

**SMP Final Review and Adoption:**

**DCD Recommendation on Ecology’s Required and Recommended Changes and Revisions Proposed for Clarification**

After review of the January 26, 2011 approval letter from WA Department of Ecology, with attachments A, B and C, staff provides the following recommendations for Board consideration (Note: changes are shown in ‘bill format’ with added text shown as underlined, and deleted text shown in ~~strikethrough~~):

ITEM	LA-SMP Provision	LA-SMP Page	Topic	DCD Guidance	DCD Recommendation
<b>Attachment B. Required Changes</b>					
1	Article 1.7.E	1-6	Applicability - Ocean Resource Management Act	Agree	Add new item ‘E’ to read: <u>The planning and project review criteria in RCW 43.143 (Ocean Resources Management Act) and WAC 173-26-360 (Ocean Management) shall apply to all ocean uses and activities conducted within Jefferson County’s and the State of Washington’s jurisdiction, including those areas extending to the westernmost boundary of the State of Washington.</u>
2	Article 1.6.A.2	1-5	Critical Areas - REUV	Agree	Delete text as follows: <del>2. Uses and developments within shoreline jurisdiction that meet the Reasonable Economic Use Variance provisions of JCC Chapter 18.22.090 shall require a shoreline variance in accordance with this Program.</del>
3	Article 4.1.D Appendix. A - Map 18	4-1 Map #18	SEDs	Alternative Proposal	Add text to Article 4.1.D and to Map #18 to read: <u>The shoreline environment designation in ocean coastal areas waterward of the OHWM extending to the westernmost boundary of the State of Washington shall be Priority Aquatic.</u> DCD recommends the Priority Aquatic designation, not Aquatic, based on the protected status of National Marine Sanctuary natural resources.
4	Article 2.A.27	2-3	Definitions – Appurtenance, normal	Request Further Guidance	The nexus and proportionality of the ‘3 car’ threshold for garages as a normal appurtenance is unclear

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5	Article 2.S.22	2-39	Definitions – Shorelines of Statewide Significance	Agree	Add new item ‘a’ and reformat to revise definition of “Shorelines of statewide significance” to read as follows: <u>a. The area between the ordinary high water mark and the western boundary of the state, within Jefferson County and State of Washington jurisdiction, including harbors, bays, estuaries, and inlets.</u>
6	Article 4.1.D	4-1	SEDs – Quinault Reservation	Agree	Add text to read: D. All areas within shoreline jurisdiction that are not mapped and/or not designated shall be designated Conservancy until the area is redesignated through a Master Program amendment, <u>except within the Quinault Indian Nation reservation where the upland designation shall be Natural and the waterward designation shall be Priority Aquatic.</u>
7	Article 6.1.D.1	6-4	Critical Areas - REUV	Alternative Proposal	Revise text to read as follows: <u>1. The Critical Areas provisions of JCC Chapter 18.22, dated March 17, 2008 [Ordinance #03-0317-08], and further amended on May 11, 2009 [Ordinance #06-0511-09], are incorporated by reference, however, the following exceptions shall prevail for actions occurring within shoreline jurisdiction:</u>  <u>i. All provisions listed in Sections D.2 - 13 and E.1 - 4 below (e.g. building setback, buffers, CASPs, reasonable use, non-conforming lots, water-oriented use/development) shall be governed by this Program and not JCC Chapter 18.22; and</u>  <u>ii. Sections of JCC Chapter 18.22 Article II and other sections of JCC Chapter 18 regarding permit process, administrative, nonconforming use, appeal, and enforcement provisions within shoreline jurisdiction shall be governed by this Program and not JCC Chapter 18.22.</u>
8	Article 6.1.D.3	6-5	Critical Areas - REUV	Agree	Delete text as follow: <del>3. Development applications that are processed according to the Reasonable Economic Use Variance provisions of JCC Chapter 18.22.090 shall be processed as a shoreline variance according to the provisions of this Program and WAC 173-27.</del>

