



February 28, 2012

Steve Gray – Planning Manager
Clallam County Department of Community Development
223 East 4th Street, Suite 5
Port Angeles, WA 98362

Sent by email to: sgray@co.clallam.wa.us

Re: Comments on Clallam County Shoreline Master Program

Dear Mr. Gray:

Our organizations appreciate the opportunity to comment on the February 2012 draft of the Clallam County Shoreline Master Program (SMP). *Futurewise* is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. *People For Puget Sound* is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

Our apologies for the abbreviated review. Other obligations limited our review time, so we have limited our comments at this time to vegetation related issues. We provided three guidance documents for your consideration in our previous letter. We reference these guidance documents in this letter and continue to recommend following the approaches described in them.

Uses That Damage the Environment Must be Prohibited or Include Special Protections

Background

A number of our comments are based on incorporating the SMA preference of water-dependency in both use limits and the vegetation management system. This means that water-dependency and use-intensity must be included in the use limits. But these preferences are also relevant to the issue of buffers. Consequently some background information is needed to understand our comments.

The origins of SMA preferences are found in the policy statements of RCW 90.58.020. Paragraphs 2 and 3 are described in our guidance documents. Paragraph 4 - the implementation paragraph - is discussed below and provides specifics for how to use preferences. Additional requirements dealing with preferences are provided in the SMP Guidelines.¹ And our guidance document on buffers provides additional discussion about the role of water-dependency for buffers. Water-dependency is critical in developing a SMP that accomplishes mitigation sequencing.

Both the SMA and the SMP Guidelines have explicit requirements establishing ecological protection, water-dependency, and public enjoyment preferences. They are based on the fourth paragraph of the SMA policy section, which is the implementation statement [with emphasis added]:

“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

¹ WAC 173-26-251.

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."

The SMP Guidelines principles for general use provisions (in WAC 173-26-241(2)(a)) further provide that [with emphasis added]:

Shoreline master programs shall implement the following principles:

- (i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.
- (iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses. ...

The two preferences for water-dependency and protection from pollution and environmental damage incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that they must minimize the damage and compensate for their impacts. Conversely, uses that don't need to be in or near the water must control pollution and avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA Policy. Such uses must be prohibited or carefully controlled with special requirements. They cannot be treated the same as preferred uses are treated; *otherwise there is no effect to the preference.*

Since many ecological functions come from native intact vegetation,² degrading that vegetation (including further degrading already degraded vegetation) causes damage to the environment.

Recommended Changes

4.2.3 Shoreline Setbacks. Paragraph 3 provides a common line setback for when existing residences are "within 50 feet" of "the side". It is not clear whether the measurement is 50 feet from the common lot line, or 50 feet from the new residence. We recommend that the standard only be allowed when existing residences are 50 feet from the new residence. Our concern is that this provision can be used on wide lots with good shoreline vegetation existing or where the view issue is not as predominant. Common line setbacks should not be allowed in wide lot or large lots situations. They are only appropriate in heavily developed narrow lot situations (as appears to be the intent of the provision), which are commonly designated with a shoreline environment. So we recommend that the common line setback only be applied to these kinds of environments. Alternatively, a narrow lot width criteria can be included for where the provision can be used.

4.2.4 Shoreline Buffers. Paragraph 3 is actually two provisions in one. The first half establishes the expected character of shoreline buffers, and is well stated. But the second half goes on to state that only 80% of the buffer vegetation is protected, and that 20% can be used for lawns and other use areas. This builds-in the allowance to clear 20% of the shoreline vegetation. This will have obvious impacts in fully vegetated areas – specifically a 20% loss of vegetative ecological and habitat functions – and that doesn't account for the broader effects of fragmenting continuous vegetation conditions. It

² EnviroVision, Herrera Environmental, and Aquatic Habitat Guidelines Program, *Protecting Nearshore Habitat and Functions in Puget Sound* pp. II-37 – II-40 and pp. III-33 – III-35 (October 2007, Revised June 2010). Accessed on December 9, 2011 at: <http://wdfw.wa.gov/publications/pub.php?id=00047>.

may be that this provision is intended to be used in only limited instances, but such limits are not stated. Like the common line setback provision above, we recommend that the 20% standard only be used in environments or situations where existing native vegetation is limited or non-existent. If limits are not included in this provision the County must account for the potential loss of intact vegetation in vegetated areas, and compensate for the losses it allows in its SMP. Our guidance document addressing no-net-loss of ecological functions and cumulative impacts analysis covers the issue of regulations that systematically allow impacts to functions, and the difficulties in accounting for them.

