

Memorandum

Date: 30 November 2016

Subject: Revised Draft Shoreline Master Program

From: Ethan Spoo, Senior Planner

To: Skamania County Shoreline Advisory Committee Members

Route to: Tim Homann, County Engineer
Debbie Cazare, Planner

INTRODUCTION

In September and October of this year, Skamania County (County) received approximately 300 comments on its draft Shoreline Master Program (SMP) from the Washington State Department of Ecology (Ecology) and members of the Shoreline Advisory Committee (SAC). This memorandum provides a guide to the comments received, as well as summarizes the County's Cumulative Impacts Analysis (CIA) and Shoreline Restoration Plan, which are work products required by Ecology in preparation for the 13 December 2016 SAC meeting. The CIA and Shoreline Restoration Plan will not be discussed at the upcoming SAC meeting unless specifically requested.

Project staff are recommending that the draft SMP be forwarded to the Planning Commission for approval. If the 13 December meeting proceeds as scheduled, this may be the last SAC meeting. For this reason, attendance at the 13 December SAC meeting will be very important.

GUIDE TO COMMENTS PROVIDED ON THE DRAFT SKAMANIA COUNTY SHORELINE MASTER PROGRAM

Complete comments received are documented in two separate tables attached to this memorandum. BergerABAM separated the comments received on the draft SMP into two separate categories: major and minor. Attachments A and B document the major and minor comments received from stakeholders, respectively. The major comments received will be discussed at the 13 December SAC meeting. The separation of comments into major and minor categories does not necessarily imply that minor comments are less important. Rather, major comments were those deemed to require further discussion at the upcoming SAC meeting.

The attached tables in Attachments A and B document each comment made and are further organized alphabetically by the commenter (agency, organization, etc.) who made the comment and numerically by the section of the draft SMP. The original comments from each commenter have been preserved as they were provided. In some cases, the commenter referenced a page number, SMP section number, and/or provision number in their comment. Because the draft SMP

sections have changed ordering, numbering has changed in some cases. Therefore, to find the edited portion of the draft SMP which corresponds to each comment in the table, please refer to column D of each table.

The revised draft SMP is also included as Attachment C. Comments from Ecology are shown in the sidebar of the SMP document. The draft SMP has been redlined to show changes from the last version of the document. Changes made are in response to all commenters and have been color-coded to show who made the comment. Orange text comments are by Ethan Spoo (Senior Planner, BergerABAM), light blue are by Laura Townsend (Technical Editor, BergerABAM), maroon/dark red are by Dusty Day (Senior Natural Resources Scientist, BergerABAM). Green colored text is existing, but which was moved from other portions of the document. Yellow-highlighted, red text are Ecology's edits. Ecology's written comments are also shown in the right-hand side margin of the draft SMP as "Author."

The following discussion summarizes the major comments received by topic.

Shoreline Maps and Jurisdiction

Ecology and PacifiCorp provided multiple recommendations for changing the proposed shoreline environmental designations found in Appendix A of the draft SMP. Comments resulting in key map changes were:

- Duncan Creek, Skamania Landing Road at Neilson Road: North Bank of Duncan Creek south of State Route 14 (SR 14) redesignated from Shoreline Residential to Rural Conservancy which is a better fit for the undeveloped, forested lands adjacent to the Creek and Woody's Lake.
- Woody's Lake; SR 14 at Butler Loop Road: Redesignated from High Intensity to Rural Conservancy.
- Washougal River Reaches 7, 8, and 9: Larger parcels south of river changed from Shoreline Residential to Rural Conservancy.
- Columbia River Reach 2, west of Spring Creek Hatchery: Area between railroad and SR 14 and east to hatchery made High Intensity.
- Wind River Reach 4 South of Cold Creek confluence: South and west side of river changed from Shoreline Residential to Rural Conservancy.
- White Salmon River Reach 6: Changed from Shoreline Residential to Rural Conservancy.
- Swift Reservoir Reaches 2 and 11: Changed from Shoreline Residential to Rural Conservancy.
- Pine Creek Reach 4: Changed from Shoreline Residential to Rural Conservancy.
- Swift Reservoir Reach 12 and Lewis River Reach 20: Swift Reservoir Dam and spillway changed to High Intensity from Rural Conservancy. Dams and associated infrastructure are a high intensity use in a highly altered environment, which better fits in this designation.

