



STATE OF WASHINGTON
DEPARTMENT OF ECOLOGY

PO Box 47775 • Olympia, Washington 98504-7775 • (360) 407-6300



September 15, 2010

Cari Hornbein, Senior Planner
City of Olympia
Community Planning and Development
PO Box 1967
Olympia WA 98507-1967

Re: City of Olympia Shoreline Master Program update | Department of Ecology Review Standards

Dear Cari:

This letter is in response to the Planning Commission subcommittee's request for Ecology to clarify the standards against which the City's work on the comprehensive update to its Shoreline Master Program (SMP) will be evaluated. There appears to be a level of uncertainty as to whether the City will be required to *explain* decisions that are made versus *defend* decisions that are made, if all decisions must be based solely on scientific data, etc. While the differences between these objectives may seem small, there are definitely important distinctions.

The standards the Department of Ecology will use to review a comprehensive SMP update include the 2003 Shoreline Master Program Guidelines (Guidelines), Chapter 90.58 of the Revised Code of Washington (RCW), and Chapters 173-18, 173-20, 173-22, 173-26 and 173-27 of the Washington Administrative Code (WAC). Most, but not all, of the elements required by the Guidelines are also captured in the Shoreline Master Program submittal checklist, which is submitted to Ecology by the local jurisdiction along with its locally adopted SMP. The checklist is intended to summarize rule (WAC) requirements, for use by a local jurisdiction to demonstrate it has complied with the SMP Guidelines throughout its update. The checklist is available on Ecology's website at <http://www.ecy.wa.gov/programs/sea/shorelines/smp/toolbox/process/checklist.html>. Ecology will also review the local government's evaluation of consistency between its Master Program and other elements of its Comprehensive Plan and Development regulations, as outlined in WAC 173-26-191 (1)(e).

In regards to scientific data and ecological functions, protection of the shoreline environment is an essential statewide policy goal, consistent with the other policy goals of the Shoreline Management Act (Act). To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), the Guidelines require local governments to identify and assemble the most current, accurate, and complete scientific and technical information available, and to base their Master Program provisions on an analysis that incorporates this information. WAC 173-26-201(2)(a) states that local governments should be prepared to identify three things: the scientific information and management recommendations on which the Master Program provisions are based; assumptions made concerning and data gaps in the scientific information; and risks to ecological functions associated with Master Program provisions [through the process identified in WAC 173-26-201(3)(d)].



This being said, the Guidelines also recognize that the policy goals for the management of shorelines harbor the potential for conflict, some of which include protecting ecological functions, allowing for public navigation and access, and fostering reasonable utilization. Therefore, to the extent consistent with the policy and use preferences of RCW 90.58.020 and with the Guidelines, local governments are given reasonable discretion to apply these various policy goals in development of their Master Programs. It should be noted however, the Guidelines state at WAC 173-26-201(2)(d) that “when determining allowable uses and resolving use conflicts on shorelines”, local governments must apply the following preferences and priorities in the order listed below:

- (i) Protect and restoring ecological functions;
- (ii) Reserve shoreline areas for water-dependent and associated water related uses;
- (iii) Reserve shorelines for other water-related and enjoyment uses compatible with ecological protection and restoration objectives;
- (iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses;
- (v) Limit nonwater-oriented uses to those locations where the above described uses are inappropriate or where nonwater-oriented uses demonstrably contribute to the objectives of the Act.

In reference to keeping records for the purposes of explaining decisions versus defending decisions, in the context of Ecology’s review the purpose is for the former. In those areas where the Guidelines give discretion to local governments in applying the goals of the Act in Master Program provisions, Ecology will be interested in understanding the basis on which policy decisions were made if not transparent in the document and its supporting appendices. However, it is a reality that updated Master Programs may face legal challenges once adopted, in which cases these records will also be valuable in defending the City’s document. In addition, as a partner in this process the State will co-defend the city’s Program once it has been adopted at the State level, if it should face legal challenges.

Hopefully this letter helps clarify the capacity within which the City’s updated Master Program will be reviewed by Ecology, as well as the standards Ecology will use to evaluate the consistency of the Master Program with the Shoreline Management Act and the implementing rules. I appreciate that the City is taking such care in this process and that the Commissioners, staff and public are taking steps to understand how the product of this process will be used. If you have any questions or need further information, please do not hesitate to contact me.

Sincerely,



Chrissy Bailey, Regional Shoreline Planner
Shorelands and Environmental Assistance Program
Southwest Regional Office

cc: Commissioner Amy Tousley, City of Olympia Planning Commission SMP Subcommittee Chair
Paula Ehlers, Section Manager, Shorelands and Environmental Assistance (SEA) Program