



## Kelso Planning Commission REVISED Agenda

Meeting at 7:00 p.m.

Tuesday, November 13, 2012

203 South Pacific Ave., City Hall Council Chambers

Agenda	Approved/ Denied	Remarks
<p><b>Timed Items:            7:00 p.m.</b></p> <ul style="list-style-type: none"> <li>1. Call to order</li> <li>2. Roll Call</li> </ul>		
<p><b>Action Items:</b></p> <ul style="list-style-type: none"> <li>1. Approve October 9, 2012 Meeting Minutes</li> </ul>		
<p><b>Presentation:</b></p> <ul style="list-style-type: none"> <li>1. Shoreline Master Program (SMP) Update Visioning Overview presented by Parametrix</li> </ul>		
<p><b>Business:</b></p> <ul style="list-style-type: none"> <li>1. Introduction of newly appointed Planning Commissioner James Webb</li> <li>2. Motion Item               <ul style="list-style-type: none"> <li>a. Appoint Commission Chair</li> <li>b. Appoint Commission Vice Chair</li> </ul> </li> <li>3. Brownfield Grant Update – 1124 N. Pacific Ave.</li> <li>4. Downtown Design Guidelines               <ul style="list-style-type: none"> <li>a. Building Exterior Paint Colors Update</li> </ul> </li> <li>5. Neighborhood Stabilization Program Update               <ul style="list-style-type: none"> <li>a. 1504 N 2<sup>nd</sup> Avenue</li> </ul> </li> <li>6. Nuisance Abatement               <ul style="list-style-type: none"> <li>a. 404 Burcham Street Update</li> </ul> </li> </ul>		
<p><b>Adjournment:</b></p> <p>Next Meeting December 11, 2012 at 7:00 p.m.</p>		

City of Kelso Community Development Department (360) 423-9922

Posted November 9, 2012



**Kelso Planning Commission Meeting Minutes**  
**Tuesday, October 9, 2012**  
**7:01pm – 7:44pm**

**Members Present:** Dan Jones, Patricia VanRollins, Rick VonRock, Toby Tabor, Jared Wade

**Members Absent:** Mark Kirkland excused

**Staff Present:** Nancy Malone, Community Development Manager; Stephanie Helem, Recording Secretary

**Call to Order:**

Vice-Chair Patricia VanRollins called the meeting to order at 7:01p.m.

**Minutes:**

Commissioner VonRock made the motion, seconded by Commissioner Jones to approve the minutes of August 14, 2012. Motion carried, all in favor.

**Business:**

1. **Introduction of newly appointed Planning Commissioner – Jared Wade.** Previously from Spokane. Wife is an attorney in Kelso practicing estate planning/family law/real estate law. He assists process of service for wife's practice. He has his own business and does apartment turnovers. Started in real estate as commercial broker. Worked in Spokane for two years in commercial real estate. Bachelor's degree in economics. Has lived in area for 5 years.
2. **Zoning Code.** Nancy Malone
  - a. **Electronic Signs.** Discussed these types of signs a number of times and have not nailed down what we want to see. Specifically talking the down town area? All of Kelso? West Kelso? Discussion followed. Safety hazard. Uniformity/continuity. All agreed to eliminate flashing message board signs from the downtown four block area completely. Nancy Malone will work on specific code language and bring back to the commission.
  - b. **Antique/Second Hand Businesses.** Discussed this a couple of months ago. In the code it specifically states when you have an antique business they cannot be within 300 feet of each other. What is the Commission's feeling on removing this language? Discussion followed. What determines antique vs. second hand? Identify and define second hand business and antique store.

**MOTION:** Motion was made by Commissioner Tabor and seconded by Commissioner Jones to take language out of code. Motion carried. All in favor. Discussion followed.

- c. **Wind Turbines.** What is the Commission's feeling on wind turbines? Where? Downtown area? Take away esthetics? What is the benefit? Allowed in residential area? Discussion followed.  
Longview is currently working on a new code. Nancy provided Commission a copy of this draft language from Longview. Nancy would like Commission to review and mark up draft and see how it will fit in our city. What are the requirements, design guidelines and location? Discussion followed.

