

**JEFFERSON COUNTY
BOARD OF COUNTY COMMISSIONERS**

AGENDA REQUEST

TO: Board of County Commissioners
Philip Morley, County Administrator

FROM: Al Scaff, Director of Community Development
Stacie Hoskins, Planning Manager/Shoreline Administrator *SH*
Michelle McConnell, Associate Planner *MM*

DATE: March 14, 2011

SUBJECT: Draft Jefferson County Response to Ecology on Changes to the *Locally Approved Shoreline Master Program* and Additional Public Input (MLA08-475)

ATTACHED: 3/7/11 Email - Ecology Guidance on Possible Changes

STATEMENT OF ISSUE: Last week, the Board of County Commissioners completed review of the Department of Community Development (DCD) staff recommendation on 61 possible changes to the *Locally Approved SMP*, including WA Department of Ecology's required and recommended changes and staff's additional revisions proposed for clarification. Based on the Board's feedback, staff has prepared a Draft Jefferson County Response to Ecology. Further, to continue the tradition of citizen involvement, staff recommends the Board accept additional public input on the Draft County Response and has prepared a draft legal notice to hold a public hearing on the Draft County Response on March 28, 2011. Submitted with this request is a March 7, 2011 email from Ecology that provides guidance on several possible changes.

ANALYSIS/STRATEGIC GOALS/PROS and CONS:

Ecology's approval is regarding the December 7, 2009 *Locally Approved SMP*, submitted to Ecology on March 1, 2010 as Exhibit A of Jefferson County Resolution 77-09 (erroneously referenced in Ecology documents as 'Ordinance Number 77-09') as the proposed amendments to the Jefferson County Comprehensive Plan and Jefferson County Code. This SMP Comprehensive Update (MLA08-475) is required by law and must be completed by December 2011.

In March 2010, the County submitted a *Locally Approved Shoreline Master Program (SMP)* to the Washington Department of Ecology (Ecology) for final review and approval, per RCW 90.58 and WAC 173-26. After a public review process, Ecology considered the County's proposed SMP update for consistency with state statute and rules.

On January 26, 2011 Ecology determined that the County has met the procedural and policy requirements of the Shoreline Management Act and the SMP Guidelines, pending some required changes. A letter from Ecology's director with three attachments outlines their conditioned approval, findings and conclusions, required and recommended changes. The County needs to consider the required changes and respond as to whether to accept or propose alternatives to those changes prior to

final adoption by the state and by local ordinance.

Staff reviewed the required and recommended changes and provided guidance to the Board on whether to agree, further study, decline or propose alternative changes, including numerous revisions proposed for clarification to correct various errors in the document prior to final adoption. The Board discussed the DCD Recommendation on February 22, February 28 and March 7, 2011 providing feedback to staff on each item for the County's response to Ecology. The next step is to confirm the County's intended response to Ecology on the possible changes and gather public input on those changes prior to finalizing and submitting the response to Ecology.

FISCAL IMPACT/COST-BENEFIT ANALYSIS:

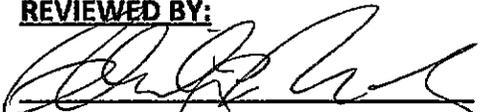
Grant funding for the SMP Update ended in June 2009. Department of Community Development staff work is covered by the department's annual budget.

RECOMMENDATION:

Staff recommends the Board:

1. Provide final review and feedback on the Draft Jefferson County Response to Ecology; and
2. Approve the legal notice for a March 28, 2011 public hearing on the Draft County Response.

REVIEWED BY:


Philip Morley, County Administrator

3/10/11
Date

Michelle McConnell

From: Stewart, Jeff R. (ECY) [jste481@ECY.WA.GOV]
Sent: Monday, March 07, 2011 4:56 PM
To: Michelle McConnell
Cc: Ehlers, Paula (ECY); Skowlund, Peter (ECY); Wolfman, Sonia (ATG)
Subject: Follow up on language changes

Good talking with you all on Thursday, March 3, 2011 by conference call. It struck me we are moving along at a good pace towards substantive agreement on most of the topics where that is needed. We appreciate the clarifications and additional perspectives you shared about other sections of the code as they relate or apply to the provisions we are discussing. In particular, the following notes are offered, with numbers corresponding to their number on your DCD recommendation list;

Required change #4.

Article 2.A.2.7 Definition of Appurtenance, Normal:

We understand the concern you raise about a three car limit. We are open to other ways of ensuring that the normal appurtenance category is not construed as allowing "garage" structures of limitless size. You explained the size limitations are covered in other sections of Jefferson County Code, regarding lot coverage, and with that being the case we are satisfied our intention will be effectively covered. We will therefore recommend the Director accept an alternate version, striking the 3 car reference.

Required Change #11

Article 7.2.f.5 Boating facilities Regulations, Residential Docks

The revised text was agreed between Jefferson County and Ecology in conversations following expressed concerns about dock length being effectively unlimited because of the provision allowing a different length as needed for reaching adequate depth to accommodate watercraft. The alternative language raises the range from 60 feet to 100 feet, increasing flexibility at the time of permitting, while explicitly limiting dock length as the minimum necessary.

We want the dock regulation to be straight-forward for administrators and easily understood by citizens, allowing enough flexibility to meet practical needs and also limiting docks to a length as needed. Ecology guidance on docks does not specify lengths, which should vary according to the physical conditions of every jurisdiction and the waterbodies therein. While the provisions are differently worded, the range of 60-100 feet is also used in the Whatcom SMP. The first two years of implementation indicate this is a reasonable and workable range. The option to get variance approval for lengths longer than 100 feet remains as relief if needed, and the administrator may also flex requirements based on resource protection needs at a given site.

If Jefferson County proposes a different methodology, we will consider recommending it for the Director's approval, but we believe the Required change language reflects an appropriate improvement for the reasons stated.

Required Change #14

Article 8.2.B.1 and 2

Ecology's required change on net-pen aquaculture reflected the water-dependent, preferred use status of all aquaculture, and the evident paucity of scientific information specific to this topic that supported the decision. In other words, we recognized that most of the focused discussion within the Advisory Groups, and the scientific information brought to those conversations, addressed geoduck and other forms of aquaculture more than net pens. Testimony was provided during the public comment periods, both in favor of banning and against banning net pen aquaculture, while our review indicates little additional technical information was amassed or considered as a basis for the prohibition. We understand there are strongly held opinions either way. Ecology's required change would leave these activities subject to Conditional use approval, and the requirements of CUP criteria will pose significant regulatory constraints to ensure protection of the resource.

We will also consider alternate methods, and whatever the Commissioners decide will be forwarded to our Director's office for a decision, but our interpretation is the required change is an appropriate one pursuant to the RCW.

Required Changes #25

Article 6.1.E.2.i

We are concerned that three hundred feet is more than necessary as a view corridor for infill situations; however, we understand the County has renewed its support for maintaining that provision, and considers the impacts on the landscape would be negligible. Provided a clear case can be made to that effect, We will reconsider recommending to our Director allowing the limited 300 common line buffer standards, to only non-conforming lots, based on factual support identified in the County's rationale.

Recommended Change #14

Article 10.20.A.3.B

Ecology's advice on this provision reflects that nothing in RCW90.58 authorizes the issuance of criminal penalties in cases where an administrative order is not adhered to or complied with. It may be the County has a different statutory authority which does support this, but we consider it inadvisable to include this language for the above reason. The "or" in the recommended changes text is a typographical error, and should change to "or."

Jeffrey Stewart

Shoreline Specialist

Washington Department of Ecology

360-407-6521