

Merrill, Hannah

From: zSMPC
Sent: Thursday, January 31, 2013 5:33 PM
To: zSMP
Subject: FW: JST comment letter
Attachments: JST CC SMP update comments 1-31-13 signed.pdf

From: Randy Johnson [mailto:rjohnson@jamestowntribe.org]
Sent: Thursday, January 31, 2013 4:53 PM
To: zSMPC
Subject: JST comment letter

Please see attached comment letter.

*Randy Johnson
Habitat Program Manager
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January 29, 2013

Ms. Sheila Roark Miller
Clallam County
DCD-SMP Comment
223 E. 4th St., Suite 5
Port Angeles, WA 98362

Re: Jamestown S'Klallam Tribe comments on the Draft (November 2012) Clallam County Shoreline Master Plan

Dear Ms. Roark Miller,

The wealth and well-being of the Jamestown S'Klallam Tribal community and Clallam County's community at large are intricately tied to the health of our waters and our freshwater and marine resources. This is why Clallam County's comprehensive update of its Shoreline Master Program (SMP) is so important and requires such care, collaboration, and diligence.

The Jamestown S'Klallam Tribe (JST) appreciates the opportunity to participate as an advisory group member. The Tribe has found the consultant and planning staff to be knowledgeable, thorough and responsive to comments. We applaud the open process of using an advisory group. However, the Tribes possess Treaty Rights which may be affected by this Program and are therefore, in a unique position and should be consulted individually in addition to their representation at the advisory group.

Comments submitted here are restricted to the November 2012 draft. We understand that there have been delays in producing the companion documents (No Net Loss Report, Restoration Plan and Cumulative Impacts Analysis). Each of these will be very important in the administration of the SMP and whether the current SMP draft language is sufficient in achieving its goals. Therefore, the Tribe expects further comment when the companion documents are made available. The Tribe has already stated, and hopes we will not need to reiterate: that restoration projects sponsored for the sole purpose of restoring habitat and ecological processes must not be measured for credit in the

mitigation arena. These projects are meant to move the baseline of ecological functions upward, so they should not be measured relative to the goal of No Net Loss.

Shoreline Environmental Designations

During this process, Shoreline Environmental Designations (SEDs) have changed, even since the November draft maps were produced. In general, the Tribe supports assigning the most protective shoreline designation warranted by the defined criteria. This clearly has not been done, and the Natural designation is especially underutilized. Rather than assigning the most protective SED possible however, the current SMP draft proposes to integrate SMP and Critical Area Ordinance (CAO) jurisdictions to provide enhanced protection to particularly sensitive shorelines. We have analyzed the effect of the draft provisions, and if administered properly, see the merit of this approach. Hence, will not argue the current draft designations, except in the case of the Jimmycomelately (JCL) estuary where it should be designated Natural. JCL Creek is critical habitat for recovering populations of ESA-Threatened salmon (Hood Canal/Eastern Strait of Juan de Fuca summer chum and Puget Sound steelhead), and much of the estuary has been restored to near-historical conditions.

Shoreline Buffers

In meeting the Shoreline Management Act's (SMA) requirement for "no net loss of ecological functions", no tool is more important than the proper use of buffers. Yet the draft buffer provisions do not begin to ensure that this fundamental SMA requirement will be met. Especially problematic are the various provisions for reducing buffer widths to accommodate development. To improve the effectiveness of the buffer provisions we recommend the following provisions for all SED's except Marine Waterfront. We recognize that these provisions would exclude the development of a very small percentage of existing lots. In these cases, the lots should become eligible for a riparian buy-back option. Buy-back values should be based upon the properties' values ***appraised as though the properties were buildable.***

Our recommended provisions for habitat buffers:

- No reductions of habitat buffer widths are allowed.
- Buffer averaging is not allowed.
- Construction of commercial or residential structures (including attachments and out buildings) is not allowed within habitat buffers.
- Minor New Development definition should be revised as follows:
 - The impervious area limit shall be < 4,000 square feet.
 - The cumulative footprint shall be < 2,500 square feet.

