

Response to Councilmember Jones' Comments from May 14, 2013

Mayor Pro Tem Jones' comments are included in blue below. The relevant sections of the Shoreline Master Program are included in black and staff response is included in green.

1. Changes to 2.3 G through J – definite improvement.

2.3 Shoreline Ecological Protection and Mitigation Policies

- G. The City should develop a program to periodically review conditions on the shoreline and conduct appropriate analysis to determine whether or not other actions are necessary to protect and restore shoreline ecology to ensure no net loss of ecological functions.
- H. Allow off-site mitigation when doing so would serve to better accomplish the goals and objectives of the Shoreline Management Act to protect and preserve ecological functions, or provide public access, or promote preferred shoreline uses, provide for appropriate development incentives and/or alternative mitigation options.
- I. The City should encourage innovative restoration strategies to provide for comprehensive and coordinated approaches to mitigating cumulative impacts and restoration rather than piecemeal mitigation.
- J. When available and when appropriate to the situation, the City should allow for offsite mitigation approaches, including Advance Mitigation, Fee-In Lieu, and Mitigation Banking.

Agree. Additional flexibility around mitigation will be important for the overall success of future mitigation efforts.

2. What promoted the change to 2.33 F? Why not encourage the cooperative use of existing parking, cargo handling and storage facilities over new construction?
- F. Encourage the cooperative use of ~~docking parking, cargo handling and storage~~ facilities in industrial areas instead of new facilities.

Ecology recommended that we delete it because it was restatement of policy in **2.25 Industrial Policies**

- H. Encourage the cooperative use of docking, parking, cargo handling and storage facilities on industrial properties.
3. Discussion of mitigation methods in section 3.21 I, J and K is appreciated.

3.21 18.34.410 - No-Net-Loss and Mitigation

- I. Type and Location of Mitigation:

1. Preference shall be given to mitigation projects that are located within the City of Olympia. Prior to mitigating for impacts outside City of Olympia jurisdiction, applicants must demonstrate that the preferences herein cannot be met within City boundaries

2. Natural, Shoreline Residential, Urban Conservancy, Waterfront Recreation, and Aquatic Environments: Compensatory mitigation for ecological functions shall be either in-kind and onsite, or in-kind and within the same reach, subbasin, or drift cell, except when all of the following apply:

a. There are no reasonable on-site or in subbasin opportunities (e.g. on-site options would require elimination of high functioning upland habitat), or onsite and in subbasin opportunities do not have a high likelihood of success based on a determination of the natural capacity of the site to compensate for impacts. Considerations should include: anticipated marine shoreline/wetland/stream mitigation ratios, buffer conditions and proposed widths, available water to maintain anticipated hydrogeomorphic classes of wetlands, or streams when restored, proposed flood storage capacity, potential to mitigate riparian fish and wildlife impacts (such as connectivity); and

b. Off-site mitigation has a greater likelihood of providing equal or improved critical area functions than the impacted critical area.

3. Urban Intensity, Marine Recreation and Port Marine Industrial Environments:

a. The preference for compensatory mitigation is for innovative approaches that would enable the concentration of mitigation into larger habitat sites in areas that will provide greater critical area or shoreline function.

b. The Administrator may approve innovative mitigation projects including but not limited to activities such as advance mitigation, fee in-lieu, mitigation banking and preferred environmental alternatives. Innovative mitigation proposals must offer an equivalent or better level of protection of critical area functions and values than would be provided by a strict application of on-site and in-kind mitigation. The Administrator shall consider the following for approval of an innovative mitigation proposal:

1) Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas;

2) Consistency with Goals and Objectives of the Shoreline Restoration Plan and the Goals and Objectives of this Program;

3) The applicant demonstrates that long-term management and protection of the habitat area will be provided;

4) There is clear potential for success of the proposed mitigation at the proposed mitigation site;

5) Restoration of marine shoreline functions or critical areas of a different type is justified based on regional needs or functions and processes;

6) Voluntary restoration projects.

J. Fee In-lieu:

1. In cases where mitigation pursuant to this section is not possible, or where the maximum possible onsite mitigation will not wholly mitigate for anticipated impacts, or where an alternative location, identified in an adopted restoration plan, would provide greater

ecological function, the Land Use Administrator may approve a payment of a fee-in-lieu of mitigation. The fee shall be reserved for use in high value restoration actions identified through the Shoreline Restoration Plan.

