

2011 Shoreline Master Program Update Questions and Answers from the Shoreline Education Series

Ecology's Role, June 3, 2010

<p>1. <i>What are some alternatives to buffers?</i></p>	<p>Geoff replied that he uses “buffers” and “setbacks” interchangeably because some SMPs rely on setbacks that have buffer-like features like vegetation retention and the department also sees buffers that have setback-like features. He said that what’s most important is for the city to determine what works for it and meets the guidelines. The city can develop a range of options - such as removing unnecessary bulkheads or infiltrating stormwater or enhancing native vegetation right along the shoreline.</p>
<p>2. <i>How much flexibility is there in the vegetation standards for along the shoreline?</i></p>	<p>The science shows that vegetation along the shoreline is very important so you want to have as much native vegetation as possible, but D.O.E.’s approach is not prescriptive and there are ways to provide options.</p>
<p>3. <i>Isn't a refusal to allow bulkhead repair really an attempt at taking without paying restitution as when one bulkhead fails all neighboring bulkheads will fail eventually taking all waterfront homes??</i></p>	<p>The guidelines lay out standards for how and when you repair bulkheads. There needs to be some showing for the necessity for that repair, but there is a lot more flexibility than the requirements for new bulkheads. The basic protection for your home, if it’s at risk from erosion, allows you to bulkhead to protect your home.</p>
<p>4. <i>What is the date for implementation of no net loss? Does this apply to all the nearshore environment?</i></p>	<p>No net loss is a broad concept based on what is existing. There is an opportunity in the update to define what the baseline is, what ecological conditions exist that you want to protect and not make worse. The guidelines are not too specific on that. You’d have to have a reasonable expectation that the development regulations you’ve established would achieve this goal of no net loss and the cumulative impacts analysis is the place you show it in the update process. On a project-by-project basis, you also need to have a reasonable expectation that each individual project is not causing the loss of ecological resources. The question that the community can help answer is a real, precise baseline for no net loss – show your work.</p>
<p>5. <i>Let's talk about alternatives to declaring existing uses or structures “nonconforming.”</i></p>	<p>Achieving no net loss is an important thing and buffers or protection of shoreline vegetation will be an important part of that. Trying to hold</p>

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	<p>development back to minimize its impacts is going to be an important piece of this, but the main concern about nonconforming uses is where you draw the buffer or the setback line. There are a lot of things that go into that. If you've got a lot of houses close to the edge of the shoreline, you may have some valid reasons to make those buffers or setbacks smaller for that reach of shoreline and not render many homes nonconforming.</p> <p>We're certainly hearing the concern. It's really important for homeowners who might be affected by this to look at it closely. Our agency is trying to look into it. What we have not found so far is concrete examples of some of the more fearful scenarios. The more important thing is for the city to be very thoughtful about how the regulations may create nonconformities and then what those standards to manage nonconformities look like so there's something that will work for this community. For example, some communities are saying that you can rebuild a nonconforming shoreline single-family residence no matter what.</p>
<p>6. <i>What is the makeup of the group within the Department of Ecology that makes decisions? How many people? What are their credentials?</i></p> <p>7. <i>How many are shoreline homeowners?</i></p>	<p>In our group there are a lot of shoreline planners who are the main liaisons and work with the process— many with local level experience. There are wetland specialists, river specialists, and marine specialists, flood specialists. D.O.E. also looks to other agencies like the Dept. of Fish and Wildlife (DOFW) and the Attorney General's office for expertise. The state brings a lot of resources into the process. The department has a coastal geologist, a hydrogeologist, and a floodplain specialist, to name a few. The cities have quite a bit of technical expertise themselves and tend to hire consultants with good credentials, so we rely on their work as well.</p>
<p>8. <i>Why does the city keep trying to institute more draconian regulations than the state requires?</i></p>	<p>Geoff replied that he hasn't experienced any jurisdictions being more restrictive. Libby Hudson replied that the city has an existing SMP. This is an opportunity for the community to reflect the community values and character in this update. The community appreciates and wants to protect</p>

