



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY
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February 18, 2015

Clallam County Department of Community Development
ATTN: Steve Gray, Deputy Director/Planning Manager
RE: Shoreline Master Program Update
223 East Fourth Street, Suite 5
Port Angeles, WA 98362

RE: Comments on November 2014 Planning Commission Review Draft SMP

Dear Mr. Gray,

I appreciate the opportunity to review the latest draft iteration of the County's updated Shoreline Master Program.

While many changes have been made to the previous November 2012 version, this correspondence does not represent a detailed, comprehensive review of the newest document but rather provides feedback on some highlighted topics of interest. The following comments are presented in order of the current draft document chapters, but also reference prior comments provided by this agency on the previous 2012 version that was organized differently. Below I am silent on sections not closely reviewed and on issues previously raised that appear to be adequately addressed by revisions.

Chapter 1. Introduction and Overview

Use vs. Development - Not a make-or-break issue, but it is noted that the past comment about clarifying the discrete but related terms of 'use' and 'development' does not appear to be addressed explicitly. While both terms are included in Chapter 11 Definitions, some additional explanation of this key concept would be helpful to readers and appropriate to include in this overview section. Consider suggested edits as follows:

Page 1-3: "Chapter 1 explains the types of shoreline use and development activities over which the Program has jurisdiction and the Program's relationship to other land use plans, programs, and regulations."

Page 1-4: "To find out if what Program requirements might apply to your proposed shoreline activity is permitted by the Program, first determine what type of use or development best describes it. All shoreline activities can be identified by a particular use and may also include a development. To summarize the definitions in Chapter 11:

- Development includes structures and other tangible evidence of a shoreline activity, while a
- Use refers more to the intended purpose of a development activity or to a non-structural or intangible shoreline activity.

For example, an observation blind along with the clearing and grading required for siting are types of development related to bird watching as a passive recreational use.

Also consider if the type of use is water-oriented or not. The three categories in order of priority are: water-dependent, water-related, and water enjoyment. While some uses that are not water-dependent are still preferred, all shoreline use and development activities must comply with the Program even if a permit or letter of exemption is not required. Chapters 3, 4 and 5 address the most common and anticipated shoreline activities.

Next determine which shoreline environment designation applies to your site (see Exhibit A). Then check to see if the environment designation policies...”

Page 1-21: “All proposed shoreline uses and development activities occurring within shoreline jurisdiction shall comply with this Program and RCW 90.58 whether or not a shoreline permit is required. “

Authority – Interpretations – Section 1.10 on page 1-22 addresses the extent of authority the Program provides. One provision that needs more clarification is 1.10.2.b. regarding administrative interpretations of the Program:

b. Confirm and make interpretations, where needed, of the regulatory boundary of the Program and the applicability of protection standards contained within.

Local government indeed has this authority per the SMA Rules (WAC 173-26), Growth Management Act (RCW 36.70A), and Local Project Review Act (RCW 36.70B). However, some text revision to this clause is suggested to better reflect Ecology’s consultation role in the process for issuing such interpretations, per WAC 173-26-140. Consulting with Ecology helps to ensure the state is on the same page as the county should questions arise about the SMP during day-to-day implementation, and keeps us in the loop on where the county is finding “gray areas” of the SMP so we can continually improve our approaches to managing shorelines and assisting our local government partners.

County – City Linkage - Also not a major issue of consistency, but for the benefit of the reader it is noted that the past comment about the shared approach of the County and the City of Forks still could be better described. If agreements on such details are not yet finalized, some placeholder language at section 1.11 Relationship to Other Plans and Regulations on page 1-23 would serve well at this stage in the update process.

Maps vs. Text – Section 1.12 Limitations and Disclaimer on page 1-23. The SMP must include an Official Shoreline Map to illustrate the approximate extent of jurisdiction and where the environment designations are applied. It would be useful and appropriate for clause 2 of this section and the map(s) to reflect the general convention that in the event there is conflict or uncertainty between the maps and the written provisions of the Program, the text shall prevail. The SMP Handbook Chapter 5 on Jurisdiction (pages 27/28) provides guidance on such disclaimer language. The intent is to clarify that due to limitations of data accuracy and scale of projection the maps are intended for planning purposes only not necessarily accurate to the parcel level and that site specific determinations may be needed at the time of project review. Unless addressed elsewhere, consider edits to clause 2 and the maps to clarify this.

