



May 11, 2012

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Sent by email to: [sgray@co.clallam.wa.us](mailto:sgray@co.clallam.wa.us)

Re: 2<sup>nd</sup> Comment Letter on Clallam County Shoreline Master Program

Dear Mr. Gray:

Our organizations appreciate the opportunity to comment on the February 2012 draft of the Clallam County Shoreline Master Program (SMP). *Futurewise* is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. *People For Puget Sound* is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

The Clallam County SMP is important because it covers many significant shorelines including the Northwest straits, a part of the larger Puget Sound region. The straits and Puget Sound need help.

According to the *2007 State of the Sound* report (and supported by more recent Puget Sound Partnership vital signs indicators) development actions across the Puget Sound region have caused eelgrass, forage fish, salmon, rockfish, marine birds and orca populations to decline (PSAT 2007). Ten species are listed as threatened or endangered by the state or federal government and an additional 33 marine species are identified as species of concern, meaning their populations also are at risk. Declines in these species' populations are directly related to the destruction, degradation, and fragmentation of the habitats on which they rely. Much of this damage occurred prior to the development of our existing regulatory framework, but significant ecosystem impairments have also occurred since the advent of the major regulatory initiatives in the 1970s.<sup>1</sup>

The current SMP updates are an opportunity to significantly improve protection for the straits and the county's other shorelines. So we strongly support the SMP update.

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<sup>1</sup> Margaret Clancy, M., Ilon Logan, Jeremy Lowe, Jim Johannessen, Andrea MacLennan, F. Brie Van Cleve, Jeff Dillon, Besty Lyons, Randy Carman, Paul Cereghino, Bob Barnard, Curtis Tanner, Doug Myers, Robin Clark, Jaques White, Charles A. Simenstad, Miriam Gilmer, & Nancy Chin, *Management Measures for Protecting the Puget Sound Nearshore* p. 8-2 (Puget Sound Nearshore Ecosystem Restoration Project Report No. 2009-01, Washington Department of Fish and Wildlife, Olympia, Washington: 2009). Accessed on May 10, 2012 at: [http://www.pugetsoundnearshore.org/technical\\_reports.htm](http://www.pugetsoundnearshore.org/technical_reports.htm). This report had external peer review. *Id.* at p. \*ix.

We previously provided three Futurewise guidance documents for your consideration. We continue to reference these guidance documents in this letter, and continue to recommend following the approaches described in them.

Our previous comments were limited to vegetation related issues while this letter addresses the entire draft SMP. The draft SMP update has many good features. In particular:

- The SMP is clearly written.
- The SMP is well organized with a good use of tables.
- While we have recommended changes, overall the specific development standards are protective and follow the 2003 guidance.
- Most of the regulations for mitigation and mitigation sequencing are well framed, though we do have important recommendations.

We do have a number of comments and suggestions on the proposed update which are included in the following sections.

### **Uses That Damage the Environment Must be Prohibited or Include Special Protections: Background**

Two of the key policy tools to protecting our state's shorelines are the Shoreline Management Act (SMA) use preferences and the preference for uses that control pollution and prevent damage to the shorelines. The SMA preference for water-dependency should be included in both use limits and the vegetation management system. And water-dependency and use-intensity must be included in the use limits.

The origins of SMA preferences are found in the policy statements of RCW 90.58.020. Paragraphs 2 and 3 are described in Futurewise's guidance documents. Paragraph 4 - the implementation paragraph - is discussed below and provides specifics for how to use preferences. Additional requirements dealing with preferences are provided in the SMP Guidelines.<sup>2</sup> And our guidance document on buffers provides additional discussion about the role of water-dependency for buffers. Water-dependency is critical in developing a SMP that accomplishes mitigation sequencing.

Both the SMA and the SMP Guidelines have explicit requirements establishing ecological protection, water-dependency, and public enjoyment preferences. They are based on the fourth paragraph of the SMA policy section, which is the implementation statement [with emphasis added]:

*"In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline."*

The SMP Guidelines principles for general use provisions (in WAC 173-26-241(2)(a)) further provide that [with emphasis added]:

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<sup>2</sup> WAC 173-26-251.

Shoreline master programs shall implement the following principles:

- (i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas. ....
- (iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses. ....

The two preferences for water-dependency and protection from pollution and environmental damage incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that they must minimize the damage and compensate for their impacts. Conversely, uses that don't need to be in or near the water must control pollution and avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA policy. Such uses must be prohibited or carefully controlled with special requirements. They cannot be treated the same as preferred uses are treated; *otherwise there is no effect to the preference.*

Since many ecological functions come from native intact vegetation,<sup>3</sup> degrading that vegetation (including further damaging already degraded vegetation) harms the environment. Our previous comment letter addressed the vegetation management provisions, the importance of limiting damage to native vegetation, and compensating for impacts by enhancing degraded vegetation conditions. Buffer systems provide some protection for heavily developed and moderately developed sites. However, buffers alone cannot fully protect undeveloped and lightly developed sites that are typically designated with protective environments such as natural and conservancy environments. This is why the SMA and SMP Guidelines require use limits that incorporate variations in use intensity. Specifically, uses in Natural are limited to very-low-intensity, and uses in Rural Conservancy are limited to low-intensity.<sup>4</sup> (The County's Freshwater Resource environment likely falls somewhere between the two.)

Many of our comments in this letter address this issue. Specifically, use intensity in the protective environments. In addition, the marine environments do not correlate with the SMP Guidelines protective environments. The issue is discussed in detail below.

### **Protective Environments and Use Limits Must be Used to Protect Intact Areas**

Clallam County has chosen to use a unique environment system that is highly customized – a marine system focused on the geological functions, and a freshwater system focused on the forest industry. The marine system, especially, is an admirable and creative approach to the designation of environments. Futurewise's guidance document on shoreline environments addresses the use of custom environments. The 2003 SMP Guidelines allows customized environment, but only within certain limitations that place limits on how they are designed. They must still implement the concepts of the Guidelines environment provisions to protect intact areas, and implement the SMA and SMP Guideline preferences in the use limits. Specifically, WAC 173-26-211(4)(c)(i) provides the allowance for using alternative systems, and states [with emphasis]: "Local governments may establish a different

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<sup>3</sup> EnviroVision, Herrera Environmental, and Aquatic Habitat Guidelines Program, *Protecting Nearshore Habitat and Functions in Puget Sound* pp. II-37 – II-40 and pp. III-33 – III-35 (October 2007, Revised June 2010). Accessed on May 10, 2012 at: <http://wdfw.wa.gov/publications/pub.php?id=00047>.

<sup>4</sup> WAC 173-26-211(5)(a) & (b).

designation system or may retain their current environment designations, *provided it is consistent with the purposes and policies of this section* and WAC 173-26-211(5)” [Note: Subsection (5) describes the specific recommended environments.] Thus jurisdictions have the discretion of establishing customized environments. But they cannot freely create any system they wish. The environments chosen need to meet the general intent laid out in the SMP Guidelines:

- protect the higher functioning shoreline areas,
- provide places for residential and other preferred shoreline development, and
- provide places for higher intensity development where the development will avoid impacting shoreline resources, such as public enjoyment and ecological function.

The freshwater environments more closely follow the SMP Guidelines environments. But the marine environments have no corollary to the SMP Guidelines.

