

March 30, 2010

King County Department of Natural Resources and Parks

**PUBLIC COMMENT RESPONSE SUMMARY -  
PROCEDURES FOR CONSIDERING PUBLIC SAFETY WHEN  
PLACING LARGE WOOD IN KING COUNTY RIVERS**

Pursuant to King County Council Ordinance 16581, the Department of Natural Resources and Parks has developed a public rule to define procedures that we will follow to consider public safety when placing large wood in County rivers. The Ordinance calls for the adoption of the public rule no later than March 31, 2010. The Department has adopted a Rule consistent with the direction of the Council Ordinance. In preparing the rule, the Department issued a draft public rule on January 4, 2010, followed by a 45-day public comment period that subsequently closed on February 19.

King County Department of Natural Resources and Parks (DNRP) received comments from 59 individuals and organizations via written submissions and oral testimony at two public hearings. We received comments from Individual Citizens (30), Government Officials or Agencies (14), Non-governmental Organizations (8), and Quasi-governmental Entities, such as salmon recovery forums (7).

DNRP staff have thoroughly reviewed all of the comments and have integrated suggestions into the final rule language. This document provides our responses to major themes identified in the public comments.

**Summary**

The majority of respondents (43 total) in every category expressed grave concern about the negative effects of the proposed rule on salmon recovery and flood protection activities (Table 1). While individual comments vary, these respondents generally expressed strong disagreement with the policy basis of the proposal (as reflected in the King County Council ordinance that called for the development of the rule) and questioned the need for the rule. Many of the most common concerns and our responses to them are described below in Themes 1-16.

**Table 1.** Respondents opposed to policy basis of rule and concerned about implications for salmon recovery and flood protection activities.

Individual Citizens - <b>21</b>	Trout Unlimited
City of Redmond	Tulalip Tribes
Green/Duwamish Watershed Alliance	USFWS
Mid-Puget Sound Fisheries Enhancement Group	Watershed Steward Association
Muckleshoot Tribe	WDFW
NOAA Fisheries	Wild Fish Conservancy
Puget Sound Partnership	WRIA 10/12 Citizen Advisory Committee
Puget Sound Salmon Recovery Council	Snoqualmie Watershed Forum (WRIA 7)
RCO-SRFB	WRIA 8 – Cedar River / Lake Washington

Seattle Public Utilities	WRIA 9 – Green/Duwamish
Snoqualmie Tribe	WRIA Representative on Stakeholder Committee
Snoqualmie Watershed Forum	

We also received comments from a smaller number of respondents (6) who feel that the proposal does not go far enough to address public safety and fails to meet the intent of the ordinance (Table 2).

**Table 2.** Respondents support ordinance. Rule fails to meet intent.

Individual Citizens - 3
King County Councilmember
King County Ombudsman
River Safety Council

The balance of respondents were supportive of the proposal as-is (3, Table 3), support the rule but have concerns about specific provisions (3, Table 4), or expressed views that were neutral regarding the substance of the proposal or that addressed issues outside the scope of the proposal (4, Table 5).

**Table 3.** Respondents support rule as written.

Individual Citizens - 2
American Rivers

**Table 4.** Respondents support rule, significant changes recommended.

Individual Citizens - 1
King County Councilmember
American Whitewater

**Table 5.** Comments neutral or fall outside scope of rule.

Individual Citizens - 3
City of Carnation

## COMMENT THEMES

Comment themes 1-16 summarize the most prevalent issues raised by the 43 respondents listed in Table 1.

**Theme 1: The rule compromises salmon recovery efforts. Large wood placement is an integral component of habitat restoration plans in King County watersheds.**

The most prevalent theme among respondents in all categories was that the proposed rule and its underlying ordinance compromise the implementation of salmon recovery plans in King County watersheds. Large wood placement is a high-priority action. Respondents

expect that the rule will lead not only to the completion of fewer projects (due to cost, delay and other factors), but also a reduction in the ecological effectiveness of those projects that are completed. The implementation of the Puget Sound salmon recovery plan is also integral to the Puget Sound Action Agenda. Thus, the region's ability to meet the broadly supported goal of cleaning up Puget Sound will be adversely affected by the implementation of this rule.

Respondents also note that salmonids are central to the economic, cultural and spiritual well-being of local tribes, and that salmonids also support both commercial and recreational fisheries for both tribal and non-tribal fishers.

