EXHIBIT 1

Alternative language proposal by the Board of Yakima County Commissioners as authorized by RCW 90.58.090(2)(e)(ii)

Introduction

The Director of the Washington State Department of Ecology, Ted Sturdevant, by letter dated December 18, 2009, granted Yakima County conditional approval of the Regional Shoreline Master Program. That decision was conditioned upon the Board of Yakima County Commissioners accepting the required changes and the recommended changes (Attachments B & C to his approval letter).

Based on its review, the Board of Yakima County Commissioners finds and concludes that the adoption and incorporation of the amendments to the Regional SMP update required and recommended by the Washington State Department of Ecology will be in the in the public interest, provided certain edits are made to clarify the scope and extent of shoreline jurisdiction, and to correct references to tables and sections of the SMP as contained in this Exhibit.

RCW 90.58.090(2)(e)(ii) provides that Yakima County may choose to submit alternative language to changes required by the Washington State Department of Ecology, provided that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and RCW 90.58. The Board of Yakima County Commissioners has proposed alternative language contained in Exhibit 1 to Resolution 54-2010 to clarify the scope and extent of shoreline jurisdiction, and to correct references to tables and sections of the Regional SMP. The Board finds and concludes that the alternative language meets the required test of consistency with the Shoreline Management Act, and hereby requests the Director of the Washington State Department of Ecology approve the alternative language modifying Attachments B, C and the Regional SMP.

Alternative Language Changes Requested as authorized by RCW 90.58

Redlined underline text is new / ~~Strike-thru text is deleted~~

*1) Page 54 – **16D.03.03(2)**: Amend as follows to specify compliance with 173-26-191(2)(a)(iii)(A):*

"Consider the degree to which the project, development or use within shoreline jurisdiction may affect or impair a designated critical area or shoreline resource and identify potential concerns that may arise;"

*2) Page 57 -- **16D.03.05(6)**: Amend as follows to specify compliance with RCW 90.58.030, WAC 173-27-040 and 140:*

"All ~~exempted~~ activities exempt from the requirement for a substantial development permit shall use reasonable methods to avoid impacts to critical areas within shoreline jurisdiction. To be exempt from ~~this title~~ the requirement for a substantial development permit does not give permission to degrade a critical area or Shoreline or ignore risk from natural hazards. Any incidental damage to, or alteration of, a critical area that is not a necessary outcome of the exempted activity shall be restored, rehabilitated, or replaced at the responsible party's expense, according to section 16D.06.23 (Reclamation).

*3) Page 71 – **16D.03.18(3)**: Amend as follows to change reference to correct table:*

"Wetland buffers set forth in Table ~~6-2~~ 6-1 shall only be minimized through application of the shoreline variance permit process and its provisions and criteria."

*4) Page 31, Table **of Contents**, correct reference to 16D:*

Chapter~~16C~~16D.11 Upland Wildlife Habitat Conservation Areas

*5) **16D.02 Definitions** 16D.02.012 (Administrative Official), edit to read as follows:*

"Administrative Official" means the duly appointed Planning Division ~~Manager~~ Director of the Public Services Department, or his designee, or the relevant decision maker identified in YCC Title 16B (Project Permit Administration); synonymous with "administrator" or "director."

6) *Page 99, Chapter ~~16C~~16D.06 (Chapter 6, "Table of Contents", Designation and Mapping), accept Ecology's changes, but amend all references to 16C and change to 16D, as follows:*

	Designation and Mapping
~~16C~~16D.06.03	Hydrologically Related Critical Area Features
~~16C16D.06.04~~	~~Upland Wildlife Habitat and Habitats of Local Importance~~
~~16C~~16D.06.05	Functional Properties
~~16C~~16D.06.06	Stream, Lake and Pond Typing System
~~16C~~16D.06.07	Wetland Rating System
~~16C~~16D.06.08	Maps
~~16C16D.06.09~~	~~Upland Wildlife Habitat and Habitats of Local Importance Development Standards~~

~~7)~~

7) *Page 101, Section 16D.06.02(6), delete reference to Y.C.C. Title 16C, amend as follows:*