The *freshwater environments* relate to the Guidelines as follows:

- The SMP uses Freshwater Natural in place of Natural. The criteria and purpose of the environment does not follow the criteria in the SMP Guidelines. Furthermore, it is limited to protected and largely pristine areas, even though its criteria (c & d) should result in long segments of Natural. And as shown on the environments map, the Freshwater Natural is strictly limited in application – namely to the Lower Elwha floodplain. Strangely, it includes cleared lands (possibly agriculture or recreation) along Elwha Bluffs Road, but excludes nearby similar areas. Since the areas intended to be protected under the SMP guidelines as Natural are not protected under Freshwater Natural, other environments must accomplish this, as we recommend below. Even within the limited area of Natural, almost all categories of development are allowed in some form without relation to use intensity, despite the limits described in the Guidelines. As one example, even commercial and industrial development are allowed if they are water-dependent, without regard to their intensity. Intense uses should be placed outside shoreline jurisdiction or in developed environments suitable for high intensity uses.
- The SMP adds a new Freshwater Resource environment that is focused on commercial forestry. The criteria and purpose indicate this environment is to be strictly limited to protect forest lands. Freshwater Resource is by far the most widely applied freshwater environment in the draft SMP. It is applied to extensive stretches of largely intact shorelines that, while harvested for forest products, return to intact conditions on a 50-year (or so) cycle. These areas would normally be designated either Natural (with strict use intensity limits), or Rural Conservancy (with still strong use intensity limits). Clallam’s approach could go far in accomplishing much of what the Natural environment is supposed to accomplish by combining the ideals of the Natural and Rural Conservancy. However as applied, the Freshwater Resource is much more lenient than either of these. The use table does not implement the criteria and purpose of the environment (supposedly limiting uses to forestry), nor the SMP Guidelines for either Natural or Rural Conservancy. The use table shows that almost all development is allowed without regard to intensity or its relation to commercial forestry, including residential, recreation, commercial and industrial. Indeed the use limits are identical to Freshwater Conservancy, except for single family residential and in-stream structures, and provide no extra protection. So the allowed uses should be limited to low-intensity uses.
- The SMP uses Freshwater Conservancy in place of Rural Conservancy. This environment should implement the SMP Guidelines provisions for Rural Conservancy, which limits uses to low intensity. However, as with Freshwater Resource, almost all uses are allowed without relation to intensity. Again, intensity limits should be added, and high intensity uses should be located outside shoreline jurisdiction.
- The SMP uses Freshwater Residential in place of Shoreline Residential. It is generally well applied, and includes appropriate use limits, though it too allows almost all uses although in this case that is appropriate.

- The SMP does not include a High Intensity environment. Most densely developed areas appear to be in marine areas, rather than freshwater areas.

The SMP's *marine environments* do not relate to the Guidelines. While they are an admirable attempt to build-in geologic functions, they don't relate to all the other ecological functions. The problem is that the SMP Guidelines describe environments based on existing development patterns (ranging from highly developed to undeveloped) and overall ecological function (for intact areas), not just on geological function – all with the intent to protect largely intact and ecologically functioning areas from overdevelopment. The draft SMP, however, establishes marine environments based almost solely on their shoreform, which doesn't capture all other ecological functions (the main exception is the developed Modified Lowland environment). These shoreforms can be either pristine or heavily developed. Consequently, the established use limits and protection regulations cannot both deal with the developed locations and protect the intact areas. While the proposed systems can be made to work, they need modifications to more closely follow the intent of the SMA and SMP Guidelines to protect intact areas.

Our specific observations on the marine environments are as follows:

- Modified Lowland. Since this appears to be a mix of the SMP Guideline's High Intensity and Shoreline Residential environments. It appears to be applied appropriately, with only a few exceptions described later. The use limits are very permissive, but are acceptable if the intact areas are designated in more protective environments.
- Bay. This environment appears to be limited to Clallam Bay and Sequim Bay. It includes lagoons, estuaries, and large and small blocks of intact vegetation. But it also includes intensely developed areas (such as marinas, ports, and dense subdivisions). The use limits are identical to the permissive uses allowed in Modified Lowland, except for Non-water-oriented Recreation uses.
- High Bank. This appears to be the most broadly applied marine environment, and encompasses the most undeveloped and intact land. This environment would be the closest equivalent to Natural for protecting marine areas that have extensive intact vegetation. However, it has no use limits that correspond with the SMP Guideline provisions to protect such intact areas either from development that is inherently intense (such as commercial and industrial), or from uses that range in intensity. Almost all categories of development are allowed without regard to intensity.
- Feeder Bluff. This appears to be a broadly applied marine environment. The vegetation is often intact within shoreline jurisdiction – the exception being the region to either side of Dungeness Spit. This intact vegetation most often extends well outside shoreline jurisdiction too, but there is sometimes development located just outside or at the edge of shoreline jurisdiction. Because large portions of this environment are applied to intact areas, we recommend that it be split into two different Feeder Bluff environments, one being an equivalent of Natural. For example establishing a Feeder Bluff Natural for intact and largely undeveloped areas, and a Feeder Bluff Developed for the well developed areas. The use limits should reflect the differences. While the use limits are the most limited of the environments, they are still too permissive to protect the intact areas. Most of the limits are for modifications, but almost all uses are allowed without regard to use intensity. Uses should be limited more similar to our recommended uses for Freshwater Resource, below.
- Lowland/Estuary. This environment seems to be appropriately applied to these sensitive locations, and the use limits appear to be the second most protective (after Feeder Bluff); but again, the limits are mainly on modifications, and almost all uses are allowed without regard to use intensity.

*For both environment systems*, the use limits are the missing linkage to the SMP Guidelines requirement of no net loss of ecological functions.<sup>5</sup> The proposed use limits were not designed to protect the intact areas, but rather to accommodate future development with few limits. The result is that the intact or even pristine areas are regulated as if they are the same as the heavily developed areas. [The one exception is that the Modified Lowland environment appears to be limited to mainly developed locations.] The biggest problem is for areas that have largely intact vegetation throughout shoreline jurisdiction. Despite using larger buffers, almost any use is allowed and very little is prohibited outside the buffers. And when development is allowed in the buffers anyway (for water-dependent primary uses, and accessory uses for non-water-dependent uses), there are no substantive limits. By addressing the issues raised in our recommendations, the proposed system could work.

The lack of use limits is demonstrated by looking at the use table. All the freshwater environments that have any substantive application (there is very little Natural) are disturbingly similar across their allowed uses. The common situation is for an entry to be reviewed the same way for all those environments. In addition, of all the use listings and modification listings, there are only two items that have a prohibition (non-water-oriented recreation and overwater residences). And all of the allowed uses are permitted in intact areas, including intensive uses such as multifamily residential. The exclusion of some uses in the marine environments is established better than for freshwater environments. The Lowland/Estuary and Feeder Bluff environments do this best. But these exclusions are still not based on protecting intact areas from intense uses - for feeder bluffs it seems to be based on geomorphic impacts which we agree are an important consideration and we support protecting the feeder bluffs. They also seem to be focused on modifications rather than uses. And like the freshwater environments, outside the Lowland/Estuary and Feeder Bluff environments, the predominant situation is that entries are reviewed the same across the other environments. Thus for both systems there is no equivalent to a Natural or Rural Conservancy that the SMP Guidelines recommends.

The lack of real limits is most disturbing for the last remaining environment - *Aquatic*. Use limits for the Aquatic environment are almost entirely dependent on what is allowed in the adjacent upland. As described in detail below, the SMP Guidelines requires protection of intact and highly functioning in-water areas. We recommend either establishing multiple aquatic environments, or using protective upland environments as a proxy for highly functioning aquatic areas. The draft SMP uses the latter. But if there are no adequately protective upland environments that limit uses in a significant way, and that lack of protection on the uplands results in a lack of protection of the aquatic areas - especially the highly functioning aquatic areas.

