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Ms. Cathy Lear  
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Dear Cathy:

The following comments on the February 2012 draft SMP are organized chronologically. The comments regarding wetland provisions were written by Rick Mraz. As you will see, there are many parts of the document not mentioned. The draft SMP appears to be well organized and generally covers what the Shoreline Management Act and Guidelines call for. Particular details will likely emerge in final review of the next iteration, but I wanted to at least communicate a few perspectives that may be helpful to your consultants in crafting that next version.

Most of the regulatory language is appropriately specific and seems clear as to meaning. Many of my comments suggest possibly clearer expressions of certain long sentences, ones where I think the meaning may be muddled by too many subjects.

The other general statement is how specifically tailored the document is relative to Clallam County geography and the historic uses of shoreline areas. The Shoreline Environment Designations are different from those standard ones in the Guidelines. The County appears to have expressed a solid rationale for taking this approach. A lot of thoughtful consideration was given over much of this last year, through the Advisory Committee process, regarding how well these Designation assignments would work in practical and regulatory terms.

### Section 1.1

The two page introductory summary places the Shoreline Master Program in a broad context of local and regional history and geography. It speaks plainly about the regulatory complexities which affect the necessary contents of an SMP. It also explains how some of the major parts of a shoreline program are structured.

I think it could be enhanced by weaving in something about Clallam County population as it is expected to grow in the next 20 years. It would also be well to say a bit more about the general role of SMA in the west end, because of distinct conditions there relative to the eastern side of Clallam County. A paragraph about how each area (WRIA 20 v WRIA 18/19) was evaluated in



the Inventory & Characterization work would be a worthwhile addition. I noticed there was no mention of the 2003 Guidelines or the no-net-loss requirements, which could fit with some of the other information presented.

On page 3.5 the lowland estuary designation description lists a single example of a recreational use that would be appropriate in these areas. I suggest adding a couple others for reasons of broader inclusion....such as "fishing" and "kayaking" or other similar activities.

On page 3-6, feeder bluffs are noted, but suggest adding something to the "Bay" Designation about sandspits and protecting the ecological processes that create and sustain these.

### Wetlands Comments

Regarding Section 4.3.4, the following comments were provided by Rick Mraz:

- The draft SMP only references the 1987 Wetland Delineation Manual. This document has recently been updated to include appropriate Regional Supplements. The reference in the SMP should include the Western Mountains, Valleys and Coast Region supplement.

WAC 173-22-035 was recently modified to reflect this change. It contains appropriate language for incorporation into the SMP.

The wetland buffer table is simple and, arguably, incomplete. Interestingly, many wetlands in Clallam County may be protected with smaller buffers than what the County is proposing; some wetlands may warrant larger buffers. A more specific table such as the one used in Alternative III (Appendix 8C) of Ecology's guidance document: Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands. Washington State Department of Ecology. Publication #05-06-008. Olympia, WA (Volume II), would be appropriate for an area as diverse as Clallam County. This table considers the specific functions of the wetland and the intensity of the adjacent land use in prescribing the buffers. A more precise application of buffers widths results from this approach.

- The SMP mitigation table should be augmented. Many different types of mitigation are currently practiced in Washington State that are not represented by the current table. In addition, mitigation ratios and chances for success are often tied to the type of wetland being created or restored. A more robust, detailed mitigation table (again like the one in Alternative III) would be appropriate for the County.

### Clallam Draft SMP Review – Wetlands Provisions

As previously noted, the draft SMP contains provisions associated with wetland buffers, buffer reductions and mitigation that are not consistent with the most current, accurate and complete scientific or technical information available. Ecology offers these additional comments to

provide guidance and direction toward a document that will help achieve no net loss of ecological functions and provide a more accurate implementation of environmental protections.

Specifically,

**Buffers:** As noted earlier, the draft SMP applies a rather blunt regulatory approach to wetland protection. The buffer table simply identifies a prescriptive distance based upon wetland category. This method lacks sensitivity and specificity, and does not take full advantage of the 2004 Wetland Rating System for Western Washington, which the County has adopted in the draft.

