

# Merrill, Hannah

---

**From:** Katie Krueger [katie.krueger@quileutenation.org]  
**Sent:** Friday, February 24, 2012 3:04 PM  
**To:** Merrill, Hannah; Gray, Steve; Lear, Cathy  
**Cc:** 'Kris Northcut'; frank.geyer@quileutenation.org; 'Mel Moon'; Osborne, Richard; 'Miranda Wecker'  
**Subject:** Quileute questions on the latest draft of the SMP for Clallam County

Please forward to any contractors that you think know the answers to what I am asking below. What follows are just areas that I don't fully understand and are in no way "official comments" or major concerns at this stage. (EXCEPT 5.7, BELOW) I just want to understand this document better. I appreciate its huge size, details, and what surely must have been a Herculean effort. I am basically happy with what Miranda Wecker and her team did for WRIA 20. But looking at this overall document (99% of which is great), I have questions, and the goal was to get them out before Tuesday's meeting. They are as follows (in order of your download links on the website meeting announcement):

## Chapter 3, Shoreline Environment Designations:

3.1.1 says the program applies to all shorelines of the state in unincorporated Clallam County. That appears to exclude federal shorelines and reservations ones, but I know the county has some sort of water quality role in the Park. We have some Park residents in our WRIA 20 who need clarity on this. It comes up in meetings.

## Comparison Chart, page 4 of 16. (old SMP with proposed one)

The new SMP will integrate the Critical Area Ordinance. I am so pleased about that but note that the SMP goes through a huge and formal approval process and then won't be amended for several years. We want the CAO to be more fluid. So are we incorporating a snapshot into the SMP, even if the CAO amends later? I looked at the section in chapter 4 (at page 4-28) on the CAO and it did not address that question. But I think we need to. I notice in the document that maps can be continually updated (see p. 4-31), even if the SMP is "finalized" but how will that work for the CAO itself?

## Chapter 4, General Policies and Regulations:

In par. 4.2.5 I, it is stated that the buffer needs to be maintained in a naturally vegetated condition. Elsewhere in the SMP it uses "native plants". Is that the same? Probably good to use the same terms, if it is.

In 4.3.3, regulations for critical areas, regarding who can write reports and whose can be used:

At subpar. 3.a., wetlands—written reports from state, tribal or federal agencies can be accepted but not a city or county. Is there a reason for that or is it an oversight? Same thing for subpar. B regarding aquatic and wildlife HCAs. Nothing re a city or county. Is that because a city or county does not set up HCAs? I understand (b) a little better than (a), because a city or county *could* be charged with wetland management and have a report, but may not do conservation areas... What about (d), again leaving off cities, regarding maps for frequently flooded areas? Or the county? I know cities and counties do stormwater mapping...so why are cities and counties left off? Why wouldn't a city flood map be allowed? And if it should not be ok, maybe we can have a brief explanation.

In 4.3.4, on page 4-24, in par. 3, Delineation shall be in accordance with the 1987 ACOE wetlands document but in par. 4 a through d that follow, the classification and rating of wetlands is by Ecology. I don't think they are consistent. I know ACOE, EPA, Ecology, and DNR all have wetlands regulations, and I am not clear why we flip between ACOE and Ecology methods and descriptions on the same page here. That might merit a little explanation in the SMP.

In 4.3.5, you provide for reduction of buffers down to 75% of their prescribed width for wetland type. It doesn't require a variance. Nor does it even require a professional opinion. That troubles me because later in the document regarding unstable slopes, buffer reductions require an engineer. I know one is for the environment and one is for safety. But that is my point! I would like an environmental professional to concur with the buffer reduction, at least on paper, recognizing that one can be found to support a position, especially since no variance is required. Maybe your explanation will put me at ease on this point. How did your team decide on 75%? Who monitors for compliance?

4.3.5 Table 4-2—a staff person thought the Classes I-IV relate to soil types as well as wetland types. We would just like clarity on that point.

4.3.6.c.—who decides what the compensation is for mitigation? Is there a protocol to follow? If so, maybe cite it. If not, maybe create it?

In 4.3. 8 regarding aquatic habitat buffers: Same issue as for wetland buffers, no expert, no variance, how decide on 75%, and who monitors compliance?

In 4.3.10, 1.b., Habitat Conservation Area designation and mapping: Here you provide for habitats “targeted for preservation by federal, state and/or local government which provide fish and wildlife habitat benefits” but leave off tribes? Was that accidental or intended? I would just like to understand that better.

In 4.3.12 there are a number of percentages and criteria related to geologic hazards and what slopes are unsafe. I was confused by the high percentages of the slopes tolerated (e.g., 65% in 2.e), because the angle of repose, after which slopes are usually unstable and start to slide is 30 degrees. Can you just share your thinking on this part, or provide a source for it?

In par. 4.4.9, regarding critical aquifer recharge area mitigation plans, par. 1.b.—“Water quality data, including pH, temperature, conductivity, nitrates, and bacteria.” Just wondering why DO, a very common parameter, is left out, since you listed so many.

Looking at 4.7.3 regarding restoration regulations, par. 2 says they need to be maintained in perpetuity. I love that goal from a fish standpoint but in reality, some projects have inherent lifespans, such as culverts. And is this an unfunded mandate? Maybe state that the project is maintained in accordance with its approved work plan? I just suggest revisiting the wording and making sure you are satisfied with it.

4.7.3, regulations for shoreline restoration: 4.b. requires removal of non-native vegetation only by hand tools. All the federal and state applicable agencies allow different (chemical) processes for knotweed. If you are requiring manual removal of every knotweed cane on a shoreline, I think we need to visit on that point. Did you touch base with Cathy Lucero on this paragraph?

