

Laws, Regulations and Policies Concerning Management of the Stehekin River Floodplain within Lake Chelan National Recreation Area

White Paper #2 – Stehekin River Corridor Implementation Plan
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Stehekin River in vicinity of Lake Chelan NRA

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Introduction

The Lower Stehekin Valley is located at the head of Lake Chelan in Chelan County Washington. Land ownership in the Lower Stehekin Valley includes a patchwork of public land managed by the National Park Service (NPS) as part of Lake Chelan National Recreation Area, approximately 460 acres of private lands referred to as the community of Stehekin, and a small amount of land owned by Chelan Public Utilities District. The Stehekin community is an unincorporated settlement of year-round and summer homes and scattered tourism-related businesses. The community was founded in the late 1800's, and some of the residents who live there today are descendents of the original homesteaders to the area.

One common thread that binds the valley is the Stehekin River, a free-flowing mountain river that drains into upper Lake Chelan. The Stehekin River has meandered throughout the Lower Stehekin Valley, routinely changing its course in response to the dynamic conditions of the surrounding landscape it flows through. Those who first homesteaded in the area often settled in the floodplain because it was only flat, relatively fertile ground. This pattern of development continued for many years because there were relatively few notable floods and there was a general lack of regulatory oversight in the area.

In the early to middle 20th century the river channel was modified using available technology in order to mine gravel and remove log jams in an attempt to reduce the impacts of flooding and erosion on private property and government facilities. These efforts continued through the early years following designation of the area as a unit of the National Park Service. Since then, federal and state laws, regulations and policies have changed—generally moving away from permitting river manipulation toward encouraging greater protection of natural resources and recognizing the long-term fiscal impacts of ongoing manipulation. Since the creation of Lake Chelan NRA other significant legislation has been enacted by Congress and Washington State, further contributing to the complex body of federal, state and local laws, regulations and policies affecting Lake Chelan National Recreation Area and the private lands within the unit.

In the last 15 years, the Stehekin Valley has experienced a sustained increase in the magnitude and frequency of flooding. Houses have been damaged and destroyed, and areas that never flooded or eroded in the past are now threatened—even during relatively modest flows such as those that accompany spring snowmelt. These conditions present a considerable challenge to landowners and residents who live in the floodplain and are seeking solutions to protect their property. These circumstances also present a considerable challenge to the National Park Service, which must protect and manage an infrastructure of roads and facilities that are impacted by this dynamic river.

Any flood protection and erosion control work in or near water involves a complicated regulatory framework. The National Park Service, in consultation with the regulatory agencies, has compiled this whitepaper in an effort to inform all stakeholders about the laws, regulations and policies that may directly or indirectly affect actions along the river. This whitepaper is by no means a treatise on all relevant laws and policies. Rather, it is a starting point for fostering a collective discussion, understanding and awareness of the regulatory constraints governing flood protection and erosion control.

1. Enabling Legislation for Lake Chelan National Recreation Area

The Enabling Legislation for Lake Chelan National Recreation Area states:

In order to provide for the public outdoor recreation use and enjoyment of portions of the Stehekin River and Lake Chelan, together with surrounding lands, and for the conservation of the scenic, scientific, historic, and other values contributing to public enjoyment of such lands and waters... (Sec. 202, Public Law 90-544, October 2, 1968).

Relevance to Lake Chelan and Stehekin River

The enabling legislation for Lake Chelan NRA does not speak specifically to issues regarding flooding on the Stehekin River. Rather, it designates the National Park Service as the federal land management agency with administrative jurisdiction over federal lands within the area, and it directs the NPS to

...utilize such statutory authorities pertaining to the administration of the national park system, and such statutory authorities otherwise available to him for the conservation and management of natural resources as he deems appropriate for recreation and preservation purposes and for resource development compatible therewith. (Title IV, Administrative Provisions).

Title III, Section 301 of the Enabling Legislation authorizes the NPS to acquire lands by donation, purchase, or exchange as follows:

Within the boundaries of the park and recreation areas, the Secretary of the Interior...may acquire lands, waters, and interests therein by donation, purchase with donated or appropriated funds, or exchange, except that he may not acquire any such interests within the recreation areas without the consent of the owner, so long as the lands are devoted to uses compatible with the purposes of this Act.

The NPS has used this authority, in part, to acquire private lands adjacent to the Stehekin River in order to protect the river and its floodplain.

Section 301 of the Enabling Legislation also protects the rights of the private landowner by prohibiting the NPS from acquiring land

...so long as the lands are devoted to uses compatible with the purposes of the enabling Act.

There is no statutory definition of a "compatible use" in the Enabling Legislation. Instead, the issue of compatibility is specifically addressed in the Land Protection Plan Elements of the 1995 General Management Plan for Lake Chelan NRA. These elements outline the criteria the NPS would consider to ensure private land uses are compatible with the purposes for which Lake Chelan NRA was established. The criteria are not intended to duplicate county zoning standards or other applicable land use practices that are the proper purview of Chelan County. Rather, the

criteria are intended to guide park management and private landowners in determining which land use proposals and practices are incompatible with the purposes of Lake Chelan NRA.

2. National Park Service Organic Act of 1916

This law (and subsequent amendments) created the National Park Service and authorized it to manage lands under its jurisdiction as follows:

[The National Park Service] shall promote and regulate the use of the Federal areas known as national parks, monuments, and reservations hereinafter specified... by such means and measures as conform to the fundamental purpose of the said parks, monuments, and reservations, which purpose is to conserve the scenery and the natural and historic objects and the wild life therein and to provide for the enjoyment of the same in such manner and by such means as will leave them unimpaired for the enjoyment of future generations.

Since 1916, Congress has established hundreds of areas of land and water as units of the National Park System. Today the system includes National Parks, National Monuments, National Seashores, National Lakeshores, National Historic Parks, Parkways, and National Recreation Areas, including Lake Chelan National Recreation Area.

Congress amended this Act on March 27, 1978 (the act expanding Redwoods National Park) with the following addition:

The authorization of activities shall be construed in light of the high public value and integrity of the National Park System and shall not be exercised in degradation of the values and purposes for which these various areas have been established, except as may have been or shall be directly and specifically provided by Congress. (16 USC 1a-1)

The NPS Organic Act, as amended in 1978 (10 year after creation of Lake Chelan NRA) is significant to Lake Chelan NRA because Congress made it clear that all units of the system, including Lake Chelan NRA, are equally protected by law without regard to the various titles (e.g. National Park versus National Recreation Area). It further emphasized that while each unit of the System is to be managed according to its specific enabling legislation, each unit is also subject to the purposes and mandates established by the Organic Act to the extent that those mandates do not conflict with the provisions of the units enabling legislation.