As addressed in Futurewise's guidance document on environments, highly functioning aquatic areas must be protected. This is specifically emphasized by recent changes to the SMP Guidelines. Of greatest concern is that highly functioning marine aquatic areas be identified and protected - preferably with a separate environment. Other jurisdictions have taken this approach, and we recommend the County do the same. For example, Jefferson County uses a Priority Aquatic. Bainbridge Island uses a similar environment. The most important areas to include in such an environment are lagoons, estuaries, and similar areas that are especially sensitive and are ecologically productive. In addition, the many habitats and special features identified in the inventory can be overlaid and those with a high density of habitats and features should be identified and designated with a more protective environment. An alternative approach we recommend is for the adjacent highly functioning upland environments (i.e. natural and conservancy) to serve as a proxy for the highly functioning aquatic areas. This is done by requiring that development in the aquatic environment also follow the use limits of the adjacent upland. However, this only works if there are actually significant limits applied to the protective upland environments, and if the protective upland environments are appropriately applied to the remaining intact areas in the jurisdiction. If there are no protective upland

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<sup>5</sup> WAC 173-26-186(8)(b).

environments, or they otherwise do not limit uses in a significant way, there is no particular protection being provided to the highly functioning aquatic areas. They are treated with the same lenient regulations as all aquatic areas.

While the draft SMP does limit uses in the Aquatic environment to those allowed in the adjacent upland environment, those use limits have negligible ability to serve as a proxy for highly functioning aquatic areas. As pointed out above, the use limits in the freshwater environments cannot accomplish this. The Freshwater Natural is almost non-existent, and the use limits in the other protective environments do not include intensity and exclude few uses. Also as pointed out above, the use limits for marine areas are not based on whether they are intact, do not include intensity, and exclude almost no uses (the limits mainly being for modifications).

### Specific Recommendations on the Environment System

We recommend changes to the use limits in each environment in order to address the technical issues we describe above:

- **Freshwater Natural should be much more broadly applied.** If not, other environments must be altered to address intact areas across the county. Since the county has chosen not to apply the Natural environment in any substantive manner by placing most intact freshwater areas in the Freshwater Resource, that environment should be made more similar to Natural. Its purpose is to protect forest resources, which is a combination of the Guidelines Natural and Rural Conservancy. It could be adjusted to fill the gap.
- **Use limits for Freshwater Resource should be significantly restricted to more closely implement its criteria and purpose for protecting forest resources, and implement the protection of intact areas.** Currently the Environment allows almost all development, so the following changes are needed:
  - For non-resource uses: all commercial, all industrial, all residential except single family, all boating facilities (multi-user facilities as defined in the SMP guidelines), and all recreation needing more than primitive facilities should be prohibited.
  - For transportation and utility uses: all NEW uses should be prohibited unless there is no alternative location (improvement of existing facilities is acceptable).
  - For resource uses: agriculture and aquaculture should be prohibited, forestry uses should be allowed, forest-based commercial/industrial should be prohibited, and mining uses should be prohibited.
  - For all modifications: structural modifications and significant alterations should be prohibited. Thus docks should not be allowed, but buoys should be; de minimus excavation and fill for foundations would be acceptable, but larger amounts should not be allowed; non-structural stabilization could be allowed; minor trails are OK; etc. These changes will implement the criteria and purpose better than the current use limits in the table.
- **Use limits for Freshwater Conservancy should be limited to low-intensity uses.** Most commercial and industrial uses, regardless of water-dependency should be prohibited. If not, size and intensity limits must be included, as we have seen done elsewhere. Residential should be limited to single family. Recreation needs extensive nuances to distinguish the wide range of intensity possible – ranging from primitive hiking trails and camp sites needing little modification; to more formal campsites and other recreation needing more alterations, to water-oriented urban parks, to intense use event and gathering sites, to non-water-oriented sports complexes and similar facilities. The permit review type should be based on the intensity and impact inherent in the recreation facility.

- The Feeder Bluff environment should be split in two so that intact areas can be better protected in the use limits compared to developed areas.
- Significant segments of intact vegetation in the Bay environment should be placed into other protective environments. This assumes that Bay is intended as a development-oriented environment suitable for the highly developed locations within it.
- The use limits for High Bank, Lowland Estuary, and intact areas of Feeder Bluff should be adjusted so that they function more like the Natural environment to protect the intact and sensitive areas within them. The use limits should approximate the recommendations above for Freshwater Resource.
- If the above changes are made, the Aquatic environment can function mostly as intended. Otherwise the environment cannot protect the highly functioning aquatic areas within it.
- The above recommendations result in more changes in the use and modification table than can be listed. But our conceptual approach is described and can be related to the use table for each environment.

### Specific Recommended Changes in Environment Locations.

On the Crescent Bay panel - Crescent Bay has one segment of Modified Lowland with only one house and lengths of intact vegetation to either side.

On the Sekiu River panel - A segment of the Modified Lowland environment extends from just east of Shipwreck Point almost to the Sekiu River. Much of this is appropriately applied but there are undeveloped segments that are nearly intact, and are more similar to the High Bank environment west of Shipwreck Point. We recommend the segments to either side of Chito Beach Resort, both of which are 1000 feet or more, be changed to High Bank or other appropriate environment that has a buffer that can protect the intact native vegetation. There is also a subdivision extending to either side of Dawnsridge Road. Between this subdivision and the Sekiu River is another largely intact segment that we also recommend should be changed to High Bank. There are also segments that are intact except for the highway. These need protective environments.

On the Hoko River panel - The segment of the Modified Lowland environment between the Sekiu and Hoko Rivers is largely undeveloped except for the highway for approximately 2/3 of a mile. The vegetation on either side of the highway is largely intact or managed for forestry, and needs more protection than a 50 foot buffer. Also see our vegetation comments on allowing roads to automatically reduce the buffer in spite intact vegetation behind the road. We recommend that this area be changed to High Bank or another protective environment.

On the Sequim Bay and Clallam Bay panels - While we support its sizable buffer, the Bay environment just doesn't accomplish what it needs to. The large buffer is applied to locations heavily developed down to the water, but at the same time it includes large intact areas in which the use limits allow intense development. It is also applied to estuary/lagoon environments, in which case the buffer is too small and the use limits inappropriate. We recommend that it would be better to differentiate with smaller segments of different environments, and perhaps to use parallel environment in some places. Sekiu should be Modified Lowland, and it appears this change may be underway. Where there are lagoon and estuary features in the Bay environment, they should be Lowland Estuary; and if there are short segments along the lagoon that are developed, they should be Modified Lowland. An example that needs Lowland Estuary is the linear lagoon along Frontier Street.

Section 3.1.1.6 assigns a "Conservancy" environment that does not exist to areas accidentally missed. The SMP Guidelines requires such situations to have a default of Rural Conservancy or equivalent. However, the SMP has no equivalent, so equivalently protective environments should be the default.



### Summary of environment system issues

The criteria and purpose statements of the environment system appear to be capable of accomplishing the SMA policy and the SMP Guideline objectives. But they are not implemented in the use limits. Comparing the environments in the use table, (1) one can see very little difference between many environments, (2) most environments allow intense uses in almost all use categories (and by extension allow them in all aquatic areas), and (3) does so regardless of use intensity. While the environment system is very creative, the use limits for those environments do not result in no-net-loss of ecological functions as the SMA and SMP Guidelines require.<sup>6</sup> It is instead designed to allow development in areas with high levels of ecological function.

### **The Role Of Modifications Must Be Distinguished From The Role of Uses**

In reviewing the SMP, most modification regulations are grouped with or mixed within the use categories. This is found both in the use table and in the regulatory text. This is not how uses and modifications are treated in the SMP Guidelines nor does it adequately protect ecological functions. In the Guidelines, modifications are in support of a primary use, and are also subject to the use limits and regulations of that use to protect the shoreline environment. In addition, not all modifications are specifically covered in the SMP Guidelines, so “general” standards are provided to apply to all modifications. Some background on this distinction is provided below.