A more refined approach considers land use intensity, wetland functions and buffer conditions, and applies a variable-width approach with the following ranges based on site specific conditions:

Category I – 100-300 feet

Category II – 100 to 300 feet

Category III – 40 to 150 feet

Category IV – 25 to 50 feet

This approach is supported by the most current, accurate and complete scientific or technical information available. It results in buffer widths and compensation ratios based on the level of protection or compensation required for particular functions. These buffer widths consider not only the functions that need to be protected, but also the impact of adjacent land use. For example, low-intensity adjacent land uses allow for narrower buffers around wetlands than those needed to protect from the impacts of high-intensity uses.

**Buffer reductions:** The provisions allowing up to a 50% buffer reduction for wetlands is inconsistent with most current, accurate and complete scientific or technical information available and may result in extremely small buffers. For example, a 50% reduction of the standard 150' buffer on a Category II wetland with high habitat functions would be inadequate to protect those functions adjacent to high intensity land use (Desbonnet, 1994).

Should Clallam County adopt Alternative III for wetland buffer standards, this approach contains supportable provisions for buffer reductions as described in Appendix 8C.2.4. of Volume II

Clallam County should incorporate the recommendations on averaging in Appendix 8C.2.6 of *Wetlands in Washington State, Volume 2: Guidance for Protecting and Managing Wetlands*, which includes the following text:

- Averaging to improve wetland protection may be permitted when all of the following conditions are met:
  - The wetland has significant differences in characteristics that affect its habitat functions, such as a wetland with a forested component adjacent to a degraded

emergent component or a “dual-rated” wetland with a Category I area adjacent to a lower rated area

- The buffer is increased adjacent to the higher-functioning area of habitat or more sensitive portion of the wetland and decreased adjacent to the lower-functioning or less sensitive portion
- The total area of the buffer after averaging is equal to the area required without averaging
- **The buffer at its narrowest point is never less than 3/4 of the required width (emphasis added)**
- Averaging to **allow reasonable use** of a parcel may be permitted when all of the following are met:
  - There are no feasible alternatives to the site design that could be accomplished without buffer averaging
  - The averaged buffer will not result in degradation of the wetland’s functions and values as demonstrated by a report from a qualified wetland professional
  - The total buffer area after averaging is equal to the area required without averaging
  - **The buffer at its narrowest point is never less than 3/4 of the required width (emphasis added)**
  - Averaging and reduction cannot be used in combination.

**Mitigation:**

Wetland replacement ratios should reflect the most current, accurate and complete scientific or technical information available. The scientific information on mitigation is consistent in documenting the frequent failures and poor performance of compensatory mitigation. Replacement ratios are a critical tool in helping ensure adequate replacement of lost wetland functions and values. Ratios should take into account the risk of outright failure; the long time frame required to successfully create, restore, or enhance wetlands; and the tradeoffs in functions that result from creating or restoring a wetland of a different type or in a different location.

We recommend that the draft SMP reference and incorporate agency guidance regarding compensatory mitigation: *Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance* (Version 1, Publication #06-06-011a, March 2006) and *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Publication #06-06-011b, March 2006).

The mitigation guidance is the result of a collaborative effort between Ecology, the U.S. Army Corps of Engineers, and the Environmental Protection Agency. Part 1 includes information on the general permit process, the laws, rules and policies that apply to projects where wetlands are involved and agency policies, requirements, and recommendations for compensatory mitigation.

Technical information on the preparation of proposals and plans for compensatory mitigation can be found in Part 2 of this guidance.

This guidance is consistent with what the state and federal agencies require for mitigation. The County should adopt the mitigation ratios presented in Table 1a of *Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans* (Version 1, Publication #06-06-011b, March 2006). By requiring mitigation based on this guidance, the County will also be providing consistency for applicants who must also apply for state and federal permits.

The mitigation section can also be augmented by the inclusion of specific definitions including:

**Restoration:** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a former or degraded wetland. For the purpose of tracking net gains in wetland acres, restoration is divided into:

**Re-establishment.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of returning natural or historic functions to a **former** wetland. Re-establishment results in a gain in wetland acres (and functions). Activities could include removing fill material, plugging ditches, or breaking drain tiles.

**Rehabilitation.** The manipulation of the physical, chemical, or biological characteristics of a site with the goal of repairing natural or historic functions of a **degraded** wetland. Rehabilitation results in a gain in wetland function but does not result in a gain in wetland acres. Activities could involve breaching a dike to reconnect wetlands to a floodplain or return tidal influence to a wetland.

