



August 3, 1999

Amy Johnson
Washington Department of Ecology
Shorelands and Environmental Assistance Program
Post Office Box 47600
Olympia, Washington 98504
Telephone (360) 407-7291
Telefax: (360) 407-6902
In Re: Proposed amendments to Chapter 173-26, filed April 7, 1999 (OTS 2886.4)

Dear Ms Johnson,

The Friends of Grays Harbor (FOGH), a Washington State non-profit corporation, is a 100% volunteer citizens group made up of crabbers, fishers, oyster growers and caring citizens from throughout Grays Harbor, the State and the Pacific Northwest. FOGH's mission is to foster and promote the economic, biological and social uniqueness of a healthy Grays Harbor Estuary through education, awareness and understanding and to secure the best possible return to the citizens of the harbor through science, conservation and balanced management of the Estuary. Through building coalitions with other organizations, FOGH has filled a need in becoming a clearinghouse for clean water information and leaders in the fight for intelligent growth practices that preserve the integrity of water quality and the rural character of the lower Chehalis River Basin and the Grays Harbor Estuary.

The Friends of Grays Harbor (FOGH) is pleased to take this opportunity to provide comments of the proposed amendments to Chapter 173-26 WAC STATE MASTER PROGRAM APPROVAL/ AMENDMENT PROCEDURES AND SHORELINE MASTER PROGRAM GUIDELINES AMENDATORY SECTION (Amending Order 95-17, filed 9/30/96, effective 10/31/96).

FOGH appreciates that this was a near Herculean task that would perhaps not be popular with all potential users of the shorelines and shorelands of our state. However, it is critical that these guidelines provide the counterweight to restore the balance to the life-functions of our waterways so that we, the public, can survive.

Congress found in their 1990 reauthorization of the Coastal Zone Management Act of 1972 (CZM) that the "habitat areas of the coastal zone, and the fish, shellfish, other living marine resources, and wildlife therein, are ecologically fragile and consequently extremely vulnerable to destruction's by man's alterations" [302 (a) amended by PL 101-508]. FOGH would submit that these comments hold true to all shorelines of the state.

As noted in the introductory remarks of the 1990 reauthorization: "Marine resources contribute to the Nation's economic stability. Commercial and recreational fishery activities support an industry with an estimated value of \$12,000,000,000 a year." Section 2(c) of the National Aquaculture Act of 1980, as amended notes: "...aquaculture has the potential for reducing the United States trade deficit in fisheries products, for augmenting existing commercial and recreational fisheries, and for producing other renewable resources, thereby assisting the United States in meeting its future food needs and contributing to the solution of world resource problems. It is therefore in the national interest, and it is the national policy, to encourage the development of aquaculture in the United States."

Wetlands play a critical role in sustaining the coastal economy and shoreline environment supporting and nourishing fishery and marine resources. They also protect the Nation's shores from storm and wave damage. Coastal wetlands contribute an estimated \$5,000,000,000 to the production of fish and shellfish in the United States coastal waters. Yet, 50 percent of the Nation's coastal wetlands have been destroyed, and more are likely to decline in the near future.

There is a clear link between water quality and land use activities along the shore. Coastal and shoreline planning and development control measures are essential to protect water quality.

It is the charge of the regulators to identify land uses which, individually or cumulatively, may cause or contribute significantly to a degradation of (a) coastal waters where there is a failure to attain or maintain applicable water quality standards or protect designated uses, or (b) coastal waters that are threatened by reasonably foreseeable increases in pollution loadings from new or expanding sources.

The waters of Grays Harbor Bay and the lower Chehalis River basin are imperiled and have been added to the EPA 303(d) list for fecal coliform. This is primarily due to the point pollution caused by the wastewater treatment plants of Aberdeen, Hoquiam, and Cosmopolis and the industrial outfalls from pulp and paper industries.