Relevance to Lake Chelan and Stehekin River

The NPS Organic Act and subsequent laws related to the Nation Park System further clarify that the NPS does not have the discretion to authorize activities that are incompatible with, or would otherwise impair, the recreational, scenic, scientific, historic, and other values of Lake Chelan NRA, including Lake Chelan and the Stehekin River.

3. Appropriations Bill for the Department of Interior, H.R. 1977, Title I, Section 117

Congress, in response to the identified need in the Lake Chelan GMP/EIS for legislation to authorize the NPS to maintain the Company Creek Road, provided the following authorization:

Notwithstanding Public Law 90-544, as amended, the National Park Service is authorized to expend appropriated funds for maintenance and repair of the Company Creek Road in the Lake Chelan National Recreation Area: Provided that appropriated funds shall not be expended for the purpose of improving the property of private individuals unless specifically authorized by law.

Relevance to Lake Chelan and Stehekin River

This law authorizes, but does not mandate, the NPS to maintain the Company Creek road and repair it in the event of flood damage. The law specifically prohibits the NPS from spending money to “improve” private property; this includes spending NPS funds to protect private property from impacts caused by flooding.

The current General Management Plan for Lake Chelan NRA provides the following criteria for determining whether or not the NPS would take action to protect public roads from flooding:

- 1) There are no feasible alternatives;*
- 2) Funds are available;*
- 3) The actions will have less impacts than other alternatives;*
- 4) The actions are permitted by county, state, and other federal agencies*

To date the NPS has successfully worked within these criteria to repair and maintain roads in the Lower Stehekin Valley, including the Upper Company Creek Road. But given the consistent increase in flood frequency and intensity experienced in the past decade, foreseeable circumstances could arise (e.g. lack of funds or severe flood damage) in which these criteria could no longer be met and the NPS would be forced to abandon maintaining the Upper Company Creek Road.

4. National Park Service Management Policies 2006

Management of Lake Chelan National Recreation area must be guided by the Constitution, public laws, proclamations, Executive Orders, regulations and directives of the Secretary of the Interior. This collective legal and regulatory framework has various ambiguities and details not addressed by Congress, the President and/or the Secretary of the Interior. Therefore, like other federal state and local agencies the NPS develops policy to interpret ambiguities and provide an objective, consistent framework for all management decisions. The NPS Management Policies are periodically updated, and NPS Management Policies 2006 is the latest version. Completed after extensive public and agency review and comment, this document applies to all units in the national park system, including Lake Chelan National Recreation Area. The following servicewide policies regarding §1.4 Park Management and §4.6 Water Resources Management, apply to potential erosion and flood control measures in Lake Chelan NRA:

The Prohibition on Impairment of Park Resources and Values, §1.4.4

While Congress has given the Service the management discretion to allow impacts within parks, that discretion is limited by the statutory requirement (generally enforceable by the federal courts) that the Park Service must leave park resources and values unimpaired unless a particular law directly and specifically provides otherwise. This, the cornerstone of the Organic Act, establishes the primary responsibility of the National Park Service. It ensures that park resources and values will continue to exist in a condition that will allow the American people to have present and future opportunities for enjoyment of them.

The impairment of park resources and values may not be allowed by the Service unless directly and specifically provided for by legislation or by the proclamation establishing the park. The relevant legislation or proclamation must provide explicitly (not by implication or inference) for the activity, in terms that keep the Service from having the authority to manage the activity so as to avoid the impairment.

Water Quality, §4.6.3

The pollution of surface waters and groundwaters by both point and nonpoint sources can impair the natural functioning of aquatic and terrestrial ecosystems and diminish the utility of park waters for visitor use and enjoyment. The Service will determine the quality of park surface and groundwater resources and avoid, whenever possible, the pollution of park waters by human activities occurring within and outside the parks. The Service will:

- *work with appropriate governmental bodies to obtain the highest possible standards available under the Clean Water Act for the protection for park waters;*
- *take all necessary actions to maintain or restore the quality of surface waters and groundwaters within the parks, consistent with the Clean Water Act and all other applicable federal, state, and local laws and regulations; and*
- *enter into agreements with other agencies and governing bodies, as appropriate, to secure their cooperation in maintaining or restoring the quality of park water resources.*

Floodplains, §4.6.4

In managing floodplains on park lands, the National Park Service will (1) manage for the preservation of floodplain values; (2) minimize potentially hazardous conditions associated with flooding; and (3) comply with the NPS Organic Act and all other federal laws and executive orders related to the management of activities in flood-prone areas, including Executive Order 11988 (Floodplain Management), the National Environmental Policy Act, applicable provisions of the Clean Water Act, and the Rivers and Harbors Appropriation Act of 1899. Specifically, the Service will:

- *protect, preserve, and restore the natural resources and functions of floodplains;*
- *avoid the long- and short-term environmental effects associated with the occupancy and modification of floodplains; and*
- *avoid direct and indirect support of floodplain development and actions that could adversely affect the natural resources and functions of floodplains or increase flood risks.*

When it is not practicable to locate or relocate development or inappropriate human activities to a site outside their regulatory floodplain, the Service will:

- *prepare and approve a statement of findings, in accordance with procedures described in Director's Order 77-2 (Floodplain Management) and its associated procedural manual;*
- *use nonstructural measures as much as practicable to reduce hazards to human life and property while minimizing the impact to the natural resources of floodplains;*
- *ensure that structures and facilities are designed to be consistent with the intent of the standards and criteria of the National Flood Insurance Program (44 CFR Part 60).*

Wetlands, §4.6.5

The Service will manage wetlands in compliance with NPS mandates and the requirements of Executive Order 11990 (Protection of Wetlands), the Clean Water Act, the Rivers and Harbors Appropriation Act of 1899, and the procedures described in Director's Order 77-1 (Wetland Protection). The Service will (1) provide leadership and take action to prevent the destruction, loss, or degradation of wetlands; (2) preserve and enhance the natural and beneficial values of wetlands; and (3) avoid direct and indirect support of new construction in wetlands unless there are no practicable alternatives and the proposed action includes all practicable measures to minimize harm to wetlands. The Service will implement a "no net loss of wetlands" policy. In addition, the Service will strive to achieve a longer-term goal of net gain of wetlands across the national park system through restoration of previously degraded or destroyed wetlands.

