

Jefferson County Shoreline Master Program (SMP) Update
Shoreline Policy Advisory Committee (SPAC)

9-12-06 Meeting Notes

Location: WSU Extension Learning Center – Spruce Room, Port Hadlock

Attendees: *Committee Members* – Al Bergstein, Dick Broders, John Cambalik, Larry Crockett, Peter Downey, Aleta Erickson, Jerry Gorsline, Sarah Krueger, Eveleen Muehlethaler, Judy Surber, Kevin Tuuri

Staff & Consultants - Josh Peters, Michelle McConnell, Gabrielle LaRoche

Audience – 10 members of the public signed the attendance sheet

Materials: Final Agenda; '00 Draft SMP Citizen Advisory Group Report; Marine Shoreline Landowners Workshop flyer/ mailing

9:07 am Welcome & Introductions – Project Coordinator Michelle McConnell welcomed everyone and expressed appreciation for their attendance. She introduced colleague Josh Peters, Lead Senior Planner with the County Dept. of Community Development. The group of committee members each introduced themselves giving name, committee representation and organizational affiliation.

9:10 am Public Comment – Two members of the audience signed-up to provide comment:

- A property owner described the situation on his Marrowstone Island marine shoreline parcel that sustained considerable erosion during the high tide storms that occurred last winter. He expressed great concern and dissatisfaction with the length, complexity and cost of the permit application review process he's experienced in trying to replace his bulkhead to provide shoreline armoring and protect his beach stairs and home. He also expressed concern that the committee had not adequately discussed bank stabilization at the previous meeting.
- A property owner (who's the neighbor of the above) commented that it seems there is too much emphasis on protecting the ecology but not enough on protecting the property rights of the people. He acknowledged that about 70% of the marine shoreline is publicly owned and that a balance must be found between public and private shorelines. He also questioned why the Consistency Report prepared by the project consultant (Adolfson) looks at the '00 Draft SMP rather than the '89 SMP that's currently enforced.

9:40 am In response to the public comment, committee member Al Bergstein asked for clarification of the SPAC's role in the SMP Update process and how they might address issues such as the Marrowstone Island property owners that had just spoken.

Michelle and Josh explained the following:

- SPAC is advisory to staff and consultants as an SMP proposal is developed for the Planning Commission, when formal public review & comment will begin. SPAC involvement and having SPAC meetings open to the public are efforts by staff to provide additional opportunities for public involvement earlier in the update process than is required.
- While the described Marrowstone Island situation is useful as a case study for the SPAC to better understand the permitting process as it implements the SMP, the group has no involvement in reviewing active permit applications.

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Members of the audience interjected several questions/comments (*answers in italics*):

- How long will the update process take? *Preliminary Draft SMP submittal to WA Dept. of Ecology (Ecology) is anticipated by June 30, 2007. In addition, the Critical Area Ordinance (CAO) revision is in progress with Board of County Commissioners (BoCC) action anticipated by mid-January, 2007. Critical area codes that apply to shoreline areas must be included in the updated SMP.*
- There are codes and statutes that define the ordinary high water mark (OHWM) but planners can arbitrarily change the statutes. *OHWM is defined in the 1971 Shoreline Management Act (SMA; state law RCW 90.58) and upheld by the 2003 SMP Guidelines (administrative rule WAC 173-26). Only Washington State Legislature can revise the laws and codes.*
- My permit application was turned down so now I have to re-apply and there are more fees. *The SPAC is not the correct body for appealing SMP implementation and permitting decisions. The group can only endeavor to make new policies more clear to help avoid similar problems in the future.*

10:45 am Consistency Report Follow-up – Committee members were invited to share any additional questions or comments on the Consistency Report that was reviewed and discussed at the previous meeting. The following comments & discussion were made:

