly to their neighbors’.

The standard of “no net loss of ecological functions” associated with utilizing the tool is achieved through the submittal and implementation of a fish and wildlife management and mitigation plan by a qualified biologist.

**Public Comment:** A letter of support was submitted by Ken Hunziker. See Exhibit B, public comment and response matrix.

**Recommendation:**
Staff recommends approval of amendment 4 based on the suggested findings of fact and conclusions.

**Amendment 4**
Revisions to Section 6.7 Exemptions
**Staff Analysis:**
The purpose of this amendment is to include restoration projects, not associated with a substantial development permit, as a written letter of exemption with a five year monitoring timeframe. While not all development exempt from a shoreline substantial development permit require a written letter of exemption, WAC 173-27-050 does authorize local government to specify developments that do require the issuance of a written letter of exemption.

Appendix D. Monitoring and Evaluation in the RSMP requires the participating jurisdictions to monitor individual restoration and/or mitigation projects as a component of the overall shoreline monitoring effort. A written letter of exemption and the monitoring timeframe would assist in the requirement to monitor the shoreline conditions in the county. The five (5) year monitoring timeframe is consistent this each jurisdictions monitoring timeframes for habitat management and mitigations plans, as required in Appendix H Shoreline Critical Area Regulations.

Restoration is defined in the RSMP as “…the re-establishment 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.”

Based on comments submitted, an amendment is recommended to remove the term “remediation” from the original draft. The term creates a certain amount of confusion and uncertainty regarding the intent of the amendment. The recommended change to the original draft is included in the comment matrix and is reflected in Exhibit A.

This amendment meets the criteria for a limited amendment in WAC 173-26-201(1)(c)(i)(D) by improving consistency with the act's goals and policies and implementing rules.

**Public comments:** Comment letter submitted by John M. Groen. See Exhibit B, public comment and response matrix.

**Recommendation:**
Staff recommends approval of amendment based on the suggested findings of fact and conclusions.

**Amendment 5**
Revisions to Section 6.18 Amendments to the Shoreline Master Program.


**Staff Analysis:**
To change the Shoreline Master Program amendment process to clarify the different roles of a planning commission and the legislative body by removing a city or county planning commission from the list of bodies authorized to initiate an amendment.

The involvement of the public is crucial to the review and amendment of plans, policies, and regulations in Douglas County. Primary tenets of both the Growth Management Act and the Shoreline Management Act are high levels of public involvement and participation in the review and adoption process. In order to accomplish this requirement, the cities of Bridgeport and East Wenatchee and Douglas County have adopted policies and guidelines within the Douglas County Regional Policy Plan, public participation plans, corresponding comprehensive plans, and the Douglas County Regional Shoreline Master Program. A critical component of the public participation process and review and amendment of official controls are the city or county planning commissions.

The Douglas County Planning Commission is a nine member commission appointed by the Board of Commissioners, pursuant to RCW 36.70.040, and specifically tasked to “assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto.”

The planning commissions of the Cities of Bridgeport and East Wenatchee are organized under RCW 35A.63 as advisory bodies to the mayor and the city council.

As an advisory body to a planning department, a planning commission plays an integral role in the public participation process during the process of review and amendment of official controls, such as the Douglas County Regional Shoreline Master Program (RSMP). Section 6.4 of the RSMP vests a planning commission “with the responsibility to review the Master Program from time to time as a major element of each jurisdiction’s planning and regulatory program, and make recommendations for amendments thereof to the board of county commissioners or city councils.” This role of a planning commission cannot be removed or replaced as it is the purpose of the commission pursuant to RCW 36.70.040.

As the legislative authorities of the county and cities, the role of the Board of Commissioners and city councils, as they relate to the RSMP, are specifically outlined in Section 6.5 of the RSMP. The legislative bodies are vested with the authority to initiate amendments, adopt amendments, and make final decisions on permits where a hearing examiner system has not been established.

With the advisory role of a planning commission and the legislative role of the Board of Commissioners and City Councils as outlined in Sections 6.4 and 6.5 of the RSMP, an error in Section 6.18 of the RSMP was identified. This section gives authority to a planning commission to initiate amendments to the RSMP following the procedures in
WAC 173-26-100. As an advisory body, a planning commission is vested with the authority to review and recommend under the direction from the local legislative body. The legislative authority of the jurisdiction sets the planning agency budget, reviews work programs, and directs staff to work with a planning commission on amendments to official controls and procedural matters. Any amendment to an official control involves significant staff time, advertising costs for public hearings, and costs associated with notifying the public of available amendments. The draft amendments clarify the different roles of a planning commission and the legislative body.

The proposed amendment does not remove a planning commission from the public participation process. The requirement for a public participation process that includes a planning commission is well documented in the adopted plans and guidance documents of the county and cities, including the RSMP. While public comments submitted by Mr. Fleming and Mr. Groen do correctly identify the need for public participation and the role of a planning commission in this process, they appear to misunderstand the amendment and the purpose of a planning commission as advisory body as outlined in RCW 36.70.040 and 35A.63. Mr. Groen states that “…the proposal to eliminate the Planning Commission role will further undercut the ability of the public to participate and influence the planning and amendment process.” (Page 3 of 3 in comments dated November 25, 2013) The amendments do not undercut the role of a planning commission; they do, however, clarify that a planning commission is an advisory body and does not act as a quasi-legislative body with the authority to initiate and direct budgetary resources.

Public Comment: Two public comments were submitted. See Exhibit B public comment and response matrix.

Recommendation:
Staff recommends approval of Amendment 5 based on the suggested findings of fact and conclusions.

Amendment 6:
Revisions to Appendix H, Section 4 Douglas County shoreline critical areas regulations, subsection 3.060(E)(1)(d).

Staff Analysis:
This amendment is only applicable to Douglas County. The purpose is to remove subsection 3.060(E)(1)(d) which refers to a code component removed during the adoption of the Regional SMP. The 2008 Douglas County locally adopted SMP included a provision for a shoreline access or dock corridor. This provision was required to be removed by the Department of Ecology as part of their adoption process. The reference in section 3.060(E) causes confusion as it refers to a non-existent SMP provision and should be removed.

This limited amendment is allowable under subsection WAC 173-26-201(1)(c)(E) in order to correct an error in the processing procedures of the SMP.
Public Comment: None

Recommendation:
Staff recommends approval of Amendment 6 based on the suggested findings of fact and conclusions.

FINDINGS OF FACT AND CONCLUSIONS:
The project analysis section for each amendment contains specific amendment findings and a recommended action. The following findings and conclusions are applicable to all the amendments and cover procedural matters.