#### Background

The SMP Guidelines, in WAC 173-26-231 Shoreline Modifications, provides the requirements for establishing modification limits that are consistent with the primary uses limits [with emphasis added]:

- (1) Applicability. Local governments are encouraged to prepare master program provisions that distinguish between shoreline modifications and shoreline uses. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use). The provisions in this section apply to all shoreline modifications within shoreline jurisdiction.
  - (2) General principles applicable to all shoreline modifications. Master programs shall implement the following principles:
    - (a) Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes. ...
    - (c) Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
- ... [NOTE: the paragraph lists a total of seven provisions that should be applied to all modifications.]

As paragraph (1) describes, modifications are those alterations and construction performed in support of an underlying use. As paragraph (2a) describes, structural modifications are only allowed where there is a real need to support or protect the primary structure or use. And as paragraph (2b) describes, modifications within intact areas must be limited. The logical and practical outcome of these requirements is that, with limited exceptions (described below), modifications need to meet the same use limits as the use they support, and must protect intact areas. Limiting modifications to those that support a primary use, and also follow the use limits of the primary use is important for two reasons.

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<sup>6</sup> WAC 173-26-186(8)(b).

First, it prevents speculative modifications that don't have a primary use, and prevents impacts from modifications that have no real need.

Second, it is a particularly important point as it relates to the preference for water-dependency and preventing damage: water-dependent uses are allowed to cause damage to the environment, all other uses must avoid damage to the environment, and uses that do cause damage must be prohibited or have special criteria applied to them. Applying these same rules to the modifications means that all facilities and modifications for uses that don't have to be in or near the water (being non-water-dependent) also have to control pollution and prevent damage, just as the use does.

The idea that modifications have a separate classification for water-dependency from the uses they support is a major misconception that we have observed throughout the shoreline planning field. It is a problem in a large percentage of SMPs we have reviewed. These SMPs allow in-water modifications even though the use itself is not water-dependent. They do so by classifying in-water modifications as "water-dependent" simply because they normally occur in the water. The outcome of this misconception is that people then think that any non-water-dependent use can have in-water structures because the structure is "water-dependent" (docks, recreation structures, etc.), and furthermore it is considered a "preferred" and "priority" facility. Thus non-water-dependent uses are allowed to cause damage to the environment by building in-water and in-buffer structures. These situations by default do not accomplish the criteria needed to be a preferred use – they are damaging the environment for a use not needing to be in the water – and they *should be discouraged*.

Undoubtedly, there are modifications that inherently take place in the water, most of which are the seven specifically listed modifications in the SMP Guidelines (especially docks, stabilization, dredging, breakwaters and groins, and beach management). But there are also many out-of-water modifications – including all the structures constructed for a use, as well as vegetation alterations. As paragraph (2) of WAC 173-26-231 (cited above) indicates, modifications are not supposed to be classified based on water-dependency. The factor to consider in establishing limits on modifications is whether they are needed for the primary use. Only allowing in-water and in-buffer modifications based on need meets the overall intent of mitigation sequencing – whereby one uses other alternatives first. In short, in-water and in-buffer modifications need a good reason to be allowed to cause damage to the environment. These can be grouped as follows:

- Water-dependent uses inherently cannot function without the in-water modification. For example, dredging takes place in the water, but dredging should not be allowed for residential uses, libraries, movie theaters, or other non-water-dependent uses. Docks are built in the water, but they should not be allowed for residential uses (other than for single-family residential moorage), for hardware stores, for hospitals, for ball field complexes, or other non-water-dependent uses. These non-water-dependent uses must protect the environment, not cause damage to it. An applicant "wanting" them, as the only reason, is not a good reason.
- The unique nature of linear facilities may require either (a) water crossings, or (b) access paths or utilities to the water's edge for a water-based activity (assuming alternatives are not available).
- Hardship is a good reason that is built into the SMA – for example for stabilization and variance reasons. Hardships are fundamentally intended to be addressed by the SMA through Shoreline Variances and Conditional Use Permits. They accommodate the need for development that would normally have to stay away from the water (and outside the buffer or setback).

One of the interesting distinctions between uses and modifications is that any use has the potential to use any of the different types of modifications based on its water-dependency and its need for different structures. Therefore we recommend that modifications should *NOT* be classified with the various water-dependency use classifications. Only uses should be classified based on water-

dependency. Then all use limits should be applied to all modifications of the overall use. Thus non-water-dependent uses should not have in-water or in-buffer modifications, unless there is some good reason described above. When such modifications are warranted, only the necessary parts should be allowed in the buffer and in the water.

### Specific Recommendations on Modifications

Modifications in Clallam's draft SMP do not follow the SMP Guidelines requirements. Modifications categories are mixed in with the use categories. For example, the use table and the different regulation sections in Chapter 5 mix categories of use and modification together. This is taken to an extreme in some instances, where modifications are mixed into use categories, making them indistinguishable from the use. As one example, Boating Facilities includes both marina uses and docks/piers modifications, but the use table treats all of them as an independent use. Thus modifications (such as armoring or docks) can be proposed, reviewed and approved without regard to a need for them associated with the primary use or its associated use limits. This allows damage to the shoreline environment, even though the shoreline uses may not require the modifications.

One modification category that is handled well is "Clearing and Grading." It includes not just "Fill" (one of the SMP Guideline modifications), but also clearing and excavation, which are not included in the list of specific modifications in the Guidelines. Furthermore it covers some of the general provisions for all modifications found in the SMP Guidelines, such as not being allowed without being in support of a primary use. This prevents speculative clearing and grading, and is a standard that should be applied to all modifications.

As indicated in the background information, there are more modifications than those in the seven specific modification provisions in the Guidelines. Some of these are addressed in the draft SMP to some extent. Modifications include accessory transportation facilities (private driveways, bridges, parking areas), accessory utility facilities (sewer lines, wells, power lines), in-water structures (for in-water modifications not otherwise covered), and accessory stormwater control facilities (pipes, trenches, infiltration areas, etc.). An often overlooked category is hardscaping (landscape walls, sidewalks, patios, parking areas, etc.). Another overlooked category is incidental facilities that can come with all development (fences, lighting, signs, poles facilities, etc.). Structures are also modifications (houses, sheds, decks, etc.), and usually have standards such as height limits, setback/buffer requirements, etc., but they often are not identified as modifications and made subject to the general modification provisions. Our general recommendation is to cover all of these and organize them well, so that they at least are subject to the general modification standards. In addition, the organization of uses needs to be altered to better follow the SMP Guidelines.

Our specific recommendations are:

- **Organize the use table to group the modifications together and the uses together.** At a minimum the table category names need to identify which ones are uses and which are modifications. Thus Agriculture becomes Agricultural Uses; and Clearing and Grading becomes Clearing and Grading Modifications. As a starting point, the SMP guidelines uses and modifications should be used.
- **Organize the regulation text sections similarly, so that modifications are grouped together and the uses are grouped together.** Again, at a minimum, the headings should identify which ones are uses and which are modifications, as described above.