2. To aid in the implementation of off-site mitigation, the City may develop a formal program which prioritizes wetland and/or other critical areas for use as mitigation and/or allows payment in lieu of providing mitigation on a development site. This program shall be developed and approved through a public process and be consistent with state and federal rules. The program should address:

a. The identification of sites within the City that are suitable for use as off-site mitigation. Site suitability shall take into account critical area functions, potential for degradation, and potential for urban growth and service expansion; and

b. The use of fees for mitigation on available sites that have been identified as suitable and prioritized for restoration and/or enhancement

c. Any off-site mitigation would have to be consistent with the goals and objectives of the Shoreline Restoration Plan.

K. Advance Mitigation

1. Advance mitigation is a form of permittee responsible compensatory mitigation constructed in advance of a permitted impact.

2. To aid in the implementation of advance mitigation, the City may develop a formal advance mitigation program. This program shall be developed and approved through a public process and be consistent with state and federal rules as defined in the Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation (December 2012). At a minimum, the program should address:

a. Credit value of advance mitigation proposals

b. Credits can only be used by the same applicant

c. Establish performance standards

d. Establish baseline conditions

3. Any advance mitigation project shall be consistent with the goals and objectives of the Shoreline Restoration Plan.

Staff looks forward to implementing these new approaches to mitigation.

4. There is needed a definition of "Primary Structure". The term is used frequently.

Staff will add a definition of primary structure to the definition section, such as, "Primary structure meaning the main or principal building on the property. Not an accessory building or structure."

5. I appreciated the clarifications contained within 3.33 C related to managing authorized uses within the VCA.

- C. In general, protected and restored vegetation conservation areas shall be composed of native vegetation comparable in species density and diversity to an ecologically similar undisturbed area. Such species density and diversity shall be determined by the Administrator based on best available science. Provided, however, that up to 33% (one-third) of the vegetation conservation area may be utilized for authorized uses and activities described in OMC 18.34.493 provided that impervious surfaces shall not exceed 25% of the VCA. If an authorized use or activity requires more than 33% of the VCA, such as transportation facilities, utilities, and public recreation trails, the applicant shall provide an equivalent area elsewhere on-site and shall ensure that the proposed use or activity will not result in a net loss to shoreline ecological functions.

This clarity will improve staff's ability to administer the code in the future by establishing clear limits on the encroachments permitted in a VCA.

6. Table 6.1 contains a change in the Waterfront Recreation allowing industrial uses. This appears to be in conflict with the management policies for this environmental designation.

This was an error and will be corrected in the next draft. Industrial uses should be allowed in the Marine Recreation subject to a conditional use permit and not allowed in the Waterfront Recreation shoreline environmental designation.

7. Is there a conflict between Table 6.1 and Section 2.33 J, since the narrative says that new boat houses should not be allowed?
- J. Encourage design elements that increase light penetration to the water below existing or new moorage facilities, such as increasing the structure's height, modifying orientation and size, and use of grating as a surface material. No new overwater coverage moorage or boathouses should be allowed.

Upland boat storage, also sometimes known as boathouses (cars go in 'garages') would be allowed per table 6.1. Boathouses are not allowed in the aquatic environmental designation and new overwater structures are not allowed in any environmental designation.

8. Table 6.3 references reach designations with names like Budd 3A, or 5B but these titles do not show on the environmental designation map. The reader has no orientation to these titles.

We will include reach designations on the final shoreline environmental designation map.

9. The VCA related height incentives described in 3.34 D. is not yet clear to me. Perhaps an example for a hypothetical Urban Intensity parcel north of Brawne on Budd Inlet would help me understand how this works. I believe this would be Budd 3A. In particular what is the required VCA?

If I'm reading the table correctly the minimum requirement is 30'. So with no restoration or improvement actions I have achieved the minimum required VCA and I am automatically eligible for a building height incentive of up to 65 feet?

I understand that use of the VCA for eligible uses beyond a 33% limit may trigger the need for mitigation actions, but these don't seem to have a bearing on height incentives.

Further what is the relationship between the height incentives and setback reductions? Is there a way to achieve both benefits?