- Committee member Larry Crockett said he'd asked the Port's land use consultant to provide comment, but had not received any as yet.
- A clarifying point was made that the current SMP Update effort was not limited to the '00 Draft SMP, but that document serves as a useful "stepping stone" since more recent science and citizen involvement helped create it as compared to the '89 SMP.
- A clarifying point was made that the SMP applies to both marine and freshwater shorelines, but on the west end of the county, all marine shoreline is under federal or tribal ownership so the SMP does not apply. It is understood that federal land managers must adhere to the Coastal Zone Management Act (CZM), but CZM includes local SMPs and Ecology confers on federal projects in shoreline areas. The feds have an "opt in" approach to local SMPs and the county has previously issued permits for some but not all projects on Indian Island (US Navy) and Protection Island (US Fish & Wildlife Svc.). National Forest and National Parks have not typically applied for permits but there is the opportunity for possible future coordination. NOAA manages Endangered Species Act (ESA) compliance and is preparing to review local SMPs for compliance with the Salmon Recovery Plan, which applies to state, regional and local recovery efforts. They have not yet reviewed the City of Port Townsend's SMP and will do so only upon CZM review. This issue was actually part of the opposition and legal appeal of the initial '00 SMP Guidelines. Shoreline Hearings Board upheld that the State has no duty to uphold the ESA so Ecology dropped that part of the Guidelines – only the feds rule on ESA compliance. It was noted that these federal agencies should be invited (again) to participate in the SMP Update process, and that it's important that the SPAC at least be aware of these issues.

11:00 am Integration Strategy Review – Josh reviewed the document by leading the explanation and discussion of each section of the summary matrix. Questions and discussion included the following:

A. Comprehensive Plan (CP) –

- There will be a shorelines element in the CP but also a "convenience document" with all SMP components for easy reference.
- Committee member Judy Surber suggested that goals and policies that logically fit in the CP outside the shorelines element be labeled as "SMP" rather than be removed from their logical place to be in the shoreline element (e.g. Port goals would fit in economic development component, but also have shorelines relevance).

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- It was suggested that Co. permit technicians be consulted as to what would be most useful for day-to-day usability.
- Committee should keep in mind that any amendment/revision to SMP components will require Ecology review. Group was cautioned to not “tie hands” for future changes or implementation.
- Committee should remember that SMP doesn’t stand alone, but is part of hierarchy and cross-reference with other goals, policies, codes, the guidelines and the SMA.
- Committee members Jerry Gorsline and John Cambalik provided comments on the Integration Strategy document including:
 - Approximately nine CP goals and policies are not included that should be
 - Some goals and policies will have more direct or indirect relevance depending on whether they’re more SMP- or CAO-related.
 - Some issues are currently under consideration by Hearings Board &/or the courts
 - Seems like there’s a lot of agriculture focus and very little aquaculture focus in the CAO
 - Jerry will provide his list of omitted items to Michelle via email

It was noted as an aside that the County webpage on Flood Protection has been recently updated.

B. Unified Development Code (UDC) -

- WAC defines critical salt- and freshwater habitat, and the pending Inventory & Characterization Report should help better define.
- Wetlands have been a hot topic for CAO discussions.
- Jerry recommended a report by the City of Seattle titled “SMA Jurisdiction & Incentives for Shoreline Restoration Projects”. It should be available online, or he’ll loan his copy.
- Judy said the City of PT tried to incorporate some alternatives and incentives but it got complicated. An example included trading restoration “credits” for increased development rights.
- Larry added that the Port is seeking mitigation credit for application to future development in exchange for the removal of some creosoted pilings, but it’s a question of how to quantify such credits.
- Where does the Surface Water Management (SWM) Plan now stand? *It is currently in Draft form and is intended as a precursor to developing a SWM Program. BoCC just had a work session with Public Works on this issue and staff will get an update for the committee. In addition, Puget Sound Action Team has provided support and Low Impact Development (LID) options such as guidelines for Planned Low Impact Developments (PLIDs) and for “tightlines” that route water runoff over bluff edges to the beach below. Staff will provide the online link to the Draft SWM Plan.*
- It was expressed that it’s better to reference the UDC rather than create a separate or duplicative SMP regulation. But the question is how to reference it and how updates will work. It may or may not work to reference specifically-dated documents but still need to address issues of equivalency of protection levels.

