



STATE OF WASHINGTON  
DEPARTMENT OF ECOLOGY

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February 27, 2012

Mr. Steve Gray  
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Department of Community Development  
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Port Angeles, WA 98362

I am writing this letter in response to concerns that were expressed by several citizens regarding the statutory basis for provisions being drafted as part of Clallam County's Shoreline Master Program (SMP) update. As you know, the update process being conducted by the County is established in the State Shoreline Management Act (SMA), RCW 90.58. The Shoreline Management Act establishes a unique relationship between local and state governments.

Under the SMA, both the local and state governments formally adopt the SMP. It becomes a dual local-state policy document. This dual approval process can be challenging and, in the end, provide significant benefits. For local governments, they are not left to defend their actions (as is the case with GMA actions). Ecology defends an approved SMP when a legal challenge is filed. Ecology adoption helps ensure that the three basic policy objectives of the SMA are met for all shorelines – ensuring space for water-dependent uses; enhancing public access; and protecting shoreline habitat.

Under the Shoreline Management Act, each county is required to adopt and administer a local SMP. The local SMP is not effective until it has been reviewed and approved by Ecology. In order to approve a local SMP, Ecology must make a determination that the SMP is consistent with the SMA Guidelines, WAC 173-26. A more detailed description and history of the SMA Guidelines is included below.

The Legislature required the Department of Ecology to develop and update Guidelines for Shoreline Master Programs. RCW 90.58.080(1) states, "Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section." The Guidelines are adopted as a WAC. As defined in RCW

90.58.030(3)(a), the Guidelines are standards adopted to implement the policy of the SMA. An SMP becomes effective only upon approval by Ecology, RCW 90.58.090(1). Moreover, Ecology is to approve an SMP only if it determines the SMP to be consistent with both the SMA and the SMP guidelines adopted by Ecology, RCW 90.58 .090(3)-(5).

In 2003, after long negotiations among diverse interests, a settlement was reached that established the new Guidelines for Shoreline Master Programs statewide. The significance of the settlement agreement is this: Ecology's Guidelines were first agreed to by business, industry, ports, Tribal Governments, environmental organizations, and other local government and citizens groups having concerns about shoreline management regulations, and then codified as a WAC. The Shoreline Master Program Guidelines are defined in WAC 173-26.

Beginning in 2004, and on a statewide basis, local governments have been provided with funding to accomplish the necessary SMP comprehensive updates which are required to be completed by 2014, with subsequent updates every 8 years. Adoption of an SMP update at the State level requires adherence to the Guidelines, with Ecology responsible for ensuring compliance.

Statewide policy goals are broadly expressed in RCW 90.58.020, which states:

"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."

Notable provisions in the new Guidelines include the phrase “no net loss,” which reflects legislative policy in RCW 90.58 to balance development with protection of the natural character, resources and ecology of Washington shorelines. No Net Loss requirements included in the Guidelines are based on 90.58.020(1)(2)(3) and (4). Public Access requirements are based on (5) Constitutional limitations which are explicit in the Guidelines to ensure that private property rights are upheld as shoreline areas are regulated by SMA.

The following text, adopted from a 2010 Washington Supreme Court case involving Whatcom County’s SMP, further describes the legal relationships of state and local governments pursuant to the SMA:

“The SMA requires that shoreline management and planning of development near shorelines be coordinated between the state government and local governments, RCW 90.58.020,050. The SMA delineates particular elements and specific provisions that local governments and Ecology must include within SMPs. See, e.g., RCW 90.58.100(2) (listing elements that shall be included within SMPs), .100(5) (requiring SMPs to contain provisions for conditional use permits and variances), .100(6) (requiring SMPs to contain standards for protecting single family residences), .150 (selected timber harvesting), .320 (height limitation). Although the SMA directs each local government to develop and administer its SMP, the state has an extensive, statutorily-mandated role in the development and administration of SMPs.

Most significantly, an SMP becomes effective only upon approval by Ecology, RCW 90.58.090(1). Moreover, Ecology is to approve an SMP only if it determines the SMP to be consistent with both the SMA and the SMP guidelines adopted by Ecology, RCW 90.58 .090(3)-(5). In the event that a local government declines, refuses, or fails to develop a Guidelines compliant SMP, Ecology is authorized to develop and impose a SMP for the local government, RCW 90.58 .070(2), .090(5). All SMPs approved or adopted by Ecology become part of the official state master program, RCW 90.59.030(3)(c), which “constitute[s] use regulations for the various shorelines of the state.” RCW 90.58.100(1).

Ecology's statutorily-mandated involvement in the process of SMP development is considerable and, ultimately, determinative. Among other responsibilities, Ecology (1) develops guidelines that provide criteria for developing master programs, RCW 90.58.030(3)(a); (2) reviews, revises, and approves SMPs, RCW 90.58.090; (3). The process for adopting SMPs is different from the process for adopting GMA comprehensive plans and regulations. The SMA did not vest planning authority exclusively in local government, as did the GMA. Instead, the SMA provides for state checks and balances on local authority, including the requirement that the Department of Ecology approve all local shoreline master programs before they become effective.”

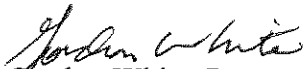
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We note that there has been discussion and concern about Ecology adopting SMPs by rule, including reference to an Ecology document. This is an outdated reference. We no longer adopt SMPs by rule – they are adopted by action of our director. The only exception is the rare instance when the local government fails to adopt an SMP: In these cases, Ecology adopts an SMP by rule for the local jurisdiction. (This has occurred once in 40 years.)

Another topic of concern has been the Restoration Strategy. There appears to be concern that this will become a regulatory document. This is not the case. Ecology staff does review Restoration Strategies to ensure that they meet the expectations of the Guidelines and grant agreement. However, these are *not* regulatory documents. Protecting salmon and other species will require habitat restoration that is beyond “no net loss.” The Restoration Strategy complements the regulations in the SMP – it does not become part of the regulations.

We look forward to continued work with all the interests in Clallam County on updating the SMP. Please contact Jeffrey Stewart at 360-407 6521 or [jste461@ecy.wa.gov](mailto:jste461@ecy.wa.gov) if you have questions related to this letter. Thanks for your interest in protecting and managing shorelines.

Sincerely,



Gordon White, Program Manager  
Shorelands and Environmental Assistance Program

cc: Jeffrey Stewart