

MEMORANDUM

March 29, 2012

TO: Chris Pasinetti, City of Fife

FROM: Kim Van Zwalenburg, Ecology

SUBJECT: Department of Ecology Comments on City of Fife Revised Draft Shoreline Master Program

These comments are offered after reviewing the latest revised draft Shoreline Master Program (SMP) received March 21, 2012. I want to note upfront the continued improvement in the language in response to our previous comments, particularly in the wetland provisions.

This paragraph is non actionable.

Most of these comments are things that need clarification or are inconsistencies that I identified in the document. I did not identify every typographical error but there are quite a few and the document would benefit from a thorough review.

This paragraph is non actionable.

The substantive comments which I identified as remaining include clarity about the proposed extent of shoreline jurisdiction, clarifying whether boating facilities are prohibited, inconsistent use of 'shoreline designation' in place of 'shoreline environment designation', clarifying provisions in Section 6 Shoreline Designations, and cleaning up old language in Section 10 Administrative Procedures.

This paragraph is non actionable.

Section/Page Specific Comments:

SECTION 1 INTRODUCTION:

Pages 3-4, 1.B Shoreline Jurisdiction: This section still needs a bit more work so that it is very clear exactly what jurisdictional area the City will be using. Beginning on page 4 where it says "In addition to these areas listed above..." I recommend you simply use the language found in the statute:

Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas

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landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter.

Then clarify that Fife will not be including the full extent of the 100-year floodplain or buffers located outside shoreline jurisdiction that are necessary to protect critical areas (see page 37 where you addressed critical area buffers more clearly).

Text modified per the 3 paragraphs provided above.

I found the language confusing about 100 year floodplains confusing in your main paragraph. What is your intent here? Do you want to include the 100-year floodplain along the Hylebos but use minimum jurisdiction along the Puyallup? We should probably discuss this further so that I have an accurate understanding. Check floodplain/floodway definitions

City of Fife staff discussed this issue with Ecology staff. Modifications to text made based upon those discussions. Floodplain/floodway definitions were and still are consistent with the WAC.

Page 5, 1.D How the Shoreline Master Program is Used: While my previous comment suggested you add language about the areas in the Urban Growth Area, I now see that this is duplicative of language in 1.B and could probably be deleted.

Text deleted.

In the second paragraph, you should delete the word “environments” in the second sentence since changes in Chapter 6 lead me to believe you are going to use the phrase “shoreline designation” instead of “shoreline environment designation”. The citation in the last sentence should be to Chapter ~~6~~5.

Text has been modified so that “Shoreline designation” is used consistently throughout document. Note: in some portions of text, environment was initially used to convey designation. However, in completing the task of identifying portions of text where the word designation was intended, occasionally the word environment was better suited and made the regulations more protective of shoreline function and as such the term environment was maintained.

Page 5, 1.E Relationship of this Shoreline Master Program to Other Plans: The second paragraph is more of a finding, appropriate for your ordinance but not the SMP and should be deleted. The paragraph which follows is appropriate.

Text deleted

SECTION 4 DEFINITIONS AND ACRONYMS:

Page 13 “Building height”: Apparently I didn’t catch this definition in my last review. WAC 173-27-030(9) has a definition of height: *“Height” is measured from average grade level to the highest point of a structure: Provided, That television antennas, chimneys, and similar appurtenances shall not be used in calculating height, except where such appurtenances obstruct the view of the shoreline of a substantial number of*

residences on areas adjoining such shorelines, or the applicable master program specifically requires that such appurtenances be included: Provided further, That temporary construction equipment is excluded in this calculation; There is also a definition for “average grade level”. I’m unclear whether your “building height” definition is consistent with ours. We should discuss this.

Height definition changed and average grade level definition removed.

Page 14 “Hand Launch”: This definition describes the activity but I think you mean to describe the facility ‘hand launch boat ramp’ which you include in your definition of “recreational development, active”. Alternatively, you could add a definition for “hand launch boat ramp”.

Hand launch specification deleted. Comment no longer relevant to draft document.

Page 22 “Shorelines”: Delete this since it is defined (more accurately) on page 23.

Text Deleted.

Page 22 “Shoreline conditional use”: replace the word ~~environment~~ with designation.

