

Kitsap County Shoreline Master Program Task Force Summary of Opinions Natural Environment Designation (CORRECTED VERSION, March 31, 2011)



Introduction

At its March 3, 2011 meeting, the Task Force advising Kitsap County on its Shoreline Master Program Update discussed the proposed “Natural” environment designation for the County’s shorelines. The group learned about the existing criteria, policies, modifications, and uses that currently exist for that environment designation, as well as the guidelines proposed by the 2003 WAC regarding that designation.

The Task Force engaged in a lively discussion at the meeting, but the discussion was too wide-ranging to get a clear sense of each member’s opinion regarding the proposed Natural designation. Subsequently, Task Force members completed an opinion questionnaire and submitted it to Margaret as a “homework assignment.” This document summarizes the opinions shared through the questionnaire.

Fifteen members of the Task Force completed the assignment. Not all members responded to every question, so the total counts described here may not add up to 15 in every case.

Existing Policies or New Policies?

One question under consideration is whether or not the County should move toward the policies proposed by the WAC and suggested by the Department of Ecology, or continue to use the policies that have guided activities in the Natural Designation since the 1970s.

2 Task Force members, Bob Benze and Ken Parker, feel that the existing policies are better. Ken feels *it could get confusing for landowners when comparing new policies to existing ones*. And from Bob: *There is no demonstrable “problem” that needs to be solved by creating new “Natural” areas. Only if the county can scientifically demonstrate some ongoing loss of ecological function (i.e. some species that current practices are harming) should new areas even be considered. By almost every measure, existing practices are continuing to improve the nearshore environment. Let’s not try to fix a non-problem.*

Dan Fallstrom thought there might be some merit in the new policies, but was concerned that they would be applied too broadly. He recommends that they be applied *site by site, since no two are the same*.

Jennifer Forbes did not comment on the old or new policies directly, but did suggest that sticking with the existing policies *might provide some stability to the public’s expectations about their ability to use their property over time*.

12 Task Force members – Jim Aho, Jessica Coyle, Susan Cruver, Michael Ellis, Dan Fallstrom, Michele Filley, Zac Halls, Mike Maddox, [Dave Nelson](#), Tom Nevins, Teresa Osinski, and Sunny Wheeler – feel that the new policies had at least some merits that should be further explored and refined. Only a couple of these members wholeheartedly agree that the new policies are “fine as is.” Another few strongly object to the policies as written, but thought they could be improved through rewriting. And, many members in this group offered up edits and comments on the criteria, policies, uses and modifications, and those suggestions are included as part of this summary.

Jessica Coyle’s comment seems representative of the overall thinking of these eleven members: *These newer policies were developed by Ecology to be shaped and molded to fit different counties and that’s what I believe we should do. In the end, I believe we will have our own unique set of policies and the current proposed ones will start this discussion.*

As noted in the comments and suggested edits section of this summary, opinions vary regarding the level of restriction that should be imposed in the Natural designation. Two members out of the 11 say that the proposed policies, uses and modifications are restrictive enough as written. The remaining 9, however, urge a greater level of conservatism and higher protection levels for the Natural designation. These opinions are reflected in the comments and edits identified.

Opinions on Other Ideas Suggested at the March 3 Meeting

In addition to the general discussion about the Natural designation, several other ideas regarding this designation were suggested on March 3. The questionnaire asked Task Force members to share their opinions on these ideas.

Existing uses should be grandfathered in under the new SMP, and the County should use maximum flexibility in dealing with these uses.

13 members weighed in on this idea, and **all generally agreed** that existing uses should be grandfathered in under the SMP Update. However, a number of caveats were also proposed on this subject, and they varied widely:

...I am uncertain how one gets grandfathered in and over what period of time? Until the property changes hands? If so, that isn’t acceptable either. Investments were made in these properties and the county needs to be very careful not to “take” property or value in this process.

...It should be noted that grandfathering is not the answer to this problem. The codes already recognize that a pre-existing legal use is “legal” under the County Code as a “Legal Non-Conforming Use.” What people do not recognize is that if something significant happens to the property, e.g. a fire where the home burns down, a business closes, etc. that the “grandfathered” interest may go away. This fact can decrease the value of property, especially commercial property. So, I am skeptical as to the usefulness of this providing any meaningful remedy.

If current uses are grandfathered, there need to be policies that prevent land owners from increasing their current footprint. For example, if a house burns down it should be built in the same footprint as before.

The County will allow existing uses to continue, but should not allow increased impact on shoreline functions and values.

Existing structures should be grandfathered in, as long as they meet up-to-date standards of ecological function for structures of similar use.

The existing uses should be allowed but the owners should be offered incentives to restore the shoreline to its natural state. These could include tax incentives, permit variances for the non-shoreline part of the property, and public recognition as “Stewards of Puget Sound” (for example).

People should be able to stay in their homes. However, if they have owned the property for a long time, logged it 40 years ago, and want to do so again, that use should not be allowed even though they could argue that it has been grandfathered.

I agree with this logic, however, any new development should be subject to the new policies.