When natural wetland characteristics or functions have been degraded or lost due to previous or ongoing human actions, the Service will, to the extent practicable, restore them to predisturbance conditions. The Service will conduct or obtain parkwide wetland inventories to help ensure proper planning with respect to the management and protection of wetland resources. Additional, more detailed wetland inventories will be conducted in areas that are proposed for development or are otherwise susceptible to degradation or loss due to human activities.

When practicable, the Service will not simply protect but will seek to enhance natural wetland values by using them for educational, recreational, scientific, and similar purposes that do not disrupt natural wetland functions. For proposed new development or other new activities, plans, or programs that are either located in

or otherwise could have adverse impacts on wetlands, the Service will employ the following sequence:

- *Avoid adverse wetland impacts to the extent practicable.*
- *Minimize impacts that cannot be avoided.*
- *Compensate for remaining unavoidable adverse wetland impacts by restoring wetlands that have been previously destroyed or degraded.*

Compensation for wetland impacts or losses will require that at least 1 acre of wetlands be restored for each acre destroyed or degraded.

Actions proposed by the Park Service that have the potential to cause adverse impacts on wetlands must be addressed in an environmental assessment or an environmental impact statement. If the preferred alternative will result in adverse impacts on wetlands, a statement of findings must be prepared and approved in accordance with Director's Order #77-1: Wetland Protection.

Watershed and Stream Processes, §4.6.6

The Service will manage watersheds as complete hydrologic systems and minimize human-caused disturbance to the natural upland processes that deliver water, sediment, and woody debris to streams. These processes include runoff, erosion and disturbance to vegetation and soil caused by fire, insects, meteorological events, and mass movements.

The Service will manage streams to protect stream processes that create habitat features such as floodplains, riparian systems, woody debris accumulations, terraces, gravel bars, riffles, and pools. Stream processes include flooding, stream migration, and associated erosion and deposition.

The Service will protect watershed and stream features primarily by avoiding impacts on watershed and riparian vegetation and by allowing natural fluvial processes to proceed unimpeded. When conflicts between infrastructure (such as bridges and pipeline crossings) and stream processes are unavoidable, NPS managers will first consider relocating or redesigning facilities rather than manipulating streams. Where stream manipulation is unavoidable, managers will use techniques that are visually nonobtrusive and that protect natural processes to the greatest extent practicable.

5. General Management Plan, Lake Chelan NRA

The 1995 General Management Plan for Lake Chelan National Recreation Area (NPS, 1995) provides the most site-specific policy guidance to the NPS for administration of Lake Chelan NRA. The General Management Plan (GMP) provides guidance on managing visitor use, natural and cultural resources, development and operation of Lake Chelan NRA according to the previously-cited enabling legislation for Lake Chelan NRA, the Organic Act, and other laws and regulations affecting management of the NRA. The following sections of the 1995 GMP and its

associated Implementation Plans provide the policy guidance relevant to flood and erosion control measures (page numbers provided for reference):

The Park Service would not manipulate the Stehekin River to protect federal property except roads and bridges according to the following criteria. Existing public roads would be protected in erosion/river conflict zones only if (1) there are no feasible alternatives, (2) funds are available, (3) proposed actions would have lesser impacts than other alternatives, and (4) the proposed actions are permitted by the state, and other federal agencies. No new road construction would be proposed in active river/erosion conflict zones (p. 20).

The Park Service would not manipulate the river to protect private property. No actions would be taken to prevent private owners from manipulating the river on their land to protect private property unless such actions would significantly harm recreation area resources or were in violation of local, state, or federal ordinances, regulations or laws (p.20).

The National Park Service would manipulate woody debris in the Stehekin River or its tributaries only to protect public roads and bridges... Woody debris would not be removed from the river system in any case. The Park Service would not remove or manipulate woody debris on public land or water to protect private property (p. 23).

The Company Creek Road would be maintained in its current alignment and condition. Three erosion control systems along the upper Company Creek road would be removed and replaced. The structures would be designed to keep the road from eroding during frequently recurring flood events (i.e., 10- to 25-year recurrence interval), and they would be made from rock, soil, and native vegetation (p.34).

Sand, Rock, and Gravel Plan:

Sand, rock, and gravel will be conserved and recycled whenever possible... To ensure conservation of sand, rock, and gravel, the National Park Service proposes to limit the use of in-park material to 1,400 cubic yards per year: 1,200 cubic yards for NPS use and 200 cubic yards per year for private use over a proposed 10-year excavation cycle... In the event of a large flood, the remaining 10-year stockpile could be used in one year.... The superintendent will have the option to exceed the established limit in the event of an emergency such as a major flood (pp.3, 10, 11).

Transportation Plan:

Erosion control systems along the Upper Company Creek Road will be removed and replaced, designed to keep the road from eroding during frequently recurring flood events (i.e., 10- to 25-year recurrence interval), and will be made from rock, soil, and native vegetation...public roads will be protected in active river erosion zones only if (1) there are no feasible alternatives; (2) funds are available; (3) the actions will have less impacts than other alternatives; and (4) the actions are permitted by county, state, and other federal agencies (p.9).

Stehekin Landing and Valley Development Concept Plan:

The natural character of the lake and river edge on public lands (which includes areas within 200 feet of the lake and river shoreline) will be restored (p.1).

6. Clean Water Act, as Amended

The “Clean Water Act” refers to several pieces of legislation including the Water Pollution Control Act Amendments of 1972 (Public Law 92-500), the Clean Water Act Amendments of 1977, and the Water Quality Act (Clean Water Act) of 1987. The goal of the Clean Water Act is to make Nation’s waters fishable, swimmable and drinkable by restoring and maintaining the chemical, physical and biological integrity of the waters of the United States. The Clean Water Act is far reaching. This discussion focuses specifically on Sections 404 and 401 of the Clean Water Act, since those sections would partially govern actions on the Stehekin River, its tributaries or adjacent wetlands.

Section 404 of the Clean Water Act

Section 404 of the Clean Water Act authorizes the Secretary of the Army, acting through the Army Corps of Engineers, to issue permits for the discharge of dredged or fill materials into waters of the U.S. The Corps must base its permit decisions on guidelines developed by the Environmental Protection Agency in conjunction with the Corps. EPA has the authority to veto any permit granted by the Corps. The Corps issues either General (or “Nationwide”) Permits or Individual permits, depending upon the nature of the proposed work. Nationwide permits are issued for smaller projects involving less potential for impact to waters of the United States than individual permits.