C. Non-Motorized Transportation Plan; Parks, Recreation and Open Space Plan

D. Surface Water Plan

E. Transportation Improvement Plan

F. Other

The following points of discussion were made:

- Committee member Sarah Krueger is interested to review the Parks, Recreation and Open Space Plan for public access issues. Michelle has already started working to get the 268-page document in digital form.
- The SWM Plan serves as a supplemental document to the SWM Manual now in use.

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- There is some concern that the three SWM document names are too similar and confusing.
- Surface water includes more than just stormwater.
- Utilities should be included with transportation, as they are linear as well. CP has a transportation element (Chapter 10) and a utilities element (Chapter 11) that includes the '86 Coordinated Water Systems Plan.
- There was a question about if and how cross- and multi-county efforts might be accommodated since roads and utilities reach outside Jefferson County.

11:50 am Integration Strategy – Appendix A – Adolfsen sub-contractor Gabrielle LaRoche was present and gave a brief overview of Appendix A that contains the findings of a series of staff interviews she conducted about deficiencies with the '89 SMP. The following points and discussion were made:

- There are many conflicts with the existing CAO.
- About 75% of shoreline development permit (SDP) requests are for stairs to the beach.
- Vegetated buffers are becoming a hot topic in recent years
- The difference between the old and new stream typing systems has been a challenge.
- There are advantages of mooring buoys over anchoring, and there has been some discussion between DNR, DFW and the County about installing a possible grid of mooring buoys. There would be some changes needed to live-aboard regulations, and there could be conflicts with shellfish areas. Pump-out, bathroom and other facilities would likely be needed. This issue can partly be addressed through the shoreline environment designations (SEDs) and the SMP regulations. Enforcement is another issue of concern and would require coordinated efforts with multiple agencies. There is some concern about increasing the likelihood of derelict vessels being left on public mooring buoys. Several members voiced concern that current state laws for derelict vessels are insufficient and DNR should be contacted about it.

Committee members were provided copies of the 10-page '00 Draft SMP Citizen Advisory Group Report, and advised that an additional 80 pages of attachments are available for review for anyone interested.

12:10 pm Lunch break

12:35 pm Integration Strategy – '89 SMP – Josh led a quick review of section 13.1 of the Integration Strategy to summarize the highlights of the staff interviews. Just two comments were made:

- What about other over-water structures in addition to stairs to the beach?
- Non-conforming uses are generally legal as “grandfathered” uses

12:40 pm '00 Draft SMP Citizen Advisory Group Report – Josh led a review of the report that was prepared in July 2000 covering each of the key concerns:

1. Inadequate Inventory – A Tala to Kala Point study was completed as sample of a more comprehensive analysis of current shoreline conditions. The pending Inventory & Characterization Report is anticipated to be a great improvement.
2. Commercial Timber Harvest – The Forest Practices Act now regulates commercial timber harvest, and Forest & Fish Agreements allow for 30% of harvestable timber in shoreline areas of statewide significance to be cut over a 10-year period. Forestry activities have been deemed “not development” under the SMA but associated roads and bridges are. SMPs cannot regulate silviculture activities via permit, only related activities.
3. Setbacks – There are allowances for averaging and other variances and the group will consider how to establish standard setbacks in general. Development setbacks are different than vegetative buffers and

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can be cumulative or overlapping. The City of PT process clarifies between Habitat Conservation Plans required for ESA compliance and Habitat Management Plans.

4. Special Report, 3rd Party Reviews – New requirements and procedures are in place since 2000, in both CAO and UDC but are not included in the '89 SMP so there is the question of how to integrate them. It must be clear as to which “trumps” which. The committee is interested to receive a briefing to update them on these issues.
5. Shoreline Function vs. Human Use – This topic is always an issue of balance due to the three broad policies of the SMA:
 - Encourage water-dependant uses
 - Promote public access
 - Protect natural resources and ecological functions

Human uses are referred to as important in both the SMA as “preferred uses” as well as the Growth Management Act (GMA) as “reasonable uses”. There is also US Superior Court case law about the issue of takings, which will be of interest this fall as the Property Fairness Initiative 933 (I-933) appears on voting ballots across the state. I-933 seeks to have government compensate property owners or waive development regulations when the landowner feels the regulations result in “damaging the use or value” of their property. The initiative also defines the term “damaging the use or value”. I-933 is found online at

<http://www.secstate.wa.gov/elections/initiatives/text/i933.pdf#search=%22Initiative%20933%22>.

