Jenna Kay

Thank you for the opportunity to provide comments on the current Shoreline Management Act rulemaking. Attached please find comments from Clark County Community Development and Community Planning staff. Please reach out if you have any questions on our submittal.

WAC Section	Comments	From
173-26-191(2)(b); 173-26-221(2)	The new language requiring critical areas be within the master program rather than through incorporation by reference will result in a substantial amount of work needed by our jurisdiction (and likely others) who currently use the incorporation by reference approach for regulating critical areas within shoreline management areas. If this moves forward, it would only seem fair if a substantial amount of funding is made available for local jurisdictions to completely revamp this significant portion of their SMPs. For our jurisdiction this would lead to needed changes not only in the SMP regulations but also the county's critical areas ordinances, to split them apart and remove cross-referencing. It also means, all local jurisdictions will need to manage two sets of critical areas codes, which in some ways simplifies things and in other ways duplicates efforts.	Clark County Community Planning and Community Development
173-26-221(6)(c)(iii)	Regarding degraded shoreline buffers language: From a local jurisdiction perspective, this is legally problematic to implement, particularity without clear objective standards to determine how much to enhance or expand.	Clark County Community Planning and Community Development
173-26-221(6)(b)(iii)	If this is going to be based on Site Potential Tree Height (SPTH), the SMA needs to be extended to the SPTH when it is greater than 200 ft. If local jurisdictions have adopted a riparian habitat designation (RMZ) based on SPTH, that should be the basis of any expansion of the SMA if supported by the local WDFW regional habitat program. As an example, Clark County has aggregated SPTH by "site class" as defined in WAC 222 and has established RMZs at 205' for Site Class III and 235' for Site Class II soils.	Clark County Community Planning and Community Development
173-26-231(3)(b)(ii)(D)	Is this intended to be an outright prohibition overriding permit pathways otherwise provided for in Critical Areas regulations?	Clark County Community Planning and Community Development
173-26-231(3)(a)(ix)	This is potentially creating new inconsistencies with Critical Areas regulations and Shoreline. Also, prohibitions are not "bulk" or "dimensional" standards and are not eligible for a variance, which leaves no administrative remedy for constitutional takings.	Clark County Community Planning and Community Development

173-26-221(6)(d)(iv)(b)	Is management of non-noxious invasive vegetation necessarily shoreline development? What about use of hand operated tools to clear english ivy and himalayan blackberry? Also application of herbicides?	Clark County Community Planning and Community Development
173-27-030	Appurtenant structure and normal appurtenance definitions: What about garages? Please address specifics related to attached, detached, and any size limitations.	Clark County Community Planning and Community Development
173-27-040(3)(f)(iii)	Regarding the use of "garage" in this section. We have the same comment as "normal appurtenance" definition, please address garages-attached, detached, and any size limitations to garages.	Clark County Community Planning and Community Development
Formerly 173-24-040(3)(m)(iii).	Loss of this exemption will require restoration projects supported by our WDFW regional habitat program to obtain a shoreline substantial development permit where the local government review may not substantively alter the project. Under the exemption we have been able to adequately assure compliance with the applicable Critical Area standards. In-water work still trigger's SEPA which ensures adequate notification to the public and agencies that my have overlapping jurisdiction.	Clark County Community Planning and Community Development
173-27-100(2)(d)	Does this completely prohibit changes to vegetation and critical areas impacts or just ensure that any such revisions meet all of the SMP mitigation requirements?	Clark County Community Planning and Community Development

173-27-170(2)(d)	Re: no net loss of shoreline ecological function: This criteria is problematic for residential properties that cannot avoid critical area or vegetation impacts and do not have adequate opportunity to provide compensatory mitigation on site to meet no net loss. There may also be cases where the mitigation cost becomes a rough proportionality concern or violates reasonable investment backed expectations (e.g. for mitigation bank credit purchase). This becomes particularly challenging when coupled with the concept that degraded buffers need to be expanded or enhanced.	Clark County Community Planning and Community Development