



Executive Summary

Department: Community Development
Issue Title: Shoreline Master Program Periodic Review Update
Meeting Date: March 8, 2021
Time Required: 30 minutes
Attendees: Jeff Rimack, Angie Silva, Dave Ward, Kirvie Mesebeluu-Yobech

Action Requested at This Meeting:

None. For briefing and discussion.

Background

The Department of Community Development is undertaking a periodic review of the County's Shoreline Master Program, as required by the Washington State Shoreline Management Act, RCW 90.58.080(4). The Shoreline Management Act requires Kitsap County's Shoreline Master Program be reviewed, and revised if needed, once every eight years. The periodic review ensures the Shoreline Master Program remains current with changes in state laws and rules and remains internally consistent with County plans and regulations. This periodic review also provides an opportunity to propose clarifications and process improvements consistent with the Shoreline Management Act.

Where we are

Phase 3: Review and Analysis (February – April 2021)

Proposed amendments to the Shoreline Master Program and associated revisions to development codes were available for formal public consideration per Kitsap County Code (KCC) 21.08.100 (review by planning commission). Kitsap County and the Washington State Department of Ecology accepted comments on the periodic review of the Shoreline Master Program under RCW 90.58.080(4). Kitsap County opted for a joint review, public hearing and comment period with the state Department of Ecology per WAC 173-26-104 and WAC 173-26-110.

The public comment period closed on March 3, 2021 at 5:00 P.M. A joint Kitsap County Planning Commission and Department of Ecology public hearing was held on March 2, 2021.

State Environmental Policy Act (SEPA) Determination

Department staff submitted the SEPA Checklist for a non-project action to the Kitsap County SEPA coordinator for review and determination. A Determination of Nonsignificance was issued per WAC 197-11-340(2) on February 18. The lead agency, Kitsap County Department of Community Development

Kitsap County, will not take action on this proposal for 14 days. The SEPA comment and appeal period ended on March 4. At the time of this summary transmittal, the Department has received one SEPA comment. The Suquamish Tribe submitted one comment letter on the proposed amendments to the Kitsap County Shoreline Master Program and associated code revisions. The same comment letter also served as SEPA comment for the Determination of Nonsignificance issued on February 18, 2021.

Public Comments Received to Date (March 3, 2021 at 8:00am)

At the time of this summary transmittal, the Department has received and recorded 18 comments since the opening of the public comment period on February 2nd. Four public testimonies were recorded during the joint public hearing on March 2nd.

Next steps

The County is preparing responses to comments and recommendations on whether changes are consistent with state law and rules and County plans and regulations. The Department will share public comments and County responses with the Department of Ecology, the Kitsap County Planning Commission, and Board of County Commissioners. The Planning Commission has two upcoming deliberation and findings of fact meetings on March 16 and April 6, 2021.

Following the Planning Commission deliberation and findings of fact, the Kitsap County Board of Commissioners will hold a public hearing in May 2021 to deliberate and render a final decision on the SMP amendments by June 30, 2021. Once final action by ordinance is taken, the Department will submit Shoreline Master Program amendments to the Department of Ecology for final approval and action per WAC 173-26-120. Ecology will review amendments for consistency with state laws and rules. Ecology may either approve the program as adopted locally, may recommend changes or deny based upon consistency with RCW 90.58.

Upcoming meetings and important dates

- **March 16** – Planning Commission Deliberation and Findings of Fact
- **March 18** – Monthly Project Update
- **April 6** – Planning Commissioner Deliberation and Findings of Fact (if needed)

Attachment:

1. Kitsap SMP Comments Compiled (PDF)

2/2/2021

Thank you for the opportunity to comment. Attached is our request to prevent view blockage by vegetation

Brian and Donna Mandak

1624 Jacobsen Blvd Bremerton 98310

bmandak@comcast.net

22.400.135 View Blockage (due to vegetation)

Reason for change:

View blockage requirements are important to shoreline property owners. Just as requirements are provided for primary and accessory structures to maintain shoreline views, they should also be provided for vegetation.

While property owners need to comply with requirements of section 22.400.120 for Vegetation Conservative Buffer they will not generally plant trees or other shrubbery that blocks their own view. However they will and have planted vegetation along boundary lines with neighboring properties that do result in view blockage. This has usually been done as a substitute for a fence or because of vindictive action against a neighbor. We have personally experienced this and seen it done elsewhere.

Requested change:

Add Requirement similar to following in Section 22.400.135 and possibly in 22.400.120 to prevent new or future view blockage in side yards due to vegetation.

“New plantings within 15 feet of side yard boundary of the Buffer and Shoreline Setback zone described in this section above shall not be greater than 6 ft at maturity”

03/02/2021

Landa Fuchs

landacarmenrose@gmail.com

360-990-5544

"The hillside behind our home is very steep and has an enormous amount of water coming off of it, from a stream that is located somewhere in the hillside. I would like to be sure this area remains undeveloped. There had been a previous slide years ago, and the vegetation that exists seems to be helping to hold the bank. Any type of construction or disruption of the slope would certainly result in another devastating slide.

Thank you

Landa Fuchs and Rob Dutton

2363 Beach Drive East Port Orchard

360-990-5544"

03/02/2021

Michael Hankinson

Michael.Hankinson@parks.wa.gov

(206) 818-4281

"State Parks Comment on Climate Change and Sea Level Rise:

State Parks recommends that the Kitsap County SMP directly address climate change and sea level rise. State Parks has considered this issue in our own decision making since 2015. On November 19th, 2015, the State Parks Commission directed "...that actions taken at all levels of the agency shall be evaluated in the context of climate change..."