The estuary supports a significant aquaculture industry that contributes to the economic base of the County. Salmon fishing, crabbing, commercial off-shore and in-shore vessels, processing plants and charter boats provide over 5,500 jobs. Grays Harbor Bay and Willapa Bay produce approximately 3.6 million pounds of oysters generating revenues exceeding \$20,000,000. These industries are directly affected by water pollution. Presently, the State Department of Health has established a decertification line that stretches across Grays Harbor Bay at approximately mid-point. All waterways and tidelands east of that line to the Chehalis River are "decertified" and not available for direct oyster or shellfish harvesting. In addition, whenever Aberdeen, Hoquiam, or Cosmopolis WWTPs bypass in excess of a million gallons of raw sewage, the oyster beds are closed for one to two weeks.

Because global warming may result in a substantial sea level rise with serious adverse effects in the coastal zone, coastal states must anticipate and plan for such an occurrence. FOGH suggests that this critical issue should be incorporated into the guidelines, in order to protect marine resources and human life.

Land uses in the coastal zone, and the uses of adjacent lands which drain into the coastal zone, may significantly affect the quality of coastal waters and habitats, and efforts to control coastal water pollution from land use activities must be improved.

It's been only 110 years since Washington was admitted as a state on November 11, 1889 by President Benjamin Harrison. In that 110 years, we've grown from a 1880 census population of 75,116 to a burgeoning population of 5,757,400. Along with that population boom we've seen water degradation due to pollution, salmon population declines because of habitat loss and unwise land use practices, a loss of 97% of the Puget Sound wetlands, wildlife extinctions and an increased threat to human health and welfare due to inadequate enforcement of existing laws.

It will take the leadership of committed individuals, enlightened government officials and bold governmental agencies to correct these losses. Ecology can be that Agency. Governor Locke and the Legislature can be those wise ones who history books thank because their legacy allowed our Evergreen State to remain an area that protects its natural marine resources, natural sandy beaches, irreplaceable shorelines and critical wetlands. The guidelines offer us the opportunity to assure that long-term survival goals are achieved for generations to come rather than satisfying short-term profit returns for a select group of investors.



Improved guidelines should be strengthened and adopted by rule into the State Master Program which itself will re-affirm that the shorelines belong to all of the people of the state.

WAC 173-26-020 Definitions. (1)

FOGH generally supports the definition of “Adaptive management”, particularly as it applies to natural shoreline functions and values, but is concerned about the potential interpretation of “the willingness to change adaptively in response to new understanding or information.” What would be the effect of this definition should the forgoing be interpreted by some to allow experimental management and experimental shoreline processes? How could this definition better reflect and incorporate the concept of “best available science”? How could this definition better reflect and incorporate the reality that natural shorelines involve a dynamic rather than static zone.

~~((4))~~ (5) “Bank full width”.

FOGH suspects that this may be somewhat confusing to the casual reader. Perhaps it be more clear to switch the final sentence, “...the top of the bank nearest the stream or river channel that can support mature tree growth...” to be the lead sentence.

(6) “Best available science”

FOGH generally agrees with definition of best available science and supports a specific definition as part of this update. Federal agencies also refer to this measurement and we suggest that the Ecology definition is consistent with other regulatory agency definitions. Recognizing the important background that local residents and folklore bring to the history of a shoreline area, perhaps the sentence should read:

“...Anecdotal information, nonexpert opinion and hearsay, while not to be ignored, are not considered best available science.

~~((5))~~ (9) “Developed shorelines” means those shoreline areas that are characterized by existing uses or permanent structures located within shoreline jurisdiction.

FOGH believes that this definition should also distinguish that “developed” does not include historical platting of the area as a criteria for land use activities.

(15)(c) “Feasible”: “...In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is placed upon the applicant. In determining an action’s infeasibility, the reviewing agency may weigh the action’s relative public costs and public benefits, considered in the short and long term time frames.”

FOGH believes that the reviewing agency MUST weigh the action’s relative public costs and public benefits. In addition, we believe that consequences to renewable marine resources should be part of the test for “feasibility”.

(16) “Geotechnical report” or “geotechnical analysis” means a scientific study or evaluation conducted by a qualified expert that includes a description of the site hydrology and geology...”

FOGH believes that the report and analysis must include site specific hydrology and geology not just the description of the area and must be based on best available science.

~~((9))~~ (20) “Mitigation” or “mitigation sequencing” (f) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

FOGH generally supports the definition and concept of sequencing, we also strongly support that monitoring should be specifically required and that the monitor period should be a minimum of 18 years.



