ATTACHMENT A:

FINDINGS AND CONCLUSIONS FOR PROPOSED COMPREHENSIVE UPDATE OF THE JEFFERSON COUNTY SHORELINE MASTER PROGRAM

SMP Submittal March 2010, Ordinance No.77-09
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BRIEF DESCRIPTION OF PROPOSED AMENDMENTS

The County of Jefferson is proposing a comprehensive update of the full Shoreline Master Program (SMP) in accord with Washington State SMP -Guidelines at WAC 173-26 (Part Three). Comprehensive update of the county SMP is required by the Shoreline Management Act at RCW 90.58.080. Once the SMP is approved by the department of Ecology (Ecology), contents of the updated Shoreline Master Program will be integrated into Jefferson County's Uniform Development Code.

The Uniform Development Code was originally adopted on December 18, 2000, as a development regulation. The UDC became effective January 16, 2001. Chapter 18.22 of the UDC includes Jefferson County's Critical Areas Ordinance (CAO).

SMP PROVISIONS TO BE CHANGED BY THE AMENDMENT AS PROPOSED

This comprehensive amendment is intended to replace Jefferson County's existing SMP in its entirety.

FINDINGS OF FACT

Jefferson County adopted its first Shoreline Master Program in 1974, in collaboration with the City of Port Townsend. Jefferson County adopted a separate, revised SMP in 1989. The Jefferson County SMP was updated and codified as Jefferson County Code Chapter 18.25 Shoreline Master Program (SMP) upon adoption of the Jefferson County Unified Development Code (UDC), effective January 16, 2001.

NOTE: Title 18.25 of the Jefferson County Code (JCC) is the SMP currently in effect. Adopted March 7, 1989, with minor revisions made in 1993, 1996, and 1998, the SMP is implemented in conjunction with "critical areas" protections also found in JCC Title 18, the Unified Development Code (UDC) in Section 18.22. The UDC contains the standards and regulations for implementing the community vision of the Jefferson County Comprehensive Plan.

NEED FOR AMENDMENT

The proposed amendments are needed to comply with the statutory deadline for comprehensive update of the Jefferson County SMP. The 2003 Guidelines at WAC 173-26 require a baseline inventory be established as a reference condition.

The SMP update is also to reflect current shoreline conditions as they have changed across time, as called for in RCW 90.58. "Current shoreline conditions" refers to both physical conditions and how shoreline lands are being used.

Jefferson County's Resolution 77-09 states, *"Beyond legal obligation to comply with state law, the SMP update also addresses the problem of ecosystem degradation in Jefferson County. Human activities have resulted in negative impacts to flora and fauna, and the natural systems that support them, which ultimately pose risks to human inhabitants that are also reliant on clean air, clean water, and a sustainable supply of natural resources for food, shelter, commerce and quality of life."*

"The proposal and eventual adoption of new shoreline goals, policies, environment designations, and regulations addresses the known and documented problem of natural resource degradation posing risks to human health, safety and quality of life, and the need for protection and restoration of said resources, in Jefferson County."

CURRENT CONDITIONS DOCUMENTED

Documentation of current conditions is vital to achieving the no net loss standard of the state SMP guidelines (WAC 173-26-186).

Jefferson County conducted an Inventory and Characterization to gather all available data and update maps as a basis for the SMP Update. The resulting Inventory and Characterization identifies existing conditions, addresses how waterfront lands are developed and being used, and describes how those uses have affected ecological resources. It also lays the groundwork for a separate Restoration Plan.

The inventory was developed with consultant support and reworked with extensive committee review, beginning in 2005 and completed in 2007. Advisory Group technical review included adding relevant documents for inclusion. A detailed overview of all Jefferson County shoreline areas was the result.

Existing ecological conditions and human uses of shoreline areas are characterized. The Inventory and Characterization describes developed areas as well as undisturbed ones, and provides the basis for assigning Environment Designations to shorelines county-wide. It affirms that large portions of Jefferson County remain rural and largely undeveloped.

The physical environment and biological resources for 59 river/stream, 14 lake, and 64 marine individual shoreline reaches are addressed. Conditions along some 500 miles of shoreline were inventoried using various scientific resources and data. The report also characterizes the key species and habitats at the ecosystem scale including priority and core areas, and those threatened or endangered along freshwater and saltwater riparian and nearshore reaches. A watershed characterization analysis describes ecosystem processes from the neighboring landscape that affects shoreline conditions.

Resolution 77-09 states, "By reviewing and synthesizing numerous scientific and technical sources of information, this report evaluates key ecosystem processes that drive the hydrological, sediment transport and water quality functions at the broad watershed scale to document how these processes in turn affect ecological functions and processes along SMP shorelines."

The Inventory and Characterization analyzes existing shoreline conditions for discrete sections, or "reaches", of the marine, stream/river, and lake areas that are currently degraded. As Jefferson County's February 2009 SEPA Checklist for the SMP Update notes: "Jefferson County is located on a peninsula that has been shaped by the interplay of geologic, climatic, and oceanographic processes tied to plate tectonics, producing an array of landscapes that are flat, rolling, hilly, steep and/or mountainous."

Jefferson County has many stretches of steep marine bluffs composed of glacially deposited sediments that are characterized by varying levels of stability. Some of these bluffs are developed with individual residences landward of the crest, although the bluffs facing the water remain largely intact. Other areas remain largely untouched landward and waterward. These bluff shoreline areas are generally in excellent condition from an ecological standpoint, especially as compared to more densely populated areas around Puget Sound.

Like most beaches in Puget Sound, Jefferson County beaches are built from eroding bluff sediments. Through the combined physical processes of erosion and sediment transport, highly productive habitats including eelgrass, macroalgae, and mudflats are maintained. Cobble, gravel, and silt beaches and their backshore areas with overlying logs are important habitats. The Shoreline Inventory and Characterization Report identifies critical shoreline habitat for Forage Fish, Shellfish, Geoduck & Urchin, Migratory, and Spawning Rearing Salmonids and other priority habitats.

The Inventory and Characterization recognizes those areas of Jefferson County which have been altered by human uses and developments, and there is a separate Restoration Plan, described later, which adds further detail about which area offer the most potential value for being restored over time to compensate for areas that will continue being developed as population increases.

Ecology finds that Jefferson County was thorough and careful in evaluating and characterizing current conditions of its shoreline areas through an interactive and science-based process. The Inventory and Characterization includes an extensive Bibliography that reflects the many sources taken into consideration and evaluated by professional reviewers through the Technical Advisory Committee proceedings. The resulting document provides Jefferson County a foundation consistent with WAC Guidelines for updating its Shoreline Master Program.

BASIS FOR ASSIGNING SHORELINE DESIGNATIONS

Assignments of Environment Designation are a fundamental aspect of SMP updates. Every stretch of shoreline has characteristics that can be recognized in common with similar areas, and to what degree natural characteristics have been altered. An SMP update must factor in how lands have been used historically, and how they are presently developed or remain in relatively undisturbed states. Guidelines criteria are primary determinants of how Designation assignments are made, along with reference to zoning and other regulatory overlays.

WAC 173-26-211(1)(2)(a) states, ”Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section.”

Information summarized in Jefferson County’s Inventory and Characterization was combined with review of aerial photographs and maps to determine how every reach of shoreline meshed with WAC 173-26-211 criteria for Designation.

The consultant team marked up maps with proposed designations. The advisory groups reviewed the draft Designation maps against WAC criteria and made adjustments based on local knowledge of particular conditions and relevant facts. The maps were also brought to various public meetings and workshops so that citizens could see where their lands fit, and comments and additional information were taken into account. Subsequent checks were made based on comments received from the public about specific areas and whether a given designation was in fact appropriate.

Ecology finds that a substantive basis for Designation of Shoreline Environments was appropriately conducted and assignments of Designations effectively completed.

LAND OWNERSHIP

Essential to an SMP Update is an up-to-date evaluation of how many shoreline properties are developed. Those areas need to be described relative to waterfront areas remaining in

undisturbed condition. Also vital is projecting reasonably likely future development in shoreline areas. This information was essential in determining the degree to which ecological resources would be affected by development that would be allowed under the new regulations.

The locally adopted Shoreline Master Program (LA-SMP) includes many provisions that relate to the honoring of property rights, among these is the following statement of governing policy:

"When regulating use and development of private property, the County's actions must be consistent with all relevant legal limitations including constitutional limitations. This Program must not unconstitutionally infringe on private property rights or result in an unconstitutional taking of private property."

As the Cumulative Impacts Analysis explains, "Existing lawfully established uses, buildings, and/or structures that do not meet the specific standards of the LA-SMP will be allowed to continue as legal 'non-conforming' uses." It also notes, "The LA-SMP also contains special provisions to allow single-family residential development on lots that are too small to allow development landward of the standard shoreline buffer."

According to county assessor's data, approximately 30 percent of all of the existing parcels on the marine shoreline in east Jefferson County are vacant (have no structure or improvements). County assessor's data also indicate that approximately 40 percent of the total river shoreline parcels in east Jefferson County are presently vacant.

Many small lots, particularly along the marine shoreline, resulted from platting conducted in the 1930's - intended at the time to support small cottages and provide the most number of parcels a view.

Through the Inventory and Characterization, over 6,200 parcels in Jefferson County have been identified as within shoreline jurisdiction. Of these, 748 parcels lie completely within the shoreline buffer width of 150 feet (ESA Adolfson, 2008a).

The Cumulative Impacts Analysis analyzed the ownership to determine how many parcels would become subject to non-conforming lots provisions with adoption of proposed buffers in the LASMP. It was determined that approximately 14 percent of the 748 in shoreline jurisdiction were in federal ownership, and that 13 percent were in areas proposed for Natural Designation.

As written, the provisions afford a defined pathway for landowners with non-conforming lots to establish single family residences with a minimum of regulatory procedure. They can build modest homes according to specified criteria on lots that would otherwise necessitate variance approval after demonstrating special circumstances and a hardship based on the physical characteristics of the site.

Ecology finds that Jefferson County thoughtfully and deliberately evaluated reasonably foreseeable future development and sought to ensure that ownership rights were protected while meeting the requisite regulatory limitations on adverse impacts.

SHORELINE PUBLIC ACCESS

WAC 173-26-221(4)(c) includes the following provisions: "Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The Master Program shall address public access on public lands. The Master Program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety."

Large areas of waterfront in Jefferson County are used for recreational activities, which include walking along beaches, scuba diving, surfing, various kinds of boating, shellfish harvest, and fishing. Numerous sites of regional cultural, recreational, and ecological significance are located in Jefferson County. Fort Worden and other Washington State Parks attract thousands of visitors annually. Private/commercial tourism facilities of various kinds are located in many areas along Jefferson County shorelines.

The Northwest Maritime Center (in City of Port Townsend) and related facilities educate residents and visitors regarding traditional water-dependent trades and promote wooden boatbuilding along with county located facilities like those at Port Hadlock.

