

Questions from the June 3, 2010 Education Series Meeting with Answers from Barbara Nightingale of the Department of Ecology

1. Are shorelines different for salt water and freshwater sites? Example Bainbridge vs Lake WA vs rivers? Yes, they are different in which of these waters qualify as shorelines of the state and shorelines of statewide significance. The State Shoreline Management Act RCW 90.58 defines Shorelines of the State as: the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta -- from DeWolf Bight to Tatsolo Point,

(B) Birch Bay -- from Point Whitehorn to Birch Point,

(C) Hood Canal -- from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area -- from Brown Point to Yokeko Point, and

(E) Padilla Bay -- from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer.

2. Can any proposed regulations allow for hard bulkheads and soft protection designs as a combined Solution? Hybrid Designs? Yes, standards for hybrid designs are not precluded from proposed regulations. The standards for shoreline stabilization are required to set forth circumstances under which shoreline alteration is permitted. Also, new shoreline stabilization measures are not allowed except when demonstrated. That demonstration of need must meet specific requirements both in what they protect and how the need is demonstrated. Hybrids

could be an option in shoreline stabilization requirements, depending upon demonstration of need and infeasibility of total soft shore protection. A hybrid is not necessarily precluded. State law gives preference to those types of shoreline modifications that have a lesser impact on ecological functions and policies that promote “soft” over “hard” shoreline modification measures.

3. Are there reviews and possibly reversals (by DOE) of variances from the SMP that have been approved at the local level? Yes, Ecology can deny variances and conditional use permits, even though they are approved at the local level.
4. What is the present status of the critical area ordinance in relation to the shoreline master plan’s regulations? Under the recently passed House Bill 1653, the State Shoreline Management Act RCW 90.58.090 was amended to add that wetlands and fish and wildlife habitat conservation areas within SMA jurisdiction must be governed by the SMP; while the critical areas outside SMP jurisdiction are still governed the GMA CAO, upon adoption of a comprehensive updated SMP meeting the 2003 State Guidelines. The bill strikes the original language that the level of protection to wetlands and fish and wildlife habitat conservation areas, located within shorelines of the state, must be equal to the CAO and replaces that language with: the level of protection of those areas must assure no net loss of shoreline ecological functions necessary to sustain shoreline natural resources per the 2003 Guidelines. Upon approval by Ecology of the SMP update under 2003 Guidelines, only the updated SMP will govern critical areas within state shoreline jurisdiction.
5. How can each municipality have different buffer requirements when there is (or should be) a standard buffer based on scientific studies? (Given identical designations and current conditions). Theoretically, given identical designations and current conditions, municipalities would likely have very similar buffers. However, it is not required that they have identical buffers under the SMA. Under the SMA, buffers should be based on science, local planning, patterns of development and the overall package of regulations.
6. I look forward to additional information on “mitigation”? Shoreline Guidelines (WAC 173-26) requires mitigation sequencing to be included in an SMP update. These can be accessed at http://www.ecy.wa.gov/programs/sea/sma/laws_rules/173-26/SMP_Guidelines_Final.pdf . In particular see WAC 173-26-201(2)(e) page 28 for environmental mitigation requirements.
7. I am interested in historic developments that are inappropriate by today’ standards? Coupeville is an example of such. The Coupeville SMP can be accessed at: http://www.town.coupeville.wa.us/reference_files/SMP.pdf with historical preservation policies beginning on page 31 of that document.
8. To what extent is “grand fathering” allowed and limited? State law requires that grandfathering will be identified in the SMP. State law requires that Grandfathered status is acknowledged and provided for in the updated SMP. Guidance on Nonconforming Structures & uses can be accessed at: http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Nonconforming_development_guidance.pdf
9. What prevents private acquisition of: community or public assets? Private Property ownership and the need to protect constitutional private property rights. Acquisition would need to be upon agreement and/or compensation to the private property owner.

10. Can you provide informed details on the value and benefit of public waters and subtidal lands appropriated by private citizen docks, floats, and piers? The City will prepare a shoreline inventory. This Inventory and Characterization document will provide information on the habitat value and conditions of ecological processes for all City shorelines within shoreline jurisdiction. It will also provide information on the location and percent coverage of docks, floats and piers. The inventory should have a suite of references on that topic.
11. How do the state, counties and cities justify pre-emptive use of public water resources for private use? Protecting private property rights is a requirement of the SMA. Recognizing and protecting private property rights. Under the SMA, RCW 90.58.020: The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership and, therefore coordinated planning is necessary; while, at the same time, recognizing and protecting private rights consistent with the public interest.
12. Describe enforcement policies and priorities for non permitted violation, such as (unpermitted) buffer changes?
13. "...repeat every 7 years'? Does this mean that the entire process repeats or that Ecology evaluates something every 7 years? Per the State shoreline Management Act (RCW 90.58.080): Local governments shall conduct a review of their master programs at least once every seven years. Following the required review, local governments shall, if necessary, revise their master programs. The purpose of the review is:
 - (a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and
 - (b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.
14. What's the full meaning of "new development". Remodel of existing residence? Development, as defined in the Shoreline Management Act is "a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level." The definition of a remodel or repair as opposed to a new structure in an SMP is actually a term to be defined by the local government through threshold-setting. For example, 20% replacement may be considered a repair and not require meeting new standards; whereas 30% replacement might require meeting new standards when repairing and replacing segments; and over 50% may be considered "new development" that requires replacement of old structure using new standards and specified building materials. However, to increase the value by 50% may be considered a remodel that could require coming into compliance with new standards of the SMP. The criteria for remodel/repair/replacement thresholds will be defined in the updated SMP by the local government.
14. Can local plans be more restrictive than State Guidelines? In other words, can local governments add related regulations that impose a burden on reasonable use of property? Yes. The actual standards are developed by the local government. The state only provides the

framework that guides the development of the SMP and requires that particular elements be included in the master plan.

15. Can a local plan require actions (such as planting shoreline vegetation) that results in/requires a “net gain” for a parcel? The Guidelines specify the objective of achieving no net loss. This can be achieved in a variety of ways. A local plan can require vegetation conservation standards that are supported by a local policy, to prevent a loss of ecological function. For example, the local government could require the planting of vegetation to off-set impacts caused by the given development benefit the shoreline and in a sense to produce a net gain in ecological function.