Suggested findings:
1. The Washington State Legislature passed the Washington State Shoreline Management Act (RCW 90.58 [SMA]) in June 1971 and it was passed by public initiative in 1972. Under the SMA, each county and city is required to adopt and administer a local shoreline master program to carry out the provisions of the Act.
2. The Shoreline Master Program Guidelines (WAC 173-26) are the standards and guidance that have been adopted by the Department of Ecology which local governments must follow in drafting their local shoreline management programs.
3. Douglas County and the cities of Bridgeport, East Wenatchee, and Rock Island initiated a joint 60-day review on September 26, 2013 as required by WAC 173-26-100 and RCW 36.70A.106.
4. The comment period concluded on November 26, 2012.
6. Douglas County issued a Determination of Non-significance for the proposed amendments on September 26 2012, pursuant to WAC 197-11.
7. Workshops were held on November 13, 2013 with the Douglas County Planning Commission, on January 7, 2014 with the City of East Wenatchee Planning Commission, on January 9, 2014 with the City of Rock Island City Council, and on January 15, 2014 with the City of Bridgeport City Council and Planning Commission.
8. The Notice of Public hearing was published on January 30, 2014 in the Wenatchee World and Empire Press.
9. The Planning Commissions of Douglas County and the Cities of Bridgeport, East Wenatchee, and Rock Island conducted a joint public hearing on February 12, 2014. The Planning Commissions entered into the record the files on this amendment, accepted public testimony, and deliberated the merits of the proposal.
10. The participating jurisdictions of the Douglas County Regional Shoreline Master Program are not currently conducting a comprehensive update to the Regional Shoreline Master Program.
11. The proposed amendment will not foster uncoordinated and piecemeal development of the state's shorelines.
12. The amendments are consistent with all applicable policies and standards of the Shoreline Management Act.

Amendment #1
13. Various state and federal agencies have regulations and permit conditions relevant to the construction of piers and docks.
14. State and federal agencies have expertise in the biological impact of docks, piers and similar structures.
15. No net loss of ecological functions is achieved through the submittal and implementation of a management and mitigation plan prepared by a qualified biologist.
16. The limited amendment to Section 5.10 is consistent with WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.

Amendment #2
17. The Washington State Legislature in 2011 approved SSB 5451, now codified as RCW 90.58.620, that authorizes legally established residential structures and appurtenant structures that are used for a conforming use to be considered conforming structures even though they do not meet SMP standards for setbacks, buffers, yards, area, bulk, height or density and the redevelopment, expansion, change in the class of occupancy or replacement of the residential structure if consistent with the SMP, including the provisions for no net loss of shoreline ecological functions.
18. Appurtenant structures are defined as garages, sheds and other legally established structures, but do not include bulkheads and other shoreline modifications and over-water structures.
19. The limited amendment to Section 5.12 is consistent with WAC 173-26-201(1)(c)(A) in order to comply with state and federal laws and implementing rules.
20. The provisions of this amendment are not allowed within the Natural Shoreline Environment Designation.
21. No net loss of ecological functions is achieved through the submittal and implementation of a management and mitigation plan prepared by a qualified biologist.
22. Any expansion to a single family residence may not occur further waterward of the existing structure.

Amendment #3
23. The Regional Shoreline Master Program includes the common line buffer/setback averaging tool. The tool has not been used since the adoption of the program in 2009.
24. Similar amendments have been adopted by jurisdictions in both Eastern and Western Washington.
25. The draft amendments achieve the standard of “no net loss of ecological functions” with the submittal and implementation of a fish and wildlife management and mitigation plan by a qualified biologist.
26. Written public testimony was received in favor of the amendments.
27. The limited amendment to Section 5.13 is consistent with WAC 173-26-201(1)(c)(D) in order to improve consistency with the Acts goals and implementing rules.

Amendment #4
23. Appendix D. Monitoring and Evaluation in the RSMP requires the participating jurisdictions to monitor individual restoration and/or mitigation projects as a component of the overall shoreline monitoring effort.
24. A written letter of exemption and the monitoring timeframe would assist in the requirement to monitor the shoreline conditions in the county.
25. WAC 173-27-050(3) authorizes local government to specify developments not specifically described in WAC 173-27-050(1) as requiring a letter of exemption.
26. Wetland and Fish and Wildlife Management and Mitigation Plans required in Appendix H Shoreline Critical Area Regulations, for each participating jurisdictions, require a 5 year monitoring timeframe with reviews at 1, 3, and 5 years.
27. No net loss of ecological functions is achieved through the submittal and implementation of a management and mitigation plan prepared by a qualified biologist.
28. The limited amendment to Section 6.7 is consistent with WAC 173-26-201(1)(c)(D) in order to improve consistency with the Acts goals and implementing rules.

Amendment #5
27. The Shoreline Management Act (RCW 90.58) requires a public process to review and amend local Master Programs.
28. The Douglas County Regional Shoreline Master Program is an official control as defined by RCW 36.70.020.
29. The Douglas County Planning Commission is organized pursuant to RCW 36.70.040, and specifically tasked to “assist the planning department in carrying out its duties, including assistance in the preparation and execution of the comprehensive plan and recommendations to the department for the adoption of official controls and/or amendments thereto.”
30. The planning commissions of the Cities of Bridgeport and East Wenatchee are organized under RCW 35A.63 as advisory bodies to the mayor and the city council.
31. Section 6.4 of the Douglas County Regional Shoreline Master Program vests the Planning Commission with the responsibility to “…review the Master Program from time to time…and make recommendations for amendments thereof to the board of commissioners.”
32. The amendment to Section 6.18 is consistent with WAC 173-26-210(1)(c)(E) in order to correct an error in the processing procedure of the RSMP.

Amendment #6
33. Subsection 3.060(E)(1)(d) refers to a code component removed during the adoption of the Regional SMP in 2009.
34. The amendment to Subsection 3.060(E)(1)(d) is consistent with WAC 173-26-201(1)(c)(E) in order to correct an error in the processing procedures of the SMP.

Suggested conclusions:
1. The procedural and substantive requirements of the State Environmental Policy Act have been complied with.
2. The procedural requirements of RCW 36.70A have been complied with.
3. The procedural requirements of WAC 173-26-100 have been complied with.
4. The proposed amendments are consistent with the Douglas County Regional Policy Plan, the Shoreline Master Program, and the Douglas County Countywide Comprehensive Plan, the City of Bridgeport Comprehensive Plan, and the Greater East Wenatchee Area Comprehensive Plan.
5. The proposed amendments are consistent with the requirements of Revised Code of Washington and the Washington Administrative Code.
Exhibit A - Douglas County Regional Shoreline Master Program Limited Amendment – February 12, 2014 – Public Hearing

Amendment 1:

5.10 Moorage: docks, piers, watercraft lifts, mooring buoys, floats

Regulations:

9. In order to minimize impacts on near shore areas and avoid reduction in ambient light level, pier, ramp, and float constructions shall meet or exceed the standards and/or requirements of the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources and the United States Army Corps of Engineers to minimize impacts on near shore areas and avoid reduction in ambient light level:

a. Pier and ramp construction must meet the following standards:

(1) The width of piers and ramps shall not exceed 4 feet for single or joint-use docks. Greater widths may be permitted for community, public or commercial docks where use patterns can justify the increase;

(2) The bottom of the pier or bottom of the landward edge of a ramp, must be elevated at least two (2) feet above the plane of OHWM;

(3) Pier and/or ramp surfaces are to consist of either grating or clear translucent material; and

(4) Pier and ramp construction shall meet or exceed the standards and/or requirements of the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources and the United States Army Corps of Engineers.

b. Float construction must meet the following standards:

(1) Any float materials that are in contact with the water must be white or translucent;

(2) Flotation materials must be permanently encased to prevent breakup and release of small floatation pieces;

(3) Decking or surface area of the float must consist of either grating or clear translucent material;

(4) Floats cannot be located where they could impede fish passage; and

(5) Float construction shall meet or exceed the standards and/or requirements of the Washington State Departments of Ecology, Fish and Wildlife, and Natural Resources and the United States Army Corps of Engineers.