Oddly, it looks like herbicides are ok to use in critical recharge areas! (See p. 4-52, section 4.8.3.c.8 and see also 5.2 on agriculture, at page 5-2, sub par. (h). )

4.9.2.1.h. In encouraging removal of chemically treated materials (creosote, arsenic, etc.) do you want to add a statement about how the waste should be handled? Cite a WAC or such? (as you did for aquaculture waste on page 5-5.)

See page 4-54-- 4.9.3.4. says that creosote wood or certain other chemicals are prohibited in shoreline water bodies. Since the above paragraph only encourages their removal, are you grandfathering existing ones? That is not clear.

5.3.2 Policies re aquaculture, par. 3—how do the aquaculturists (is that a word?) figure out what is significant risk, or any other party? Is “significant” defined in a regulation you can cite? I know all parties would like guidance on that point.

In 5.3.2.8, the paragraph reads that rights of tribes “should” be addressed in the permit process and is “encouraged”. I would like to see “shall” or “must”. Why was this precatory?

5.3.6.g Still aquaculture—distance from wildlife areas, etc. How were the distances established? 600 feet, 1500 feet... Ditto for finfish acreage on page 5-6, in par. o. I am not disputing the numbers—have insufficient knowledge to do so—but would like to know their source/basis. Citations that exist (e.g., WACs) would be good.

5.4.3.2 re beach access structures—walkway and structure dimensions. Same question about source of the numbers. page 5-8.

On page 5-9, 5.2.2 Policies, par. 4 re new marinas—I would suggest you state “affected” Native American tribes. Your notice (and response) issues can be pretty large, otherwise. As described, that requirement is not even limited to western Washington, or Washington State.

Re new marinas, page 5-11, par. 10.e.—who must do the analysis of fish and shellfish resources that may be affected? Should it be required that the analyst be a biologist or water quality expert? Same question for par. f that follows, re said resources and impacts/mitigation.

**IMPORTANT** 5.7 Dredge/fill section, all of 5.7, page 5-17 ET SEQ.. The federal CWA Section 404, and its promulgated rules, give authority to ACOE and in part to USEPA on this and they should be cross referenced at the beginning of the section. This absolutely applies to state lands and waters, and if the uniformed reader is not cross-referenced, he or she may think just the SMP language is enough. It is not.

5.8 Forest Practices. I would add “as amended” to 5.8.2.2 citations. Ditto for 5.8.3.1.a.

5.9. Floodplain Management and Flood Control Structures. See par. 5.9.2.10 re the 2008 BO on the federal flood insurance program. This is another example of where you will want to say “or any successor BO thereto”, as I believe the situation is evolving again, and you don’t want to be stuck with the 2008 BO embedded in the SMP. Ditto for 5.9.3.1.d. on that and anywhere else said BO may appear.

5. Section 5.10.2.2—you name agencies with a say in in-stream structures, and I think is a good idea to put “e.g.”, or “and other applicable agencies”, since jurisdiction tends to change and/or new agencies get created. Example—USCG used to be in DOT. The state may merge some ecological agencies. So just a thought.

5.14.2 Policies for Residential Development, page 5-32. I am nervous about the broad language that property owners can elect to build in hazard areas, assuming the risk, just so long as they mitigate adverse effects on shoreline functions and processes. That is inferred; actual language is that they can “if doing so would cause unmitigated adverse effects”. I would suggest that if they cut trees to the roots (heard this in Sequim meeting) and then try to mitigate later, that is really too late. It takes decades for a comparable tree, with its function, to do the shoreline job, and what happens to that large woody material they cut? Do they sell it? Do they burn it? Or must they put it into a LWM bank (best idea of a bad situation)? This paragraph gives me some gray hairs.

5.15 re Shoreline stabilization/armoring. I don’t see reference to ACOE here and I am pretty sure they are involved when bulkheads, riprap, etc., are involved. Good idea to confirm or deny this. Cite any applicable federal requirements if I am right. Aha. First and only place that shows up is under design standards 5.15.6—you do mention ACOE requirements. I think you need to mention their role at the very beginning of this major section. OK, next place you see it is in section 6.15.2, where CWA 404 and Rivers and Harbor Act Sec. 10 are reference in *notices of decision for exemptions*. Those major ACOE sections need to be brought up early, where the developer is reading about stabilization and armoring in the first place.

5.18 re dams and hdro—might want to cross- reference FERC right up front in this section. I did not see it mentioned until 5.18.5 3, “for dams not regulated by FERC.”

5.18.8 regulations for wind energy offshore. The science and environmental concerns re wind energy offshore are evolving. You may want to insert the need to get necessary permitting from applicable state and federal agencies like DOE (and it may be NOAA one day) so your SMP is not “hanging out” on this topic, after approval. So I think it needs to be broad reference to applicable permitting agencies. There was a lot of discussion on adverse impacts that were not expected, re fisheries, at American Fisheries Society this past September.

In reading 6.5 Exemptions from Shoreline Substantial Development Permit Process, I sure wish those exemption tests would be applied to buffer reduction! Just a wish. (or per variances in section 6.31)

6.13.7—your title has a run-on punctuation glitch...

6.21 Hearings. Would like to know who is noticed, and if affected tribes can be parties to a permit process or remedies, etc.

6.32 Penalties. In my estimation, in today's money, \$1000 or \$5000 will not be deterrents to those who see a value in construction contrary to these rules.

## Li/qtskal/ax2

Katie Krueger, staff attorney and policy analyst  
Quileute Natural Resources  
401 Main Street (deliveries); PO BOX 187 (mail)  
La Push, WA 98350-0187  
(360) 374-2265, FAX 374-9250, Cell 460-4842  
Go to <http://www.quileutenation.org/natural-resources>  
to check out our programs and more.