



COMMUNITY DEVELOPMENT
DEPARTMENT
LONG RANGE PLANNING
City of Vancouver
P.O. Box 1995
Vancouver, WA 98668-1995

MEMORANDUM

DATE: November 23, 2010

TO: Cedar Bouta, Washington Department of Ecology
Via e-mail: ShorelineRule@ecy.wa.gov; CEBO461@ECY.WA.GOV

FROM: Marian Lahav, City of Vancouver

RE: Shoreline Management Act Rulemaking 2010

The City of Vancouver appreciates the extent to which the Department of Ecology has incorporated our earlier suggestions into the current version of the proposed rule and the current opportunity to review and offer comments on the revised proposal.

1. WAC 173-26-020(9) and WAC 173-26-221(2)(a)(2)

We urge you to eliminate the proposed definition of *Critical Resource Areas*, new requirement, and related text (...and critical resource areas...) throughout the Guidelines.

- a. The phrase *resource areas* is likely to cause confusion since it refers to agriculture, forestry, and mining areas under GMA.
- b. The existing Guidelines are clear that critical saltwater habitats and critical freshwater habitats may or may not be the same as GMA critical areas.
- c. Defining *additional shoreline and shoreland areas identified by local governments that warrant special protection necessary to achieve no net loss of ecological functions* adds unnecessary complexity. Nothing in the existing Guidelines restricts a local government from providing special protection to areas that warrant it even if they are not technically critical areas or critical saltwater or freshwater habitats, and tools exist for doing so.
- d. Likewise, the new requirement at WAC 173-26-221(2)(a)(2), ...*local governments should identify additional shoreline and shoreland areas identified by local governments that warrant special protection necessary to achieve no net loss of ecological functions* is unnecessary. Please eliminate it or replace *should* with *may*.

2. WAC 173-26-020(36)

We strongly recommend once more that Ecology replace this atypical definition of *should* with its common meaning and usage: that a particular action ought to be taken or is recommended. Compelling the use of *should* as essentially mandatory leaves little or no room to distinguish between goal/policy statements and regulations, both of which are necessary for a successful shoreline master program. Rather than facilitating integration with other state and local codes, this unique definition sets the stage for conflict between them. We are struggling with this in our current comprehensive SMP update process.

3. WAC 173-26-020(25)(b)

We are concerned that words ...*as now or hereafter amended* in the new definition of *Comprehensive master program update* could be construed such that local jurisdictions



undertaking an update would have to comply with new or amended regulations during the planning process. Local jurisdictions have neither the time nor the budget to accommodate a changing regulatory environment during the update process. Please clarify that the regulations in effect at the time a local jurisdiction begins the update process (in accordance with their contract with Ecology) are those with which they must comply.

4. WAC 173-26-201

Again, we appreciate Ecology accepting many of the suggestions made earlier. We still urge you to delete the language prioritizing new SMP adoptions and comprehensive updates over other amendments that may be just as important and time-sensitive. Placing internal agency concerns above the public health, safety, and welfare is poor public policy.

5. WAC 173-26-211(5)(c)(ii)(G) and (H)

There is an inherent conflict between these two sections and with implementation of the policy in RCW 90.58.020. Section G requires local governments to reserve aquatic areas for protecting and restoring ecological functions. Section H requires them to reserve shoreline space for preferred uses. Given all the other protective measures (no net loss, mitigation sequence, etc.) for ecological functions in the Guidelines and the policy of fostering all reasonable and appropriate uses of the shoreline, this conflict should be resolved by eliminating Section G.

Thank you again for your positive response to our earlier comments and for this opportunity to review and comment on the updated proposal. Please feel free to contact me at marian.lahav@ci.vancouver.wa.us or (360) 487-7949 with any questions or if I can be of assistance.