Responsiveness Summary –

Jefferson County Locally Approved Shoreline Master Program:

Review and response to issues raised by State-wide public comment

November 30, 2010

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Introduction

The state of Washington's 1971 Shoreline Management Act (RCW 90.58) and 2003 Shoreline Master Program (SMP) Guidelines (WAC 173-26) call for local jurisdictions to complete a comprehensive SMP update consistent with statutory and administrative requirements. The Jefferson County Comprehensive Plan calls for shoreline management to protect natural resources and maintain quality of life for area residents, including revisions to the SMP as directed by state laws and rules. The Jefferson County SMP Comprehensive Update (MLA08-475) has been in progress for several years, and now nears completion with a County proposal under review by Washington Department of Ecology (Ecology).

After Board of County Commissioner approval of the *Jefferson County Locally Approved SMP* (LA-SMP or 'the Program') in December 2009 (Resolution #77-09), the Jefferson County Department of Community Development (DCD) prepared and sent a complete submittal packet to Ecology on March 1, 2010. Ecology conducted a state-wide public comment period and public hearing in April/May 2010 that yielded over 300 written comments and verbal testimonies. Per state administrative rule (WAC 173-26-120), the County must prepare a Responsiveness Summary to review and respond to the issues raised by the public comments and testimonies. Ecology will review this summary as they prepare their Findings and Conclusions regarding the consistency of the LA-SMP with state requirements, and issue their decision on whether to approve/deny/require changes to the LA-SMP prior to final state adoption.

The state received some 340 written comment letters and verbal testimonies regarding the LA-SMP during the state-wide public comment period and public hearing. Jefferson County conducted a thorough review of the comment letters and testimonies that were transmitted by Ecology and provides this review of and response to the issues raised by citizen input.

Issues of Public Interest

The large volume of state-wide public input on the LA-SMP was fairly balanced between comments in support of the proposed shoreline management provisions and those that expressed concern over one or more of the proposed policies or regulations. This review is focused on the content of the issues raised, rather than the frequency. The SMP update is a legally mandated action and must comply with state requirements.

Most comment letters/testimonies were brief (e.g. one sentence to one page), some were longer (e.g. 5 – 15 pages; one submittal was 88 pages). Some were very general, others were very detailed. Most people submitted just one letter/testimony, others sent their letter both via email and US Mail, and some submitted multiple comments via separate letters, emails and verbal testimony (e.g. one person submitted 19 separate emails plus a verbal testimony). The public input also covered a range of topics and personal sentiments related specifically to the LA-SMP, generally to the subject of shoreline management, or indirectly to other subjects such as personal anecdotes.

To record and summarize the large volume of public input, the County has created comment summary statements. The full content of all citizen input is present in the public record. These summary statements (listed below) are not meant to paraphrase exactly what was said, nor meant to replace the full content of submitted comment letters and testimonies. Rather the summary statements are meant to reflect the general topics, major themes, and issues expressed by the public input received. The state requirement and the purpose of this County Responsiveness Summary is to ensure that public comments were fully considered and appropriately addressed, not respond to individuals or debate matters of personal opinion.

This summary is organized alphabetically by topic and provides an overview of the perspectives submitted to the state. Comment summary statements are not presented in any order of priority and only appear under a single topic heading even if multiple topics apply. The County's response to issues of public interest is presented for each topic and primarily addresses issues in a collective manner so that individual comments may be combined and responded to in general terms.

Administration/Permits

Issues of concern about the LA-SMP included:

- LA-SMP is too big/complex for County to implement; not enough staff to enforce new provisions.
- County staff doesn't have the expertise to review the special reports required.
- Permit review process and fees will discourage compliance.
- RCW & WAC don't require expanding use of conditional use permits.
- CUPs allow too much Ecology control.
- CUPs can't be required by government, only offered as an option for the applicant to choose.
- CUP based on adjacent upland designation is absurd.
- CUPs will be too expensive & time consuming.
- Eliminate all CUPs from the LA-SMP.
- Statement of Exemption for preferred uses dilutes purpose of exemptions.

Issues raised that support the LA-SMP included:

- Conditional use permits (CUPs) allow better protection at the individual-project level.

- County needs even better GIS/mapping for more accurate implementation of the shoreline regulations.
- Vesting issues need to be clarified regarding SPAADs

Response to Issues of Public Interest:
Articles 9 and 10 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.140, WAC 173-26-191, -241 and 173-27 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The current, accurate and complete science reviewed supports the administrative and permit policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. The SMP is jointly administered by the County and Ecology, per statute. In light of department efficiencies and a broad range of development intensities, the County has included three types of conditional use permits with varying levels of review. The administrative options will reduce cost and processing time while ensuring adequate protection of shoreline resources. The County intends that existing plats, issued permits and site plan approval advance determinations (SPAADs), and development agreements consistent with RCW 36.70.B will be honored through vesting to any applicable code in place at the time of issuance.

Agriculture

Issues of concern about the LA-SMP included:

- LA-SMP does not comply with State agricultural requirements/exemptions.
- New regulations will impede farming.

Response to Issues of Public Interest:
Article 8.1 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.065, WAC 173-26-241 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to agriculture are addressed throughout the Program. The current, accurate and complete science reviewed supports the agriculture policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. Consistent with the County's Comprehensive Plan, agriculture is a valued and growing sector of the local economy and important to the rural heritage of Jefferson County. Existing and ongoing agriculture may continue and new agriculture may be permitted when consistent with the Program and other code requirements. Local farmers are encouraged to implement best management practices to ensure protection and restoration of shoreline resources.

Aquaculture

Issues of concern about the LA-SMP included:

- LA-SMP needs to recognize that aquaculture is important to local economy.
- Aquaculture industry is already regulated enough by other agencies.
- LA-SMP regulations are too restrictive and will cripple the industry.
- Aquaculture provisions could be more clearly written.
- Geoduck aquaculture shouldn't require CUP.
- Fish farming would provide local jobs.
- Finfish net pens should be allowed.
- Allow net pens w/ CUP.
- Net pens should be allowed with some restrictions to ensure adequate protection.
- Net pen prohibition is inconsistent with intent of WAC/State Guidelines.

Issues raised that support the LA-SMP included:

- Adopt the shellfish provisions as written.
- Support the aquaculture provisions, but they need additional limits to be more protective.
- Only low-intensity aquaculture operations should be allowed in Natural and Priority Aquatic designated areas.
- Allowing high-intensity aquaculture in sensitive areas will cause net loss.
- Geoduck aquaculture has negative impacts to other aquatic species/habitat.
- Geoduck should be more strictly regulated.
- Geoduck aquaculture should be banned.
- Support the net pen prohibition.

Response to Issues of Public Interest:
Article 8.2 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.100, WAC 173-26-241 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to aquaculture are addressed throughout the Program. The current, accurate and complete science reviewed supports the aquaculture policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. When properly managed to avoid impacts to shoreline resources, aquaculture is a valued and growing sector of the local economy and important to the rural heritage of Jefferson County. Throughout the SMP update process public comments have been intense – both in favor and opposed – and as such, the Board of County Commissioners spent considerable time deliberating the aquaculture provisions to consider and address the public interest. The LA-SMP reflects the Board's decision to balance economic development with shoreline protection. The County has exercised its legislative discretion in proposing certain finfish/net pen prohibitions and requirements for geoduck operations as a conditional use to allow appropriate use and development while ensuring adequate protection for shoreline resources.

Beach Access Structures

Issues of concern about the LA-SMP included:

- Everyone should be allowed to build a beach access structure.
- Denying access to my beach is a property rights infringement.
- Siting and design standards/dimensions are infeasible.
- Applicant obligation to prove no adverse impact is overly burdensome.
- Different provisions for public/private are not fair.

Response to Issues of Public Interest:

Article 7.1 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-231 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to beach access structures are addressed throughout the Program. The current, accurate and complete science reviewed supports the beach access structure policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. While public access to shorelines of the state is a key policy goal of the statute, administrative guidance directs the County to prefer public beach access structures that serve greater numbers of people and to minimize the proliferation of individual beach access structures. The RCW and WAC requirements for protection of sensitive resource areas also result in the prohibition of beach access structures on eroding 'feeder' bluffs and in other unsafe shoreline areas. In general, the Program allows beach access structures in most areas as a conditional use per administrative review to save applicants time and money and to allow for appropriate use and development while ensuring adequate protection of shoreline resources.

Boating Facilities

Issues of concern about the LA-SMP included:

- Every waterfront homeowner should be allowed a dock
- SMP allows too much regulatory discretion and uncertainty for landowners

Response to Issues of Public Interest:

Articles 6.1, 7.2 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-241 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to boating facilities are addressed throughout the Program. The current, accurate and complete science reviewed supports the boating facility policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. While public access to shorelines of the state is a key policy goal of the statute, administrative guidance directs the County to prefer public boating facility structures that

serve greater numbers of people, to minimize the proliferation of individual boating facility structures, and to prohibit private boating facility structures in the most sensitive shoreline areas. The substantial development permit exemptions for residential docks and mooring buoys remain per state requirement, and residential docks and mooring buoys are allowed in most areas with an administrative review to save applicants time and money. The County has exercised its legislative discretion in proposing certain marina and mooring buoy provisions to allow appropriate use and development while ensuring adequate protection for shoreline resources.

Buffers & Setbacks

This topic received many comments.
Issues of concern about the LA-SMP included:

- Many people that will be affected by SMP are opposed to it.
- Buffers are too big.
- Buffers are one-size fits all.
- Buffers are a 'takings' and property owners should be compensated.
- Buffers are not based on science.
- Buffer science used is inadequate/not applicable.
- Buffers won't protect the environment.
- Opposed to building setbacks.
- Oppose 165' setback.
- Oppose the 150' buffer.
- It’s not fair City of Port Townsend requires 50’ but County will require 150’.
- 150' might be appropriate in some cases but not as a standard since individual site evaluation is needed.
- Consider 75' buffer as a compromise.
- Support 50' buffer.
- Buffers will create hardship for property owners.
- Buffers will prevent waterfront views.
- Buffers will preclude development.
- Buffers will reduce property value.
- Buffers will affect personal property not commercial interests.
- Adjacent/nearby jurisdictions with smaller buffers will out-compete the County in the housing market.
- Buffers are intentionally large to create lots of non-conforming structures so they can be eliminated.
- Buffers are intended to force a return to a pre-development state.
- Buffers should be based on high/medium/low impacts of development.
- Buffers should be designed to protect water quality.
- Buffers shouldn't include FAA 'airspace'.
- Want same buffer as existing neighbors' homes.
- Common Line Buffer should be allowed with 300' separation.

Issues raised that support the LA-SMP included:

- Buffers are needed for shoreline protection.
- Support 150' buffer.
- Support 100' buffer on lakes, rivers/streams.
- Buffers are based on science.
- Buffers are appropriate for protection.
- Support the flexible buffer provisions.
- Support protection of wetlands, fish and wildlife habitat, flood areas.
- Channel migration zone (CMZ) protection is needed and appropriate.
- Buffers help reduce erosion/landslide risks thereby protecting taxpayers from having to pay for problems after the fact
- Buffers should be bigger for adequate protection and no net loss.
- Economic value of ecosystem services should be part of the buffer/protection equation.

Response to Issues of Public Interest:
Article 6.1 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -610, WAC 173-26-191, -211, and -221 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to buffers are addressed throughout the Program. The current, accurate and complete science reviewed supports the buffer policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. Buffers are a scientifically valid (see attached Buffer Science Summary handout), common and accepted method to protect and maintain ecological functions and to minimize risks to human health and safety. The standard shoreline buffers are equivalent to those currently required by the County's Critical Areas Ordinance, meet the 'no net loss' standard and may be adjusted when site conditions meet specific criteria. The County has exercised its legislative discretion in proposing certain buffer adjustment provisions to allow appropriate use and development while ensuring adequate protection for shoreline resources.

Critical Areas

Issues of concern about the LA-SMP included:

- County improperly adopted CAO into SMP.
- Shorelines aren't critical areas.
- No CAO or other Growth Management Act (GMA) jurisdiction allowed in shorelines, SMA only.
- Public didn't get to review CAO regulations when incorporated into SMP.