Jefferson County Parks provide access to a number of beaches. A public trail, mostly along the waterfront, connects Port Hadlock and Port Townsend. The Port Townsend Marine Science Center often conducts educational activities along the shores at North Beach, and Tarboo Bay. Area colleges and universities occasionally conduct studies and research along local shorelines.

The LA-SMP provides a policy basis for long-range public access planning at a countywide scale, and to seek funding for property purchase. The public access provisions address adjacency issues and provide mechanisms for safety and ecological protection to be considered.

Ecology finds that Jefferson County has thoughtfully addressed the need for maintaining and increasing opportunities for the public to access shoreline areas, both visually and for direct access. Provisions include recognition of WAC 173-26-186 to ensure public access requirements are consistent with constitutional and other legal limitations. The LASMP includes provisions for addressing alternate methods of providing public access where circumstances warrant.

SHORELINE MODIFICATIONS

Per WAC 173-26-231, "...Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal." Also notable, as a general principle that applies to all shoreline modifications, "Allow structural shoreline modifications only where they are demonstrated to be necessary…." and "Reduce the adverse effects of shoreline modifications, and, as much as possible, limit shoreline modifications in number and extent."

An important aspect of achieving no-net-loss of shoreline ecological functions in the future is limiting the further spread of shoreline armoring and overwater structures. Residential provisions will ensure that homes are placed farther landward than was allowable under the previous master program, consistent with Guidelines requirements for protecting nearshore habitat and avoiding the need for armoring to protect structures.

The Cumulative Impacts Analysis notes, "Shoreline armoring is a concern with many types of shoreline development but is especially common with residential development. Shoreline property owners, especially on rivers and marine shores, often feel compelled to 'armor' their land against the erosive effects of wind, waves, and currents using conventional concrete or rip-rap structures. However, bulkheads can disrupt sediment generation and net-shore drift patterns and adversely affect shoreline morphology and habitat function."

Provisions in the LA- SMP establish stricter limitations on where new installations of hard armoring can be placed, and provide incentives for using less-impacting technologies like large woody debris arrays or the building up of dune-like berms to diffuse wave action.

The provisions of Chapter 7, in particular, are focused on beach access structures, docks, floats, boating facilities, marinas, mooring buoys, launch ramps and lifts. This chapter also has standards for flood control and in-stream structures, and it addresses excavations and filling in shoreline jurisdiction. Policies and regulations germane to shoreline restoration are also included. The regulations are differentiated by Environment Designation.

Ecology finds that Jefferson County has followed Guidelines requirements for limiting the modification of shorelines and preventing adverse impacts from shoreline armoring by design and placement of new structures on the landscape. The LA- SMP includes standards setting forth the circumstances under which alteration of the shoreline is permitted, and for the design and type of protective measures.

WATER ORIENTED USES

The following language is included in Section 5.2, Use Preferences:
Uses that require a shoreline location shall be preferred over non-water related uses. Non-water-related uses should be located outside the shoreline jurisdiction or in areas where they will not interfere with or displace preferred uses or public access.

Ecology finds that the Jefferson County LA-SMP has appropriately recognized and provided for the use preferences and priorities identified in RCW 90.58 and the SMP Guidelines.

AQUACULTURE

Jefferson County's Responsiveness Summary notes, "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."

Jefferson County has two of the largest shellfish hatchery facilities in the United States, and is considered the third largest shellfish producing county in Washington State. There is an active razor clam fishery on the County's west coast. The SEPA checklist notes, "There is an extensive aquaculture industry in Jefferson County, of which some utilize structures (rack& bag, longlines, etc.) and non-structures (geoduck tubes) although exact locations and full extent of operations is not fully known/ mapped."

An Ecology Frequently Asked Questions document - which applies throughout the Puget Sound region notes: Geoduck aquaculture is a relatively new and expanding form of shellfish aquaculture, especially in the intertidal or shallow area of Puget Sound. Right now, the extent of commercial geoduck aquaculture is relatively small (totaling approximately 360 acres) compared with other allowed shoreline uses such as single family housing, piers and docks, and marinas.

However, the industry expects to grow in the future. Concerns exist over the location of geoduck aquaculture in relationship to other shoreline uses, the environmental impacts, and the tradeoffs if geoduck aquaculture is allowed.

Disputes exist between property owners with geoduck operations and neighboring property owners affected by noise, lights, visual impacts, and other aspects of commercial operations. Challenges also exist in balancing a viable geoduck aquaculture industry with other natural resource priorities such as saving endangered salmon, restoring Puget Sound, and ensuring the viability of other resource-based businesses such as boating, crabbing, and tourism. Like other business sectors, aquaculture often changes technology to improve productivity and cost-

effectiveness. Aquaculture businesses will also change their operations to suit site specific conditions.

A Department of Natural Resources Frequently Asked Questions document puts local aquaculture operations into a statewide economic context: "Shellfish aquaculture exists today on both private and public tidelands. The Washington aquaculture industry is a major supplier of shellfish throughout the United States and the world, producing more that 23.6 million pounds of shellfish in 2006 at an estimated value of $66.1 million dollars (WDFW farm production estimate). It is the largest employer in Pacific County and the second largest in Mason County, Washington.

The Washington State Legislature has encouraged the development and expansion of shellfish farming and promotes the development of a diverse shellfish farming industry. This is a renewable practice that provides revenue, food products, and regional jobs. Aquaculture lease revenues provide the state dedicated funding for management, protection and restoration of state- owned aquatic lands. For example, potential state revenue for leasing just 30 acres for geoduck aquaculture would generate approximately $370,000 per year, or $1.8 million every 5 years."

This DNR perspective emphasizes the importance of the aquaculture industry in terms of economic development, which has to be balanced against SMA required protection of ecological resources through the SMP, and through other regulatory programs.

The DNR states, "Cumulative effect of shoreline development: Increasing demand for shellfish, and new aquaculture operations, raise concerns about the sustainability of ecosystems that support this use (especially in smaller inlets and bays). It is difficult to interpret the contribution of failing septic systems, bulkheads, removal of native vegetation from the shorelines, etc.., and there are many questions concerning the cumulative effect of all this use on the aquatic ecosystem; how much development is too much before dissolved oxygen, elevated nitrogen, or critically altered intertidal habitat are an issue? There is also potential impacts of hatchery stocks on wild stocks including disease into the natural stocks, competition between cultured geoduck and wild geoduck, and the potential for altered genetics, studies are ongoing"

While the SMP update process was underway, there were many and various discussions about the appropriate ways of limiting adverse impacts that might result from intensifying geoduck aquaculture and from other, not necessarily foreseeable developments in the aquaculture industry. There was considerable engagement among members of the Technical and policy Advisory Committee members on these topics, including a subcommittee which developed the Priority Aquatic Designation and identified those sensitive areas and waterbodies especially well suited for aquaculture to be given particular protection.

During the public review process, significant testimony was provided on matters related to aquaculture. The Planning Commission made numerous revisions to the Aquaculture section,

some of which reflect awareness of concurrent proceedings at a statewide level for the regulation of this evolving, generally water-dependent industry.

Ecology finds that Jefferson County thoughtfully evaluated the existing and likely degree of expanding aquaculture uses in its jurisdiction. Through Advisory Committee debate and discussion, and including knowledge of regional efforts in related areas, the County developed mostly appropriate regulatory constraints in its SMP to protect ecological resources while allowing appropriate water-dependent industry to be conducted according to those criteria and regulations.

PROJECTED DEVELOPMENT IMPACTS RELATIVE TO REQUIREMENT FOR NO NET LOSS

The SMP guidelines require SMPs to result in no net loss of existing ecological functions in shorelines and shorelands once they are adopted and being implemented. Assignment of Environment Designations is required to reflect actual conditions according to specified criteria. Protection of currently existing shoreline ecological functions-as characterized with the Inventory and Characterization, shall be maintained by implementing all the updated SMP goals, policies, regulations and standards.

While the most common use of Jefferson County shoreline areas is residential, the density of development varies by area. Planned Unit Development at Port Ludlow is an example of urban density shoreline use, established in various configurations. There are other pockets of multi-family residential use on various scales. In general, single family residential is predominant.

The SEPA Checklist for the SMP Update notes: “Most shoreline development consists of single family residential structures and accessories with some resort, commercial, industrial/port development including:

> Worldmark/Trendwest resort at Discovery bay
> Master Planned Resort at Port Ludlow
> Mats Mats Quarry at Mats Mats Bay
> Port Townsend Paper Corporation Mill at Glen Cove/Port Townsend Bay
> Port of Port Townsend boat ramps at Gardiner, Port Hadlock, Mats Mats Bay, and marina at Quilcene Bay.”

Resolution 77-09 states, “SMP goals, policies, and regulations target the protection, use, development, and restoration of public access opportunities, historical, cultural, scientific and educational shoreline resources, and integration with watershed and sensitive species planning and conservation efforts.”

Although development intensity in Jefferson County is relatively low when measured on a watershed basis, there are pockets of more intense development and the effects of forest

clearing, floodplain and wetland fill, dike and levee construction, road building and other development activities are evident throughout the County.

These activities have affected water flow patterns, water quality, sediment transport and other ecosystem processes and have altered the abundance, diversity, distribution, and movement of fish and wildlife species to a noticeable degree. Many of these changes are most pronounced near freshwater rivers and streams and on the marine shoreline where the majority of the County's residents live. "

With respect to assignment of Shoreline Environment Designations, the Cumulative Impacts Analysis notes, "Nearly half (40 percent) of all the shoreline in the County are Designated Natural, which provides the highest level of protection possible. Of these, 60 percent have a corresponding in-water Designation of Priority Aquatic. An additional 28 percent of the uplands (or shorelands) are designated Conservancy, which ensures that they will be used for low-intensity uses." It also notes, "Given the policy guidance and regulatory requirements proposed, the LA-SMP assures no net loss of ecological functions."

The 2009 SEPA Checklist notes, "The proposal includes provisions for "no net loss" of shoreline ecological functions consistent with the new SMA Guidelines. Specifically, the adoption by reference of Jefferson County Critical Areas Regulations (J.C.C. 18.22) including those provisions pertaining to Wetlands Fish and Wildlife Habitat Conservation Areas and channel migration zones…"and, "To protect habitat and wildlife and to achieve no-net loss of ecological functions, the proposal requires each project to mitigate impacts by avoiding, then minimizing adverse effects, then replacing damaged resources through compensatory mitigation efforts."

On-site or off-site mitigation, informed by a restoration plan, can be used when smaller buffers are necessary to accommodate preexisting uses, smaller, pre-existing parcels adjacent to the shoreline, water dependent uses, or other local circumstances. Shoreline variance permits can be approved as situations warrant. Waterfront property owner can apply the provisions of the LASMP to reasonably develop their land while preserving the ecological functions which are essential to the long term well being of the regional environment of concern to all.