Section 401 Water Quality Certification

Authority for administration of Section 401 in Washington State is delegated to the Department of Ecology. A water quality certification is required for any activities that:

- *might result in a discharge of dredge or fill material into water or non-isolated wetlands; or*
- *involve excavation in water or non-isolated wetlands and require a federal permit or license*

The 401 Certification can cover both the construction and operation of the proposed project. Issuance of a 401 Certificate means that the Department of Ecology anticipates that the applicant’s project will comply with state water quality standards and other aquatic resource

protection requirements under Ecology's authority. Conditions of the 401 Certification become conditions of the permit issued by the Corps.

The Department of Ecology has already reviewed and approved, denied or partially denied the various Nationwide permits issued by the Corps. If a specific nationwide permit has already been approved, no further 401 Certification review by Ecology is required. If a nationwide permit has been partially denied, then an individual certification or Letter of Verification from Ecology may be required. If a nationwide permit has been denied, then an individual certification is required for all activities under that nationwide permit.

Relevance to Stehekin River and Lake Chelan

Lake Chelan, the Stehekin River and its tributaries, and adjacent wetlands are all waters of the United States and thus regulated in part under Section 404 of the Clean Water Act. Proposals for flood protection and/or erosion control that may affect these waters must obtain a 404 permit and/or 401 water quality certification before proceeding. In Washington State, a Joint Aquatic Resources Permit Application (JARPA) initiates the Corps' review under Section 404, and Ecology's review for shoreline, floodplain and 401 certification requirements. Both the Corps and Ecology can place conditions on permit applications as they relate to these programs.

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Internet Links

More information on Nationwide permits can be obtained online at:
http://www.usace.army.mil/cw/cecwo/reg/nationwide_permits.htm

7. Wild and Scenic Rivers Act

The National Wild and Scenic Rivers Act of 1968 established a national policy that certain selected rivers of the nation and their immediate environments shall be preserved and protected for the benefit and enjoyment of present and future generations. The Act specifically preserves designated rivers (or river segments) and their adjacent environments if they are free-flowing and "...possess outstandingly remarkable scenic, recreational, geologic, fish and wildlife, historic, cultural, or other similar values..." Rivers, or sections of rivers designated under the Act must be preserved in their "free-flowing condition" and cannot be dammed or otherwise modified in such a manner that would adversely affect the "outstandingly remarkable values" which contribute to designation.

The Act provides three levels of designation for rivers or river sections: wild rivers, scenic rivers and/or recreational rivers. Wild river areas are considered the most primitive and pristine; they must be unpolluted, free of impoundments and generally inaccessible (except by trail), with undeveloped watersheds and shorelines. Scenic rivers must also be free of impoundments and have largely primitive shorelines, but can be accessible in places by roads. Recreational rivers or sections of rivers can be readily accessible by road, may have some shoreline development, and may have undergone some impoundment or diversion in the past.

Rivers can be added to the national Wild and Scenic Rivers System in one of two ways. The traditional way is for Congress to pass Wild and Scenic legislation that is signed into law by the President (similar to Wilderness). The other way is for the Governor of a state to petition the Secretary of the Interior to add a river to the system.

Wild and Scenic designation does not affect a private landowners' ability to develop privately-owned lands within the river corridor. On federally-owned land, however, future development along a designated wild, scenic or recreational river is allowed as long as it is consistent with the river's classification, and does not harm the values which contributed to designation.

Relevance to Stehekin River and Lake Chelan

The Stehekin River and its tributaries have never been designated as part of the Wild and Scenic Rivers System. In addition, neither the Stehekin River nor any of its tributaries are part of the Washington state Scenic Rivers System. Therefore, currently the only way the river could be included in the system is via affirmative congressional action, and no action is believed pending or contemplated by Congress as of this writing.

As an internal matter, the NPS in 2002 evaluated the Stehekin River and its tributaries for its eligibility for inclusion in the National Wild and Scenic Rivers System, and determined the entire watershed of the Stehekin River is eligible for designation (Finlayson, 2002). The eligibility analysis was prompted by management guidance in the 1995 General Management

Plan for Lake Chelan NRA, and the miscellaneous provisions of a 1991 Consent Decree¹ between the Secretary of the Interior and the North Cascades Conservation Council. A brief summary of the eligibility report follows, along with its implications for river-related management actions on the part of the NPS.

The eligibility analysis used two criteria to evaluate the river's eligibility in accordance with the Act: (1) the "Free-flowing" condition of the river; and (2) the river's "Outstandingly Remarkable Values" including fish, wildlife, vegetation, prehistoric and historic resources, geology, scenery and recreation. The "Free-flowing" criterion was evaluated by dividing the river into three segments in light of differences in human activity and development along its shoreline. Segment 1 extends from the mouth of the Stehekin River to High Bridge (the segment within Lake Chelan NRA); segment 2 extends from High Bridge to Cottonwood Camp; and segment 3 from Cottonwood Campground to the headwaters. To evaluate the "outstandingly remarkable values" criterion, all three segments were considered collectively.

All three segments of the Stehekin River were determined to be eligible for inclusion in the Wild and Scenic Rivers System due to its generally free-flowing condition and outstandingly remarkable values, including wildlife, fish, prehistoric, historic, geologic, scenic and recreational resources. The river's vegetation, however, was found to be exceptional but not sufficiently unusual to contribute to eligibility. Segment 1 was classified as "Recreational" due to higher levels of development and road/bridge accessibility. Segment 2 was classified as "Scenic" in light of very limited road accessibility and shoreline development. Segment 3 was classified as "Wild" because except for a few trails it is completely undeveloped.

The Stehekin River Eligibility Report places the Stehekin River in the category of an "Agency Identified, 5(d)(1) Study River". Section 5(d) of the act charges federal agencies with the responsibility of submitting candidate rivers for Congressional consideration. That process involves studies of both eligibility (are there "outstandingly remarkable" values?) and suitability (is protection in the public interest?). The eligibility phase determines which rivers meet the criteria established by the Wild and Scenic Act, while the suitability phase examines the positive and negative impacts of designation. For the Stehekin River, eligibility has been determined, but suitability has not. Although the determination of eligibility carries no direct legal authority, it lays the foundation for future designation of the river should the U.S. Congress choose to do so. The eligibility finding does, however, influence NPS management actions that could potentially affect the river's "free-flowing" characteristics or the various "Outstandingly Remarkable Values" that contribute to its eligibility. In accordance with guidance from the Interagency Wild and Scenic Rivers Coordinating Council, and Section 4.3.4 of NPS Management Policies 2006, the NPS must avoid taking management actions that would adversely affect the "Free-flowing Condition" and "Outstandingly Remarkable Values" that qualify the river for inclusion in the National Wild and Scenic Rivers System.