Issues raised that support the LA-SMP included:

- Critical Area Ordinance (CAO) inclusion is needed and appropriate

Response to Issues of Public Interest:
Articles 1.6, 6.1 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-221 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to critical areas are addressed throughout the Program. The current, accurate and complete science reviewed supports the critical area policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. The County's Critical Areas Ordinance is compliant with state requirements and, per legislative mandate, will continue to provide protection of environmentally sensitive features of the shoreline upon incorporation into the Program. The County's Comprehensive Plan calls for protection of natural systems and resources as important to the social, economic and cultural value of Jefferson County upon which residents' quality of life depends. The critical areas protections of the Program allow for appropriate use and development while ensuring adequate protection of shoreline resources.

Cumulative Impacts

Issues of concern about the LA-SMP included:

- Cumulative impacts provisions are insufficient and will allow unjust denials.
- Cumulative Impacts Analysis is inadequate.
- Exempt activities shouldn't have cumulative effects review.
- Cumulative impacts analysis requirement is too onerous/burdensome for applicant.
- Cumulative Impacts Analysis is inadequate to measure/track 'no net loss'.

Response to Issues of Public Interest:
Article 6.1 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to WAC 173-26-191 as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', precautionary principle, and mitigation sequencing as related to cumulative effects is addressed throughout the Program. The current, accurate and complete science reviewed supports the cumulative impacts policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In keeping with an overarching policy of the statute and administrative rules, the collective effects of individual use/development actions allowed by the Program, and the Program as a whole, have been assessed and determined to achieve no net loss of ecological function. The cumulative impacts provisions allow for appropriate use and development while ensuring adequate protection of shoreline resources.

Definitions

Issues of concern about the LA-SMP included:

- 'Alteration, non-conforming structure' definition is too broad.

- Article 2 Definitions is inaccurate/inadequate
- 'Channel Migration Zone' definition is too broad and includes regulatory language.
- 'Dock' definition is confusing & too restrictive.
- 'Feeder Bluff' definition, standards, and identification/classification criteria are unclear.
- 'Liberal construction' definition exceeds RCW.
- 'No net loss' is undefined.
- 'Shorelines of statewide significance' definition does not comply with RCW.
- 'Substantial development' definition does not comply with RCW.
- Need to define 'lateral'.

Response to Issues of Public Interest:
Article 2 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.030, -900, WAC 173-26-020 as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The current, accurate and complete science reviewed supports the definitions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. Definitions included are sourced from the Unified Development Code (JCC Title 18), the SMP Guidelines (WAC 173-26), the Shoreline Management Act (RCW 90.58), or prepared from the authors' collective, professional knowledge and experience.

Forest Practices

Issues of concern about the LA-SMP included:

- Forestry provisions don't comply with State Forest Practices Act.

Response to Issues of Public Interest:
Article 8.4 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.150, WAC 173-26-241 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to forest practices are addressed throughout the Program. The current, accurate and complete science reviewed supports the forest practices policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, forest practices such as tree cutting and harvest activities are not regulated by the Program, while associated activities such as filling, excavation, roads and structures and conversion of forest land to non-forestry uses must comply with the Program. Per the state Forest Practices Act, selective timber cutting is limited to a 30% threshold; otherwise a conditional use permit is required by the WAC. The forest practices provisions allow for appropriate use and development while ensuring adequate protection of shoreline resources.

General

Issues of concern about the LA-SMP included:

- I oppose the SMP.

Update not needed because…

- Current SMP is fine 'as is'.
- Economy is too bad now for new rules.
- If liberal construction is included in SMP, it should also apply to the SMA and WAC.
- I oppose the WAC/SMP Guidelines.

SMP is/does…

- SMP is not based on science.
- SMP is too broad and far-reaching.
- SMP is too long/complex/onerous.
- SMP language is too vague and imprecise.
- SMP is too restrictive and will eliminate jobs, hurt local economy.
- SMP is so restrictive it will cause a mass exodus of existing and potential shoreline property owners looking to escape oppressive government.
- SMP goals, policies and regulations are disjointed.
- SMP seems based on distrust of property owners.
- SMP is redundant of other regulations (i.e. GMA, SEPA, stormwater, etc).
- Vague language gives DCD too much discretion.
- SMP infringes on property rights but expands public access/rights.

SMP isn't/doesn't…

- SMP doesn't comply with State requirements re: 'takings'.
- SMP doesn't adequately prevent pollution.
- SMP doesn't accommodate population expansion to 2060.
- SMP is not consistent w/ legal/case law.
- SMP provisions/prohibitions are not in-line with intent of SMA/WAC.
- SMP isn't consistent w/ County Comprehensive Plan.
- SMP isn't consistent w/ Port of Port Townsend policies.
- SMP isn't consistent w/ US Constitution - Equal Protection Clause; Takings.
- SMP isn't consistent w/ GMA.
- SMP isn't consistent w/ SMA.
- SMP isn't consistent w/ City of Port Townsend SMP.

SMP is unfair…

- SMP unfairly punishes new landowners instead of making existing owners fix the problem.
- SMP unfairly punishes existing when new development is the problem.
- SMP unfairly makes Jefferson County clean up pollution caused by City of Port Townsend, and more urban areas around Puget Sound.
- Jefferson County is unfairly being forced to fix problems that are state-wide.
- It's unfair that Port Townsend, Port Ludlow and Cape George are exempt from SMP.
- SMP is unfair because it treats similar properties inconsistently.
- It's not fair NW Maritime Center was approved, but garages get declined.

SMP needs/should…

- SMP needs better monitoring & enforcement provisions.
- SMP should balance property rights & shoreline protection.
- New rules should only apply when property is sold so new owner has to comply.
- Public lands should have to comply by the same rules as private.
- Throughout document, term 'impacts' should always be 'significant impacts'.

SMP will…

- SMP will be too expensive to implement.
- SMP will increase development costs (permits, construction).
- SMP will reduce tax revenue.
- SMP will reduce shoreline property values and increase tax burden to everyone else.
- SMP will cause many lawsuits in opposition.
- Lawsuits against this SMP will be too expensive and/or bankrupt the County.
- SMP will preclude responsible stewardship and coastline preservation.

The people & rights…

- Property owners love & appreciate shoreline resources.
- Property owners are the best stewards of their land.
- Increased shoreline property values are evidence that landowners are best at protecting/improving their property.
- Private property ownership means being able to use your land as you see fit.
- Private property rights should trump public interest.
- Environmentalists seem to think all development causes adverse impacts.
- Environmental activists that support the SMP commonly get the facts wrong, thereby fueling opposition.
- SMP opponents will vote out any elected officials and then fire any staff that support this SMP.
- Support any litigation in opposition of this SMP.
- I have questions about the SMP I want answered.

Other…

- We already have too much government.
- Global climate change and sea level rise (SLR) goals are unreasonable.
- Disagree with some aspects of Kramer et al. white paper on SMP Updates.
- Overharvesting is the main problem with salmon.
- Eroding bluffs, tsunamis, and global warming haven't occurred/don’t exist.

Issues raised that support the LA-SMP included:

- Support the SMP as written.
- Mostly support the SMP, with a few concerns.

SMP is/does…

- SMP is based on science.
- SMP document is clearly organized and well-written.
- SMP satisfies all RCW/WAC requirements.

- SMP is largely consistent with Tribal Treaty Fishing Rights.
- SMP fairly balances property rights & shoreline protection.
- SMP offers improved shoreline protection and better SMA consistency.
- SMP is a benefit for whole community, including those who cannot afford shoreline property.
- SMP helps fix current problems so we don't leave them for future generations.
- SMP is as good a compromise between allowing more development and protecting resources as we can expect.

SMP should/will…

- SMP should and does balance protection with use of shorelines.
- SMP will improve property value through protection and consistency.

I like the SMP's…

- Support the preference for water-dependent uses.
- Support best management practices to minimize impacts.
- Support use of 'precautionary principle' to protect shorelines.

I believe…

- We must protect Puget Sound and Hood Canal.
- Protecting what we have will attract others who value healthy resources.
- Appreciate value of the ecological and economic benefits of a healthy shorelines & Puget Sound ecosystem to protect quality of life.
- Appreciate value of the access/view and cultural benefits of healthy shorelines.
- SMP opponents have a narrow/selfish vision.
- SMP opponents seem ill informed/haven't read the proposal.
- SMP opponents well attended the public process and voiced dissent.
- Landowners need to be educated to not pollute/damage shoreline.
- Landowners are not always the best stewards of their land, but often the cause of degradation.
- Some people think it's their right to break the rules, regardless of safety or damage to neighbors.
- Many rural lots are risky to develop due to dynamic/fragile natural resources.
- Taxpayers shouldn't have to pay for landowners stupid mistakes.
- Safety must be a priority for shoreline management.
- All human activity has an environmental impact.
- All landowners have property rights, whether they are good stewards or exploit and degrade.
- Property owners need to hold themselves and their neighbors accountable for protecting shorelines.
- There is balance in having existing landowners' reduced profit and new landowners' increased cost of privilege.
- Citizens and regulators must work together to protect shorelines and natural resources.
- Everyone must yield something for the greater good.
- Public good must trump private/commercial interests.
- Concerned about cruise ship sewage pollution.

- County needs stormwater ordinance and low impact development standards to complement SMP.
- Consider using students, creative arts, and digital/social media to educate, honor, and discuss SMP implementation issues.

Response to Issues of Public Interest:
Provisions of the LA-SMP comply with statutory and administrative requirements including the Shoreline Management Act (RCW 90.58) and the SMP Guidelines (WAC 173-26) as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing are addressed throughout the Program. The current, accurate and complete science reviewed supports the policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, the Program is a needed revision, based on documented needs and conditions, that balances appropriate use and development while ensuring adequate protection of shoreline resources.

Jurisdiction and Shoreline Environment Designations

Issues of concern about the LA-SMP included:

- Disagree with application of jurisdictional/SED criteria.
- RCW doesn't say to include 'associated wetlands' in shoreline jurisdiction.
- SED designation criteria are inconsistent w/ WAC.
- Disagree with application of SED at specific site.
- Priority Aquatic SED is unnecessary.
- Natural SED is too restrictive.
- Too much shoreline designated as Natural.
- SMP doesn't clarify how to address Tribal inholder parcels.
- Default Conservancy SED would allow water-dependent development on Tribal lands not allowed by the Tribe.
- The County doesn't have jurisdiction to designate Tribal shorelines.
- Should have process for contesting/changing parcel/reach SEDs.

Issues raised that support the LA-SMP included:

- Priority Aquatic Shoreline Environment Designation (SED) is innovative and needed for resource protection.
- Natural and Priority Aquatic SEDs need more protective standards to avoid/minimize impacts and keep uses low-intensity.
- Conservancy SED needs more protective standards for industrial/port and multi-family uses to keep uses low-intensity.
- Default SED should be Natural to better protect resources.

Response to Issues of Public Interest:
Article 4 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.350, WAC 173-26-110 and -211 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The current, accurate and complete science reviewed supports the jurisdiction and shoreline designation policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. The issue of inholder property on tribal lands is complex. The shoreline jurisdictional area is determined by the statute and does not include federal or tribal lands. Therefore, the provisions of the Program only apply where the County has authority. The system of shoreline environment designations (SEDs) helps tailor use and development regulations so that the most sensitive shoreline areas get the most protection. SED assignments at specific locations can be changed via a limited amendment to or comprehensive update of the Program. The County has exercised its legislative discretion in creating a new SED called 'Priority Aquatic' for high value salmon and shellfish habitat areas to allow for appropriate use and development while ensuring adequate protection of shoreline resources.

Mining

Issues of concern about the LA-SMP included:

- Support some mining restrictions to ensure adequate protection, but not complete prohibition.

Issues raised that support the LA-SMP included:

- I support the mining prohibitions.
- Prohibit mining in channel migration zones too.
- Oppose Pit-to-Pier project or similar future efforts.

Response to Issues of Public Interest:
Article 8.6 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-241 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to mining are addressed throughout the Program. The current, accurate and complete science reviewed supports the mining policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. Most mining activities are prohibited, except transportation via roadway and excavation along High Intensity shorelines. The County has exercised its legislative discretion in proposing certain mining prohibitions in sensitive areas to allow appropriate use and development while ensuring adequate protection for shoreline resources.

Non-conforming Development

This topic received many comments.