Commissioner VonRock suggested a Public Hearing for citizens input and Commissioner VanRollins mentioned workshops. Nancy suggested this can be part of a text change for updating the code along with a few other things she is looking at changing/updating in the municipal code. If city/commission can come up with decent language to add to the code this can become part of the overall public hearing process.

3. **Downtown Design Guidelines - Building Exterior Paint Colors.** Nancy Malone  
Paint color pamphlet provide to Commission for review. In the downtown guidelines traditional western turn of the century is mentioned but no colors identified. Nancy contacted paint company and they put this paint color information together. Discussed picking certain colors or leave it wide open for significant amount to pick from. All agreed to leave it open for more choices.
4. **Neighborhood Stabilization Program (NSP).** Nancy Malone
  - a. **1124 N. Pacific Ave.** The old Terry Salvage property. Public meeting to be held October 18<sup>th</sup> at Barnes Elementary School from 6:00pm to 8:00pm. Maul Foster Alongi is the consultant. Looking at applying for grants to remove contamination of the site. Save the date post cards have been sent out to 100 property owners in that specific area. There will be a notice in the paper and on the city website. This meeting is to go over the facts about the Brownfield clean up grant, dollar amount and what is hoped to be accomplished through this. If the grant is approved city will look at selecting contractor to remove contamination. The city will be giving this property to CAP and CAP and the city will be putting together a development proposal for this site. Discussion followed on redevelopment and cottage housing.
  - b. **NSP Program.** City has recovered five blighted properties instead of four. The city does have money left over to acquire another property and rehab the property. If funds are not used city will lose them.
5. **Shoreline Master Plan Update.** The public involvement process will start next month. Someone from Parametrix will be at the next Planning Commission meeting to talk about update to the Shoreline Master Plan. Kalama, Kelso, Woodland, Castle Rock and Cowlitz County working together with Parametrix.
6. **Kelso Business.**
  - a. New City Manager, Steve Taylor will be at next Planning Commission meeting.
  - b. Budget time for the city.
  - c. Nuisance Abatement progress.

## Adjournment

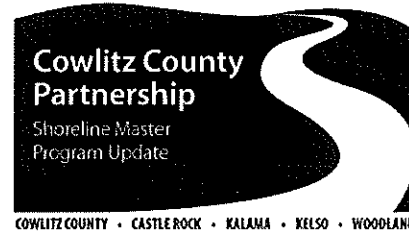
There being no further business, Commissioner VanRollins motioned to adjourn and Commissioner VonRock seconded to adjourn at 7:44pm.

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Patricia VanRollins, Planning Commission Vice-Chair

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Respectfully submitted:  
Stephanie L. Helem, Recording Secretary



# Shoreline Master Program VISIONING OVERVIEW

**DATE:** November 6, 2012  
**TO:** City of Kelso Planning Commission  
**FROM:** David Sherrard, Parametrix, Project Manager  
Jennifer Hughes, Parametrix, Planner  
**SUBJECT:** City of Kelso Shoreline Master Program (SMP) Update  
Overview – Visioning Issues

This memorandum addresses the framework of decisions needed to be made to implement the 2003 Shoreline Guidelines WAC 173-26 as part of the City Shoreline Master Program (SMP) update.

Issues addressed in this memorandum include:

1. Schedule
2. Shoreline Master Program Planning (SMP) Process
  - a) Local Jurisdiction and State (Ecology) Roles
  - b) Relation to Comprehensive Plan and Zoning
3. Basic Goals of the SMP
  - a) Use Preference – Water Oriented Uses
  - b) Public Access
  - c) Maintenance and Enhancement of Ecological Processes
4. Structure of the SMP
  - a) Shoreline Environment Designations
  - b) Modification Regulations
  - c) Use Regulations
  - d) Critical Areas
5. Constitutional Issues/Provisions for existing development

More detailed discussion of each of these issues is provided below.

## 1. Schedule

The schedule for the SMP update is summarized in the table below.

These steps are outlined in the Shoreline Guidelines (WAC 173-26) and are included in the Ecology Grant to support the local program update.

