

February 5, 2013  
Todd Stamm, Planning Manager  
Olympia Community Planning and Development  
PO Box 1967  
Olympia WA 98507-1967

Re: City of Olympia Shoreline Master Program update | Council Hearing Draft (January 2013)

Dear Todd,

The Department of Ecology (Ecology) appreciates the opportunity to provide comments on the draft Shoreline Master Program (SMP) currently pending before the Olympia City Council. Ecology recognizes the challenging nature of the Comprehensive update process and the time and energy invested by citizens of the City as a whole and by City staff personally.

As your partner, we look forward to continuing to work with you to ensure the Olympia SMP is consistent with the Shoreline Management Act or SMA (RCW 90.58), the Shoreline Guidelines (WAC 173-26) and will achieve the no net loss of shoreline ecological functions standard over time.

Ecology has provided comments to City staff over the years as drafts have been developed and we appreciate that many of the comments have been integrated into the current draft SMP<sup>1</sup>. The comments below summarize high level areas of concern that remain, most of which have previously been identified. Citations (where appropriate) and a brief explanation are provided in support of each of these comments. The enclosed attachment (Attachment A) is intended to provide detail in support of the summary comments in the form of more specific or additional comments on provisions in the SMP. Many of these comments are exactly the same as those conveyed with regard to the December and November 2012 drafts; please also see those documents for further detail.

### Section 1.

1. The City has the option to write new critical area provisions in the SMP to meet requirements in the Guidelines (WAC 173-26-221 [2]), or to either embed or incorporate its existing CAO by reference. The current draft appears to incorporate the CAO by reference. Therefore section 1.4 eventually must reference a specific, dated version of the ordinance that adopted the CAO. Critical area provisions in the SMP will continue to apply to critical areas within shoreline jurisdiction in the event the city revises its CAO (OMC 18.32). An SMP amendment would be required to revise the critical areas provisions in the SMP.

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<sup>1</sup> Comments were provided on the October 2010 internal draft SMP, the OPC draft SMP dated June 2012, and most recently on the November 2012 internal draft and December 18, 2012 draft SMPs. A letter summarizing Ecology's likely required changes to the Critical Areas Ordinance for incorporation into the SMP was sent under separate cover on December 28, 2012.

## Section 2.

2. 1.4 - Circumstances under which the City would allow a shoreline Conditional Use Permit to grant relief from critical area regulations within shoreline jurisdiction needs to be clarified.

A shoreline variance is the means set forth in the Shoreline Management Permit and Enforcement Procedures Rule (WAC 173-27) to grant relief from the specific bulk, dimensional or performance standards in a master program.

### Section 2

1. Use of the word “shall” in policies is required to be changed to “should” (WAC 173-26-020).

2. 2.5 (E) - this provision should also apply to roads and utility corridors. Table 6.1 supports this change with the split C/P permitting scheme and the Guidelines at WAC 173-26-211

(5)(a)(ii)(B) also support it.

3. 2.8 (A) – this provision should be refined. In addition to recreational use, what makes lands designated Waterfront Recreation different from other recreational lands like the proposed city park on Ward Lake? How does this designation then apply to the uplands adjacent to the Port Lagoon?

4. 2.8 (B) – clarification of what “low intensity recreational uses” encompasses is needed in order to understand exactly how the City intends to apply these policies and manage these areas in the future.

5. 2.11 (C) – non-water oriented uses may be allowed where there is **NO** direct access to the shoreline. WAC 173-26-211 (5)(d)(ii)(A) and 173-26-241 (3)(d)(ii).

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), 1<sup>st</sup> paragraph and (i) & (ii).

7. 2.27 – floating homes as defined in RCW 90.58.270 have not been addressed. Since the policies and regulations will be split into two separate documents (Comprehensive Plan and Development Regulations), this section should also include policies related to residential accessory and appurtenant structures.

8. 2.28 – will transportation policies (and regulations) apply to railroads? Also noted is Ecology’s preference for use of the word ‘feasible’ instead of ‘possible’ because feasible is defined in the SMP.

9. 2.32 (E) – this policy conflicts with a regulation in section 3.65 H and will also conflict with regulation 3.62 (A)(5) after a Guidelines-required change is made. Striking ‘recreational use’ here will harmonize this policy with those regulations and with the Guidelines at WAC 173-26-231 (3)(c).

10. Section 2.33 (Moorage Policies) appears to encompass recreational floats, even though section 3.3 (C) defines floats as not intended for use as boat storage.

### Section 3

1. 3.3 – various comments on definitions section(s). Most significantly, in 3.3 (C) the definition of shorelands or shoreland areas cannot be varied from the definition in RCW 90.58.030 (2)(d); contiguous floodplains 200’ landward of floodways are not optional shoreline

jurisdiction.