Issues of concern about the LA-SMP included:

- Term 'non-conforming' seems ominous.
- Non-conforming development standards are not clear – What happens to existing development that ends up in the new buffer?; Who can do what, when?
- The County is incorrectly/inconsistently regulating non-conforming uses in/outside shoreline jurisdiction.
- SMP will make too many existing homes non-conforming.
- Non-conforming status is 'taking' - should be compensated.
- Non-conforming status will damage property value, increase taxes, preclude insurance and resale.
- Non-conforming status will result in eventual elimination.
- Non-conforming standards will illegally force shoreline restoration.
- My existing shoreline development should be 'grandfathered'.
- SMP should have a 'grandfather' clause.
- SMP should allow rebuilding after fire/damage.
- Non-conforming rules shouldn't apply to interior remodels.
- If existing non-conforming development can expand, then everyone should be able to locate that close.
- Support non-conforming lot provisions that protect landowner investment in property, not restrict property improvements.
- The State shouldn't be able to seize property based on non-conformity.
- Sellers may have to disclose 'non-conforming' status to potential buyers.
- Abandonment clause is unconstitutional.

Issues raised that support the LA-SMP included:

- Support 'grandfather' allowance for maintenance and repair of existing development.
- Support limited expansion of existing development when impacts are adequately addressed.

Response to Issues of Public Interest:

Article 10.6 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, WAC 173-27-080 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to non-conforming use/development are addressed throughout the Program. The current, accurate and complete science reviewed supports the non-conforming development policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, non-conforming uses/development can continue 'as is' unless/until any new use/development is proposed, which must comply with the Program. The Program includes provisions that allow legal, non-conforming single family residences some degree of enlargement/expansion per administrative review if site-specific

criteria are met. With an estimated 70% of shoreline lots already developed, and 12% of shoreline parcels anticipated to become non-conforming lots, the County refers to pages 12-13 of the FAQ handout (attached) to consider whether the Common Line Buffer (CLB) provision should have limited applicability. The Cumulative Impacts Analysis concludes that the 'no net loss' standard (NNL) is met when only non-conforming lots are provided such relief from the standard buffer requirement. Should the CLB provision be made available to all lots, the County recognizes the importance of maintaining NNL and avoiding any unintended consequences and believes the CLB provision to be a fair exception to the standard buffer to avoid small lots becoming unbuildable. The County has exercised its legislative discretion in proposing certain non-conforming provisions to allow appropriate use and development while ensuring adequate protection for shoreline resources.

No Net Loss and Mitigation

Issues of concern about the LA-SMP included:

- Shoreline Management Act (SMA) doesn't require NNL.
- Basing the SMP update process on NNL is flawed & without any SMA basis.
- NNL is not possible or a reasonable goal.
- NNL is used as permission to restrict all shoreline uses.
- Inventory & Characterization Report is too general to establish a NNL baseline.
- NNL can't be standard used if/when there are no baseline/indicators to monitor.
- Without clear NNL baseline/indicators, cumulative impacts and restoration needs cannot be assessed.
- Past restoration efforts and other increased regulatory controls should be part of equation to reach NNL.
- Neither RCW nor WAC requires making preferred uses non-conforming.
- Mitigation requirements are inadequate.
- Mitigation standards don't meet nexus & proportionality requirements/definitions.

Issues raised that support the LA-SMP included:

- Support 'no net loss' (NNL) as a worthwhile and needed goal.
- Inventory and Characterization Report was extensive and well-done.
- Support mitigation sequencing requirements.

Response to Issues of Public Interest:

Article 6.1 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -340, WAC 173-26-186, -201 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of cumulative effects, precautionary principle, and mitigation sequencing as related to 'no net loss' are addressed throughout the Program. The current, accurate and complete science reviewed supports the 'no net loss' policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC

requirements. In general, the Program was prepared to ensure 'no net loss' at the programmatic level, and ensures 'no net loss' is considered at the site-specific stage of implementation. Findings of the supplemental *Final Inventory & Characterization Report* establish the baseline of shoreline conditions, and the supplemental *Final Shoreline Restoration Plan* identifies opportunities to improve conditions to offset unanticipated degradation and that caused by existing development in order to achieve 'no net loss' of shoreline ecological functions.

Project/Process

This topic received many comments.

Issues of concern about the LA-SMP included:

- No problem defined to need SMP update.
- Not enough public outreach.
- Public involvement was inadequate.
- The County didn't coordinate with the Tribes.
- No shoreline property owners on the STAC/SPAC.
- Not enough shoreline property owners on the committees.
- Tribal staff were not STAC/SPAC members and did not participate.
- Update process fails to meet RCW/WAC requirements.
- Inventory & Characterization is not adequate.
- Ecology staff comments during local process were improper.
- No cost/benefit or financial analysis performed.
- No 'concise explanatory statement' to answer public questions prior to rule adoption.
- SMP should have had an Environmental Impact Statement (EIS) evaluation.
- BoCC made changes to PC recommendation.
- Submittal of PC recommendation that was different from committee recommendation was inappropriate.
- County improperly approved LA-SMP.
- Location of public hearing was inconvenient.
- Most people who attended the public hearing were opposed to the SMP and represent majority opinion.
- Only residents of rural Jefferson County should have a say in the SMP, not City of PT residents.
- Only shoreline property owners should have a say in the SMP.
- I'm a scientist and no-one asked for my professional input.
- Process to implement SMP needs to be simplified for general public.
- SMP process was biased by personal agendas.
- County staff is clearly biased and tried to influence public input.
- The County is promoting indoctrination under the guise of education.
- County receipt of Ecology funding makes whole SMP process suspect.
- Ecology is pushing this through against property owner wishes.
- Ecology should deny the SMP and start over.

- Ecology should deny the SMP and require the County to work with the Tribes.
- Ecology should postpone all SMP Updates until they streamline the process and provide more money.

Issues raised that support the LA-SMP included:

- Public involvement was extensive and well-done.
- Appreciate that the Shoreline Technical and Shoreline Policy Advisory Committees (STAC /SPAC) included shoreline property owners.
- BoCC review was above adequate – listened to public and reviewed science.
- County has adequately addressed legal review re: 'takings'.
- SMP is result of much hard work by County staff, consultants, residents, Planning Commission (PC), BoCC, and Ecology staff.
- Support periodic SMP updates to allow for changes in resources, science, economy.
- Government plays important role to moderate between private interests and the public good.
- ECY should ignore the fear-based hysteria that was evident at the public hearing.
- ECY should avoid further delay in adopting the SMP.

Response to Issues of Public Interest:
The update process followed to prepare the LA-SMP complies with statutory and administrative requirements, including, but not limited to RCW 90.58.100, -130, WAC 173-26-201 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The County exceeded state requirements for encouraging participation by interested parties through advisory committees, news releases, web and email notices, several direct mailings to shoreline property owners, and numerous public outreach events at locations around the County. To date, there have been four public comment periods that generated over 1,300 comment letters and/or verbal testimonies from citizens, organizations, agencies and tribes. The County has adequately evaluated the issue of 'takings' and the Program does not infringe on private property rights (see attached legal memos).

Public Access

Issues of concern about the LA-SMP included:

- SMP will limit public access to public waters.
- SMP will force public onto private property and cause litter/sanitary pollution/property damage.
- Increased public access will result in resource degradation since private property owners take better care of the land.
- Public access requirements are a 'taking' and should be compensated.
- Feeder bluff prohibitions ignore mitigation and engineering options.

Issues raised that support the LA-SMP included:

- Shorelines need to be open to everyone, not allow all uplands to be privately owned & preventing public access.

Response to Issues of Public Interest:
Articles 3.4, 6.3 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-221 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to public access are addressed throughout the Program. The current, accurate and complete science reviewed supports the public access policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, the Program reflects the broad policy goal of the Shoreline Management Act to encourage visual and physical access to public lands and waters while ensuring adequate protection of shoreline resources.

Residential Development

Many comments were received that pertained to various aspects of residential development. The bulk of those issues have been categorized under other topics in this review as appropriate.

Issues of concern about the LA-SMP included:

- Requiring a CUP for single family residential in Natural SEDs is illegal.

Response to Issues of Public Interest:
Articles 6.1, 8.8, 10.6 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-241 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to residential use and development are addressed throughout the Program. The current, accurate and complete science reviewed supports the residential policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, existing residential uses/structures are allowed to continue as is, unless/until any new use/development is proposed. Those existing structures that become non-conforming to the Program may be allowed some degree of expansion/enlargement provided impacts are addressed. Two special provisions recognize the preferred status of single family residential development and allow placement within the standard buffer area when site conditions might otherwise preclude such development. The Conditional Use Permit requirement for single family residential in the Natural designation is per administrative rule requirement. The County has exercised its legislative discretion in proposing certain accessory dwelling unit (ADU) provisions to allow appropriate use and development while ensuring adequate protection for shoreline resources.

Restoration

Issues of concern about the LA-SMP included:

- Neither SMA nor GMA require restoration.
- SMP shouldn't require restoration.
- SMP requires restoration to pre-settlement conditions.
- Restoration Plan isn't parcel-specific.

Response to Issues of Public Interest:
Articles 3.6, 7.8 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.515, -580, WAC 173-26-221 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to restoration are addressed throughout the Program. The current, accurate and complete science reviewed supports the residential policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, restoration is encouraged and sometimes required for more intensive development proposals. There is also an allowance for a 'mitigation credit' when restoration precedes a related development action.

Shore Armor/Stabilization

Issues of concern about the LA-SMP included:

- Bulkheads should always be allowed for single family residential (SFR) and appurtenances.
- Shore armor regulations are too broad and restrictive.
- Shore armor regulations are not based on science.

Issues raised that support the LA-SMP included:

- I support stricter standards for hard shore armoring.
- I support the reduction of hard shore armoring.
- I support non-structural shore stabilization.
- Beach armor only provides neatness, no natural productivity/discovery/fun/interest.

Response to Issues of Public Interest:
Article 7.8 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-231 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to shore armor and stabilization are addressed throughout the Program. The current, accurate and complete science reviewed supports the shoreline armor and stabilization policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, the Program allows for bulkheads to protect single family residential primary structures, but otherwise limits shore modifications to prefer non-structural stabilization over structural shore armor to allow appropriate use and development while ensuring adequate protection of shoreline resources.

Vegetation Conservation

Issues of concern about the LA-SMP included:

- SMP vegetation provisions are too strict.
- WAC doesn't specify 'native' when requiring maintenance of shore vegetation.
- Native vegetation doesn't adequately mitigate impacts.
- SMP should recognize that shoreline views add value to residential development.
- Limiting view maintenance is a property rights infringement.
- The 25% tree removal limit isn't based on science.
- SMP won't allow removal of blackberries/weeds.
- SMP won't allow protection from fire danger.
- The 'hazard tree' provisions are inadequate.
- Some tree topping should be allowed for unique cases.

Issues raised that support the LA-SMP included:

- Shoreline trees need protection.
- I support responsible trimming/pruning.
- Native vegetation is important for bluff stability, water quality, habitat.
- Bluff-top non-native vegetation is high maintenance and poor performing.
- Previous bluff damage was caused by the cutting of upland trees.

Response to Issues of Public Interest:
Article 6.4 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-221 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to vegetation conservation are addressed throughout the Program. The current, accurate and complete science reviewed supports the vegetation conservation policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, the Program requires and encourages maximizing native vegetation through retention and replacement, removing non-native invasive vegetation, reducing the use of chemicals, and clarifies that views may not necessarily be unobstructed. Existing lawns and landscaping may continue to be maintained as is, unless/until new or expanded lawns/landscaping are proposed. Some activities are exempted from the provisions to allow for appropriate use and development while ensuring adequate protection of shoreline resources.

Water Quality/Quantity

Issues of concern about the LA-SMP included:

- City residents are polluting Puget Sound, not county residents.
- Stormwater runoff and chemical use are the problem.

- Septics are not the problem.
- Septics are the problem, sewers the solution to Puget Sound.
- Septics/sewage pollution is the problem.
- Ecology didn't prevent pollution from an aluminum plant in Bellingham Bay decades ago so don't trust them now.

Issues raised that support the LA-SMP included:

- Dumping chemicals and waste into Puget Sound will harm the kelp that produces oxygen.

Response to Issues of Public Interest:
Article 6.5 and other provisions of the LA-SMP comply with statutory and administrative requirements, including, but not limited to RCW 90.58.020, -100, WAC 173-26-221 and as documented in the SMP Submittal Checklist and Jefferson County Resolution #77-09. The general policies of 'no net loss', cumulative effects, precautionary principle, and mitigation sequencing as related to water quality and quantity are addressed throughout the Program. The current, accurate and complete science reviewed supports the water quality policy decisions reflected in the LA-SMP as the logical approach to comply with RCW and WAC requirements. In general, the Program does not directly regulate septic systems other than to require that they must meet all applicable health and other standards. The Program also prevents water pollution by requiring non-toxic materials when in contact with water, disallowing effluent discharge to ground or surface waters and by encouraging pervious materials and other low impact development practices to allow for appropriate development while ensuring adequate protection of shoreline resources.