<b>Phase</b>	<b>Products</b>	<b>Schedule</b>
<b>Phase 1</b>	<b>Shoreline Jurisdiction Determination Public Participation Plan</b>	This has been Completed
<b>Phase 2</b>	<b>Shoreline analysis and characterization</b> Involves: <ul style="list-style-type: none"> <li>▪ Gathering relevant existing information, and</li> <li>▪ Synthesizing this information into a map portfolio and Shoreline Characterization Report that describes both ecological functions and human use of the shoreline.</li> </ul>	June to December 2012 A Draft is currently being reviewed by agencies and the public. Copies are available at the project website and the Kelso and Longview Libraries
<b>Phase 3</b>	<b>Develop the Shoreline Master Program</b> Includes shoreline environmental designation, policies, and regulations <ul style="list-style-type: none"> <li>▪ Visioning – The process we are in now</li> <li>▪ An initial draft will be prepared in the Spring of 2013 (?) for public review</li> <li>▪ The final Draft will be prepared in late 2013 and will incorporate changes in response to comments</li> </ul>	November 2012 to December 2013 <i>Initial SMP Draft target April 1, 2013</i> <i>Opportunities for public involvement and input will be provided throughout the process</i>
<b>Phase 4</b>	<b>Cumulative Impacts Analysis and Restoration Plans</b>	November 2013 to January 2014
<b>Phase 5</b>	<b>Adoption</b> Each jurisdiction adopts their local Shoreline Master Program and sends to the State Department of Ecology for approval	January to June 2014
<b>Phase 6</b>	Ecology conducts the state approval process	June to November 2014

The purposes of the community visioning process are:

- To better understanding the framework for the Shoreline Master Program update including state requirements;
- Identify community goals and aspirations for use and management of local shorelines;
- Identify information resources;
- Help to develop shoreline environment designation, policies and regulations.

This is simply the initiation of the community input process. It will continue throughout the update.

### ***Planning Commission Schedule Issues***

- The Ecology grant for preparing the SMP includes a target date of April 1 for completing an initial draft of the SMP.
- We anticipate that with the holiday season coming up – this will involve an intensive commitment by the Planning Commission to delve into the issues outlined in this memo in January, February and March.
- It is possible to ask Ecology to extend the deadline?

### ***Questions***

- Is the Planning Commission comfortable with an intensive work program review these issues the first three months of 2013?
- Will this interfere with other work program items you have scheduled?
- Are there areas where the public should not have greater shoreline access because of sensitive ecological resources?

***If we are to request Ecology move the target for the initial draft of the SMP, we think it would be better to do so now rather than wait.***

## **2. Shoreline Master Program Planning Process**

### **a) Local Jurisdiction and State (Dept. of Ecology) Roles**

The statute, the Shoreline Management Act (RCW 90.58) contains the following provisions that relate to the cooperative relationship between local government and the state:

#### **RCW 90.58.050 Program as cooperative between local government and state — Responsibilities differentiated.**

This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter. [Emphasis Added]

The overall framework of cooperation, however, is constrained by a large number of specific policies both in the statute and the Shoreline Guidelines (WAC 173-26) that provide that local Shoreline Master Programs must comply with certain objectives – many of which are quite explicit.

The local program cannot choose not to meet those objectives, but has flexibility in how those objectives are achieved.

A fairly succinct statement of the relationship of the local jurisdiction and the State is provided in a recent State Supreme Court Decision (Citizens for Rational Shoreline Planning v. Whatcom County):

The SMA encourages local jurisdictions, such as Whatcom County, to formulate SMPs to meet particular local conditions. But this process is done in the shadow of Ecology's control. The SMA provides Ecology with stringent oversight authority and command over the final contents of any jurisdiction's SMP. The involvement of local jurisdictions in the SMP process is a benevolent gesture by the state. Ultimately, state law directed Whatcom County to act by a certain date, created the overarching framework with which Whatcom County's SMP must comply, and left final approval of the County's SMP in the hands of Ecology. [Emphasis Added]

<http://law.justia.com/cases/washington/supreme-court/2011/846758-opn.html>

Despite the formal role of Ecology in establishing the rules and overseeing the process, jurisdictions throughout the state have developed substantially differing SMP provisions based on local conditions and local goals.

