

Olympic Stewardship Foundation

Jefferson County Shoreline Master Program Executive Summary

The proposed Jefferson County Shoreline Master Program (SMP) update, as currently drafted, is a huge expansion of the shoreline regulatory system. It unnecessarily limits future construction of single-family homes, a preferred use under the Shoreline Management Act (SMA), and reduces existing uses to a disfavored status.

If you are a shoreline or riverfront property owner or a taxpayer in Jefferson County you should be very concerned about these proposed changes to shoreline use!!! During a severe budget crisis, the SMP will have negative economic consequences with no corresponding environmental benefit.

The Olympic Stewardship Foundation (OSF) retained attorney Dennis Reynolds, an expert in environmental and land use law, to conduct a thorough review of the December 3, 2008 SMP draft. His conclusions, summarized as follows, were submitted to the County for consideration.

- The current protection standards are preserving Jefferson County shorelines.
- The draft SMP ignores the County's unique local circumstances.
- The draft SMP does not reflect the SMA intent to balance protection and use of the shoreline.
- Many policies and regulations in the proposed changes exceed the legal requirements of the SMA.
- The new SMP delegates too much local control to DOE.
- By incorporating the Growth Management Act (GMA)-based Critical Areas Ordinance into the SMP, the draft clashes with a state Supreme Court decision that shorelines are to be regulated exclusively under the SMA.
- The draft SMP designates every inch of shoreline as a critical area, an action which is over-inclusive and not supported by the record.
- The shoreline protection standards are based on biased state agency science which hasn't been independently reviewed.

OSF has asked if the County has performed or requested a similar legal appraisal of the draft SMP, but they have not responded.

The most consequential change in regulation of our shoreline is a five-fold increase in buffers, from 30 feet to 160 feet. This change means 80% of the shoreline jurisdiction is now a buffer zone. Not only that, but **even with the 160 foot buffers, the applicant may still have to supply special reports that prove no harm will result from the proposal!** It also means:

- Construction of new homes will be subject to the new buffers. Options to reduce the buffers to (112' maximum) are costly and time-consuming.

- Despite assurances that existing uses are generally not affected, alterations to existing homes are subject to numerous conditions, including compliance with critical area buffers.
- Likely devaluation of shoreline properties will result in a county-wide shifting of the tax burden to include all property owners.
- Roughly 70% of the shoreline will be made a non-conforming use. Some legal opinions advise these otherwise legitimate uses are meant to be restricted and eventually phased out.
- Residential development on non-conforming lots is subject to eleven conditions, including size restrictions.
- Replacement of a home destroyed by fire or other catastrophe may mean the landowner is not able to rebuild within the same footprint.

The increased percentage of the shoreline designated “Natural” from 11% to 41% is another dramatic change. Most uses in the Natural designation are prohibited or require a conditional use permit that must be approved by DOE, including single-family residences.

Permitting of common accessories to single-family residential use – beach access, docks, armoring, etc. – are made more difficult or even prohibited under the proposed changes. Lawfully allowed armoring to protect homes from erosion is discouraged or prohibited in the new SMP.

The science used by the County and DOE to justify extreme buffers on modest development is selectively cherry-picked from preferred sources and ignores other reputable science that concludes much smaller buffers achieve the same purpose. For all the attention paid to protecting the shoreline environment, the draft SMP contains no corresponding evaluation of the extent of development which needs to be regulated. Predictions of future increased “development pressures” must be verified with the same scrutiny as the ecological science. Jefferson County shorelines have been preserved under the existing 30 foot buffers.

The science is also arbitrarily applied. It allows 30 foot buffers for non-conforming lots and 50 foot buffers for exceptions called “common line setbacks,” but insist 160 foot buffers are necessary for those parcels that don’t fall into either category. The 160 foot buffers are either environmentally necessary or they aren’t.

While the SMP contains options for relief from standard buffers, the process will be expensive and time-consuming for the permit applicant. The administration of a complex regulatory scheme like the SMP will cause further delays, making the feasibility of buffer options untenable for homeowners or prospective buyers. Allowances for variances and conditional use permits require DOE approval, creating more uncertainty.

Finally, the burden of proof is placed on the applicant throughout the draft SMP to demonstrate no harm is occurring as a result of a proposed permit for development. This improperly contradicts the time-honored principle of presumption of innocence unless proven guilty. A fundamental principle of the Olympic Stewardship Foundation is that it is the responsibility of the regulating agency to demonstrate a showing of harm before imposing restrictions.