((10)) (29) “Shoreline modification activities” means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, dredged basin, landfill, or bulkhead. They can include other actions, such as clearing, grading, or application of chemicals.

FOGH feels that any activity that anchors the forebeach and thereby interferes with the natural dynamic process of the shoreline should fall under this definition, e.g., foundations for multi-family residences, businesses or industries.

WAC 173-26-100 (8) For local governments not planning pursuant to the Growth Management Act or for local governments planning pursuant to the Growth Management Act and not choosing to submit pursuant to subsection (6)(b)(ii) of this section, the local government must approve the proposal.

FOGH believes that the shorelines of the state are significant and irreplaceable, therefore ALL jurisdictions should stringently comply with SEPA guidelines and planning pursuant to the GMA.

WAC 173-26-170 (3) Foster reasonable and appropriate uses that are in the public’s best interest.

FOGH believes that there would be benefit gained in prioritizing some of the below-listed uses:

(a) Give preference to uses “which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s natural marine resources and shoreline.”

((b) (c)) Undertake a “planned, rational, and concerted effort, jointly performed by federal, state and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines

((c)(d)) “Appropriately classify the shorelines and shorelands of the state and revise these classifications when circumstances warrant regardless of whether the change in the circumstances occurs through man-made causes or natural causes.”

((d)(e)) Reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and give appropriate special consideration to same. Alterations to the natural conditions of the shorelines of the state, in those limited instances where authorized, shall be given priority for: • “Single-family residences and their appurtenant structures; • Ports; shoreline recreational uses, including, but not limited to, parks, marinas, piers, and other improvements facilitating public access to the shorelines of the state; • Industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state; and • Other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.”

((f)(b)) Conduct the “coordinated planning necessary to protect the public’s interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest.” Ensure equal treatment and fairness to all parties with respect to the use of shoreline resources..”

WAC 173-26-210 (a) Consistency with comprehensive planning and other development regulations. Shoreline management is most effective when accomplished within the context of comprehensive planning. For cities and counties planning under the Growth Management Act...

FOGH is concerned about the consistent theme statement “...For cities and counties planning under the Growth Management Act...” What is the potential consistency of land use policies for those cities and counties that do not plan under GMA? What would be the effect to shoreline protection if all jurisdictions were required to, at the minimum, plan under GMA? What regulations or guidelines assure that consistency is provided for by these non-GMA jurisdictions? What regulations or guidelines assure that there is consistency between state, local and federal jurisdictions when developing SMP’s or comprehensive plans? What assures that comprehensive plans developed under GMA or non-GMA are consistent with RCW 90.58.20?



NEW SECTION WAC 173-26-220.

Wetlands. (A) Wetland use regulations.

FOGH is concerned that language here does not take into consideration that wetlands, like estuaries, can not be successfully duplicated. Experience has shown that mitigated wetlands have an unusually high rate of failure. In general FOGH supports in-kind and on-site mitigation for wetlands, but then and only then when a proper mitigation sequencing has been achieved. The goal and requirement should require no loss...of quality, quantity and function. Our wetlands have been described as the kidneys of the watershed. As with humans, the requirement of dialysis because of poor long-range water-dependent hygiene can be fatal.

NEW SECTION WAC 173-26-230 Shoreline modification activities.

FOGH supports the Governor's Coastal Erosion Task Force who in their report stated that "coastal erosion solutions and policies should not come at the expense of the state's natural resources and critical habitat; e.g., solutions should minimize interference with fishing areas and/or keep solution impacts to a minimum. In general, we support the concept of avoidance when considering shoreline modification activities, at the very least mitigation sequencing should be required.

FOGH suggests that the shorelines and coastlines, especially those subject to erosion and/or in the geological hazard zone, undergo a process of identification and delineation. What are the impacts to public trust and public health and safety if shoreline modification activities are allowed on shorelines that are subject to:

- 1. Imminent erosion hazards (within 10 years)?*
- 2. Intermediate hazards (within 30 years)?*
- 3. Long-term hazards (within 60 years)?*

What would be the impact to salmonoid and wildlife recovery if those delineations were adopted as required SMP/SMA regulations? How would this be affected by geological hazards? How do shoreline modification activities affect the natural environment? What happens to the beach profile in front of such activities? What is the consequence to clams and other burrowing creatures? What is the consequence to sand beaches? What effect would this have on Tribal interests?