Paragraph 4 goes on to list 8 situations where compensatory mitigation is specifically not required even though such activities will cause impacts: view corridors, private paths, hazard tree removal, invasive species removal, boating facilities for residences (though it appears to mean boat structures rather than “boating facility” uses as regulated in the SMP Guidelines), pedestrian beach access, public trails or beach access, utilities and essential public facilities that are water-dependent/related. These developments are simply “allowed” in the buffer without regard to the vegetation they displace, and without requiring them to provide compensation. Such allowances must be accounted for in the Cumulative Impact Analysis. We are strongly opposed to outright waiving compensatory mitigation requirements. Even water-dependent uses (such as access to water-dependent activities, residential docks, or in-water components of utilities) must compensate for their impacts. Otherwise the jurisdiction must provide the compensation through the Cumulative Impact Analysis. Non-water dependent uses cannot cause damage to the environment, but paragraph 4 specifically allows damage. Below are brief comments on each item.

- Residential view corridors are not given special treatment in the SMA or SMP Guidelines – only public views are. Only existing views should be allowed to be maintained, and not expanded. And clearing vegetation for new view corridors should not be allowed.
- Hazard tree removal can remove large numbers of large trees that provide some of the most important habitat structure. There needs to be better limits on their removal, and three replacement trees should be planted as compensation for each tree that is removed.
- The invasive plants provision requires compensatory mitigation by replanting, even though the introduction to the list says compensatory mitigation is waived. This establishes conflicting statements within the same section.
- Boating structures and boathouses have some of the biggest impacts since they span the water line and occupy large areas of water or vegetation – such impacts must be compensated for.
- Boathouses are one of the ultimate unnecessary convenience facilities – a garage for your boat. Such unnecessary development flies in the face of mitigation sequencing (avoid, then minimize, then compensate for remaining impacts). Furthermore there is no limit to how much buffer vegetation can be eliminated around the boathouse. Boathouses should only be allowed in the buffer when other alternatives are not available. Running the marine railway tracks a little further, or carrying the kayak or fishing gear a little further is not a hardship. If they are placed in the buffer, there needs to be a good reason, similar to variance criteria.
- Paths, trails, and utility facilities are not inherently water-dependent and thus cannot be allowed in the buffer as a default position. However, there are special needs associated with these linear facilities. They may inherently need water crossings, or need to provide direct access for a water-dependent use. The SMP Guidelines recognize this in the requirements for utility and transportation uses. Implementing the Guidelines would result in standards for placing these uses outside shoreline jurisdiction unless infeasible, and otherwise placing them as far from the water as possible, and requiring crossings/access by the most direct route rather than using parallel routes. Linear facilities are only acceptable in the buffer within these limits and should otherwise be outside the buffer to avoid damage to the environment. And like all development, the impacts they cause must still be compensated for.

- Private pathways in the buffer might legitimately be considered a de-minimus impact if they require no structures, no grading, and no tree removal. But such limits need to be included in the provision. More substantive paths and trails need more comprehensive review and attention to compensatory mitigation.

4.2.5 – Buffers for Nonconforming Lots. This section has a number of good standards for minimizing damage in these situations. However, it doesn't include provisions for providing compensatory mitigation specific to buffer impacts. The section establishes a fairly elaborate system for allowing development close to the water, along with the inherent impacts. The system also needs to include direction for providing compensatory mitigation. We recommend that development in these areas follow compensatory mitigation ratios that we describe under the vegetation management section, below.