The Yakama Nation Department of Natural Resources provided comments indicating that shoreline jurisdiction should include the entire floodplain and critical area buffers in shoreline jurisdiction to better protect ecosystem-wide functions. At this time, the shoreline environmental designation maps (Appendix A of the draft SMP) identify what is known as “minimum shoreline jurisdiction.” Minimum shoreline jurisdiction includes lakes over 20 acres, streams and rivers with a mean annual flow of 20 cubic feet per second, associated wetlands of these waterbodies, and upland areas (shorelands) extending 200 feet from the ordinary high water mark or floodway and associated wetlands. This proposed minimum shoreline jurisdiction meets the requirements of Revised Code of Washington 90.58.030.

However, shoreline jurisdiction may optionally include additional area extending to the edge of all other critical areas (habitat conservation areas, floodplains, critical aquifer recharge areas, geologically hazardous areas) and their buffers (see Attachment D). If shoreline jurisdiction were to extend to these areas, it would provide the advantage of better protecting ecological functions of these areas. The disadvantage to property owners would be that more stringent environmental protections would extend to a greater number of properties because shoreline jurisdiction would be larger. Whether to use minimum or optional shoreline jurisdiction is a policy choice for the County and a topic of discussion for the SAC at the next meeting.

Shoreline Setbacks, Buffers, and Vegetation Conservation Standards

The previous draft SMP (August 2016) did not provide for riparian area buffers. Riparian areas are streams, rivers, and lakes that provide habitats and are regulated critical areas. In critical areas ordinances across the state, riparian areas are required to have buffers generally ranging from 50 to 300 feet. Riparian buffers are areas of native vegetation adjacent to streams, rivers, and lakes where development is generally prohibited or highly restricted. The application of riparian area buffers in shoreline jurisdiction is inconsistent in shoreline master programs across the state and confusing because shoreline master programs are required to achieve conflicting goals: protecting shoreline ecological functions (which would suggest that buffers are necessary) and promoting appropriate, water-oriented development within shoreline jurisdiction (which conflicts with the idea of providing buffers). In addition to setbacks for structures and uses already required by shoreline master program guidelines, buffers apply an additional layer of regulation which can be very confusing to property owners and developers. Because shoreline master programs must allow for water-dependent uses within riparian buffers, it could be argued that buffers do not result in more protection than adequate setbacks with vegetation conservation.

As a result of comments that buffers should be provided and in an effort to both achieve no net loss of ecological functions, while at the same time provide for regulations that are as straightforward as possible, the regulations regarding setbacks and riparian buffers in the SMP have been revised. Section 3.4.8, regulation 2 of the SMP now applies riparian area buffers. However, these buffers are now equivalent to the development and use setbacks in Table 5-1 of the SMP. The setback area is required to be maintained in native vegetation in accordance with the vegetation conservation standards in section 3.7 of the SMP. In turn, the vegetation conservation standards have been revised to be more protective and require higher mitigation ratios as

compared to the August draft SMP. The new vegetation conservation standards are based on the Washington Department of Fish and Wildlife guidance for mitigation of vegetation removal within 50 feet of a waterbody and greater than 50 feet from a waterbody. Because of more restrictive vegetation conservation regulations, the setback is, practically speaking, very similar to a buffer. Therefore, the shoreline setback will function more like a buffer, is based on an approach supported by science, and is simpler to implement than having a buffer in addition to shoreline setbacks.

Furthermore, and in coordination with Ecology, proposed setbacks in Table 5-1 will be revised upward for certain uses once Ecology has a chance to review this portion of the SMP, thus providing a greater level of protections for shorelines.

Critical Area Maps/Designation/Protection

Washington Administration Code (WAC) 173-26-221 requires that critical areas (wetlands, flood hazards, geologically hazardous areas, critical aquifer recharge areas, and fish and wildlife habitat conservation areas) be protected to achieve no net loss. Section 3.4 of the SMP does this by designating critical areas and buffers and requiring that impacts to these areas be avoided or that mitigations are provided where impacts are unavoidable. Critical area boundaries are designated and impacts are mitigated on the site level through the recommendations contained in critical area reports prepared by qualified professionals.

A few stakeholders commented regarding the lack of critical area maps in the draft SMP. Specifically, the National Scenic Area staff and the Yakama Nation commented about the lack of maps for geologically hazardous areas, critical aquifer recharge areas, and fish and wildlife habitat conservation areas. It is not typical to provide these maps in draft SMPs. Jurisdictions commonly refer to critical area maps prepared as part of their critical areas ordinances, which apply outside shoreline jurisdiction. The text of the draft SMP defines what these critical areas are and where they apply. Based on conversations with Ecology, the text designation of critical areas is sufficient for the SMP purposes. As part of a separate process, the County may want to consider developing critical areas maps to provide a better indicator to property owners and applicants as to where these areas are located. In the case of critical aquifer recharge areas, data to map these areas is not available and, therefore, cannot be mapped.