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	<p>the natural resources. Staff doesn't intent to enact draconian regulations – they really are intended to protect those resources. There are some problem areas in those regulations that have been identified through administering the regulations. As we move through this update, staff hopes that the review and changes to the regulations will reflect the community's values.</p> <p>Barbara Nightingale added there is a community that prohibits single-family residential docks but that reflects what they have there and how their shoreline is used. It sounds, on the face of it, draconian but for that community – for that shoreline – it makes sense.</p> <p>Kathy Cook said in the time that she's been the director, one of staff's biggest struggles is dealing with the ambiguities that cause a lot of frustration for staff and property owners. How those ambiguities are clarified will need to involve all interested parties. She added that, because the City's SMP is so old, it does not recognize modern technology, resulting in situations in which a proposal with new technology cannot be approved because of the way that the regulations are written.</p>
<p>9. <i>How do any proposed rules relate to ex post facto law?</i></p>	<p>There is some confusion about the Growth Management Act and an updated Shoreline Master Plan in regulating critical areas on the shoreline. That was corrected by the legislature this last session. There's actually an appeal of that bill because the appellants believe that the bill goes back in time and changes rules retroactively. [Note: This was a partial answer in the absence of an attorney.]</p>
<p>10. <i>How do you account for cumulative impacts in determining no net loss?</i></p>	<p>The cumulative impacts analysis is based on the inventory, so the inventory is a really important element identifying those processes, values, and functions and the conditions that they're in . The land use analysis is another component that gives you a potential for growth and where that growth is, where you have vacant land and the potential for subdivision or more docks. Then you identify what regulation(s) address</p>

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	that impact Each project isn't the sole bearer of no net loss but how that project will impact the overall scenario must be kept in mind.
<p>11. <i>Many ecological processes are cyclical. No net loss from what point in the cycle and who measures the loss?</i></p>	<p>Ken Sethney clarified that he was asking about the ecological processes of living things and asked if that wasn't part of what is trying to be addressed. Barbara Nightingale replied that people get confused about what we're doing – we're not managing fish and wildlife; we're not managing fish numbers – that's Fish and Wildlife and the National Marine Fisheries Service.</p> <p>What we're doing is managing land use on the shoreline so that the habitat is not impacted. You do have to identify what animals are out there and what their habitat is and to what extent their habitat is there. Who measures that loss is the local jurisdiction based on reasonably available information.</p>
<p>12. <i>Given that the salmon population has drastically declined under the present environment and no net loss means more of the same, do we have to accept continued loss of salmon, bottom fish, and orcas with heavy concentrations of PCB's?</i></p>	<p>It doesn't mean continued degradation – that's exactly what we're protecting for. Sometimes the presentations start with the orca because that's the top of the food chain that are impacted by land uses. That's a very important concern.</p>
<p>13. <i>No net loss is a key component of the SMP. What cities or counties have developed specific procedures or a methodology for demonstrating/determining no net loss? Do you really see and have you reviewed jurisdictions' no net loss analysis?</i></p>	<p>The City of Kent, the City of Kirkland, and the City of Redmond really stand out. Whatcom County has been held up as a model of many things. Those are seen as models and you'll find them on the D.O.E. website.</p>
<p>14. <i>Does no net loss still apply with variances and conditional use permits – how can this be done?</i></p>	<p>One of the criteria that must be satisfied is how the development will achieve no net loss. How that will be done has to be analyzed very closely and the City does a very good, very thorough job of that.</p>
<p>15. <i>How do you reconcile the principal of no net loss with the notion that you can retroactively require a vegetative buffer on existing residential property where none exists now?</i></p>	<p>The regulations from the update deal with future development and changes, such as expansions, and would not require retroactive restoration on an existing home. A lot that had been prepared for the construction of a house, it is possible that a buffer may be required to build the house (which is considered an improvement). A buffer is not</p>

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	going to make up all the difference from that construction but it would help achieve no net loss.
<i>16. Define “public interest.” Define “setbacks for views.’ Define “no net loss.”</i>	Public access is defined as to touch, view, and feel the water. Public interest is not defined although it is referred to. The master program development and the public participation that goes with it should be where the public interest is drawn out and articulated, including the statewide interest, but public interest is not precisely defined. The guidelines call out that you should have setbacks or views. It’s not something that you would find in the list of definitions but it is something that’s really created by the local jurisdiction.
<i>17. Do you want to expand on the no net loss definition?</i>	You can’t make things worse. The guidelines don’t have a very specific definition, but it’s all based on the inventory – what you have and what you think you want based on where you are. The city will have to spend some time grappling with that at both a global and individual development level.
<i>18. Because of limitations of our knowledge about the ecological, is no net loss really a workable concept? Is DOE confident that the issues can be resolved? How often will the results be moot?</i>	It’s a challenging concept; people have figured it out. It sounds overwhelming but remember that it is based on what you know.
<i>19. How have other jurisdictions achieved the goals of public access-shoreline trail systems?</i>	Kent and Des Moines have extensive public access along their shorelines. One caution: be careful so that you’re not putting public access where it could be perceived as a taking. There are some very creative ways of respecting private property rights and providing public access to everyone’s satisfaction. The city needs to demonstrate public access and how to achieve the public access in its program.
<i>20. Discuss state law regarding the right of the public to walk across or otherwise use privately-owned tidelands? Does the SMP address such usage?</i>	Yes, it does. One of the safeguards is the submittal checklist and one of the questions on the checklist is “Are private property rights being protected?”
<i>21. Can regulations distinguish between low-bank and high-bank shoreline properties in terms of regulating shoreline armoring?</i>	There is a reachscape analysis done at the inventory and analysis stage – the shoreline is divided up into different reaches because of the physical