Summary & Conclusions

The comments summarized above are generally reflective of the broad spectrum of public input that the County received throughout the SMP update process. Prior to the state-wide public comment period, the County received similar comments on these issues as well as other topics including boathouses, commercial development, dredging, historical, archaeological, cultural, scientific and educational resources, industrial/port development, in-stream structures, recreation, signs, transportation, use table, and utilities. The County attempted to address public comments and questions received throughout the update process in myriad ways such as preparing Frequently Asked Question (FAQ) Handouts (see May 27, 2010 version attached), providing frequent website and email updates, and conducting numerous public outreach events. In doing so, the County complied with the statutory mandate and worked in good faith to protect the public interest in shorelines of the state consistent with state law.

To support and augment staff work on the update project, the County hired two consulting firms - ESA Adolfson and Battelle Marine Sciences Laboratory. Under staff direction, the consultants have assisted

with technical analyses and the resulting preparation of proposed shoreline goals, policies, designations and regulations. Washington Department of Ecology staff also provided technical analysis to support the County's scientific review of shoreline and ecosystem resources. As a result, the County has prepared key documents that serve as technical supplements to the updated SMP proposal, including the *Final Shoreline Inventory and Characterization Report*, the *Final Shoreline Restoration Plan*, and the *Cumulative Impacts Analysis*.

These technical reports were prepared in consultation with two advisory committees consisting of broad representation from stakeholder agencies, tribes, non-governmental organizations, County Planning Commissioners and the general public. The Shoreline Technical and Shoreline Policy Advisory Committees also reviewed proposed SMP policy and regulatory provisions. During the three years of committee involvement, staff also made frequent and iterative efforts to inform and seek input from citizens, affected property owners and other interested parties. Because the County greatly values public input as important to the process of government, SMP public involvement efforts far exceeded the state requirements and provided ample opportunity for citizen participation. County staff and consultants considered the committees' input along with informal public comments in preparing a Preliminary Draft SMP proposal for formal public review.

Over the course of seven months, the Planning Commission held weekly meetings that were open to the public in order to review the Preliminary Draft SMP proposal and conducted two comment periods to provide additional citizen input opportunities. The Planning Commission duly considered the formal public comments in preparing their final recommendation to the Board of County Commissioners.

The Board of County Commissioners hosted a public workshop and provided another public comment period then reviewed and considered the Planning Commission recommendation, staff input and more citizen input. Over the course of two months, the Board conducted some 30 hours of deliberation delving into details noted in the public comment record. The County firmly holds that a high level of public involvement and scrutiny is both needed and desired for issues of such importance. The SMP is a local program designed to balance the diverse values and varied opinions of the community in a proposal that fully satisfies legal requirements. The County is grateful to all parties who participated and thanks everyone for sharing their perspectives to help shape the future of local lake, river/stream and marine shorelines.

As a result of considering all the evidence, the Board accepted most of the Planning Commission recommendations, revised some provisions for legal consistency and/or for clarity, and opted to exercise their legislative authority on a variety of issues such as geoduck aquaculture, finfish and net pen aquaculture, mining, mooring buoys, accessory dwelling units, common line buffers, non-

conforming uses/structures, and public transportation infrastructure. Finally, the Board adopted Resolution #77-09 to submit the *Locally Approved SMP* (LA-SMP) to the state for final review and approval.

In preparing this responsiveness document, staff conferred with the Board during three public sessions (two County Administrator Briefings and one Regular Agenda) to receive their feedback on draft versions. Upon finding no new issues of public interest not already considered, the Board's previous decision on the LA-SMP stands after careful consideration of all of the comments received to date, including those obtained during the state-wide public comment period, and the extensive legislative record. Existing supplemental documents establish an extensive record of conditions and needs, support the LA-SMP as compliant with the RCW and WAC, address the issues raised by public comment, have been previously submitted to Ecology and are hereby incorporated by reference, including:

- Final Shoreline Inventory and Characterization Report
- Final Shoreline Restoration Plan
- Cumulative Impacts Analysis
- Consistency Report
- Integration Strategy
- Bibliography of Scientific and Technical Information Considered

The County concludes the update process and submitted LA-SMP are consistent with statutory and administrative rule requirements.

Attachments

1. May 2010 Frequently Asked Questions (FAQ) Handout
2. September 2009 Buffer Science Summary Handout
3. February 2010 Memo on private property rights/takings
4. July 2010 Memo on takings analysis

FREQUENTLY ASKED QUESTIONS: Shoreline Master Program Update

***Issued**: May 27, 2010*

For the past several years, Jefferson County has been working to update the existing Shoreline Master Program (SMP) to meet state requirements. The process has involved citizens, stakeholder organizations, government agencies, tribes, appointed and elected officials and is now at the final state review and approval phase. The following questions and answers are related to the most current version of the document – the December 2009 Locally Approved Shoreline Master Program (LA-SMP). Please note that additional changes could occur prior to final adoption by ordinance. This document is available at the Department of Community Development (621 Sheridan St. Port Townsend, WA 98368) or online at www.co.jefferson.wa.us.

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GENERAL

Is the new SMP currently in effect?
No. The *Locally Approved SMP* (LA-SMP) is under state review by the WA Department of Ecology. After the comment period ended May 11, Ecology is considering the public input and reviewing the document for consistency with state requirements. Then they'll notify the County of their decision. The state may require changes prior to final adoption. Formal action by the Board of County Commissioners to adopt by ordinance will be the final step making the new SMP effective.

Where does the SMP apply?
Shoreline jurisdiction includes approximately 200' from the ordinary high water mark on certain lake, river/stream and marine shores in Jefferson County. To qualify, lakes must be over 20 acres in size, rivers/streams must have a mean annual flow rate of 20 cubic feet per second (cfs), and all marine shorelines from ordinary high water out to the County line. However, there is no SMP jurisdiction on federal or tribal lands.

The total is over 500 miles of shoreline, including about 22 miles of lake shore, 238 miles of river/streams and over 250 miles of marine shore. Shoreline jurisdiction also includes the river deltas, estuaries and wetlands associated with shorelines, even if those features are more than 200' away from the ordinary high water mark. The approximate upland jurisdictional area is shown in the LA-SMP Appendix A maps that depict shoreline designations. Also see the ordinary high water mark section below, shoreline environment designations section below, and Figure 1. at the end of this document. *[LA-SMP Reference: Article 4 Jurisdiction; and Appendix A maps]*

To what shoreline activities will the new SMP apply?
The SMP applies to all shoreline activities, whether they require any type of permit or not. This said, there are allowances that existing uses/structures may continue 'as is', while new use and development will be subject to the new

provisions. Proposed use and development must also meet all other applicable code requirements, such as stormwater, septic, building, etc. *[LA-SMP Reference: Article 1 - Introduction]*

Where is the ordinary high water mark (OHWM)?
The interface between land and water is dynamic by nature, with the ebb and flow creating constant change. However, the state Shoreline Management Act identifies the ordinary high water mark location by determining where there is physical evidence in the soil and vegetation. The OHWM is not mapped and local jurisdictions often make site visits to determine the on-the-ground location. Should the site prove difficult, or if the location is disputed, WA Department of Ecology has final authority. For general conversation, OHWM location along marine shores is approximately the high tide line, and along freshwater shores is approximately the usual high water level.

What is the 'no net loss' standard?
The state SMP Guidelines (WAC 173-26) require that local master programs must include policies and regulations designed to achieve no net loss (NNL) of ecological functions. This does not mean no adverse impacts are allowed, but rather the overall condition of shorelines must not decline from the established baseline. The shoreline inventory and characterization work establishes the baseline of shoreline conditions. However, adverse impacts need to be avoided, minimized or compensated for through replacement or mitigation. The NNL standard is applicable at the project scale as well as at the programmatic scale so that both individual actions and the SMP as a whole must comply.

What does 'locally approved' mean?
Local approval of the SMP is the first of three steps that must occur before the SMP has the force of law in Jefferson County. Local approval via County Resolution # 77-09 occurred on December 7, 2009. Ecology is currently reviewing the LA-SMP and must provide a decision to deny, approve the SMP or approve with changes. The SMA states that a "master program …. shall become effective when approved by the department," meaning Ecology. After Ecology approval, the final step will be adoption of the SMP via a County Ordinance, giving the SMP the effect of local law.

How long will Ecology approval take?
Ecology review started with the March 1, 2010 submittal of the LA-SMP and could take a few to several months for a decision. The process and timeline are defined by SMP Guidelines (WAC 173-26-210). The key steps of the state review include a public comment period, review for consistency with state requirements, and establish findings and conclusions, provide the County with a decision to approve/deny, and come to agreement with the County on any needed changes to the LA-SMP. By statute, Jefferson County must be in compliance before the December 1, 2011 deadline set for us by state law.

Do the rules surrounding "best available science" apply when updating the SMP?
No. The term 'best available science' (BAS) is from the state Growth Management Act (GMA), which specifically states the BAS standard is not applicable to the adoption of an SMP. However, both the SMA and the SMP Guidelines require use of "natural and social sciences and the environmental design arts", "all plans, studies inventories and systems of classification made or being made by federal, state, regional or local agencies …. or by organizations dealing with the pertinent shorelines of the state", and "the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern."

The County has been diligent in using science to determine the text of the SMP. The reader is referred to the November 2008 Final Shoreline Inventory and Characterization Report, the October 2008 Final Shoreline Restoration Plan, and the February 2010 Cumulative Impacts Analysis.

Why update the current Shoreline Master Program?
The state Shoreline Management Act (SMA) requires all jurisdictions to develop or amend a Shoreline Master Program (SMP) to comply with the current regulations adopted by the WA State Department of Ecology (Ecology) in 2003. The state Legislature adopted a timeline for all jurisdictions, indicating the date by which each local government had to comply. Jefferson County's deadline is December 1, 2011.

Why can't the County simply make minor changes to its current SMP?
The County's first SMP was adopted in 1974. After revisions, the current SMP was adopted in 1989 with the last of several minor amendments made in 1998. Much has changed over time – population, development patterns, shoreline conditions and our scientific understanding of how shorelines work. Further, Jefferson County adopted a Growth Management Act Comprehensive Plan in 1998 (readopted in 2004) that has goals and policies for the shoreline that must be reflected and implemented in a new SMP. Minor revisions to the current SMP will not accomplish the task of compliance with 2003 state requirements and consistency with the community vision represented by the County's Comprehensive Plan.

What does the LA-SMP document contain?

Introduction	Sets the general context and applicability for shoreline planning and management	Article 1
Definitions	Defines many terms used in the SMP and in the review and permit issuance process	Article 2
Goals	General framework for shoreline management consistent with the Comprehensive Plan and state requirements	Article 3
Policies	Broad statements of intent to guide actions of the county and shoreline developers	Articles 4, 5, 6
Shoreline Environment Designations (SED)	Categories to help tailor regulatory provisions to existing shoreline conditions	Article 4
Regulations	• General regulations – apply everywhere, to all uses • SED Regulations – determines which uses are allowed, prohibited or allowed only with conditions based on shoreline conditions • Specific Use Regulations – apply to uses and modifications	Article 6 Article 4, 7 and 8 Article 7 and 8
Procedural & Administrative standards	Provisions to establish how the SMP is implemented – exemptions, noticing requirements, permit criteria, appeal processes, penalties, and exceptions to standard provisions	Articles 9 and 10
Official Shoreline Map	Set of 20 graphic images to represent where SEDs are applied and approximate extent of shoreline jurisdiction	Appendix A
Critical Areas Ordinance (CAO)	Title 18.22 of the Jefferson County Code (JCC 18.22) is adopted by reference for implementation within shoreline jurisdiction. JCC 18.22 is included as a convenience for the 'stand-alone' version of the LA-SMP, and to avoid including duplicative text when the SMP regulatory provisions are codified in the JCC.	Appendix B

EXISTING USE & DEVELOPMENT

Will I have to relocate my existing home outside the new buffer?
No. Existing structures that have been legally established can stay right where they are, even if they're inside the new buffer. Most new repair and maintenance activities for these 'grandfathered' structures will be allowed through a streamlined administrative process for permit exemption approval. Also see the buffers & setbacks section below. *[LA-SMP Reference: Article 9 – Exemptions]*

Can I still mow my lawn, tend my garden, and maintain my existing landscaping?
Yes. Any use/development legally existing before the new SMP takes effect can continue 'as is'. However, if you want to expand your lawn, add new garden beds, or increase your landscaping, the new provisions may apply depending on the specifics of your case. In general, the new SMP promotes improving native vegetation conditions and limiting use of chemicals along lake, river and marine shores. Also see the vegetation section below. *[LA-SMP Reference: Article 6.4 – Vegetation Conservation; and 6.5 Water Quality]*

What does 'non-conforming' mean?