Aquaculture – The overall organization of this section, and related sections of Chapters 2, 10 and 11, has been improved. There are some additional opportunities to further clarify and ensure consistency with WAC 173-26-241(3)(b):

Overall – There does not appear to be an exclusion from permitting or policies/regulations for culturing/harvesting on private land for personal consumption. This could be accomplished within an expanded aquaculture definition, in the Chapter 2 Use Table, and/or at the beginning of this Chapter 3.2 Aquaculture section.

Definitions (Chapter 11) –

- Pages 11-2 and -3: Agriculture definition does not reflect the SMA definition at RCW 90.58.065(2)(b), which declares upland finfish are an “agricultural product”. Aquaculture definition is not strictly consistent with the newer, more concise definition at WAC 173-26-020(6). Because Chapter 8.1 Agriculture Regulation 2.6 eliminates upland finfish aquaculture use and development to be managed as Aquaculture, some explicit note of this differentiation might be useful also in the definitions. Definitions, policies, and regulatory provisions of the Program need to apply to both existing facilities and to new proposals.

Commercial Geoduck - While the general requirements of substantial development and conditional use permits are found at Chapter 10.2, the specific conditional use requirements for commercial geoduck aquaculture from the SMP Guidelines need to be better described. While the Aquaculture policies, general regulations and application requirements address most of the topics required by the Guidelines, many are not stated explicitly leaving some uncertainty for the reader; greater specificity would be helpful.

- For example 3.2.5.4 application requirements state the ‘Administrator may require...’ while the Guidelines at §(iv)(f) state the ‘application must contain...’
- Another example, in order to achieve no net loss any impacts from the use of nursery tanks/holding pools, motorized vehicles, habitat alterations, corner markers, predator exclusion devices, etc. should be considered although these are not readily called out in the General Regulations or Geoduck Regulations.
- One item appears to be missing: WAC 173-26-241(3)(b)(iv)(H), which allows workers to accomplish on-site work during low tides, which may occur on nights and weekends. A provision to this effect needs to be added.

Policies with no implementing regulation or performance standard are difficult to apply. Some additional work to better include or reference the Guidelines’ more specific requirements would provide greater transparency and certainty to project proponents and permitting staff. The SMP Handbook Aquaculture Interim Guidance also provides information to help refine this section.

Finfish – Many improvements have been made to this section reflecting past input, however some additional work is needed to better align with the state guidance:

- Aquaculture Policy 3.2.1.3 – To more accurately reflect the range of entities involved, add Ecology, NOAA and finfish aquaculture interests; consider suggested edits as follows:
3. When properly managed, aquaculture can result in long-term ecological and economic benefits. The County should engage in coordinated planning to identify potential aquaculture areas and assess long-term needs for aquaculture. This includes working with the Washington Department of Fish and Wildlife (DFW), the Department of Natural Resources (DNR), the Department of Ecology, National Oceanic and Atmospheric Administration (NOAA), ~~and~~ tribal co-managers, and fin fish and shellfish industry interests to identify areas that are suitable for aquaculture and protect them from uses that would threaten aquaculture’s long-term sustainability.
- Aquaculture Policy 3.2.1.12 – This policy is inconsistent with Policy 8a-e on page 3-4. Policy 8 sets a better framework for state and federally approved aquaculture uses/development more appropriately based on the mitigation sequence and does not establish a ‘zero-tolerance’ for escapes or disease. While avoidance is the first preference, mitigation allows for other actions to offset impacts. Policy 12 needs to be revised or deleted because, as currently stated, no currently existing, fully-permitted commercial net pen could meet this provision and the Program would be disallowing a state permitted activity; this does not seem to be the intent of the many related provisions.
- Regulation 3.2.4.10 should also include NOAA as another guidance agency involved in review.
- The definition for Net pens (Chapter 11) excludes Pacific salmon enhancement and restoration net pens but they are not addressed explicitly by the Chapter 2 Use Table, in this Chapter 3.2 Aquaculture section, or in Chapter 3.9 Restoration. Such facilities are akin to acclimation ponds and hatcheries that will be addressed in the pending revision to the Handbook chapter on Aquaculture. It is not immediately clear to the reader how the Program regards such use/development or how proposals would be reviewed.