The Kitsap County SMP should recognize that climate change and sea level rise greatly impact shoreline development projects and, in some cases, will require new approaches to developments in response. This key omission does not allow homeowners, private developers, or public agencies the opportunity to provide the most thoughtful and appropriate response to this dynamic change in natural processes, especially if this appropriate response contradicts the SMP.

In many cases, State Parks projects are designed to last 50 years and in that time sea levels are projected to rise. As a result, new approaches will be required today that better adapt to this changing condition. Adaptation in design and engineering, however, may be inconsistent with current and proposed amendments to the SMP. How to resolve this issue? Consider amending the current SMP to address climate change, provide a timeline that explains when adaptation to sea level rise is included in the SMP, and describe how the issue is addressed in the future.

Comment on Trail Developments:

The proposed amendment explains...

In order to accommodate water-oriented uses and modifications within the buffer, the following standards shall apply subject to shoreline permit review unless otherwise exempted:

a. Trails. Trails may be permitted but shall be limited to five feet in width... Pervious surface materials, such as mulch, organics, raised boardwalks composed of untreated wood or an equivalent, are required. Gravel trails shall be considered impervious surfaces pursuant to Title 12.

State Parks Comment on Trail Amendment:

State Parks is concerned about strict limitations on appropriate materials for trail surfacing especially in the light of the Americans with Disabilities Act (ADA), which should be included in this amendment.

According to the amendment, the only option to meet ADA requirements in a picnic area like Manchester State Park is to build raised boardwalks. More latitude and flexibility to meet ADA standards would be helpful.

State Parks has experience with pervious hardened materials and has found them to clog with organic material, plug the walking surface, and is nearly impossible to maintain, especially in forested environments.

Ideally, impervious asphalt and concrete in a typical setting such as the Manchester day-use area, with appropriate storm water measures designed, is ideal. It provides for a more cost-effective installation, can re-charge the groundwater just as an pervious surface does for maximum water quality benefits, and in the end is a much better surface for visitors during all times of the year and less maintenance over time.

"

03/03/2021

Christina Kereki

ckereki@co.kitsap.wa.us

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"As the Shore Friendly Kitsap project manager, I want to ensure that Shore Friendly (SF) projects with the intent to enhance and restore ecosystem functions are streamlined (or a minimum no further permitting barriers to be placed on them). I have some concerns that some SF projects may be interpreted as a hybrid (by definition in 22.150.570). For example, there are projects that could propose half bulkhead removal and half replacement with necessary hard armor in shoreline length. Currently, these are viewed by SF as an enhancement and a net lift for the nearshore and supported by the SF program. It would be a detriment to the program goals for these types of projects to be viewed as hybrid and then require an administrative CUP. It appears that 22.600.175 A. 3 (pg. 109) will allow SF projects that have hybrid elements but meets the intent of soft-shore stabilization will allow the projects to be processed without an administrative CUP. Perhaps, if this language 22.600.175 A. 3 could be repeated in the definitions 22.150

570 it could provide further clarity. Also, large wood and boulders to pin logs can be used in soft shore designs so long as it maintains nearshore processes. 22.600.175.D C ii - Consider adding large wood and rounded boulders to definition."

2/4/2021

John Read jread@vtacs.com

I would think that we should start planning for dealing with increasing levels of the ocean. At some point we either need to face up to the fact that waterfront properties are going to be flooded, which will result in billions of dollars of lost taxes and property values, or we need to propose realistic ways of dealing with the increased water levels. This is not "nature doing its thing". It is the result of human activities and now we need to address the future damage instead of waiting for a disaster.

Thanks

2/8/2021

betsycooper1@gmail.com

Hello,

I wish to submit these comments for consideration as part of the Review and Comment process on the current proposed revisions of the Kitsap SMP during its periodic review.

If you have questions on my comments please contact me at betsycooper1@gmail.com or 206-819-7834.

Thank you,
Betsy Cooper

Comments on Kitsap Shoreline Management Plan Periodic Review Proposal
Submitted to reviewSMP@co.kitsap.wa.us on February 18, 2021 by Betsy Cooper, 24897 Taree Dr.
NE, Kingston WA, 98346 Betsycooper1@gmail.com

Thank you for the opportunity to comment on the proposed changes to the Kitsap Shoreline Management Plan. I present comments below on the Scoping Matrix and the February 2nd Public Draft Redline of Title 22 SMP. I also offer one additional request/comment for your consideration.

Comments on the Scoping Matrix and Amendment Guide

Under the Ecology Mandatory section:

#1 f – F 22.100.125 – Assure stream listings and areal extent and stream typing has been updated with the latest on water typing efforts of WDFW or the Wild Fish Conservancy and all additional mapping since 2010.

Under the Ecology Recommended section:

#2b - 22.600.145a - Revise this sentence as noted to replace 'may' with 'shall'" Forest practice that includes new or reopened right of ways, grading, culvert installations or stream crossings SHALL (may) be considered development.

#2c – 22.100.120.d - Why are Tribal Trust lands included in this exemption? It is requested that Tribal Trust Land not have a full exemption.