~~6) The state gives some discretion to local governments in designating fish and wildlife habitat. WAC 365-190-080(5)(a) (fish and wildlife habitat designation) identifies six non-marine habitat types from which to choose in designating fish and wildlife habitat, but does not require the use of all listed habitat types. Five habitat types are protected using the approaches described above. The remaining habitat type - Threatened, Endangered, and Sensitive Species Habitat is difficult to use due to the difficulties in obtaining accurate maps of habitat for the different species. In addition, such species are protected by federal and state laws which are administered by other agencies. Yakima County's approach to protecting Threatened, Endangered, and Sensitive Species Habitat is to do so indirectly, using each of the above listed protection approach items. Direct protection measures are deferred to the relevant state or federal agency with jurisdiction over the different species. Yakima County will consider comments and advice related to a species from such agencies in the course of normal development review processes.~~

In addition to the provisions of Section 16D.06.02(4) above, for purposes of managing fish and wildlife habitat conservation areas pursuant to the Growth Management Act, habitat for listed state and federal threatened, endangered, and sensitive species was assessed and incorporated for upland species. Consequently, Yakima County's approach to protect habitat for listed state and federal threatened, endangered, and sensitive upland species is outlined in Section 16D.11. ~~and Y.C.C. Title 16C.11, of the CAO~~.

8) Chapter 16D.11. The entire new chapter applies only to land within shoreline jurisdiction, although much of it has been moved from previous sections and edited as follows:

Chapter ~~16C~~16D.11
Upland Wildlife Habitat Conservation Areas

Sections:

~~16C~~16D.11.010 Purpose and Intent
~~16C~~16D.11.020 Protection Approach
~~16C~~16D.11.030 Functional Properties
~~16C~~16D.11.040 Upland Wildlife Habitat and Habitats of Local Importance
~~16C~~16D.11.050 Mapping
~~16C~~16D.11.060 Critical Areas Report Requirement
~~16C~~16D.11.070 Upland Wildlife and Habitats of Local Importance Development Standards

~~16C~~16D.11.010 Purpose and Intent

1) Wildlife habitat conservation means land management for maintaining species in suitable habitats within their natural geographic distribution so

that isolated subpopulations are not created. This does not mean maintaining all individuals of all species at all times, but it does mean cooperative and coordinated land use planning is critically important (WAC 365-190-080(5)).

2) It is the intent of these provisions to classify seasonal ranges and habitat elements with which federal and state listed endangered, threatened and sensitive species have a primary association and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.
3) It is the purpose of these provisions to protect and conserve natural habitats of upland wildlife species within shoreline jurisdiction as provided in the Shoreline Management Act (RCW 90.58) and as defined in 16D.10.03

~~16C~~16D.11.020 Protection Approach

1) To maintain viable populations of upland wildlife species, there must be adequate environmental conditions for reproduction, foraging, resting, cover, and dispersal of animals at a variety of scales across the landscape. Key factors affecting habitat quality include fragmentation, the presence of essential resources such as food, water, nest building materials, the complexity of the environment, and the presence or absence of predator species and diseases. As a method of linking large habitat areas, migration corridors offer a means by which to connect publicly protected lands and other intact habitat areas. Yakima County protects habitat for upland species using the Upland Wildlife Habitat Conservation Area and associated protection measures described below.
2) Yakima County has a very high proportion of federal, state and other publicly and tribally owned land. These lands are generally managed for the conservation of wildlife habitat. Consequently, one of Yakima County's approaches to protecting all wildlife habitat types is to rely on the management of these lands by the responsible entity (i.e. US Forest Service, US Bureau of Land Management, US Department of Defense, Washington Department of Fish and Wildlife, Washington Department of Natural Resources, Yakima Nation, etc.). The protection of Larch mountain salamander *(Plethodon larselli)* (State Sensitive, Federal Species of Concern) and Spotted Owl *(Strix occidentalis)* (State Endangered, Federal Threatened) habitat is accomplished through this approach, since their habitat of primary association is located within Federal ownership.
3) To aid in upland wildlife protection on private lands, Yakima County followed a methodology utilizing Gap Analysis Program (GAP) data to map wildlife habitat. Comparison of the map to public lands shows that a small percentage of the mapped area is within private ownership. An analysis of the privately owned lands showed that they are largely in remote areas that are undeveloped with no cultivated agriculture. The predominant land use on these private lands is forest and rangeland.

