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May 5, 2021

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Water Quality Program
Washington State Department of Ecology
PO Box 47600
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Dear Ms. Morgan:

Subject: Comments on the Critical Aquifer Recharge Areas Guidance Revised March 2021.

Send via the eComments form

Thank you for the opportunity to comment on the Critical Aquifer Recharge Areas Guidance Revised March 2021. Futurewise strongly supports the update. This revised guidance will save local governments, public interest groups, and state agencies time and money through its helpful and objective background information and well considered scientific recommendations. It will also protect Washington State's ground water which is owned by the people of this state and used by fish and wildlife, residences, businesses, and government agencies. Protecting these important sources of water will also save taxpayers and ratepayers from the high costs of cleaning up polluted ground water, costs that have bankrupted many polluters. We thank you and the State of Washington Department of Ecology (Ecology) for conducting this update. We do have several suggestions to improve the guidance explained below.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State.

RCW 36.70A.190(4) requires a program of technical assistance utilizing the staff of state agencies, including Ecology. We appreciate that Ecology is continuing to provide this important technical assistance to protect our state's drinking water and to assist counties and cities.

Please clarify the "setting priorities" paragraphs at the bottom on page 4 and top of page 5.

The Growth Management Act (GMA) "requires" a county or city "to designate and protect all critical areas within its boundaries."¹ The "GMA requires that the regulations for critical areas must

¹ *Stevens Cty. v. Futurewise*, 146 Wn. App. 493, 511, 192 P.3d 1, 10 (2008) review denied *Stevens Cty. v. Futurewise*, 165 Wn.2d 1038, 205 P.3d 132 (2009).



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protect the ‘functions and values’ of those designated areas. This means all functions and values.”² So local governments cannot prioritize the regulation of critical areas in a way that will not protect aquifer recharge, ground water quality, or the other functions of critical aquifer recharge areas.

While certainly not Ecology’s intent, the setting priorities paragraphs could be read as allowing regulations insufficient to protect the aquifer to be adopted or these regulations under enforced. This would violate the GMA. In addition, only monitoring within a one-year time of travel of a well or other water source would be a serious mistake as it usually takes much more than one year to clean up a spill that has reached ground water. Also as the data for the Nitrate Prioritization Project shows, more sparsely developed areas used for certain types of agriculture can cause serious ground water pollution. The second setting priorities paragraph could be recast to read as follows with our additions double underlined and our deletions double struck through:

An example would be to focus educational programs in areas with commercial or industrial uses more likely to pollute the aquifer~~apply stricter regulations and monitoring within the one-year time of travel of a public water supply well~~, as opposed to ~~more sparsely developed~~ areas of the county with a lower risk of ground water contamination. Stricter regulations should be applied in an area where the aquifer is shallow and vulnerable to contamination more than an aquifer that is deep and protected.

Clarify “prioritization” on page 19

As was documented above, the “the GMA requires” a county or city “to designate and protect all critical areas within its boundaries.”³ We are concerned the sentence on prioritization could be read to imply that some critical aquifer recharge areas do not need to be protected. Given that much of the water in Washington State is already allocated to various uses, every contaminated aquifer creates a crisis for the homes, farms, ranches, and businesses that rely on that water. Many of the companies that cause the contamination end up going out of business due to the high of the cleanup. Local, state, and federal taxpayers are then left holding the bag. So we recommend this paragraph be clarified with our additions double underlined.

Prioritization of Critical Aquifer Recharge Areas in need of the most attention can be accomplished by identifying where high-value water resources are located in highly susceptible areas (King County, 2004³⁴).

In Section 4, please clarify steps 5 and 6 on page 19 and 40.

As was documented above, the “the GMA requires” a county or city “to designate and protect all critical areas within its boundaries.”⁴ While the actual content of the sections is good, we are concerned that steps 5 and 6 on page 19 and the heading for step 5 on page 40 could lead some to believe they do not have to protect all critical aquifer recharge areas. The step 6 heading could also

² *Whidbey Env't Action Network v. Island Cty.*, 122 Wn. App. 156, 174 – 75, 93 P.3d 885, 894 (2004) review denied *Whidbey Env't Action Network v. Island Cty.*, 153 Wn.2d 1025, 110 P.3d 756 (2005).

³ *Stevens Cty. v. Futurewise*, 146 Wn. App. 493, 511, 192 P.3d 1, 10 (2008).

⁴ *Stevens Cty. v. Futurewise*, 146 Wn. App. 493, 511, 192 P.3d 1, 10 (2008).

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be read as not supporting avoidance even though the discussion on page 41 does recommend avoidance. So we recommend that steps 5 and 6 on page 19 be revised to read as follows with our addition double underlined and our deletions double struck through.

5. Designate areas ~~that are most~~ at risk from ~~to~~ contamination events.

6. Protect by avoiding and minimizing activities and conditions that pose contamination risks.

For the same reasons, we recommend that the heading for “step 5” on page 40 be revised to read as follows with our addition double underlined and our deletions double struck through.

Step 5: Designate areas ~~that are most~~ at risk from ~~to~~ contamination events.

Other Comments

Please delete the space between “County wide” at the beginning of the last paragraph on page 46.

The bulleted description of a “good critical aquifer recharge area program” on page 69 is excellent.

Section 8 is very good too. As is Section 11.

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 102 or email: tim@futurewise.org.

Very Truly Yours,



Tim Trohimovich, AICP

Director of Planning and Law