NEW SECTION WAC 173-26-260 Ocean management. (1) Purpose and intent. This section implements the Ocean Resources Management Act (RCW 43.143.005 through 43.143.030), enacted in 1989 by the Washington state legislature.

FOGH is supportive of the Ocean Resources Management Act (ORMA) and hopes that the Department of Ecology will be vigorous in interpreting guidelines and policies for the management of ocean uses.

For FOGH, whose primary focus is clean water and a healthy estuary, the ocean and its sandy shorelines provide a critical link to the life-cycle chain. Because the estuary provides the transition zone for ocean migration and therefore its resources, please comment on the consistency of estuarine land use policies.

(2) Geographical application.

FOGH believes that it is clear from ORMA that it applies to estuary areas, including Grays Harbor. In fact, ORMA specifically notes that Grays Harbor should receive special importance. FOGH believes this should be clarified, at least to the extent that the specific language relating to Grays Harbor is included in the definition of "Geographic Application" of ocean management provisions.



(3) Ocean uses defined.

FOGH believes that the definition of ocean uses should be clarified. Currently, it states that these activities are “on Washington’s Coastal Waters that may include their associated off-shore, near-shore, inland marine, shoreland and upland facilities.” This scope is more limited than that of ORMA, even though the guidelines are meant to implement ORMA, at least to some extent. For example, RCW 43.143.030 requires plans and performance bonding, and the new guideline (I) provides further clarification of this requirement. Thus, these new guidelines would apply whenever ORMA applies. The definition of “ocean uses” should therefore be consistent. ORMA explicitly applies to “uses or activities...that will adversely impact renewable resources, marine life, fishing, aquaculture, recreation, navigation, air or water quality, or other existing ocean or coast uses.” RCW 43.143.040. FOGH is concerned that the current definition arbitrarily defines “ocean uses” at a standard below that of ORMA. The new definition also leaves open the argument that ORMA only applies to shoreland or wetland developments where that development is connected with an ocean use. Consider the use and importance of the wetlands associated with Grays Harbor. The SMA and the courts have long understood the interconnectivity of our waters, shorelines and their associated shorelands. ORMA adopted this approach but it is not sufficiently represented by the definition.

(5) Regional approach.

This suggests that master programs “should” be consistent with the guidelines in this section. However, it is clear from ORMA that the guidelines “must” be consistent. FOGH believes this consistency is necessary from a public policy perspective, as these coastal resources, including the Grays Harbor estuary are of statewide importance. These guidelines must provide a minimum standard for the protection of our statewide resources. Master Programs must be consistent with ORMA, CZM and the guidelines.

The guidelines also suggest that once a SMP is adopted, the guideline will apply to only those projects which “clearly involves more than one jurisdiction.” This creates an unnecessary ambiguity. For example, almost every coastal project will have some impacts within other jurisdictions. More importantly, because the guidelines apply only to shorelines of statewide significance, the interest in these projects should ALWAYS have extra-jurisdictional interest. Therefore, it should be clarified that the guidelines shall apply to any projects within its scope in addition to the local master program. FOGH assumes that this new section implementing ORMA is in addition to the current WACs on the subject. If not, those WACs should be incorporated here as well. For example, the existing WACs require local jurisdictions to comply with the decision-making process of RCW 43.143.030 before issuing a shorelines permit. This should be made explicitly in each master program. FOGH has earlier outlined the importance of the Grays Harbor estuary and its various shorelines. Grays Harbor and other Counties have chosen to NOT plan under the guidance of the Growth Management Act. The Master Program planning process therefore becomes significantly more important in these jurisdictions, especially where ORMA and designations of state-wide significance are concerned. SMP’s and these guidelines should emphasize the importance of wise land use policies and provide clear and concise rules to achieve these goals.

Thank you for this opportunity to comment.

Sincerely yours,

Arthur (R.D.) Grunbaum
Board Member