2. 3.16 (B) is not accurate - see comment on previous draft. Minimum shoreline jurisdiction is the *larger* of the floodway plus 200' of contiguous floodplain or 200' from the OHWM, and associated wetlands. If the intent of this statement is to say that no areas of option shoreline jurisdiction are being evoked as authorized in RCW 90.58.030 (2)(d)(i) and (ii), consider stating just that.

3. 3.24 (F) – please refine what is meant by “effective” or point to a definition. It is not clear what it is intended and whether or not this regulation would be enforceable as written.

4. 3.26 (B) - please verify the intent is not to authorize informal trails under any circumstances (informal meaning trails not addressed in the EDDS). If such trails would be authorized, the SMP must contain standards for them. Provisions the SMP needs to include may generally relate to width, avoiding and minimizing vegetation disturbance, surfacing, etc.

5. 3.30 – additional detail will be necessary for provision (D). For example, which activities exactly trigger restoration or creation of a VCA? Must development have a direct impact on the VCA to require restoration? If the prescribed setback is met is the avoidance step of the mitigation sequence fulfilled and therefore no further planting or restoration required? If not, how much planting is required? This is the type of detail that will be needed in this section.

6. 3.30 (E) – the reference here and in multiple places in the document to OMC 18.34.410(B) does not seem applicable. Should this reference be to OMC 18.34.410(H)?

7. 3.31 - Ecology is still seeking clarity on whether the intent of this section is to allow these uses/activities within VCAs without a variance. While the list of uses allowed in the VCA is relatively broad; a 25% limit to the amount of the VCA that can be encumbered with these uses is established in subsection 3.33 (C).

8. 3.31 (B) - Accessory structures are not defined in the SMP, while appurtenant structures are. View Protection regulations in section 3.36 (I) suggest that accessory structures include things like fences, walls and hedges. Ecology needs to know specifically which structures may be allowed in VCA's. The way this provision is currently written, we would interpret it to mean that no appurtenant structures, fences, walls, hedges, or structures meeting the definition of accessory structures in OMC 18.02.180 would be authorized within the VCA. However this is not completely apparent in the following subsection (3.32). That subsection says these structures must protect existing native vegetation within the VCA but not that they cannot be located within the VCA. Subsection 3.54 (C) suggests a waterfront patio or deck can be placed within the VCA. All of these provisions need to be aligned and consistent with one another, and clear to the user.

9. 3.32 – similar to the preceding comment, the SMP must explicitly state what is prohibited and what is allowed in a VCA. It is not clear if this provision is intended to apply only to alteration of these structures, or also to new structures. New structures and uses of the type listed here appear to be prohibited in VCAs per subsection 3.31 (B). Things like sport courts, patios, decks, etc. should either be prohibited or allowed subject to the 25% limitation in 3.33 (C).

10. 3.33 (B) and (C) – VCA widths cannot be reduced by the administrator, but they may be averaged. Reductions to a dimensional standard such as a VCA would require a shoreline variance.

11. 3.33 (E) – are lawns completely prohibited or can they part of the 25% utilized under subsection 3.31 and 3.33 (C)?

12. 3.36 (I) – accessory structures are prohibited in VCAs per subsection 3.31 (B).

13. 3.41 (C) - Accessory structures are prohibited in VCAs per subsection 3.31 (B). Is this meant to apply to structures between the edge of the VCA and the setback? The SMP must be explicit which uses or structures are authorized, how many, and of what size in both VCAs and in setback areas. Are 'small buildings' different than 'accessory' or 'appurtenant' structures? Consider further defining this in the SMP; for example, I don't consider an 800 square foot garage to be a small structure.
14. 3.41 (D) – bonuses and incentives need to be more clearly described throughout the SMP. These mechanisms and the associated triggers/requirements need to be thoroughly explained or referenced in the SMP.
15. 3.41 (Table 6.1) - new residential development in the Aquatic designation must be prohibited. This would be a required change. See WAC 173-26-241 (3)(j).
16. 3.41 (Table 6.2) - a zero foot setback for non-water dependent development (possibly with an exception for water related development) is not acceptable to Ecology. As was previously stated in Ecology comments, it is unclear how the SMP reflects that water dependent uses are preferred uses of shoreline areas with one generic setback that applies to all uses in a shoreline segment or designation.
17. 3.43 – aquaculture. If commercial geoduck is authorized, the provisions from WAC 173-26-241 (3)(b)(ii) through (iv) are required. Additional criteria for evaluating this use/activity are needed. Example criteria from approved SMPs were sent to the City on 12/6/2012.
18. 3.46 (B)(11) – the 30' setback conflicts with tables 6.1 and 6.2. Per table 6.1, marinas are permitted in the Port Marine Industrial zone, and there is no setback there per table 6.2.
19. 3.49 (A) – the prohibition on expansion of overwater commercial buildings conflicts with provisions in subsection 3.81 (2).
20. 3.51 - This provision goes beyond the Guidelines where non-water oriented use and development is allowed as part of a mixed use development that includes water dependent uses. As proposed in the SMP, non water oriented commercial is only allowed in one SED (Urban Intensity).  
Additional qualifying circumstances where non water oriented commercial use and development are acceptable are outlined in the Guidelines; these need to be added to the SMP (limited navigability and physical separation from the shoreline by another property or public right of way, WAC 173-26-241 (3)(d)(ii)). Considering these exceptions, it seems those that are not currently included are the most likely to apply to properties within Olympia's shoreline jurisdiction.
21. 3.53 – the Guidelines statement “Recreational development and facilities shall be located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located” at WAC 173-26-241 (3)(i) needs to be added to the SMP.
22. 3.54 (C) - The intent of this provision has changed over time; it started as an incentive for removal of hard armoring. Ecology assumes every property owner that can take advantage of this will; this provision should be assessed in the CIA if it hasn't been. This also conflicts with subsection 3.31 (B) which prohibits accessory structures in the VCA.
23. Use of the word “should” in regulations is required to be changed to “shall” (WAC 173-26-020).
24. 3.55 (E) - This needs clarification. Subsection 3.26 (A)(2) says trails “shall be buffered from sensitive ecological features and provide limited and controlled access to sensitive features and the water's edge where appropriate”. Subsection 3.33 (C) says “up to 25% of the