Eelgrass – There does not appear to be a distinction made between native *Zostera marina* and non-native *Zostera japonica*. This could be accomplished by adding an eelgrass definition to Chapter 11 that only includes *Z. marina* so that it is adequately protected without directly protecting the non-native *Z. japonica*. Provisions should allow the voluntary removal of *Z. japonica* as consistent with current state Class C noxious weed listing. The Interim Aquaculture Guidance and Ecology website provides information to help address this issue.

Application Requirements – More concise language to avoid duplicity, along with greater specificity and less reliance on County’s discretion for case-by-case requirements will provide better consistency and predictability; consider suggested edits as follows:

2. ~~Prior to approving a permit for a new aquaculture use or development,~~ Where significant public views or views from a substantial number of residences on areas adjoining the proposed project may be effected, the Administrator may require, ~~at his/her discretion,~~ a visual analysis prepared by the applicant/proponent describing effects on nearby uses and aesthetic qualities of the shoreline. The analysis shall demonstrate that significant adverse impacts on the character of those areas are effectively mitigated. [*consider including reference to the visual impacts analysis from Ecology’s Siting Study*]

3. ~~Prior to approving a permit for a new aquaculture use or development, In areas adjacent to navigation lanes with high wind or wave energy,~~ the Administrator may require, ~~at his/her discretion~~ a plan to address and mitigate the potential for net pens to be swept from moorings into navigation lanes. *[some additional criteria would be helpful]*

4. ~~Prior to issuing a permit for any proposed aquaculture use or development,~~ the Administrator shall consider how the proposed activity is being regulated by other agencies and then establish the appropriate level of additional review. The Administrator may require, ~~at his/her discretion,~~ copies of permit applications and/or studies required by state and federal agencies to ensure provisions of this Program are met, including but not limited to, the following information:

6. ~~Where not required by other permit applications,~~ the Administrator, ~~at his/her discretion,~~ may require the applicant to provide baseline and periodic surveys, assessments, and/or operational monitoring by a qualified consultant to determine the magnitude of any significant adverse impacts. Conditional use permits shall include specific performance measures and provisions for adjustment or termination of the project if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.

Residential –

- General Regulation 3.8.2.9 on page 3-24 covers a lot and may benefit from some additional formatting to break into several provisions or separate key point from supporting statements.
- Our past comment about providing rationale for the 75 year lifespan is not addressed in this revised draft, but may be better addressed in a revised Cumulative Impacts Analysis/No Net Loss Report.
- Accessory Structure Regulation 3.8.3.1 is comprised of a rather long and complex sentence that makes the intended meaning difficult to discern; consider revising to improve readability.

Chapter 4. Policies and Regulations for Shoreline Modifications

Beach Access Structures –

- Regarding our previous comment, it does not appear the provisions of Section 4.1 have been revised to address the number of similar or related structures allowed on a single lot or to otherwise require consistency with WAC 173-26-231 general principle to ‘...limit shoreline modifications in number and extent.’
- Application Requirement 4.1.3.2.d prohibits beach access structures in mapped feeder bluff areas; such a limitation on allowance seems better included as a regulation.
- Policy 4.1.1.2 references both new and expanded structures and Regulation 4.1.2.6 allows for repair/maintenance of an existing legal structure but does not speak to enlargement of such a structure. While such activities are addressed in Chapters 5 and 10, a minor revision to this Chapter 4 provision is suggested to include cross references to aid the reader.

