

7. REGULATORY PROGRAMS THAT COMPLEMENT THE SHORELINE MASTER PROGRAM

Clallam County's Shoreline Master Program is one of several regulatory programs that determines, influences, and shapes the type, intensity and impact of development along and adjacent to shoreline environments. Clallam County Code (CCC) has several additional provisions that work in concert with state and federal programs to protect shorelines and accommodate appropriate shoreline use and development. The following summary describes some of the key regulatory programs that support the overall goals and policies of the County's SMP.

7.1 Local Regulations and Plans

7.1.1 Comprehensive Plan and Zoning (CCC Title 31 and 33)

The County adopted its first comprehensive plan in 1967, and has made several updates to the plan to identify long-range planning goals and policies that address issues of a county-wide nature. Issues that have been identified through this process include the management of forest and mineral lands, urban growth and sprawl, transportation, economic development, affordable housing, natural, historical and cultural resources, utilities and capital facilities (CCC 31.01.300). The plan also fulfills the County's responsibilities to manage growth as mandated by the Growth Management Act (GMA).

The current Comprehensive Plan, adopted August 28, 2007, provides guidance for development within the unincorporated areas, as well as those lands held by the State. Although the County works cooperatively with the Tribes to achieve common goals, the Comprehensive Plan does not cover tribal trust lands.

CCC Title 33 establishes zoning districts in the County (Clallam County, 2010). These districts, which generally follow land use designations established in the Comprehensive Plan, include 6 resource and public zones, 13 rural zones, 7 urban zones, 13 commercial zones, and 2 industrial zones.

7.1.2 Critical Areas Regulations (CCC 27.12)

The GMA defines the following types of areas as "critical areas": critical aquifer recharge area, flood hazard areas, geologic hazard areas, habitat conservation areas (including most streams, lakes, and marine shorelines), and wetlands. Clallam County critical area regulations apply to all those unincorporated lands not within City, National Park / Forest lands, or tribal trust lands. Last amended in April 2007, the code provides protection standards for critical areas within the shoreline jurisdiction under Part Three of Title 27.12 through the use of buffers, land use restrictions, and building standards.

The regulations require buffers around wetlands and some fish and wildlife habitats. Buffer widths for regulated wetlands range from 25 feet to 200 feet depending on the wetland type and the nature of the proposed adjacent development. Buffer widths for aquatic habitat areas range from 25 feet to 150 feet based on the type of resource and nature of the proposed adjacent

development. Regulations also limit the types of alterations that are allowed within critical areas. Activities that are allowed often require the applicant to prepare a special report (i.e., geotechnical, wetlands, etc), including an analysis of the impact of the proposed development on the critical area and its buffer and a mitigation plan to compensate for identified impacts.

Ecology mandates that shoreline master programs provide protection for critical areas within shoreline jurisdiction. This was clarified in Engrossed House Bill 1653 (Washington State, 2010). Ecology has directed local jurisdictions to incorporate their critical area ordinance into their shoreline master programs according to one of two options:

1. Adopt by reference the critical area ordinance, citing the ordinance number and date of adoption; or
2. Incorporate the critical areas ordinance into the SMP as either an appendix or part of the body of the SMP.

Ecology's SMP Guidelines state that local governments that plan to integrate critical area regulations into SMPs must review the existing critical area regulations to ensure they meet SMA requirements for critical area protection. Jurisdictions must use "*the most current, accurate and complete scientific and technical information available*" (WAC 173-26-201(2)(a)).

7.1.3 Other Provisions of Clallam County Code

The County is also in the process of developing a comprehensive stormwater management plan and associated ordinances for stormwater management and clearing and grading. The County intends to move forward with revising and adopting a Small Project Drainage Manual, and will apply this manual for certain residential projects, as funding is available. An approved drainage plan will be required as a part of building permit submittals for new structures and expansion of existing structures. The drainage plan must control any increase in the amount and rate of stormwater runoff as a result of the development of that property. Standards vary depending whether the development occurs in an area with a community drainage system or not.

The CCC also establishes a special shellfish district to protect shellfish resources. The legal boundaries of the district include the Dungeness Watershed and those waters influenced by it through the irrigation system, and other independent tributaries to the Strait of Juan de Fuca from Bagley Creek east to and including the Sequim Bay Watershed. This encompasses the Dungeness and Graywolf rivers, the creeks of Bagley, McDonald, Matriotti, Meadowbrook, Cooper, Cassalery, Gierin, Bell, Johnson, Dean, Jimmycomelately, Chicken Coop and their tributaries.

7.1.4 Water Resources Inventory Area (WRIA) Plans

Watershed planning occurs under enabling legislation passed in 1998 (Watershed Management Act, RCW 90.82). It is closely tied to planning for other water and watershed resources, including local land use planning and other federal, state, regional, and local laws, regulations, and planning initiatives. The watershed planning process provides a framework for locally based resource management. The primary goals of local watershed planning are to assess the status of water resources within each WRIA and determine how to address competing demands for water.

The statute states one of its purposes is “...to develop a more thorough and cooperative method of determining the current water situation in each water resource inventory area of the state and to provide local citizens with the maximum possible input concerning their goals and objectives for water resources management and development” (RCW 90.82.005).

The WRIA 18 Elwha-Dungeness Watershed Plan was adopted by the Clallam County Board of Commissioners in 2005. The WRIA 18 Initiating Governments include Clallam County, the City of Port Angeles, the Elwha Klallam Tribe, the Jamestown S’Klallam Tribe, and the Agnew Irrigation District. The WRIA 17 Quilcene-Snow planning area within Clallam County includes Sequim Bay and Miller Peninsula. These areas have been incorporated into the planning area WRIA 18. A Draft WRIA 19 Lyre-Hoko Watershed Plan was issued in 2008. The WRIA 19 Initiating Governments include Clallam County, the Lower Elwha Klallam Tribe, the Makah Tribe, and the Clallam Public Utility District. Portions of WRIA 20 Soleduc-Hoh planning area fall within Clallam County, but are not included in the current SMP update planning area.