We are confident that Ecology will be an effective partner in this process as we identify unique local issues and local approaches.

Because it is important to meet statewide guidelines as we craft local solutions and proceed through the process, we will continue to make reference to specific provisions of the Shoreline Guidelines (WAC 173-26) as we outline options..

#### **b) Relationship of the Shoreline Master Program to the Comprehensive Plan and Development Regulations**

##### *SMA Guidelines*

The 2003 Shoreline Guidelines allow:

- a) Adoption of a separate SMP as a stand alone document containing policies and regulations
- b) Adoption as a package of separate policies and regulations in various sections of the Comprehensive Plan and Development Code. The most significant requirement of this approach is the ability to clearly designate shoreline regulations and procedures from other non-shoreline provisions and clear provisions for assuring Ecology review and approval of all amendments.

***SMP Process***

***Potential Vision Issues***

- a) How important is it to integrate the SMP into the Comprehensive Plan and zoning?
- b) Are there issues unique to the shoreline that are not currently covered in the Comprehensive Plan and zoning?
- c) Are there insights from looking at issues relating to the shoreline that indicate that the city should consider upland changes to policies or regulations?

**3. Basic Goals of the SMP**

**a) Water Oriented Uses**

*SMA Guidelines:* Preferred uses are addressed in a number of provisions:

1. The statute in RCW 90.58.020 provides a preference for uses that are “unique to or dependent upon use of the state's shoreline.”
2. The SMA Guidelines in WAC 173-26-020 and .201(2)(d) provide an explicit hierarchy of preference for uses that are particularly dependent on shoreline location or use in the following:
  - Water dependent uses are uses that “cannot exist in any other location and are dependent on the water by intrinsic nature of its operation”. Examples of water-dependent uses include shipyards and dry docks, ferry terminals, waterborne cargo terminals, marinas, log booming, and aquaculture.
  - Water-related uses are those not intrinsically dependent on a waterfront location but whose operation cannot occur economically without a shoreline location. Examples include vessel parts and equipment manufacture, container shipping yards, seafood processing plants, marine salvage yards and similar uses.
  - Water enjoyment uses provide the opportunity for a significant number of people to enjoy the shoreline. They must be located, designed and operated to assure the public’s ability to enjoy the physical and aesthetic qualities of the shoreline and they must be open to the public with shoreline space devoted to public shoreline enjoyment. Examples include parks, fishing piers, museums, restaurants (depending on design) interpretive centers and resorts (depending upon design)
  - Non-water-oriented uses have no functional relationship to the shoreline and are not designed to enhance public enjoyment of the shoreline.
3. WAC 173-26-201(2)(d) requires that a SMP:
  - Reserve appropriate areas for water dependent uses (including harbor areas, and other areas that have reasonable commercial navigational accessibility and



necessary support facilities such as transportation and utilities) unless the local government can demonstrate that adequate shoreline is reserved for future water dependent and water related uses; or that there are no navigable waters, or that such areas are not compatible with ecological protection and restoration objectives;

- Reserve areas for water-related and water-enjoyment uses that are compatible with water-dependent uses and ecological protection and restoration objectives;
- Limit non-water oriented uses to those locations where either water-oriented uses are inappropriate or where non-water-dependent uses demonstrably contribute to the objectives of the Shoreline Management Act.

4. If an analysis of water-dependent use needs, as described in WAC 173-26-201(3)(d)(ii), demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and nonwater-dependent uses may be established. If those shoreline areas also provide ecological functions, standards must be applied to assure no net loss of those functions.(WAC 173-26-211(5)(d)(iii)(A))

#### ***Water Oriented Uses- Potential Vision Issues***

- Is there sufficient land in the community for water-dependent, port uses?
- Does the city and region have adequate support for maintaining navigable waters, particularly those with a maintained dredged channel?
- Is there a need for recreational water-dependent uses such as marinas?
- Is there a need for water enjoyment uses – such a waterfront restaurants or mixed use development that provide additional opportunities for the public to enjoy the physical and aesthetic qualities of the shoreline?
- Uses at or near the water/land interface must be developed in a manner compatible with ecological protection (no net loss). Would it be advantageous for the community to support resource banking programs to make it easier for individual development to mitigate impacts?