Definitions:

¹ A judgment whereby the defendant agrees to stop the activity that was asserted to be illegal, without admitting wrongdoing or guilt.

Eligibility: Qualification of a river for inclusion in the national system through determination that it is free-flowing and with its adjacent land area possess at least one outstandingly remarkable value.

Study Report: The report on the suitability or unsuitability of a study river for inclusion in the national system which section 4(a) requires the Secretary of Agriculture, or the Secretary of the Interior, or both jointly to prepare and submit to the President. The President transmits the report with his recommendation to the Congress.

8. Rivers and Harbors Act

Various sections of the Rivers and Harbors Act of 1899 prevent unauthorized obstruction or alteration of any navigable water of the United States. The most frequently exercised authority is contained in Section 10 (33 U.S.C. 403) which covers construction, excavation, or deposition of materials in, over, or under such navigable waters, or any work which would affect the course, location, condition, or capacity of those waters.

The jurisdiction of the Rivers and Harbors Act of 1899 includes all navigable waters of the United States, defined in 33 CFR Part 329 as follows:

those waters that are subject to the ebb and flow of the tide and/or are presently used, or have been used in the past, or may be susceptible to use to transport interstate or foreign commerce.

Note: The Clean Water Act also uses the term "navigable waters"; however, the term "navigable waters" in section 404 of the Clean Water Act generally encompasses Section 10 waters *plus* their tributaries and adjacent wetlands and isolated waters where the use, degradation or destruction of such waters could affect interstate or foreign commerce.

The Secretary of the Army, acting through the Army Corps of Engineers, is authorized to issue Section 10 permits. The basic form of authorization used by the Corps is the individual permit. In Washington, the process for obtaining a Section 10 permit begins with submittal of a Joint Aquatic Resources Permit Application. Once a complete application is received by the Corps, the formal review process begins. This process can involve a public notice and will evaluate the impacts of the project and all comments received. The permit decision document includes a discussion of the environmental impacts of the project, the findings of the public interest review process, and any special evaluation required by the type of activity.

Relevance to Stehekin River and Lake Chelan

The Corps has designated Lake Chelan as a navigable water, so a Section 10 Permit is required for any actions that could obstruct or otherwise affect navigation on Lake Chelan proper. The Corps has not designated the Stehekin River as a navigable river. Instead, the Corps considers the Stehekin River as a "traditional navigable water" (pers. comm. Debbie Knaub, ACOE, 8/30/07). As a "traditional navigable water", the Corps does not regulate the Stehekin River under Section 10 of the Rivers and Harbors Act. The Corps does, however, regulate the Stehekin River, its tributaries and adjacent wetlands under Section 404 of the Clean Water Act.

Contact

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9. Endangered Species Act, as Amended

The purpose of the Endangered Species Act (ESA) is to protect and recover imperiled species and the ecosystems upon which they depend. It is administered by the Interior Department's U.S. Fish and Wildlife Service (FWS) and the Commerce Department's National Marine Fisheries Service (NMFS). The FWS has primary responsibility for terrestrial and freshwater organisms, while the responsibilities of NMFS are mainly marine species such as salmon and whales.

Under the ESA, species may be listed as either "endangered" or "threatened." Endangered means a species is in danger of extinction throughout all or a significant portion of its range. Threatened means a species is likely to become endangered within the foreseeable future throughout all or a significant portion of its range. All species of plants and animals, except pest insects and non-native species, are eligible for listing as endangered or threatened.

The ESA protects listed species and their habitats by prohibiting the "take" of listed animals and the interstate or international trade in listed plants and animals, including their parts and products, except under federal permit. Such permits generally are available only for certain conservation and scientific purposes. Take is defined as "to harass, harm, pursue, hunt, shoot, wound, kill, trap, capture, or collect or attempt to engage in any such conduct." Through regulations, the term "harm" is defined as "an act which actually kills or injures wildlife. Such an act may include significant habitat modification or degradation where it actually kills or injures wildlife by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering." Listed plants are not protected from take, although it is illegal to collect or maliciously harm them on federal lands.

Section 7 of the ESA requires all federal agencies including the NPS to use their legal authorities to promote the conservation purposes of the law. This section also requires federal agencies to consult with the FWS or NMFS to ensure that actions they authorize, fund, or carry out will not jeopardize listed species.

Section 10 of the ESA provides relief to private landowners who want to develop land inhabited by listed species. Landowners can receive a permit for the take of a listed species that may occur incidental to otherwise legal activities, provided they have developed an approved habitat

conservation plan (HCP). HCPs include an assessment of the likely impacts on the species from the proposed action, the steps that will be taken to minimize and mitigate those impacts, and the funding available to carry out those steps. When the FWS approves the HCP, the landowner can apply for an “incidental take” permit, which allows him/her to proceed with the proposed action. HCPs benefit not only the landowners but also the species by securing and managing important habitat.

Washington State Listed Species

Washington State has various administrative codes that are somewhat analogous to the U.S. Endangered Species Act. The Washington State Department of Fish and Wildlife (WDFW) maintains a “Species of Concern List” that includes species native to Washington and listed as Endangered, Threatened, or Sensitive, or as Candidates. The designations of Endangered, Threatened, and Sensitive species are legally established in Washington Administrative Code 232-12-297, Endangered, threatened, and sensitive wildlife species classification. Candidate species are established by WDFW policy. Washington Administrative Code 232-12-011 provides that wildlife classified as protected shall not be hunted or fished.

Relevance to Stehekin River and Lake Chelan

Several federal and state listed species are believed to be present in the Lower Stehekin Valley within Lake Chelan NRA (Table I). NPS Management Policies require the agency to preserve state listed species in a manner similar to that of federally listed species, so those species currently listed under the Washington State Species of Concern List are also provided in Table I.

Bull trout (Threatened) are the only federally listed species of fish historically found within the Stehekin River; however, the last confirmed catch of bull trout was in 1957 (Brown, 1984). Once a tremendous attraction for anglers, bull trout may be extirpated because they have not been documented for 50 years despite numerous surveys.