- On all categories of feeder bluffs (as classified in the 2012 Shorelines Inventory and Characterization Report), the measurement for habitat buffers shall begin at the top edge of the bluff. Additionally, common-line setbacks are not allowed.
 - The minimum habitat buffer width on non-exceptional feeder bluffs shall be 100 feet.
 - The minimum habitat buffer width on exceptional feeder bluffs shall be 150 feet.
 - Buffers shall be increased where documented bluff retreat rates equal or exceed
 - One-foot per year on non-exceptional feeder bluffs and
 - 1.5-feet per year on exceptional feeder bluffs.
 - In these cases, buffers shall be increased to a minimum width equaling 100 years of the documented bluff retreat rate.
- On non-feeder bluff marine shorelines, the measurement for habitat buffers shall begin at ordinary high water (OHW), except in low bank areas (bank <10-foot high) where the measurement shall begin at the top edge of the bank or OHW, whichever is farther landward.
 - The minimum habitat buffer width for minor new development shall be 100 feet.
 - The minimum habitat buffer width for major new development shall be 150 feet.
- On freshwater streams designated as “critical habitat” under the Endangered Species Act (ESA), the minimum habitat buffer width shall be 150-feet from OHW or the edge of the channel migration zone (CMZ), whichever is farther landward.
- On freshwater streams not designated as “critical habitat” under the Endangered Species Act (ESA), the minimum habitat buffer width shall be 100-feet from OHW or the edge of the channel migration zone (CMZ), whichever is farther landward.

Safety Zones

Safety zones should be established that cover all areas located within 1-meter vertical elevation (NAVD 88 datum) above OHW on FEMA coastal flooding and marine tsunami zones. For delineating safety zones, measurements should be taken from native ground elevation. Placing fill within a safety zone would not remove the filled area from the safety zone. Construction of residential and commercial structures should be prohibited inside these zones. This is a very modest standard to prevent construction of houses and other buildings that would be certain to be flooded from storm surge in the next several decades. The presence of structures within these dangerous areas would

engender expensive and harmful protective measures and ultimately place people and property in harm's way.

Shoreline Stabilization

We are pleased to see that structural shoreline stabilization is not allowed on feeder bluff shorelines. No adequate predictive tools or mitigation measures exist to address the enormous risk to public and private resources that would occur from the armoring of feeder bluffs. In some cases, soft bank armoring can be less environmentally harmful than riprap and other hard bulkhead material, especially on low banks. However, soft bank bulkheads placed along feeder bluffs will eliminate sediment recruitment just as completely as hardened bulkheads.

Docks and Mooring Buoys

We are concerned about the proliferation of docks and mooring buoys in areas with shellfish resources. The State Department of Health has criteria that require a shellfish closure when densities are exceeded (10 boats in a given area). The county should have a map of shellfish resources, areas used currently for commercial shellfish production, and docks and language to limit the proliferation of each (really boats) to prevent shellfish closures or downgrading a growing-area classification. The installation and use of mooring buoys (including commercial and recreational buoys) in marine waters shall be consistent with all applicable state laws, including WAC 246-282, the current National Shellfish Sanitation Program

Water Quality/Human Health Issues

The traditional diet of Jamestown S'Klallam Tribe citizens has been altered for many reasons including the diminished abundance of finfish and shellfish and the increasing number of pollutants in our environment. Section 3.15.4, regulation of dredge material disposal, pertains to toxins in seafood and the associated health risks. The County should prohibit disposal of any dredged materials originating from urban and industrial sites. Without an outright prohibition, the potential remains to have contaminated sediments reduce harvest areas for Tribal and recreational fishers. Section 4.7.3, regulations of water quality and water management, pertains to commercial and recreational harvest of shellfish. This section should explicitly include the minimum 100' setback of all on-site sewage systems from surface water. It should also specify that in areas where nitrogen is a concern, de-nitrification treatment of wastewater is required.

Administration

The proper administration and management of the updated Shoreline Master Program will demand extensive resources. We recommend that this program include a funding mechanism that would serve at least two purposes:

- Provide funding for County planning staff to 1) administer the program and 2) perform the monitoring to assure No Net Loss (or adapt the program if needed).
- Discourage property development in sites that have inherent risks to both the developed structure and the surrounding environment (such as along erosive bluffs, near channel migration zones, and along marine shorelines that already are flood prone or will be with sea-surface rise).