Criteria (i) states: "At least eighty percent (80%) of the buffer area between the structures and the shoreline and/or critical area is maintained in a naturally vegetated condition." As written this provision allows removal of the other 20% of intact vegetation, the problems of which we have commented on above.

4.8 Vegetation Management. This section specifically addresses vegetation outside the buffer, as stated in section 4.8.1. We recommend that the standards apply to treatment of all vegetation since the standards are fairly general, and many would be considered best practices regardless of the relation to the buffer (for example chemical use, placement of structures, species use, existing agriculture, etc.). We also recommend adding details about how compensatory mitigation related to vegetation should be handled both inside and outside the buffer.

The policies in section 4.8.2 include a statement that clearing for individual views is allowed. As we have already commented above, single family residences are non-water-dependent uses and are not allowed to cause damage to the environment. Clearing for views unnecessarily causes damage, and thus residences doing so should be prohibited. Only existing views should be maintained (not expanded).

We recommend adding a new paragraph to the regulations in section 4.8.3 that provides details about how to provide vegetation-related compensatory mitigation that scales up or down with the scale of the project. It should include ratios that capture the greater importance of vegetation in different areas, the failure rate of compensatory mitigation, increased human activity, and losses due to differences between mature and replacement vegetation. We recommend incorporating the following approach, including using the recommended ratios.

- Development of vacant lots in the Natural, Conservancy, and other relatively undeveloped environments shall compensate for the new impacts of development by providing enhancement of degraded vegetation conditions within the buffer that will result in natural vegetation conditions. For wide lots, this standard applies to the water frontage for the full width of site development and for an equal distance to either side within the lot boundaries. Additional mitigation, such as for development within the buffer, may be required.
- Expansion of existing development in the Natural, Conservancy, and other relatively undeveloped environments shall compensate for the increased impacts of the development by providing enhancement of degraded vegetation conditions using the rules below for the more development-oriented environments to ensure a minimum area of buffer vegetation. Additional mitigation, such as for development within the buffer, may be required.

- Development in residential, commercial, and similarly development-oriented environments where vegetation degradation is the norm shall compensate for impacts of development by providing a basic level of enhancement of vegetation conditions. A de minimus level of new development below approximately 100-200 sq. ft. cumulatively is not required to meet this standard. New development above this amount must compensate for impacts by re-establishing a minimum percentage and depth of the buffer vegetation so it can actually function to buffer and mitigate impacts. The remaining non-vegetated areas are to be focused on access and existing use areas. Additional mitigation may be required to address larger impacts.

[Variations of this approach for heavily developed area have been used by many cities. Examples we have seen include the Kirkland SMP (75% of the water frontage 10 feet deep), and the draft Bellevue SMP (60% of area). The best approach we have seen was developed in the draft Issaquah SMP (using more complex enhancement provisions). To be clear, this approach will not be adequate for small lots covered by intact vegetation, as described in the ratios below. The impacts to those areas (especially allowing the loss of 20% of the buffer) almost certainly cannot be performed on-site – one cannot mitigate by enhancing already intact sites. More careful guidance is needed in these situations.]

- For all environments, the following ratios should be used to compensate for impacts. These ratios may contribute to meeting the requirements of the above three standards, and may exceed those requirements. Sites with little or no degraded conditions, may necessitate off-site or alternative mitigation options. Sites that are very small or extremely developed may necessitate off-site or alternative mitigation methods.
 - Removal of existing native vegetation outside the buffer should be compensated at 2:1.
 - Removal of existing native vegetation inside the setback should be compensated at 3:1.
 - Development inside the buffer on land area without native vegetation should compensate for impacts at a ratio of 2:1 for all new use areas, and areas of new impervious surface.
 - Development in the water that cannot provide direct compensation (i.e. un-shading water for new docks, un-armoring the shore for new armoring, etc.) should provide indirect revegetation compensate for impacts using a ratio of 3:1 for all new use areas – including areas occupied by boats, swim areas, and similar use areas.

Thank you for the opportunity to comment.

Sincerely,



Dean Patterson, Shoreline Planner
Futurewise



Heather Trim, Urban Bays & Toxics Program Manager
People For Puget Sound