- **Separate the modifications that are mixed into specific use sections, and move them to the Modifications section.** This includes:
  - Boating Facilities is a separate use, but the docks, piers and boating structures are modifications.
  - Floodplain Management and Flood Control is treated like a use in the SMP, but they are actually protective modifications to deal with hardships similar to stabilization. The SMP Guideline requirements for Stabilization show that flood control is one type of stabilization.
  - In-stream Structural Uses (as listed in the SMP Guidelines) is combined with In-water Structures, which are modifications.
  - Parking can be a primary use, but parking accessory to a primary use is a modification.
  - Signs are modifications, though billboards would be a primary use that should be prohibited due to visual impacts on the shorelines.
  - Public Transportation facilities (and sometimes private) are a use, but individual driveways, bridges, and parking accessory to a primary use are modifications.
  - Public Utility facilities (and sometimes private) are a use, but individual sewer and water lines, power lines, wells, etc. that are accessory to a primary use are modifications.
- **Create other categories of modifications to address the many types of modifications not listed in the SMP Guidelines.** Some examples of categories are described in the background information above. The SMP already includes many of these standards, but mixed-up with the use sections.
- **Add a “General Modification Regulations” section to the Modifications section to cover all the modifications that don’t have specific standards.** This section should implement the provisions in WAC 173-26-231(2). It should also be clear that other modifications than the seven specific categories in the Guidelines have to meet the standards in the section.

### **Edits to Table 5-1 are Needed To Meet SMP Guidelines Requirements**

Our previous comments identify many general changes that we recommend be incorporated into Table 5-1. It includes: some environment changes to better distinguish and protect intact areas and forestry uses; entry changes within the table to limit uses in some environments; some organizational improvements to distinguish between uses and modifications; and creating distinctions in the use categories to differentiate between high-intense and lower-intensity uses.

Specific recommended changes to the use table and use regulations are described below.

**Agriculture.** The draft SMP allows new agriculture in most environments, whether they are intact or not. Since new agriculture removes the native vegetation wholesale, it should be prohibited where intact vegetation exists throughout shoreline jurisdiction – those areas that would normally be designated Natural.

**Aquaculture.** The draft SMP uses the approach of limiting in-water development based on the adjacent upland environment. While the County doesn’t protect high-quality aquatic areas with a separate environment, this approach can serve as a proxy if the intact upland areas are protected by appropriate use limits. However, this approach seems to be abandoned for Aquaculture. Thus aquaculture is allowed in all aquatic areas regardless of whether they are highly functioning, or are adjacent to intact upland areas. Neither situation meets the requirements of the recent SMP Guideline changes for regulating aquaculture and protecting highly functioning aquatic areas.

Aquaculture practices today are typically highly intensive. While harvesting itself can have impacts on shorelines, it is the facilities and operations that have the most widespread and long lasting effects. In the use table, facilities would be allowed in all marine shorelines. It is important to understand the effects of aquaculture and acknowledge them in the SMP so they can be accounted for. From an ecological perspective, many modern aquaculture practices will typically replace the natural features in the tidelands with artificial features. Operations can include: clearing of existing species (star fish, sand dollars, vegetation, etc.), rocks, and logs; grading and gravelling the tidal bed; blanketing the tidal bed with intense use of gear (sheeting, bags, nets, racks, etc.); and the use of hydraulic blasting, mechanized equipment, and vehicles during operations. However, not all operations are of this intensity. From a public enjoyment perspective, the extensive gear and use of structures can dramatically change the visual character of the shoreline. These possible effects should be described in the SMP so they will be considered during review. The regulations should also distinguish between structure-based operations, gear-based operations, and minimally altering operations. The table does so for fin-fish and geoduck aquaculture, but most aquaculture falls outside these two categories and needs better definition. Only minimally altering aquaculture should be allowed to cause impacts to the highly functioning aquatic areas, and waters adjacent to the intact upland areas. Other aquaculture should be prohibited in similar manner as all intense uses should be.

The Aquaculture regulation (3) allows expansion of 25% without a permit. But this is not allowed under the SMP Guidelines. Expansions are new development that must be reviewed just like all other development, and must comply with the SMP. Any allowance for flexibility must be kept to a de minimus scale, and certainly no larger than 5%. Regulation (4) establishes a default presumption that Aquaculture needs no permit, unless certain criteria are triggered. The real world operation will almost always interfere or even exclude public use of waters during a sizable part of the tidal cycle. The default language of the standard should be that few very-low intensity types of aquaculture will not require a permit or exemption. Paragraph (5) goes on to limit the consideration of when aquaculture interferes with public use of waters (either through physical obstruction or by prohibiting entry). It completely excludes from considering whether the proposal would use gear configurations that cover large tidal areas and therefore exclude the public from the use of these tidelands. This sort of impact should be considered during the permitting process.

Beach Access Structural Modifications should be prohibited in intact marine areas. The table lists structures for public, and single family residential purposes, but does not address other private structures. This gap should be filled. We recommend that the regulations include an avoidance and minimization standard: Structures should not be allowed when trails are present. Obtaining shared access to existing structures should be encouraged. New structures should be shared with adjacent lots, and provisions similar to shared subdivision facilities (easements, cost sharing, etc.) should be used. Duplicate facilities that provide the same functions, such stairs, trails, and trams all of which provide access to the shoreline while adversely impact shoreline vegetation, should not be allowed. All subdivisions should only use a single shared/community facility.

Boating Facilities. As discussed previously, this category includes both Boating Facility Uses (as described in the SMP Guidelines) and modifications (docks, piers, and boating structures). We recommend they be split apart so they can be treated appropriately. Boating Facilities are a specific "use" in the SMP Guidelines established for multi-user recreational boating. These can include commercial and non-commercial facilities, public and private facilities, large and small facilities. They include marinas, private community docks, boating clubs, public boat launches, large shared single-family residence docks (for more than four residences), all multi-family residential docks, and mooring buoy fields. The SMP Guidelines require<sup>7</sup> local SMPs to deal with Boating Facilities as a specific use category. These facilities can be intensely used and need special provisions for dealing with such use.

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<sup>7</sup> WAC 173-26-241(3)(c).

Consequently, the SMP Guidelines require that, when Boating Facilities are allowed (except those serving four single-family residences or less), SMPs include regulations to ensure that they:

- result in no net loss of ecological functions;
- include limits for appropriate locations, access, and neighboring uses;
- include provisions for health, sanitation, and safety protections;
- mitigate aesthetic impacts;
- provide for public access; and
- protect the rights of navigation.

In the draft SMP, the Boating Facilities section is a broad grouping that includes marinas, but also includes all docks and boating structure modifications. It may be that the other boating facilities described above are included in the definition of Boating Facility or Marina, but it is unclear. If so, we recommend providing examples to assist understanding of the definitions. If not, then the SMP only specifically describes and regulates marinas with regulations that are similar to the Guidelines. Other multi-user facilities are not specifically addressed or regulated appropriately. These other multi-user boating facilities can have the same issues as marinas and should be covered similarly. We recommend that the easiest solution would be to expand or clarify the definition of Marina to all multi-user facilities we list above so that the regulations apply to them.

Multi-user facilities are intense uses, and should be prohibited in intact areas that would normally have a Natural or Rural Conservancy environment.

We also recommend establishing another category of modifications for “Docks, Piers, and Boating Structures.” Docks and piers are sometimes needed for water-dependent uses for non-moorage purposes, so the “boating” name limitation should not be applied to docks and piers. Boating Structures cover all the things normally associated with residential moorage and marinas, and should address, lifts, launch ramp construction, canopies, marine railways, etc.

The most important component that we recommend on such facilities, which is consistent with our previous comments on modifications, is to include the SMP Guideline limitation, similar to the following: “Docks, piers, and boating structures are prohibited for non-water-dependent uses. They are allowed for water-dependent uses (including public recreation/public access needing access over the water), and for a boating dock accessory to a single family residence.” This directly implements the SMP Guidelines provisions.<sup>8</sup> This could be incorporated into the use table, especially since the table sets apart residential docks, even though multi-family residential uses are not water-dependent.

