

## **Proposed Changes to Shoreline and Sensitive Area Ordinance 19-04**

**April/2018 - DRAFT**

The Swinomish Planning Commission is reviewing a proposed draft amending the Shorelines and Sensitive Areas Ordinance.

The amendment makes a number of minor corrections and updates, as well as substantive changes especially to address sea level rise and strengthen regulation of hard bank protection actions.

Written Comments to the Swinomish Planning Commission may be sent or delivered in person to Zam DeSheilds, Director of Planning, 11430 Moorage Way, LaConner, WA 98257,

Copies of the draft code amendment are available on request at the Planning Office, 11430 Moorage way during regular business hours.

### **Clarifications and corrections, and minor updates include:**

- “Department” – means Department of Environmental Protection. Where most of the authority to implementation of this Chapter will reside.
- Reference corrected of Biological Assessments for compliance with ESA (not NEPA) may be substituted for Fish and Wildlife Sensitive Area report if fully addresses questions.
- Corrections and Re-numbering referenced sections.

**Purpose and Scope** – adds reference to sea level rise and shoreline migration.

**Construction** – shall be construed in concert with... Swinomish Climate Adaption Action Plan.

**Findings** – add that Climate change is occurring with potentially significant impacts including sea level rise. The tidelands boundary at MHW will shift shoreward with sea level rise and blocking this shoreline migration will have impacts to shoreline ecological functions and values.

### **Definitions:**

- Substitute “soft” for “alternative” bank protection.
- Add:
  - Beach Nourishment;
  - Inundation Risk Zone;
  - Managed Retreat;
  - Marine Feeder Bluff;
  - Non-Conforming Use;
  - Mean Higher High Water;
  - Sea Level Rise Risk Sensitive Area.

### **Permit**

Exemption for maintenance and repair shall not include:

- Repair of armoring blocking sediment on marine feeder bluff,
- Repair of bulkheads (other than in High Intensity class).

Exemption added to allow removal of driftwood < 100 lbs.

The minor structure exemption – clarified as < 100 sqft.

Exemption letter process clarified, deleting requirement that all such exempt activities must obtain letter prior to any work.

### **New Subsection – Open Permits.**

Allow obtaining a permit for tree removals or for bank protection that allows a number of small actions by a single land owner / manager to be added to the open permit for a period of time (2 years for trees and 5 years for bank protection). Setting conditions when this open permit may be applied, subject to Department approval, mitigation fees and an overall prior approved plan. Such actions under the overall permit will be reviewed under the plan and its criteria and standards, and require only a \$100 review fee rather than separate permit fees.

### **Fees**

Retain \$200 permit fee for most activities, but charge \$500 permit fee for following actions:

- Structures 2000 sqft or more
- Clearing 5000 sqft
- Hard bank protection
- Within Sensitive Areas, buffers or below MHW, or within shoreline setback
- Dikes or conventional tidegates (new or major repair)

Appeals process fee \$500.

**Shorelines and Sensitive Areas Plan.** Develop “as feasible”, may (rather than shall) be limited to listed elements and delete requirement to update every 5 years.

### **Mitigation.**

Shall (rather than may) require mitigation when ecological functions and processes affected.

“Rough Proportionality” shall take into account “uncertainty and failure rates of restoration projects.”

**Water quality** – add “continuing operations”, fecal contamination and toxic substances to statement of what may not violate water quality standards.

When project requires sec. 401 cert and SSA permit, Tribe may require compliance with SSA as condition of 401 certification if compliance will contribute to meeting WQS.

### **Fisheries**

May impose seasonal work windows, in addition to for anadromous fish, for other fish and wildlife for which other sensitive areas have been designated.

## **Marine Bank Protection Works**

New construction of bank protection must demonstrate need to protect occupied structures or critical public infrastructure that existing as of Aug/18 2005 (when SSA first adopted).

“Soft” bank protection practices shall be used whenever possible. Soft practices clarified.

Hard practices (such as bulkheads and riprap)– impacts from these must be “fully mitigated” under a mitigation plan including:

- Prior removal of equal length structure on Reservation, or if not available, in location approved by the Department.
- Hard practices may be used where Department determines necessary to protect critical infrastructure, where not feasible to move and must still be fully mitigated.

## **Existing bank protection structures**

Soft structure – repair is exempt from permit.

Hard structure repair is not exempt from permit and shall include information on percent of structure to be repaired.

Repair of hard structure – when more than 50% (previously 60%) over lifetime of structure, shall replace with practice which minimizes impacts, unless infeasible.

Shoreline Access Structures. [Beach stairs]

- Designed and constructed to minimize impacts and where applicable lower section retractable.
- If existing damaged by storm surge – meet minimum impacts / retractable criteria.

## **Shoreline Residential**

New hard bank prohibited unless “necessary to protect structure pre-existing” adoption of Chapter.

Setbacks:

In Shelter Bay clarify that must meet a structure setback distance in their covenants, but otherwise follow Tribal code and procedures including maintaining native vegetation within setback to extent feasible.

Where new construction or an addition is allowed within the setback, a 1:1.5 mitigation ratio developed to mitigated area is required.