Since about half of the parcels proposed for the Natural Designation are under public ownership, the Natural Designation should be applied to just those parcels. Parcels under private ownership should be given a rural conservancy or more lenient designation.

5 members – Bob Benze, Jennifer Forbes, [Dan Fallstrom](#), Ken Parker, and Teresa Osinski – agree with this idea.

7 members – Jim Aho, Jessica Coyle, Susan Cruver, Michael Ellis, Zac Halls, [Dave Nelson](#) and Tom Nevins – disagree with this idea.

Those who disagreed offered up opinions such as: *private property in the natural state is just as important to the health of the Sound as public land; all parcels, private or public, within the Natural Designation deserve maximum protection.*

Another comment was: *The designation should follow the condition of the shoreline. Under the new policies, owners will be able to use their property under a conditional use permit. Per question 1 above, existing uses should be grandfathered for current and future property owners.*

Michele Filley didn’t agree or disagree with the idea, but offered a similar comment: *I think that depends on what would happen if someone purchased land designated as “Natural” with an existing development present. Would they also be granted the grandfather status? If that is the case, then would the type of designation really matter? I imagine that the new homeowners would be subject to the same policies as the previous homeowners regarding new development. Maybe it’s a moot point?*

And another thought: *Natural areas should remain natural, despite ownership, however, those parcels owned privately should be given access to participate and be given a clear avenue in which to request permitted uses otherwise not allowed in public parcels.*

And those agreeing with this idea offered up the following opinions, starting with Teresa Osinski, who had originally proposed the idea at the meeting, and thought the question did not accurately reflect the concept:

This doesn't really capture the issue. Some task force members seemed to be quite concerned that when using a term like "natural" that the parcels really ought to be just that... "natural." However, some of those parcels are partially to fully developed, even if only 10 actually encroach on the 200 foot delineating line. To try to get at their concern, and recognize that the word "natural" seems to suggest something with little to no human development, it was suggested that those lands currently being proposed as "natural" and that are owned by the public, be in fact the more restrictive "natural" -- maybe the definition that was in place before. The other properties that are being suggested for "natural" but are in private ownership be the new definition of "natural" as proposed in the current WAC, or be assigned some other designation like maybe the "rural conservancy." Generally, I oppose code changes that cause existing land owners to find themselves in a "non-conforming" status. Therefore, making the "natural" designation more restrictive could be a serious problem even if only for 10 property owners. I'm not sure I like "sub designations" per se' but rather support a completely separate designation for those properties that are publicly owned.

And other comments on this issue:

Agree – with the understanding that existing designations or their equivalent will be maintained for privately owned property unless the county can demonstrate specific environmental harm at specific locations. Then any “taking” of property rights shall be compensated.

Completely agree – except I would say that if a person wants to voluntarily place their property under this designation that they should have that option.

“Sub designations” could be used to divide those “natural” parcels that are under private ownership vs. public ownership.

In addition to Teresa’s endorsement of this idea above, 3 members – Bob Benze, [Dan Fallstrom](#), and Ken Parker – agree with this idea. Bob commented: *This is less desirable than maintaining the existing designations for private property which is not demonstrated to produce environmental harm. However, should there be the possibility of harm, subdivisions should be employed per WAC 173-26-211(4)(c)(ii) which allows “parallel environments” for physical features such as a bluff.*

5 members disagree with this idea – Jim Aho, Michelle Filley, Zac Halls, [Dave Nelson](#) and Tom Nevins. Most of these members wanted to keep the regulations in this regard as simple as possible, with a representative comment: *I am leery of making things more complicated than they need to be.*

Jessica Coyle said she would need to hear more about this in order to give an opinion, but further noted that *ownership should not decide if an area is or is not Natural.*

Michael Ellis said he could agree with this, *as long as the natural designation protections remain intact.*

Susan Cruver: *Is this the idea to give the natural designation to the critical area portion of a parcel, as shown on the South Eglon example? That idea seems very reasonable to me.*

And from Jennifer Forbes: *Maybe, assuming that the regulations also give meaning to that distinction.*

And finally, the questionnaire asked if any members had any additional ideas to share regarding the discussion of the Natural Designation:

The natural shoreline is a rare and vanishing resource which needs protection of the highest order. In the long run, the value to the individual owners and the public as a whole will be greater if our shores and waters are the standard of quality of the recommended management of the state, country, and world.

I think the meat of the recommended management policies is good. It's just the wording that I get tripped up on. It needs to be clear and concise.

We keep forgetting about the aquatic designation, and that where the real impacts are going to be from any new development. The impacts in the aquatic area should be recognized and protected, regardless of the upland designation we are working on.

Unless there is a demonstrable problem, there should be NO changes that adversely impact private property rights. The old adage: "If it ain't broke, don't fix it" applies.

I agree with Michael Maddox that there are possibly other natural areas in the county that should be so designated, and if and once they are identified, there should be a way to include them at a later date.

Suggested Comments and Edits on Proposed Natural Designation Purpose, Criteria, and Management Policies

Purpose

To protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Restoration of degraded shorelines should be planned within this environment.

Comments

This purpose should also include the phrase: “to protect fish and wildlife habitat.” This was in the 1970s SMP, but is nowhere in the 2011 environment designations, and it should be.