Response: King County continues to be a leader in the implementation of salmon recovery plans in County waters and participates actively in many regional forums regarding the health of Puget Sound. DNRP acknowledges that where recreational river use is prevalent, the placement of large wood may be modified as a result of the rule. However, we have reiterated in the revised rule that all projects will continue to be designed to meet their primary objectives, and that public safety for recreational rivers users will be of primary consideration in the selection of design alternatives that meet project objectives.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 2: The rule inappropriately displaces existing, broadly supported policy priorities.**

Respondents note that watershed-specific salmon recovery plans and the King County Flood Hazard Management Plan were developed through extensive, collaborative processes that enjoy the support of numerous partners and stakeholders. King County is recognized as a leader on both fronts and has developed policies and practices to support large wood placement in county rivers, both as structural elements of flood protection projects and as integral components of salmon habitat restoration. Respondents question how the safety of recreational river users - who are engaged in a voluntary and inherently dangerous activity – can suddenly ‘trump’ these other, well-established priorities.

Response: In practice, King County has considered recreational river use in its project planning processes since the mid-1990's. The elevation of recreational safety as a “primary consideration” is the result of a King County Council decision. Projects will continue to be designed so that they meet principal project objectives (e.g., bank stabilization, habitat creation); within that context, public safety for river recreation will be of primary consideration.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 3: Projects modified for ‘safety’ will not provide same ecological benefits.**

Respondents commented that the ecological benefits of large wood are directly linked to how wood interacts with flow and sediment and that project modification will erode the ecological value of projects.

Response: We agree that the orientation, configuration and location of wood placements are substantial determinants of their ecological value. For this reason, the rule calls for additional mitigation for projects that are substantially modified as a direct result of recreational safety considerations. As part of the rule development process, DNRP produced a list of peer-reviewed references that describe the ecological function and value of large wood. The list of references is available on the large wood website<sup>1</sup>.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 4: The rule is not justified by data on accidents.**

Several respondents stated that the proposed rule and the ordinance on which it is based lack evidence of a problem that requires the proposed solution. Respondents noted that the Large Wood Stakeholder Committee was presented with information regarding river rescues and deaths in King County. That data showed that the lack of personal floatation devices, alcohol use, improper equipment and training were the most common causes of serious river accidents. Placed large wood has not been implicated in any deaths in King County rivers.

Response: While no exhaustive database or analysis of river accidents and their causes has been conducted in King County, we agree that placed wood does not appear to be the cause of known accidents or deaths in King County. Accidental deaths are investigated by the King County Medical Examiner and Public Health – Seattle & King County. In an analysis of drowning deaths in County rivers between 1996-2006, none were attributed primarily to large wood. Quantitative data on injuries or rescues is not readily available, but the King County Sheriff has reported that victims who are successfully rescued are often found clinging to large wood as a refuge from swift water<sup>2</sup>.

⇒ Comment noted. No change to rule.

**Theme 5: Procedures will increase costs of flood protection and habitat restoration projects.**

Respondents are concerned by the escalation of project costs for flood protection and habitat restoration due to additional administrative procedures and potentially the need to re-design projects to address recreational safety concerns. Respondents asked how these additional costs will be covered.

Response: We agree that projects that include large wood will likely cost more on average. We also believe that increased expenditures are appropriate to address safety concerns. There has been no separate appropriation for this additional cost. DNRP is committed to implementing the proposed procedures and all other steps in the project planning and design process in an efficient manner to maximize the value of these critical investments.

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<sup>1</sup> <http://www.kingcounty.gov/environment/watersheds/general-information/large-wood.aspx>

<sup>2</sup> Sgt. Jim Knauss, personal communication

⇒ Rule has been streamlined to reduce unnecessary duplicative steps by focusing public input at the point that it can best be included in the process.

**Theme 6: Wasteful to add new bureaucracy at a time of budget cuts.**

Respondents commented that the addition of new bureaucratic hurdles and associated costs is inappropriate at a time when the County is cutting critical services.

Response: The King County Council directed the DNRP to establish the new procedures in the interest of public safety. DNRP is committed to making the procedures as efficient as possible while meeting the intent of the ordinance.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 7: Procedures will cause delays for flood protection and habitat restoration projects.**

Respondents are concerned that the new procedures will create additional delays for critical capital projects, especially if project design becomes an iterative process due to recreational concerns. Delays will increase costs and complicate permitting processes.

Response: We agree that projects may be delayed if the process for implementing the procedures is inefficient.

⇒ The final version of the rule addresses this concern by emphasizing the completion of recreational safety analysis early in the design process so that costly delays can be avoided in subsequent design steps.