### **b) Public Access**

#### *SMA Guidelines*

The 2003 Shoreline Guidelines have multiple provisions for public access. The most important include:

#### **WAC 173-26-221(4) Public access.**

(a) Applicability. Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) Principles. Local master programs shall:

- (i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.
  - (ii) Protect the rights of navigation and space necessary for water-dependent uses.
  - (iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.
  - (iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.
- (c) Planning process to address public access. Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements.

***Public Access - Potential Vision Issues***

- Is there sufficient area in the community for public access to the water?
- Are there specific types of public access that are not currently adequate?
  - i) parks
  - ii) boat launches
  - iii) trails
  - iv) swimming areas
  - v) other recreation areas
- Are there areas where existing trail or other public access facilities should be expanded.
- Are there areas where the public should not have greater shoreline access because of sensitive ecological resources?
- Are there areas in public ownership that could provide additional public access?
- Are there publicly financed projects that could provide additional benefits of providing public access?
- Are properties that make use of public navigable waters limiting the general public use of the water, or are they making adequate provisions for public access?
- Should new development along the shoreline provide additional public access?
- Should public agencies increase public access by purchasing land and/or easements?
- Should public access be enhanced as part of an overall plan or as individual opportunities arise?

## c) Maintenance and Enhancement of Ecological Processes

### *SMA Guidelines*

The statute and the 2003 Shoreline Guidelines have multiple provisions that address environmental concerns and ecological functions. Only the most significant are reproduced below.

#### **RCW 90.58.020:**

"The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization protection, restoration, and preservation."

"This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life..."

"To this end uses shall be preferred which are consistent with the control of pollution and prevention of damage to the natural environment."

"Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area."

#### **WAC 173-26-186 Governing principles of the guidelines.**

- (8)(a) Local government is guided in its review and amendment of local master programs so that it uses a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.
- (8)(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.
  - (i) Local master programs shall include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.
  - (ii) Local master programs shall include regulations ensuring that exempt development in the aggregate will not cause a net loss of ecological functions of the shoreline.
- (8)(d) Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act. To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities.

**WAC 173-26-201 Comprehensive process to prepare or amend shoreline master programs.**

(2)(c) Protection of ecological functions of the shorelines. This chapter implements the act's policy on protection of shoreline natural resources through protection and restoration of ecological functions necessary to sustain these natural resources. The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical and biological components, that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these components.

As established in WAC 173-26-186(8), these guidelines are designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by: [following text not reproduced]

***Ecological Processes - Potential Vision Issues***

- Are there important species of fish or wildlife in the area that are threatened by current patterns of use of the shoreline?
- Are there areas of the community that should be preserved in their natural state? Does this include privately owned lands?
- Are there areas of the community that have been so altered that there are few natural ecological functions and future changes should be relatively unconstrained?
- Are there areas of the community that have important ecological functions, but that also are important for part of other uses that should take precedent over preservation?
- Are there areas of the community that have been altered but should be targeted for restoration?
- If there is a need to preserve or enhance ecological values of certain areas, what is the fair share of responsibility for accomplishing this between private parties and the general public?
- Are there actions that individual private property owners on the shoreline can take that will make a positive contribution to preserving or enhancing ecological functions over time?

## **4. Structure of the SMP**

### **a) Shoreline Geographic Environment Designations**

#### *SMA Guidelines*

WAC 173-26-211(4)(c)(i) provides that “Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

Environment Designations in WAC 173-26-211(5) include

- a) Natural
- b) Rural Conservancy (generally not relevant for cities)
- c) Urban Conservancy
- d) Residential
- e) High Intensity
- f) Aquatic

Shoreline environments must contain:

- a) A statement of purpose that describes the shoreline management objectives of the designation in a manner that distinguishes it from other designations.
- b) Classification criteria that provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.
- c) Management policies that are in sufficient detail to assist in the interpretation of the environment designation regulations and to evaluate consistency with the local comprehensive plan.
- d) Regulations that address:
  - i) Types of shoreline uses permitted, conditionally permitted, and prohibited;
  - ii) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and
  - iii) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

Factors to be considered in determining the system must include:

- The existing use pattern;
- The biological and physical character of the shoreline;
- The goals and aspirations of the community as expressed through comprehensive plans;
- The criteria in WAC 173-26-211; and

- Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

Local jurisdictions have developed a wide variety of Shoreline environments to recognize local conditions and integrate with local land use regulations.