Amendment 2:

5.12 Residential

Regulations:

8. Residential structures and appurtenant structures, as defined by RCW 90.58.620, that were legally established and used for a conforming use which are located landward of the OHWM, not within the Natural Shoreline Environment, and do not meet the
standards of this Program with respect to setbacks, buffers, yards, area, bulk, height or density are considered to be conforming. A one-time expansion is allowed, as follows:

a. the area of expansion is no more than twenty-five percent (25%) of the habitable floor area of the existing residence;
b. the expansion does not exceed the allowed height limit;
c. the expansion is no further waterward of the existing structure; and
d. a management and mitigation plan is prepared by a qualified professional biologist that demonstrates that the expansion will result in no net loss of shoreline ecological functions; and
e. an exemption is issued for the project based on the request by the applicant that is accompanied by a site plan and construction plans sufficient to depict the expansion.

Amendment 3:

5.13 Shoreline bulk and dimensional standards

Regulations

7. Common line buffer/setback:

A common line wetland or riparian buffer/setback may be utilized for the construction of a single-family residence on an undeveloped lot to accommodate shoreline views that are similar, yet not necessarily equal, to those from adjoining properties. Common line setbacks may be allowed on lots that are adjacent to lots that have a single family residence on one or both adjoining shoreline lots within an urban growth area, a Rural Service Center, the Rural Conservancy shoreline environment or the Shoreline Residential shoreline environment.

A common line wetland or riparian buffer/setback may be utilized for the development of a single family dwelling on an undeveloped lot, where the lot is a legal lot of record in place at the time of adoption of this Program and is located adjacent to existing residential dwelling units on both adjacent shoreline lots. The common line buffer/setback shall be determined by; averaging the buffers/setback, as measured landward from the delineated wetland or riparian boundary, for each of the adjacent residential dwelling units on the shoreline.

a. Common line buffers/setbacks shall apply when:

(1) The width of the undeveloped lot is less than 150 feet;
(2) The lot is located within an Urban Growth Area, Planned Development, Rural Service Center or Rural Recreation zoning districts, or is a cluster lot.

a. The common line buffer/setback shall be determined by; averaging the buffers/setback, as measured landward from the delineated wetland or riparian boundary, for each of the adjacent residential dwelling units on the shoreline.
riparian boundary, for each of the adjacent residential dwelling units on the shoreline.

   i. Existing residential dwelling units on both sides: Where there are existing residences on both sides of the proposed residence, the setback shall be calculated the average of adjacent residences’ existing setback from the OHWM.

   ii. Existing residential dwelling unit on one side: Where there is an existing residence within 150 feet of one side the proposed residence, the setback shall be determined as a common line calculated by the adjacent residences’ buffer/setback, as measured landward from the OHWM and the default buffer for the adjacent vacant lot.

b. Common line buffers/setbacks shall not apply when:

   (1) The elevation of adjacent structures on adjacent lots are 15’ higher or lower from the natural grade on the vacant center lot.

   (2) One of the adjacent lots is undeveloped.

   (3) Either of the adjacent lots has been developed since the date of adoption of this Program.

   (4) Greater than 250 cubic yards of grade or fill needs to occur in order to accommodate utilizing the common line buffer/setback.

e. A management and mitigation plan prepared by a qualified professional biologist shall be submitted and approved which demonstrates no net loss of ecological functions for the site in conformance with the applicable appendices of the jurisdiction in Appendix H.

Amendment 4:

6.7 Shoreline exemptions

1. An exemption from the substantial development permit process is not an exemption from compliance with the Shoreline Management Act or the Master Program, or from any other regulatory requirements. To be authorized, all uses and development must be consistent with the policies, requirements and procedures of this Program and the Shoreline Management Act.

2. Exempt developments are those set forth in WAC 173-27-040; RCW 90.58.030 (3)(e), 90.58.140(9), 90.58.147, 90.58.355 and 90.58.515, as amended.

3. Letters of exemption shall be issued by a jurisdiction when required by the provisions of WAC 173-27-050.

4. Letters of exemption for shoreline restoration projects, not associated with a shoreline substantial development permit, shall be conditioned to establish a five-year monitoring period to ensure plant survivability.

3-5. No statement of exemption shall be required for other uses or developments exempt pursuant to WAC 173-27-050 unless the Administrator has cause to believe
a substantial question exists as to qualifications of the specific use or development for the exemption or the Administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.

Amendment 5:

6.18 Amendments

1. Amendments to the Program shall be processed in accordance with WAC 173-26-100, as amended.

2. The board of county commissioners, or city council, or planning commission may initiate an amendment to this Program according to the procedures prescribed in WAC 173-26-100. Where established, the planning commission shall conduct a public hearing on any amendment proposed by a city council or the board of county commissioners.

3. Any person may petition the city council or, board of county commissioners, or planning commission to amend this Program. Petitions shall specify the changes requested and any and all reasons therefore. The board of county commissioners or city council or planning commission may schedule a public hearing on said petition(s) if it deems the proposed amendment would make this Program more consistent with the Act and/or any applicable Department of Ecology Guidelines, or more equitable in its application to persons or property due to changed conditions in an area.

Amendment 6:

3.060 Specific Standards

E. View Corridors.

The development or maintenance of view corridors can provide the general public and property owners of single family residences, opportunities for visual access to water bodies associated with shoreline lots. One view corridor may be permitted per lot, when consistent with the provisions of this Chapter. A mitigation and management plan consistent with Section 3.037 of Appendix H must be submitted for review and approval; either with a complete building permit application for a new single family residence or associated with an existing single family residence.