Stabilization – Overall this section may benefit from some streamlining and reorganization, including a section of general regulations that apply broadly to all shoreline stabilization. Additional clarifications and edits to consider include:

- 4.6.2 Existing Structural Shoreline Armoring:
 - Regulation 1 on page 4-21 allows for replacement in kind of existing armoring with demonstrated need. As consistent with WAC 173-26-231 noted above, consider some added criteria to ensure the smallest size necessary, reduce the size, and to have the proponent consider soft/bio-engineered replacement options as would be feasible.
 - Regulation 3 on page 4-22 allows for 10% fill placement or removal as annual maintenance of a bulkhead exempt from a substantial development permit based on SEPA compliance. As written, this provision could allow structural stabilization to incrementally increase over time without the same level of review required for expanded structures in Section 4.6.4 on page 4-23. Without any criteria or performance standards this provision seems too broadly permissive and may be difficult for Ecology to support. Local government does not have the authority to establish alternate or additional exemptions that differ from statute. Our previous comment about this provision has not been addressed and our concern about this allowance remains.
- 4.6.3 Subdivisions & Existing Lots Without Structures:
 - Regulation 3 seems to apply more broadly than this sub-category; consider moving to be a general regulation applicable to all shoreline stabilization.
 - Regulation 4 appears out of place as it is related to protection of structures but is listed under the sub-category specific to lots without structures. Consider moving this clause to be listed as a general regulation.
- 4.6.4 New or Expanded Stabilization
 - Regulation 1 is difficult to read and understand as a single sentence. Consider rephrasing to improve readability. Further, section 1.c reads “...The geotechnical analysis should evaluate on-site drainage...” may be better stated as ‘shall’ as a regulation not a policy.
 - Regulation 2 refers to three types of erosional shorelines as ‘feeder bluff, feeder bluff – talus, and exceptional feeder bluff.’ These terms are not consistent with the legend labels on the maps of Appendix A.
 - Regulation 3 relates to the comment above, and may be better located in a section of general regulations.
 - Regulation 4 is partly duplicative of Regulation 1.c above it, and could be appropriately applied more broadly to also include replacements, or as a general regulation.
- 4.6.5 Design Standards for New or Expanded Shoreline Stabilization
 - This clause is duplicative of Regulation 4.3 noted above; such broadly applicable requirements may be best presented as general regulations.
 - Regulation 6 appears to be focused on use of salvaged materials without addressing whether drift wood/logs would be an acceptable material. Also, how are visual impacts to be assessed and/or mitigated?
 - 4.6.7 and 8 include provisions that could also serve well as general regulations applied more broadly. Also, at Regulation 8.1.b, is the ‘existing shoreline’ meant to be the ordinary high water mark?
- 4.6.9 Application Requirements

- Clause 2.b terminology is not clear if/how it relates to the three types of feeder bluffs previously notes or terminology used on the Appendix A. Maps.
- Clause 3 is quite lengthy and much of it could serve as a general regulation.

Other Issues

While specific feedback is not given herein about other key topics such as Chapter 5.3 Public Access, Chapter 6 Buffers and Vegetation Conservation, Chapter 7 channel migration zone protections, Chapter 10 appeal processes, and the degree of detailed data shown on Appendix A. Maps, the County is urged to consider past Ecology comments about these and other issues. Written response to Ecology comments would be helpful to all parties tracking the iterative process of review and revision and will add to the rationale to support the Program upon adoption.

At several places throughout the document the phrase ‘thwart or substantially compromise’ is utilized; it is unclear the specific meaning of this phrase or the definitions of the terms used. The County may want to provide better explanation or consider alternate language.

Cumulative Impacts Analysis – No Net Loss Report: The County is strongly urged to release any revised version of this key supplemental document to aid the Planning Commission’s review of the current draft Program. Ultimately, a final version of the report must reflect the locally adopted SMP and be included with its submittal to Ecology for the state review and adoption process.

SMP Submittal Checklist – Similar to the above CIA/NNL Report, a Submittal Checklist is a required component of the County’s locally adopted SMP submittal packet for Ecology review and approval. The County is strongly urged to use the checklist form as a tracking tool that keeps pace with revisions to the Program to ensure that all state requirements are met and to aid readers in knowing where in the document to find particular topics.

It is noted that while the comments provided here are numerous and detailed they are not intended as exhaustive; additional feedback will continue to be provided by Ecology during the ongoing public review and local adoption process as requested and/or as deemed necessary by this department. The vast amount of work completed to date by staff, consultants, committee members and interested stakeholders is impressive - I look forward to continued involvement with the County’s ongoing SMP Update process.

Please don’t hesitate to contact me with questions.

Sincerely,



Michelle McConnell
Shoreline Planner
Southwest Regional Office