

# Merrill, Hannah

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**From:** zSMP  
**Subject:** SMP 5.12 Draft - Clallam County

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**From:** Stu McColl [mailto: ]  
**Sent:** Wednesday, April 10, 2013 4:31 PM  
**To:** mclancy@esassoc.com  
**Cc:** Gray, Steve  
**Subject:** SMP 5.12 Draft - Clallam County

Margaret / Steve:

Thank you for conducting such a productive meeting yesterday.

We discussed 5.12 and agreed in the meeting that the restrictive language in 5.12 must be removed. Specifically you said you would match with similar language the Kitsap and Seattle SMPs. We also agreed that other language regarding rebuilding in dangerous sliding bluff situations and restrictions would be added.

Attached for your convenience are the notes I submitted.

Also, I offered to provide specific and targetted legal citations and appellate and supreme court case law to show why the draconian wording of "... it shall not be repaired or reconstructed ..." is not legally sustainable. It is for this reason primarily that I believe Kitsap and Seattle did not use this kind of restriction, that they knew there would be immediate and aggressive legal challenges.

Finally ... I did discuss this issue with Jeff Stewart from Ecology and he expressed no reservations as well. He and I discussed the doctrine of "No Let Loss" in detail and the doctrine's rooting in the RCWs concept of "protecting" the environment.

Please email me back confirming receipt of this email. And please make the changes to upcoming published SMP DRAFT revision.

Best Regards,

Stuart McColl

Stuart McColl

Sequim, WA 98382

Email:

Ph:

April 8, 2013

**Issue:** Current Clallam County Draft SMP does not allow does not allow an otherwise legally permitted and constructed Single Family Home to be rebuilt on it's same footprint in the event of major damage "... it shall not be repaired or reconstructed ..." 5.12 .

**Necessary Analysis:** Contained herein are references to Department of Ecology published guidelines regarding "halting new impacts", the recently passed Seattle & Kitsap County SMPs, and Washington Administrative Code. Why did both Seattle & Kitsap County codify a guarantee to rebuild on the same footprint for Single Family Homes ? Why did Ecology approve of both Seattle's and Kitsap's plan ? Did Seattle & Kitsap consider carefully Ecology's guidelines and the WAC in concluding this was the correct posture ? Does rebuilding an existing permitted and legal Single Family Home create a "new net loss" ?

**Conclusion:** The references contained and analysis of Clallam's SMP Draft indicate it is out of step with reality on this issue and exceeds it's mandate spelled out in Ecology's Handbook which guides Clallam's SMP development grant. Rebuilding an existing permitted Single Family Home is not new development. No evidence has ever been presented, nor exists, showing that rebuilding a damaged single family home creates a "new net loss".

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## #1 Clallam County SMP Draft as of April 2013

### 5.12 Grandfathered Use/Development

8. Rebuilding After Major Damage: If a legal, grandfathered structure sustains structural damage due to fire, flood or other natural disaster, but the

extent of damage is equal to or more than seventy-five percent (75%) of the replacement cost of the structure, **it shall not be repaired or reconstructed** unless it is done to conform to the development requirements of this Program, unless a variance is issued by the Board of Adjustment or Hearing Examiner.

## **#2 Seattle Municipal Code**

**SMC 23.60.124** <http://conlin.seattle.gov/tag/shoreline-master-program-smp/>

B. A nonconforming structure or development which is destroyed by fire or other act of nature, including normal deterioration of structures constructed in or over the water, **may be rebuilt to the same or smaller configuration** existing immediately prior to the time the structure was destroyed; provided that action toward replacement must be commenced within twelve (12) months after demolition or destruction of a structure.

## **#3 Kitsap County Shoreline Master Program Tasks 5.1 and 5.7**

[http://www.kitsapshoreline.org/Kitsap\\_Locally\\_Adopted\\_Draft\\_SMP\\_1.30.13.pdf](http://www.kitsapshoreline.org/Kitsap_Locally_Adopted_Draft_SMP_1.30.13.pdf)

### 5.1.2 Existing Structures

#### A. Lawfully constructed structures

4. In the event that a legally existing structure is damaged or destroyed by fire, explosion or other casualty, **it may be reconstructed to configurations existing immediately prior to the time the structure was damaged or destroyed**, provided the application is made for the necessary permits within six months of the date the damage or destruction occurred, and the restoration is completed within two years of permit issuance or the conclusion of any appeal on the permit.

## #4 WA State SMP Handbook Last updated 6/22/2010

<http://www.ecy.wa.gov/programs/sea/shorelines/smp/handbook/Chapter4.pdf>

### Chapter 4 No Net Loss of Shoreline Ecological Functions

#### Introduction

The Shoreline Management Act (SMA) provides a broad policy framework for protecting the natural resources and ecology of the shoreline environment. The SMP Guidelines establish the standard of “no net loss” of shoreline ecological functions as the means of implementing that framework through shoreline master programs. WAC 173-26-186(8) directs that master programs “include policies and regulations designed to achieve no net loss of those ecological functions.”

#### What does no net loss mean?

Over time, the existing condition of shoreline ecological functions should remain the same as the SMP is implemented. Simply stated, **the no net loss standard is designed to halt the introduction of new impacts** to shoreline ecological functions resulting from new development.

#### Shoreline Master Program Guidelines (Chapter 173-26 WAC)

##### SMP Guidelines references specifically addressing the No Net Loss requirement

##### WAC 173-26-186:

8(b) **Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.**

8(i) Local master programs shall include regulations and mitigation standards ensuring that each permitted development **will not cause a net loss** of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards **in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.**

Consistent with WAC 173-26-186 (5) and (8), master programs shall also

provide direction with regard to mitigation for the impact of the development so that: (A) Application of the mitigation sequence achieves **no net loss** of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in **no net loss** of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.

**Chapter 17 Cumulative impacts analysis**  
**Phase 3, Task 3.6**  
**Shoreline Master Program Planning Process**  
**Introduction**

The purpose of the cumulative impacts analysis is to ensure that Shoreline Master Program (SMP) updates include shoreline policies and regulations that will achieve no net loss of shoreline ecological functions, as the SMP is implemented over time.

A cumulative impacts analysis should:

**Demonstrate how the draft SMP policies, regulations and environment designations will achieve no net loss of shoreline functions over time.**