1. In addition to the submittal of a complete mitigation and management plan, an applicant must submit the following materials:
   a. A signed Douglas County Master Application form by the property owner of the shoreline proposed for vegetation alterations.
   b. A scaled graphic which demonstrates a side, top and bottom parameter for the view corridor with existing vegetation and proposed alterations. The
view corridor shall be limited to 25% of the width of the lot, or 25 feet, whichever distance is less.

c. A graphic and/or site photos for the entire shoreline frontage which demonstrates that the homesite and proposed or existing home does or will not when constructed have a view corridor of the water body, taking into account site topography and the location of shoreline vegetation on the parcel.

d. Demonstration that the applicant does not have an existing or proposed shoreline access corridor or dock access corridor.
November 25, 2013

Douglas County Land Services
140 19th Street NW
East Wenatchee, WA 98802

Douglas County Planning Commission
140th 19th Street NW
East Wenatchee, WA 98802

Re: Limited SMP Amendments

Dear Planning Commission Members and Douglas County planning staff:

This letter is to provide public comment on behalf of the Douglas Property Owners Association (DPOC) on the proposed limited SMP amendments. DPOC is a group of Douglas County residents and shorefront property owners who are concerned with the County SMP and its impacts on residents, including themselves.

Amendment No. 2
The DPOC proposes that the language of Amendment No. 2 be revised so that the first sentence reads as follows:

8. Legally-established existing residential structures, and residential appurtenances existing prior to August 27, 2009, located landward of the OHWM, not within the Natural Shoreline Environment, and that do not meet the standards of this Program are considered to be conforming . . . .

The policy basis for this suggested revision to the first sentence is to provide clear guidance that residential appurtenances will be considered conforming as part of the residential structure. This is critical to property owners because it is often not the house itself, but the appurtenances that may otherwise be viewed as non-conforming. This is consistent with and implements the intent behind the approval by the State Legislature of SSB 5451, which specifically allows appurtenances to be considered conforming. The August 27, 2009 date makes it clear that this relief applies to appurtenances that pre-date the 2009 amendments.

It is known that for years after the original SMP was adopted, the County granted permits for residences and mobile homes where various normal appurtenances would be established as part of the residence. For many of these, it is simply impossible to know when such appurtenances were actually installed or what regulations applied, if any, at that time. The proposed amendment should help diminish inconsistent enforcement and provide some degree of clarity for home owners who are concerned about the status of their properties.
Amendment No. 4
The DPOC proposes that Amendment No. 4 be revised so that the existing proposed language (adding subsection 4) be deleted and replaced by the following:

4. All shoreline remediation and restoration projects require letters of exemption, which shall be conditioned to establish a five-year monitoring period to ensure plant survivability. Remediation projects as used herein means hazardous waste clean up projects as defined in RCW 70.105D.020, “Remedial actions”. Restoration projects as used herein means projects undertaken primarily to rehabilitate existing areas of impaired shoreline ecological functions, as defined and prioritized in Appendix B. Restoration projects as used herein do not include on-site restoration elements included in management and mitigation plans prepared to ensure no net loss of ecological functions for exempt shoreline projects.

The current SMP contains no definition of “remediation.” That term is used only in Chapter 5, Section 5.14 in relation to hazardous waste cleanup. Further, Regulation 11 in Section 5.14 already requires a “remediation” permit pursuant to RCW 70.105D (Hazardous Waste Cleanup).

The term “restoration” is more widely used. See e.g. SMP Chapters 1-9 and Appendix H; WAC 173-26-186.

As proposed by the County, the amendment is vague in its meaning and purpose. Such vagueness allows for arbitrary and discretionary interpretation. Moreover, it denies the conscientious proponent the opportunity to understand the regulation simply by reading it. Planning staff should be asked by the Planning Commission to clarify its intent of this proposed amendment. If the intent is limited to addressing only hazardous waste remediation and stand-alone restoration projects on previously degraded shorelines, then the amendment should more clearly be restricted to these applications.

If, in the alternative, this amendment is intended to extend the Administrator’s authority to require letters of exemption and 5 year monitoring for other projects and minor projects, then clear and compelling evidence should be required showing that such a new obligation on project proponents has become necessary due to recent documented cases.

The proposed amendment as worded by the County should be deleted altogether as unnecessary, or reworded as suggested above to define the scope of the requirement.

Amendment No. 5
The DPOC opposes this proposed amendment that would eliminate the role of the Planning Commission with respect to SMP amendments.

The Shoreline Management Act, codified at RCW 90.58, requires and encourages public participation in the shoreline management process. RCW 90.58.130. Similarly, WAC 173-26-
191 specifies that the preparation “and amending of master programs shall involve active public participation.”

The proposal to eliminate the Planning Commission role will further undercut the ability of the public to participate and influence the planning and amendment process. The Planning Commission is a key channel for conveying input from individual citizens into the process. Members of the Planning Commission, as private citizens, have more direct contact with the general public and work to listen and understand the concerns of the County residents. Eliminating an avenue of participation and public input is not in the interest of Douglas County and the people who live here.

Such a proposal also is inconsistent with SMP Section 6.4 which gives the Planning Commission the responsibility to review the SMP and make recommendations for amendments to the board of county commissioners. That policy should not be changed.

Proposed New Amendment
In addition to the above comments, DPOC also proposes a new amendment for consideration by the Planning Commission. That amendment and its justification is provided in the attached Exhibit A. The purpose of the new amendment is to correct inappropriate existing SMP shoreline designations and ensure uniform setback conditions between adjacent lots.

Respectfully submitted,

GROEN STEPHENS & KLINGE LLP

John M. Groen
groen@GSKLegal.pro
DOUGLAS PROPERTY OWNERS COALITION

PROPOSED

NEW AMENDMENT TO THE DOUGLAS COUNTY SHORELINE MASTER PROGRAM

Purpose:
The purpose of this amendment is twofold:

1. To correct inappropriate existing SMP shoreline environmental designations in certain areas where intense shoreline residential development has occurred since adoption of the county’s comprehensive SMP update in 2009. Shoreline subdivision areas that were substantially developed at the time the 2009 comprehensive SMP update was being prepared were accurately designated as “shoreline residential” environmental designation. However, similar intensively developed shoreline subdivisions that have developed after the 2009 SMP update now remain incorrectly designated as “rural conservancy”.

2. To ensure more uniform setback conditions between adjacent developed and undeveloped lots within the “shoreline residential” environmental designation areas. In waterfront subdivisions where narrow lots create closely-spaced houses, it is important that regulations relating to buffer widths and setback requirements be uniformly allowed and applied. Without uniform regulations lot-to-lot, logical enforcement of those regulations becomes highly problematic.

Limited Administrative Criteria (WAC 173-26-201):

This limited amendment is allowable under subsection (1)(c)(D) in order to improve consistency with the Act’s goals and implementing rules.