Text Modified.

Page 22 “Shoreline environment designations”: Based on the changes I saw in Chapter 6, isn’t it your intent to use the term “shoreline designation”? The more complete definition is found in WAC 173-26-211(2)(a). I would use that language or at least add it (existing use pattern, biological and physical character of the shoreline, goals and aspirations of the community).

Text modified.

SECTION 6 SHORELINE DESIGNATIONS:

Pages 37-39: It appears you would prefer to use the term ‘shoreline designation’. If so, please correct every instance (there are many) where “shoreline environment” or “shoreline environment designation” occurs in this chapter. I also recommend you add the following sentence in 6.A: *For purposes of this Program “shoreline designation” is used in place of the term “shoreline environment designation” referred to in WAC 173-26.*

SMP modified to read “shoreline designation” where appropriate.

In each of the upland designations, you provide a purpose statement which is succinct, and then list a number of objectives. Many of the objectives appear to be appropriate policy statements. I recommend you consider combining the listed objectives into the management policy sections.

Objectives have been removed to management policy sections and duplicates have been removed.

I also recommend including a statement in all designations that encourages restoration. However, please delete the sentence (in Shoreline Residential, Urban and Levee designations) that says “Restore ecological functions as a condition of project approval in areas that have been previously degraded”. While mitigation can be required for unavoidable impacts, restoration is a voluntary (and non-regulatory) action.

Requested sentence deleted. Replace with encourage restoration activities, which is now a City of Fife Policy in all designations.

Page 37, 6.B Summary of Shoreline Designations: The second and third paragraphs are more appropriate under a heading “Official Shoreline Map” or “Shoreline Map” and perhaps combined with the language in Section 6.C Written Descriptions.

New section created.

Page 43, E.4.b Bulk and Dimensional Regulations: Here you include a discussion about critical areas, presumably in relation to any required critical area buffers (though the term used here is “more restrictive shoreline setback”). It is appropriate to discuss how the greater of the shoreline setback or the critical area buffer will apply, but it should be added to all upland shoreline designations, not just Conservancy. In addition, I recommend you use the language in the definition of “setback” in Chapter 2 to describe what is allowed.

Text modified for each table.

Page 52, 4.J: Summary Bulk and Dimensional Regulations Table: Since you have this table, why repeat the requirements in a table under each designation? This might be the appropriate place to state how the critical area buffers and the shoreline setbacks need to both be considered. You should consider moving this table to Section 8.

The summary table was created and placed at the end of this chapter based upon previous Ecology requests. Based upon interaction with the public, it is believed that the constituency would be more likely to look for designation based setbacks in the regulations specific to the designation. Although, the City is aware that some jurisdictions approach this differently, it is felt that this is the best approach for the City and would be more inclined to rectify the confusion by deleting the summary table instead.

SECTION 7 GENERAL REGULATIONS:

Page 53, first sentence: Delete the word “environment” to be consistent with Section 6.

Text deleted.

Pages 54, 7.C Flood Hazard Reduction: Please delete the phrase “as amended” in Regulation C.3.a. This is considered a “loose” reference to Fife Municipal Code Title 15.40 (not an

incorporation by reference) so you will be able to update that code as needed without an SMP amendment.

Text deleted.

Page 56, 7.D Public Access: In regulation 7.D.3.b I believe you intend to reference Regulations e and f (lower case).

Text modified.

Page 57, Regulation 7.D.3.f references Regulation 5 in the first line which is incorrect (since there is no regulation 5). I'm not sure what you meant to cite.

3.e. was meant. Text modified.

Page 58, Regulation 7.D.3.j lists piers and docks as public access amenities. However these are prohibited in your use matrix in Section 8. Please correct the inconsistency.

Text modified.

Pages 60-61, 7.F Water quality, storm water and nonpoint source pollution: Why not just have a regulation similar to the form used in your Flood Hazard Reduction section, where you reference the appropriate city code(s)?

Text modified.

Page 65, G.3 Fill: Regulation c.5 references "items" # 3 and 4. Do you mean regulations 3 and 4?

Text does not appear in draft.