Under Ecology Discretionary action section:

#6 - 22.400.100.B.1.d – Reduce the time proposed for allowing construction to occur from 2 years from permit approval to 1 year from permit approval. While other sections of code allowed a permit to be viable for 2 years after approval these sensitive shoreline areas should not be allowed such a liberal amount of time particularly because action has already been under planning with the expansion of the provision of a year of permit review. Therefore addition 2 additional years is not appropriate and too many conditions could change in that time.

#7g – 22.400.120C.2.c – There is often a misunderstanding that any action that are exempt from SMP permitting is also not required to meet all the policies and requirements of the Shoreline Management Plan. Therefore, this section should state again that this variance is only given if the policies and

requirements of the plan are met. The criteria should be created before any such variances are considered.

Also, the proposed language should be revised to change the word 'could' to 'should' in the sentence; "Such an expansion SHOULD (could) be reviewed administratively during the building permit review for compliance with the SMP."

#11a – Review table 21.04 – It is not agreed that removing the hearing examiner's review offers no value added. This is particularly because, with climate change expected affects, there may need to be consideration about buffer reductions since they may not be advisable in some areas, even if the general criteria created might signal such buffer reduction is allowable.

#12b - 22.600.160.C.3.b – The revision should say "no less than 20 ft" rather than just spaced 20 ft. apart. The point is that this should not force additional pilings be installed if some pile-supported projects can be done with greater than 20 ft between pilings.

Comments on the February 2nd Public Review Draft of Tittle 22 -redline

22.100.120 Applicability

B. Development not requiring review - There should always be a requirement that the County prepare a 'Letter of Exemption' for any action not undergoing formal review under the SMP. Such letters are an opportunity for the County to track the number of actions that have occurred in any shoreline areas. It will also allow the reiteration to any project proponent that while not submitting to a formal review, the project still has the responsibility to meet all policies and requirements of the SMP.

Shoreline Stabilization – It would be advisable to add a note in the Plan that recognizes that all shoreline stabilization measures come with the requirement for appropriate maintenance. Such maintenance assures that no additional, more intrusive stabilization becomes needed down the road.

22.300.125 – Shoreline Use & Site planning

D. Policy SH23 – Should be modified to include requirements for appropriate planning for climate change affects such as sea level rise and changing effects of storm surge.

22.400.105 – Proposed Development

A. 2 – This section should include some reference or requirement to avoidance of effects of climate change, such as sea level rise or storm surge affects.

22.400.135 – View Blockage

D.1 Any appeal process should NOT be solely Administrative. It should be a type 3.

22.400.150

This section should be modified to require consideration of appropriate climate change effects in planning and approval of activities in flood hazard areas, including channel migration zones, and flood plans.

22.500.110 - Enforcement and Penalties

B.2 This section should be revised to add, as one of the considerations along with the considerations already listed: 1) the ecological function lost, and 2) the cost of replacing or mitigating the ecological damage or risk caused by the action. While the criteria currently listed are important, the true cost of

repairing the damage done by the action and the loss of ecological structure and function time and time again from no meaningful enforcement against violations must be stemmed.

22.700.130 – Cumulative Impacts

This section should state that there must also be a consideration in each analysis of the cumulative of potential climate change-related effects for the project and the other reasonably knowable actions in the area of the projects.

Finally, while I am not sure where in the plan this should be acknowledged, I call for the County to commit, as part of the Plan Periodic review, to undertaking appropriate feedback monitoring, described in Ecology Guidance. Such monitoring should include Program Consistence monitoring (demonstrating permit writers are consistently writing permits that match the SMP), Permit Effectiveness monitoring (that the projects are being built in accordance with the permit conditions and enforcement is being taken when they are not) and Plan Effectiveness monitoring (environmental or systems monitoring to demonstrate that the plan is achieving No Net Loss of ecological structure and functions).

2/24/2021

Dear Kirvie,

Thank you for your program last week. I thought of this question after we signed off.

SMP 22.150.321 defines Floating Homes and 22.200.100 (1) describes that the application is to all marine waters. There has been a live aboard boat anchored in the bay at Manchester for over a year and I hope that we don't see a proliferation of this style of living all over Kitsap County. I understand the difference between a boat and the defined floating home, but the discharge of effluents of long-term "residence" should be a concern.

This is probably outside the purview of the SMP, but I think it is worth considering.

Thank you for all your work on this project.

Respectively,

Craig Abramson

2/26/2021

My comments on the draft SMP revisions are below.

22.150.485 - the definition of "Principal Building" is even more ambiguous, and dangerous to the need to balance all property owner rights, because now there is no definition of "Accessory Structure" and the additional exclusions are also not defined (e.g. a "converted boathouse" may be of arbitrary height and area) so may include very tall structures that significantly block views of buildings on that and adjacent lots, yet would not be considered in determine the adjacent property owner's view blockage line. I urge that the original language be retained and that, furthermore, it be clarified that the meaning of "Accessory Structure" is that which was clearly intended by the original (pre integration with SMP) view blockage ordinance: the closest building on the shoreline that is taller than 10' or more than 150sf is the one the view blockage line is drawn to. At a minimum there should be some height limit above which the closest to shoreline structure becomes the "Principal Building" for purposes of drawing the view blockage line.

22.400.120.B.3 includes " shorelines of statewide significance (Hood Canal)" yet elsewhere in the program, as by the State, this term is defined to also include Puget Sound waterward of extreme low tide. I could see some future DCD staff being confused and applying this to Puget Sound shorelines. It would be less ambiguous if this read "Hood Canal (as a shoreline of statewide significance)" thus clearly applying ONLY to Hood Canal not Puget Sound shorelines.

