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SMA Rule Amendments Comments

These comments are being submitted by the Wahkiakum County Real Property Rights Advisory Board, which is a volunteer board appointed by the county commissioners to advise the commissioners regarding property rights issues. For more than 5 years, the board has been Ecology's primary point of contact regarding updating the SMP.

Critical Areas

1. We strongly concur with requiring critical areas protection policies and regulations to be located directly in the SMP. That change dramatically improves readability of that section of the SMP. Accordingly, "critical areas ordinances" should be deleted from the definition of "Development Regulations", as it is no longer a separate regulation.
2. WAC 221(2)(d) includes the words "avoid directing new growth". These words only apply to local governments that are required to plan under the GMA, or to those that have chosen to enact zoning requirements. This is but one example of the many references in shoreline WACs which directly or indirectly references the Growth Management Act (GMA). There are 11 counties plus their associated municipalities that are not required to plan under the GMA. We suggest adding a section in each shoreline WAC clarifying this fact.

Nonconforming uses, developments, and Lots

1. The word "lot" is frequently used, but is not defined.
2. WAC 173-26-221(3)(d)(i)(H) states "Expansion of nonconforming development may be allowed only when necessary to support a conforming use". RCW 90.58.620 does not include this restriction. The only restriction is that such expansion will result in no net loss of ecological function.

Public Access

1. New paragraph WAC 173-26-221(4)(d)(iv) references a requirement that is based on the use of the development and fails to account for the possibility that the use could change to one that is not required to provide public access. The summary section titled "Changes impacting the regulated community" acknowledges a potential change in use, but that is not reflected in the proposed WAC amendment.
2. The Public Access summary states that local governments are "encouraged" to have a public access plan, while the actual amendment uses the word "should", which seems to imply a requirement (although the definition of "should" is disputed). Neither RCW 90.58.100 nor the GMA require a plan.

Definitions

1. In the amended section of WAC 173-26-020(1)(6) it states “see definition for appurtenant structure”. There is no such definition in this section.
2. Section WAC 173-26-221(6)(e)(i) defines Hazard Tree as one that presents a “high or extreme risk to persons or property”, and that definition is accurate. However, the determination of an arborist that a tree will not fall “under the normal range of environmental conditions” is inadequate assurance that life and property are safe. It is not unreasonable to give a property owner some discretion in eliminating trees that cause concern. A commonly used standard is that a tree can be considered a hazard if it is within 1.5 tree lengths of a residence or other primary structure.

Shoreline Modifications

1. WAC 173-26-231(1) lists some examples of shoreline modifications related to the construction of a physical element. Elimination of a physical element such as removal of a dike is also a shoreline modification and should be included as an example.

Restoration Projects

1. When shoreline jurisdiction boundaries are intentionally moved as a result of shoreline restoration or habitat improvement projects, there is a potential for resulting hardship to the property owner on which the project takes place as well as adjoining properties. RCW 90.58.580 recognizes this issue and provides relief to land owners so affected, but only in urban growth areas. While hardships may be more widespread in those urban areas, the resulting impact in rural areas may be no less severe. It should be noted that a restoration project requires property owner approval, and not allowing relief on that owner’s property or on the property of neighbors could negatively affect such approval, thus precluding the accomplishment of the project. The comment submitted by Ian Sinks during the informal comment period supports our position.

Sea Level Rise (SLR)

1. RCW 90.58.080(6) and RCW 90.58.250 require that local governments receive “reasonable and adequate” funding for the development and amendment of master programs. However, we are concerned regarding the possible increase in resources required to support the increase in ongoing workload outside of the review periods. It is not clear that local government functions such as monitoring and adaptation defined in WAC 173-26-246(4) are intended to be performed only during the review process or if they are ongoing.