The Yakama Nation also commented that critical freshwater habitats must be protected. As confusing as the name is, critical freshwater habitats are not, from a regulatory perspective, the same as critical areas. Nevertheless, WAC 173-26-221(2)(c)(iv) does require that critical freshwater habitats be protected in SMPs. Critical freshwater habitats are defined to include wetlands, lakes, streams, rivers, their associated channel migration zones, hyporheic zones, and floodplains. Because they overlap with critical areas, these areas are already protected by the draft SMP. For instance, section 3.4.8 of the SMP protects fish and wildlife habitat conservation areas and applies riparian area buffers. Protection of fish and wildlife habitat conservation areas would also protect the hyporheic zone, floodplain, and channel migration zone associated with a stream, lake, or

river. In discussions with Ecology, they view protections of critical areas in the draft SMP as also protecting critical freshwater habitats. The draft SMP has been updated with a new regulation in section 3.4.4, which protects critical freshwater habitats and hydrologic connections between waterbodies.

The Yakama Nation also commented that channel migration zones be included in flood and geologically hazardous areas. Per WAC 365-190-110 and 120, flood and geologically hazardous areas do not include channel migration zones. The WAC SMP Guidelines in 173-26 require that the general location of channel migration zones be mapped (see Appendix C of the Inventory and Characterization Report), but does not require that they be accurately mapped at the site level nor do the Guidelines prohibit development within these areas (see WAC 173-26-221(3)(b)). However, the SAC may recommend that channel migration zones be required to be mapped at the site level by applicants, if it chooses.

Stakeholders also commented that the SMP's provisions to reduce buffer widths through buffer width averaging and enhancements is not based on science and should not be allowed administratively. As a result of these comments, buffers reductions (previously set at 50 percent of the buffer width) may now be a maximum of 25 percent. Revisions to this section were prepared using the June 2016 Ecology Guidance for Critical Areas Ordinance updates. Administrative buffer reductions are a common approach throughout the state in shoreline management programs and critical areas ordinances when consistent with recommendations provided in a critical areas report. The County provides public notice of shoreline applications and stakeholders who disagree with buffer reductions can submit comments or have the right to appeal the Shoreline Administrator's decision.

National Scenic Area Integration

At the 13 September 2016 SAC meeting, several comments were provided that the National Scenic Area (NSA) Standards in Skamania County Code Title 22 should be integrated with SMP standards to reduce the burden on applicants to the degree possible. Several stakeholders provided comments about the differences between NSA standards, such as buffers, and those in the SMP.

The draft SMP has been updated to integrate NSA standards and allow these standards to substitute for SMP compliance where it makes sense. While the NSA and SMP standards address many of the same issues, such as wetland and riparian area regulation, critical area reports, and vegetation conservation, it is not possible to seamlessly integrate the two standards. Additionally, even if they could be seamlessly integrated, NSA permits would still be required within shoreline jurisdiction.

A new table has been inserted in section 3.4.3(7) to address SMP and NSA integration. This section indicates that developments in the NSA and located in shoreline jurisdiction that comply with SCC Chapter 22.20 (Natural Resource Protection – GMA) and SCC 22.28 (Natural Resource Protection – SMA) are not required to comply with SMP sections 3.4.6 (Wetlands) and 3.4.8 (Fish and Wildlife

Habitat Conservation Areas). Table 3-1, however, provides that certain provisions in SMP 3.4.6 and 3.4.8 still need to be met because they are based on more current science. For instance, wetland buffer widths from the SMP, which are based on Ecology Guidance, still apply to developments in the NSA to demonstrate SMP compliance. In addition, the draft SMP section 3.3.3 provides that developments which comply with NSA archaeological standards are deemed compliant with the SMP.

To reiterate, there is no way to perfectly integrate the NSA and SMP standards so that applicants need only demonstrate compliance with one and not both. However, BergerABAM has tried to integrate these standards where common issues are addressed.