Ecology finds that Jefferson County has realistically assessed the present condition and projected reasonably likely future development of various kinds in its shoreline areas, based on available information. In its LA-SMP, the County established appropriate measures to manage future development with minimum adverse impacts. Ecology finds that property rights have been explicitly taken into account along with meeting the No Net Loss requirement by Jefferson County in developing the SMP.

CUMULATIVE IMPACTS EVALUATION

The SEPA checklist notes, "…Because incremental impacts may result in a cumulative effect over time, a Draft Cumulative Impacts Analysis has been prepared. The objective is to demonstrate that commonly occurring shoreline uses and developments within the County will not result in a net loss of ecological functions compared to baseline conditions as the updated SMP is implemented. This assumes that impacts will occur, but that there are adequate measures in place to mitigate them such that the post-development conditions are no worse overall than pre-development conditions."

The Cumulative Impacts Analysis notes that poorly-designed and sited development activities such as clearing, grading, road and utility installation, and building construction result in landslides, erosion, stormwater transport, habitat fragmentation, and loss of native forests, habitat structures and plant communities. While discouraged through 'highest and best use' taxation, large parcels (10 – 40 acres) may be completely cleared (except for required buffers) under current code.

The Cumulative Impacts Analysis describes how the LA-SMP addresses some of the impacts described: "The majority of the vacant parcels occur in areas that are designated Natural (Figure 5). Single family residential development on shores that are designated Natural is allowed but requires a conditional use permit. In addition, there are strict limits on accessory structures, docks, and other appurtenances associated with these developments. These requirements and the other LA-SMP regulations pertaining to buffers, setbacks, vegetation conservation, and other issues help prevent cumulative impacts and maintain shoreline functions while also allowing preferred uses."

Ecology finds that Jefferson County has thoughtfully and carefully considered the extent of development most likely to affect the ecological resources which are currently intact as the Inventory and Characterization describes, *and has used that awareness to balance such development with legally appropriate regulation to minimize impacts and promote eventual restoration actions.*

GROWTH MANAGEMENT INTERSECTION

Per Jefferson County Resolution #77-09, the County's 2008 Critical Area Ordinance is adopted by reference into the Shoreline Master Program update, with the exception of specified provisions excluded for procedural inconsistency.

The Growth Management Act (GMA) and Shoreline Management Act (SMA) share similar objectives for protecting fish and wildlife habitat. GMA requires the designation and protection of critical areas, including fish and wildlife habitat conservation areas (RCW 36.70A.040). It is the policy of the SMA to "protect against adverse impacts to the land, its vegetation and

wildlife and the waters of the state and their aquatic life" (RCW 90.58.020). The "waters of the state" are defined in the SMA as "shorelines." The associated wetlands and uplands of these shorelines are defined as "shorelands."

The Best Available Science Review (2004) for Jefferson County was among the many documents consulted during the SMP Update. In part, Jefferson County based its buffer width requirements on the science developed and reviewed through its adoption of its CAO in 2008. "Wetlands are integral features to the landscape of Jefferson County. They provide important habitat for fish and wildlife, reduce flooding to development, and help recharge the groundwater. In some areas, wetlands act as water storage and groundwater discharge points. These functions can be vital to support stream flows during times when the flows are the lowest. Still other wetlands are important at river mouths and along the marine shorelines. These estuarine and salt marsh wetlands are vital to the health of fish and wildlife populations; they are extremely productive and often act as nurseries, or areas where juveniles are able to forage and grow with protection from predators.

The role of a wetland, and its biological and ecological function in the watershed, relate directly to the classification of that particular wetland. The classification system translates into the protections provided to the wetland under the Jefferson County UDC. Jefferson County uses the rating system developed by the Department of Ecology which defines four classes of wetlands."

"Fish and Wildlife Habitat Conservation Areas are defined in the Growth Management Act as a critical area (RCW 36.70A.030(5)). Conserving and protecting fish and wildlife habitat requires land management decisions that maintain species in suitable habitats within their natural geographic distribution so that isolated subpopulations are not created; it does not mean maintaining all individuals of all species at all times (365-190-080(5) WAC). The State of Washington established guidelines regarding protection of Fish and Wildlife Habitat Conservation Areas, which Jefferson County has followed in the Comprehensive Plan and the associated development regulations in the UDC.

The BAS review conducted in October 2000 (Christensen, 2000) focused primarily on what would be appropriate riverine buffers to protect stream processes and functions. These processes, in turn, influence the quality and quantity of fish and wildlife habitat. The protections provided to fish and wildlife habitat are strongly influenced by anadromous fish needs. Since the completion of the previous BAS review, several key documents regarding fish and wildlife habitat protections have been produced, and very recently the system of stream classification has been modified.

A. Stream Classification: The stream classification system used by the Washington State Department of Natural Resources has been modified. Appendix A (222-16-030 WAC) details how a new permanent classification system will be implemented. The stream classification system will become a permanent rule after adoption by the Forest Practices

Board. In the interim, the 222-16-031 WAC contains an "interim" proposal for the classification system.

The existing UDC stream buffers are shown in Table 2-1, based on the water classification system ranging from Category 1 through Category 5:

Table 2-1. Existing UDC Stream Buffers

Existing Stream Buffers	
Water Type	Buffer
1	150'
2	150'
3	100'
4	100'
5	50'

Based on the interim and proposed stream classifications (222-16-030 and 031 WAC), and review of the BAS, the following recommendations were made for stream buffers for the UDC:

Table 2-2. Recommended Stream Buffers

New Recommended Buffers	
Water Type	Buffer
S	150'
F	150'
Np	100'
Ns	50'

As previously assessed, these recommended buffers will protect the vast majority of the functions provided by riparian vegetation to maintain high quality fish habitat and riverine functions. Several habitat-forming processes may be affected, although none are anticipated to cause significant impacts. Potentially, there could be some reduction in woody debris inputs, some microclimate impacts and water quality impacts for Type Ns streams. Overall, the stream buffers as suggested are within the range of protective buffers suggested by the best available science."

The Shoreline Master Program (SMP) Guidelines reflect legislative policy in the Governing Principles (WAC 173-26-186), and throughout the comprehensive process to prepare or amend shoreline master programs (WAC 173-26-201).

An integration strategy addressing shorelines and growth management was launched by Jefferson County in 2006. This focused on how the SMP update would best mesh with the Comprehensive Plan and the UDC. It also addressed consistency with the County's Surface

Water Management Plan, with watershed planning, ocean management, Northwest Straits Marine Conservation Initiative, and other plans and programs.

A Critical Areas Ordinance (CAO) was adopted by Jefferson County in March 2008, and later amended in May 2009. That instrument was legally challenged and formally determined in full compliance with GMA by the Western WA Growth Management Hearings Board.

The CAO established 150 buffers along most marine shorelines, and 100 feet on river and lake shorelines. This change left the previously established SMP setbacks less protective than those required for the CAO. The SMP update will remedy inconsistencies among the SMP, zoning ordinance and comprehensive plan for the purposes of shorelines and growth management integration. The LA-SMP includes the substantive portions of the Critical Areas Code as appropriate.

Provisions in the December 2009 Locally-Adopted SMP and the adopted Critical Area Ordinance (CAO) include requirements for increased buffers and setbacks (an increase from 30' to 150'), native vegetation conservation, restrictions on shoreline armoring and overwater structures, and recommendation for LID BMPs to mitigate stormwater impacts at the site scale.

This policy intention has been further confirmed by legislative action in EHB 1653 clarifying the relationship between the Shoreline Management Act (SMA) and the Growth Management Act (GMA).

On April 14, 2010, Jefferson County Department of Community Development issued the following as a response to the legislative action:

"*On March 18, 2010, Washington State approved a legislative change, EHB 1653, as follows: The legislature affirms that development regulations adopted under the growth management act to protect critical areas apply within shorelines of the state as provided in section 2 of this act. The legislature affirms that the adoption or update of critical area regulations under the growth management act is not automatically an update to the shoreline master program. Apply Critical Area Ordinances in shoreline jurisdiction until an updated SMP is adopted, retroactive to July 27, 2003. How does this legislative change affect permitting in Jefferson County?*

*The UDC (Unified Development Code**)** Code Interpretation regarding Relationship between Growth Management Act (GMA) and Shoreline Management Act (SMA) jurisdiction dated August 22, 2008 is hereby rescinded; CAO provisions adopted after July 27, 2003 shall apply within shoreline jurisdiction despite the absence of an update to the shoreline master program; however Applications vested prior to March 18, 2010 shall be reviewed per the codes and code interpretations in effect on the date of vesting including the August 22, 2008 code interpretation, as applicable; and Codes in effect, including critical areas ordinances retroactive to July 27, 2003, shall apply to development within shoreline jurisdiction with a vesting date on or after March 18, 2010, the effective date of EHB 1653."*

Resolution 77-09 notes, "The SMP as locally approved furthers and is consistent with the GMA definition of "rural character" by ensuring that the maintenance of "open space, the natural landscape, and vegetation are [are] predominate over the build environment" and by protecting "natural surface water flows and ground water and surface water recharge and discharge areas" as described in the Comprehensive Plan Chapter 3 (CP3) Land Use and Rural Guidelines."

Ecology finds that Jefferson County has carefully attended and followed the provisions of its own Comprehensive Plan, making adjustments as required based on relevant court decisions. These have been appropriately taken into account with developing an updated Shoreline Master Program. The combined policies and regulations establish clearer protection as appropriate under both these state land use laws.

SHORELINE RESTORATION PLAN

Per WAC 173-26-201 2 (c), "Master programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201 2)(f), where such functions are found to have been impaired based on analysis described in WAC 173-26-201 (3)(d)(i).

It is intended that local government, through the master program, along with other regulatory and non-regulatory programs, contribute to restoration by planning for and fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local government should identify restoration opportunities through the shoreline inventory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their master programs. The goal of this effort is master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county."

Jefferson County conducted restoration planning actions pursuant to guidelines requirements. With Ecology support and funding, the County also participated in specialized efforts to quantify the values of different shoreline reaches. This work was done for ranking likely success in the event of restoration actions. According to Battelle's subsequent research article:

"Because the relevance of stressors and controlling factors varies by shoreline geomorphic type, we classified the entire shoreline according to seven landforms and scored each ShoreZone Unit per its assigned geomorphic class: 1) low bank, 2) high bluff, 3) barrier, 4) rocky shore, 5) river (estuarine) delta, 6) embayment, and 7) lagoon (Appendix 1). These geomorphic classes were synthesized for Jefferson County based on geomorphic categories developed for Puget Sound by Terich (1987) and Shipman (2004). They are consistent with those used in the Bainbridge Island nearshore assessment (Williams et al. 2004). Two of the seven classes are associated with rivers and streams."

"At each scale, attributes from GIS layers and other data sets were evaluated for their influence on identified controlling factors within a given unit. At the ShoreZone Unit (SZU) Scale, scores were derived for two general categories: stressors (a sum of negative anthropogenic impacts for a given unit) and functions (a sum of positive ecological functions). At the drift cell reach scale scores from SZUs were aggregated and standardized for length. Additionally, a watershed stress score was derived to provide an indication of impact within the watersheds of a Drift Cell."