I believe Councilmember Jones is referring to section 3.41 18.34.620 - Use and Development Standards Tables D in his comments above.

- D. Upon demonstration of adequate provisions for protection or creation of the minimum required vegetation conservation area on the same property or offsite as described herein, an applicant may obtain approval of a development incorporating an increased maximum building height ('VCA bonus') or a reduced minimum principal building setback.

Staff proposes that the section be amended to read:

OMC 18.34.620(D). Upon demonstration of adequate provisions for protection or creation of a vegetation conservation area (VCA) on the same property or offsite as described herein, an applicant may obtain approval of a development including an increased maximum building height ('VCA bonus') as set forth in Table 6.2. At minimum, such VCA must conform to the provisions of OMC 18.34.492 and 18.34.495. If on the development site, such VCA must be at least as wide as described for the site in Table 6.3. If offsite, such VCA must be of at least equal upland area as would otherwise be required onsite and must provide equal or greater environmental benefit; see OMC 18.34.410(l) for guidance.

Note that since Marine Recreation (at least reach 5c) is now covered by Table 6.3, so I took the setback reduction provision out of this clause.

- 10. 3.41 E, which is related to Table 6.3 is an impressive effort by staff to reflect the interests of the public as expressed by the Council. I found subsections 1 through 8 to really help define what is needed to manage a VCA.
 - A. Reductions shall be allowed as provided in Table 6.3 and subject to the following:
 - 1. Incentives for setback reductions noted herein are cumulative up to the maximum reduction allowed. Incentive eligible restoration projects may be completed in association with, or in addition to, required mitigation projects, however, no setback reductions shall be allowed for required mitigation projects.
 - 2. Public access shall be access to the marine shoreline from the public right of way via a sidewalk or paved trail on a publicly dedicated easement no less than 6 feet in width and constructed to city standards as included in the City's Engineering Design and Development Standards. Other forms of indirect access such as viewing towers and platforms may be considered where direct access to the shoreline is deemed dangerous due to the nature of the use of the property or the conditions at the shoreline. Existing access meeting the standards described herein may be used to meet setback incentive provisions.

3. Park space shall be an open space accessible to the public providing direct access to the shoreline. The area of the park shall be no less than the area of the shoreline reduction and in no case shall the area be less than 1,000 square feet. Such areas shall include at least 4 of the following amenities: 1. shelters; 2. trash receptacles and drinking fountains; 3. pedestrian lighting, light bollards; 4. public art; 5. street trees, flower boxes, or container landscaping; 6. street vendor stations; or, 7. bike racks. Existing park space meeting the requirements described herein may be used to meet setback incentive provisions.
4. Trail shall be a commuter multi-use trail on a public easement no less than 12 feet in width, providing continuous public access across the site and shall be placed upland of the ordinary high water mark and constructed to commuter multi-use trail standards as included in the City's Engineering Design and Development Standards. Existing trails meeting the requirements described herein may be used to meet setback incentive provisions.
5. Vegetation restoration shall be planting of native shoreline vegetation in excess of that required to achieve no net loss of environmental function and shall substantially mimic undisturbed native shorelines in the South Puget Sound in plant species, species mixture and plant density. Vegetation restoration shall be accomplished through an approved Vegetation Management Plan. Uses may encroach the required setback area as described above so long as they provide for mitigation of the encroachment at a ratio determined to offset the impacts of the encroachment and in no case less than a 2 square feet of mitigation for every 1 square foot of encroachment within the required setback area and demonstrate no net loss of environmental function.
6. Removal of bulkhead shall be the physical removal of a vertical structure and replacement with a softened shoreline treatment. Measures may include use of gravels, cobbles, limited use boulders, logs, and vegetation.
7. Replacement of a hardened shoreline shall be the physical removal of rip rap or other non-vertical shoreline protection with a softened shoreline treatment. Measures may include use of gravels, cobbles, limited use boulders, logs, and vegetation.
8. Water dependent, Water Related, Water Oriented and Listed uses may encroach the required setback and vegetation conservation area as described in Table 6.3 so long as they provide for mitigation of the encroachment at a ratio determined to offset the impacts of the encroachment and in no case less than a 2 square feet of mitigation for every 1 square foot of encroachment within the required vegetation conservation area and demonstrate no net loss of environmental function. Required mitigation shall meet the vegetation restoration standards noted in 5 above. Reductions to less than a 20 foot setback shall only be allowed where alternative public access has been provided sufficient to mitigate the loss of direct public access to the shoreline. Projects proposing setbacks less than 20 feet shall also meet the shoreline bulkhead removal or hardening replacement requirements of 5 or 6 above for each linear foot of shoreline impacted. Mitigation required may take place on site or off site.
9. No setback shall be required in the Port Marine Industrial shoreline environmental designation, however, mitigation shall be required to offset any impacts determined through the mitigation sequencing process to ensure no net loss of environmental function and to mitigate for loss of public access.