Consequently, part of Yakima County's approach to protect upland wildlife on private land is to rely on the large lot/low density provisions of the Remote (40 acre minimum), Forest (80 acre minimum) and Agriculture (40 acre minimum) zoning districts.

4) Through the wildlife habitat analysis, habitat for listed state and federal threatened, endangered, and sensitive species was assessed and incorporated for upland species. Consequently, Yakima County's approach to protect habitat for listed state and federal threatened, endangered, and sensitive upland species is to require approval of a ~~standard~~ substantial development permit, the submittal of a habitat assessment, and where necessary, development of a management plan as outlined in Section ~~16C~~16D.11.060 and ~~16C~~16D.11.070 below. Protection measures for Bull Trout *(Salvelinus confluentus)* (State Candidate, Federal Threatened) and Steelhead *(Oncorhynchus mykiss)* (State Candidate, Federal Threatened) are accomplished by the standards in chapter ~~16C~~16D.06.

~~16C~~16D.11.030 Functional Properties

Wildlife habitat consists of the arrangement of food, water, cover, and space required to meet the biological needs of an animal. Different wildlife species have different requirements, and these requirements vary over the course of a year. Wildlife habitat generally includes one or more of the following functional properties:

a) Reproduction and/or nesting;
b) Resting and refuge;
c) Foraging for food;
d) Dispersal and migration.

Designation and Mapping

~~16C~~16D.11.040 Upland Wildlife Habitat Conservation Areas

1) Upland wildlife habitats are identified in the Shoreline Inventory and Characterization prepared as required in WAC173-26-210(2), and (3)(c),(d), for the comprehensive update of the Yakima County Regional SMP.
2) Upland Wildlife Habitat Conservation Areas are those areas within which state or federally designated endangered, threatened, or sensitive species have a primary association. State listed species are those native fish and wildlife species legally designated as Endangered (WAC 232-12-014), Threatened (WAC 232-12-011) or Sensitive (WAC 232-12-011) by the Washington Fish and Wildlife Commission. Federal listed Threatened, Endangered or Sensitive species means all species of wildlife listed as such by the United States Secretary of the Interior or Commerce.
3) Pursuant to the provision of the Growth Management Act: Upland Wildlife Habitat Conservation Areas include State Natural Area Preserves and Natural Resource Conservation Areas.
4) Upland Wildlife Habitat Conservation Areas include Species and Habitats of Local Importance. These are habitats or species that due to their declining

population, sensitivity to habitat manipulation or other values make them important on a local level. Habitats of Local Importance may include a seasonal range or habitat element with which a given species has a primary association, and which, if altered, may reduce the likelihood that the species will maintain and reproduce over the long term.

a) Species and Habitats of Local Importance may be identified, for protection under this title. State or local agencies, individuals or organizations may identify and nominate for consideration specific species and habitats, or a general habitat type, including streams, ponds or other features.
b) Review of a Species and/or Habitat of Local Importance application is a legislative action, and shall be processed during the Comprehensive Plan amendment cycle.
c) Species and/or Habitat of Local Importance applications shall be docketed for official action with the Planning Commission in accordance with section 16B.10.090 (Development Regulation Amendments) with no fee requirements.
d) The Planning Commission may convene a best avaliable science committee to ensure the Species and/or Habitat of Local Importance application conforms to RCW 36.70A.172 and WAC 365-195-900 through WAC 365-195-925.
e) Species and/or Habitat of Local Importance shall be adopted as appendicies to this title.
f) Species and/or Habitat of Local Importance applications shall be reviewed for conformance with subsections (g) and (h) below.
g) Applicants for Species and/or Habitat of Local Importance shall present evidence concerning the criteria set forth in sub-section (h) below, including maps to illustrate the proposal and habitat management recommendations for use in the administration of this chapter, and/or:
h) The review of nominated habitats, and habitats for species of local importance shall consider the following,
   i) A seasonal range or habitat element which, if altered, may reduce the likelihood that the species will maintain or reproduce over the long term;
   ii) Areas of high relative density or species richness, breeding habitat, winter range, and movement corridors;
   iii) Habitat with limited availability or high vulnerability to alteration;
   iv) Whether these habitats are already identified and protected under the provisions of this or other county ordinances or state or federal law.