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9	Article 6.D.3	6-5	<i>DUPLICATE OF #8 ABOVE</i>		
10	Article 7.C.3	7-18?	Dredging	Agree	Add new item '7' to read: <u>Maintenance dredging may not be approved under exemption except within the existing footprint in accordance with previous approved plans.</u>
11	Article 7.2.F.5	7-10	Boating Facilities – Regulations - Residential Docks	Agree	Revise to read as follows: 5. The length of docks and piers accessory to residential use/development shall be <del>no greater than that required</del> <u>the minimum demonstrated necessary</u> for safety and practicality for the residential use. The maximum length for residential docks or piers shall be limited to <del>sixty (60)</del> <u>100 feet</u> as measured horizontally from the ordinary high water mark. The Administrator may approve a different dock or pier length when needed to: i. Avoid known eelgrass beds, forage fish habitats, or other sensitive nearshore resources; or <del>ii. Reach adequate depths to accommodate watercraft; or</del> <del>iii. ii.</del> <u>Accommodate shared use.</u>
12	Article 8.2.A.10	8-4	Aquaculture Policies	Agree	Delete text to read as follows: 1. Commercial and recreational shellfish areas including Shellfish Habitat Conservation Areas are critical habitats. Shellfish aquaculture activities within all public and private tidelands and bedlands are allowed uses. Such activities include but are not limited to bed marking, preparation, planting, cultivation, and harvest. <del>Nothing in this program should be construed as to preclude their use.</del>
13	Article 4.3 – Use Table	4-6	Use Table – Net Pens/Finfish	Alternative Proposal	Revise Use Table to read as follows: X* <del>X*</del> <u>C(d)</u> X* X* X* <del>X*</del> <u>C(d)</u>

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14	<p>Article 8.2.B.1 and 2</p> <p>Article 8.2.C.1 through 6</p> <p>Article 8.2.D.8 and 9</p>	8-4 to 8-8	<p>Aquaculture – Prohibitions</p> <p>Aquaculture – Shoreline Environment Regulations</p> <p>Aquaculture – Regulations - General</p>	Alternative Proposal	<p>Delete text to read as follows:  <del>B. Uses and Activities Prohibited Outright</del>  1. Net pens, as defined in Article 2, are prohibited.  2. Finfish aquaculture that use or release herbicides, pesticides, antibiotics, fertilizers, non-indigenous species, parasites, pharmaceuticals, genetically modified organisms, feed or other materials known to be harmful into surrounding waters is prohibited.</p> <p>Add text and reformat to read as follows:  B. Shoreline Environment Regulations  1. Priority Aquatic: Aquaculture activities may be allowed subject to the use and development regulations of the adjacent upland shoreline environment, <u>except finfish aquaculture, including net pens, is prohibited.</u>  2. Aquatic: Aquaculture activities may be allowed subject to the use and development regulations of the adjacent upland shoreline environment.  3. Natural: Aquaculture activities, except for geoduck <u>and finfish</u> aquaculture, may be allowed subject to policies and regulations of this Program. Geoduck aquaculture may be allowed with a conditional use permit (C(d)). <u>Finfish aquaculture, including net pens, is prohibited.</u>  4. Conservancy: Aquaculture activities, except for geoduck <u>and finfish</u> aquaculture, may be allowed subject to policies and regulations of this Program. Geoduck aquaculture may be allowed with a conditional use permit (C(d)). <u>Finfish aquaculture, including net pens, is prohibited.</u>  5. Shoreline Residential: Aquaculture activities, except for geoduck <u>and finfish</u> aquaculture, may be allowed subject to policies and regulations of this Program. Geoduck aquaculture may be allowed with a conditional use permit (C(d)). <u>Finfish aquaculture, including net pens, is prohibited.</u>  6. High Intensity: Aquaculture activities may be allowed subject to policies and regulations of this Program, <u>except finfish aquaculture, including net pens, may be allowed with a conditional use permit (C(d)).</u></p> <p>Add new items 8 and 9 to read as follows:  C. Regulations - General  8. <u>Proposals for aquaculture activities that use or release herbicides, pesticides, antibiotics, fertilizers, non-indigenous species, parasites, pharmaceuticals, genetically modified organisms, feed, or other materials known to be harmful into surrounding waters is prohibited. shall demonstrate all significant impacts have been mitigated.</u>  9. <u>Finfish aquaculture, including net pens as defined in Article 2, may be allowed with conditional use approval (C(d)) and be subject to consultation under Section 7 of the Endangered Species Act (16 U.S.C. § 1531 et seq. , ESA) to determine jeopardy.</u></p>