Substantial structures should be prohibited on intact shorelines that would normally be Natural, and on ecologically or geologically sensitive locations. This includes docks, but less intense structures such as buoys are acceptable in these types of locations. Regulation 5.5.3.8, allows new marinas to obstruct shore drift processes if they occasionally replenish sediment supply. Doing so does not compensate for the permanent impact on the drift cell. The provision should only be applied to expansion of existing marinas. The studies required in paragraph (10) should also include bathymetry, sediment transport processes, and a description of compensatory mitigation for all impacts to ecological processes and shoreline values.

The regulations for residential dock, pier, and boating structure modifications should include an avoidance and minimization standard – possibly by altering regulation (8), which as written is contrary to some of the minimization concepts. Obtaining shared access to existing structures should be encouraged. New structures should be shared with adjacent lots, and provisions similar to shared

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<sup>8</sup> WAC 173-26-231(3)(b).

subdivision facilities (easements, cost sharing, etc.) should be used. Multiple major facilities should not be allowed; thus if there is a (1) dock, (2) launch ramp and buoy, or (3) marine railway and buoy on the site, only one of the three should be allowed. All subdivisions should only use a single shared/community facility. The first standard for residential docks and piers should state: "Docks, piers, and boating structures that are accessory to multi-family residential uses are prohibited, unless they are reviewed and approved as boating facility uses." Multi-family residential is a non-water-dependent use. This matters because docks and similar facilities have significant adverse effects on the shoreline environment and the public's use of the shorelines. Regulation (10) allows 100 square feet of covered dock area for no purpose. It is essentially a covered patio for every residence, which allows non-water-dependent uses to cause impacts to the shoreline contrary to the SMA and SMP Guidelines.

Commercial/Industrial Uses. The SMP combines these two uses in the table and in the regulation text, in spite of the fact that they are of completely different land use character, and are often vastly different in scale and impacts. We recommend separating them. In addition there are no intensity limits, so that high-intensity commercial/industrial of some sort is allowed in all environments. The only limit is based on water-dependency. Both commercial and industrial uses should be prohibited within intact upland areas (and in adjacent waters) – such uses should be outside shoreline jurisdiction. Given that most of the County's shorelines are subject to forest practices, commercial and industrial uses in these largely intact areas should be prohibited or limited in scale to low-intensity. One example of such limits is to place a 1 acre limit on total disturbed area, and placing components not needing a near-water location outside shoreline jurisdiction.

Commercial/Industrial regulation (4) allows non-water-dependent uses for three reasons (a-c) that match the SMP Guidelines, but then allows a fourth reason (d) of providing a significant public benefit. This is contrary to the Guidelines - the significant public benefit is a requirement of the first three alternatives, not an extra reason to allow non-water-dependent commercial uses. In fact, the Guidelines require that all commercial/industrial development should provide restoration and public access unless the public access is unsafe.

Dredging-Related Modifications. Both dredging and disposal should be prohibited in highly-functioning marine areas, and adjacent to intact upland areas. Regulation (2) should be supplemented to say that dredging for other purposes than the list is prohibited. Saying what is allowed is not the same thing. List item (e) allows maintenance dredging, but it should state "... except that dredging for a residential dock is prohibited" to be consistent with the SMP Guidelines.

Flood Control Modifications should be prohibited within and adjacent to intact upland areas. The regulations should require the submittal of a compensatory mitigation plan for all impacts.

In-Stream Structural Uses should be prohibited within aquatic areas adjacent to intact upland areas.

Parking as a primary use should be separated from accessory parking modifications. Parking as a primary use is prohibited under the SMP Guidelines. Accessory parking is usually allowed with the primary use, including uses allowed in intact areas. The regulations should require that lighting be screened from the water, buffers, and other habitats.

Recreation. Non-water-oriented recreation is prohibited in most environments. It should be prohibited in the remaining environments, especially the Lowland/Estuary, and these usually unnecessary and intense uses certainly should be prohibited in the intact upland areas. Water-oriented recreation can vary wildly in its intensity, from primitive trails to urban parks. The table should distinguish low-intensity, moderate-intensity, and high-intensity recreation facilities. Only low-intensity facilities such as primitive trails, un-improved camping sites, and minor parking that doesn't require significant clearing should be allowed in intact locations.

Residential. The table provides several distinctions. We recommend that Floating Homes should be prohibited in highly functioning aquatic areas, and adjacent to intact upland areas. They have distinct visual impacts and pollution issues, and are best limited to marinas or historic moorages. Multi-family residential should be prohibited in most environments, and particularly in intact upland locations. The regulations for Land Division (#1) allow lot widths of 150'. Such widths will result in a wall of houses effect, effectively cutting off the water and riparian areas from the uplands – a condition existing in many county shorelines. This prevents normal animal migrations between these important habitats and the upland habitats. We recommend lot widths of at least 300' for the largely intact environments to allow these movements to continue and to maintain the visual character of the shorelines.

Mining is allowed in all environments – even Freshwater Natural where it would have the greatest impact (being in the highly mobile Elwha River tributary area).<sup>9</sup> Furthermore all mining is allowed regardless of its type and impact. Disturbingly, mine material shipping ports/terminals are allowed – again in all environments. We recommend that the following distinctions be made: underground mining should be prohibited within shoreline jurisdiction, surface mining should be prohibited in all intact areas (it should be placed outside jurisdiction), in-water mining should be prohibited in all aquatic environments (and especially highly functioning aquatic), mine related shipping terminals should be prohibited in intact upland areas and highly functioning aquatic areas. Stream mining regulation (1) allows in-water mining of accretion features. Mining the river's active sediment sources is the most damaging location for mining. They cannot be mitigated and should be prohibited. Mining in the channel migration zone is almost as damaging and should also be prohibited – it is discretionary in regulation (2).

Mixed use development is actually a commercial use, and is not found in the SMP guidelines. Its purpose is unclear, but jurisdictions may not create new categories to avoid the use limits and standards of other categories. We recommend this entry be moved to commercial. If not it must be refined in its use limits and regulations to meet all the water-dependency and other preferences of the SMA and SMP Guidelines, as is already done for commercial and other use categories.

Signs are another new category not in the SMP Guidelines. They are also accessory modifications – aside from billboards, which should be prohibited due to their visual impact. Accessory signs are normally reviewed with the primary use.

Transportation Uses. The table only lists them generally, yet there are great distinctions in scale and impacts. Highways should be treated differently from local roads, and differently from central maintenance facilities. Furthermore the accessory transportation modifications are included in this category, and can be treated as separate uses that can be built in all environments except Freshwater Natural and Lowland/Estuary regardless of the use they support. Air transportation terminals should be outside shoreline jurisdiction. The distinctions in the transportation category should be similar to those of the utility category, which has many different entries. The regulations should require compensatory mitigation plans to accompany the application.

Utility Uses. The table lists many different utility uses. Dams and hydroelectric facilities are actually In-stream structural uses under the SMP Guidelines, and need to meet those provisions. Solid waste facilities should not be allowed in shoreline jurisdiction if it includes solid waste landfills and storage. However, the category also includes accessory waste handling modifications, and is allowed in most environments. Most of the entries have this same problem – major facilities that require extensive clearing are allowed in most of the environments that have extensive intact vegetation, and allowed in

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<sup>9</sup> David K. Norman, C. Jeff Cederholm, William S. Lingley, Jr., *Flood Plains, Salmon Habitat, and Sand and Gravel Mining* Washington Geology pp. 4 – 5 (vol. 26, no. 2/3, Sept. 1998) accessed on March 15, 2012 at [http://www.dnr.wa.gov/Publications/ger\\_washington\\_geology\\_1998\\_v26\\_no2-3.pdf](http://www.dnr.wa.gov/Publications/ger_washington_geology_1998_v26_no2-3.pdf)



highly functioning aquatic areas. In most of these cases, the facilities should be prohibited. Transmission lines are one example of facilities that may be acceptable. Essential Public Facilities normally includes more than utilities. The entry should be supplemented with the term "... of a utility nature." As implied in the use table they should be prohibited in sensitive locations – we recommend also prohibiting these uses in intact areas and highly functioning aquatic areas. The regulations should require compensatory mitigation plans to accompany utility applications.