The Jefferson County Final Shoreline Restoration Plan recommends actions to improve native vegetation along local Shorelines of the State and across the watershed landscapes that support shoreline ecological processes and functions.

Resolution 77-09 states, "The FSRP establishes Jefferson County's restoration vision and goals, identifies priority areas for freshwater and marine nearshore restoration and protection, and recommends specific restoration actions by reach area along with an overview of project implementation steps, anticipated technical/logistical considerations (cost/time/difficulty), potential partner organizations and funding sources."

Ecology finds that the Final Shoreline Restoration Plan is based on well documented available research, and that it supports the planning and regulatory roles of the LA-SMP. The Final Restoration Plan can serve as a tool for the County, private landowners, government agencies, non-profit organizations and the public to collectively improve shoreline conditions ecologically in a better organized manner over time. Such restoration efforts are understood to help achieve the "no-net loss" standard of the state SMP guidelines (WAC 173-26-186).

AMENDMENT HISTORY, REVIEW PROCESS

As Jefferson County's Resolution 77-09 states, "In January 2005 Jefferson County applied for and was approved to receive FY 05-07 state Department of Ecology grant funds to support a comprehensive update of the SMP (G0600343.)" The effective date of the agreement was July 1, 2005, with an expiration date of June 30, 2007. The contract was formally amended three times.

In November, 2005, following an RFP and selection interviews, Jefferson County contracted with ESA Adolfson & Associates for consultant support in developing the SMP pursuant to the Guidelines.

A separate grant was awarded to Battelle Institute and Jefferson County for related work on quantitative methods applied to the required Restoration Planning. The results of that effort were integrated into the Final Restoration Plan.

Plans for public involvement were developed and implemented, beginning in 2006 and continuing until the time of local adoption. Jefferson County identified a need for changes in the budget, and Letter Amendment #1, amending the grant contract, was approved by Ecology on May 29, 2007. The effective date remained July 1, 2006 and maintained the expiration date of June 30, 2007.

Amendment # 2 to the grant contract was approved effective July 1, 2007, expiring June 30, 2009. This amendment added funds to augment work in progress. Funds were requested for the 2007/2009 biennium. These were approved by Ecology in June, 2009. A time extension without further funds (Amendment #3) was granted in July, 2009, expiring October 30, 2009. This date was extended to December 31, 2009. All funds were billed by the end of the Biennium.

TRIBAL GOVERNMENT CONCERNS AND THE SMA

The Point No Point Treaty Area encompasses large areas in Jefferson County. Tribes with an active interest in Jefferson County's SMP Update included Jamestown S'Klallam, Quinault, Quilleute, and Port Gamble S'Klallam. Most of these were participants in advisory capacities.

Ecology's webpage provides the following perspective on SMPs relative to Tribal lands:

"The application of the SMA to land within Indian reservations is a complex legal issue that should be approached with caution and sensitivity. …Our best distillation of case law on this is as follows:

> Indian tribes have the authority to plan for and regulate tribal trust lands and lands allotted to, and held in trust for, tribal members within their reservations. They also have the authority to regulate land within reservation boundaries owned by non-members in areas where Indians own significant amounts of land and make up a majority of the population.
>
> State and local governments do not have the authority to regulate tribal trust lands and land allotted to and held in trust for tribal members. So, presumably, the SMA and shoreline master programs do not apply to these properties.
>
> State and local governments may regulate land within reservation boundaries that is owned in fee by non-tribal members where non-Indians make up more than half the population and own nearly half the land. So, presumably, the SMA and shoreline master programs do apply to these properties.

However, other circumstances may limit state and local authority over non-Indian land on Indian reservations. In addition, the factors that the courts look to in deciding if local and state governments have authority over land on reservations are unclear and may change. This means

that jurisdictional questions require fact specific analysis. Even after such an analysis, the extent of authority may be unclear.

The Department of Ecology recommends a cooperative approach to jurisdictional issues. The State of Washington has a policy of working cooperatively with the Tribes on a Government to Government basis and, based on this policy, Department of Ecology urges local governments to work with Indian tribes and Ecology to cooperatively define the extent of jurisdiction and to coordinate applicable regulations. "

CONSULTATION WITH OTHER AGENCIES AND TRIBAL GOVERNMENTS

The County convened two advisory groups in November, 2007. One focused on Policy and the other on Technical issues. Representatives were asked to participate such that a wide range of citizens and groups in Jefferson County would be included. DCD staff and Consultants acted as facilitators during review of and discussion about the Inventory & Characterization and other SMP products. Regular meetings of the Technical and Policy Advisory Committees were conducted from June 2006 to November 2008.

Resolution 77-09 indicates, "The STAC and SPAC were formed by, worked with, and were advisory only to the DCD [Department of Community Development] team of staff and consultants in preparation of the amendment proposal MLA08-475.The groups were neither appointed by the BOCC nor formed as a committee of the Planning Commission. Both groups were chaired by staff with considerable consultant support/participation, functioned primarily by informal consensus rather than voting, and met as needed to review materials and provide feedback on draft work products.

Between June 2006 and November 2008, the STAC met three times exclusively, another five times jointly with the SPAC, and the SPAC met another fourteen times exclusively. All committee meetings were advertised and open to public attendance."

The Policy Advisory Committee was convened with 25 invited participants. This group primarily focused on the content of policies and regulations that were being drafted by consultants, with discussion bringing many perspectives of Jefferson County citizens to the table.

The Technical Advisory Committee was convened with 16 invited participants. Members of the groups represented a range of interests and kinds of expertise, including tribes, regional government, local business and waterfront landowners. A primary focus of the technical committee was review and comment on the Inventory and Characterization, to which members also brought numerous contributions of specific information. Vigorous and careful review and sifting of the relevant science was collaboratively engaged in Technical Advisory Committee meetings, as meeting records indicate.

The Technical and Policy Advisory Committee meetings were announced in advance with public notices in local newspapers. The meetings were open to all citizens.

The August 30, 2006 Port Townsend Leader announcement of the Policy Committee meeting stated, "…..Its ongoing agenda is to utilize the scientific information prepared by project staff, consultants, and the Shoreline Technical Advisory Committee as the basis for providing input on the proposed goals, policies, environment designations and regulations for a comprehensive update of the Jefferson County Shoreline Master Program."

OPPORTUNITIES FOR PUBLIC INVOLVEMENT

The September 20, 2006 Edition of the Port Townsend Leader carried a short article titled, COUNTY TALKS SHORELINES**,** which included the following text: "Members of the Shoreline Policy Advisory Committee met last week to review issues related to how an updated Jefferson County Shoreline Master Program will integrate with the county comprehensive plan, Unified Development Code, and other pertinent plans and regulations. The committee meets again on Tuesday, September 26, 10AM to 2PM at WSU Learning Center in Port Hadlock" Notices and articles of this type were posted throughout the period when the Advisory Committees meetings were being held, as documented by the County.

In addition to legal advertisements, press releases and posters being circulated, the record shows that flyers were sent by direct mail to 3,165 shoreline property owners on October 5, 2006, announcing a two day "Shoreline Charette Primer" that was subsequently held at Port Hadlock October 12-14, 2006. Technical and Policy Advisory Group members joined with interested citizens as County staff and consultants facilitated a series of exercises and exchanges with attending citizens. As county records indicate, results of the Charette Primer were recorded and were applied in subsequent SMP development.

This initial two day public workshop was followed in 2007 with a series of Open House forums, at which presentations were made to the public explaining the SMP update, and staff as well as Advisory Committee members were available to answer questions and explain various aspects of the SMP as it applied where citizens live. These were held in October, 2007 at three locations around the County.

There was a "recess" in early 2008 during which the Advisory Committees did not meet, pending release of an SMP document for their review. A "Revised Committee Working Draft SMP" was released to both Advisory Groups and the public on May 23, 2008. As County records indicate, "This document includes Goals and Policies, Regulations and Environment Designations as per the SMA and SMP Guidelines."

Jefferson County also set up "Neighborhood Information Booths" at grocery stores and other public settings in seven locations in late July, 2008. News releases were made and press

coverage resulted in early July and August. A direct mailing of announcements was made, sent to 3,100 shoreline property owners, on June 24, 2008. At the ensuing events, according to County records, a total of 86 direct contacts were made in 12 locations and over 26 hours of significant project visibility was provided in a variety of east county neighborhoods.

A Community Planning Workshop was held July 10, 2008, at the Inn at Port Hadlock, which attendance records indicate approximately 40 individuals attending. Both advisory groups met jointly on August 5, 2008, to discuss comments on the draft SMP. A Final Shoreline Restoration Plan was released for review in October, 2008.

The consultant team worked with information gleaned during the Inventory & Characterization, along with comments from citizens gathered during the Charrette and Advisory Group meetings in drafting an SMP. Consulting the SMP Guidelines and the above, consultants produced a "**Preliminary Draft Shoreline Master Program." (PDSMP)** This was released to the public in December, 2008.

PLANNING COMMISSION REVIEW

On December 3, 2008, the DCD presented the PDSMP proposal to the members of the Planning Commission. A joint workshop was held with the Board of County Commissioners at this time, during proceedings open to the public at the County Courthouse. Presentations were given by Jefferson County staff and by their consultants. A question and answer session followed. This launched an extended formal public review, which continued until January 30, 2010. Nearly 400 written public comments were received, both in favor of and opposing the PDSMP.

A public hearing before the Jefferson County Planning Commission was held on January 21, 2009, which focused on the SMP Update. The record shows that 44 citizens testified in those proceedings. The County reported that notice of the hearing was published on January 4, 7, 14, and 21. Planning Commission meetings focused on the SMP were subsequently held evenings twice monthly. Citizen comment was heard during each of these meetings.

After three months of weekly meetings and deliberations over the draft SMP, the Planning Commission requested additional time beyond what had been scheduled for their review. Deadlines for draft SMP completion in the original contract were extended by four months, as requested by Jefferson County Board of County Commissioners on March 16, 2009, and confirmed by Ecology on May 6, 2009. The time extension was to allow for additional review and public process with the Planning Commission at the local level. The Board of County Commissioners instruction to the Planning Commission was to complete their review and make recommendations by June 30, 2009.

On June 3, 2009, the Planning Commission released their Revised Draft SMP and convened a regular meeting held as a public workshop to introduce the document and answer questions

from the public. A formal comment period ran from June 3 until June 17, during which 200 comment letters were received, in which 570 topic areas were identified by DCD staff.

Planning Commission took formal action to transmit their final recommendation to the Board of County Commissioners on July 15, 2009. On July 28, 2009, DCD made an agenda request to the Board of County Commissioners for discussion at their August 3 meeting of the final Planning Commission Final Draft SMP Recommendation. A public comment period was opened starting August 19, 2009. On August 24, 2009, DCD presented the Commissioners with a line/line out version of recommended changes along with a ranked list of controversial issues for the Board to consider in its review. The public comment period ended after the 9 PM ending of a public hearing that was held on September 8, 2009. 55 individuals testified during this meeting.