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15	Article 8.2.A.12 and 13	8-4	Aquaculture - Policies	Alternative Proposal	Delete and add text and reformat to read as follows: <del>12. Net pens, as defined in Article 2, should not be allowed.</del> <u>12. Finfish Aquaculture activities that uses or releases herbicides, pesticides, antibiotics, fertilizers, pharmaceuticals, non-indigenous species, parasites, genetically modified organisms, feed, or other materials known to be harmful into surrounding waters should only be allowed when applicant demonstrates that all significant impacts have been mitigated.</u> <del>should not be allowed.</del>
16	Article 8.3.F.1.iii and iv	8-10	Commercial Use – Regulations for Non-water-oriented	Alternative Proposal	Revise to include language provided in WAC 173-27-241(3)(d) to read as follows: 1. Non-water-oriented commercial uses are prohibited on the shoreline unless they meet the following criteria: <u>i. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or</u> <u>ii. Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.</u>
17	Article 8.4.C.3	8-12	Forest Practices – Shoreline Environment Regulations	Alternative Proposal	Revise language specific to the Natural Shoreline Environment Regulations to read as follows: 3. Natural: Forest practices may be allowed <u>with Conditional Use approval</u> , subject to the policies and regulations of this Program.
18	Article 8.2.D.4	8-5	Aquaculture – Regulations	Agree	Delete text to read as follows: Activities shall not be considered to substantially interfere with normal public use of surface waters, unless: i. They occur in, adjacent to or in the immediate vicinity of <del>public waters including</del> public tidelands; and

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19	Article 4.3 - Use Table  Article 8.7.B.5	4-7  8-22	Recreation - Shoreline Environment Regulations for Non-water-oriented	Alternative Proposal	Revise Use Table to show Recreation use/development in Shoreline Residential designation allowed as conditional use discretionary (C(d)).  Revise text to read as follows: Shoreline Residential: Water-oriented recreational use and development is allowed subject to the policies and regulations of this Master Program. Non water-oriented recreation <del>is prohibited.</del> <u>may be allowed as a conditional use.</u>
20	Article 4.3 – Use Table	4-7	Use Table – Residential Boathouses	Agree	Revise Table 1 to be consistent with Article 8.8.E.3 to read as follows: Boathouses accessory to single family residences <del>XXX C(a) PP</del> <u>X X X C(a) C(a) C(a)</u> This will make the use a C(a) in the Shoreline Residential and High Intensity designations.
21	Article 8.3.F.1.iii	8-10	<i>DUPLICATE OF #16 ABOVE</i>		
22	Article 9.3.A.9	9-4	Exemptions – Residential Docks	Agree	Revise text to read as follows: Residential Docks - Construction of an individual/single-user or shared dock for private non-commercial pleasure craft, for use by the owner, lessee, or contract purchaser of a single-family or multi-family residences. The private dock exemption applies to dock construction cost as specified in RCW 90.58.030(3)(e). <del>if either:</del> i. <del>In saltwater, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500). For the purpose of this section saltwater shall include the tidally influenced marine and estuarine water areas of the state including local marine waters and all associated bays, inlets and estuaries;</del> ii. <del>In fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five (5) years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Program.</del>