Page 66 G.4 Shoreline Stabilization: Policy b.2 could use some revision. I recommend using terms already used elsewhere in the document such as 'structural' and 'non-structural' rather than 'soft-bank' and 'hard-bank' which are not defined. Also, preference is shown "for" not "to" something.

Text modified.

SECTION 8 SHORELINE USE MATRIX:

In the header, replace the word environmental with shoreline.

Text modified.

Because I think your intent is to prohibit boating facilities because of the existing conditions in the Hylebos (and the lack of jurisdiction waterward of the Ordinary High Water Mark on the Puyallup River), the matrix should reflect this. Currently it shows boating facilities as allowed in four designations.

During previous SMP iterations, it was thought that Boating facilities would not be pursued along the Hylebos or Puyallup. Recently the City was made aware that the Puyallup Tribe may be pursuing a boat launch to the Puyallup River. The code was modified to address this eventuality.

The Conservancy column for in-stream structures should say N/A.

Text modified.

Signs are listed as prohibited in the conservancy and shoreline residential designations. This would prohibit directional and interpretive signs. Is that your intent? This means interpretive signs, public access signs and trail signs would not be allowed in these designations.

Text modified.

For consistency, I recommend correcting the matrix which lists “Scientific, historical, cultural and educational research activities” to “Archaeological, historic and cultural research activities” as written on page 53.

Text modified.

SECTION 9 USE-SPECIFIC REGULATIONS:

Page 77, 9.A Agricultural Activities: Regulation A.3.g refers to Title 17 Environmental Protection. Shouldn't this reference Appendix B?

Text modified.

Pages 79-80, 9.C Boating Facilities: Because you have defined hand launch facilities as part of recreation, and the Hylebos is a narrow and shallow waterbody it appears that boating facilities cannot be accommodated in Fife and should be prohibited.

City to discuss with Ecology.

Pages 80-81, 9.D Commercial Development: Regulation 9.D.3.b requires a public access easement of ten feet. This is inconsistent with the twelve foot easement required in Regulation 7.D.3.m.

Text modified.

In addition, the policies aren't adequately reflected in the regulations. For example, Policy 2.b suggests non-water-oriented commercial uses should be allowed but the regulations are silent on this. (See regulation G.3.a on page 82 as a possible approach).

Text modified.

Pages 81-82, 9.F Forest Practices: Regulation 3.a could simply say "Forest practices are prohibited with the City of Fife."

Text modified.

Page 86, K Recreational Development: In Regulation K.3.a, replace the word "environment" with "shoreline".

Text modified.

In Regulation 3.i, the last word should be "Program" not "Plan".

Text Modified.

Page 90, 9.M Restoration Activities: Regulation 3.f needs some editing.

Text modified.

Pages 90-91, 9.N Signs: I believe Regulations 3.e and 3.f are more properly a subset of 3.d. See also my comment on the Use Matrix about signs.

Text modified to subset. Changes also made to use regulations.

Page 93, 9.O Transportation Facilities and Parking: Regulation 3.k addresses culverts and indicates these shouldn't be installed waterward of the Ordinary High Water Mark. Isn't this impossible? I recommend deleting this regulation entirely as culvert sizing is usually dependent upon fish passage and flow (including stormwater) parameters. Being less specific would allow for site specific designs.

Text deleted per request.

Page 94, Regulation 3.x appears to address the issues in Regulation 3.v. I recommend deleting Regulation 3.v.

Text deleted per request.

Page 95, 9.P Utilities: I recommend rewriting Regulation 3.a.1 by replacing the word "reasoning" with "need".

Text modified per request.

In Regulation 3.b, I recommend adding the words “where feasible” after “right-of-way”.

Text modified per request.

SECTION 10 ADMINISTRATIVE PROCEDURES: - Entire Section revised to extent comments are no longer applicable.

As a general comment, you are not required to have all this language in your SMP. At a minimum, you must include the conditional use and variance criteria but you can reference your local code for permit process and decision making. You do need to ensure that any procedures related to shoreline permit decisions are consistent with the SMA. Overall, there are a number of duplicative and internally conflicting sections and a lot of language that is inconsistent with provisions of the Act. I recommend this get a thorough review and get edited appropriately. I have highlighted a few areas of concern below but this entire section really needs some focused work.