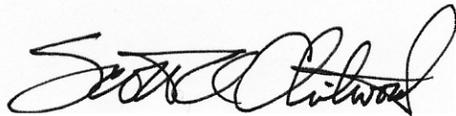
The discussion of a funding mechanism for administering the SMP was entirely lacking from the advisory group sessions to date but it is a necessity. Please consider adapting the existing Public Benefit Rating System to include annual charges for properties which meet specific criteria. It is likely that these funds could then be used to help relocate structures if/when needed.

Aquaculture, Cultural Resources, and Detailed Comments.

Please see the following tables for the Tribe's recommendations on aquaculture and cultural resources. Additional specific recommendations on buffers and other sections of the draft are also included in the tables.

Thank you for the Tribe's opportunity to participate in Clallam County's shorelines update process and to provide these comments.

Sincerely,

A handwritten signature in black ink, appearing to read "Scott Chitwood", written in a cursive style.

Scott Chitwood
Director, Natural Resources Department

Section	Recommended Revision	Explanation
1.1 p 1-8	Clallam County has moved houses from the <u>floodplain</u> along the Dungeness.	Correction: the houses were not within the CMZ. They are landward of ACOE dike.
2.7.3.b	Insert notice to title when owners are made aware of risks.	Strengthens the policy.
2.7.3.e	Repeat language from residential conservancy designation: New development should be designed and located to preclude the need for structural shoreline stabilization and flood control measures.	This language is good and bears repeating.
2.9 table 2-1	Inconsistencies between text and table. J Cambalik provided list during Jan meeting.	Correction.
3.1.3.c	Insert language requiring density and size of vegetation to be maintained and mechanism for assuring that it is maintained.	Without specific requirements, effective administration is impossible.
3.8.3.4	<u>Within all shoreline environments</u> new residential use and development should be located outside CMZ when there is buildable area outside of CMZ.	Current language omits residential designations but if they fit outside CMZ; then that is what should be done.
3.8.3.7	Insert sentence stating that bulkheads shall be discouraged in all designations and other methods of home protection must be shown to be ineffective before bulkheads shall be allowed.	Addition that better meets the intent of SMP.
3.12.5	Should include tidal generators	Addition will make section more complete as tidal

		projects are quite likely in Clallam County.
3.12.5.5	Facilities on public land shall provide public access/open space for use by public.	The current language says for use by employees, which seems erroneous.
3.15.4.5	Insert language prohibiting disposal of dredge material originating from urban or industrial sources.	Addition better serves the public health and community interest by avoiding potential of importing contaminated sediments.
4.2.3.8	Habitat buffer averaging shall not be allowed.	Buffer averaging undermines the value of the buffer and does not meet the intent of SMP.
4.2.3.9	Safety buffer averaging shall not be allowed.	Buffer averaging undermines the value of the buffer and does not meet the intent of SMP.
4.2.3.12		The no net loss report will need to address how buffer modification will be allowed without compensatory mitigation and still achieve no net loss.
4.2.3.17.b	Remove agricultural exemption for existing activity in buffers.	Agricultural activity can seriously degrade water quality and bank integrity. Buffers must be maintained to meet the goals of SMP.
4.3.5.5	Sites that lack well-vegetated buffers shall be planted (to same specifications to be defined in 3.1.3)	Buffers should be well vegetated to perform ecological functions, otherwise they need to be larger.
4.3.8. table 4-2	Insert row for critical habitat of Federally listed aquatic species and provide buffer width of 150'.	Critical habitat buffers are missing from current version.
4.3.13.1	Safety buffer averaging shall not be allowed.	Buffer averaging undermines the value of the buffer and does not meet the intent of SMP. If