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23	Article 9.5.C	9-7	Critical Areas - REUV	Agree	Delete text to read as follows: <del>C. Proposals that qualify as a Reasonable Economic Use Variance pursuant to JCC Chapter 18.15.220 shall require a shoreline variance.</del>
24	Article 10.6.H.1	10-7	Non-conforming Development – Expansion w/o CUP or Variance	Agree	Add text to read as follows: 1. Single Family Residential: The Administrator may allow <u>a one time</u> landward enlargement or expansion of non-conforming single family residences by the addition of space to the exterior of the main structure or the addition of normal appurtenances without a shoreline conditional use permit or shoreline variance provided, and subject to, the following:
25	Article 6.1.E.2.i	6-7	Critical Areas – Regulations - Buffer Exceptions – Common Line Buffer	Alternative Proposal	Decline; no text change: 'The proposed residence must be located within 300 feet of an...' This required change was indicated by Ecology Findings and Conclusions (page40) but inadvertently omitted from Attachment B. Required Changes.
<b>Attachment C. Recommended Changes</b>					
1	Article 1.2.F	1-4	Applicability – Quinault Tribe	Agree	Add text to read as follows: F. The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals. <u>Where Tribal concerns are expressed in relation to SMP jurisdiction, those shall be resolved through appropriate government to government consultation in accordance with Washington State Centennial Accord and the RCW.</u>
2	Article 2.B.22	2-7	Definitions - Buffer	Decline	Buffer depth does not depend on presence/absence of structure; Leave definition as is.
3	Article 2.C.13	2-10	Definitions – Community Dock	Agree	Add text to read as follows: Community dock means a dock that serves multiple residential properties including upland and waterfront lots in a subdivision or similar community setting. <u>See also “Shared use.”</u>
4	Article 2.F.24 and 25	2-19	Definitions – Frontage Setback	Decline	Frontage setback is measured from road, not from OHWM.

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5	Article 2.S.9	2-37	Definitions – Shared Use	Alternative Proposal	Add new text and reformat numbering to read as follows: <u>9. <b>Shared use</b> means a facility shared by two or more lots/parcels. This can apply to facilities for adjoining lots or facilities shared between waterfront and upland properties; comparable to ‘Community Structure’ per JCC 18.10.030. See also ‘Community dock’.</u>
6	Article 2.N.8	2-29	Definitions – Non-conforming Lot	Alternative Proposal	Add text to read as follows: 8. <b>Nonconforming lot</b> means a legal lot of record in existence prior to the effective date of this Program and any amendments thereto, on which it is not possible to construct as structure outside of/landward of the shoreline buffer or which does not otherwise meet the minimum lot size requirements as set forth in this Program. <u>Depth of lot is measured as the distance from ordinary high water mark to the inside edge of the frontage setback.</u>
7	Article 6.1.E.1.iii	6-7	Critical Areas – Regulations - Buffer Exceptions – Non-conforming Lots	Agree	Delete text to read as follows: iii. All single family residences approved under this section shall not extend waterward of the common-line buffer; <del>as measured in accordance with 6.7.B;</del> and
8	Article 6.1.B.8	6-3	Critical Areas – Regulations - No Net Loss & Mitigation	Agree	Add text to include appropriate reference date upon final adoption of restoration plan; [anticipated to be same date as final adoption of SMP by ordinance].
9	Article 6.4.B.4.iii	6-20	Vegetation Conservation – Regulations – View Maintenance	Agree	Delete redundant text to read as follows: <del>iii. Maintenance trimming of vegetation with main stem or supporting structures less than three (3) inches in diameter, except tree topping, Vegetation removal is not included;</del>  And delete ‘s’ to read as follows: v. Maintenance trimming of the limbs or branches on a trees or shrub that has a main stem less than three (3) inches in diameter;

