



## FRIENDS of CLARK COUNTY

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August 20, 2020

Mr. Karl Johnson, Chair Clark County Planning  
Clark County Planning Commission  
Public Service Center  
1300 Franklin Street  
Vancouver, WA 98660

### **RE: Comments Shoreline Master Program Update**

Dear Chair Johnson and Planning Commissioners:

Friends of Clark County (FoCC) appreciate the ability to comment to the Planning Commission on the Shoreline Management Update.

On August 5<sup>th</sup>, the Washington Dept. of Ecology (DoE) sent out this announcement about an upcoming meeting of the East Fork Lewis Partnership stating, “**Background:** The East Fork Lewis River and its tributaries are on Washington State's polluted waters list for warm water temperatures and bacteria levels that exceed the state water quality standards and compels the need to develop a *Water Cleanup Plan* (TMDL Alternative).”

Since 2007, Clark County has been cooperatively working with the DoE on shoreline and water quality issues (Exhibit 8 of the most recent Planning Commission Hearing and meeting notes). Clearly, in the East Fork Lewis (EFL) even with State and County efforts, water quality continues to deteriorate. We would point out the vast majority of project impact and mitigation within the County has occurred in the East Fork Lewis basin from 9/12/2012 to 12/20/2018 (latest County data). Clark County has continued to acquire parcels along the East Fork through the Legacy Lands program, costing millions of dollars. In November 2017 alone, the County Councilors authorized issuing \$7 million in bonds to purchase 10 properties spread across the county. Six of which are located in the East Fork Basin. And yet, this basin continues to degrade. FoCC is concerned over permitting additional development within shoreline areas (Shoreline jurisdiction extends 200’ landward of the water’s edge and additionally includes associated wetlands, floodways and the 100 year floodplain) in this already overcommitted basin.

Previous Comments of Friends of Clark County and Sierra Club were presented to County staff during the open comment period and are represented in exhibit 6: Our response to each of staff's recommendations are listed below.

7-1 Shoreline Designations We appreciate staff agreement regarding the need for improved SMP educational materials. **The existing County code is too bureaucratic and difficult for the layman to comprehend. Please revise the text.**

7-2 Net Ecological Gain **We still endorse the Net Ecological Gain concept and request the county be at the forefront of promoting this concept.** The legislature created Substitute HB 2550 and referred it to the House Committee on Appropriations. This Substitute bill would require the Office of Financial Management (OFM) to submit a report to the legislature that assesses how to incorporate a net ecological gain standard into state land use, development, and environmental laws and rules, including the Shoreline Management Act. To implement such a concept, a framework is needed for how the concept would be applied in the existing law. The county council would need to provide policy direction on whether or not they want staff to work on this framework prior to creation of any new state legislation. We would like to see this done. FoCC believes Clark Co. should establish itself in the forefront of good land use planning. This should not be delayed until the review of the entire comprehensive plan in the next few years.

7-3 Mitigation The first step in the mitigation chronology is avoidance. Actions should be avoided if possible. If unavoidable, then confine to the same parcel, or nearby parcel and finally a parcel in the existing basin. Futurewise also is in agreement. Riparian planting is the main form of mitigation for development impacts in the shoreline. Generally, any new vegetation clearing or impervious surface within 250 ft. of the ordinary high-water mark (OWHM) will require riparian habitat mitigation in proportion to the impact. Higher ratios are applied to clearing of vegetation that is more difficult or takes more time to replace. In the July 2020 **Development reports, there were two proposals for development (one cabin replacement and one new home plus septic) in the Heisson bridge area of the East Fork Lewis (EFL). Both are within 250' of the river and no mitigation nor septic plan was discussed. Septic systems this close to the river are potential problems. These actions need to be reviewed.**

7-4 Mitigation In reference to the County's poster on mitigation presented at the open houses, it was not clear how these ratios are set. The different ratios per mitigation activity should be clearly listed. Also, in the face of climate change, the County should advocate for increasing the ratio of mitigation for disturbed lands. Wetland mitigation ratios are codified (Section 40.450.040(D) Clark County Code). **Habitat mitigation ratios are not codified. This seems confusing and habitat mitigation is open to interpretation and potential disagreement. Please clarify these differences.**

7-5 Mitigation We continue to have concerns that present mitigation is not effective and needs to be focused on ecological functions like hyporheic flow, shade, etc. The SMP has been in effect since 2007, and water quality in the East Fork Lewis (EFL) and other County waters continues to deteriorate. The County does not have a baseline of specific, detailed ecological metrics. The 2012 Inventory and Characterization Report aggregate various existing datasets

and does not have the level of detail needed to evaluate at individual sites, or that can be measured before and after a project. Proxies for these key metrics are needed. **We need reliable and affordable metrics with direct relationships to the functions in question to be able to measure performance. Was this particular mitigation successful? In many cases it is not.**