The information in the Shoreline Inventory and Analysis is a key input into the determination of Shoreline environments, but is only one of the criteria. Typically, the balance between preserving natural functions and providing for other uses has been a major issue in developing and applying Shoreline environment designations.

***Structure – Environment Designations - Potential Vision Issues***

The following table indicates a range of alternative designation systems that have been developed in other jurisdictions.

Natural	Natural
Urban Conservancy	Conservancy/Recreation
	Urban Conservancy
Residential	Single Family Residential
	Multi Family Residential
	Mixed Use Residential
High Intensity	Port
	Port and Industrial
	Waterfront Commercial
	Commercial
	Mixed Use
	Special Opportunity Areas
Aquatic	Aquatic
	Aquatic Natural
	Aquatic Conservancy
	Aquatic High Intensity

## **b) Shoreline Modifications.**

A subsection addressing “shoreline modification” is a general requirement of the SMP.

Specific requirements are found in WAC 173-26-231. Requirements that apply generally include:

- a) Allow structural shoreline modifications only 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 of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
- b) Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
- c) Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
- d) Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.
- e) Where applicable, base provisions on scientific and technical information and a comprehensive analysis of drift cells for marine waters or reach conditions for river and stream systems. Contact the department for available drift cell characterizations.
- f) Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.
- g) Avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201 (2)(e).

The specific elements addressed in WAC 173-26-231 include:

- Shoreline stabilization.
- Piers and docks.
- Fill.
- Breakwaters, jetties, groins, and weirs.
- Dredging and dredge material disposal
- Shoreline habitat and natural systems enhancement projects.

### ***Structure – Shoreline Modifications - Potential Vision Issues***

- Shoreline stabilization is generally an issue for many property owners. The guidelines provide a pretty specific template and require a shift in use of past “hard armoring”

practices. Administration may be a greater issue than the actual standards, since the site-specific application of standards is likely to be the key issue.

- Piers and dock regulation is typically controversial. Piers and docks play a major role in commerce at ports and can provide public recreational opportunities at parks. Docks serving single family and multi-family residences are common, particularly on lakes and are often thought of by property owners as an intrinsic part of their enjoyment of waterfront property.

Docks can have adverse impact on fish and wildlife habitats including altering natural processes of light, wave energy, substrates and water quality.

SMPs are required to address docks. Prohibition of docks may be appropriate in very sensitive areas that have many natural ecological functions. In areas of high intensity residential use, dock regulations are most likely to require design features that minimize adverse impacts such as increasing pier height and providing grated decks to increase light penetration, reducing width, adjusting placement to avoid nearshore environments and decrease prop scour, as well as other measures.

- Are there areas of the community that should be preserved in their natural state? Does this include privately owned lands?
- Dredging and dredge material disposal is an important local issue on the Toutle, Cowlitz and Lower Columbia Rivers. This is likely to be an area where “programmatic permits” should be explored.

### **c) Shoreline Use.**

A subsection addressing “shoreline use” is a general requirement of the SMP.

Specific requirements are found in WAC 173-26-241. Requirements that apply generally include:

- a) Establish a system of use regulations and environment designation provisions that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.
- b) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.
- c) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline.
- d) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.
- e) Establish Conditional Uses, which provide for Ecology veto in the following cases:



- To address unanticipated uses that are not classified in the SMP
- To address cumulative impacts.
- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation or with the Shoreline Management Act policies.

The specific uses addressed in WAC 173-26-241 include:

- Agriculture
- Aquaculture
- Boating facilities (excludes docks serving four or fewer single-family residences)
- Commercial development
- Industry
- In-stream structural uses
- Mining
- Recreational development
- Residential development
- Transportation and parking
- Utilities

***Structure – Shoreline Use - Potential Vision Issues***

- Local input into whether any of these uses are especially important to local communities will affect whether special provisions should be included in the SMP.
- Local communities may have specific land use code provisions for these uses that should be incorporated into the SMP.