**Creation (Establishment):** The manipulation of the physical, chemical, or biological characteristics present to develop a wetland on an upland or deepwater site where a wetland did not previously exist. Establishment results in a gain in wetland acres. Activities typically involve excavation of upland soils to elevations that will produce a wetland hydroperiod, create hydric soils, and support the growth of hydrophytic plant species.

**Enhancement:** The manipulation of the physical, chemical, or biological characteristics of a wetland site to heighten, intensify, or improve specific function(s) or to change the growth stage or composition of the vegetation present. Enhancement is undertaken for specified purposes such as water quality improvement, flood water retention, or wildlife habitat. Enhancement results in a change in some wetland functions and can lead to a decline in other wetland functions, but does not result in a gain in wetland acres. Activities typically consist of planting vegetation, controlling non-native or invasive species, modifying site elevations or the proportion of open water to influence hydroperiods, or some combination of these activities.

**Protection/Maintenance (Preservation):** Removing a threat to, or preventing the decline of, wetland conditions by an action in or near a wetland. This includes the purchase of land or easements, repairing water control structures or fences, or structural protection such as repairing a barrier island. This term also includes activities commonly associated with the term *preservation*. Preservation does not result in a gain of wetland acres, may result in a gain in functions, and will be used only in exceptional circumstances.

**References:**

Desbonnet, A., P. Pogue, V. Lee, and N. Wolff. 1994. Vegetated Buffers in the Coastal Zone: A Summary Review and Bibliography. Coastal Resources Center Technical Report No. 2064. University of Rhode Island 72pp.

*Washington State Wetland Rating System for Western Washington* (Revised, Publication #04-06-025, August 2004)

*Wetlands in Washington State - Volume 1: A Synthesis of the Science* (Publication #05-06-006, March 2005)

*Wetlands in Washington State Volume 2: Guidance for Protecting and Managing Wetlands* (Publication # 05-06-008, April 2005)

*Wetland Mitigation in Washington State, Part 1: Agency Policies and Guidance (Version 1, Publication #06-06-011a, March 2006)*

*Wetland Mitigation in Washington State, Part 2: Developing Mitigation Plans (Version 1, Publication #06-06-011b, March 2006)*

On **page 4-40**, the following statement was noted as questionable, for reasons of less-than-well-defined parameters: "7. The Administrator shall prohibit any use or development that will result in unmitigated cumulative impacts."

While cumulative impacts are to be considered at a project level in conditional use permit review, generally the concept is aimed at the master program as a whole. The shoreline administrator should not be able to arbitrarily prohibit an activity unless some definite (and legally authorized) parameters are added on which to base such a decision.

We note that in **Chapter 4** there are many pages of text, in separate sections, about mitigation reports of various sorts. The text in each is almost exactly the same. Perhaps there is a way to lump them together in one general location that applies to all, and then have one or two line particular distinctions in the individual sections? This would trim the volume of words and eliminate some redundancy.

On **page 5-3, Policy #4** includes a sentence about experimental....we suggest this would fit better if added to the **definition #28** for aquaculture activities.

A policy and associated regulation that addresses limitations on the overall size of an aquaculture facility might be appropriate to add. Regulation **#5** speaks to a one square acre figure, and **#6(o)** mentions a 2 acre size for finfish facilities, but something more particular and dealing with adjacent facilities would be appropriate to also consider.

On **page 5-7, Policy #3** speaks to combining resources for beach access structures. It is acceptable as written, but I would encourage additional language that clarifies a distinction between shared private access among two or more property owners, relative to community access or public access structures that would serve larger numbers of people. The related regulation on **page 5-8, #5**, and that provision also is ok, but we note it does not mention any criteria or sideboards, which could be helpful to planners reviewing applications.

An important distinction is made on **page 5-9**, where it states that boathouses and certain other facilities are identified as being “commercial uses.” It seems counter-intuitive to then say these “are not considered boating facilities....” We suggest rather stating that they are **not regulated** as boating facilities. They should also be listed among the examples of commercial development on **page 5-16**.

On **page 5-12**, the following statement appears to be missing (typo) a specific reference

“The Administrator shall defer to the dimensional requirements imposed via project-specific permit conditions by the Corps of Engineers and Washington Department of Fish and Wildlife via the ( ? ) for new docks, piers and....”

