



North Central Washington
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Sage Park
Director
Central Region
Washington Department of Ecology
1250 W. Alder St., Union Gap, WA 98903-0009

Joenne McGerr
Program Manager
Shorelands and Environmental Assistance Program
Washington Department of Ecology
P.O. Box 47600, Olympia, WA 98504-7600

Re: DOE Compliance with Washington State Shoreline Master Program Laws

Dear Director Park and Program Manager McGerr:

North Central Washington Audubon Society (NCWAS) is the local chapter of the National Audubon Society covering Chelan, Douglas, Okanogan, and Ferry counties. NCWAS seeks to protect and enhance the environment, native fish and wildlife populations, and habitat connectivity in the counties our chapter covers. Protecting shorelines of lakes, rivers, and creeks is, therefore, of major concern to us. These water bodies are critical components of a healthy landscape, and provide critical habitat for numerous bird, mammal, and aquatic species in Chelan County.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable, and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State including Chelan County.

NCWAS and Futurewise were active during Chelan County's 2018 Shoreline Management Plan (SMP) Amendment process, submitting written comments to both Chelan County and the Washington Department of Ecology. We raised several concerns regarding the proposed changes to shoreline buffer widths and shoreline designations. We believe several of the changes in the 2018 Amendment do not comply with the Washington Shoreline Management Act (SMA) (RCW 90.58) or chapter 173-26 of the Washington Administrative Code (WAC). The responses to our comments provided by Chelan County per WAC 173-26-120(2)(e) did not adequately address our concerns, and the County adopted the 2018 SMP Amendment as proposed. Ecology approved the amendment despite the inconsistencies with state law. Therefore, Ecology is not adequately fulfilling its duty to review and approve SMPs per WAC 173-26-120 and RCW 90.58.090. In the sections that follow we detail issues from the 2018 Chelan County SMP Amendment that exemplify Ecology's shortcomings in fulfilling its role to review and approve SMPs.

Shoreline Buffers:

The vegetated buffers provided by riparian habitat adjacent to water play a critical role in ecological processes that provide shoreline functions. These functions are wide ranging and benefit both wildlife and humans. As Ecology's *Shoreline Master Program Handbook* states: "Buffers and setbacks with vegetation conservation support a main tenet of the Shoreline Management Act (SMA) -- 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."

Chelan County significantly reduced shoreline buffer widths in its 2018 SMP Amendment. The “natural environment” designation was reduced from 200/250 feet (high/low intensity) to 150 feet; the “conservancy environment” designation was reduced from 200/250 feet to 100 feet; the “rural” designation was reduced from 100/150 to 100 feet, and the “urban” designation was reduced from 75/100 feet to 50 feet.

In adopting these buffer width reductions, Chelan County did not comply with RCW 90.58.100(1) and WAC 173-26-201(2)(a), which require the use and inclusion of scientific and technical information. The Chelan County Commissioners adopted the 2018 SMP Amendment via Resolution 2017-120. That resolution, in Finding of Fact #28(c), states the *Berks and Associates Memo* dated November 8, 2017 cites “various scientific information” which supports the reduction of environmental designations and buffer widths. In fact, the Berks memo is a summary of existing SMP guidance and a comparison of other Eastern Washington counties’ buffer widths. Two guidance documents summarized in the Berks memo that would be considered scientific or technical information are *Management Recommendations for Washington’s Priority Habitats* by Washington State Department of Fish and Wildlife (WDFW), and the *Shoreline Master Program Handbook*, by the Washington Department of Ecology. The following is excerpted from the Berks memo: “WDFW prepared management recommendations for Riparian areas in 1997. Buffer widths for Shorelines of the State are about 250 feet [(76 meters)].” The 2011 *SMP Handbook* guidance is that “Natural” “Conservancy” and “Rural Residential” buffer widths should all be 150-200 feet. Clearly, the Chelan County 2018 SMP Amendment does not meet the above guidance, which is based on scientific and technical information. Resolution 2017-120 erroneously cites the *Berks and Associates Memo* as its inclusion of scientific and technical information. Adopted buffer widths do not meet the scientific and technical information provided in that memo. Therefore, the 2018 Amendment does not meet the requirements of RCW 90.58.100(1) and WAC 173-26-201(2)(a).

Ecology also cites the Berk memo in their Written Findings of Consistency and Approval of the SMP per WAC 173-26-120(3)(a)(i) and RCW 90.58.090(2)(d) saying it “supports the County’s environmental designations and suggestions for buffer modifications.” While the Berk memo does make suggestions for Chelan County based on other Eastern Washington county’s SMP buffers that had already been approved, the scientific and technical information presented in the memo does not support Chelan County’s designations or modifications or Ecology’s approval of them. In Chelan County’s response to public comments provided to Ecology per WAC 173-26-120(2)(e), the county states “The BERK analysis provided a variety of buffer information from other jurisdictions and an overview of the County buffer sizes and modification tools.” This statement provides further evidence that the county solely looked to other approved Eastern Washington counties and did not follow “scientific and technical information” or its own Cumulative Impacts Analysis (see below).

Shoreline Designations at Lake Wenatchee and Fish Lake:

Chelan County, as part of its 2018 Amendment, changed designations for shorelines surrounding Lake Wenatchee and Fish Lake. Many parts of these lakes are now designated as “Rural”, and a significant portion of Lake Wenatchee’s shoreline is designated as “Urban”. These changed designations reduce the buffer widths and encourage development.