**d) Critical Areas**

*SMA Guidelines*

Critical areas are defined as including the following areas and ecosystems [RCW 36.70A.030(5)]:

- Wetlands;
- Areas with a critical recharging effect on aquifers used for potable water;
- Fish and wildlife habitat conservation areas;
- Frequently flooded areas; and
- Geologically hazardous areas.

A recent change in RCW 90.58.060 provides that SMPs provide a level of protection for critical areas that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines (EHB 1653) [emphasis added].

The 2003 Shoreline Guidelines in WAC 173-26-221(2) provide similar standards to those that apply to critical areas in non-shoreline areas found in WAC 365-190-080. Specific requirements in shorelines include:

- a) Provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government's critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines;
- b) Are consistent with the specific provisions of the SMA Guidelines for flood hazard reduction;
- c) Buffers for critical areas, within the shorelines may be included in the SMP, even if they extend outside of normal shoreline jurisdiction;
- d) Critical area regulations must be developed using scientific and technical information developed in the Inventory/Characterization as described in WAC 173-26-201 (2)(a).
- e) The *planning* objectives of shoreline management provisions for critical areas are the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The *regulatory* provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.
- f) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

Generally the existing Critical Areas regulations are based on a broad based classification system and do not reflect the more detailed information available in the Shoreline Inventory that distinguishes different levels of ecological function for different shoreline reaches. In addition, they do not reflect the potential for water-oriented uses, which would require some orientation to the land/water interface.

Ecology has prepared a "gap analysis" for each jurisdiction indicating recommended changes.

#### ***Structure – Critical Areas - Potential Vision Issues***

Several options may be considered in updating the SMP:

- a) Keep the existing regulations with only minor changes to address Ecology issues. These provisions could be preserved in their existing code sections or re-adopted into the SMP.

Advantages include:

- i) consistency with other regulatory systems using DNR based classifications
- ii) consistency between shoreline and non-shoreline streams

Disadvantages of this approach are:

- i) They rely on a classification system that relates regulations to the presence of certain features, such as vegetation or impervious surfaces which are not necessarily the primary conditions that determine ecological functions provided
- ii) The classification system does not apply the much more detailed information on shoreline ecological functions provided in the Shoreline Inventory/Characterization prepared for this update
- iii) The regulations do not incorporate decisions required to be made in the Shoreline Master Program update that balance the goals of:
  - Maintaining ecological productivity
  - Providing a priority for water related uses
  - Providing public access
- b) Integrate critical area regulations for aquatic species in the SMP in conjunction with the regulatory system specific to the shoreline. For example:
  - The setback and vegetation management provisions for specific reaches could be tailored to the existing ecological functions documented in the Shoreline Inventory.
  - Areas with high intensity or port use could have unique buffers (or no buffers) recognizing the priority given to those uses.
  - Areas with a specific development character, such as existing shoreline setbacks and buffers could be given different regulations.
  - Different set of criteria could be provided for varying standard buffers based on specific local conditions.

## 5. Constitutional Issues/Provisions for existing development

### a) Constitutional Issues

The Shoreline Management Act (RCW 90.58) contains the following provisions that relate to constitutional issues:

#### **RCW 90.58.020 Legislative findings — State policy enunciated**

The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. [Emphasis Added]

*SMP Guidelines include the following.*

## **WAC 173-26-186 Governing principles of the guidelines (5)**

The policy goals of the act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in chapter 82.02 RCW and RCW 43.21C.060 on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. A process established for this purpose, related to the constitutional takings limitation, is set forth in a publication entitled, "*State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property*," first published in February 1992. The attorney general is required to review and update this process on at least an annual basis to maintain consistency with changes in case law by RCW 36.70A.370.

### **b) Provisions for existing development**

Provisions for nonconforming uses are contained in WAC 173-27, which addresses the shoreline permit process and was not updated in 2003. The provisions for nonconforming uses apply only if the local jurisdiction has not adopted provisions.

In the Shoreline Master Program (SMP) Handbook, Ecology has provided the following as general recommendations for how local jurisdictions may approach this issue.