BOARD OF COUNTY COMMISSIONERS DELIBERATIONS

During October, 2009, Jefferson County Commissioners held a series of workshops with Department of Community Development staff in which the draft Shoreline Master Program from the Planning Commission was reviewed page by page.

A second version, including limited and specific changes to what the Planning Commission proposed-and recommended to the Commissioners by the Department of Community Development, was also considered as a reference in this process. While these BOCC workshops were open to the public, and citizens did attend, the evaluations were well-focused discussions on the particular language of the SMP as it might affect various groups of citizens.

Each Commissioner had the opportunity to raise any questions or issues from their personal review of the documents. The Jefferson County Administrator, Prosecuting Attorney, and Staff from Jefferson County DCD and also from Ecology were present, answering questions about provisions of concern or interest. Commissioners read excerpts from numerous letters from citizens as part of the evaluation. Many changes were agreed to by the BOCC which DCD staff later used for amendment into the final document.

As the County's Responsiveness Summary notes: 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 LASMP to the state for final review and approval."

LOCAL ADOPTION

With passage of Resolution #77-09, on December 7, 2009, the County authorized staff to forward the proposed amendments to Ecology for approval. The complete submittal was received by Ecology in March 2010. The proposed SMP amendments were received by Ecology for state review and verified by Ecology as complete in a letter of April 12, 2010.

STATEWIDE REVIEW

Notice of the state comment period was distributed to state task force members and interested parties identified by the County , in compliance with the requirements of WAC 173-26-120 and as follows:

The state comment period began on April 12, 2010 and continued through May 11, 2010. On April 20, 2010, Ecology held a public hearing in Port Townsend to seek input on the proposed amendments. A summary about the statewide review with related links was posted for the benefit of interested citizens on Ecology's website, and remains online with periodic updates as a point of reference.

STATEWIDE PUBLIC HEARING

Notice of the hearing was mailed to a large number of citizens on the Interested Parties list, email notifications were sent to many others. These included a description of the proposed amendment and the authority under which the action is proposed, the times and locations of the hearing/s and the manner in which interested persons may obtain copies and present their views was provided in the April 19, 2010 edition of the Port Townsend Leader and Peninsula Daily News, the County's official newspaper of record. A Guest Editorial, written by Phil Andrus and Phyllis Schultz, articulating some of the contents and the authors' perspectives about the importance of the SMP Update. The editorial was published in the Port Townsend Leader on April 14, 2010.

For about two hours before the Hearing, an open house was hosted by Ecology at Fort Worden Commons. Several SEA program staff and Jefferson County Planner Michelle McConnell spoke directly with many individuals, answering questions particular to their homes, lands, or other concerns. This dialogue allowed many citizens to understand how the proposed document would or would not affect their property rights, and many who thus consulted chose to leave before the Hearing, and not to testify about the SMP, whether for or against.

Following the Open House exchanges, The **Public Hearing** was convened, and after ground rules were explained by Hearings Officer Jerry Thielen, and agreed to by those attending, Ecology

Shoreline Specialist Jeffree Stewart gave a presentation explaining the statewide context of Jefferson County's SMP update.

It was estimated that approximately 400 individuals attended the Statewide Public Hearing for some portion of the evening. A total number of 340 individuals or organizations submitted comments on the proposed amendments. This included verbal testimony at the hearing and those received in written form. Ecology sent all oral and written comments it received to the County on May 25, 2010. Efforts were also made by Ecology to organize this same information into summary tables to help Jefferson County with its responses.

The diversity and detail of the comments was voluminous, with many comments of various length and complexity received. Large numbers of comments both for and against the Update and its provisions were synopsized and responses combined in summary. Logistical problems were posed in organizing the volume of comments, with many months being devoted to meeting the requirement for a responsiveness summary which addressed their content. Two time extensions were requested by Jefferson County and granted by Ecology to allow for thoughtfully coalescing and addressing citizen concerns.

RESPONSIVENESS SUMMARY

On November 30, 2010, the County submitted to Ecology its responses to issues raised during the state comment period. We find the County has summarized and grouped the responses along lines that make sense for an overview, and provided appropriate, generalized responses. Ecology's own responses to issues raised during the comment period are expressed at various places in these Findings and Conclusions.

Consistency with Chapter 90.58 RCW: The proposed amendments have been reviewed for consistency with the policy of RCW 90.58.020 and the approval criteria of RCW 90.58.090(3),(4) and (5). In accordance with RCW 90.58.050, Jefferson County, as a local government, has "the primary responsibility for initiating the planning required by [the SMA] and administering the regulatory program consistent with the policy and provisions of [the SMA.]"

The County has also provided evidence (see above) of its compliance with SMA procedural requirements for amending an SMP contained in RCW 90.58.090.

Consistency with "applicable guidelines" (Chapter 173-26 WAC, Part III): The proposed amendment has been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the County.

Consistency with SEPA Requirements: The County submitted evidence of SEPA compliance in the form of a SEPA checklist and issued a Determination of Non-Significance for the proposed SMP amendments on February 10, 2009;

OTHER STUDIES OR ANALYSES SUPPORTING THE SMP UPDATE

Ecology reviewed the following reports, studies, map portfolios and data prepared for the County in support of the SMP amendment:

These supporting documents include:

- *An August 2006 Final Consistency Report*
- *A September 2006 Final Integration Strategy*
- *a November 2006 Summary of methods for Jefferson County Marine Shoreline Restoration Prioritization*
- *a November 2008 shoreline inventory and characterization,*
- *a February 2010 cumulative impacts analysis,*
- *an October 2008 restoration plan*
- *a Frequently Asked Questions document prepared by Jefferson County Prosecuting attorney's office about legal aspects of the SMP Update*

SUMMARY OF ISSUES RAISED DURING THE PUBLIC REVIEW PROCESS

Jefferson County's SMP amendment drafting and subsequent public review process was at times contentious. Once the County completed the two plus year process of drafting an SMP through its Advisory Committee process, the Preliminary Draft SMP was sent for review to the Planning Commission. As their meetings convened, a group of vocal opponents frequently appeared and testified in Planning Commission meetings.

The Jefferson County Realtors Association and others organized written response campaigns that generated large volumes of SMP-related mail to Jefferson County during each public comment period. Jefferson County posted all the correspondence on their website, and the issues raised were considered by the Planning Commission and later the Board of County Commissioners during respective reviews in 2009. A revised Planning Commission Draft version went for review by the Board of County Commissioners, and further local comments were provided and considered.

Beginning in April, 2010, when the Statewide Public Comment period opened, strong support was voiced by many for the Update being needed and well-conducted, while passionate antagonism was voiced by a significant number of citizens. 340 testimonials were recorded,

with many substantive recurrences of messages previously attended through the local proceedings. Along with what was summarized in Jefferson County's November 30, 2010 Responsiveness Summary, Ecology notes that considerable debate centered on the following topics:

The County was inclusive and proactive with public involvement

The record contains abundant and specific evidence showing that Jefferson County actively notified citizens and invited participation from the earliest days of the update effort. Along with appropriate Tribal and Agency and scientific/technical representation, privately owned residential waterfront property owners were included in the Advisory Groups that developed the SMP update. The meetings were all open to the public.

Many assertions were made, especially in 2009 and 2010, saying that Jefferson County was non-inclusive, and saying waterfront owners were not properly represented. The record shows otherwise. Citizens were notified, given specific information on topics being covered at meetings, and were encouraged to participate. The record shows a wide range of ways public involvement was solicited, and also reflects how individual comments were engaged.

A letter from the 2010 statewide review notes: "Never before in the history of land use planning have we experienced such detailed outreach efforts to engage land owners and citizens. There were multiple mailings to property owners; workshops and presentations held throughout the county, and multiple public hearings. The Board of County Commissioners, in the final deliberations, carefully and thoughtfully went through all the oral and written testimony and modified or added elements that were suggested by our citizens. "

Effect of revised regulations on residential property values

Many citizens protested the supposedly negative impact new regulations would have on the value of their properties. At one point in 2009, confusion was introduced in these matters by a public official claiming that property values countywide would change as a result of the proposed SMP being adopted, with the SMP provisions shifting the tax burden from waterfront owners to everyone else. These remarks were among others broadcast in the local newspaper.

Considering the source, and based on subsequent public testimony, the remarks generated some anxiety about property taxes. It was later recognized this testimony had not been carefully considered, verified, nor vetted by the County. It was also noted that the speaker had not actually read the proposed SMP document he was referring to when making testimony about how it would affect everyone's tax bills.

Printed and spoken information was also broadcast by various parties to suggest the non-conforming use and structure provisions would result in increased insurance costs, or worse, for some homeowners. The insurance concern was later shown to be speculative and of

uncertain origin, but many citizens were stirred by these claims to challenge the SMP as a hardship to them in public testimony.

Many other citizens posited the economic effect of the new SMP would be generally positive. These focused on the natural beauty of the region, there being plenty of evidence that problems were afflicting the regional ecosystem as population increased and development spread, that its undisturbed character would be better protected by the new regulations, and proposing this regulatory upgrade would effectively increase property values generally.

A notable example of those favoring the updated SMP:

“People are attracted to Jefferson County in large part because of the natural beauty of this area- the water, the mountains, and the trees. I understand that there is a delicate balance between the need to preserve and clean up the natural resource and the desire of land owners to develop their property. It is well known that Puget Sound water quality has degraded over the last 100 years. Development practices have changed from ‘do whatever you want’ to needing to regulate development. Of course, this regulation feels oppressive to the land owners.

However, in the large scheme, most people would not want to live here if our water and air quality were unsafe—or if their neighbor could cause their waterfront bluff edge to erode. You have the responsibility, along with the Jefferson County Planning Commission, the Jefferson County Board of County Commissioners and the Jefferson County Department of Development to come up with a standardized regulation that will the most fair to the most people, while safeguarding our waterfront. Mostly, I am in support of the current proposal of the Shoreline Management Program that was submitted to you. I understand that there are numerous ways that a homeowner could mitigate their development impact to the shoreline written into this proposal.”

The County’s Responsiveness Summary notes the following in relation to residential regulations: “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.

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."

Depth of shoreline buffer zones and science basis for setting these

Citizen ideas and opinions were divided on the issue of how deep shoreline buffers ought to be. Many comments stated there was no scientific basis for requiring 150 foot shoreline buffers. Claims were made about government violations of the rights of property owners. A lot of emotion was brought to public forums in testimony which denounced the "one-size-fits-all" buffer requirement.

One of very many citizens who made similar comments wrote: "We think the loss of revenue would be too much for the county if the 150' were approved. The county assessor said the property taxes would not decrease but the change would lower value of the property which sounds like a double standard? The City of Port Townsend has a 50' setback and the city is part of the county -is this discrimination?' How many pieces of property will the 150' setback render worthless? Is this plan cost effective for the county? We think the 150" setback is an overkill."