		this goes through; the only way it would be acceptable is if landowner signs statement agreeing that they will be prohibited from conducting any stabilization activity into the future which is recorded to the Title.
4.4.2.3	Insert language to clarify reporting time period. Two years is recommended so that adaptive measures can be taken to respond to monitoring information. Insert water quality parameters in monitoring requirements; perhaps 303d listed waterbodies.	A reporting time frame is necessary to assure regular reporting and an ability to respond to metrics that may be performing poorly.
4.4.3.f	The mitigation bond shall be refunded after the site has been demonstrated to be viable for the long-term, or a ten year period, whichever is longer.	A 10 year period is a more appropriate time-scale for assuring ecological function than the installation of the project.
4.7.3.2	Revise language to: land disturbing activities located within SMP jurisdiction shall provide for stormwater quality and quantity control including Temporary Erosion and Sediment Control plan consistent with DOE 2005 Stormwater Management Manual for Western WA.	Makes SMP consistent with CAO which currently requires a certificate of compliance for clearing/grading activity and requires TESC plan and drainage plan. This language is needed to protect water quality.
4.7.3.4	Insert language requiring minimum 100' setback of OSS from surface waters and de-nitrification when along shorelines where nitrogen is a contaminant of concern.	This should be explicit in SMP.

5.12.10	Insert language to prohibit multiple expansion projects.	A loophole in the current version which may lead to further investments in properties located in harm's way.
5.12.12.v	Insert language defining how a project proponent will demonstrate that no adverse impacts to shoreline would be created.	Current version seems impossible to discern if adverse impacts will be made (for example: over what time horizon)
7.216	Minor New Development definition allows for extremely large single family homes. The impervious area limit should be < 4,000 sq ft. and the cumulative footprint should be < 2,500 sq ft.	Minor new development requires the smallest buffers, as small as 50'. Therefore, the sizes should be more representative of typical dwelling sizes (as provided).
Section	Proposed Revision	Explanation
3.2.2 Policy 1:	Aquaculture is dependent on the use of the water area and is a preferred use of the water area when pollution is controlled and damage to the environment is prevented. <u>Aquaculture is of statewide interest. Properly managed, it can result in long-term benefit and can protect the resources and ecology of the shoreline. Aquaculture is a preferred, water-dependent use of regional and statewide interest that is important to the long-term economic viability, cultural heritage and environmental health of Clallam County.</u>	Stricken language appeared to be more of a definition than a policy.
3.2.2 Policy 2:	<u>Aquaculture should be designed, located, and maintained so as not to spread disease to native aquatic life, establish new nonnative species which</u>	This language is consistent with WAC173-26-241(3)(b)(i)(C).

	<p><u>cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Where such impacts cannot be avoided, they should be minimized.</u> activities should be designed, located, and operated in a manner that supports long term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.</p>	
<p>3.2.2 Policy 3:</p>	<p>3. Aquaculture <u>should not be permitted in areas where it would result in a net loss of ecological functions or where it would significantly conflict with navigation and other legally established water-dependent uses, including normal public use of the surface waters.</u> uses/developments should be allowed when they have been evaluated and approved by state and federal agencies, when they incorporate measures to mitigate adverse effects on people and the environment and when they demonstrate that the use/development will not:</p> <ul style="list-style-type: none"> a. Materially and adversely disrupt important intracoastal or international navigation routes; or b. Cause significant adverse effects on water quality, sediment quality, benthic and pelagic organisms, and/or wild fish populations; 	<p>Language is consistent with WAC173-26-241(3)(b)(i)(C). The language that is stricken out will be addressed in required State and Federal agency permits. How would an applicant demonstrate that b) or c) is <u>not</u> an issue?</p>

	<p>or</p> <p>e. Cause significant adverse effects on critical saltwater or critical freshwater habitats.</p>	
3.2.2 Policy 4:	<p>4. Experimental aquaculture projects in water bodies should be limited in scale and duration until their effects can be adequately understood. Experimental aquaculture means an aquaculture activity that uses methods or technologies that are unprecedented or unproven in Washington; and/or aquaculture that uses genera that have not previously been regularly cultivated in the state of Washington.</p> <p>Experimental forms of aquaculture involving the use of new species, new growing methods or new harvesting techniques should be allowed when they are consistent with applicable state and federal regulations and this Program.</p>	<p>Should be consistent with WAC 173-26-241 (3)(b)(i)(B): “The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.”</p>
New Policy	<p><u>Intensive residential uses, other industrial and commercial uses, and uses unrelated to aquaculture should be located so as not to create conflicts with aquaculture operations.</u></p>	<p>Language is consistent with WAC 173-26-241(3)(b)(i)(D): “Local government should ensure proper management of upland uses to avoid degradation of water quality of existing shellfish areas.”</p>
Section 3.2.2 Policy 5	<p>57. Commercial <u>net pen</u> aquaculture operations that propagate non-native <u>finfish</u> species should be discouraged unless these operations are conducted in upland systems, full self-</p>	<p>Clarifies the policy’s intent.</p>