Table I. Washington State and Federal endangered (E), threatened (T), candidate (C) and other sensitive species for which there is suitable habitat in the Lower Stehekin Valley. Species unlikely to be present (or extirpated) are noted with an asterisk; these species are not tolerant of human activity (e.g. residential development, motorized vehicle use) or they lack sufficient habitat.

Common Name	Scientific Name	Status	
		Federal	State
Gray Wolf*	<i>Canis lupus</i>	E	E
Grizzly Bear*	<i>Ursus arctos</i>	T	E
Canada Lynx*	<i>Lynx canadensis</i>	T	T
Pacific Fisher*	<i>Martes pennanti pacifica</i>	C	E
California Wolverine*	<i>Gulo gulo luteus</i>		C
Western Gray Squirrel	<i>Sciurus griseus griseus</i>		T
Townsend's Big-eared Bat	<i>Corynorhinus townsendii</i>		C
Bald Eagle	<i>Haliaeetus leucocephalus</i>	T	T
Northern Spotted Owl	<i>Strix occidentalis caurina</i>	T	E
Northern Goshawk	<i>Accipiter gentilis</i>		C
Golden Eagle	<i>Aquila chrysaetos</i>		C
Merlin	<i>Falco columbarius</i>		C

Common Name	Scientific Name	Status	
Flammulated Owl*	<i>Otus flammeolus</i>		C
Vaux's Swift*	<i>Chaetura vauxi</i>		C
Lewis' Woodpecker*	<i>Melanerpes lewis</i>		C
Black-backed Woodpecker*	<i>Picoides albolarvatus</i>		C
Pileated Woodpecker	<i>Dryocopus pileatus</i>		C
Bull Trout*	<i>Salvelinus confluentus</i>	T	
Western Toad	<i>Bufo boreas</i>		C
Columbia Spotted Frog*	<i>Rana luteiventris</i>	C	C

In accordance with the Endangered Species Act, the NPS is required to consult with the U.S. Fish and Wildlife Service regarding any action that may affect a listed species. Private landowners are generally exempt from the Endangered Species Act unless their actions harm a listed species or require approval from a federal agency. For example, a private landowner may be required to develop a Biological Evaluation (i.e. an analysis of potential adverse effects to federally listed species) in conjunction with a 404 permit application depending upon the nature of the proposed action. This requirement is necessary because the Army Corps of Engineers cannot knowingly issue a permit that may violate the Endangered Species Act.

Regional Contact:

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US Fish and Wildlife Service, Central WA Field Office
215 Melody Lane, Suite 119
Wenatchee, WA 98801
509-665-3508 extension 24

Internet Links

More information on the Endangered Species Act can be obtained online at:
<http://www.fws.gov/endangered>

10. Washington State Hydraulic Code

A Hydraulic Project Approval (HPA) from the Department of Fish and Wildlife under 75.20 RCW is required if a project includes construction or other work, that will use, divert, obstruct, or change the natural flow or bed of any fresh or salt water of the state. The purpose of this law is to ensure that construction or other related activities are done in a manner to prevent damage to the state's fish, shellfish, and their habitat. By applying for and following the provisions of the HPA issued under Chapter 77.55 RCW, most construction activities that affect the bed or flow of state waters can be allowed with little or no adverse impact on fish or shellfish. More information is available online at: <http://www.wdfw.wa.gov/hab/hpapage.htm>

Relevance to Stehekin River and Lake Chelan

In general, work below the Ordinary High Water Mark in the Stehekin River (or its tributaries) requires an HPA. In some instances, this requirement extends to dry channels and upland areas adjacent to water if the action has the potential to affect fish or fish habitat. For example, felling of trees from the bank into the Stehekin River, or removing a log jam, typically require an HPA.

Contact

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11. Washington State Floodplain Management Act

The Washington State Floodplain Management Act (Flood Plain Management Chapter 86.16 RCW; Chapter 173-158 Flood Plain Management WAC) governs development, including fills, grading, in stream restoration, bank stabilization and other structures that occur within Flood Plain and Shoreline jurisdictions. The state Flood Plain Management Code requires a permit, typically issued by the local government, for any development as well as filling or grading activities within the 100 year floodplain. Proposed projects are reviewed and conditions imposed on any permits issued to reduce the potential for damage from floodwater. Permits are required for any development as well as for filling or grading activities in the floodplain. State law requires that local entities have a local floodplain ordinance that meets or exceeds National Flood Insurance Program (NFIP) requirements. Ecology has approval authority over these ordinances.

In Washington, communities with designated floodways must restrict land uses in the floodways by prohibiting the construction or reconstruction of residential structures except for:

Repairs, reconstruction, or improvements to a structure which do not increase the ground floor area;

Repairs, reconstruction, or improvements to a structure the cost of which does not exceed fifty percent of the market value of the structure either

- *Before the repair, reconstruction, or improvement is started*
- *If the structure has been damaged, and is being restored, before the damage occurred.*

Work done on structures to comply with existing health, sanitary, or safety codes which have been identified by the local code enforcement or building official and are the minimum necessary to assure safe living conditions shall not be included in the fifty percent determination.

A residential dwelling located partially within a designated floodway is considered totally within a designated floodway and must comply with floodplain management regulations. Exemptions to the prohibitions include existing farmhouses in designated floodways that meet the provisions of WAC 173-158-075, or to residential dwellings other than farmhouses that meet the depth and velocity and erosion analysis provisions of WAC 173-158-076, or to structures identified as historical places.

When a regulatory floodway for a stream has not been designated, the community may require that applicants for new construction and substantial improvements reasonably utilize the best available information from a federal, state, or other source to:

- Consider the cumulative effect of existing, proposed and anticipated future development.*
- Determine that the increase in the water surface elevation of the base flood will not be more than one foot at any point in the community.*

Building and development near streams without a designated floodway shall comply with the requirements of 44 CFR 60.3 (b)(3) and (4), and (c)(10) of the NFIP regulations

Agencies and Responsibilities

The Department of Ecology is responsible for coordinating the flood plain management regulation requirements of the National Flood Insurance Program. Local governments participating in the National Flood Insurance Program (NFIP) administered by the Federal Emergency Management Agency (FEMA) are required to review proposed development projects to determine if they are in identified floodplains as shown on the FEMA maps. If a project is located in a mapped 100-year floodplain (A or V zone), the local government must require that a permit be obtained prior to development.

While the local government (in this case Chelan County) issues the permit, Ecology has the authority to examine, approve or reject designs and plans for any structure or works, public or private, to be erected, built, reconstructed or modified along the banks, over the channel, over or across the floodway of any stream or body of water in Washington. Also, any other development, including filling and grading, must be reviewed and permitted by the local government. Ecology may also review proposed actions along the Stehekin River that are initiated under the Shoreline Management Act.