### Conflicts In The Mitigation Requirements Need To Be Resolved

Section 4.4.3 General Mitigation Requirements has strong language about mitigation sequencing and mitigation plans, except for Paragraph 3, which only requires compensatory mitigation for limited situations. This results in adverse impacts to shoreline functions in violation of the no net loss requirement. The statement is intended to specifically limit the application of compensatory mitigation, and is provided below. Here are our recommended edits to fully meet the SMP Guideline requirements for no-net-loss and mitigation sequencing; along with notes to explain our reasoning in *bold italics*.

3. The Administrator shall first determine whether identified impacts have been avoided and secondly minimized. ~~Unless otherwise stated, development proposals that do not fully conform to the dimensional requirements, performance standards, and/or design criteria in this Program shall require compensatory mitigation for remaining impacts to ensure no net loss at the project scale. The Administrator may require compensatory mitigation for development proposals that:~~

*Note – With edits, this accurately describes how mitigation sequencing occurs and when compensatory mitigation is needed. The original text assumes that meeting performance and dimensional standards by default results in no impacts. Alternatively, it assumes that such impacts are acceptable, in which the case the County is responsible for accounting for them and providing mitigation through its Cumulative Impacts Analysis. The original text also only makes compensatory mitigation an optional requirement – the administrator may or may not require it.*

*Dimensional standards and performance standards are typically limited to avoidance and minimization requirements. They do not inherently result in preventing impacts, and assuming so is logically unfounded. Almost all development will have impacts. Only developments with a de minimus scale of impacts and restoration projects can be assumed to have no impacts.*

- a. ~~Do not fully conform to one or more of the dimensional requirements, performance standards, and/or design criteria in this Program; or These situations would normally require a variance or CUP or similar exception to the standard.~~
- b. ~~Require a variance or conditional use permit; or Variances and CUPs are relatively rare, thus compensatory mitigation would be relatively rare.~~
- e. ~~Result in measureable damage, loss and/or displacement of a wetland, aquatic habitat conservation area, wildlife habitat conservation area, flood storage or conveyance area, or critical aquifer recharge area; or Vegetation damage (including buffers) is left out of the list. The list might be acceptable as examples of common impacts.~~
- d. ~~Result in measureable damage, loss and/or displacement of kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance; subsistence, commercial and recreational shellfish beds; mudflats; intertidal habitats with vascular plants; and areas with which priority species have a primary association. The list might be acceptable as examples of common impacts.~~

In addition, a curious conflict is created by Paragraph 7: “The Administrator shall prohibit any use or development that will result in unmitigated cumulative impacts.” Yet the concept that simply meeting dimensional standards will automatically mitigate all impacts is a logical error that cannot be true and will result in many impacts. This standard will only have meaning if changes are made to the system of compensatory mitigation, as recommended in our comment letter on vegetation management.

Understandably, the County may be reluctant to require all developments to provide a full-scale mitigation plan developed by a professional, as described in section 4.4.4. But rather than eliminating the compensatory mitigation requirement for the majority of development, the mitigation plan requirement should be simplified for specific instances where less rigorous plans are acceptable. We recommend spelling out when a detailed mitigation plan is required, and when a simplified mitigation plan is required. To further ease the difficulty of developing a mitigation plan for all concerned, we recommend that details about how compensatory mitigation should be provided for different types of common development should be included within the SMP regulations. We provided examples of such details in our previous comment letter on the buffers and vegetation sections.

The mitigation plan requirements (section 4.4.4 thru 4.4.9) are very detailed and cover many issues. The requirements seem to do a good job of eliciting how compensatory mitigation will be accomplished, which we support. But what seems to be missing is a description of how the project was designed to meet the other parts of the mitigation sequencing requirement. We recommend that the plan provide descriptions of how impacts are avoided through project choices, and how impacts are minimized through project choices. This would get at the full concept of using the mitigation sequence.

One of our concerns with the mitigation plan provisions is that it is unclear when the plan is required. Section 4.4.4 only applies when “required by this Program.” As our guidance documents describe, almost all development will have remaining impacts after avoidance and minimization. Remaining impacts must still be compensated for, and some description of how this is done is needed through the mitigation plan. We recommend that Section 6.12 Application Requirements first be expanded to cover exemptions too, as described in our exemption comments below. Second, we recommend that item (1j) be edited as follows: “A summary characterization of the effects of the project on existing ecological functions and processes in the vicinity of the project. Unless the administrator determines that the project will have no adverse effects on shoreline ecological functions or processes, such as de minimus alterations, restoration projects, or other similar development, a mitigation plan shall be provided demonstrating measures that will be taken to offset impacts. The plan may be detailed or simplified as determined by the administrator.” This ensures that only projects that have no remaining impacts will avoid doing a mitigation plan, but also allows less rigorous plans for smaller projects.

### **Guidance On How To Do Mitigation Is Needed.**

In our previous comment letter on vegetation management, we recommend incorporating vegetation specific compensatory mitigation guidance in the SMP regulations. We also recommend this same concept for all types of development. One way to address this issue is the use of a Mitigation Manual as Bainbridge Island has done. Their draft manual is limited in scope, but the concept can be applied broadly. Within it are descriptions for how to mitigate for different types of modifications. Thus compensating for impacts of adding new overwater coverage requires removing overwater coverage somewhere; compensating for new armoring means removing armoring somewhere; compensating for removing vegetation means replanting vegetation; compensating for adding impervious surface means removing impervious surface. It also discusses instances where out-of-kind mitigation is needed – often in the form of revegetation enhancement. We recommend incorporating a mitigation manual into Clallam’s SMP.

## Waiver Of Mitigation For Vegetation Impacts Must be Eliminated

Our previous letter provided comments on vegetation management provisions. Those include the waiver of any compensatory mitigation for eight vegetation clearing activities that are common to single family residences. This waiver becomes compounded by the administrative shortcomings related to shoreline exemptions described below.

### All Requests for Shoreline Exemptions Should Be Reviewed

The Administration section appears to be thoroughly designed. A close review of it, however, shows a major gap in review. Specifically, most shoreline exemptions will not be reviewed, nor subject to an authorization that can require compliance with the standards, nor require compensatory mitigation for impacts of the exempt development.

Section 6.5.2 correctly states: "An exemption from the substantial development permit process is not an exemption from compliance with the Act or this Program, or from any other regulatory requirements. To be authorized, all uses and developments must be consistent with the policies and provisions of this Program and the Act."

Section 6.5.7 states: "All permits or statements of exemption issued for development or use within shoreline jurisdiction shall include written findings prepared by the Administrator, including compliance with bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program."

While these initially sound appropriate, the exemptions provisions are tweaked so they include no authority for the administrator to ensure that exempt development meets the SMP standards. Section 6.5.7 (above) is carefully limited to apply to statements of exemption, which are referred to as written exemptions below.