Non-conforming ≠ Illegal

The term 'non-conforming' means that a use/structure was in compliance with all codes when it was established, but no longer meets code requirements because the codes have changed – like the term 'grandfathered'. Non-conforming is not the same as illegal. Non-conformity is often due to location where buffer and setback requirements are not met. Many existing shoreline uses/structures that were legally established before the first Jefferson County SMP (1974) have been non-conforming for decades with little consequence. *[LA-SMP Reference: Article 2 - Definitions]*

What if my house burns down?
If a legal non-conforming structure is damaged by natural disaster, it may be rebuilt in the same location and to the same configuration, as long as certain criteria are met. For example, the rebuilt structure must not be expanded and permitting time limits must be met. The few exceptions are if rebuilding would damage the shoreline or adjacent property, or if the location is in/over water or geologically unsafe. *[LA-SMP Reference: Article 10.6 Non-Conforming Development]*

Can I remodel my non-conforming home?
Yes. The SMP usually doesn't apply to interior remodels, but add-ons, expansions and enlargements must comply with the Program. Existing homes that become non-conforming with the new SMP may be allowed to expand/enlarge the footprint inside the new buffer area if certain criteria are met –

- minor expansion with only an administrative shoreline exemption approval;
- moderate expansion with a conditional use permit; and
- substantial expansion with a shoreline variance approval.

Also see Figure 3 at the end of this document. *[LA-SMP Reference: Article 10.6 Non-Conforming Development]*

NEW RESIDENTIAL DEVELOPMENT

Can I build a new home on my shoreline property?
Yes. Residential development is not water-dependent but is a preferred use of shorelines when done in a manner that is consistent with requirements. New homes:

- Must locate outside standard buffer, or adjust the buffer with one of the six options provided
- Single family homes will be allowed on non-conforming lots that are too small for the standard buffer
- Will be allowed along Natural designated shorelines, where currently prohibited

[LA-SMP Reference: Article 8.8 Residential]

What if my lot is too small for the standard buffer?

One of the six buffer adjustment options is the Non-conforming Lots standards for single family homes. This provision allows modest homes to be built on small lots inside the standard buffer area by using prescriptive criteria without a shoreline variance or conditional use permit. The total footprint (i.e. home, garage, lawn/landscaping – septic drainfield not included) must be less than 2,500 sq. ft. with additional area allowed for a driveway. The home must be sited in the least environmentally damaging location on the lot. Generally, a streamlined administrative permit exemption approval process would be used, unless the location is along a Natural designated shoreline.

BUFFERS & SETBACKS

What will the new standard buffers be?
Standard shoreline buffers of 150' (marine and rivers) and 100' (lakes) are proposed. The current Critical Areas Ordinance already requires a 150' buffer along fish & wildlife habitat and Type 'S' streams. Both requirements must be met by new development.

Standard Shoreline Buffers	
Marine	150'
River/stream	150'
Lake	100'

However, if your lot is part of a plat that establishes the waterfront setback, the plat setback will prevail. Similarly, if you have already have an issued permit or Site Plan Approval Advance Determination (SPAAD) vested before the new SMP takes effect, the buffer/setback established by the permit/SPAAD will be honored.

Can the standard buffer be adjusted?
Yes. There are six options to adjust the buffer if certain criteria are met. Two options are specifically for non-conforming lots. Buffer Reduction and Buffer Averaging allow up to a 25% reduction of the standard buffer. The CASP option allows property owners to avoid the standard buffer by developing protective measures specifically tailored to their site.

Buffer Adjustment Options
1. Buffer Reduction
2. Buffer Averaging
3. Critical Area Stewardship Plan (CASP)
4. Non-conforming Lots (SFR only)
5. Common Line Buffer (SFR views only)
6. Shoreline Variance

Single family residential (SFR) on lots that are too small for the standard buffer may also use the Non-conforming Lots standards or the Common Line Buffer (for protecting views) options instead of the standard buffer. And for unique cases that don't find remedy with the above options, a Shoreline Variance may provide relief. Also see Figure 2 at the end of this document. *[LA-SMP Reference: Article 6.1 Buffers; JCC 18.22 Critical Areas]*

Are there both a buffer *and* a setback required?
Yes. Buffers are intended to protect natural resources and shoreline functions. A 10' setback from the buffer is also required to ensure the buffer isn't damaged by construction or maintenance activities. A 5' side-yard setback is also required along property lines, and road frontage setbacks may be required by other County codes. *[LA-SMP Reference: Article 6.1 Buffers; and 6.6 Setbacks]*

Are the buffers a 'no touch' zone?
No. The new SMP will require keeping buffers well vegetated with native plants, however:
- 20% of the buffer area can be 'active use' (i.e. lawn, pathway, garden/landscaping)
- Some vegetation trimming/removal will be allowed for views
- Water dependent uses/structures (e.g. boating facilities) can be located in the buffer if criteria are met
- Some vegetation management activities will be permitted as exempt from the standards

[LA-SMP Reference: Article 6.1 Buffers; and 6.4 Vegetation Conservation]

How were the proposed buffers determined?
Buffers are based on 1) State requirements and 2) a review of science as documented in the 2008 Final Shoreline Inventory & Characterization Report. Before March 2010, the state required that protection of critical areas in shoreline areas must be equal to the protection of critical areas outside shorelines.

Because the County's Critical Areas Ordinance requires a 150' buffer for Fish & Wildlife Habitat Conservation Areas, establishing a shoreline buffer of 150' meets the requirement for equal protection. In addition, the range of science reviewed included over 200 sources, of which more than 90 papers addressed the marine environment. This technical review showed that buffers between 15' and 450' are needed to protect shoreline functions and values. As of March 2010, the state now requires updated SMPs to include protection of critical areas in shoreline jurisdiction that meets the 'no net loss' standard. *[LA-SMP Reference: November 2008 Final Shoreline Inventory & Characterization Report]*

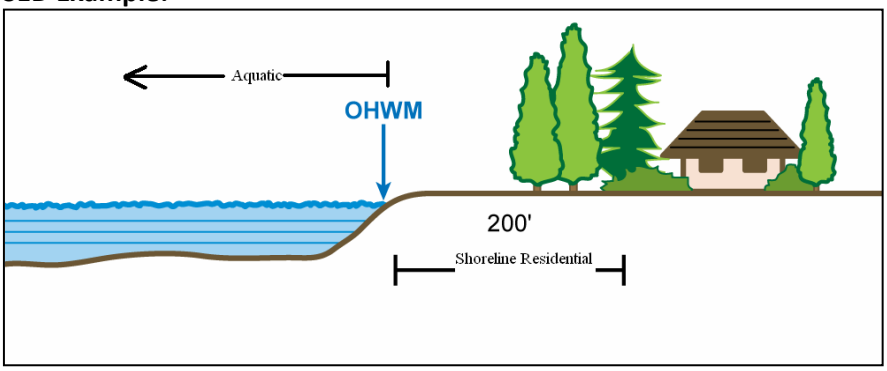
Why not 50' buffers like in Port Townsend?
Port Townsend is the only incorporated city in Jefferson County and has its own SMP. City shoreline buffers range from 50' to 200' depending on shoreline conditions. There is quite a difference between the City's heavily developed urban waterfront and most of the County's rural shorelines; therefore the same buffers may not be appropriate. Further, the review of science did not support a 50' standard buffer as adequate for County shorelines, nor would 50' have been equivalent to the 150' critical area buffers. *[LA-SMP Reference: Article 6.1 Buffers; and November 2008 Final Shoreline Inventory & Characterization Report]*

SHORELINE DESIGNATIONS

What is a Shoreline Environment Designation?
Shoreline Environment Designations (SEDs) are similar to a zoning overlay, but do not change land use zoning (e.g. Rural Residential, Rural Village Center, Commercial Forest, etc). SEDs categorize existing shoreline conditions so the regulations can be tailored and sensitive areas get the most protection for natural resources. This helps avoid a 'one size fits all' approach and allows for development density and intensity to be appropriate for the location.

Above OHWM	Below OHWM
Natural	Priority Aquatic
Conservancy	Aquatic
Shoreline Residential	
High Intensity	

SED Example:



Two shoreline designations are assigned to every stretch of shoreline under SMP jurisdiction – one for the on-land portion above the ordinary high water mark (OHWM), and one for the in-water portion below OHWM. On land the four options are: Natural, Conservancy, Shoreline Residential, and High Intensity. In the water the two options are Aquatic

or Priority Aquatic. *[LA-SMP Reference: Article 4 Jurisdiction and Environment Designations]*

What do the shoreline designations mean?

- Check the Appendix A maps to see what designations apply to your area
- Look at the Article 4 Allowed Use Table for a 'quick glance' overview of what's allowed/prohibited based on the designation
- Read the details in Articles 6, 7, and 8 for specific criteria and standards

[LA-SMP Reference: Article 4 Jurisdiction and Environment Designations]

How were the shoreline designations determined?

The SEDs for each segment of shoreline were established based on a review of many factors including:

- Physical conditions
- Biological conditions
- Existing development – type and density
- Current zoning – anticipated future use/development

This technical information was compared with the purpose and criteria for each SED to find the best match. The state guidelines provide purpose and criteria for 5 of the 6 SEDs proposed by Jefferson County. The Priority Aquatic designation was created by a team of County staff, consultants and advisory committees for the purpose of protecting specific areas most important to salmon and shellfish resources. *[LA-SMP Reference: Article 4 Jurisdiction and Environment Designations]*

Is there a proposed increase in the amount of shoreline designated Natural?

Yes. In east Jefferson County, approximately 40% of all shorelines – lake, river and marine combined - are proposed to be designated Natural. The existing SMP is based on outdated purpose and criteria definitions from the state so that currently the Natural designation is applied sparingly to areas that are unique, fragile, unaltered or hazardous. The newer state guidelines include revised requirements for SED purposes and criteria that result in broader geographic application of the "Natural" SED.

Our community is fortunate to have many areas that are 'mostly ecologically intact' or 'minimally disturbed'. These most sensitive areas need the greatest protection to ensure shoreline resources stay healthy. For example, in order to allow some development in sensitive areas but limit the density and intensity so that ecological impacts are minimized, single family homes may be permitted in the Natural designation, but accessory dwelling units (ADUs) are prohibited in such areas. Also see the existing use and development section above. *[LA-SMP Reference: Article 4 Jurisdiction and Environment Designations]*

BEACH ACCESS

Will the new SMP prevent me from using my own beach?

No. The SMP does not change your ownership of shoreline property. As long as you own the tidelands or waterfront area, you can certainly enjoy your beach. However any use/development activity on that beach must comply with the SMP, whether a permit is required or not.
[LA-SMP Reference: Article 7.1 Beach Access Structures]

How will I get down to my beach?
Beach access structures like boardwalks, steps, stairways, stair towers and trams (cable lifts) are common means for accessing the shoreline. Beach access structures can be either private or public. To minimize unwanted effects on natural resources, provisions apply regarding location and design of beach access structures. For safety and environmental reasons, some properties will have view-only access to the shoreline.

Due to the sensitive nature of erosional bluffs (AKA 'feeder bluffs') all new beach access structures are prohibited from these areas to ensure shoreline functions are protected. In order to minimize the number of structures while serving greater number of people, public beach access structures may be permitted in sensitive areas, while private structures are not. In other areas, beach access structures will be permitted if they meet the development standards. *[LA-SMP Reference: Article 7.1 Beach Access Structures]*

Will the new SMP force me to allow the public on my private property?
While public access is a primary goal of the state Shoreline Management Act, it is not a blanket requirement for all shoreline use/development. Public access includes both visual and physical access and is intended to connect people to public lands and public waters. Public access does not allow trespassing on private property.

Some types of new development will require public access to be provided, but not for existing homes nor for new single family homes when part of new plat with four or fewer lots. There's also an option to provide required public access at an off-site location when on-site public access is infeasible. *[LA-SMP Reference: Article 6.3 Public Access]*

New Shoreline Development	Public Access Required?
• Single family residential with 1- 4 lots/units	No
• Single family residential with 5 or more lots/units • Private commercial or industrial developments • Projects by public entities (i.e. government, Port, utility district) on public lands	Yes – must provide physical public access to the shoreline, unless safety and environmental risks prevail.