22.400.120.D.1.a "Trails" seems to overreach for simple residential development by requiring adherence to complex Title 12 stormwater code. It also contains contradictory language in the new statement that "Pervious surfaces... are required" and the existing statement that "Previous surfaces shall be utilized except where determined infeasible. Homeowners should not need a civil engineer for a simple trail and the existing language already significant disfavors impervious surfaces so I would urge retention of the original language of this section without any additions.

22.400.120.D.1.b "Decks and Viewing Platforms" - same comment as above: to be required to be part of a mitigation plan (per existing language) already implies a professional involved and no net loss established, and 100sf maximum should result in presumption of same anyway. No need for this new language and it is an overreach and cost burden on homeowners without delivering significant needed new protection.

22.400.125 "An SDAP shall also be required for impervious surface creation in areas of the shoreline mapped as critical drainage areas" - this would imply a few feet of gravel trail, even if permitted per above because it's necessary, would also require an SDAP since so much of the shoreline is mapped as "critical drainage areas". We already have a shortage of civil engineers willing to work on residential development in Kitsap County, layering on more administrative burden is very inadvisable. At a minimum, this provision should have a square footage minimum.

22.400.135 (View Blockage) - generally these changes are improvements in clarity and reasonableness (if the definition of "Principal Building is changed to be clear and appropriate - see above); however, the change to include "all additions to or reconstruction of a principal building" is problematic. If the view blockage line applicable to a given principal building can change based on siting of future adjacent principal buildings - the use of the plural "building(s)" in the proposed language raises this possible interpretation - that would seem to potentially prevent additions to and reconstructions of principal buildings that were originally legally sited. That this is not the case could be clarified with added language "The shoreline structure setback line for the purpose of this subsection is based ... **(except that**

in the case of additions of reconstruction of a principal building, an applicant may utilize the shoreline structure setback line approved at the time of original permitting of that principal building)." Then you would know that remodeling or, (especially!) reconstruction within the footprint of the approved principal building won't be impermissible later!

Thank you very much.

William McCoy
21026 Miller Bay Rd
Poulsbo, WA 98370

Chapter 19.200

WETLANDS

Sections:

- 19.200.205 Purpose and objectives.
- 19.200.210 Wetland identification and functional rating.
- 19.200.215 Wetland review procedures.
- 19.200.220 Wetland buffer requirements.
- 19.200.225 Additional development standards for certain uses.
- 19.200.230 Wetland mitigation requirements.
- 19.200.235 Incentives for wetland mitigation.

19.200.205 Purpose and objectives.

This chapter applies to all uses within or adjacent to areas designated as wetlands, as defined in Section 19.150.660, except those identified as exempt in Section 19.100.125. The intent of this chapter is to:

- A. Achieve no net loss and increase the quality, function and values of wetland acreage within Kitsap County by maintaining and enhancing, when required, the biological and physical functions and values of wetlands with respect to water quality maintenance, storm water and floodwater storage and conveyance, fish and wildlife habitat, primary productivity, recreation, and education;
- B. Protect the public's health, safety and welfare, while preventing public expenditures that could arise from improper wetland uses and activities;
- C. Plan wetland uses and activities in a manner that allows property owners to benefit from wetland property ownership wherever allowable under the conditions of this title;
- D. Prevent turbidity and pollution of wetlands and fish or shellfish bearing waters; and
- E. Maintain the wildlife habitat.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 351 (2005) § 18, 2005; Ord. 217 (1998) § 3 (part), 1998)

19.200.210 Wetland identification and functional rating.

A. General.

1. All wetland delineations shall be done in accordance with the approved federal wetland delineation manual and applicable regional supplement. All areas within the county meeting the wetland designation criteria are hereby designated critical areas and are subject to the provisions of this title.
2. Kitsap County uses the Washington Department of Ecology Washington State Wetland Rating System for Western Washington, revised 2014 or as hereafter amended, to categorize wetlands for the purposes of establishing wetland buffer widths, wetland uses and replacement ratios for wetlands. Wetlands shall be generally designated as follows. (See Chapter 19.800, Appendix A, for more detailed description.)

B. Wetlands.

1. Category I Wetlands. Category I wetlands include, but are not limited to, wetlands that represent rare or unique wetland types, those that are more sensitive to disturbance than most wetlands, those that are relatively undisturbed and contain ecological attributes that are impossible to replace within a human lifetime, or those that provide a high level of function. Category I wetlands score twenty-three points or more out of twenty-seven on the wetlands ratings system.

2. Category II Wetlands. Category II wetlands are those wetlands that are more difficult to replace and provide high levels of some functions. Category II wetlands score between twenty and twenty-two points out of twenty-seven on the wetlands ratings system.
3. Category III Wetlands. Category III wetlands are those wetlands with a moderate level of function and can often be adequately replaced with mitigation. Category III wetlands score between sixteen and nineteen points on the wetlands ratings system.
4. Category IV Wetlands. Category IV wetlands have the lowest level of function and are often heavily disturbed. Category IV wetlands score less than sixteen points out of twenty-seven on the wetlands ratings system.

C. Exemptions for Small Wetlands. Category III wetlands that are less than (two thousand) square feet and Category IV wetlands that are less than four thousand square feet that do not contain federally listed species or their critical habitat are exempt from the buffer provisions in this chapter when the following are met:

1. They are not associated with riparian areas or their buffers.
2. They are not associated with shorelines of the state or their associated buffers.
3. They do not contain a Class I fish and wildlife habitat conservation area, identified by the Washington Department of Fish and Wildlife and
4. The wetland report identifies the specific wetland function affected or at risk and the proposed mitigation to replace the wetland function, on a per function basis.