**Theme 8: The procedures do not reflect the recommendations of the Large Wood Stakeholder Committee.**

Several respondents were members of the Large Wood Stakeholder Committee and many other respondents had reviewed the committee's report. Of those committee members that provided comments on the proposed rule, a majority felt that the proposal does not reflect the committee's recommendations. Specifically, the committee recommended outreach and education as the most important element in reducing river accidents. While the committee strongly supported the consideration of recreational safety, they also felt that projects must meet their primary design objectives while minimizing risks to recreational users. Respondents felt that this sense of balance is not reflected in the proposal. Moreover, the majority of committee members felt that individuals must take responsibility for their own actions when engaging in inherently risky activities.

Response: DNRP places tremendous value on the recommendations of the Large Wood Stakeholder Committee and appreciates the time and effort invested by its members in assisting King County. Importantly, the committee was convened by the Water & Land Resources Division (WLRD) of DNRP prior to the Council's action of passing the large wood ordinance. The committee was not convened to respond to the specific language of the ordinance, but to provide a holistic set of recommendations regarding King County's existing large wood placement protocol and its protocol for the management of natural

wood in rivers. The committee chose to expand its mandate to produce an additional set of recommendations regarding outreach and education as this was quickly identified as the most important tool for reducing river accidents. In contrast, the Council ordinance was narrowly focused on wood placement and contained specific language regarding the primary importance of recreational safety. Thus, the proposed rule could not address the broader context of large wood management and recreational river users in the manner recommended by the committee. The DNRP is committed to integrating more of the committee's recommendations in future efforts to improve our large wood management practices.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 9: Persons engaged in inherently hazardous recreation should be responsible for their own safety. Laws in other states protect government from liability.**

Several respondents feel that government should not be liable for the safety of persons who engage in inherently risky recreational activities. Rivers are dangerous places in any conditions and the level of danger is quickly exacerbated by poor choices, lack of knowledge and lack of appropriate preparation. Respondents noted that other states – such as the State of California – have laws in place to shield government agencies and their employees from liability related to injury or death resulting from participation in hazardous recreational activities. They encouraged the County to pass such a law or to work with the State to do so.

Response: We agree that river recreation is inherently dangerous. Consideration of public safety is important and appropriate for projects that we build, regardless of the legal implications. The California example is a state law. Similar legislation could presumably be enacted at the State level in Washington.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 10: A requirement to use Personal Flotation Devices would do far more to improve safety.**

Respondents commented that the lack of PFDs has been cited as the major cause of river drowning deaths in King County, according to information presented to the Large Wood Stakeholder Committee. A large number of respondents recommended the passage of a PFD requirement for all recreation on rivers. Spokane County has such a law for certain areas.

Response: We agree that lack of PFDs is a major cause of drowning deaths in King County, though PFD use varies substantially by user group. For example, experienced kayakers typically wear PFDs. However, the rate of PFD use by 'casual' recreational river users on inner tubes and other such craft is generally very low. Committee members themselves provided anecdotal information about the lack of PFD use on County rivers; some estimated PFD use by inner tubers as less than 5%.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 11: The procedures are not needed. The County already has a good system in place to address recreational safety.**

Respondents commented that the County has successfully worked with boaters for many years and that a protocol for the consideration of recreational safety in the context of large wood placement was already in place. Respondents inquired why the protocol (adopted in 2008) was not evaluated for its efficacy prior to the passage of an ordinance and a requirement for a more formal and onerous process.

Response: The existing protocol was effective at ensuring consideration of recreational safety. The King County Council requested a more formal process. Many elements of the previous protocol have been incorporated into the rule.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 12: Rule creates false sense of security in an inherently dangerous environment.**

Respondents are concerned that the rule conveys a false sense of safety for recreational users in an inherently dangerous environment, and that no set of procedures can ensure the safety of river users. Rivers are very dynamic – the nature and severity of hazards in a particular river reach can change dramatically with a change in flow conditions, and can change over time due to natural conditions. Respondents noted that natural wood is far more abundant than placed wood and that the perceived safety improvements of County projects will have no discernible net effect on the level of safety for river users.