Many other citizens voiced strong support for the 150 foot buffers, and some asked that shoreline buffers be made still deeper to protect more habitat. It was noted the selection of 150 feet is coincident with the buffer already established in the 2008 Critical Area Ordinance. It was chosen by Jefferson County as a median point of departure for regulatory purposes, from which site specific factors can be applied to determine sensible and appropriate buffer requirements at the project level.

For Inventory and Characterization purposes, the science on buffers has been summarized, because the literature consulted is extensive. Some comments alluded to research papers by local scientists, expressing concern that Jefferson County had not included important local research. It was suggested that the County disagreed with the conclusions of those papers, and so discounted them. In fact, the bibliography for the Inventory & Characterization includes many citations for numerous papers written by the local sources cited as having been ignored.

Various papers have different areas of focus, and are based on different types and levels of research. Resulting recommendations for application to establishment of buffer areas can be anywhere from 50 feet to 400 feet being needed. The variation is based on protection of different ecological resources.

Protection of naturally occurring vegetation such as trees and shrubs plainly has beneficial effects such as erosion control, shade for beaches, food production valuable to aquatic species, and providing habitat for various mammals, birds, and other life forms.

In response to many and various concerns expressed by citizens about how the LA-SMP was written , and its scientific basis, the County notes in its Responsiveness Summary:

“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.

Provisions affecting “non-conforming” lots and structures

When buffer zones or other code provisions change, some existing structures will no longer be in compliance with the new codes. New rules become stricter than old rules, and existing homes become identified as “non-conforming” to the new rules.

It was argued passionately by some that this was a “taking” of private property rights. Claims were made that objective evidence would limit options, that building costs would increase, and state policy “disfavoring” non-conforming uses and structures was noted.

An example comment noted, “….Existing structures legally permitted and built under our existing land use regulations, will become identified as "nonconforming" under the new regulations. This status will impact both land values, ability to seek financing (lending), and insurance costs of current and future home owners. According to the Washington State Administrative Procedures Act a cost/benefit study is required for substantive actions like this. However, one has not yet been provided for review. An analysis of this importance when completed, must be independently validated by an unbiased source. Then it should be made available to the citizens of this county such that they are aware of this 'taking' without just compensation.”

It was pointed out that the “nonconforming terminology has been in use for the last 60 years, and a large body of case law has addressed particular situations and definitions. However, testimony was offered by citizens that labeling people’s property this way gave a negative impression. It was suggested that different names be designated that would not diminish value.

Many citizens expressed concern they would not be allowed to rebuild their homes or make improvements because of this legal status. A lot of information was broadcast to citizens that mischaracterized the requirements of the draft SMP as applied to nonconforming structures while it was being publicly debated. Statements were made suggesting homes could be burned to the ground “by eco-terrorists” and then not allowed to be rebuilt because of the SMP. In

fact, the provisions of the LA-SMP allow a range of improvement and even expansion of nonconforming structures, depending on conditions on the site.

Jefferson County notes in its Responsiveness Summary, " 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."

Impacts to ecological functions from net pen and geoduck aquaculture

Aquaculture has been practiced for many decades in certain tideland areas of Jefferson County, while new methods of aquaculture have been extending into deeper waters and adding cultivation to what formerly was harvest of naturally occurring animals. It is recognized that aquaculture is water-dependent industry which provides jobs and has in many ways been conducted with environmental protection as a strong concern. The topic of aquaculture was extensively debated in developing the LASMP.

Net pen production of fishes was especially controversial, and the BOCC voted to prohibit that as a way to protect water quality in the County.

One citizen put the concerns as follows: "The prohibition of net pen farming is long overdue. They should be outlawed everywhere. The sea lice are a significant part of the reason why the fisheries are in trouble. The fishing industry supports much of our economy and that of our neighbor to the north, Canada, and we must do everything we can do to prevent further losses of fish stocks and habitat. I've personally researched this issue and find it so alarming that I've brought it to the attention of my local supermarket (QFC) that sells farmed fish. I don't touch the stuff, EVER. You shouldn't either. "

The other side of the many comments on this topic is reflected in this excerpt: "….request that Ecology make the necessary changes to Jefferson County's locally approved SMP before approving them. Ecology should change the current SMP language regarding the prohibition on net pen aquaculture that would make it possible for future development of net pen aquaculture operation that can show they meet the proper regulatory controls and conditions that safeguard the environment. The change in language would specifically pertain to the

prohibition and elimination of finfish net pen aquaculture in Jefferson County that is uncalled for, and not in line with the State's Shoreline Management Act. Pacific Aquaculture suggest Ecology's language regarding net pen finfish aquaculture allows for those type of proposals to be permitted through the appropriate conditional use criteria, and set forth language that will be both protective to the environment, but also allow development of this important water dependent industry. Net pen proposals can be evaluated using current scientific information, appropriate regulatory safeguards, environmental monitoring standards and other protective conditions to safeguard the environment."

Comments in the statewide review contend this prohibition is not legal and will be challenged. The County's Responsiveness Summary notes: " The LA-SMP reflects the Board's desire 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."

Whether or not proposed aquaculture regulations specified by Shoreline Designation can effectively protect aquatic sensitive areas

Concerns about impacts to ecological functions were expressed as reasons for imposing restrictions and permit requirements on some forms of aquaculture, while the aquaculture industry argued its activities should be exempt from any permit requirements. Of particular concern to one group was allowing aquaculture as a primary use in Priority Aquatic Designated shorelines. Their concerns questioned how the "intensity" of uses was being applied:

"While Jefferson County has developed an excellent approach to identifying the most natural and intact areas for both upland and in-water situations, the regulations do not protect the shoreline ecological functions as the Shoreline Management Act and the Shoreline Master Program Guidelines require in a few important cases.

The problem is best illustrated by the use table. Of particular concern are that intense levels of development are allowed in the Priority Aquatic, Natural and Conservancy environments, for example: industrial/port development in Conservancy, multi-family residential in Conservancy, structural stabilization in Priority Aquatic and Natural. The primary reason these examples and similar situations are an issue is the low-intensity focus of the SMP Guidelines for ecologically intact areas. The industrial/port section includes limits on intensity for the Conservancy environment, but industrial/port development is inherently a high intensity use that is inappropriate for this environment.

On the other hand multi-family residential could be designed to be low intensity, but the regulations do not require this. Structural stabilization should not be allowed in the Natural and Priority Aquatic environments, because its very nature is to obstruct natural functions. Allowing these situations will result in a loss of vegetation, habitat, and ecological functions contrary to

the policy of the SMA and the requirements of the guidelines. We recommend that these uses and similar uses be prohibited or carefully limited in their intensity within environments designed to protect ecological functions.

However, perhaps the most important of our concerns on this subject relates to aquaculture; because it is the in-water use that will be most common over broad areas, yet it has the least use limits. We support aquaculture in suitable shoreline areas. However, aside from the distinctions for geoduck, net pens, and finfish, the wide array of aquaculture practices is allowed in all environments at the highest intensity, which is contrary to the SMP Guidelines principle for limiting uses to low intensity for ecologically intact areas, such as the Natural and Priority Aquatic environments. Many of the current forms of aquaculture are very intensive, and the trend is to become more intensive."

Another quote was, "They include many methods and practices that significantly alter the ecological functions and natural character of the shoreline." It was suggested that stricter limitations be applied than what was approved in the LASMP in order to meet the policy intentions of no-net loss of ecological functions. Particular attention was given to activities proposed in Natural and Priority Aquatic designated shoreline areas.

The Priority Aquatic shoreline Designation was formulated by a subcommittee that included shellfish growers, Tribal, and environmental organization representatives. The Priority Aquatic Designation was meant for both high value shellfish growing areas and critical habitats to be better protected. The Technical Advisory Committee adopted their recommendations, which were folded into the Preliminary Draft SMP, and carried forward to the Planning Commission. It was later included in the LASMP.

Prevention of any additional mining in shoreline areas

A large number of letters was written that were opposed to allowing any additional shoreline areas to be used for purposes of mining or the storage of mined resources. An existing proposal, yet to be realized, was applied for under the existing SMP, is "grandfathered," and would not be affected by the new regulations.

An example of one of many comments on this matter: "I trust that Ecology will take the long term view that protects our precious shorelines and ignore the fear-based hysteria that was obvious at the public hearing. I am particularly interested in the prohibitions placed on mining related operations on our shoreline. There should be no place for industrial harbor complexes to load and ship aggregate or other mining products to distant markets. Not only would this permanently spoil the shoreline, threaten water quality and destroy essential habitat; it would also be accompanied by massive strip mining within our watershed."

Consistent with Guidelines provisions, the LASMP severely constrains future mining activities in shoreline areas.

Challenges to the overall scope and complexity of the SMP

Many writers voiced a general condemnation of the LASMP as being overly complicated and difficult to read. The word “draconian” was invoked more than once, along with various dire predictions on the negative effects the documents adoption would have. A number of writers complained there was no need for changing the old regulations. Some citizens complained the County would be unable to effectively administer the new regulations. Others protested it was unfair, and some said unconstitutional.

A number of others wrote with praise for how clearly written and easily understandable the significant content of the LASMP was. One concise letter noted, “I have read the draft SMP in its entirety and have submitted verbal and written testimony throughout the county's extended process. In all of my eighteen years on the Shoreline Commission and on the Planning Commission, I have never witnessed a more thorough, inclusive, and professional plan development process. As a marine electrician, I am keenly concerned for the protection of the working waterfront. As a sailor, kayaker, clam digger and crab chaser, I recognize the many values of the shorelines and the waters of our county.

The draft is vastly superior to the document it will replace. First, it incorporates contemporary scientific knowledge in its policies and regulations. Second, it is more logically and clearly organized and written. And, third, while recognizing the needs and rights of property owners, it protects shoreline resources and processes for the benefit of the citizens of Jefferson County and of the entire state.

Meriting special mention are the following:

1. The prohibition of all mining and mining-related activities on natural, conservation, and residential shorelines
2. The prohibition of farming of salmon in net pens
3. Buffer modification is flexible enough to allow reductions in buffer sizes when appropriate.
4. Reduction of the demand for shoreline armoring
5. Strengthening of the regulations of shoreline armoring, when armoring cannot be avoided
6. Continued respect for water dependent uses”

Another citizen wrote: “We cannot afford to lose or degrade any more of Puget Sound's shoreline habitat. The citizens of Jefferson County have worked thoroughly and methodically to determine the optimal course for our shorelines. The Jefferson County Shoreline Master Program Comprehensive Update represents the outcome of this effort. This plan defines and establishes protections throughout our County’s water systems. I would like to thank all that have worked to make this plan representative of the broad cross-section of interests in Jefferson County. I applaud the Jefferson County Board of Commissioners for their effort and approval of this update.”

Others argued fervently in favor of updating the SMP with much stronger protective mechanisms.