C. (The following wetlands may be exempt from the requirement to avoid impacts, and they may be filled if the impacts are fully mitigated based on the remaining actions in this chapter. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, it is essential that a critical area report for wetlands be submitted.

1. All isolated Category IV wetlands less than 4,000 square feet that:
 - a. Are not associated with riparian areas or their buffers
 - b. Are not associated with shorelines of the state or their associated buffers
 - c. Are not part of a wetland mosaic
 - d. Do not score 6 or more points for habitat function based on the 2014 update to the *Washington State Wetland Rating System for Western Washington: 2014 Update* (Ecology Publication #14-06-029, or as revised and approved by Ecology)
- a. Do not contain a Priority Habitat or a Priority Area¹ for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in the regulatory code,

Commented [BN(1)]: Changed from 2,500 sq ft.

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2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer dimensions contained in this Chapter.

(Ord. 545 (2017) § 5 (Appx. (part)), 2017; Ord. 376 (2007) § 4, 2007; Ord. 351 (2005) § 19, 2005)

19.200.215 Wetland review procedures.

A. Application Requirements. Except as otherwise provided herein, all applications for development within a wetland or its largest potential buffer width shall include the following special reports at the time of application. This shall not prohibit the department from requesting reports or other information.

1. Wetland delineation report (Section 19.700.710).
2. Wetland mitigation report (Section 19.700.715).

B. Delineation of Wetland Boundaries.

1. The applicant shall be responsible for hiring a qualified wetlands specialist to determine the wetland boundaries by means of a wetland delineation. This specialist shall stake or flag the wetland boundary. When required by the department, the applicant shall hire a professional land surveyor licensed by the state of Washington to survey the wetland boundary line. The wetland boundary and wetland buffer established by this chapter shall be identified on all grading, landscaping, site, on-site septic system designs, utility or other development plans submitted in support of the project.
2. The department may perform a delineation of a wetland boundary on parcels where no more than one single-family dwelling unit is allowed.
3. Where the applicant has provided a delineation of a wetland boundary, the department may verify the wetland boundary at the cost of the applicant and may require that a wetland specialist make adjustments to the boundary.

C. Wetland Review Process for Single-family Dwellings.

1. Expedited Approval. Applicants proposing a single-family dwelling may receive expedited approval by the department if they choose to adopt the largest buffer width from the appropriate wetland category.

Expedited approval removes the requirements of the wetland certification process for single-family dwellings (subsection (C)(2) of this section); provided, that the wetland delineation and/or wetland rating is not disputed. Administrative buffer reductions or variances will not apply. Expedited approval is not the same as expedited review, which is sometimes available for additional fees.

2. Wetland Certification Process for Single-Family Dwellings (No Encroachment into a Wetland or Its Standard Buffer).

- a. Prior to issuance of a building permit, site development permit, or on-site sewage system permit, the applicant may submit a single-family wetland certification form completed by a wetland specialist that certifies either:
 - i. No wetlands are present within two hundred fifty feet of the project area; or
 - ii. Wetlands are present within two hundred fifty feet of the project area, but all regulated activities associated with the dwelling (e.g., landscaped areas, septic facilities, outbuildings, etc.) will occur outside of the standard buffer of the identified wetland.
- b. If wetland buffers extend onto the site, the wetland specialist shall place permanent, clearly visible, wetland buffer signs at the edge of the buffer. A wetland buffer sign affidavit, signed by the wetland specialist, shall be submitted to the department as verification that the wetland buffer signs have been placed on the subject site.
- c. An accurate depiction of the wetland boundary is required, however, a recorded survey will not be required with a single-family wetland certification form.
- d. The single-family certification form may be used only to authorize single-family dwellings and associated home-site features such as driveways, gardens, fences, wells, lawns, and on-site septic systems. It may not be used for new agricultural activities, expansion of existing agricultural activities, forest practice activities, commercial projects, land divisions, buffer width modifications, or violations.
- e. The single-family certification process will be monitored by the department for accuracy, and enforcement actions will be initiated should encroachment into a wetland or buffer occur.
- f. The applicant/property owner assumes responsibility for any and all errors of the single-family certification form, as well as responsibility for all associated mitigation required by the department.
- g. Single-family certification forms shall be filed with the Kitsap County auditor's office.

Commented [BN(3): Technical ability to provide a diagramed delineation is commonly available w/o a record of survey, suggest broadening the requirement.

19.200.220 Wetland buffer requirements.

A. Determining Buffer Widths. The following buffer widths are based on three factors: the wetland category, the intensity of the impacts, and the functions or special characteristics of the wetland that need to be protected as established through the rating system. These factors must be determined by a qualified wetland professional using the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication No. 14-06-029, or as revised and approved by the Washington State Department of Ecology). If a wetland meets more than one of the characteristics listed in Tables 19.200.220(B) through (E), the greater of the buffers recommended to protect the wetland is applied. Buffers shall be measured horizontally from a perpendicular line established at the wetland edge based on the buffer width identified using the tables below.