Other Ecology responsibilities under the Flood Plain Management Code include:

- Provide guidance and assistance to local governments in development and amendment of their flood plain management ordinances;*
- Provide technical assistance to local governments in the administration of their flood plain management ordinances;*
- Provide assistance to local governments in enforcement actions against any individual or individuals performing activities within the flood plain that are not in compliance with local, state, or federal flood plain management requirements*
- Establish minimum state requirements that equal minimum federal requirements for the national flood insurance program*
- Assist counties, cities, and towns in identifying the location of the one hundred year flood plain, and petitioning the federal government to alter its designations of where the one hundred year flood plain is located if the federally recognized location of the one hundred year flood plain is found to be inaccurate*

- *Assist communities in developing effective flood hazard management plans that reduce flood hazards and minimize environmental degradation*
- *Support communities in implementing flood damage reduction projects*
- *Conduct community evaluation visits to monitor their floodplain management programs and assure compliance with federal and state regulations*
- *Provide training to communities in floodplain management methods and procedures*
- *Provide materials and methods to improve public awareness of flood hazards*
- *Evaluate flood characteristics to develop recommendations on repairing or replacing substantially damaged residential structures located in regulatory floodway. Replacement or repair can only be recommended where:*
 - *Flood depths cannot exceed more than three feet; flood velocities cannot exceed more than three feet per second.*
 - *No evidence of flood-related erosion. Flood erosion will be determined by location of the project site in relationship to channel migration boundaries adopted by the local government. Absent channel migration boundaries, flood erosion will be determined by evidence of existing overflow channels and bank erosion.*
- *At the request of local government, the department will prepare a report of findings and recommendations for local government concurrence on repair or replacement of substantially damaged residential structures located in the regulatory floodway. Without a recommendation from the department for the repair or replacement of a substantially damaged residential structure located in the regulatory floodway, no repair or replacement is allowed.*

Legal Authority

- Chapter 173-158 Flood Plain Management WAC
- Chapter 86.16 Flood Plain Management RCW
- Title 42, Ch 50, S 4001 et seq USC
- Title 44, Ch I, S 60.3 CFR

Relevance to Lake Chelan and Stehekin River

Portions of Lake Chelan National Recreation Area and the Stehekin Community are within the 100-year floodplain of the Stehekin River. Chelan County has an Ecology-approved floodplain management ordinance administered under County Code Chapter 3.20, Flood Hazard Development. The Chapter prohibits encroachments, including fill and other development, unless hydrologic and hydraulic analysis done by a registered professional engineer shows the encroachment will not result in any increase in flood levels during a 100-year flood event. The Stehekin River FEMA-approved flood plain study included a floodway designation. Structures within the floodway with damage greater than 50% market value cannot be replaced.

Chelan County also regulates structures in frequently flooded overlay district, which they define as the 100-year floodplain (Chapter 11.84 Chelan County Code). This section restricts development within the floodway including:

- 1) *New lots may be created within frequently flooded areas, provided:*

- a) *A designated buildable area in each lot is provided for outside the floodway and is identified on the face of the final plat, short plat or binding site plan mylar;*
 - b) *All improvements, including parking areas, are located outside the floodway;*
 - c) *Roads necessary to access permitted improvements may cross the floodway if no reasonable route exists outside the floodway;*
 - d) *Open space lots may be located within the one-hundred-year floodplain; and*
- 2) *No residential structures may be built or placed within a designated floodway;*

Contact

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12. Washington State Shoreline Management Act

Development within Shoreline jurisdiction may require shoreline development permits including conditional use, substantial development and variance. Each local government has development regulations in its Shoreline Master Program. The local government shoreline regulations identify the “conditional uses”, i.e. uses that are not preferred but may be permitted when specified conditions are met. Shoreline Conditional Use Permits are sent to Ecology for approval or disapproval. Ecology may add its own conditions during its review process.

A Shoreline Substantial Development Permit is a written permit issued by local government for development on shorelines. All non-exempt developments and uses exceeding \$5,718 fair market value as defined in RCW 90.58.030(3) and WAC 173-27-030(8) may require this permit. After completion of the local process the permits are sent to Ecology for filing but Ecology does not have authority to approve or deny them.

Agencies and Responsibilities

The local government and Washington Department of Ecology are responsible for managing and regulating development along state shorelines. All permit applications start at the local level but some require Ecology approval also. The local government then supplies the information to the Washington Department of Ecology.

Shoreline Conditional Use and Variance Permits are sent to Ecology for approval or disapproval. Ecology may add its own conditions during its review process. The state Shoreline regulations (173-27-160 WAC) establish criteria for reviewing conditional use permits.

- 1) *Conditional uses may be authorized provided that the applicant demonstrates all of the following:*

- a) *That the proposed use is consistent with the policies of RCW 90.58.020 and the master program;*
 - b) *That the proposed use will not interfere with the normal public use of public shorelines;*
 - c) *That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;*
 - d) *That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located;*
 - e) *That the public interest suffers no substantial detrimental effect.*
- 2) *The cumulative impact of additional requests for like actions in the area must be considered. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 (Shoreline Management Act) and shall not produce substantial adverse effects to the shoreline environment.*
- 3) *Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program.*

Internet Links

[Chapter 173-27 WAC](http://apps.leg.wa.gov/WAC/default.aspx?cite=173-27&full=true): <http://apps.leg.wa.gov/WAC/default.aspx?cite=173-27&full=true>

[Chapter 90.58 RCW](http://apps.leg.wa.gov/rcw/default.aspx?cite=90.58&full=true): <http://apps.leg.wa.gov/rcw/default.aspx?cite=90.58&full=true>

[Shoreline Management Act home page](http://www.ecy.wa.gov/programs/sea/SMA/index.html): <http://www.ecy.wa.gov/programs/sea/SMA/index.html>

[Shorelines Hearings Board](http://www.eho.wa.gov/Boards/SHB.asp): <http://www.eho.wa.gov/Boards/SHB.asp>

Relevance to Stehekin River and Lake Chelan

Under Chelan County's Shoreline Master Program, shoreline conditional use, substantial development and variance permits may be required for bank stabilization projects. Excavation of > 250 yd³ within 200 yards of shorelines of state significance (e.g., Stehekin River and Lake Chelan) may require a substantial development permit.