SMP revision No. 1:

As defined in Appendix E and related shoreline designation mapping, change the shoreline environmental designation from Rural Conservancy to Shoreline Residential for the following areas:

River Mile (RM) 494.3 to RM 496.1 (Twin W subdivision)
RM 505.1 to RM 507.6 (Beebe Ranch subdivision)
Revise the Environmental Designations table contained in Appendix H, Section 3.050, General Standards, Paragraph B, Sub-paragraph 6c as follows:

<table>
<thead>
<tr>
<th>Environment Designations</th>
<th>Zone 1</th>
<th>Zone 2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Perennial and intermittent streams in all environment designations</td>
<td>75 feet</td>
<td>+0-50 feet</td>
</tr>
<tr>
<td>High Intensity, Shoreline Residential</td>
<td>75 feet</td>
<td>+0-50 feet</td>
</tr>
<tr>
<td>Rural Conservancy, Shoreline Residential, Urban Conservancy</td>
<td>100 feet</td>
<td>+0-50 feet</td>
</tr>
<tr>
<td>Natural</td>
<td>150 feet</td>
<td>+0-50 feet</td>
</tr>
</tbody>
</table>
Arguments supporting the proposed new SMP Amendment

1. SMP Chapter 3.6 defines the purpose of the Shoreline residential environment designation, and prescribes the policies and criteria for its use along the shorelines of Douglas County, as follows: "The purpose of the shoreline residential environment is to accommodate residential development and accessory structures that are consistent with this chapter...".

It goes on to include the following qualifying criteria under the heading “Designation Criteria”: “Assign a shoreline residential environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, "limited areas of more intense rural development," or "master planned resorts," as described in RCW 36.70A.360, if they are predominantly single-family or multi-family residential development or are planned and platted for residential development.” [emphasis added]

2. Intensely developed shoreline residential areas that existed at the time the 2009 SMP comprehensive update was being prepared were recognized and properly designated as “shoreline residential” according to the criteria prescribed in No. 1 above. As listed in Appendix E, Table 1, the following intensely developed areas were included as “shoreline residential”:

   RM 475.4 to RM 475.8  (Turtle Rock area development)
   RM 476.8 to RM 478.1  (Shore Drive/Willowood area development)
   RM 479.9 to RM 481.8  (Orondo waterfront residential development)
   RM 490.8 to RM 491.5  (Bray’s Landing development)
   RM 492.8 to RM 494.0  (Sun Cove development)

   The Twin W subdivision and the Beebe Ranch subdivision were not recognized and designated in the 2009 SMP update as shoreline residential areas. Their substantial subsequent development, however, should now be recognized and the SMP should be amended to properly identify their shoreline designation as “shoreline residential”.

3. Established residential shoreline areas recognized in the 2009 SMP update were all substantially developed prior to 2009, when buffer and buffer width requirements were different. Many residential structures and yard appurtenances in those areas were developed in closer proximity to the shoreline than would be allowed un
4. der the current SMP. Because they pre-existed the current SMP requirements, they are, or should be, considered “conforming”. To make the SMP buffer widths more nearly reflect the actual existing conditions in those areas already defined as “shoreline residential”, the buffer width specified in the table contained in Section 3.050, Paragraph B should be changed as indicated in the table above.

It is illogical to justify the use of the now-specified 75’ buffer width for intense land uses such as water-oriented commercial, transportation and industrial applications that fit within the high-intensity environment designation, and then to require a 100’ buffer width for less potentially-ecological-damaging residential yards. For logical consistency in the requirements for buffer widths, the buffer width for shoreline residential environmental designation should be changed to 75’.

5. The Twin W and Beebe subdivisions were platted prior to the adoption of the 2009 SMP update. Their recorded plats reflected the shoreline setback requirements that were in effect at the time.

Some owners purchased their lots in those subdivisions and began the development of their lots prior to 2009. In some cases, homes were built and yard appurtenances were developed under those earlier buffer requirements.

Other neighboring lots, however, have been purchased and/or developed with residential structures after the 2009 SMP update, and thus are subject to the buffer regulations now in effect. This situation creates a regulation and enforcement nightmare, where closely-spaced adjacent lots and homes are used, occupied and developed under differing standards.

Close examination of the existing conditions at Twin W and Beebe subdivisions indicates that irregular residential structural setback from the OHWM is not a particular problem. As seen in aerial photos, existing residences in both subdivisions are quite generously and uniformly set back from the river. The more troublesome issues has to do with how former and current buffer restriction affect the proximity to the river of yard and appurtenant development. Some pre-existing yards extend closer to the river, others and future developments are currently required to observe a larger buffer dimension.

This checkerboard of differing buffer requirements could be largely eliminated by the requested change in buffer width requirements proposed in this amendment.
With only two exceptions (built in 2005), the average distance from the river to existing residential structures in the Twin W development is approximately 130 feet, as measured on the county's interactive aerial photo website. In the Beebe subdivision the existing homes average about 107 feet from the edge of the river. Because these homes are not in close proximity to the river, the application of the SMP's common line buffer setback provisions would do little or nothing to correct the checkerboard conditions here explained.

For all of the foregoing reasons, it is requested that the above defined SMP amendment be considered and adopted by Douglas County.
Citizen Amendment

Revision to 6.3 Hearing Examiner

As it reads now;

Where a hearing examiner system has been adopted by the local jurisdiction, the hearing examiner shall have the authority to:

1. Grant or deny shoreline substantial development permits not issued administratively.
2. Grant or deny variances from this Program.
3. Grant or deny conditional uses under this program not issued administratively.
4. Decide on appeals from administrative decisions issued by the Administrator of this Program.

We would like number 4 to read as follows:

Decide on appeals from administrative decision issued by the Administrator of this Program, unless the appeal is for an enforcement action for an alleged violation that was completed more than 4 years previously.

Justification for this addition:

6.3 Should not grant the examiner the authority to determine the doctrine of law.

The purpose of this amendment is to clarify the authority of the hearing examiner. The current SMP states under subparagraph 1, 2, and 3 that the hearing examiner shall have the authority to grant or deny a current permit request. Number 4 allows for a decision on appeals of administrative decisions. All 4 of the directives given under hearing examiner are for requests for or changes to current development applications based upon the application of current regulations.

Under Douglas County code 2.13 Hearing Examiner Purpose 2.13.010 states; The purpose of this chapter is to provide an administrative land use regulatory function from its land use planning function; ensure and EXPAND THE PRINCIPLES OF FAIRNESS and due process in public hearings; and to provide an efficient and effective land use regulatory system which integrates the public hearing and decision making processes for land use matters.

Under code 2.13.040 Examiner-Qualifications It states; the examiner shall be appointed solely with regard to qualifications for the duties of such office and shall have such training or experience as will qualify the examiner to conduct administrative or quasi-judicial hearings utilizing LAND USE REGULATORY CODES and must have expertise and experience in Planning, and SHOULD have knowledge or experience in at least one of the following areas: environmental sciences, law, architecture, economics or engineering.
In the Douglas County Land Use HEARING Examiner 2011 Annual Report the examiner wrote about an administrative appeal. The examiner states: "The appellants have hired an attorney which has necessitated the County getting the County Prosecutor involved in this matter as well.

This certainly implies that an interpretation of law will or may be required to make a fair decision. As 2.13.040 states: the examiner will make their decision based on land use codes and may or may not have some knowledge of law.