Table 19.200.220(A)
Land Use Impact "Intensity" Based on Development Types

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
High	Commercial, urban, industrial, institutional, retail sales, residential subdivisions with more than 1 unit/acre, new agriculture (high-intensity processing such as dairies, nurseries and greenhouses, raising and harvesting crops requiring annual tilling, raising and maintaining animals), new transportation corridors, high-intensity recreation (golf

Rating of Impact From Proposed Changes in Land Use	Examples of Land Uses That Cause the Impact Based on Common Zoning Categories
	courses, ball fields), hobby farms
Moderate	Single-family residential lots, residential subdivisions with 1 unit/acre or less, moderate-intensity open space (parks), new agriculture (moderate-intensity such as orchards and hay fields), transportation enhancement projects
Low	Forestry, open space low-intensity such as passive recreation and natural resources preservation, minor transportation improvements)

Table 19.200.220(B)
Width of Buffers for Category IV Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Score for all 3 basic functions is less than 16 points	Low – 25 feet Moderate – 40 feet High – 50 feet	None

Table 19.200.220(C)
Width of Buffers for Category III Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use	Other Measures Recommended for Protection
Moderate level of function for habitat (6-7 points)*	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Score for habitat 3-14 points	Low – 40 feet Moderate – 60 feet High – 80 feet	None

Commented [A1]: Consistency Analysis, Table 3-1, Item #2 & 3

Commented [A2]: Consistency Analysis, Table 3-1, Item #2 & 3

*If wetland scores 8 – 9 habitat points, use Table 19.200.220(D) for Category II buffers.

Table 19.200.220(D)
Width of Buffers for Category II Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
High level of function for habitat (score 8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas
Moderate level of function for habitat (6-7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 65 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	No additional surface discharges of untreated runoff
Estuarine	Low – 75 feet Moderate – 110 feet High – 150 feet	None
Interdunal	Low – 75 feet Moderate – 110 feet High – 150 feet	None

Commented [A3]: Consistency Analysis, Table 3-1, Item #2 & 3

Commented [A4]: Consistency Analysis, Table 3-1, Item #2 & 3

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Not meeting above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

TABLE 19.200.220(E)
Width of Buffers for Category I Wetlands

Wetland Characteristics	Buffer Width by Impact of Proposed Land Use (most protective applies if more than one criterion met)	Other Measures Recommended for Protection
Wetlands of high conservation value	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries No septic systems within 300 feet of wetland Restore degraded parts of buffer
Bogs	Low – 125 feet Moderate – 190 feet High – 250 feet	No additional surface discharges to wetland or its tributaries Restore degraded parts of buffer
Forested	Buffer width to be based on score for habitat functions or water quality functions	If forested wetland scores high for habitat (8–9 points), need to maintain connections to other habitat areas Restore degraded parts of buffer
Estuarine	Low – 100 feet Moderate – 150 feet High – 200 feet	None
Wetlands in coastal lagoons	Low – 100 feet Moderate – 150 feet High – 200 feet	None
High level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Interdunal wetland with high level of function for habitat (8 – 9 points)	Low – 150 feet Moderate – 225 feet High – 300 feet	Maintain connections to other habitat areas Restore degraded parts of buffer
Moderate level of function for habitat (4 – 7 points)	Low – 75 feet Moderate – 110 feet High – 150 feet	None
High level of function for water quality improvement (8 – 9 points) and low for habitat (less than 8 points)	Low – 50 feet Moderate – 75 feet High – 100 feet	None
Not meeting any of the above characteristics	Low – 50 feet Moderate – 75 feet High – 100 feet	None

Commented [A5]: Consistency Analysis, Table 3-1, Item #2 & 3

Commented [A6]: Consistency Analysis, Table 3-1, Item #2 & 3

B. Modification of Buffer Widths. The following modifications to buffer widths may be considered provided the applicant first demonstrates that reductions or alterations to the required wetland buffer cannot be avoided, minimized or mitigated (in that order):

1. Buffer Averaging. Standard buffer widths may be modified by the department for a development proposal first by averaging buffer widths, but only where the applicant can demonstrate that such averaging can clearly provide as great or greater functions and values as would be provided under the standard buffer. The following standards shall apply to buffer averaging:

a. The decrease in buffer width is minimized by limiting the degree or magnitude of the regulated activity.

- b. For wetlands and/or required buffers associated with documented habitat for endangered, threatened, or sensitive fish or wildlife species, a habitat assessment report has been submitted that demonstrates that the buffer modification will not result in an adverse impact to the species of study.
- c. Width averaging will not adversely impact the wetland.
- d. The total protection area after averaging is no less than the total buffer area prior to averaging.

~~e. For Category III and IV wetlands with habitat scores less than five points for habitat function based on the Washington State Wetland Rating System for Western Washington 2014 update, as amended, the minimum buffer width at any point will not be less than fifty percent of the width established after the categorization is done and any buffer adjustments applied in accordance with this chapter.~~

e. For all other wetlands, the minimum buffer width at any point will not be less than seventy-five percent of the widths established after the categorization is done and any buffer adjustments applied in accordance with this chapter.

f. If significant trees are identified, such that their drip line extends beyond the reduced buffer edge, the following tree protection requirements must be followed:

- i. A tree protection area shall be designed to protect each tree or tree stand during site development and construction. Tree protection areas may vary widely in shape, but must extend a minimum of five feet beyond the existing tree canopy area along the outer edge of the dripline of the tree(s), unless otherwise approved by the department.
- ii. Tree protection areas shall be added and clearly labeled on all applicable site development and construction drawings submitted to the department.
- iii. Temporary construction fencing at least thirty inches tall shall be erected around the perimeter of the tree protection areas prior to the initiation of any clearing or grading. The fencing shall be posted with signage clearly identifying the tree protection area. The fencing shall remain in place through site development and construction.
- iv. No clearing, grading, filling or other development activities shall occur within the tree protection area, except where approved in advance by the department and shown on the approved plans for the proposal.
- v. No vehicles, construction materials, fuel, or other materials shall be placed in tree protection areas. Movement of any vehicles within tree protection areas shall be prohibited.
- vi. No nails, rope, cable, signs, or fencing shall be attached to any tree proposed for retention in the tree protection area.
- vii. The department may approve the use of alternate tree protection techniques if an equal or greater level of protection will be provided.