	contained aquatic systems, or can be shown to present low risk of escapement, disease transmission, or significant waste-related environmental impacts.	
Section 3.2.2 Policy 8	<p>89. The County should support community restoration projects associated with aquaculture when they are consistent with this Program. The enhancement or rehabilitation of water bodies and their adjacent habitat by public or private entities for purposes of increasing yields or production of aquaculture resources should be encouraged.</p>	The proposed language is clear and concise. The language is consistent with the Shoreline Management Act.
Section 3.2.3 Regulation 4	<p>4. Aquaculture uses and activities involving hatching, seeding, planting, cultivating, raising, and/or harvesting of planted or naturally occurring shellfish shall not be considered development, and shall not require a shoreline substantial development permit, unless:</p> <ul style="list-style-type: none"> a. The activity <u>significantly adversely affects substantially</u> interferes with normal public use of surface waters; or b. The activity involves placement of any structures; or c. The activity involves dredging using mechanical equipment such as clamshell, dipper, or scraper; or <p>The activity involves filling</p>	Added language clarifies stricken language.

	of tidelands or bedlands.	
Section 3.2.3; Regulation 6	<p>6. Aquaculture activities not listed or meeting the criteria above shall require a shoreline substantial development permit or conditional use permit as indicated in Table 2-2, and shall be subject to all of the following regulations:</p> <p>a. Subtidal, intertidal, floating, and upland structures and apparatus associated with aquaculture use shall be located, designed, and maintained to avoid, minimize and otherwise mitigate adverse effects on ecological functions and processes.</p> <p>...</p> <p>g. Aquaculture use and development shall not materially interfere with intracoastal or international navigation routes, or access to adjacent waterfront properties, public recreation areas, or Tribal harvest areas. Mitigation for <u>any significant adverse impacts</u> shall be provided to offset such impacts where there is high probability that significant adverse impact would occur consistent with section 4.4 of this Program. This provision shall not be interpreted to mean that an aquaculture operator is required to provide access across owned or leased</p>	<p>g. Added language: mitigation for the “probability” of impacts seemed vague. Added language is meant for consistency.</p> <p>h. native eelgrass beds clarifies which eelgrass species requires protection by the State. <i>Japonica</i> is an invasive species.</p>

	<p>tidelands at low tide for adjacent upland owners.</p> <p>h. Aquaculture use and development shall be sited so that scouring, shading and other significant adverse impacts to existing red/brown macroalgae (kelp) and <u>native eelgrass beds</u> are minimized. In evaluating the potential for significant adverse impact, the Administrator shall also consider beneficial effects that shellfish species can have on water quality.</p> <p>...</p> <p>i. Non - navigational directional lighting associated with aquaculture use and development shall be used wherever possible <u>practicable</u>. The height of the light source above the water surface shall be the minimum necessary, not to exceed 80 inches, <u>unless otherwise specified by State or federal requirements.</u> Non - navigational lighting shall not adversely affect vessel traffic.</p>	
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Section	Comment
4.1.1	Cite 36CFR800 and RCW 27.53
4.1.1/ Section 7	Areas of Significant cultural heritage is not defined in the Definitions (Chapter 7). Archaeological site is, which is taken from the National Register of Historic Places. However, NHPA does not protect sites that are significant under Bulletin 38 or the American Indian Religious Freedoms Act.
4.1.2.1	Include “if the presence of an archaeological site is unknown, then a survey should be conducted by an archaeologist (as defined in Chapter 7).
4.1.3 (1)	change ...”located within 500 feet of a known site” to “if the project area has not undergone a survey and presence absence testing that determined that no cultural sites are within the proposed development.”
4.1.3 (1)/ Section 7	Define Cultural Resource Assessment- do they mean Site reevaluation? Is this different than a survey and presence/absence testing?
4.1.3 (7)	Include a new subheading (f) that in an event that an archaeological resource is damaged an Archaeological Damage Assessment will completed pursuant to WAC 25-48-043 and the National Park Service Technical Brief 20