The examiner is only expected to be qualified to make decisions “utilizing land use regulatory codes”. The directives have nothing to do with administrative decisions now based on what the legal input of the County Prosecutor and an attorney submit as evidence to determine what may or may not have happened years before under different regulations, different personnel, and different circumstances.

To make a decision based on what happened years before would require the interpretation of civil law or even criminal law based on intent. The fact that the county states that enforcement fees will be applied if a property owner does not comply with an enforcement action makes this type of case subject to many questions. Certainly Laches Law may be used as a defense by a property owner.

Laches is the legal doctrine that an unreasonable delay in seeking a remedy for a legal right or claim will prevent it from being enforced or allowed if the delay has prejudiced the opposing party. The doctrine is an equitable defense that seeks to prevent “legal ambush” from a party who is negligent in failing to timely make a claim. It recognizes that the opposing party’s ability to obtain witnesses and other evidence diminishes over time, due to unavailability, fading memory, or loss. Disallowing the negligent party’s action on the ground of laches is a form of estoppel.

For example, the delay in bringing the claim may have caused much larger potential damages to be awarded; the ability to pay the claim is lacking; the property sought to be recovered has already been sold; or evidence or testimony may no longer be available to defend against the claim.

There are many cases of improvements along our river that our citizens were given verbal permission to install or told that no permission was needed, that we are now finding out may have been in violation of some past regulation. Many land services personnel who were on site at these properties when improvements were proposed, or were being completed have moved on. Many of the properties have changed hands since the improvements were made. To properly adjudicate these cases is a matter of understanding how regulations were applied to each of those cases at that time and not just what the regulations were or are now. To do that will require witnesses. It would not be or have the appearance of fairness to have the hearing examiner who is hired by, and paid by the county to act as an impartial judge in a matter of civil law.

WAC 173-27-250 Definitions States “(1) “Permit” means any form of permission required under the act prior to undertaking activity on shorelines of the state. It did not stipulate the permission must be in writing. Prior to the 2009 SMP many property owners installed normal appurtenant items to be used for the enjoyment of their house. According to many of our citizens they were given verbal permission to
make improvements such as fences, flagpoles, lawns and bulkheads or ramps. It is up to a judge to determine if there was negligence, intent or if laches should apply.

WAC 173-27-260 Policy States "the choice of enforcement action and the severity of any penalty should be based on the nature of the violation, the damage or risk to the public or to public resources, and/or the existence or degree of bad faith of the persons subject to the enforcement action". If the person or persons of authority are given a choice that means a call for judgment based on things other than LAND USE REGULATORY CODES to include what witnesses have to say or the lack of witnesses.

Any enforcement action with the possibility of the interpretation of law and not just the interpretation of land use regulatory codes is clearly not the job of the examiner.

Thanks for listening
Craig Fleming
Amendment 5:

THERE SHOULD BE NO REVISION TO 6.18

ARGUMENTS FOR

PURSUANT TO WAC 173-26-191[a] "MASTER PROGRAMS SERVE A PLANNING FUNCTION IN SEVERAL WAYS. FIRST, THEY BALANCE AND INTEGRATE THE OBJECTIVES AND INTERESTS OF LOCAL CITIZENS. THEREFORE, THE PREPARATION AND AMENDING OF MASTER PROGRAMS SHALL INVOLVE ACTIVE PUBLIC PARTICIPATION, AS CALLED FOR IN WAC 173-26-201[3]. SECOND, THEY ADDRESS THE FULL VARIETY OF CONDITIONS ON THE SHORELINE. THIRD THEY CONSIDER AND, WHERE NECESSARY TO ACHIEVE THE OBJECTIVES OF CHAPTER 90.58 RCW, INFLUENCE PLANNING AND REGULATORY MEASURES FOR ADJACENT LAND."

AS THE WAC STATES: A PLANNING FUNCTION (FIRST WILL BALANCE AND INTEGRATE THE OBJECTIVES AND INTEREST OF LOCAL CITIZENS), (AMMENDING OF MASTER PROGRAMS SHALL INVOLVE ACTIVE PUBLIC PARTICIPATION), (SHORELINE REGULATIONS CAN INFLUENCE PLANNING AND REGULATORY MEASURES FOR ADJACENT LAND.)

THE CITIZENS BELIEVE THE DECISION TO INITIATE AN AMENDMENT SHOULD REST WITH THE CITIZENS. WE FEEL MEMBERS OF THE PLANNING COMMISION HAVE MORE CONTACT WITH THE GENERAL PUBLIC AND DO A GOOD JOB OF WORKING FOR THE CITIZENS. THERE IS MORE OPPORTUNITY FOR THE GENERAL PUBLIC TO SPEAK WITH SOMEONE ON THE PLANNING COMMISION ALLOWING FOR MORE ACTIVE PUBLIC PARTICIPATION. THE CITIZENS WOULD LIKE TO KEEP SECTION 6.18 AS IT CURRENTLY READS.

THE DECISION OF AMENDING THE SMP DOES REST SOLEY WITH THE LEGISLATIVE AUTHORITY OF THE COUNTY OR CITY. HOWEVER THEIR DECISION IS OR SHOULD BE BASED ON THE RECOMMENDATION OF THE PLANNING COMMISION AND THE VOICE OF THE PEOPLE JUST AS IT WAS WHEN THE COMMISIONERS MADE THE DECISION ON ZONEING CHANGES TO RURAL RESOURCE 2 DISTRICT, TO ALLOW FOR R.V. PARKS ALONG THE WATERFRONT.

THE COUNTIES REASON FOR THIS AMENDMENT IS, "SHORELINE AMENDMENTS ARE LENGTHY AND CONSUME SIGNIFICANT STAFF AND FINANCIAL RESOURCES OF THE LOCAL JURISDICTION".

WE DO NOT BELIEVE THAT SHORELINE MASTER PROGRAM AMENDMENTS WOULD BE ANY LESS LENGTHY OR CONSUME LESS STAFF AND FINANCIAL RESOURCES OF THE LOCAL JURISDICTION IF IT IS INITIATED BY A COUNTY COMMISSIONER OR BY A MEMBER OR MEMBERS OF THE PLANNING COMMISSION.

Thanks
Craig Fleming
Here is important information for Douglas County shoreline property owners

Buffer zone violations

Have you or your prior waterfront property owner ever made improvements within 200 feet of the river without a county permit, since the mid-1970s? If so, you are at risk of a notice of violation of the county’s Shoreline Master Program (SMP) and/or Critical Areas Ordinance (CAO). And don’t think it can’t happen to you! Some owners are already dealing with such violation notices. And the county has successfully argued in court that violations committed anytime under past SMP and CAO land use regulations are current violations.