~~2. (Administrative Buffer Reductions. Standard buffer widths may be modified by the department for a development proposal by reducing buffers, but only where buffer averaging is not feasible and the applicant can demonstrate that such is the minimum necessary to accommodate the permitted use and that the reduction can clearly provide at least or greater functions and values as would be provided under the standard buffer requirement. This may be accomplished through enhancement of a degraded buffer. The following standards shall apply to buffer reductions.)~~

a. The department may administratively reduce the buffer pursuant to the variance criteria listed in Section 19.100.135 and subject to the conditions specified in 19.200.230.D.

b. For proposed single-family dwellings, the department may administratively reduce a buffer by up to twenty-five percent of the area required under the standard buffer requirement, but not less than thirty feet.

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Commented [BN(4)]: Not sure where/how this is justified. Fifty percent cannot demonstrate no net loss. Recommend it be removed and rely on other provisions to adjust buffers when necessary.

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Commented [BN(5)]: A better approach would be to simply require full mitigation of all reductions. How does the applicant demonstrate the minimum necessary", since the buffers are derived from BAS this seems impossible to accomplish. "enhancement of a degraded buffer" doesn't apply if the buffer is not degraded--what then? There is no mention of mitigation which should be required of any changes to buffer widths.

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Commented [BN(6)]: Need at least a cap of 25% such as in "b", where SFD's don't have to meet variance criteria.

b. For all other proposed uses, the department may administratively reduce the buffer by up to twenty-five percent of the area required under the standard buffer requirement, but not less than forty feet.

c. To minimize impacts and provide equivalent functions and values as required by this section, applicants may propose:

- i. Enhancement of existing degraded buffer area and replanting of the disturbed buffer area;
- ii. The use of alternative on-site wastewater systems in order to minimize site clearing;
- iii. Infiltration of storm water where soils permit; and

iv. Retention of existing native vegetation on other portions of the site in order to offset habitat loss from buffer reduction.

v. Applicants may propose to utilize provision contained in section 19.200.230.D.

d. The buffer widths recommended for proposed land uses with high-intensity impacts to wetlands can be reduced to those recommended for moderate-intensity impacts under the following conditions:

- i. For wetlands that score moderate or high for habitat (five points or more for habitat functions), the width of the buffer can be reduced if both of the following criteria are met:

(A) A relatively undisturbed, vegetated corridor at least one hundred feet wide is protected between the wetland and any other priority habitats as defined by the Washington Department of Fish and Wildlife. The corridor must be protected for the entire distance between the wetland and the priority habitat by some type of legal protection such as a conservation easement.

(B) Measures to minimize the impacts of different land uses on wetlands, such as the examples summarized in Table 19.200.220(F), are implemented to the maximum extent possible.

(C)(B) For wetlands that score less than five points or less for habitat, the buffer width can be reduced to that required for moderate land use impacts by applying measures to minimize the impacts of the proposed land uses, such as the examples summarized in Table 19.200.220(F).

Table 19.200.220(F)
Examples of Measures to Minimize Impacts to Wetlands

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Lights	<ul style="list-style-type: none"> • Parking lots • Warehouses • Manufacturing • Residential 	<ul style="list-style-type: none"> • Direct lights away from wetland
Noise	<ul style="list-style-type: none"> • Manufacturing • Residential 	<ul style="list-style-type: none"> • Locate activity that generates noise away from wetland
Storm water runoff	<ul style="list-style-type: none"> • Parking lots • Roads • Manufacturing • Residential areas • Application of agricultural pesticides • Landscaping • Commercial 	<ul style="list-style-type: none"> • Route all new, untreated runoff away from wetland while ensuring wetland is not dewatered • Establish covenants limiting use of pesticides within 150 feet of wetland <ul style="list-style-type: none"> • Apply integrated pest management • Retrofit storm water detention and treatment for roads and existing adjacent development • Prevent channelized flow from lawns that directly enters the buffer
Change in water regime	<ul style="list-style-type: none"> • Impermeable surfaces • Lawns • Tilling 	<ul style="list-style-type: none"> • Infiltrate or treat, detain, and disperse into buffer new runoff from impervious surfaces and new lawns
Pets and human disturbance	<ul style="list-style-type: none"> • Residential areas 	<ul style="list-style-type: none"> • Use privacy fencing plant dense vegetation to delineate buffer edge and to discourage disturbance using vegetation appropriate for the ecoregion; place wetland and its buffer in a separate tract

Commented [BN(7)]: Should reference section 19.200.230.D Below

Commented [BN(8)]: As worded is weak. Not sure what other measures may be available, since the list is inclusive.