vegetation conservation area may be utilized for authorized uses and activities described below”, which includes trails. Subsection 3.53 (D) says “trails and shared use paths shall be setback at least 10 feet from the OHWM in the Urban Intensity Environment and at least 25 feet in all other locations”.

It appears that trails in the UI SED must be at least 10’ from the water. However because the VCA is between 20’ and 30’, only 25% of the VCA on a particular site could be encumbered by ‘limited and controlled’ trail spurs. Assuming all of the other sections cited above work together, consider adjusting this one to reflect that there are limitations to the authorization.

25. 3.56 (B) – the 30 setback cited here conflicts with the Port Marine Industrial SED, where setbacks are zero.

26. 3.57 (C) - The Guidelines at WAC 173-26-231 (2)(a) say “Structural shoreline modifications are only allowed where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger...” Primary structure must be defined in this context. Example language for consideration was submitted to the City in November and December 2012.

27. 3.58 (Table 7.1) – fill in the aquatic designation. Per WAC 173-26-231 (3) (c), fill waterward of the OHWM for any use except ecological restoration requires a CUP.

28. 3.58 (Table 7.1) – soft armoring. Requiring a CUP can be a disincentive. Consider establishing criteria and standards in the SMP and make it a permitted use.

29. OMC 18.32 will no longer apply in shoreline jurisdiction when the SMP is in effect. All applicable critical area regulations will be in the SMP. Language referencing OMC 18.32 needs to be revised to reflect this reality; see previous comments for suggested language.

30. 3.62 (A)(5) – the Guidelines authorize fill waterward of the OHWM only when necessary to support public access. See related comment on section 2 above.

31. 3.62 (A) – Ecology will be looking for thresholds in the SMP that clarify what level of alteration or modification to existing docks/piers triggers compliance with the new SMP standards.

32. 3.66 (B) – please see Ecology comments from November. Many of these provisions are based on the Washington Department of Fish and Wildlife draft Hydraulic Project Approval (HPA) provisions (WAC 220-110), which may change. Therefore, the City may wish to consider instead minimum standards that align with Washington State Department of Natural Resources requirements for State Owned Aquatic Lands and the United States Army Corps of Engineers Regional General Permit (RGP) 6. Even though RGP 6 has expired, the Army Corps has indicated that an applicant for a residential dock following the specifications in this RGP will make it through the consultation process with the Federal Services in 2 to 3 months versus one year for those who do not.

Docks also must avoid critical saltwater habitats as outlined in WAC 173-26-221 (2)(iii)(C). The Corps and the current WDFW standards require a 25’ in-water buffer from macroalgae beds, eelgrass, etc

33. 3.72 through 3.75 - changes to this section outlined on the December draft would be required for compliance with WAC 173-26-231 (3). The Guidelines are very prescriptive regarding shoreline stabilization for existing structures versus new (water and non-water dependent) structures/uses and versus replacement stabilization structures.

34. 3.80 through 3.84 – please see Ecology comments from December.

35. 3.84 - this was not Ecology suggested. The Planning Commission deliberated such an option

for Single Family Residences. This section was not included in the final PC draft in June and reappeared in the November draft. Ecology's question in November was which applies, this section or section 3.81? Note it was not presented as an "option" in November it was just a duplicative section. The point is there are conflicts between this subsection, 3.80 and 3.81 that need to be clarified if this subsection is retained.

Please let me know if you have any questions; I look forward to continuing work with the City to complete the comprehensive SMP update process.

Sincerely,

Chrissy Bailey, SWRO  
Regional Shoreline Planner

CC: Paula Ehlers, Section Manager  
SMP file