7.1.5 Other Shoreline Master Programs

Two cities within Clallam County, Sequim and Port Angeles, are currently in the process of updating their own SMPs. These incorporated areas are not subject to the provisions of Clallam County’s SMP.

7.2 State and Federal Regulations and Plans

Numerous state and federal agencies have regulatory jurisdiction over resources in the County’s shoreline planning area. State and federal regulations apply throughout the County and sometimes overlap with existing County regulations and with each other. Among the most important of these regulations are: the federal Endangered Species Act, the federal Clean Water Act, the federal National Flood Insurance Program, the federal Rivers and Harbors Act, the State Forest Practices Act and State Hydraulic Code. Other relevant federal laws include the National Environmental Policy Act, Anadromous Fish Conservation Act, Clean Air Act, and the Migratory Bird Treaty Act. Other state laws that address shoreline issues include the State Environmental Policy Act, Salmon Recovery Act, and the Water Quality Protection Act.

A variety of agencies (e.g., U.S. Army Corps of Engineers, National Marine Fisheries Service, U.S. Fish and Wildlife Service, Washington Department of Ecology, Washington departments of Natural Resources and Fish and Wildlife) are involved in implementing these regulations, but these agencies typically only review shoreline permits that involve in- or over-water work, discharges of fill or pollutants into the water, or substantial land clearing. Depending on the nature of the proposed development, state and federal regulations can have a major effect on the design and implementation of a shoreline project, and on the timing and complexity of the permit review process.

7.2.1 Clean Water Act (CWA):

The federal CWA requires states to set standards for the protection of water quality. It also regulates excavation and dredging in waters of the U.S., including lakes, streams, and wetlands. Certain activities affecting shorelines, including all in-water work requires a permit from the

U.S. Army Corps of Engineers (Corps) and/or Washington State Department of Ecology under Section 404 and Section 401 of the CWA, respectively. Aquaculture operations, construction of bulkheads, docks, launching ramps, beaches, and shoreline restoration projects all have the potential to require permits under Section 404 and Section 401. The Corps and Ecology review all projects and require mitigation for adverse impacts.

7.2.2 Rivers and Harbors Act Section 10:

The federal Rivers and Harbors Act requires any project that creates an obstruction or alteration in, over, or under navigable U.S. waters to obtain a permit. Permits are issued by the Corps for construction and maintenance of docks, piers, pilings, bulkheads, and certain other in-water and over-water structures. Corps standards for Section 10 approval will dictate construction techniques, materials, and size and bulk allowed for construction of docks, piers, shoreline armoring, and other in-water / over-water structures. The Corps also requires mitigation for adverse effects caused by these construction activities.

7.2.3 Endangered Species Act

The federal ESA addresses the protection and recovery of federally listed species. Depending on the listed species, the ESA is administered by either the National Oceanic and Atmospheric Administration National Marine Fisheries Service or the United States Fish and Wildlife Service (collectively called ‘the Services’) Many of the County’s shoreline waterbodies provide critical migration, spawning, and rearing habitat for threatened salmon species. Any project that has a ‘federal nexus’ (meaning it requires a federal permit, occurs on federal land or uses federal funding) must be reviewed to ensure that effects of the project will not result in a ‘take’ of listed species. The Services require project to implement specific conservation measures to ensure that listed species are not jeopardized.

7.2.4 State Hydraulic Code

The Washington Department of Fish and Wildlife regulates activities that use, divert, obstruct, or change the natural flow of the beds or banks of waters of the state and may affect fish habitat. Projects in the shoreline jurisdiction requiring construction below the ordinary high water mark could require an HPA. These projects would include construction of docks, bulkheads, culverts, and other in-water structures. Projects creating new impervious surface that could substantially increase stormwater runoff to waters of the state may also require approval.

7.2.5 Forest Practices Act

The Washington Forest Practices Act of 1974 (RCW 76.09) regulates activities that relate to growing, harvesting, or processing timber. The Forest Practices Board is an independent state agency that defines rules and regulations for forest practices. The rules are designed to protect public and natural resources such as water quality and fish habitat. By requiring harvesters to implement a reforestation plan, natural resources are protected while maintaining a viable timber industry. The Washington Department of Natural Resources (WDNR) administers the publication of the Forest Practices Board rules, along with guidance and other technical information. Specific rules involving water quality protection must be approved by Ecology prior to Forest Practices Board adoption.

Operators of lands covered under the Forest Practices Act must file a notice of intent to convert to a non-forestry use with DNR. The notice is then forwarded to the local jurisdiction, which has the authority to approve or deny associated development permits based on compliance with the provisions of the original application for forest practices.

The Forest Practices Act directs counties planning under the Growth Management Act to adopt and enforce ordinances and regulations for forest practices within their jurisdiction. The Clallam County Comprehensive Plan (section 31.02.140 of the CCC) and the use provisions within the SMP provide regulations for all areas containing forest lands for the protection of both environmental and commercial resources. Regulations for forest practices within the shoreline jurisdiction (approximately 25 percent of Clallam County shorelines) may not be more restrictive than those provided by the Forest Practices Act, except for the proposed conversion to non-forest land uses (RCW 90.58.030(2)(d)(ii)).

7.2.6 Aquatic Land Leasing

Much of the aquatic lands (tidelands) within Clallam County are publically owned and managed by DNR. A DNR authorization to use state-owned aquatic lands is required if a project will occur on or over state-owned aquatic lands.