- Other Issues
 1. Terminology – there are better definitions now and the pending I & C Report will also help
 2. Bulkheads – alternatives and options should be considered
 3. Vegetation Management – As previously discussed, as well as large woody debris (LWD) and even throwing grass clippings over the bluff. Also, Ecology is currently looking at mitigation banking and other options and alternatives. The committee would like a staff update on this topic.

It was noted that the STAC Review Draft of the I & C Report was just received and will go to the technical committee for review and comment prior to SPAC receipt of the document. Staff will post the document to the project webpage if file size allows.

1:15 pm Announcements –

- Michelle distributed a flyer that was recently mailed to 3,100 shoreline property owners in Jefferson County about a pair of workshops designed to educate marine shoreline landowners about the coastal geology, marine ecology, water quality and stewardship aspects of having waterfront property. John explained the workshops will be held from 10 am to 4 pm on September 30 in Quilcene and on October 14 in Hadlock. Pre-registration is required and a fee of \$12 covers the workshop and lunch for each participant. Marine shoreline landowners, SPAC and STAC members will be given registration preference.
- Michelle notified the group that meeting notes from the 8/31 meeting would be forthcoming, as well as notes from today’s meeting. They will be provided to the group as they are available, and comments are welcome to ensure an accurate account of each SPAC meeting.
- Michelle notified the group that the next SPAC meeting will be held from 10 am to 2 pm on 9/26 at the same location (WSU Learning Center – Spruce Room). Agenda and reminder will be sent via email and the meeting will allow follow-up on the Integration Strategy, and lead consultant Adolfson will present an orientation to the I & C Report. The SPAC will then meet jointly with the STAC on October 13, to review the document and discuss STAC comments.

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1:20 pm Public Comment – Members of the audience made comments:

- The SMP Update seems to be following a different approach than the CAO code revision. There seems to be differing levels of staff involvement in the SPAC as compared to the Planning Commission Critical Areas committee and citizen advisory group regarding who leads the discussion.
- CAO code revision is using another jurisdiction as an example, the SMP Update is using the '00 Draft SMP more than the '89 SMP. It seems like a problem to use the WAC as guidance when we have no control over it.
- It seems like we're building in a problem to the SMP by using cross references to other goals and codes.
- My apologies for sounding antagonistic earlier. I realize you have a big job to do and it's complicated by the administration. The challenge is to balance between business, landowners and ecology. I've just experienced a loss of property value so this issue just became personal. The simple language gets clouded by logistics. If you want advice on sensible management approaches, talk to Marti Ivers. There are 25 agencies involved and we need better leadership from above to avoid all these contradictions.
- It sounds like the group needs lots of answers from Ecology, so why aren't they here? You need to consider how your decisions will affect the people. We need another Depression to make people work together for the best solutions.
- Don't repeat language from other documents, but refer to them instead.
- It's Ecology's language in the '03 SMP Guidelines and Ecology's approval of the SMP, then the County and Ecology "jointly administer" the SMP... why not just let Ecology do it all in the first place. *The 1971 Shoreline Management Act (state law) and the 2003 SMP Guidelines (administrative rules) require co-administration of the SMP. The county handles shoreline development permits and Ecology handles variances and conditional uses.*
- Partisan differences need to be rectified to address the problem.
- These old-timers here today have knowledge and experience – listen to them!
- Has a charrette approach been successful in Jefferson County before? *City of PT had a public visioning meeting called a "charrette" about gateway development; county housing charrette?*
- The public tries to keep up, get informed and be involved but the meetings are too frequent and too long. All the committee members are paid to attend. We're still tired from the In-stream Flows, Critical Aquifer Recharge Areas, UDC and Comp. Plan – and those all took a long time.
- How will you summarize all this information for the public?
- This process is too compressed – it's more like a nuclear bomb mushroom cloud coming at us than a train coming down the tracks.
- Use the newspapers to educate the public.
- Thanks to the committee members for their time.
- Give the public a vote on the issues.

2:10 pm Adjourn