7-6 Mitigation The County's literature review on mitigation is out of date and not relevant to today's best available science (BAS). The BAS for critical areas needs to be reviewed again as part of the next comprehensive critical areas ordinance update. Ecology staff, notes that there are some recent sources that are showing better mitigation success in conjunction with better compliance regulations. **Revise the BAS standards to comply with the state.**

7-7 Salmon recovery Plans for anadromous fish and endangered and/or threatened species recovery are critical. The recovery of anadromous fisheries is a GMA goal. The GMA requires critical areas ordinances to "...give special consideration to conservation or protection measures necessary to preserve or enhance anadromous fisheries..." The County is planning on completing a critical areas ordinance update before the next comprehensive plan update. **This additional anadromous fish protection should be incorporated into the new comp plan. Salmon protection within the SMP would be a good place to begin.**

The conservation and enhancement of CRITICAL AREAS in the County are paramount for at least two reasons: 1) Critical areas provide protection and enhancement of our groundwater resources and 2) WRIA 27, of which the EFL watershed is a part thereof, is already over appropriated which threatens the recharge of our critical areas and thus, threatens the health of the EFL. The County is "technically" in compliance with the GMA goals regarding Critical Areas according to a staff presentation during Council Time on August 5, 2020<sup>1</sup>, it is likely that without substantial improvements to our CRITICAL AREAS ordinance, it will not be in compliance with GMA. Given the continuing degradation of the EFL, **it is imperative to impose stricter regulations that protect our "jewel" which is quickly being tarnished by overdevelopment in the Basin, especially within the shorelines.**

7-8 Sea Level Rise The County needs a mechanism to periodically update its mapping to reflect change in 100-year floodplain as sea level increases. **The floodplain maps need to be updated on a routine schedule.**

7-9 Steep Slopes Certain high bank areas (on East Fork Lewis) are currently sloughing off into the river. Setbacks on high bank or cliff areas need to be extended further back to protect homes and ensure family safety. **The county should review its geo-hazards code regulations for high banks and cliff areas within the shoreline boundaries.**

7-10 Drone Monitoring We recommend using drone flights along rivers in summer and winter (foliage gone) to monitor for illegal water withdrawals for lawns and gardens. WDFW snorkel teams on the EFL have noticed many PVC pipes running from the river. **The County needs to beef up enforcement efforts related to illegal water withdrawals in rural and riparian lands, and not solely rely on neighbors informing on fellow citizens.** This disrupts neighborliness and community harmony.

7-11 Water temperature Elevated water temperature continues to increase beyond what is suitable for ESA listed fish species within the County that are protected under the Endangered Species Act within the County. Removal of trees and riparian vegetation has a direct and adverse impact on temperature of the EFL continues to be a problem. See generally, [https://www.bpa.gov/Projects/Projects/I-5/eis/Chapter\\_19\\_Fish\\_FEIS.pdf](https://www.bpa.gov/Projects/Projects/I-5/eis/Chapter_19_Fish_FEIS.pdf) at p 19-12, 19-14, 19-

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<sup>1</sup> Listen to Council Time starting at 56:50 as to comments by Dr. Oliver Orjiako and then at 1:01:54 by Brent Davis. Some portions of our rivers have evolved to be so wide and shallow, that even existing tree shade no longer reaches the middle portions of the EFL. **Therefore, under the premise of best available science, the Hyporheic flow areas need to be identified, mapped, and protected.**

7-12 Climate Change Climate change will continue to heat our streams and alter the flow of our hydrologic regime. **Prepare for anticipated Climate Change Effects of rising sea-level, increased water temperature, and reduced summer stream flows** We must protect and preserve our cool water flows. Also, monitor species change and invasive exotics in riparian vegetation due to climate change. Monitor changes in upland plants as well.