One commenter contended that the SMP went beyond what the law intended: “The directive to "improve" ecological functions in 8.8.A.7.(i.) is beyond the scope of the SMA. The objective of the SMA is no net loss. In the Summary opening of the Cumulative Impact Analysis the overall purpose of the SMP is characterized as: "Taken together, the PD SMP and the Shoreline Restoration Plan are expected to have a net beneficial effect on shoreline ecological processes and functions as restoration actions are implemented to improve degraded shorelines and as new properties are developed and existing properties redeveloped in accordance with the new policies and regulations." Again, this exceeds the mandate of the SMA. This overreaching ambition is reflected in the entire content of the LA SMP.”

Jefferson County notes in its Responsiveness Summary, “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.”

Striking an appropriate balance between required protection of ecological functions and allowing for reasonable uses of waterfront land was carefully considered by Jefferson County at every step in developing these regulatory provisions. The Locally adopted SMP has flexibility mechanisms to ensure that case-by-case review could relax or modify the standards when appropriate.

The provisions have been written as clearly as possible to help citizens understand what the requirements are and which apply to a given proposal. A close review of the iterative versions of the drafts preceding the LASMP will reveal extensive effort applied to making the provisions as clearly written as possible while remaining consistent with legal requirements.

Conditional Use Permits

A number of comments focused complaint on the new SMP having too many instances of Conditional Use Permit requirements, saying, for example, these requirements “gave too much control to Ecology.”

An example is described in relation to Environment Designation assignments: “Designation of 41 percent of Jefferson County shorelines as Natural is an abuse of the goals and policies of RCW 90.58 and WAC 173-26. This is purely a policy decision by the county, not one founded in the requirements of the law. The dramatic expansion of this designation places nearly half our shorelines under conditional permit review by DOE for single-family residences, a preferred and

exempt use in the SMA. This is in conflict with RCW 90.58.100(5) requirements to "insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020."

Jefferson County responded by correctly noting that many of the CUP requirements in the updated SMP are those required by the Guidelines. Their Responsiveness Summary further notes. "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. 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."

Ability to access beach with stairs or other structures versus view only access, and long term impacts of such structures/ significance of bluff height or effect on landslide hazard/ ecologically sensitive areas

For many years, high bluff waterfront property was commonly treated by owners as having "view-only" access for practical and economic reasons. In recent years, Jefferson County shorelines have increasingly been accessed from high bluff properties by stair tower and other structures for single family residences. In some cases, large structures have been installed in areas designated as landslide hazard zones.

To discourage proliferation of such structures, provisions in the LASMP make clear that stairs to the beach would not be allowed in areas designated as feeder bluffs. Landslide hazard areas and other sensitive area conditions can also be reasons to not allow construction of structures that would likely later be broken up by earth movements, or require shoreline armoring to protect footings.

A number of citizens protested these provisions as impairing their ability to enjoy their property. One example is here:

"Beach Access Structures. Why live on the water if access to the beach is restricted? RCW 90.58.020 states, "It is the policy of the state to provide for management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." Waterfront property owners have a right to access their shoreline."

The same author wrote elsewhere: " Expansive designation of shorelines under Natural also prohibits outright common accessory uses such as beach stairs and preferred uses such as protective bulkheads (RCW 90.58.100(6) without any opportunity to mitigate perceived harm. The automatic assumption that these uses will cause harm without mitigating measures betrays the SMA, ignores modern engineering techniques, and most of all is simply prejudicial.

Others wrote to praise the common sense basis for such restrictions. The County's Responsiveness Summary notes, "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."

Limitations on shoreline armoring and impacts to nearshore ecology

Comments on the topic of shoreline armoring were of three basic sorts-a number of writers said there should be little or no restrictions and the proposed regulations were too complicated and/or restrictive. A second group said that bulkheads are vitally important for protection of property and should be allowed.

One citizen commented: "7.8. Structural shoreline Armoring and Shoreline Stabilization. "There can be no ownership of property without protection of property." Again the county and DOE operates from the assumption that armoring and bulkheads are categorically harmful. The science used to defend this assumption is not universally accepted. And the science doesn't exist in a vacuum and must have some context with regard to the specific conditions.

7.8.A.1. If this policy is to prevent the "proliferation" of bulkheads and armoring then it doesn't recognize historic trends. Shoreline stabilization is massively expensive. Nobody wants to do it except as a absolute necessity. Not to mention that it is a primary preferred use under RCW 90.58.100(6)."

Many other writers thought there were already too many bulkheads, said their impacts on ecological functions are clear, and we should definitely prevent any more shoreline armoring than necessary from being built.

Guidelines requirements about shoreline armoring are especially focused on preventing the need for new shoreline armoring-and thus protecting ecological functions of beaches and bluffs- by locating new structures farther back from then water's edge.

The County's responsiveness summary indicates the following: 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.

Forest Practices Regulation

Comments were made that the LA-SMP forestry provisions don't comply with State Forest Practices Act. The County's responsiveness summary indicates the following:
"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."

Designation of shoreline areas within the Quinault Reservation

The Quinault Tribe has many miles of Pacific Ocean shoreline in its jurisdiction. A number of recreational and residential lots have been developed on reservation lands that are privately held. The Tribe designates most all the coast as wilderness, and at the statewide review they requested the Designation of these areas be changed to Natural from Conservancy.

SUMMARY OF ISSUES IDENTIFIED BY ECOLOGY AS RELEVANT TO ITS DECISION

Ecology reviewed all of the records of individual public comments from the Statewide Public Comment period. Those were all considered by Ecology in relation to the record from the public comments throughout the SMP development proceedings. It was recognized that many of the issues raised in the statewide review had previously been considered and addressed, one way or another, in the process leading to local adoption. Certain issues were identified by Ecology as having particular significance and warranting close review prior to final approval by Ecology:

Whether provisions allowing residential development will afford necessary protection?

There were many concerns expressed by citizens about how the SMP might affect the ability to develop and enjoy residential properties. These comments were carefully considered as the SMP was developed, because as was noted earlier, residential use is one of the most common

uses of waterfront in Jefferson County. Many of the comments made during the statewide review had already been heard and addressed by Jefferson County during local public comment periods.

As noted in the Cumulative Impacts Analysis, "In and of itself, residential development probably does not have major adverse effects on shoreline resources. Most of the effects are caused by actions commonly associated with residential development and use, including construction of bulkheads, removal of shoreline vegetation, use of fertilizers and other chemicals, alteration of natural drainage pathways, construction of docks/piers, boating activities, and the like. These actions typically cause a variety of impacts that affect physical processes and can damage fish and wildlife species and their habitats."

Depth of Buffer Zone/ Vegetation Conservation

In particular, many concerns were expressed about how wide the buffer zone was proposed to be. These concerns had been discussed often, in great detail, as the SMP update was being conducted. They had also been raised repeatedly over the last several years by a group of citizens determined to limit regulation of private property, some of whom insist that science does not support buffer restrictions like the ones already in effect with Jefferson County through the County's Critical Area Ordinance.

Using more protective riparian habitat area buffers does not mean property owners have no options for use of their land. Science-based buffers could be reduced on a case by case basis as needed to accommodate the other policy goals of the SMP. There are numerous ways waterfront properties may be developed which appropriately limit ecological impacts while enabling owners to build safely sited homes and enjoy their property.

WAC 173-26-221 states, "Master programs shall include: Planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation, as necessary to achieve no net loss of ecological functions….and to reduce the hazard of slope failures or accelerated erosion."

The Cumulative Impacts Analysis notes, "Removal of shoreline vegetation, which often accompanies residential development, reduces shade and large woody debris recruitment potential, which impacts the supply of prey resources for juvenile and resident salmon and decreases in-stream habitat complexity in river systems. Failure to maintain or plant vegetation along bluffs can decrease root strength and increased likelihood of future landslides….Bluffs with significant modifications to both the natural drainage regime and vegetation are particularly susceptible to landsliding."

Ecology participated and provided technical support as Jefferson County worked to determine reasonable and appropriate means for protecting ecological resources of its shoreline areas. Pursuant to Guidelines requirements that reflect the legislative intent of RCW 90.58, many of

Jefferson County's SMP provisions are focused on protecting existing vegetation and other ecological resources in shoreline areas.

Ecology observes that the proposed 150 foot buffer was chosen as a reasonable approach premised upon the protection of the most vital of ecosystem components along the shoreline. The County provided literature explaining how buffers function in various ways including erosion control, shade for beaches, production of food valuable to aquatic species, and habitat protection. These materials described how different buffer widths were necessary to protect different functions.

The 150 foot buffer in the Locally Adopted SMP is also consistent with previously adopted CAO provisions, which were prepared considering the best available science, as required by the GMA. This results in increased consistency and avoids conflicts between different kinds of permit requirements.

Ecology review determined the approaches used in preparing the LASMP were consistent with requirements in the Guidelines, considering the further evaluation of likely impacts.

Residential Appurtenant Uses

Ecology recognized potential misuse of how appurtenant uses were defined:

Appurtenance, normal means a structure or use that is necessarily connected to the use and enjoyment of a single-family residence and is located landward of the ordinary high water mark. Normal appurtenances include, *but are not limited to*, utilities, septic tanks and drainfields, and grading which does not exceed two hundred fifty (250) cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark, as well as driveways, walkways, and fences upon which the primary use is dependent.

The matter of defining appurtenant and accessory structures was considered carefully. These need to be expressly identified as to which are exempt versus needing permits. With the various sized outbuildings and other developments some owners propose, unrestricted development of accessory structures would increase impervious surface coverage, potentially impact buffer integrity and in some cases have very adverse impacts.

To prevent future arguments about any number of structures other than the ones explicitly being identified, a required change was to revise the definition for greater clarity and specificity. The list was made short and crisp. Unlisted structures can be approved as CUPs.

Another concern was with boathouses along the shoreline. Boathouses are water-related, but not water-dependent. They can be useful for boat and gear storage when located back from the water's edge. Placement of structures at the water's edge intrudes on some of the most

important habitat values, and may lead to a need for shoreline armoring, so regulation of siting and design are essential to resource protection.

The Planning Commission proposal would have allowed boathouses in all environments as a permitted use, and this would have allowed such a structure on each waterfront lot regardless of conditions on site. This would have been more permissive than the current SMP, and therefore less protective. The cumulative impacts appeared not to have been well considered.

The Locally Adopted version of the SMP requires Conditional Use approval for these structures, which is consistent with historical practice in Jefferson County. The new provisions add specificity about the size and configuration of boathouse structures, and explicitly prohibit their use as residential structures. *Ecology considered carefully the various safeguards in the proposed language, and determined the protection to use preference ratio was acceptable*.

Whether cumulative impacts of allowing a 300 foot wide common line setback standard have been effectively addressed?

A "common line setback" is used in residential land use regulation to ensure that builders of new homes are not denied reasonable views from their homes when older homes are located closer to the shoreline than what is allowed by newer regulations.