The Douglas Property Owners Coalition is a group of waterfront owners who want to see changes made in the SMP. One of the changes we are seeking is protection under “statutes of limitation” type protection, which would essentially “grandfather” all residential appurtenant improvements made within the shoreline jurisdiction prior to 2009. We have prepared and submitted to the county planning department and the county’s Planning Commission a carefully crafted proposed revision to the SMP which, if adopted, would achieve this goal. The rest of the work is up to concerned citizens – who must convince the County Commissioners that this SMP amendment is worthy of adoption.

This proposal will be considered at upcoming hearings before the Planning Commission and the County Commissioners. To make this initiative happen, we need the support of all like-minded citizens. The exact hearing date has not been scheduled yet – it will likely be held in January. We will post the date and other information on our website as it becomes available.

Irregular (offset) jogs in buffer zone widths

When the updated SMP was adopted in 2009, it implemented wider buffer widths than were previously required. For densely-spaced waterfront subdivisions not yet fully developed, this created a highly undesirable buffer zone “checkerboard”. This situation is especially true in the Twin W and Beebe Ranch subdivisions, but is also applicable to all “shoreline residential” developments in Douglas County. Lots in waterfront subdivisions that were improved with houses and yard-related improvements prior to 2009 were allowed closer to the river. Those who came later, or are yet to develop their lots, find themselves under buffer regulations that require a greater dedication of their waterfront property to “natural” conditions. This results in an irregular line of required “natural” preserves along the waterfront of these closely-spaced lots.

The Douglas Property Owners Coalition has crafted a carefully worded proposed amendment to the SMP which would smooth out these irregular jogs in buffer zone setbacks in all shoreline residential environments. It does so by reducing the buffer width in these residential environments. This proposed SMP amendment will be difficult to “sell” to the county staff and the Department of Ecology at upcoming hearings. It will take the combined
support of all affected citizens to see this important protective amendment adopted. Your registered support is vital to the adoption of this amendment. The exact hearing dates will be posted on our website as soon as they are set by the county.

We value the Planning Commission

The SMP, as currently adopted, assures that the Planning Commission has a say in the review and processing of proposed amendments to the SMP. The County planning staff is now proposing to essentially remove the Planning Commission from participation in the SMP amendment process. That is wrong.

The Planning Commission is a board of nine unpaid, volunteer citizens who act as a sounding board for the County Commissioners. In effect, they are the window where private individuals or groups can effectively make themselves heard by the County Commissioners. They are an essential part of the democratic process, and should retain an active role in any manipulation of the SMP.

The Douglas Property Owners Coalition has prepared and submitted a statement of objection to the county staff’s current proposal to remove the Planning Commission from SMP involvement. We seek the support at upcoming hearings of all like-minded citizens who desire to see the Planning Commission’s role in SMP amendment processing remain unchanged. More information on the exact hearing schedule will be made available as it becomes known.

Let’s clarify proposed Amendment No. 4

Amendment No.4 to the SMP as currently proposed by the county staff is poorly written, and potentially contains much tighter requirement on all owner’s activities within buffer areas — activities that currently qualify as “exempt” under the SMP. The vague language in the proposed amendment would force the shoreland owner to seek a determination from the planning department as to whether any planned “activity” within the buffer zone would be subject to review, approval and a 5 year monitoring requirement by the county. Laws written so vaguely that a citizen of reasonable intelligence cannot understand them are unacceptable.

The Douglas Property Owners Coalition has prepared and submitted written comments regarding this pending amendment, and has prepared and submitted requested revised wording for it. This amendment in itself potentially affects every waterfront ownership in Douglas County. We are requesting the support of all citizens in Douglas County to help in demanding that this proposed amendment be reworded or eliminated. Your comments and attendance at an upcoming hearing regarding the proposed amendments will ensure that your voice is heard.

For further information and the exact wording of all SMP additions and revisions proposed by the Douglas Property Owners Coalition, please go to www.douglasowners.com

If you would like to receive further notices and news by email, please go to our website and leave your email address.

Douglas Property Owners Coalition
5120 State Route 28
Rock Island, WA 98850
December 3, 2013

Douglas County Planning Department
140 19th Street NW
East Wenatchee, WA 98802

RE: Pending Shoreline Master Program amendments
    Amendment No. 3 – Common line buffer/setback

Sir/Madam:

This is to advise you that we support adoption of the wording of proposed SMP Amendment No. 3 as published by the Douglas County Planning Department on September 26, 2013. We are directly affected by this amendment. The proposed revision to Section 5.13 will clarify existing SMP language that presently clouds our options to develop our vacant property at 5100 State Route 28, Rock Island, WA.

As we testified at a planning commission meeting on May 8, 2013, we contend that the existing language of Section 5.13 is ambiguous; it can be interpreted in as many as three different ways. It is important that the intent of the common line buffer/setback provision be made entirely clear, and that its effect under the SMA on shoreland owners here is made consistent with similar regulations now existing elsewhere in Washington State.

We support adoption of proposed SMP Amendment No. 3 as published September 26, 2013.

Kenneth Hunziker
R. Kay Hunziker

Kenneth Hunziker
R. Kay Hunziker
To: Rock Island City Council Members

RE: Upcoming actions on Douglas County Shoreline Master Program amendments

Dear City Council member:

At your upcoming meeting, you will be asked to sort out and reconcile comments and recommendations from the county’s planning department and other interested citizens and groups regarding the referenced pending SMP amendments. These are changes to the SMP that will have long-term impacts on land use regulations, particularly related to use and enjoyment of shoreline properties. The Douglas Property Owners Coalition and all shoreland owners urge you to spend the extra time needed to understand the somewhat complex issues involved in some of the proposed amendments before you adopt any suggested amendment language.

Amendment No. 2 One of the greatest on-going concerns of shoreline owners is their exposure to violation notices from the county for alleged shoreline violations that may have occurred many years ago. The courts have thus far ignored appeals relating to the state’s statute of limitations, leaving property owners with the burden of proving their innocence in long-ago gray-area violations, in some cases committed by prior owners. The planning department’s proposed Amendment No. 2 provides an opportunity to rectify this problem, but only if it is slightly reworded from the planning staff’s language. DPOC members urge you to recommend adoption of Amendment No. 2 after re-wording to clearly grant “conforming” status to residential appurtenances existing within shoreline jurisdiction areas prior to August 27, 2009. Details of our proposed re-wording are available on our website at www.douglasowners.com. The County Commissioners have the authority within the framework of the SMP to adopt this wording.

Amendment No. 4 There are certain types of shoreline projects where the conditions imposed by proposed Amendment No. 4 are entirely appropriate. Unfortunately, the wording of the amendment as now proposed is so vague that it potentially allows its very burdensome requirements to be applied on nearly any shoreline project, no matter how minor. New and more burdensome regulations beyond those required by the state’s shoreline management act should only be imposed by the county if a compelling need has been demonstrated. The county’s planning staff should be asked to clarify the intent of this proposed amendment.
intent is limited to addressing only hazardous waste remediation and stand-alone restoration projects on previously identified degraded shorelines, then the amendment should be clearly restricted to these applications by the rewording proposed by DPOC. If, on the other hand, the amendment is intended to apply to other, often minor, projects, you are urged to seek a satisfactory explanation as to why this amendment is really necessary. Details of this amendment rewording can be seen at our website: www.douglasowners.com.