~~16C~~16D.11.050 Mapping

1) The approximate location and extent of upland wildlife habitat conservation areas for~~,~~ Endangered, Threatened and Sensitive species are shown on the County's critical area map titled, "Upland Wildlife Habitat Conservation Areas of Yakima County". This map is to be used as a guide for the county and may be updated as more detailed data becomes available. This map is a reference and does not provide a final critical area

designation. Upland Wildlife Habitat Conservation Areas when within shoreline jurisdiction are subject to the requirements of this Title.

2) The Upland Wildlife Habitat Conservation Area map utilized GAP (Gap Analysis Project) and Department of Fish and Wildlife data. GAP data is derived from satellite imagery and modeling of vegetation and species presence. The wildlife habitat analysis methodology was chosen to protect wildlife from a regional perspective rather than a species-specific perspective, to identify areas of high biodiversity for long-term species survival. The methodology:
    a) Uses the richest habitat areas;
    b) Includes some habitat for all species;
    c) Focuses on large habitat areas that are most remote from human development;
    d) Uses publicly owned lands;
    e) Provides corridor links between blocks of habitat areas using streams, and steep ridge slopes;
    f) Considers WDFW Priority Habitat and Species and Wildlife Heritage data to test accuracy, and;
    g) Covers threatened endangered and sensitive species on public lands.

~~16C~~16D.11.060 Permit and Critical Areas Report Requirement

1) Developments proposed within shoreline jurisdiction in an upland wildlife habitat conservation area with which state or federally endangered, threatened, or sensitive species or a species of local importance has a primary association may be required to submit Critical Areas Identification Form and site plan as per ~~16C~~16D.03.02(1). The Administrative Official may require a habitat assessment to be submitted if it is determined that the development proposal could impact the UWHCA within shoreline jurisdiction. A habitat assessment is an investigation of the project area to evaluate the presence or absence of such species, and areas with which such species has a primary association.
2) In addition to the general critical area report requirements of Section ~~16C~~16D.03.17, habitat assessments and habitat management plans must be prepared by a qualified professional. Critical area reports for two or more types of critical areas must meet the report requirements for each relevant type of critical area.
3) If the habitat assessment determines that such species or habitat area is present on site, and are likely to be impacted by the development proposal, then a standard development permit and management plan are required.
4) If a ~~standard~~ substantial development permit and management plan are required, as determined by the habitat assessment, it may follow published federal, state, or local management recommendations, as applicable, that have been developed for species or habitats located on or adjacent to the project area. Management plans developed by an

independent third party shall be provided for review by the Department of Fish and Wildlife or the responsible federal agency. The Administrative Official may consult with the appropriate agency and consider their comments through the review process.

~~16C~~16D.11.070 Upland Wildlife Habitat Conservation Area Development Standards

Projects located within an Upland Wildlife Habitat Conservation Area in shoreline jurisdiction as designated in section 16~~C~~D.11.040 shall meet the following standards listed below, rather than the development standards in 16~~C~~D.06.10 through 16D~~C~~.06.23 for Hydrologically Related Critical Areas, unless review is also needed for Hydrologically Related Critical Areas.

1) Projects shall be designed using management recommendations established for the species or habitat by federal and state agencies, or those adopted for Species and Habitats of Local Importance by Yakima County. The department shall consider the extent such recommendations are used in its decision on the proposal, and may consider recommendations and advice from the agencies with expertise.

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9) Chapter 16D, Enforcement and Penalties, accept recommend changes but amend all references to 16C and change to 16D, as follows:

Chapter ~~16C~~16D.04
ENFORCEMENT AND PENALTIES

Sections:

~~16C~~16D.04.01 Enforcement Responsibilities Generally.
~~16C~~16D.04.02 Enforcement Responsibilities – Chapters ~~16C~~16D.05.20 through ~~16C~~16D.05.72, Flood Hazard Permits.
~~16C~~16D.04.03 Penalties.