Lake Wenatchee is designated as a Shoreline of Statewide Significance by RCW 90.58.030(2)(f)(iv). RCW 90.58.020 states the following regarding use preference for Shorelines of Statewide Significance:

“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.”

The designation of large portions of Lake Wenatchee’s shoreline as “Urban”, which significantly reduces buffer protections and encourages increased development, clearly violates the legislature’s intent for Shorelines of Statewide Significance stated in RCW 90.58.020.

Chelan County completed the *Shoreline Inventory and Analysis Report* in 2009 as part of the 2018 Amendment process. The stated intent of the report is that it “establishes the framework for future steps in the SMP update process. Those future steps include development of the updated SMP, and preparation of the Cumulative Impacts Analysis and Restoration Plan.” In Section 5.2.2, the Lake Wenatchee sub-watershed, containing both Lake Wenatchee and Fish Lake, is identified as Category 1 sub-watershed. This categorization is taken from the *Wenatchee Watershed Management Plan* and associated *Detailed Implementation Plan* (2006), which assigned categories to all sub-watersheds throughout the Wenatchee basin. Section 5.3.2 of the *Shoreline Inventory and Analysis Report* defines a Category 1 watershed as follows: “Category 1 – These sub-watersheds represent systems that most closely resemble natural, fully functional aquatic ecosystems. In general, they support large, often continuous blocks of high-quality habitat and smaller drainages supporting multiple populations. Connectivity among smaller drainages and through the main sub-watershed stream corridor is good, and more than two species of federally listed fish are known to occur. Exotic species may be present but are not dominant. **Protecting functioning ecosystems in these sub-watersheds is a priority.**” In designating portions of the shorelines of both lakes as “Rural” and a significant portion of the Lake Wenatchee shoreline as “Urban”, the county is slashing protections of these functioning ecosystems and ignoring its own *Shoreline Inventory and Analysis Report*, on which the updated SMP is supposed to be based.

Fish Lake and Lake Wenatchee contain priority habitats and several priority species as defined by WDFW. The bog at the west end of Fish Lake is designated “Wetland of High Conservation Value” by the Washington Natural Heritage Program, and a “Resource Natural Area” by the U.S. Forest Service due to its unique ecosystem qualities and functions. Large portions of the shorelines of both lakes are publicly owned and managed for recreation and conservation uses. The 2018 Amendment’s designations of “rural” and “urban” shorelines for portions of these lakes are not consistent with observable conservation value of the lakes or the manner in which public portions of the lakes are managed.

WDFW agrees with this assessment. In public comments dated October 26th, 2017, submitted as part of the 2018 Amendment process, WDFW states, “WDFW has concerns with large changes from where Natural designations are being proposed for changes to Rural or Urban designations in the undeveloped areas within the county along the shorelines. WDFW would be glad to explain to anyone who disagrees with the above comment why they are important for fish and wildlife consistent with the best scientific and technical information. WDFW suggest this SMP be consistent with the State designation requirement in WAC 173-26-211.”

In the response to public comments provided by Chelan County per WAC 173-26-120(2)(e), and approved by Ecology, the county simply states that it, “did follow designation criteria within WAC 173-26-211.” However, they do not provide any explanation or evidence as to how they followed the criteria or how the reduction in protections will result in no net loss.

No Net Loss

WAC 173-26-186(b) states that, “Local master programs shall include policies and regulations designed to achieve no net loss of [shoreline] ecological functions.”

The following is stated in Resolution 2017-120 under Conclusions #3, “the Cumulative Impacts Analysis found that the draft Shoreline Management Program will result in no net loss of ecological functions to the shorelines of Chelan County.” However, the Cumulative Impacts Analysis (CIA), dated July 2011, does not reflect the final SMP Amendment adopted in 2018. Buffer widths analyzed in the CIA are as follows: Natural/Conservancy

Environments 250 feet (high intensity) / 200 (low intensity), Rural Environment 150 feet / 100 feet, and Urban Environment 100 feet / 75 feet. These buffers are substantially more protective than the buffers eventually adopted. Shoreline designations have changed between the CIA and the 2018 Amendment as well. The CIA does not identify any portion of the Lake Wenatchee shoreline as “urban”, but as discussed above, significant portions of the lake’s shoreline are classified as “urban” in the 2018 Amendment. The above inconsistencies nullify any claim by the County that its SMP results in no net loss of ecological functions.

In the response to public comments provided by Chelan County per WAC 173-26-120(2)(e), and approved by Ecology, the county erroneously cited the CIA multiple times as justification for its shoreline designations, buffer widths, and compliance with the No Net Loss mandate. Clearly, the Chelan County 2018 SMP Amendment does not meet the requirements of WAC 173-26-201(1)(c)(iv): “All master program amendments must demonstrate that the amendment will not result in a net loss of shoreline ecological functions.”

Conclusions

It is clear from the above that Ecology, in reviewing and approving Chelan County’s 2018 SMP Amendment, failed to meet its obligations under WAC 173-26-120(2) to assure that the county’s amendment met “the policy of RCW 90.58.020 and the applicable guidelines”. Based on the above Chelan County example, we believe the Department of Ecology has not been fulfilling its SMP oversight responsibilities as required by Washington State law. Ecology needs to review and reform its SMP oversight policies, and, going forward, comply with all aspects of State SMP law.

We request a meeting between Ecology and this letter’s signatories to discuss the issues raised in this letter and the Department’s approach to fulfilling its ongoing and future SMP oversight responsibilities.

Thank you in advance for your attention to our concerns.

Sincerely,

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North Central WA Audubon Society

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cc: Laura Watson, Department of Ecology Director
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