The Planning Commission proposed that for vacant lots with adjacent homes up to 300 feet away, a setback for a new home could be lined up with the front of an existing one. This proposed standard was carried forward in the Locally Adopted SMP adopted by the Board of County Commissioners.

However, Ecology found no supporting rationale was provided to show this provision would be necessary in most cases to protect views. The extent of probable impacts also remained uncertain under full build out circumstances. Ecology articulated concerns in writing about this idea, as a significant loosening of current standards, in October of 2008. The County was advised at that time that such a liberal standard could not likely be adopted, adding that to make the case, the County would need to conduct a full build-out analysis and demonstrate how this provision would uphold the No Net Loss objective.

Ecology concluded that a standard of 100 feet should effectively address view impacts in most cases and that other mechanisms are available for relief as needed, while more effectively protecting ecological functions.

Regulation of nonconforming structures-acceptability of prescribed allowance for SFRs on nonconforming lots, and how that is described in the LASMP

Based on the current or proposed regulations, some existing homes would not be allowed to be built new in their same locations. These are known as non-conforming structures, built close to

or in some instances over the water's edge. Best ways to address their presence in shoreline buffer zones as legally grandfathered uses/structures were carefully considered in developing the SMP update. During public comment, the effect of these provisions was fiercely argued about, and many citizens expressed strong feelings about their homes and investments and legacies for children being somehow threatened. Jefferson County carefully attended to these concerns in writing and consultation about individual properties.

Jefferson County's Critical Areas Ordinance includes this language:

18.22.080 Nonconforming uses.

(1) Any legal use or legal structure in existence on the effective date of the ordinance codified in this chapter that does not meet the buffer requirements of this chapter for any designated critical area shall be considered a legal nonconforming use.

(2) Any use or structure for which an application has vested or for which a permit has been obtained prior to the effective date of the ordinance codified in this chapter, that does not meet the buffer requirements of this chapter for any designated critical area, shall be considered a legal nonconforming use.

(3) A legal nonconforming use or structure may be maintained or repaired without limitation by this chapter.

(4) A legal nonconforming use or structure that has been damaged or destroyed by fire or other calamity may be restored and its immediately previous use may be resumed. [Ord. 3-08 § 1]

For structures in shoreline jurisdiction, additional and more specific criteria are addressed. Older waterfront homes can be remodeled and expanded as has always been allowed previously. The degree to which they can be expanded, in what directions, and which permit requirements apply is given detailed scrutiny in the locally adopted SMP which is new. Specifications on expansion size are aligned with degree of regulatory process and/or constraint applied.

The following excerpt from an October 2008 letter from Ecology to Jefferson County addressed the matter of allowing each non-conforming lot to have a modest sized single family residence constructed according to prescribed conditions:

Jefferson County's initial analysis shows that of 39,213 lots in the County, some 8,830 are affected by shoreline jurisdiction with some 3,259 to 3,361 being partially or fully nonconforming to the proposed buffers (give or take a 20' error margin to allow for unmapped OHWM).

It will need to be demonstrated how the Jefferson County code protections would make this mechanism comparably protective for Ecology to reach the same conclusion. Jefferson County will prepare a brief description of constraints to further illustrate and justify the proposed approach.

Conducting cumulative impacts analysis would be necessary before Ecology could approve this. Under a full build-out scenario, how many new homes would be constructed? The number of nonconforming lots, their site specific circumstances, plus the overall habitat values of various shoreline reaches with numerous platted lots-and other factors- need to be evaluated.

Subsequently, additional work was done (described earlier in this document) in the Cumulative Impacts Analysis to more precisely identify the scope of lands that would be affected. Ecology. Like Jefferson County, recognizes the need to allow for reasonable use of properties in shoreline jurisdiction, while being legally mandated to regulate such development.

Ecology determined that Jefferson County had effectively constrained the probable impacts of developing single family residences within buffer zone areas. Ecology determined there needed to be some further specification to limit expansions across time, to be consistent with statewide policy and case law. Required changes were identified to prevent an owner from making successive expansions-which met the identified criteria-that would gradually result in a degree of development that would have adverse impacts beyond what was intended by the Guidelines.

Whether dock and pier regulations are sufficiently limited and clear about length & width?

In the Locally Adopted SMP, a standard length for residential docks was set at 60 feet. A subsequent provision allowed for a longer length if needed to accommodate the depth needed for a given vessel. No other criteria were indentified to allow a longer dock. While in some cases this degree of administrative flexibility can be useful, it can also lead to disagreements about how long a dock can be allowed in a relatively shallow embayment.

Another concern is when a boat is simply too big to be moored in front of a residential area. Longer docks are problematic for ecological impact reasons and for limiting public use and navigation of the water and beaches.

Based on WAC 173-26-231(3)(b): An alternative approach was discussed with Jefferson County. By adding a phrase about the minimum length necessary, it becomes clear the dock should only be as long as needed for conditions at a given site. Allowing 60 foot docks can be avoided when 40 feet will work fine. Up to 100 feet can be allowed as need is demonstrated and impact avoidance proven.

Widths will be limited to 4 feet with up to 6 feet allowed for shared use docks. This will afford flexibility while placing definite length limits, and variance approval could be applied for if someone could demonstrate a longer dock met the criteria and was necessary. This would provide the appropriate level of regulatory control in limiting proliferation of SFR docks in residential areas.

After discussion with Jefferson County DCD, Ecology determined a preferable approach is to limit the length of all docks to the minimum necessary, up to 100 feet as an allowed use based on conditions at a given site. Docks longer than 100 feet, if allowed for demonstrated need, would require approval as a variance.

Whether allowance of boat ramps in all areas is appropriately regulated?

The installation of boat launch ramps across beaches was considered as it would affect marine riparian and ecological resources. SMP provisions support public boat launch ramps in appropriate locations while carefully limiting the degree to which such facilities may be associated with private ownership. This concern reflects the statewide policy in the Guidelines, and properly attempts to manage the ecological impacts of boat launch facilities on beaches as balanced with enabling the public to have recreational access to Waters of the State. *Ecology concluded no changes were needed to these provisions.*

Whether it was acceptable to prohibit non-water oriented recreational uses in an environment where non-water oriented commercial uses were allowed

A minor inconsistency was identified that was generally inconsistent with policies for water dependent uses.

Improper use of term, "essential public facilities"

The Growth Management Act provides for siting of what are known as Essential Public Facilities, only some of which would be considered as water-related and therefore appropriate for shoreline locations. The language in the Locally Adopted SMP was insufficiently distinguishing between these different categories and so changes are required to avoid improperly siting facilities that can just as well be located inland.

Whether changes are needed to Designation assignments in Quinault Reservation

The Quinault Tribe was among those invited to participate in the Technical and Policy Advisory Committee work that developed the LASMP. The Tribe elected not to be represented in the process. The Tribe also did not provide written comments during local public comment periods.

During the Statewide Review proceedings, the Tribe wrote to express its displeasure with assignments of Conservancy Environment Designation to lands on the reservation, preferring the lands be designated Natural. They also expressed particular concerns about Tribal ownership and described Jefferson County's responses to their concern as "wholly inadequate."

Jefferson County's Responsiveness Summary notes, "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."

After consultation with Jefferson County, *Ecology agreed to require changes to the LASMP as requested by the Tribe for the sake of greater consistency with the Wilderness Designation in the Quinault and for clarity about ownership and jurisdiction.*

Whether Guidelines requirements were met in Forest Practices regulation

In Natural Designated shoreline areas, conduct of forest practice activities can be allowed only as a Conditional Use. This was not clear in the LASMP, so a require change makes it explicit.

Whether an outright prohibition of net pen aquaculture (Sec 2A and Sec. 8) has an appropriate rationale or needs to be modified?

A total ban on a water-dependent use such as net pen aquaculture was considered in terms of the policy rationale as presented by the Board of County Commissioners. It was recognized there was considerable public support for banning net pens based on concerns about water quality and ecosystem health. Ecology considered whether there was enough discussion and evidence of a science basis in the record to support a ban. We concluded there was not a conclusive science basis on the record to support such a ban. *A required change removed the outright ban on net pen fisheries.*

Whether Aquaculture policies contain provisions that would be inconsistent with the Guidelines or contradict other portions of the SMP

Two lines under Article 8.2.A.10 were recognized as definite, strong statements with clear potential for being misconstrued or applied. To avoid possible significant confusion about which portions of the SMP applied to aquaculture proposals, these are required to be deleted.

Statewide policy on ocean management

A state statute which applies to the regulation of uses in ocean coastal water areas in shoreline jurisdiction was recognized by Ecology to require explicit treatment in the SMP. RCW 43.143.030 and WAC 173-27-360(6) are therefore introduced as required change language with Ecology's approval package. Most ocean waterfront in Jefferson County jurisdiction is either in federal or Tribal ownership, so relatively little uplands development seems probable. However, offshore areas have considerable potential for being used, such as with energy production and underwater cable installation. A provision is added to Article 1 that recognizes the criteria which apply to new uses in these areas.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that Jefferson County's SMP proposal, subject to and including Ecology's <u>required</u> changes (itemized in Attachment B), is consistent with the policy and standards of RCW 90.58.020 and RCW 90.58.090 and the applicable SMP guidelines (WAC 173-26-171 through 251 and .020 definitions).

This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new master program amendments over time (WAC 173-26-201(2)(c).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in Attachment C) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required, but can, if accepted by Jefferson County, be included in Ecology's approved SMP amendments.

Consistent with RCW 90.58.090(4), Ecology concludes that those SMP segments relating to critical areas within Shoreline Management Act jurisdiction provide a level of protection at least equal to that provided by the County's existing critical areas ordinance.

Ecology concludes that those SMP segments of Jefferson County relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy (RCW 90.58.090(5).

Ecology concludes that Jefferson County has complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that Jefferson County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP amendment process.

Ecology concludes that the County has complied with the purpose and intent of the local amendment process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County's SMP amendment submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring a SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in WAC 173-26-120.

Ecology concludes that the County has chosen not to exercise its option pursuant to RCW 90.58.030(2)(f)(ii) to increase shoreline jurisdiction to include buffer areas of all critical areas within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those

designated critical areas with buffers that extend beyond SMA jurisdiction, the critical area and its associated buffer shall continue to be regulated by the County's critical areas ordinance. In such cases, the updated SMP shall also continue to apply to the designated critical area, but not the portion of the buffer area that lies outside of SMA jurisdiction. All remaining designated critical areas (with buffers NOT extending beyond SMA jurisdiction) and their buffer areas shall be regulated solely by the SMP.

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments are consistent with the policy of the Shoreline Management Act, the applicable guidelines and implementing rules, once required changes set forth in Attachment B are approved by the County. Ecology approval of the proposed amendments with required changes, is effective on the date at which Ecology receives written notice that the County has agreed to the required changes.

As provided in RCW 90.58.090(2)(e)(ii) the County may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58 and the applicable guidelines, then the department shall approve the alternative proposal and that action shall be the final action on the amendment.