~~16C~~16D.04.01 Enforcement Responsibilities Generally.

It shall be the duty of the administrative official or his designee to enforce the provisions of the ~~Critical Areas Ordinance~~Shoreline Master Program pertaining to all development within the jurisdiction of this title, except as expressly noted in Section ~~16C~~16D.04.02 below pertaining to flood hazard permits. Whenever any development is found to be in violation of this title or a development authorization issued pursuant to this title, the administrative official or his designee may order any work on such development stopped by serving written notice on any person

engaged in the wrongdoing or causing such development to be done. The notice shall state the nature of the violation and order all violation activities to stop. The order shall state the corrective actions necessary to fulfill authorization conditions and/or terms of this title and the time within which such corrections shall occur. The order shall identify the parties responsible to take the corrective actions mandated in order. No further development shall be authorized unless and until compliance with the development authorization conditions and/or terms of this title has been achieved to the satisfaction of the administrative official. Violations of this chapter constitute a public nuisance and Yakima County may take such actions as are authorized in Yakima County ordinance and State statute to abate such nuisances.
~~(Ord. 13-2007 §1 (Exh. A)(16C.04.01), 2007).~~

~~16C~~16D.04.02 Enforcement Responsibilities – Chapters ~~16C~~16D.05.20 through ~~16C~~16D.05.72, Flood Hazard Permits.

(1) It shall be the duty of the chief building official or his designee to enforce the provisions of Chapters ~~16C~~16D.05.20 through ~~16C~~16D.05.72. Whenever any development is found to be in violation of said chapters or a permit issued pursuant to said chapters, the chief building official may order any work on such development stopped and the responsible parties to take such actions as required to correct such violation by serving written notice on any persons engaged in the doing or causing such development or substantial development to be done. Any such persons shall forthwith stop such work until authorized by the chief building official to proceed with the work.
~~(Ord. 13-2007 §1 (Exh. A)(16C.04.02), 2007).~~

~~16C~~16D.04.03 Penalties.

(1) Any person, firm, or corporation violating any of the provisions of this Title, or failing to comply therewith, or violating or failing to comply with any order issued or made pursuant to its provisions shall severally and for each and every violation and non-compliance respectively, be guilty of a misdemeanor or shall be subject to a civil infraction as provided for by Chapter 7.80 RCW or any other remedy provided by law. Any person who violates or fails to comply with any of its requirements shall, upon conviction of a misdemeanor in a court of competent jurisdiction, be fined not more than one thousand dollars or be imprisoned for not more than ninety days, or both, and in addition shall pay all costs and expenses involved in the case. A person found to have committed a civil infraction shall be assessed a monetary penalty. All violations of this chapter shall be denominated Class I civil infractions. The maximum penalty and default amount for a Class I civil infraction shall be two hundred fifty dollars, not including statutory assessments. Each day such violation continues shall be considered a separate offense; however, no additional action will be initiated pending the disposition of any previous suit or complaint.

(2) It shall be the affirmative duty of the county prosecutor's office to seek relief under this section for violations of this title.

(3) Nothing herein shall prevent the county prosecutor's office from taking such other lawful action, legal and/or equitable, as is necessary to prevent or remedy any violation.

(4) In addition to any criminal proceedings brought to enforce this title and in addition to any fine or imprisonment provided for therein, continuing violations of this title may be enjoined or ordered abated in a civil proceeding for injunction or for abatement. For purposes of abatement actions, such violations are declared to be public nuisances. Any person, firm, or corporation violating the provisions of this title shall be liable for all costs of such proceedings, including reasonable attorney's fees and expenses of abatement. The provisions of this subsection are in addition to any other remedies available at law or equity.

(5) Nothing in this Chapter shall be constructed as requiring the County to enforce the prohibitions in this Chapter against all or any properties which may violate the Ordinance. The County has the discretion to enforce and prosecute violations of this ordinance as the County's resources permit. Exercise of such discretion may result in the enforcement and prosecution of a limited number of violations at any given time. Nothing in this Section or the absence of any similar provision from any other County law shall be constructed to impose a duty upon the County to enforce such other provision of law.

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