I also saw, but did not specifically note that there is still some variation in the draft SMP in how you refer to the responsible official. I saw it expressed as Director, Fife City Director, Community Development Director, and there may be other variations.

Page 97, 10.A Shoreline Permit Requirements: In the first paragraph it should say Shoreline Management Act not Master Act. I would delete the entire second paragraph and add it to A.1 which is where it is more appropriate.

Page 100, 10.A.1 Exemptions: In Provision I.1 relating to watershed restoration projects, I recommend deleting the reference to Appendix D. This is not the only source for watershed restoration plans.

Page 101, 10.B Shoreline Permit Procedures: B.1 references Fife Municipal Code Chapter 14.03. Is this a title (the term used elsewhere in the SMP) or a Chapter? Also, what is the name of this code. Finally, please delete the phrase “as amended” here and wherever else it appears. This is a loose reference and it’s not intended that this code be part of the SMP.

Page 104, 10.B.5 Permit Process: In 5.a.1 (e) the public comment period is listed as 20 days. Please note that the requirement is for a 30-day comment period (see RCW 90.58.140(4)(c)).

Page 105, 5.b in the middle of the page is duplicative of the paragraph right above it.

Page 106, 10.B.8 Department of Ecology Review of Substantial Development, Variance, and Conditional Use Permits: I find this section very confusing and don’t believe much of it is necessary. In fact it doesn’t describe Ecology review but does say that all permits must be filed with Ecology. It doesn’t say anything about conditional use or variance permits, discusses other

topics like appeals and when construction can begin, an applicant's burden of proof and permit recission.

In addition, changes were made to the statute in the 2011 Legislative session that replaced the phrase "date of receipt" with date of filing in most instances. Please review RCW 90.58 140 and 180 to ensure that your proposed language is consistent.

Page 109, 10.B.9 Permit Time requirements: 9.a has an incomplete sentence. 9.b ends with the word "department". You should clarify what department.

Pages 109-110, 10.C Appeals: C.1.a allows for appeal within 30 days of Ecology's receipt of a shoreline substantial development permit. This is incorrect. The appeal period is 21 days.

Page 110, C.1.b Washington State Department of Ecology Review: This is duplicative of at least one previous section and is improperly located under a section titled "Appeals".

Page 111, 10.D.1 Variances: 1.a includes a sentence which says "No variation in permitted uses can be granted through a Variance." The specific provision says "Variances from the use regulations of the master program are prohibited." This entire paragraph is garbled and in fact the entire section on variances needs to be re-written. Please see WAC 173-27-170 and either import the language directly or specifically reference the review criteria.

Page 113, 10.D.2 Conditional Use: Please see WAC 173-27-160 and ensure this section is wholly consistent with the criteria listed in the rule. Again, either import the language directly or reference the review criteria.

Page 114, 10.E Time Requirements and Revisions: This is the second or third location in Section 10 in which permit time requirements are described.

Page 114, 10.E.2 Revision of Permits: 2.a describes "scope and intent". This is defined in WAC 173-27-100 not the statute. Please review this whole section of your draft for consistency with WAC 173-27-100.

Page 116, 10.F Non-conforming Development: 1.g has two sentences which are duplicative.

APPENDIX B CRITICAL AREAS ORDINANCE REGULATIONS:

I previously forwarded these two comments on the revised Chapter SMP 17.17 Wetlands by e-mail but wanted to include them here as well.

This paragraph is non actionable.

Our impression of the revised wetland provisions is that there is a marked improvement in what was a very outdated ordinance.

This paragraph is non actionable.

In the definition for “wetland” or “wetlands” the cited publication is outdated and should be replaced with: *Washington State Wetland Rating System for Western Washington – Revised*. Washington State Department of (Ecology Publication # 04-06-025, 2004).

Change made for both wetland definitions in code.

SMP17.17.380 Decreased wetland mitigation ratios: Alex recommended removal of this section because while this provision may allow for flexibility, it may make it difficult to maintain standards.

The City notes Ecology’s recommendation. However, the City would like to proceed with the text as is, e.g. maintain the decreased wetland mitigation ratios. It is the City’s belief that SMP17.17.380 A will provide the ability to maintain suitable standards. In addition, the majority of the other SMP’s recently approved by Ecology include buffer reduction regulations.