[available at

[http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Nonconforming\\_development\\_guidance.pdf](http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Nonconforming_development_guidance.pdf)]:

Ecology does not expect, nor is it asking, local governments to eliminate all nonconforming development from shorelines. Some nonconforming uses and structure within shoreline jurisdiction have existed for many years.

The basic general "sideboards" for nonconforming development regulations suggested by Ecology include:

- "Grandfathered" (nonconforming) existing legal uses and structures may continue.
- Owners of grandfathered structures that wish to expand the structure may be able to do so if they do not increase the nonconformity. For example, a house partially within the buffer could be expanded outside the buffer.
- Regulations must be applied fairly to new development and existing development. Local governments cannot excuse existing neighborhoods from meeting new standards while enacting new standards for new development.
- Local governments have the right to terminate nonconforming development. (On occasion, an existing use may have a high potential for use conflicts, such as a

fuel storage facility within a city's wellhead protection zone. In these cases, a specific time may be set for the use to be amortized and removed.)

- As reflected in case law, local governments may adopt regulations to phase out nonconforming development over time. More commonly, phasing out is accomplished by adopting disincentives such as strict limits on change of use or expansion.
- For updated SMPs, the “no net loss” policy objective should guide review of proposed expansions or other changes to grandfathered uses and new development on substandard vacant lots.
- Consider whether nonconforming developments are “benign” or “detrimental”
- The cumulative impact of numerous minor or lesser impacting “benign” developments should be considered.
- SMPs need to cover the breadth of the nonconforming provisions that are in WAC 173-27-080, including:
  - Definitions.
  - Structures – maintenance and repair, expansion, moving the structure.
  - Uses – expansion, change in use.
  - Reconstruction after damage, including timelines for permitting and reconstruction. Ecology suggests that SMPs include criteria to avoid reconstruction in hazard areas.
  - Abandonment.
  - Undeveloped lots.

An additional issue is the potential cumulative impacts of these provisions address changes to a property that might impact ecological functions, either individually or cumulatively.

***Constitutional Provisions, Existing Uses - Potential Vision Issues***

- a) Constitutional review of the proposed SMP provisions will be an ongoing part of our work.
- b) For Non-Conforming provisions, the main issue for each jurisdiction will be the extent to utilize existing provisions in their land use regulations.

**Shoreline Master Program Update  
Critical Areas Gap Analysis Transmittal from Department of Ecology**

**Kelso Critical Areas Ordinance**

The Kelso CAO was adopted in 2006. Despite this fairly recent adoption date, it contains many obsolete or inaccurate definitions. It appears that, in 2006, Kelso re-adopted their existing ordinance (1997 version). The current CAO references and includes many documents that have been superseded or updated.

**Generally**, the document needs many significant revisions to become consistent with requirements for No Net Loss. Some of these include:

**Wetland Ratings System** - The City uses the 1993 wetland rating system. This is an outdated ratings approach and is no longer the most current, accurate and complete scientific or technical information available; it has been replaced by the 2004 ratings system.

**Mitigation** - The City uses an outdated mitigation approach that is not consistent with joint-agency documents (Corps/EPA/Ecology) or the most current, accurate and complete scientific or technical information available.

The mitigation sequencing section is incomplete and inconsistent with SEPA. Mitigation ratios, as prescribed, would result in high risk that wetland resources would not be adequately replaced.

Updating this section will serve a number of benefits including providing consistency and predictability for applicants in the City.

**Buffers** - The City's buffers at the low end of the range of the most current, accurate and complete scientific or technical information available. The City would benefit from the use of a more refined buffer table that better considers actual onsite conditions. This approach is present in Ecology's Small Cities Guidance.

The City allows significant, additive buffer reductions that do not contain adequate review or mitigation provisions. Such policies, in combination with already low prescriptive buffers, result in buffer widths that are well below what wetland science indicates are necessary to protect the full suite of wetland functions.

**Recommendation** - Since the document is very outdated and a functional substitute exists, it would be a better use of time and resources to adopt the sample chapter from the Small Cities Guidance into SMP. This action would improve regulatory clarity in the City without increasing a regulatory burden.