On **page 5-13**, the following statement is noted: “Fill waterward of the ordinary high water mark shall be limited to the minimum necessary to match the upland with the elevation of the non-residential dock or pier. “

This same language is used as policy and regulation. It should be clarified that dock designs should avoid the need for any fill waterward of OHWM. Adding the phrase, “In those limited instances where allowed, “to the beginning of Regulation #12 on **page 5-15** could accomplish this.

On **page 5-16**, the following regulations (**#2 and #3**) are singled out for being awkwardly written and hard to understand. We suggest editing for clarity:

*2. Construction of over-water commercial or industrial structures shall be prohibited, provided this prohibition does not preclude the development of docks, boat launch ramps, or other river/marine access facilities that are consistent with the intent of this Program and necessary for the operation of an associated water-dependent commercial or industrial use.*

(Alternate option for #2) Development of docks, boat launch ramps, or other river/marine access facilities can only be permitted when they are necessary for the operation of a water-dependent commercial or industrial use. To be permitted, proposed facilities must be otherwise consistent with this Program. New commercial over water structures that do not meet these criteria are prohibited.

*3. A use or development shall not be considered water-dependent, water-related or water-enjoyment until the Administrator determines that the proposed design, layout and operation of the use/development meet the definition and intent of the water-dependent, water-related or water-enjoyment designation.*

(Alternate option for #3) The proponent has to demonstrate a proposed use is water-related or water-dependent so the Administrator can evaluate the design, layout and use, and determine that the proposal would be consistent with (WAC criteria) and this Program.

On page 5-17, regulation #5 is awkwardly written, with repetition of the phrase "conforms to this program." We suggest alternate language could read:

"Existing commercial or industrial uses which are non water-dependent and non-water related may be permitted to expand landward so long as they otherwise conform with this program."

On page 5-20, under regulations for Forest Practices, suggest an alternate version to simplify: "Uses and developments associated with timber harvest that meet the definition of development will require a shoreline substantial development and/or conditional use permit."

On page 5-29, under regulations for parking, #2 could cause problems, because it encourages adding (undefined) structures associated with the main use as a buffer to parking. This could lead to impairment of water views and raise arguments about the kinds of structures allowable. Regulation #3 can be said simply: "Where feasible, parking facilities shall...." dropping the unnecessary text about appropriate and conducive conditions.

Regulation #4 on page 5-29 refers to "administrator-approved" vegetation without the administrator being given any sideboards or the applicant any guidance about criteria. Regulation #5 is awkwardly written. Suggest breaking the long sentence. The last phrase is hard to make sense of. If an "alternate location" would have less environmental impacts, then it is ok to locate parking waterward?

On page 5-31, under Applicability for Residential development, we note that accessory uses are very broadly described, and one example is given. The question of what is NOT included in accessory uses should be addressed here to avoid later arguments.

On page 5-32, Policy #3 could be stated more simply. The second sentence might read, "Property owners who build in identified hazard areas must not expect their properties would be protected by any public infrastructure."

Regulation #4 is somewhat confusing because of the added second sentence. We suggest separately addressing the issue of existing development, and stating the regulation something like, "Where lot depth precludes conformance with required buffers in existing subdivisions and other partially developed areas, bulkheads may be allowed as a conditional use."

Page 5-32 has the section on Shoreline Stabilization. These provisions were discussed in one of our Advisory Committee meetings, and I concur with Pete Schroeder's suggestion (if I understood correctly) that the second sentence in Policy #4 ought to move up and be added to the applicability paragraph.

On page 5-40 is the Transportation section, and I thought a suggestion made by Andy Stevenson made sense; that trails are distinct enough from roads and other transportation infrastructure to



warrant being removed from this section and regulation for those be placed in the Recreation section instead.

On page 6-7, provisions for dealing with non-conforming uses, in #4 suggest adding "or development...." immediately after "...any subsequent use."

#5 is written awkwardly. Rearranging as follows might be somewhat more clear: "On lots whose dimensions do not allow a residence outside the shoreline buffer, new single family residential development may be allowed, without requiring a variance, following the provisions of **Chapter 4, Section 4.2.**"

Again, the general contents and language use in the draft SMP seem to be going in a good direction. I hope the few editorial suggestions here and wetlands clarifications are helpful to the County in moving toward local adoption. Please let me know if any of my comments or suggestions are less than clear or raise questions for you.

Sincerely,



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cc: Steve Gray, Clallam County  
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