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	<p>environment, because of ecological conditions. The nature of bluffs and non-bluffs can be a part of that and you can design your designations on features like that. They are different and would be managed in somewhat different ways. It's really at the permitting stage, when you're looking at a particular property, that those differences need to be considered</p>
<p>22. <i>Three long-time bulkhead contractors have told me that <u>none</u> of the hybrid or "soft" bulkheads they have built have lasted even one year. Do you know of one?</i></p>	<p>There are examples where it has worked and Jim Johansson has been tracking those over time, but it may not work on specific properties. We don't have an extensive database to provide numbers, but there are examples in different environments.</p>
<p>23. <i>What, if any, are the consequences if the city needs more time than 2012 to develop their SMP? Aka: What happens if the Bainbridge SMP is not submitted to Ecology by 2012?</i></p>	<p>If the city doesn't do it, the state law lays out a mechanism by which Ecology can come and do it for you – and we really don't want to do that. I imagine that your community would prefer to tailor and craft this in their own way.</p>
<p>24. <i>If the decision is made at the end of this process that bulkheads are the problem and must be removed, who pays for the removal?</i></p>	<p>This process is not going to call for the blanket removal of specific bulkheads. You may identify areas that have been degraded because of bulkheads, but we're not going to say that you need to remove those bulkheads. The new requirements would kick in when they come in for repair. One community decided to zone all the shoreline homes differently and built into their program that bulkheads were necessary to protect those homes.</p>
<p>25. <i>The rest of the question about Draconian regulations was that COBI, in the last several years has responded to lawsuits from homeowners on the Island because they wanted to do something much more demanding than shoreline required. It seems there are a couple of people in COBI who make all the decisions and there are a lot of people who feel that our roads have gone to pot because we are spending all of our money defending lawsuits. Now it looks like we're going to give over management of our water system to Kitsap County and we would have been better off if we'd never left Kitsap County because our government hasn't been very well run. My question is can't we have some vote on whether we want to have the City involved</i></p>	<p>Libby replied that the Island has 52 miles of shoreline. We have shoreline regulations; we have people who want to do development and have to follow the regulations that are in place right now. So, there are issues where our laws will not allow us to approve certain sorts of proposals that a land owner may want to develop and they have the ability to appeal those. On this Island – in this city – it's different. There's not as much litigation in other cities. It's not that the City is inviting lawsuits and we hope to improve the program as we update it. We're trying to protect our natural resources and allow appropriate land development. Kathy added that the City does not want to be involved in lawsuits or appeals either.</p>

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in all of this litigation which seems to be very limiting to what the Island can do as far as running the Island for the benefit of its residents.

She iterated that one of the problems is that some of the regulations are somewhat subject to interpretation – that’s something that can be involved through the update. Kathy also told the audience that there have been a number of situations in which the staff and applicant have been able to work out a solution that is acceptable to all. In addition to the cases in which the applicant appeals a denial or a condition, there are many times when neighbors or other citizens appeal.

After asking to see how many waterfront property owners were in the room, one speaker stated that the cities are pumping more pollutants into the Sound every day than this program can ever counter.

Geoff Tallent said that clearly the challenges for Puget Sound come from a number of sources. Where the water and land meet is a very important strip of land and there are other efforts going on too. He hopes this process captures those interests.

26. *What is the average amount of time required to complete the update process? Is it realistic to think that the City can complete it in the next 18 months?*

It’s in the three-four year range. The state originally asked for a two-year deadline & DOE requested a one-year extension. The biggest challenge is that the funding is tied to those timelines.