Response: We agree that County projects are a relatively small factor in the overall conditions encountered by recreational river users. Nothing in the rule is intended to convey that rivers are safe places to engage in recreation or that implementation of the rule will have a discernible effect on safety relative to the broad suite of river hazards that a recreational river user is likely to experience.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 13: Education and outreach regarding recreational safety should be top priority.**

Many respondents agreed with the Large Wood Stakeholder Committee that education and outreach are the most important and effective ways to reduce the incidence of accidents, including drowning, in King County rivers. The financial resources that must now be committed to implementation of the new procedures would be better spent educating the public about river hazards and safety measures, and about the importance of large wood to river ecosystems.

Response: We agree that outreach and education are important. Swimmer and boater safety on waters of the State has traditionally been a state-level responsibility. King County often integrates educational signage into a variety of capital projects along our rivers and within the County's many park facilities. King County is not proposing any

additional education at this time but would consider partnering with a State-initiated process.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 14: It is sufficient for the County to notify public about location of existing and new large wood placements.**

Some respondents feel that it is appropriate and sufficient for the County to provide up-to-date information about its wood placement projects, via the internet and possibly by utilization of signage. It should be the responsibility of recreational users to ensure that they are well informed of river conditions.

Response: We agree that notification of new and existing large wood placement locations is an important element of our outreach efforts. The DNRP intends to make such information readily available on the internet and to distribute information about large wood projects to electronic mailing lists that will be established for that purpose. DNRP already notifies many interested parties about pending large wood projects, but the process for enrolling in the updates will be automated for greater transparency and efficiency.

⇒ Comment noted. Project location information already included in rule.

**Theme 15: The County will be less competitive in securing grant funds for habitat restoration.**

Comments from individuals and from the Salmon Recovery Funding Board (a major source of restoration funds for salmon recovery in Puget Sound) noted that while it is important to consider public safety in project design, it should be done in a manner that balances important objectives and ensures the ecological effectiveness of the project. Failure to incorporate the best available approaches in the design of large wood projects will likely influence funding decisions by SRFB and other funding agencies.

Response: We have clarified language in the rule to emphasize the fact that all projects designed by King County must meet their primary objectives, such as habitat restoration or bank stabilization. Public safety will be given primary consideration when choosing between design alternatives that meet project purposes. We expect that King County will continue to produce highly effective projects and that funding agencies will continue to support high priority actions for habitat restoration.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 16: The County should communicate with salmon harvest co-managers (Washington Department of Fish and Wildlife and Tribes) early in the design phase of any large wood projects.**

The Washington Department of Fish and Wildlife (WDFW) and certain local tribes have co-management authority over fish harvest. The WDFW and tribes commented that both

should be notified early in the design process of any project that utilizes large wood to ensure that input from co-managers is incorporated into the design.

Response: DNRP has added language into the revised procedures to emphasize the importance of communication early in the design process with all interested members of the public. The WDFW and tribes will have an opportunity to provide input with other members of the public during the early phases of project design.

⇒ The timing and procedures for soliciting public input have been clarified.

Themes 17-25 summarize concerns raised by one or more respondents listed in Tables 2-5.

**Theme 17: The rule should not have limited consideration of public safety to the recreational context. Other aspects, such as flood risk and infrastructure risk should have been considered.**

Four respondents interpret the intent of the ordinance to encompass a much broader consideration of public safety that is not limited to river recreation. Additional considerations that should have been incorporated include flood risk and risk to public and private property or infrastructure.

Response: Consideration of other elements of public safety (e.g., infrastructure, flood risk) is and always has been a part of all King County capital project design processes. Safety considerations are a standard element of engineering practice. Moreover, these considerations are often documented and weighed by a variety of permitting agencies.

⇒ Upon consultation with the King County Prosecuting Attorney's office, we have modified the rule to refer to public safety in general, with an emphasis on safety of recreational river users.

**Theme 18: The procedures appear to balance priorities whereas the ordinance calls for public safety to be of primary consideration.**

Three respondents feel that the ordinance intended public safety for recreational river users to be more important as a consideration relative to other interests. This interpretation stems from the ordinance language that states "...safety for river users shall be of primary consideration in design concerns involving a balancing of important public purposes...".

Response: All public infrastructure projects are designed to meet their primary objectives. We have clarified the rule to emphasize the ordinance language that safety will be a primary consideration when selecting among alternatives that meet a project's objectives.

⇒ Rule modified to emphasize ordinance language regarding primary consideration of public safety.

**Theme 19: Procedures should be applied to all rivers rather than a predetermined list of rivers. Different types of recreation occur in rivers and streams of all sizes.**

Respondents noted that the list of “rivers commonly used for recreation” was arbitrary and that different types of recreation are known to take place in many areas not included on the list. Instead, the procedures should be applied to all projects in rivers and streams that utilize large wood. Some respondents suggested that while the rule should apply to all projects, it is also appropriate and advisable to apply a tiered evaluation approach so that projects with little or no recreational nexus can be readily identified and would thus not be subject to in-depth consideration of recreational safety.