## **Rural Conservancy**

Preferred uses – delete agriculture and aquaculture; add hunting and gathering.

Setbacks – 75% of area waterward of setback to be maintained in native veg.

Bank Protection – New hard construction not permitted except for habitat restoration approved by Dept., or where soft protection not feasible for critical public infrastructure.

### **Natural Shorelines**

Clarifies only soft bank practices are allowed and only as necessary for habitat restoration projects.

### **Aquatic Lands**

Clarifies coordination of SSA code with Tidelands ordinance process for Tribal Tidelands.

**Sensitive Areas** – clarifies the exception of prior existing activities under this Chapter does not include ongoing agricultural activities which must conform to the code.

### **Wetlands**

Wetland Classification – adds cultural values and functions including where “significantly contributes to the abundance of culturally important plants” as factor for wetlands classification.

Forested Wetlands (new subsection) – defines, allows timber harvest when in accord with approved Forest Management Plan:

- In Class II wetland buffer only as required for forest health or ecological function.
- In Class III wetlands subject to approval of Dept.  
No Harvest allowed in wetland or buffer of Class I (high value) wetland.

### Wetland buffers

Estuarine buffers shall be no less than 50 ft in width, but may be up to 100 as needed to address shoreline migration and sea level rise.

### Wetland reports

Report needed for project within wetland buffer (not within 200 ft). Dept may require report if boundary delineation is needed to determine if project is within wetland or buffer.

### **Fish and Wildlife Sensitive Areas**

- Some clarifications on designated species
- Changes authority for designation of additional species or habitat from Planning Commission to Environment and Lands Committee.
- Map not required to be updated every 5 years.
- Sets minimum Fish and Wildlife Sensitive Area buffer of 100 ft unless otherwise specified and prohibits development within buffers unless fully mitigated.

### Reports

Fish and Wildlife Sensitive Area Reports required if project within 100 ft of Sensitive Area (not 200 ft).

### **Stream buffers**

Clarifies stream buffers are as on Fish and Wildlife Sensitive Areas Map, but not less than numerical widths set out in the section.

Corrects setback distance is measured from Ordinary High Water (not Mean High Water).

Fish Passage – shall be provided for anadromous fish (current / historical) – deletes “where needed”, adds unless other adequate ingress / egress. (clarification)

### **Eagles**

Clarifies where sensitive area is for eagle “nesting”.

**Eagle perch trees** (new subsection) – within designated areas for eagle perching:

- Retain known perch trees; all conifers > 24” dbh; 50% all conifers > 10” dbh.
- Exception – hazard trees to structure prior existing this sub-section adoption.

### **Shellfish Areas and On-site septic**

New OSS prohibited within 200 ft of shoreline adjacent to designated shellfish harvest area (rather than 200 ft from area itself – so slight increase in setback), Unless DEP determines no reasonable alternative.

### **Geohazard Areas**

Correction – slopes measured in degrees (not percent). This conforms code with practice.

Clarifies – no buffer for liquefaction risk areas. (Either In or out of risk area).

Deletes requirement of update every 5 years.

### **Protection of Marine Feeder Bluffs (new section)**

Setback from top of marine feeder bluff – new construction – 50 ft

Existing structures with 25 ft requiring 50% or more repair over 3 years – remove.

New hard armor prohibited on Marine Feeder Bluffs.

Repair of armor on Marine feeder bluffs must be fully mitigated and if 50% or more repair over life of structure – shall be removed.

## **Sea Level Rise Risk Sensitive Areas (new sub-chapter)**

**Inundation Risk Zone** – identified, map from climate change study cited. Defined as 5 vertical ft above the current Mean Higher High Water mark and an additional 3 ft for storm surge.

Structures. New structures in inundation risk zone only allowed if:

- Will not block shoreline migration associated with sea level rise during lifetime of structure.
- Lowest occupied floor 5 ft above MHHW
- Meet building and zoning codes applicable to inundation risks.
- Owner signs acknowledgement of SLR risk.

If a structure still in place when MHW mark reaches the structure because of sea level rise, it shall be removed or obtained new permit under aquatic lands provisions of SSA and lease under Tidelands ordinance.

Repair existing structures:

- 20% or more repair – minimize and mitigate impacts to shoreline including the blocking of shoreline migration.
- 50% or more repair over lifetime for damaged caused by coastal flooding, inundation or storm surge – treat as new structure (as above).

## **Non-Conforming Use**

Pre-existing, non-conforming structures (for shoreline setbacks) are prohibited from waterward expansion, but may expand laterally or landward within setbacks if mitigated at ratio of 1:1.5 area. [ie if expand house by 100 sq ft, create or restore native veg from hardscape or lawn of 150 sq ft within setback area].

Non-conforming use discontinued 12 consecutive months or 12 months in 2 year period is deemed abandoned and shall conform to setbacks and buffers.

**Dikes** –prohibits new dikes from blocking shoreline migration unless for managed retreat or habitat restoration approved by Dept of Environmental Protection.

**Effective Date** (.680) - on adoption of the Senate.