The Stehekin River and upper Lake Chelan have Conservancy Environment shoreline designation. In Chelan County's Shoreline Master Program Conservancy is defined as:
 7.2.280.5 CONSERVANCY ENVIRONMENT - An area characterized by a potential for diffuse outdoor recreation activities timber harvesting on a sustained yield basis, passive agricultural uses such as pasture and range lands, and other related development.
 Activities permitted in the Conservancy designation under the Chelan County Shoreline Master Program are:

- *Agriculture permitted in the Conservancy designation cannot involve major construction or other activities which substantially change the character of the environment (Section 12.3.1).*
- *Timber harvesting is subject to Washington Department of Natural Resources Forest Practices Regulation. Within Shorelines only selective commercial timber harvest, a maximum of 30% merchantable trees in any 10 year period may be permitted (Section 14.1.2). In the Conservancy Environment designation, roads must be maintained to minimize erosion, or be permanently closed, water barred, reforested, or planted and seeded with appropriate ground cover (Section 14.3.2).*
- *Mining operations may be permitted in conformance with WDFW Hydraulic Permit and WDNR mining regulations.*
- *Single family residences with lot size and height restrictions (Section 16.1.2, 16.3.2)*
- *Multi-family residences may be permitted as Planned Development with restrictions on height (35 feet), setback (common line from OHWM), and parking lots*
- *Only water-related and water-dependent commercial development may be permitted*
- *Shoreline protection and structures (e.g., bulkheads and docks) may be permitted provided they don't substantially change the character of the environment and are part of a project defined as water dependent or water related and project would be not be feasible without the structures.*
- *Channelization of streams is prohibited except as provided in RCW 90.58.030 (3) (e) (Shoreline Management Act). There is no provision under this section of the Act that would allow channelization of the Stehekin River.*
- *Land filling is prohibited (Section 22.3) except it may be permitted when:*
 - *Fill is landward of the OHWM and does not affect aquatic habitat or organisms and water quality.*
 - *Needed to provide a minimum single-family residence building site where there would be no ability to build even given variances, the property is not more than 70% below the OHWM, there is public sewer or adequate on-site sewage treatment area, the property landward of the OHWM is owned by the land owner, the residence is < 2000 square feet, the land fill waterward of the OHWM follows the natural shoreline contours and is the minimum necessary to provide a buildable site. This provision mostly applies to Lake Chelan where water levels fluctuate due to dam operations.*
 - *Water dependent use that is recreational in nature and could not occur except by land filling.*
 - *Dredging may be permitted to accommodate water dependent uses (Section 23.3) provided spoils are placed landward of OHWM and where they won't cause environmental harm (e.g. avoid wetlands).*
 - *Public roads and bridges may be permitted where it is necessary to cross water and roads are setback from OHWM (Section 26.3).*

- *Low intensity recreational uses such as nature trails, unimproved beaches, semi-developed campgrounds allowing vehicle access (Section 28.3).*

Chelan County Code also includes geologic hazards overlay district where a development permit may be denied based upon an evaluation of the inability to reduce risks associated with the geologically hazardous areas which include channel erosion and migration. Performance standards to be utilized include:

- *Construction methods should be used which minimize risks to structures and do not increase the risk to the site, or to adjacent properties and their structures, from the geologic hazard. Development shall not increase instability or create a hazard to the site or adjacent properties, or result in a significant increase in sedimentation or erosion.*
- *Site planning should minimize disruption of existing topography and vegetation, and should incorporate opportunities for phased clearing.*

Other important information

Chelan County has received grant money from Ecology to update their Shoreline Master Program. Under the revised Shoreline Management regulations, Chelan County is required to map channel migration zones (CMZ). Within the CMZ, development or structures are limited to those which won't interfere with channel migration and won't require future bank stabilization, dikes or other control structures. Channel migration regulations are mostly addressed under the flood hazard reduction provisions of the state Shoreline Management regulations:

- *Flood hazard provisions:*
 - *WAC 173-26-221(3)(b): Establishing general principle that SMP should limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and or result in a net loss of ecological functions associated with the rivers and streams.*
 - *WAC 173-26-221(3)(b)(i) - (vii): Describes more specific flood hazard prevention principles, including encouragement to plan for and facilitate removal of artificial restrictions to natural channel migration.*
 - *WAC 173-26-221(3)(c)(i): Standard generally prohibiting new development in shoreline jurisdiction where it would require new dikes or levees within the CMZ. Includes list of specific developments that may be appropriate exceptions to the standard.*
- *Modifications and Use provisions:*
 - *WAC 173-26-231(3): Fills must protect shoreline ecological functions, including channel migration processes.*
 - *WAC 173-26-231(3)(f): Requiring conditional use permit for disposal of dredge material on shorelands or wetlands within CMZs.*

- *WAC 173-26-241(3)(ii)(E): Requiring conditional use permit for mining within CMZ.*

Since Ecology has provided funding for the Stehekin River flood management plan (FCAAP grant) and the Shoreline Master Program update (Shoreline grant), Ecology's role in coordination between the two activities will be important and necessary.

Regional Contacts

Shoreline Master Program and Update

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Shoreline Permit Review, Wetlands, Critical Areas

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13. Washington State Environmental Policy Act

The Washington State Environmental Policy Act (SEPA) provides a way to identify possible environmental impacts that may result from governmental decisions. These decisions may be related to issuing permits for private projects, constructing public facilities, or adopting regulations, policies or plans. Information provided during the SEPA review process helps agency decision-makers, applicants, and the public understand how a proposal will affect the environment. This information can be used to change a proposal to reduce likely impacts, or to condition or deny a proposal when adverse environmental impacts are identified.

In most cases, one state or local agency will be designated as the "SEPA lead agency". This agency is responsible for evaluating the proposal and determining if the proposal is likely to impact the environment. For most private projects, the SEPA lead agency will be the city or county where the project is located.

Any proposal that requires a state or local agency decision to license, fund, or undertake a project, or the proposed adoption of a policy, plan, or program can trigger environmental review under SEPA (See WAC 197-11-704 for a complete definition of agency action). SEPA is a process, not a permit. The SEPA lead agency will review the environmental checklist and may request additional information or special studies.

Internet Links

The State Environmental Policy Act Home Page

<http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

Statewide Contact

Washington Department of Ecology, SEPA Unit

Headquarters

SEPA Unit

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Olympia, WA 98504-7703

Website: <http://www.ecy.wa.gov/programs/sea/sepa/e-review.html>

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