It is no longer debatable that Climate change increases fire risk. It is possible that homes built at or in the shorelines will need larger buffers and, to the extent that those buffers would impose on necessary buffers that protect streams then development permits should be denied. This is an evolving situation and defensive protection measures must be updated often. The composition of vegetation in the forests are changing. We must be prepared for those changes. **In addition, to the extent that a development is under review, the person(s) seeking the permit must show sufficient stores of water, that are NOT related to removal of water from the streams and rivers, to fight fires.**

7-13 Shoreline Vegetation Existing shoreline native vegetation is more beneficially than more options like grass. **Existing shrubs and trees should not be removed and replaced with grass.** See generally, [https://www.bpa.gov/Projects/Projects/I-5/eis/Chapter\\_19\\_Fish\\_FEIS.pdf](https://www.bpa.gov/Projects/Projects/I-5/eis/Chapter_19_Fish_FEIS.pdf) at p 19-12, 19-14, 19-16. **Shoreline vegetation should be enhanced, particularly in Chinook habitats.**

7-14 Habitat conservation Protect all priority species and habitats, not just point habitats as reflected in code language. We note there is no mechanism to preserve existing highly valuable habitats. Normally, a species has been driven down to such an exploited state that it is put on the endangered species list prior to land being designated as critical habitat. **A process needs to be created to proactively preserve and protect the most valuable and species divergent habitats within the county for what they are – existing excellent habitat worthy of protection.**

7-15 Net Ecological Gain (2) **Adopt the “net ecological gain objective”; and to replace “no net loss” standard to more effectively meet standards that protect and restore public resources.** We believe in the hierarchy of mitigation: to more seriously avoid impacts; keep disturbance to a minimum; mitigate on site; and if that is not possible – mitigate in the same

basin. There is no reason to wait for the upcoming comp plan update, to consider this upcoming shift. Begin implementation now.

7-16 Mitigation Monitoring **Monitor new and existing mitigation efforts for functions and values, and to ensure full compliance over time (20 years) and report findings to the public.**

The code and shoreline management plan need to incorporate stringent monitoring standards to ensure that the mitigation are, or are not, providing any positive benefit and, if no benefit is shown, then a mechanism in the code that would trigger the implementation of additional mitigation measures that are effective and have a positive impact on our shorelines and waterways. Monitoring should be conducted on at least an annual basis.

New Culverts In June 2018, the US Supreme Court affirmed a 2013 US district court order that the state of Washington increase its efforts in removing culverts blocking or impeding fish passage. In 2019, Gov Inslee ordered the Department of Transportation ramp up culvert repair efforts across the state to improve fish passage and salmon recovery. **Clark County should incorporate how infrastructure and land use policies affect native fish, and take measures to remove impediments and improve habitat where possible. Accomplishing an inventory of the county's culverts is a good first step. Given the importance of this issue, the inventory should be included in the Shoreline Management Plan.**

Friends also agrees with and supports the adoption the recommendations made by Futurewise, particularly in sections 8-1 through 8-11, in Exhibit 8 of the most recent Planning Commission Hearing and meeting notes.

Friends also supports and recommends adoption of the recommendations of the Washington Dept. of Ecology:

- particularly in sections 10-1 through 10-7 on wetland buffers.
- In 10-8, we agree the wetland avoidance minimization mitigation sequence needs to be made clearer.
- We agree with 10-9 in including additional criteria for considering additional preservation of wetlands.
- In 10-10, 10-11, and 10-12 remove the existing confusing language. Make it more understandable.
- We support and agree with DoE comments in 10-13 through 10-25.

Staff, in their response, indicated many items referenced in our comments refer to aspects of the critical areas ordinance, which is up for updating in the near future. Although that may be true, it is clear that the current CRITICAL AREAS ordinance has, at a minimum, an uphill battle to be in compliance with GMA and that Shoreline Management regulations and the CRITICAL AREAS ordinance need to work hand in hand to protect our water and habitat resources.

Therefore, Friends asserts that the time to begin to plan and act on that update is now and that the current inadequacy of our CRITICAL AREAS ordinance should require more restrictive measures be implemented in our Shoreline regulations. We advocate for the replacement of “No

Net Loss” with “Net Ecological Gain”. This is the vision of the future. Begin evaluating and enacting this concept now.

Unfortunately, this County has a history of putting in the bare minimum and/or non-compliant environmental regulations that have resulted in the County losing money when found to be non-compliant with existing laws, whether is the large CWA fine that the County just finished paying off, or not being able to get grants and loans due to non-compliance. We encourage the County to be proactive, forward thinking and implement a Shoreline Plan that can complement a new, and GMA compliant Critical Areas ordinance that includes protections for wetlands, critical habitat, geologic hazard areas (especially within our shorelines), flood hazard areas, and critical aquifer recharge areas.

Thank you for your attention.

Sincerely,



Sue Marshall, President  
Friends of Clark County  
Ridgefield, Washington



Mark Leed, Chair  
Sierra Club - Loo Wit Group  
Vancouver, Washington

NOTE: Comments prepared by Jim Byrne Friends, Clark County Board Member, in collaboration with the Loo Wit Group of Sierra Club.