Staff agrees and thinks that this new section provides clarity around development occurring near the shoreline can be managed in way that will enhance the shoreline in areas where such efforts can have the greatest benefit.

11. Budd 5C, which is designated Marine Recreation, table 6.3 says that the building setback in this reach may be reduced from 75' to 50' with the provision of a continuous trail on a public easement no less than 12 feet in width. This reach has a good start at getting that trail in place. It also has great public access and areas that can likely be considered park space.

My recollection is that the Council placed a high priority on a stabilized shoreline in this area through soft engineering. Yet there are greater incentives available through setback reductions for any other of the other identified restoration or improvement actions than for the action the Council was emphasizing.

Marine Recreation Budd 5C	75'/30'	50'	Public Access	50% (12.5')	See 18.34.620.E. 2
			Park Space	Up to 50% (12.5')	See 18.34.620.E. 3
			Trail	100% (25')	See 18.34.620 E. 4
			Restoration of vegetation	Up to 100% (25')	See 18.34.620.E. 5
			Bulkhead Removal >50% frontage	40% (10')	See 18.34.620.E. 6
			Bulkhead Removal <50% frontage	20% (5')	See 18.34.620.E. 6
			Replacement of hardened shoreline with soft structural stabilization measures waterward of OHWM.	20% (5')	See 18.34.620.E. 7
*Water Dependent and Water Related Uses Reduce from 50'-0'			Water Dependent/Related Use	100% (50')	See 18.34.620.E. 8

As noted above in the section of Table 6.3 related to reach Budd 5C setback reductions are provided for public access, parks space, trail, restoration of vegetation, bulkhead removal, and replacement of hardened shoreline with soft structural stabilization. Vegetation restoration could include shoreline softening. We can certainly change the ratios to add more weight to bank softening techniques. We will amend this table to provide greater weight for shoreline softening along this reach.

Marine Recreation - Budd 5C	75' / 30'	50'	Public Access	20% (5')	See 18.34.620.E. 2
			Park Space	Up to 20% (5')	See 18.34.620.E. 3
			Trail	28% (7')	See 18.34.620 E. 4
			Restoration of vegetation	Up to 28% (7')	See 18.34.620.E. 5
			Bulkhead Removal >50% frontage	40% (10')	See 18.34.620.E. 6
			Bulkhead Removal <50% frontage	20% (5')	See 18.34.620.E. 6
			Replacement of hardened shoreline with soft structural stabilization measures waterward of OHWM. <u>This measure is required and may be used in conjunction with other measures to achieve a maximum setback reduction of 25 feet.</u>	50% (12.5')	See 18.34.620.E. 7
*Water Dependent and Water Related Uses Reduce from 50'-0'			Water Dependent/Related Use	100% (50')	See 18.34.620.E. 8

12. Table 6.3 provides a setback reduction to zero for water oriented uses that differ, depending on environmental designation of the reach.

[Marine Recreation at Budd 5C](#) – from 50' down to 0' for water dependent and water related uses.

[Waterfront Recreation at Cap 6](#) – from 30' down to 0' for water dependent uses.

[Urban Intensity at Budd 3A](#) – from 30' down to 0' for water oriented uses.

Urban Intensity at Budd 4 – from 50’ down to 0’ for water oriented uses.

Urban Intensity at Budd 5A – from 50’ down to 0’ for water oriented uses.

I recall that the Council was interested in providing a zero setback for water dependent uses. Water oriented and water related uses were not provided special treatment.