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10	Article 6.1.E.2.iii	6-8	Critical Areas – Regulations - Buffer Exceptions – Common Line Buffer	Alternative Proposal	Revise and add text to read as follows: iii. Existing Home on One Side: Where there is only one existing residence adjacent to the proposed residence, the <del>standard</del> <u>common line</u> buffer shall be determined as the greater of either 1) a common line drawn between nearest corner <u>of the foundation for the</u> adjacent residence and the nearest point of the standard buffer...
11	Article 7.2.F.9	7-11	Boating Facilities – Regulations - Residential Docks	Agree	Revise formatting to read as follows:  9. Residential developments with more than four (4) lots or dwelling units may be granted permits for community docks that are shared by at least one other owner. No more than one (1) dock/pier or float may be permitted for each three (3) adjoining waterfront lots, with necessary access easements to be recorded at the time of permitting.  10. Single-user docks, piers and floats for individual residential lots may be permitted in existing subdivisions approved on or before January 28, 1993, only where a shared facility has not already been developed. Prior to development of a new single-user dock/pier/float for a single residential lot, the applicant shall demonstrate that:
12	Article 8.8.D.2	8-26	Residential – Regulations – Primary Residences	Alternative Proposal	Delete and add text to read as follows: 2. The buffer requirements in Article 6 of this Program apply to residences, normal appurtenances, and accessory dwelling units, except that docks, floats, and <del>pedestrian</del> beach access structures and other water-dependent and water related structures accessory to residential use may be permitted to encroach into the buffer in accordance with the applicable provisions of this Program. <u>Accessory residential structures must be sited and designed to not require shoreline armoring within 100 years.</u>
13	Article 8.2.D.5	8-6	Aquaculture - Regulations	Agree	Revise text to read as follows: 5. Aquaculture activities not listed in 8.2.D.3 and listed activities that fail to meet any of the criteria in <del>8.2.C.4</del> <u>8.2.A.2</u> shall require a shoreline substantial development permit ( <u>SDP</u> ) or conditional use permit ( <u>CUP</u> ), and shall be subject to all of the following regulations:

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14	Article 10.20.B	10-16	Violations & Penalties	Agree	Delete text to read as follows: B. Any person who willfully violates any court order <del>or regulatory order</del> of injunction issued pursuant to this Program shall be subject to a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than ninety (90) days, or both.
<b>Additional Revisions Proposed for Clarification</b>					
1	Article 6.1.A.3	6-1	SPAADs and vesting	Proposed Clarification	Add text to read as follows: The County should recognize and honor buffers and setbacks established by existing plats, <u>issued permits, binding site plans (BSPs) and site plan approval advance determinations (SPAADs)</u> , and by development agreements that are consistent with RCW 36.70B.
2	Article 6.1.D.7	6-5	SPAADs and vesting	Proposed Clarification	Add text to read as follows: The County shall recognize and apply a buffer or setback established by an existing plat, <u>issued permits, binding site plans (BSPs) and site plan approval advance determinations (SPAADs)</u> , or a development agreement that is consistent with RCW 36.70B.
3	Article 2.F.5	2-16	Definitions – Fill	Proposed Clarification	Line 28: Delete 'than'
4	Article 2.N.8	2-29	Definitions – Nonconforming lot	Proposed Clarification	Line 27: Revise 'as' to 'a'
5	Article 2.R.9	2-35	Definitions – Recreation, shoreline	Proposed Clarification	Line 5: Revise text to read as follows: '...means a <u>commercial or public</u> activity intended for personal enjoyment...'
6	Article 2.R.14	2-35	Definitions – Residential development	Proposed Clarification	Line 35: Add text to read as follows: '...non-transient occupancy <u>including single-family, multi-family, and creation of new residential lots by land division.</u> '
7	Article 2.W.3	2-44	Definitions – Water-dependent use	Proposed Clarification	Line 3: Revise asterisk notation to indicate source = '**' WAC, not '***' RCW