Response: The revised rule extends the applicability of the rule to all DNRP projects that utilize large wood in the rivers and streams of King County. This change will bring a larger number of flood protection and habitat restoration projects under the purview of the procedures.

⇒ Geographic scope of rule has been expanded to include smaller streams.

**Theme 20: King County does not have legal authority to close a river to recreation.**

One respondent asserted that King County does not have the authority to close rivers to recreation (an option under Section V.2.A) and that this issue has been litigated elsewhere in the United States in favor of recreational access.

Response: King County does not intend to utilize river closure as a common practice. However, the rule does provide restriction of river use as a possibility under certain circumstances. The King County sheriff has authority to close rivers to designated uses and for designated uses. KCC 12.44.200 states: “In the interests of safe navigation, life safety and the protection of property, the sheriff shall designate restricted areas and the purpose for which the same may be used.” In addition, “‘Restricted area’ means an area that has been marked in accordance with and as authorized by the law or regulations of the county to be used for, or closed to, certain designated purposes such as swimming, skindiving, ferry landings and aquatic events.” KCC 12.44.020.

⇒ No change in rule. Comment forwarded to County Council for consideration.

**Theme 21: It is not possible for the King County Sheriff to patrol rivers that have been ‘closed’ to recreation.**

One respondent expressed concern about the cost of patrolling closed rivers and noted that it may not be practicable for the King County Sheriff to enforce river closures.

Response: As noted above, King County does not intend to utilize river closure as a common practice. If the King County Sheriff restricts access to a particular area, it also has the authority to issue citations to persons who violate that restriction.

⇒ No change in rule.

**Theme 22: Signage should be used to warn river users of wood.**

Many respondents would like to see King County utilize signage to alert river users to placed wood that they may encounter further downstream.

Response: King County has utilized signage in the past for certain projects and will continue to do so. It is appropriate for the County to alert river users to the presence of intentionally placed large wood. These procedures define the steps to be taken by DNRP to seek input from the public and to consider public safety in the design of projects that utilize large wood. Decisions about signage will be made as part of the design process for individual projects.

⇒ No change in rule.

**Theme 23: Large wood is not good for fish. Causes siltation of gravel.**

One respondent argued that large wood has not been demonstrated to provide benefits to salmon and may even cause harm by encouraging silt deposition in spawning gravels, or by exacerbating flooding.

Response: While the specific function of wood placement varies by location, design and orientation, we strongly disagree with the suggestion that wood does not provide benefits to salmon. Please refer to the list of peer-reviewed documents that describe the many functions of wood, posted on the large wood website (see footnote 1).

⇒ Comment noted. No change in rule.

**Theme 24: Rule should have included prescriptive measures for large wood project design to reduce risks.**

Two respondents offered that the rule should have included a list of prescriptive measures regarding the placement of wood, such as avoiding outside bends of rivers, etc.

Response: The rule is intended to define the procedures for the consideration of public safety and is not a design guidance document per se. Project design is based on engineering and analysis specific to location, river flow and project objectives. The design solutions for each project must be considered independently according to the specific context.

⇒ Comment noted. No change in rule.

**Theme 25: Large wood exacerbates flooding.**

Two respondents noted that large wood structures can exacerbate flooding by causing water to back up and overflow the banks.

Response: The potential effect of a structure on flooding and risks to property and infrastructure are considered during project design for all King County projects in rivers. Wood is often used effectively to reduce the likelihood of flood damage in the context of

bank stabilization projects. King County has seen no evidence that its projects have exacerbated flooding.

⇒ Comment noted. No change in rule.

**Theme 26: King County should be responsible for removing floating logs from Lake Washington.**

One respondent noted that logs floating in Lake Washington are a hazard to boaters and that the County should be responsible for their removal.

Response: The U.S. Army Corps of Engineers' Floating Plant Unit is responsible for the removal of wood in Lake Washington. This is not a County function.

⇒ No change. Not related to content of rule.

**Additional comments**

The preceding summary of comment themes and responses is not an exhaustive list of concerns and suggestions raised by the public. A complete set of comments received by DNRP may be obtained via our large wood website at:

<http://www.kingcounty.gov/environment/watersheds/general-information/large-wood.aspx>