(39) "Water-dependent use" means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

(40) "Water-enjoyment use" means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

(41) "Water-oriented use" means a use that is water dependent, water-related, or water-enjoyment, or a combination of such uses.

(43) "Water-related use" means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Council discussed setbacks and VCA widths at great length on several occasions and provided some direction regarding reductions in setback and VCA widths for water dependent uses. Given the potential for confusion around this issue and the guidance provide by the Department of Ecology staff felt it was important that Council fully understand the definitions of the three different shoreline use categories before making a final decision about how to proceed.

List of uses typically associated with different shoreline use categories from the 2009 TRPC draft SMP for Lacey, Olympia and Tumwater.

xx.15.010 W Shoreline Definitions - Specific

Water-dependent Use. A use or portion of a use which cannot exist in a location that is not adjacent

to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

Water-dependent uses include, but are not limited to:

- A. Aquaculture,
- B. Boat launch facilities,
- C. Ferry terminals,
- D. Hydroelectric power plants,
- E. Marinas,
- F. Marine construction, dismantling and repair,
- G. Marine and limnological research and education,
- H. Private and public docks for public moorage,
- I. Terminal and transfer facilities for marine commerce and industry,
- J. Water intakes and outfalls,
- K. Log booming, and
- L. Tug and barge facilities.

Water-enjoyment Use. A recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public's ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

Water-enjoyment uses include but are not limited to:

- A. Aquarium, with direct water intake
- B. Restaurants,
- C. Public golf courses,
- D. Museums,
- E. Shared use paths
- F. Boardwalks, and
- G. Viewing towers.

Water-oriented Use. A use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

Water-related Use. A use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- A. The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- B. The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Water-related uses include, but are not limited to:

- A. Warehousing or storage facilities,
- B. Support services for fish hatcheries,
- C. Seafood processing plants,
- D. Wood products manufacturing,
- E. Log storage,

- F. Watercraft sales, and
- G. Boating supplies.

Department of Ecology guidance from their February 5, 2013 correspondence to Mr. Stamm.

6. 2.24 (A) – a preference for water-dependent commercial use, followed by water related and then water enjoyment commercial uses, is not reflected in Tables 6.1 and 6.2. The City appears to have more accurately reflected preferences as they are presented in the Guidelines; consider using that verbiage instead. In addition, non water oriented commercial uses can also be considered when providing a significant public benefit such as public access or ecological restoration - WAC 173-26-241 (d), 1st paragraph and (i) & (ii).

Staff looks forward to receiving council direction on how to finalize table 6.3 of the SMP.

- 13. Section 3.55 related to transportation facilities includes language related to abandoned rail corridors. This is not needed and should be deleted. Also this whole section contains policy constructed on the word “shall”. Ecology’s guidance directed that we not use this terminology.

3.55 18.34.700 - Transportation and Trail Facilities

- A. The following provisions apply to trail, road and railroad expansions:

Staff Response: Revised language reflects edits recommended by Ecology to include railroads. In policy 2.28 below the Department of Ecology recommended including railroads in this policy. Policies and regulations should be consistent therefore 3.55 18.34.700 was also amended to include railroads.

2.28 Transportation Policies

- A. New roads and railroads, and expansions thereof should not be built within the shoreline jurisdiction. Where this is not feasible, such improvements should be located and designed to have the least possible adverse effect on the shoreline, not result in a net loss of shoreline ecological functions, or adversely impact existing or planned water-oriented uses, public access, and habitat restoration/enhancement projects.

There is one railroad within 200 feet of the shoreline that runs along Capitol Lake and Percival Creek.

- 14. New nonconforming language is generally clunky.

Staff Response: Staff has revised this section and the revised language is included in the May 28, 2013 draft Shoreline Master Program. This section has been simplified, and various redundancies and unnecessary language has been eliminated. The whole section was moved from the zoning code’s nonconforming chapter (chapter 18.37) to the shoreline master program - in chapter 18.34 of the Olympia Municipal Code. In addition, the prior version had a 50% threshold about when a structure was damaged fire or natural disaster. However, in internal staff discussions, it was felt that the 50% threshold does not provide significant value within this context. Accordingly, the section (18.34.910(B)) was revised to allow rebuilding when any portion of a structure is damaged or destroyed by fire or natural disaster.