Suggested Edits

To preserve and protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. Severe restrictions on the intensities and types of uses permitted in such areas are required. Restoration of degraded shorelines should be planned within this environment.

Criteria

Suggested Edits

An area having a unique asset or feature considered valuable for its natural or original condition which is relatively intolerant of intensive human use, such as largely undisturbed portions of shoreline areas, wetlands, estuaries, unstable bluffs, spits, and ecologically intact shoreline habitats, both in and out of the UGA or Lamrid. Assign if any of the following characteristics apply:

An area having a unique asset or feature considered valuable for its natural or original condition which is relatively intolerant of intensive human use. Such areas may be identified by one or more of the following:

1. The shoreline is ecologically intact and therefore currently performing an important, irreplaceable function or ecosystem-wide process that would be damaged by human activity.
2. The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest.
3. The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

New development or uses would cause significant impact, and strike out the word “support” altogether.

Management Policies

Suggested Edits

The following policies should be applied to any permissible uses occurring in the natural environment. 1) Because natural environments are intolerant of human use, they should remain relatively free of human influence; 2) When human influence is permitted, the impacts should be capable of easy restoration to the original natural condition.

#1 Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

Suggested Edits

Add this sentence: Uses that would degrade functions and character are shoreline bulkheads, vegetation removal, impervious surfaces.

#2 The following new uses should not be allowed in the “natural” environment: Commercial, Industrial, non-water-oriented recreation, roads, utility corridors, and parking areas that can be located outside of “natural”-designated shorelines.

Comments

This policy should be deleted and these uses should not be allowed.

Suggested Edits

Delete that can be located outside of natural-designated shorelines.

#3 Single family residential development may be allowed as a conditional use if the density and intensity of such use is limited as necessary to protect ecological functions and is consistent with the purpose of the environment.

Comments

This should read: Single family residents may be allowed (delete residential development).

Suggested Edits

Add: As a condition of permission, shoreline bulkheads and vegetation removal within SMP Natural designations is prohibited.

#4 Commercial forestry may be allowed as a conditional use, provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

Comments

This policy should be deleted and this use should not be allowed.

Suggested Edits

After provided, add that no ecological impact to shoreline function and values will

result.

#5 Agricultural uses of a very low intensity nature may be consistent with the “natural” environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

Comments

This policy should be deleted and this use should not be allowed.

Suggested Edits

We don't need this item in the Kitsap plan. This is here for Skagit farmers.

#6 Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

Comments

No recreation should be allowed.

Yes, these uses should be allowed.

#7 New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions.

Comments

Delete the second sentence of this proposed policy.

Doubt that the “subdivision” item is of significance due to GMA limitations.

Suggested Edits

Delete that would reduce the capability of vegetation to perform normal ecological functions. Delete significant.

General Comments

Comments

No development of any kind should be allowed, including residential, commercial, industrial and no harvest activities such as forestry, agriculture and mining. No degradation should be allowed, including overwater structures or shoreline modifications.

No single family home development, forestry and agriculture should be allowed, however limited by the permitting process. Limited aquaculture might be allowable – I see no harm in seeding the beach with oysters. However, the new way oysters are being farmed is not compatible with a natural environment, nor are geoduck farms, which couldn't be more unnatural.

Comments

This is our last chance to protect the natural environment. A natural place needs to stay preserved. "Natural" is pretty clear. It should be very difficult to do anything in this designation. We need to preserve as much as we possibly can.

No agriculture within the natural shoreline. Aquaculture is allowed with an EIS and a shoreline substantial development permit. No building of any kind within the natural shoreline. No motorized access within the natural shoreline. No logging, removal of vegetation, landscaping, planting of non-native flora, or use of chemical herbicides or pesticides in the natural shoreline.

Uses and Modifications

Comments

I object to the proposed uses and modifications for the Natural designation. ...There has been a fundamental change towards less conservation and more development in the WAC's proposed designation...so much so that Natural doesn't represent natural anymore. Why create a policy where natural shoreline can, in the future, be plowed, aquaculture farmed, docks built, trees cut down, and houses put up? I realize these activities may already exist to limited degrees in some natural areas, and I agree that such current non-conforming uses should be grandfathered for their current land owners, but these un-natural activities should not be given formal policy approval as part of our approved natural designation uses and modifications. Uses and modifications will determine whether we do or do not have natural shoreline in the future.

We should take great care to not sacrifice our natural shoreline and habitat just because small amounts of modifications have been made to it. What has been done has been done, but if the ecosystem is primarily intact, or it has the potential to be rehabilitated and be of great ecological value, then it should be categorized as Natural and not relegated to a lesser ecological level. Categorizing such land as less than Natural would condemn it permanently to future development...only for the presence of a few existing buildings or docks. Natural shoreline is scarce and precious, and when the chance exists to keep it – with the attendant potential to rehabilitate it fully – then that chance should be taken.

The list of proposed prohibited and allowed uses seems reasonable to me. Some boating and mooring facilities should be allowed for residential use and to support aquaculture.

No non-natural activities should occur with exception to scientific, historical, cultural and very light recreation.