VEGETATION MANAGEMENT

How does the new SMP address shoreline vegetation?
Some key policy concepts include:

- Maintain and establish native shoreline vegetation to ensure well-vegetated, stable shorelines that provide habitat and other ecological benefits and so that the composition, structure, and density of the plant community resemble a natural, unaltered shoreline as much as possible.
- Limited and selective clearing for views and lawns may be allowed when slope stability and ecological functions are not compromised, but landowners should not assume that an unobstructed view of the water is guaranteed.

Preferred	Not Preferred
Maintaining well-vegetated shorelines	Clearing vegetation to create views or provide lawns

Preferred	Not Preferred
Native plant communities	Non-native ornamental vegetation that requires use of fertilizers, herbicides and/or pesticides
Trimming and pruning	Removal of native vegetation
Structures and associated development are placed to avoid disturbance of established native plants, especially trees and shrubs	
Established areas of native plants are preserved to maintain slope stability and prevent surface erosion	Clearing and grading near bluff edges and other erosion- or landslide-prone areas
Removing invasive or non-native species and planting native species when doing so would improve ecological functions and processes	
Overhanging trees along shorelines to provide shading and other ecological functions	

Can any vegetation be trimmed or removed?
Yes. While the overall direction is to maintain existing native vegetation, some clearing and trimming may be allowed. Inside the buffer area, 80% of the buffer area must be kept as 'predominantly natural' while 20% can be 'active use' for lawns, pathways, landscaping, or other non-structural use. Within shoreline jurisdiction (both inside and outside the buffer), vegetation trimming and removal for view maintenance must meet the criteria with no more than 25% of a single tree or the canopy of a stand of trees removed. The exceptions are if/when safety or environmental impacts make vegetation clearing/trimming detrimental to people or shoreline resources.

Will all shoreline use activities have to meet the vegetation standards?
Some activities are not subject to the requirement to maintain all native vegetation, such as:

- Maintenance of landscaping (e.g. lawns & gardens) in existence before the new SMP (i.e. 'non-conforming use' or 'grandfathered');
- Trimming limbs/branches of trees/shrubs with trunk less than 3" diameter;
- Trails no wider than 5' for non-motorized use
- Hazard tree removals
- Removal of noxious weeds
- Harvest of wild crops (e.g. berry picking)

Further, the new SMP encourages landowners to voluntarily improve shoreline conditions by:

- Avoiding or minimizing the use of lawn/garden chemicals;
- Not dumping yard waste in the shoreline area (e.g. over the bluff/bank)
- Restoring and enhancing shorelines by
    - Removing non-native and invasive plants; and
    - Planting more native vegetation

[LA-SMP Reference: Article 6.4 Vegetation Conservation]

SHORE ARMORING

Will the new SMP prohibit all new bulkheads?
No, although non-structural 'soft' shoreline stabilization methods are preferred. New or expanded shore armor will be prohibited on lake shores, and in low-energy areas (bays, spits) where erosion is not a threat. Repair and maintenance of an existing bulkhead or other shore armor may be allowed with an exemption approval. Replacement of existing shore armor/stabilization may be permitted if documentation shows the erosion is due to currents/tides/waves, not drainage or bank stability issues.

New residential bulkheads may be allowed as an exemption as long as certain performance criteria are met. For example, new shore armor must be designed and constructed to allow surface water flow, to avoid any 'damming effect'. Materials used to construct new shore armor must be erosion resistant, non-toxic, and cannot be any sort of waste/debris (e.g. tires, concrete, old boats). Other types of shore armor or stabilization may be permitted as a conditional use where it is documented that a primary structure is in imminent danger, and may require a geotechnical study and mitigation for impacts. *[LA-SMP Reference: Article 7.8 Shoreline Armor and Stabilization]*

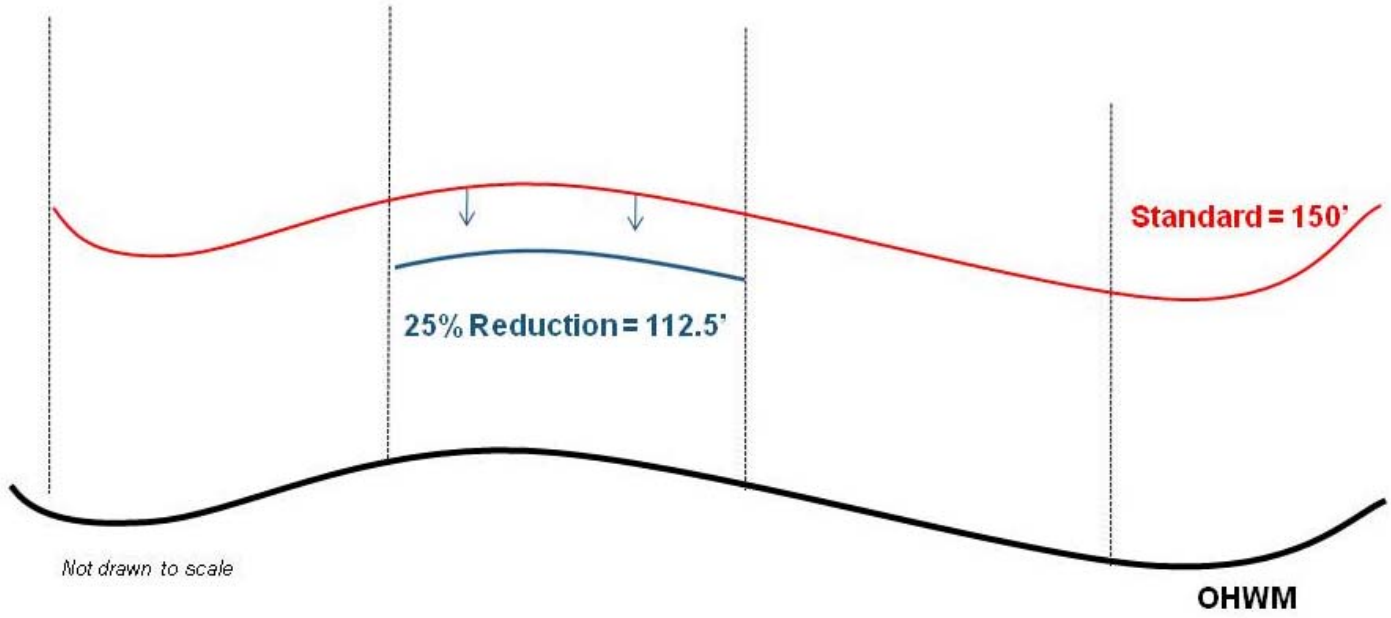
FIGURE 1. SMP Jurisdiction - Waterbodies Affected:

Marine	**Lakes**	**Rivers – East**
East - All shorelines of Puget Sound, Hood Canal and Strait of Juan de Fuca within Jefferson County, including bays, beaches, estuaries and river deltas. West – The SMP does not apply to federal or tribal lands/waters as is the case on the Pacific shore of Jefferson County	Anderson	Big Quilcene River
	Beausite	Chimacum Creek
	Crocker	Dosewallips River
	Gibbs	Duckabush River
	Leland	Fulton Creek
	Lords	Little Quilcene River
	Ludlow	Salmon Creek
	Mill Pond/Unnamed Lake	Snow Creek
	Peterson	
	Rice	
	Sandy Shore	
	Tarboo	
	Teal	
	Wahl	
Rivers - West		
Alder Creek	Hurst Creek	Nolan Creek
Anderson Creek	Kalaloch Creek	Owl Creek
**Bogachiel River*	Kunamakst Creek	**Quinault River*
Cedar Creek	Manor Creek	Salmon River
Christmas Creek	Maple Creek	Sams Creek
**Clearwater River*	Matheny Creek	Shale Creek
Deception Creek	McKinnon Creek	Snahapish River
Dowans Creek	Miller Creek	Solleks River
Elk Creek	Miller Creek (E. Fk.)	Stequaleho Creek
Goodman Creek	Minter Creek	Tacoma Creek
Hell Roaring Creek	Mosquito Creek	Willoughby Creek
Hoh River (S. Fk.)	Mud Creek	Winfield Creek
**Hoh River*	** = Shoreline of Statewide Significance*	

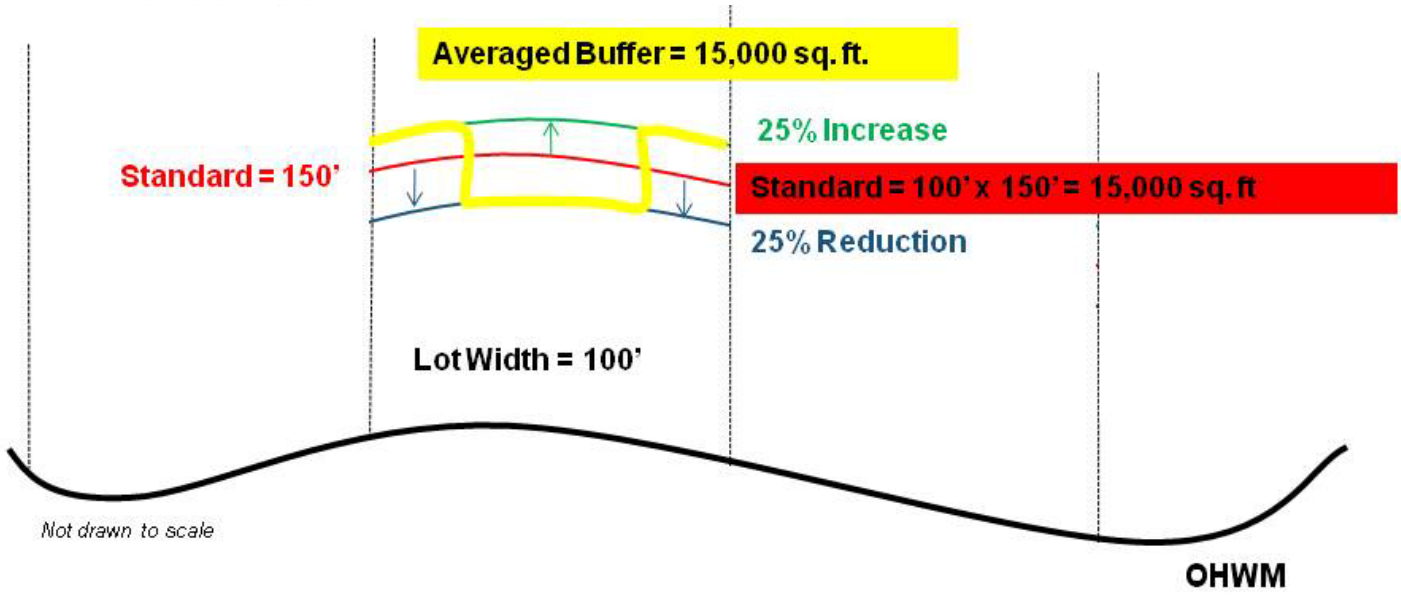
FIGURE 2. Buffer Adjustment Options

[LA-SMP Reference: Article 6.1 Buffers]

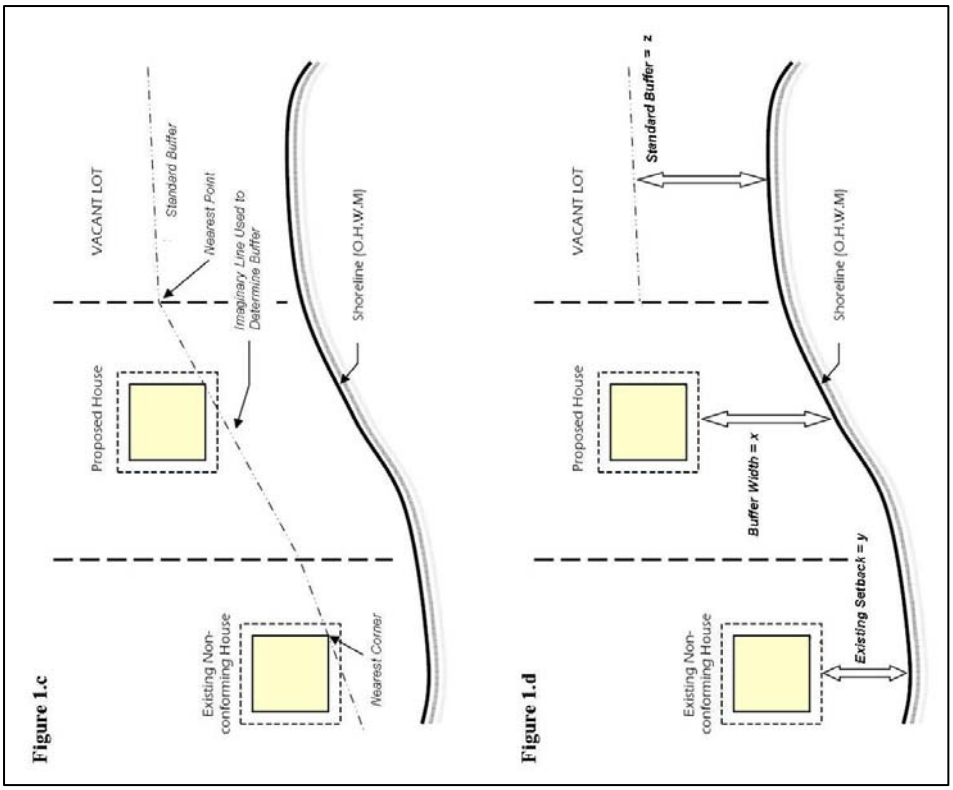
Buffer Reduction Example:

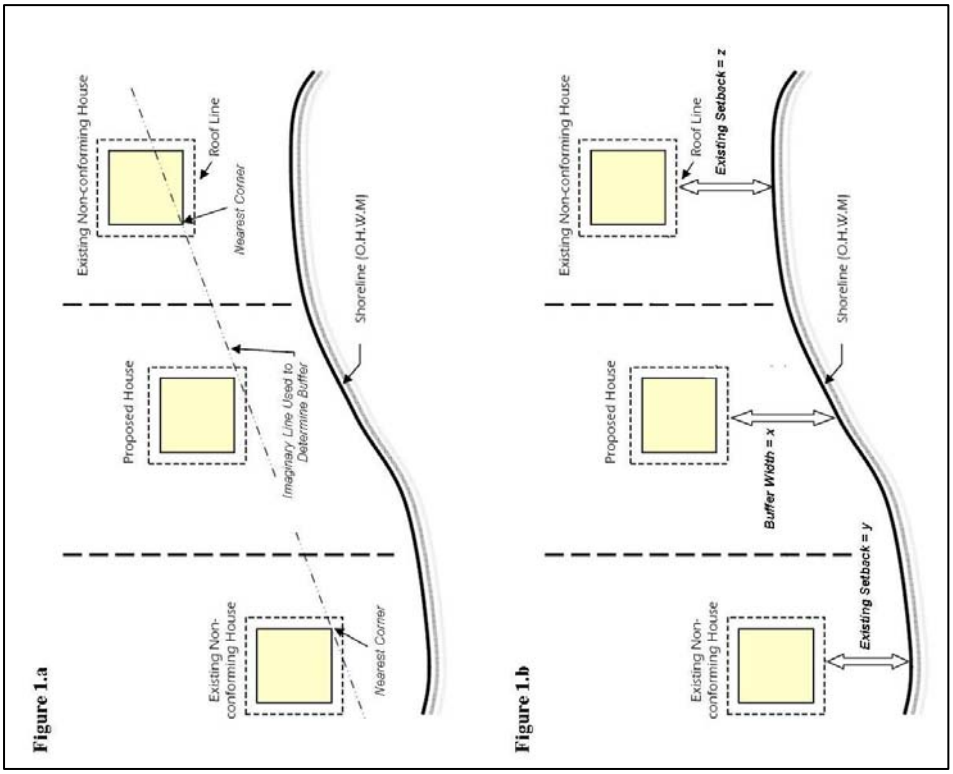


Buffer Averaging Example:



Common Line Buffer Examples:





Either draw a line between the two nearest points or calculate as
x = (y + z) ÷ 2

NOTE: *The information provided herein is intended to be general in nature.*
Case-by-case analysis may be required for site-specific answers.
Should any discrepancy exist between FAQ information and the LA-SMP, text of the proposed code shall prevail.

FIGURE 3. Expanding/Enlarging a Non-conforming Single Family Residence

Jefferson County Shoreline Master Program (SMP) Comprehensive Update
Locally Approved SMP (LA-SMP) Article 10.6

Expanding/Enlarging a Non-conforming Single Family Residence

LA-SMP Article 2 Definitions
Nonconforming structure means a structure which does not conform to the dimensional regulations of this Program, including but not limited to setback, buffer, height, lot coverage, density, and building configuration (Note: Nonconformity is different from and not to be confused with illegality.)

Single Family Residential Expand/Enlarge Footprint or Additional Appurtenance	Up to 10% of Footprint	11—25% of Footprint Or Up to 35' Height Limit	More than 25% of Footprint or Vertical Expansion or Adverse Effect on Critical Area or Views	Waterward Expansion or Height over 35', or Further Encroach on Critical Area or Side yard Setback
Criteria	• Landward expansion only • No lateral, waterward or vertical expansion • Do not locate in/over water • Do not threaten critical areas • Do not significantly impair shoreline views	• Landward or vertical expansion • No lateral or waterward expansion • Do not locate in/over water • Do not threaten critical areas • Do not significantly impair shoreline views • Do not increase the degree of non-conformity • Equivalent area of shoreline buffer to be enhanced with native vegetation	• Expand footprint more than 25% • Landward, lateral or vertical expansion • No waterward expansion • Adverse effects on critical areas • Obstruct view of adjacent development	• Waterward expansion • Further encroach into critical area • Further into side yard setback • Increase height over 35'
Permits	• Allowed w/o Conditional Use Permit or Shoreline Variance • Administrative review for consistency w/ criteria as part of SFR Exemption from Shoreline Substantial Development Permit	• Allowed w/o Conditional Use Permit or Shoreline Variance • Administrative review for consistency w/ criteria as part of SFR Exemption from Shoreline Substantial Development Permit	• Conditional Use Permit required	• Shoreline Variance required

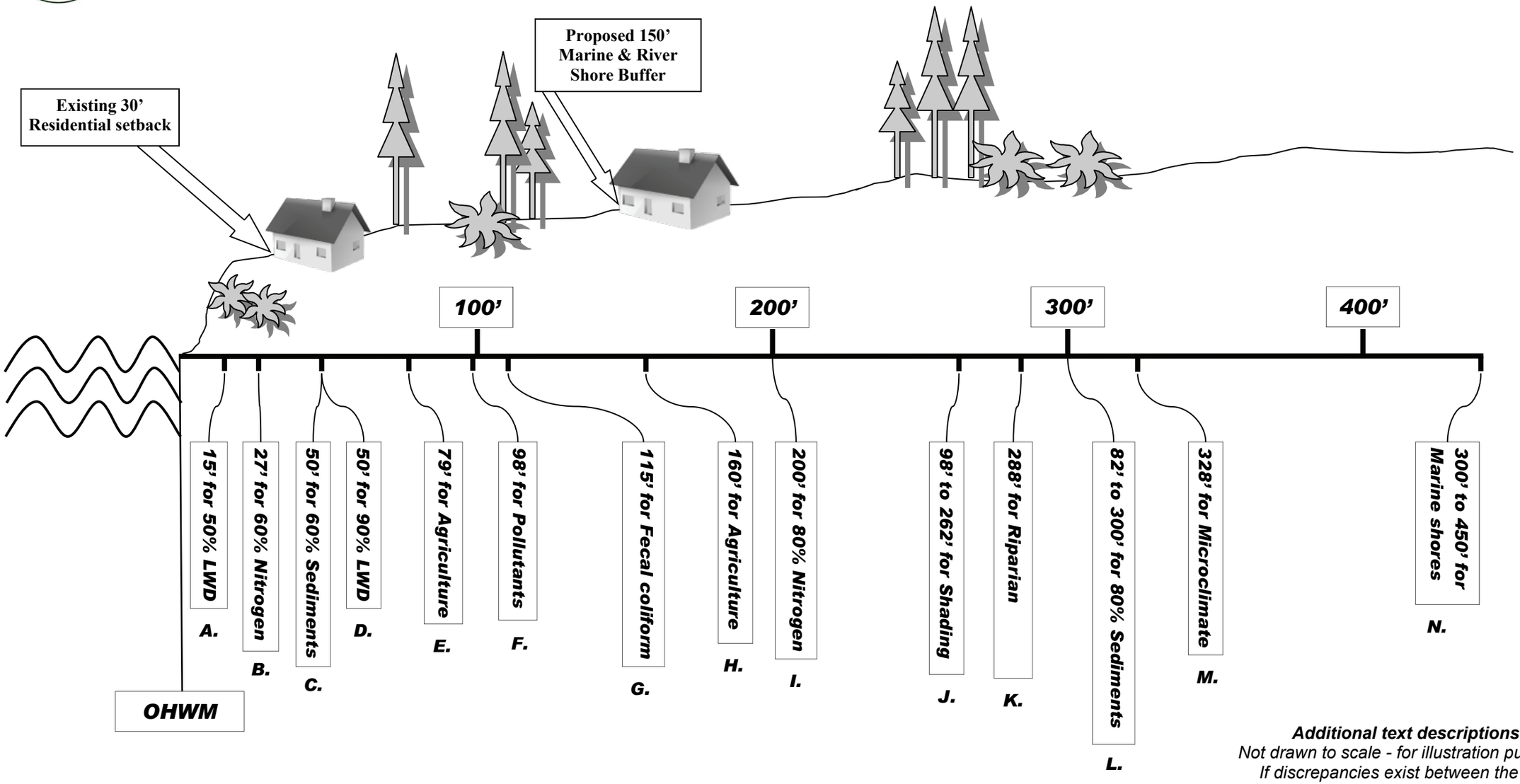
May 2010

NOTE: *The information provided herein is intended to be general in nature. Case-by-case analysis may be required for site-specific answers. Should any discrepancy exist between FAQ information and the LA-SMP, text of the proposed code shall prevail.*

Jefferson County Shoreline Master Program (SMP) Comprehensive Update

Buffer Science Summary

Source: Chapter 5.2 of the November 2008 *Final Shoreline Inventory & Characterization Report*



Additional text descriptions on reverse.
Not drawn to scale - for illustration purposes only.
If discrepancies exist between the text and this diagram, the text shall prevail.
9-2-09

Buffer Science Summary - page 2

Source: Chapter 5.2 of the November 2008 *Final Shoreline Inventory & Characterization Report*

Excerpted Text Descriptions

A. **Large Woody Debris (LWD):** In riverine environments, more than half of all large woody debris is recruited from within 15 feet of streams.
B. **Nitrogen:** According to the literature, buffer widths as small as 27 feet could reduce nitrogen by as much as 60 percent, while widths up to 200 feet would be required to reduce nitrogen by 80 percent (Desbonnet et al., 1994, in Pentec, 2001).
C. **Sediment:** In general, a 50-foot buffer is estimated to be approximately 60 percent effective at removing sediments, while an 82- to 300-foot buffer would remove approximately 80 percent of sediment load (Brennan and Culverwell, 2004; Pentec 2001).
D. **LWD:** About 90 percent of all large woody debris comes from trees growing within about 50 feet of streams (Herrera, 2005).
E. **Agriculture:** Minimum buffer recommendations for controlling agricultural runoff are 79 feet for 20 percent slopes with slight erosion, and 160 feet for 30 percent slopes with severe erosion (Brennan and Culverwell, 2004).
F. **Pollutants:** Although sediment carried into nearshore marine environments will seldom be of a magnitude to significantly compromise water clarity, the minimum recommended buffer width for sediment control and pollutant removal is 98 feet (30 meters) (May, 2003).
G. **Fecal Coliform:** Control of fecal coliform inputs from agriculture or septic systems to acceptable levels for primary contact recreational use could be achieved by a 115 feet buffer (Young et al., 1980, in Pentec, 2001).
H. **Agriculture:** See 'E' above.
I. **Nitrogen:** See 'B' above.
J. **Shading:** Buffer recommendations range from 98 to 262 feet for natural temperature regulation and shading, or providing equivalent shading as a mature forest (May, 2003).
K. **Riparian Habitat:** For Washington State, the average width reported to retain riparian function for wildlife habitat is 288 feet (Knutson and Naef, 1997).
L. **Sediment:** See 'C' above.
M. **Microclimate:** The minimum recommended buffer for microclimate protection is 328 feet (May, 2003).
N. **Marine Shores:** Levings and Jamieson (2001) cite findings from the Canadian Ministry of Forestry in British Columbia recommending buffers of 300 to 450 feet for marine shores depending on the type of shore, wind conditions, and other factors.