Residential Use

Discussion at the 13 September 2016 meeting also focused on residential development standards in section 5.3.11. Comments centered around what type of uses would be permitted within the setback area. The August draft SMP allowed for water-oriented, uses such as decks, gazebos, seating areas, and hot tubs in the setback. Concerns were raised that these types of uses do not constitute water-oriented uses and a minimum 35-foot setback is too small to result in no net loss. The draft SMP has been updated to address these comments. Water-oriented use has been more narrowly construed to be stairs, walkways, or unimproved trails to the shoreline, piers, docks, bridges, stabilization, and shoreline ecological restoration projects. The minimum setback through common line setback reductions, minor setback adjustments or setback variances cannot be less than 50 feet or 35 feet from the top of a steep or unstable slope, whichever is greater. The common line setback reduction can only be employed in situations when views are obstructed.

Aquaculture

The Yakama Nation commented that they recommend prohibiting culture of non-native or genetically modified organism species because of unacceptable potential impacts on native species and their habitats. This is a policy decision of the County that needs to be discussed at the upcoming SAC meeting.

Archaeology

The Yakama Nation made multiple comments regarding the archaeology language in the draft SMP. WAC 173-26-221(1) requires that shoreline management programs include standards to protect historic, archaeological, and cultural features of the shoreline in coordination with the Department of Archaeology and Historic Preservation (DAHP) and affected Indian tribes. Protection requires that (1) work stop immediately if archaeological resources are uncovered during excavation, and (2) shoreline permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by an archaeologist. The draft SMP currently contains provisions meeting these *minimum* requirements.

The Yakama Nation's comments recommend that the County include additional archaeological and cultural resources language requiring applicants to pay greater attention and the County to

provide better protections for these resources than the minimum required by the WAC Guidelines. The Tribe recommends the following:

- Inclusion of goals and objectives for archaeological and historic resources not now included in the draft SMP.
- Requiring that applicants protect resources identified by the Tribe, not just identified by DAHP.
- Better protection of undiscovered resources by requiring archaeological site inspections wherever DAHP has identified the risk of encountering such resources as high.
- Require archaeological studies when (1) recommended by an archaeologist; (2) a project site is within 1/4-mile of a recorded site; (3) a project site is within 500 feet of known, but unrecorded site; or (4) when determined by the County based on comments provided by the DAHP or affected tribes.

This issue is very important and will have major implications for the County, applicants, and affected tribes. BergerABAM's understanding is that Ecology is currently working with the Yakama Nation to come to an agreement regarding appropriate language to include in shoreline management programs. We, therefore, recommend that the existing language in the SMP remain until an agreement between Ecology and the Yakama Nation is completed.

SUMMARY OF CUMULATIVE IMPACTS ANALYSIS

The draft Cumulative Impacts Analysis is Attachment E to this memo. The Cumulative Impacts Analysis is a required work product under the Ecology grant contract with the County that assesses likely development within the shoreline and addresses how the draft SMP will achieve no net loss of shoreline ecological functions with implementation of the shoreline master program standards, as well as other pertinent laws and regulations. The main tools for reducing impacts to shoreline functions in the SMP and assessed in the Cumulative Impacts Analysis are environment designations, critical areas provisions, vegetation conservation standards, and use-specific regulations. The Cumulative Impacts Analysis concludes that no net loss will be achieved. This document is also available for review and comment on the County's website.

SUMMARY OF SHORELINE RESTORATION PLAN

The Shoreline Restoration Plan is another required work product under the County's grant contract with Ecology. The purpose of the Restoration Plan is to provide a non-regulatory framework for restoration of the County's shorelines. Using the Shoreline Inventory and Characterization Report and information from stakeholders, such as the Lower Columbia Fish Recovery Board, the Restoration Plan identifies and prioritizes shoreline restoration opportunities. Recommendations from the Restoration Plan have been incorporated into the draft SMP (see Attachment F for further detail). This document is available for review and comment on the County's website.

CONCLUSION

The changes to the draft SMP are extensive and address all of the comments provided. Staff believe these changes, with discussion at the 13 December SAC meeting, adequately address all requirements of the SMP Guidelines in WAC 173-26, primarily that no net loss is achieved as demonstrated by the Cumulative Impacts Analysis and recommends that the SAC recommend approval to the Planning Commission of the draft SMP.

ATTACHMENTS

- Attachment A: Major Comments Received
- Attachment B: Minor Comments Received
- Attachment C: Draft Shoreline Master Program, November, 2016
- Attachment D: Minimum/Optional Shoreline Jurisdiction Graphic
- Attachment E: Cumulative Impacts Analysis (available for download on the County's website)
- Attachment F: Draft Shoreline Restoration Plan (available for download on the County's website)