Section 6.1.1.b authorizes the administrator to: "Grant written permit exemptions from shoreline substantial development permit requirements of this Program" – again carefully written to only apply to "written exemptions." This is restated in Section 6.5.9 which goes into detail about issuance of "written exemptions." Thus the administrator only has authority to review, place conditions on, and require mitigation from "written exemptions." The regulations exclude authority over other exemptions. They do so by carefully limiting the scope of written exemptions. Sections 6.5.10 & 11 state [with emphasis added]:

10. Exempt activities related to any of the following shall not be conducted until a statement of exemption has been obtained from the Administrator: dredging, flood control works and in-stream structures, archaeological or historic site alteration, clearing and ground disturbing activities such as landfill or excavation, dock construction, shore stabilization, free-standing signs, or any development within a Lowland / Estuary, Priority Feeder Bluff, or Freshwater Natural shoreline designation; provided that no separate written statement of exemption is required for the construction of a single-family residence when a County building permit application has been reviewed and approved by the Administrator; provided further, that no statement of exemption is required for emergency development pursuant to WAC 173-14-040(1)(d).

11. No statement of exemption shall be required for other exempt uses or developments unless the Administrator has cause to believe a substantial question exists as to qualifications of the specific use or development for the exemption, or the Administrator determines there is a likelihood of adverse impacts to shoreline ecological functions.

The first part of (10) leaves out many types of development – some even in the water. Paragraph (11) specifically states that those do not have to have the statement of exemption. The second part of (10) gives a blanket waiver to all single family residential development regardless of whether it includes list items from the first part.

Summary of Exemption Shortcomings The above mitigation and exemption review problems results in a gap in the regulations that the large majority of shoreline development will fall through. Residential development and many other types of development do not require a written exemption, so the administrator has no authority to review, condition, or require compensatory mitigation for it. This leaves compliance with the SMP regulations to be up to the project proponent – thus voluntary and discretionary. Clearing associated with most elements of a residence has the compensatory mitigation requirement waived. Compliance with the standards, of which the above clearing waiver is one, automatically means projects have to provide no compensatory mitigation.

### Specific Recommendations

The waiver of compensatory mitigation for residential clearing must be eliminated as described in our previous comment letter on vegetation management.

The automatic assumption that meeting standards waives the compensatory mitigation requirements must be eliminated.

Exemption provisions should be edited to allow the administrator to review, condition, and require compensatory mitigation for all exemptions, including non-written exemptions. Our concern is not the name of the review (be it “statement of exemption” or “written exemption” or anything else), it is that all exemptions are subject to review for compliance with the SMP by the administrator to ensure compliance with the SMP as the SMA requires. Our recommendations for the existing provisions in the draft SMP are provided below.

Edit Section 6.5.7: All ~~permits or statements of exemption-shoreline exemptions~~ issued for development or use within shoreline jurisdiction shall include ~~written findings prepared documentation~~ by the Administrator that the project complies with the SMP, including compliance with bulk and dimensional standards and policies and regulations of this Program. The Administrator may attach conditions to the approval of exempt developments and/or uses as necessary to assure consistency of the project with the Act and the Program. *Note: This section is for exemptions not permits. Documentation can be placed in a written statement of exemption or in a digital authorization.*

Edit Section 6.1.1.b: Grant ~~written permit~~-exemptions from shoreline substantial development permit requirements of this Program” *Note: The word permit is redundant, and authority should be for non-written exemptions too.*

Edit Section 6.5.9: The Administrator is hereby authorized to grant or deny requests for ~~statements of exemption~~ from the shoreline substantial development permit requirement for uses and developments within shorelines that are specifically listed in RCW 90.58.030 and WAC 173-27-040. Such ~~statements requests~~ shall be ~~applied for made~~ on forms provided by the Administrator and shall include information adequate to confirm the projects qualification for the exemption, and to determine compliance with the SMP. The ~~statement shall be in writing and authorization~~ shall indicate the specific exemption of this Program that is being applied to the development, and shall provide a summary of the Administrator’s analysis of the consistency of the project with this Program and the Act. As appropriate, such ~~statements of exemptions authorization~~ shall contain conditions and/or mitigating measures of approval to achieve consistency and compliance with the provisions of the Program and Act. A denial of an exemption shall be in writing and shall identify the reason(s) for the denial. Exemptions that are denied may still qualify for normal permit review. The Administrator’s actions on

the issuance of a statement of exemption or a denial are subject to appeal pursuant to the appeal provisions listed in this chapter. *NOTE: The changes make the specifics applicable to either written or unwritten exemptions. Adequate information needs to accompany the request for exemptions for the administrator to actually make a determination. Exemptions not qualifying for an exemption can still apply for normal permit review.*

Rework Sections 6.5.10 & 11: These sections need edits consistent with other changes. Our first recommendation would be to eliminate these two sections that provide distinctions to avoid exemption review. If our recommendations above are accepted, the distinction may still be acceptable if the gap for non-written exemptions is fixed. The references to statements and written exemptions will have to be adjusted as appropriate.

Section 6.12 lists very basic application information requirements. We recommend these also apply to exemptions to ensure the administrator has adequate information to base a determination on.

Section 6.13.9 allows nonconforming residences to be expanded without a Variance or CUP. The details listed appear to contemplate that a review of some sort is to be done. But given the above described problems, this additional near-water development would be allowed with the same review problems described above. While item (vi) indicates some enhancement requirement, it is inadequate, and should instead follow the vegetation compensation approach we provide in our comment letter on vegetation management.

## Definitions

The definitions section includes several different definitions for habitat of various sorts. However, we could find no definition for the SMP Guidelines types: “Critical Saltwater Habitat” and “Critical Freshwater Habitat.” Both of these need to be described, and they need to be incorporated into the CAO, shoreline buffers, and other regulations. Specifically, the General Requirements for All Critical Areas (4.3.3) should be applied to Critical Saltwater Habitat and Critical Freshwater Habitat. Critical area policies and applicability would also need to be modified.

The definitions for buffer, riparian zone, and native vegetation all deal with the same thing, but they do not reference each other. We recommend they be better coordinated, and that the definitions for buffer and riparian zone specifically describe that in optimal conditions they encompass native vegetation.

The definition for enhancement includes vegetation enhancement, but one of the other primary methods of enhancement is to remove or undo manmade alterations and modifications. This aspect should also be included.

## Shoreline Buffer Reduction Standards Must Include Mitigation To Fix Degraded Vegetation

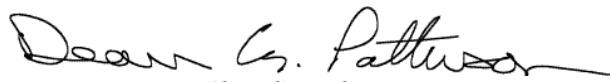
Section 4.2.3.3 Common Line Setback allows major and automatic buffer reductions to allow development close to the water. Given our concerns with exemption review, we oppose this provision. If the exemption review problems are fixed, this provision may be acceptable, but not everywhere. The standard implies that it is for “densely platted areas”, but does not include such limitations in the specific regulations. We recommend that the specific alternatives be limited to be use only for lots 200’ wide or less. Given the large scale impacts that initial development of a lot comes with, specific compensatory mitigation needs to be described by adding “(c) Compensatory mitigation shall be provided for all native vegetation removed, and for other impacts of development consistent with [REFERENCE]. Degraded conditions in the remaining buffer area shall be enhanced with native trees,

shrubs and groundcover.” The REFERENCE should be to the vegetation mitigation ratios described in our previous comment letter or a mitigation manual.

The above standard goes hand in hand with Section 4.2.5 Buffers For Nonconforming Lots. The same conceptual limitations should be applied, including the addition of a compensatory mitigation standards similar to the one described above. Item (i) allows the buffer to be 20% clear of native vegetation. It must be limited to enhancement of already degraded sites, and not allow clearing of 20% of intact vegetation in addition to the reduction.

Thank you for the opportunity to comment. If you require more information please contact Dean Patterson at 509-823-5481.

Sincerely,



Dean Patterson, Shoreline Planner  
Futurewise



Heather Trim, Director of Policy  
People For Puget Sound