Buffers protect shoreline ecological functions and processes, water quality and habitat:

- Nutrient cycling
- Groundwater recharge
- Soil stability
- Erosion
- Siltation
- Soil-bound contaminants
- Particulate nutrients, metals, organic chemicals
- Fecal coliform bacteria
- Feeding/foraging
- Perch/refuge
- Breeding & Nesting
- Microclimate for plant growth/ decomposition
- Prey production
- Migration/travel corridor
- Habitat structure
- LWD = large woody debris

Standard Buffers	Planning Commission Recommendation (7/15/09)	DCD Staff Recommendation (8/20/09)
Lake Shoreline	100'	100'
River Shoreline	150'	150'
Marine Shoreline	Natural = 150' Conservancy = 150' Shoreline Residential = 50' High Intensity = 50'	150'

NOTE: Options to adjust standard buffer width given specific criteria include: 1) Buffer reduction, 2) Buffer averaging, 3) Non-conforming Lots Standards, 4) Common Line Buffer, 5) Critical Area Stewardship Plan, and 6) Shoreline Variance.

Does the LA-SMP unconstitutionally infringe upon private property rights?

After asking the above-listed question of the local government submitting an SMP for approval, Ecology refers the reader to the State Attorney General's Advisory Memorandum entitled "Avoiding Unconstitutional Takings of Private Property." It is a Memo created by the State Attorney General in December 2006. Ecology doesn't seem to mandate use of that Memo.

That Memo from the State Attorney General asks six questions in this regard. It is instructive solely for a "macro" view of the complex and nebulous legal arena of "takings." Jefferson County does not concede that the State AG has prepared the only or the best way to analyze whether a local regulation rises to the level of an unconstitutional "taking." The issue of whether a "takings" has occurred is much more likely to be crystallized in the context of an SMP permit or SMP permit condition. In fact, most of the familiar "takings" cases arise not from the enactment of a local regulation but by the application of a regulation to a particular landowner or applicant.

Therefore, and for illustrative purposes only, Jefferson County briefly and generally answers the six AG questions. See the matrix on the next two pages.

Nor is the matrix the entire response of Jefferson County to the question listed above. Please refer also to the listed sections of the LA-SMP where constitutional considerations and limitations are either reflected or discussed.

Question from the AG Advisory Memorandum	Answer to question with respect to LA-SMP
Will the new LA-SMP amount to a permanent or temporary physical occupation of private property?	No, since the government is not physically occupying any privately owned land. See ***Loretto v. Teleprompter Manhattan CATV Corp***., 458 U.S. 419 (1982).
Will the new LA-SMP deprive the owner of all economically viable uses of their property?	No, because the LA-SMP, as a creature of the SMA, fosters all reasonable and appropriate shoreline uses, including, for example, increasing both recreational opportunities and public access to the shorelines as well as allowing residential uses at the shoreline. See also the response to the FIFTH question in this matrix.
Will the new LA-SMP deny or substantially diminish a fundamental attribute of property ownership?	No, because after SMP adoption the landowner will still be the property owner and will continue to have the authority to exclude others from the property and to sell the property. Since those are the three "fundamental attributes" of property ownership that cannot be destroyed, the LA-SMP passes constitutional muster with respect to this question.
Will the new LA-SMP require a property owner to dedicate a portion of their property to a public use or grant an easement?	Since the LA-SMP regulations derive from the most current, accurate and scientific and technical information available, the LA-SMP satisfies the "nexus" and "rough proportionality" tests laid out in case law by the U.S. Supreme Court. Some specific uses are required to provide public access (either visual or physical access) as part of a proposed shoreline development, but there are numerous caveats that allow the provision to be waived when safety, cultural, cost, environmental, use conflicts or other issues are evident. The LA-SMP regulations at Article 6.3.B (p. 6-16 to 6-18) clarify that the requirement to provide access applies to multi-family residential/subdivisions, public entities, and commercial/industrial uses but does not apply to single family home development. When required, access may also be provided off-site if not feasible on-site.

Will the new LA-SMP have a severe impact on the landowner's economic interest?	This question asks about so-called "regulatory takings." For such allegations refer to the balancing test found in ***Penn Central Transportation Co. v. New York City***, 438 U.S. 104 (1978). When an entire property impacted by the LA-SMP is considered rather than merely the portion subject to a prohibition, it becomes clear that the investment-backed expectations of the landowner have not been unconstitutionally "taken" by the LA-SMP. The LA-SMP recognizes and addresses priority uses consistent with state law. Residential development receives special status as a preferred shoreline use, along with business uses that are water dependent or water related and therefore require a shoreline location. Additionally, properties that are fully contained by SMP jurisdiction are afforded special options to allow preferred use/development (i.e. single family residential, water dependent commercial/industrial) not allowed for those properties that can meet requirements or locate a use/development outside jurisdiction.
Does the LA-SMP rise to the level of a substantive due process violation suffered by the landowner?	Since the LA-SMP aims to achieve a legitimate public purpose, uses reasonably necessary means and is not oppressive to the property owner, the answer to this question is "no."

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Juelanne Dalzell

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Chris R. Ashcraft, Deputy Prosecutor
Lianne Perron-Kossow, Victim Services

NOT CONFIDENTIAL

Date: July 8, 2010
To: County Commissioners
County Administrator
DCD Director Al Scalf
Title 18 Administrator/SEPA Official Stacie Hoskins
Michelle McConnell
From: David Alvarez, Chief Civil DPA
Topic: Locally Approved Shoreline Master Program (LA-SMP)

Issue:

A citizen, attorney Jim Tracy, has raised the question of whether there was a procedural defect in the BoCC's adoption of the LA-SMP in December 2009 because the LA-SMP has not been the subject of a U.S. Constitution "Fifth Amendment-No takings without just compensation" analysis prior to local adoption occurring.

Is such a failure to undertake a Fifth Amendment "takings" analysis a procedural defect in the local approval of the LA-SMP?

Short Answer: No.

Background:

Because Jefferson County is a county planning under the Growth Management Act (or "GMA" as codified at Ch. 36.70A RCW), any person or entity wishing to assert the unlawfulness of the LA-SMP must appeal to the Western WA Growth Management Hearings Board or "WWGMHB." In this regard see RCW 90.58.190(2)(a) (from the Shoreline Management Act or "SMA") and RCW 36.70A.290(2)(c), found within the GMA.

Note well, of course, that there is nothing to appeal until the WA State Dept. of Ecology ("Ecology") approves or disapproves of the LA-SMP. At that point the County must publish a notice that the SMP has been approved or disapproved, said publication serving to begin a 60-day time frame within which an aggrieved person or entity can appeal. See RCW 36.70A.290(2) for the 60-day time frame and RCW 36.70A.290(2)(c) for the requirement that the decision of Ecology be published.

Note also that the WWGMHB has been granted statutory authority to determine if an ordinance adopted by a local government such as Jefferson County complies with the SMA. See the first paragraph of RCW 36.70A.290(2).

Relevant state law:

The citizen's inquiry is based on RCW 36.70A.370, which reads as follows:

> **"36.70A.370. Protection of private property**
>
> (1) The state attorney general shall establish by October 1, 1991, an orderly, consistent process, including a checklist if appropriate, that better enables state agencies and local governments to evaluate proposed regulatory or administrative actions to assure that such actions do not result in an unconstitutional taking of private property. It is not the purpose of this section to expand or reduce the scope of private property protections provided in the state and federal Constitutions. The attorney general shall review and update the process at least on an annual basis to maintain consistency with changes in case law.
> (2) Local governments that are required or choose to plan under RCW 36.70A.040 and state agencies shall utilize the process established by subsection (1) of this section to assure that proposed regulatory or administrative actions do not result in an unconstitutional taking of private property.
> (3) The attorney general, in consultation with the Washington state bar association, shall develop a continuing education course to implement this section.
> (4) The process used by government agencies shall be protected by attorney client privilege. Nothing in this section grants a private party the right to seek judicial relief requiring compliance with the provisions of this section."

Attorney Tracy also brought to the attention of the BoCC a decision from the WWGMHB known as ***Laurel Park Community LLC v. City of Tumwater***, WWGMHB #09-2-0010 (FDO 10/13/2009).[1] That decision struck down a Tumwater ordinance creating a "single use manufactured home park zone" for failure to comply with Goal 6 (property rights), more specifically the absence of any evidence indicating that Tumwater used the "Attorney General review process" mandated in the GMA by RCW 36.70A.370(2).

Of importance to note is that the decision in ***Laurel Park Community LLC*** arose in the context

[1] The current status of the ***Laurel Park Community LLC*** case is that there is a pending APA appeal before the Thurston County Superior Court brought by the Petitioners. Thurston County Superior Court refused to issue a Certificate of Appealability which, if granted, would have circumvented the Superior Court and set the matter immediately before the Court of Appeals, Division Two. Source of this information is the WWGMHB web site.

of a challenge to a development regulation and amendments to the city's Comprehensive Plan proposed and adopted pursuant to the GMA and that decision did not involve a Shoreline Master Program or the SMA. Neither the SMA nor a Shoreline Master Program is mentioned once in the FDO from October 2009.

The absence of any SMA or SMP references in the ***Laurel Park Community LLC*** case is of great significance because the WWGMHB, although it has authority to hear challenges to the County's SMP, must use the SMA rather than the GMA when determining the lawfulness of the County's SMP. Here is the text in the GMA that leads me to that conclusion, codified in RCW 36.70A.480, particularly RCW 36.70A.480(2) and RCW 36.70A.480(3)(a).

> **"36.70A.480. Shorelines of the state**
>
> (1) …….
> (2) The shoreline master program shall be adopted pursuant to the procedures of chapter 90.58 RCW rather than the goals, policies, and procedures set forth in this chapter for the adoption of a comprehensive plan or development regulations.
> (3)(a) The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program with this chapter except as the shoreline master program is required to comply with the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105.
> (b) …..
> (c) ……
> (d) ……
> (e) The provisions of RCW 36.70A.172 shall not apply to the adoption or subsequent amendment of a local government's shoreline master program and shall not be used to determine compliance of a local government's shoreline master program with chapter 90.58 RCW and applicable guidelines. ……"

The reader can note that only quite limited sections of the GMA are relevant to the analysis a regional Hearings Board must undertake when it is asked to rule on a challenge to a SMP and that RCW 36.70A.370 is NOT among those listed in the RCW found above.

Additionally, there is a parallel provision in the SMA to reaffirm that the SMP has to be considered and compared against the SMA statutes and related regulations rather than the GMA statutes and regulations even if a GMA regional Hearings Board is the administrative law agency ruling on the validity of the SMP. The reader is referred to RCW 90.58.190(2)(b):

> **"90.58.190. Appeal of department's decision to adopt or amend a master program**
>
> (1) …..

> (2)(a) The department's final decision to approve or reject a proposed master program or master program amendment by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board by filing a petition within sixty days from the date of the department's written notice to the local government of the department's final decision to approve or reject a proposed master program or master program amendment, as provided in RCW 36.70A.290. The department's written notice must conspicuously and plainly state that it is the department's final decision and that there will be no further modifications under RCW 90.58.090(2).
> (b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW 90.58.020 and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW."

Of significance in the above-listed RCW is the absence of any reference to RCW 36.70A.370.

Because the WWGMHB must examine the SMP in the light of the SMA rather than the GMA (with certain exceptions listed below) I conclude that a regional Hearings Board such as the WWGMHB cannot utilize or rely upon RCW 36.70A.370 when reviewing any SMP for compliance with the SMA.

Also note that the WWGMHB at page 10 of the FDO it issued in ***Laurel Park Community LLC v. City of Tumwater***, WWGMHB #09-2-0010 (FDO 10/13/2009) reminded its audience "we do not have the authority to determine if an unconstitutional 'taking' of the Petitioners' property occurred." In sum, none of the regional Hearings Board can reach or decide the substantive question of whether a GMA-derived Ordinance violates the Fifth Amendment of the U.S. Constitution because it amounts to an uncompensated "taking."

Conclusion:

Both the GMA and SMA include express statutory sections to make it clear that when a Hearings Board such as the WWGMHB is asked to review a SMP that review must be done pursuant to the rules and regulations that surround the SMA rather than the parallel statutes and regulations applicable in the GMA "universe."

Please do not hesitate to contact me with any questions or concerns.

UNSIGNED BECAUSE DELIVERED TO THE RECIPIENTS VIA E-MAIL

David Alvarez, Chief Civil DPA