Amendment No. 5 There is no justifiable reason for amendment No. 5. DPOC believes it is in the best interest of all Douglas County property owners to retain the Planning Commission’s involvement in the SMP amendment process. You are urged to oppose this amendment.

Proposed New Amendment The SMP contains provisions that allow private individuals and groups to submit proposed amendments for consideration by the Planning Commission. That language can be found in Section 6.18(3) of the SMP. The DPOC has prepared and submitted a new proposed amendment that addresses issues of particular concern to the Twin W and Beebe subdivisions. Owners in that area are very concerned about the “checkerboard” effect that is created when the larger 2009 buffer setback requirements for yet to be developed lots are superimposed and interspersed over and among the earlier-developed lots that enjoyed a smaller buffer setback requirement. This is particularly troublesome when such lots and homes are closely spaced.

A number of the affected property owners expressed the opinion that relief for this problem could be obtained by further rewording of the common-line buffer/setback provisions contained in proposed amendment No. 3. However, a simpler and fairer solution lies in the reduction of the required buffer widths within areas assigned the “Shoreline Residential” environmental designation. Although these two subdivisions are not currently designated Shoreline Residential, they should be, so as to be consistent with all other significant shoreline residential areas in Douglas county. The amendment proposed by DPOC, therefore, would: 1) re-designate these subdivision areas to Shoreline Residential, and; 2) reduce the common buffer width in Shoreline Residential areas to 75 feet.

This in-out “checkerboard” of enforceable buffer widths is a problem that must be corrected. The DPOC and all affected property owners urge you to recognize the real problem that it is, and to consider and adopt amendment language such as proposed by DPOC that will permanently and fairly correct the problem.

More details and specific language for the DPOC proposed amendment revisions/additions can be found at www.douglasowners.com/amendments.

Thank you for your consideration.
Amendment #2: Suggest adding August 27, 2009, the date the RSMP became effective. Boldface: Add clarity specifically for appurtenant structures.

The addition of the date is not necessary. The draft regulation already identifies that legally established single-family residences and residential appurtenances, defined as garages, sheds and other legally established structures, but not including bulkheads and over water structures, that are located landward of the ordinary high water mark, are included in a limited amendment if the standards of the program are considered conforming. In order to be more consistent with the legislative bill and RCW 90.58.020, a suggested revision is included.

Amendment #4: Provides suggested text revision which includes the definition of remediation from RCW 70.105D.020 and additional language regarding restoration projects.

The inclusion of the term remediation creates confusion utilizing the definition in the Washington Administrative Code. The purpose of the written letter of exemption and monitoring period is to assist in the overall SMP monitoring requirement.

Amendment #5: Oppose the elimination of a city or county planning commission with respect to SMP amendments. Outline the need for public participation and states that the change is inconsistent with Section 6.4 of the RSMP which sets a planning commission to review and recommend amendments to the RSMP to the Board of Commissioners.

The commenter appears to have misunderstood the purpose and intent of the amendments and the role of the planning commission in the public process. Planning commissions are vital to the public review of amendments to the RSMP and will not be removed from this responsibility. The Douglas County Planning Commission was organized under RCW 36.70A.040 to assist the Planning Department in the review and update of official control by holding public hearings and formulating recommendations to the Planning Department which are transmitted to the Board of Commissioners. Similarly, city planning commissions have the responsibility to conduct hearings and make recommendations to city planning departments and councils. This process, as Mr. Green points out, is included in Section 6.4 of the RSMP. The proposed amendment only removes a city or county Planning Commission from initiating amendments. A city or county planning commission does not exercise budgetary authority, which is the responsibility of the legislative authority either a City Council or Board of Commissioners.

Proposed new amendment: An amendment to change the environment designation of the Twin W and Beebe Ranch developments from Rural Conservancy to Shoreline Residential based on the shoreline environment designation and reduce the Zone 1 aquatic habitat buffer from 100 to 75 feet. The purpose of the environment designation change are based on two purposes: (1) to correct an inappropriate environment designation and (2) to ensure a more uniform setback between adjacent developed and undeveloped lots. The letter states that the amendment is authorized as a limited amendment to improve consistency with the Act’s goals and implementing rules. The letter further includes four arguments supporting the change: (1) the change to the Shoreline residential environment designation is consistent with the designation criteria in Section 3.6 of the RSMP; (2) other intensely developed areas that existed in 2000 were designated as shoreline residential; (3) points the reduction in the buffer to 75 feet based on other pre-existing developments and logical consistency; and (4) discusses a “checkerboard” pattern of development based on varying changes to buffers over time.

Response to argument #1: The commenter appears to have misread or misunderstood the designation criteria for the Shoreline Residential Environment designation in WAC 173-26-211 and Section 3.6 of the RSMP. The designation criteria for the Shoreline Residential Environment designation, in WAC 173-26-211 and Section 3.6 of the RSMP list four specific criteria that qualify land for designation: (1) located inside an urban growth boundary, (2) located inside incorporated municipality, (3) designated by the Growth Management Act as a “limited areas of more intense rural development”, or (4) a master planned resort. If they are predominantly single-family or multi-family residential development or are planned and planned for residential development. Neither the Twin W nor Beebe Ranch developments meet any of these criteria. They are both located outside an UGB, outside an incorporated municipality, are not designated as a “limited areas of more intense rural development”, and are not within a master planned resort. The properties do not meet the minimum designation criteria and cannot be designated as shoreline residential. Response to argument #2: The areas identified by the commenter are designated as “limited areas of more intense rural development” in the Courthouse Comprehensive Plan and were properly designated as Shoreline Residential. “Limited areas of more intense rural development” as defined by the WAC 365-196-425(6) are existing areas or uses that were in existence on the date the county became subject to the provisions of the Growth Management Act. The Twin W and Beebe Ranch developments did not exist when Douglas County opted into planning under RCW 36.70A. Response to argument 3: Amendment #5 in the draft seeks to recognize existing development that does not conform to the current shoreline master program with respect to setbacks, yards, and buffers. The commenter seeks to reduce the buffer/setback from the shoreline utilizing a logical approach. The Shoreline Management Act requires the use of scientific data to justify and establish setback and wet and wetland habitat buffers. No such data was provided by the applicant to document the reduction in the buffer width for the Shoreline Residential Environment designation. Response to argument #4: The SMP currently includes the buffer/setback averaging tool in Section 5.13. The current limited amendment process also includes proposed revisions to this provision for broader application of the tool. No revisions are proposed to Section 6.3.

Proposed new amendment is not applicable to the Cities of Rock Island and East Wenatchee. The Twin W and Beebe developments are located in unincorporated Douglas County. The amendment proposes changes to the critical area regulations in Appendix H applicable only to Douglas County.