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8	Article 6.1.E.1.i	6-6	Critical Areas – Regulations - Buffer Exceptions – Non-conforming Lots	Proposed Clarification	Line 34: Revise text to read as follows: '6.1.D. <u>6</u> '
9	Article 6.4.B.3.i	6-19	Vegetation Conservation – Regulations – View Maintenance	Proposed Clarification	Add text to read as follows: 'Tree topping is prohibited <u>when main stem/trunk is over 3" diameter.</u> '
10	Article 6.6	6-22	Shoreline Setbacks and Height	Proposed Clarification	Move section and renumber accordingly to occur alphabetically between 'Public Access' and 'Vegetation Conservation'
11	Article 7.2.B.2.ii	7-6	Boating Facilities – Shoreline Environment Regulations – Aquatic	Proposed Clarification	Line 19: Add comma to read as follows: ...'piers, floats...'
12	Article 7.2.G.3.vii	7-13	Boating Facilities – Marina Regulations	Proposed Clarification	Line 31: Revise text to read as follows: ...'Washington Department <u>of</u> Health guidelines and National Shellfish...'
13	Article 7.2.H.2	7-16	Boating Facilities – Mooring Buoy Regulations	Proposed Clarification	Line 6: Revise text to read as follows: '...(NSSP) standards, and other state Departments...'
14	Article 7.2.H.8	7-16	Boating Facilities – Mooring Buoy Regulations	Proposed Clarification	Line 23: Revise text to read as follows: '...no circumstances shall mooring buoy density exceed state Department of Health...'
15	Article 8.8.B.4	8-25	Residential – Uses & Activities Prohibited Outright	Proposed Clarification	Line 28: Move 'or' to end of 4.iv. and capitalize 'Result' for 4.v.
16	Article 10.6.I.1.i	10-8	Non-conforming Development – Expansion/Enlargement with a CUP	Proposed Clarification	Line 28 - 29: Add text to read as follows: '...or the expansion/enlargement occurs <u>vertically</u> , laterally or landward, but not waterward, of the structure.'

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17	Appendix A		Maps #2,3 and 4	Proposed Clarification	Delete 'Old' to read 'Fort Townsend State Park
18	Article 2.A.4	2-1	Definitions – Accessory structure	Proposed Clarification	Delete, add and reformat text to read as follows: ' <del>Garages,</del> <u>Boathouses</u> , barns, <u>decks</u> , storage sheds...'
19	Article 7.8.E.2.iv	7-32	Shore Armor – Regulations – New or Expanded	Proposed Clarification	Revise text to read as follows: iv. When necessary to protect <u>an existing, lawfully established primary water-oriented use, including a residence, but not including a boathouse or other accessory structure</u> , that is in imminent danger of loss or substantial damage from erosion caused by tidal action, currents, or waves.
20	Article 7.8.E.5.iii	7-33	Shore Armor – Regulations – New or Expanded	Proposed Clarification	Add new item 'iii' to read as follows: 'Be prepared by a licensed professional engineer or geologist or other qualified professional with appropriate credentials.'
21	Article 8.2.D.2	8-5	Aquaculture – Regulations – General	Proposed Clarification	Add text to read as follows: Ongoing maintenance, harvest, replanting, restocking <u>of</u> , or changing the species cultivated in any existing or permitted aquaculture operation <u>is not considered development, and shall not require a new substantial development permit (SDP), unless or until:</u>
22	Article 6.1.E.4	6-11	Critical Areas – Regulations - Buffer Exceptions – Water-oriented Use/Development	Proposed Clarification	Lines 17 – 2: Revise text to eliminate redundancy on to read as follows: iv. <u>Public or private</u> beach access structures accessory to residential, commercial, industrial, port or other allowed use/development; and v. Public access structures, including but not limited to docks, piers, and floats; and