Examples of Disturbance	Activities and Uses That Cause Disturbances	Examples of Measures to Minimize Impacts
Dust	• Tilled fields	• Use best management practices to control dust

3. Variance. In cases where proposed development cannot meet the administrative buffer reduction criteria described in this section, a variance shall be required as described in Section 19.100.135 and subject to the provisions of 19.200.230.D).

C. Fencing and Signs.

1. Wetland buffers shall be temporarily fenced or otherwise suitably marked, as required by the department, between the area where the construction activity occurs and the buffer. Fences shall be made of a durable protective barrier and shall be highly visible. Silt fences and plastic construction fences may be used to prevent encroachment on wetlands or their buffers by construction. Temporary fencing shall be removed after the site work has been completed and the site is fully stabilized per county approval.

2. The department may require that permanent signs and/or fencing be placed on the common boundary between a wetland buffer and the adjacent land of the project site. Such signs will identify the wetland buffer. The department may approve an alternate method of wetland and buffer identification, if it provides adequate protection to the wetland and buffer.

D. Protection of Buffers. The buffer shall be identified on a site plan and on site as required by the department and this chapter. Refuse shall not be placed in buffers.

E. Building or Impervious Surface Setback Lines. A building or impervious surface setback line of fifteen feet is required from the edge of any wetland buffer. Minor structural or impervious surface intrusions into the areas of the setback may be permitted if the department determines that such intrusions will not adversely impact the wetland. The setback shall be identified on a site plan.

19.200.225 Additional development standards for certain uses.

In addition to meeting the development standards of this chapter, those uses identified below shall also comply with the standards of this section and other applicable state, federal and local laws.

A. Forest Practice, Class IV General, and Conversion Option Harvest Plans (COHPs). All timber harvesting and associated development activity, such as construction of roads, shall comply with the provisions of this title, including the maintenance of buffers around wetlands.

B. Agricultural Restrictions. In all development proposals that would introduce or expand agricultural activities, a net loss of functions and values to wetlands shall be avoided. Wetlands shall be avoided by at least one of the following methods:

1. Locate fencing no closer than the outer buffered edge; or
2. Implement a farm resource conservation and management plan agreed upon by the conservation district and the applicant to protect and enhance the functions and values of the wetland.

C. Road/Street Repair and Construction. Any private or public road or street repair, maintenance, expansion or construction may be allowed within a critical area or its buffer only when all of the following are met:

1. No other reasonable or practicable alternative exists and the road or street serves multiple properties whenever possible;
2. For publicly owned or maintained roads or streets, other purposes, such as utility crossings, pedestrian or bicycle easements, viewing points, etc. shall be allowed whenever possible;
3. The road or street repair and construction are the minimum necessary to provide safe roads and streets; and

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Commented [BN(9)]: As with the other provisions, needs to reference the provisions of mitigation measures.

Commented [BN(10)]: This doesn't apply in SMP so needs SMP requirements.

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Commented [BN(11)]: Needs to reference the below requirements.

4. Mitigation shall be performed ~~(as required in section 19.200.230 D)~~ in accordance with specific project mitigation plan requirements.

Commented [BN(12)]: Also needs to reference the mitigation provisions.

D. Land Divisions and Land Use Permits. All proposed divisions of land and land uses (including but not limited to the following: short plats, large lot subdivisions, performance-based developments, conditional use permits, site plan reviews, binding site plans) which include regulated wetlands, shall comply with the following procedures and development standards:

1. The area of a wetland and its buffers may be included in the calculation of minimum lot area for proposed lots, except for the area with permanent open water.
2. Land division approvals shall be conditioned to require that wetlands and wetland buffers be dedicated as open space tracts, or an easement or covenant encumbering the wetland and wetland buffer. Such dedication, easement or covenant shall be recorded together with the land division and represented on the final plat, short plat or binding site plan, and title.
3. In order to implement the goals and policies of this title, to accommodate innovation, creativity, and design flexibility, and to achieve a level of environmental protection that would not be possible by typical lot-by-lot development, the use of the clustered development or similar innovative site planning is strongly encouraged for projects with regulated wetlands on the site.
4. After preliminary approval and prior to final land division approval, the department may require the common boundary between a regulated wetland or associated buffer and the adjacent land be identified using permanent signs and/or fencing. In lieu of signs and/or fencing, alternative methods of wetland and buffer identification may be approved when such methods are determined by the department to provide adequate protection to the wetland and buffer.

E. Surface Water Management. Surface water discharges from storm water facilities or structures may be allowed in wetlands and their buffers when they are in accordance with Title 12 (Storm Water Drainage) subject to the provisions of Section 19.100.145, Special use review, and this subsection. The discharge shall neither significantly increase nor decrease the rate of flow or hydroperiod, nor decrease the water quality of the wetland. Pretreatment of surface water discharge through biofiltration or other best management practices (BMPs) shall be required. Stormwater discharge shall be implemented according to the applicable Ecology stormwater manual.

Commented [BN(13)]: Per guidance.

F. Trails and Trail-Related Facilities. Construction of public and private trails and trail-related facilities, such as benches and viewing platforms, may be allowed in wetlands or wetland buffers pursuant to the following standards:

1. Trails and related facilities shall, to the extent feasible, be placed on existing road grades, utility corridors, or any other previously disturbed areas.
2. Trails and related facilities shall be planned to minimize removal of trees, soil disturbance and existing hydrological characteristics, shrubs, snags and important wildlife habitat.
3. Viewing platforms, interpretive centers, benches, picnic areas, and access to them, shall be designed and located to minimize disturbance of wildlife habitat and/or critical characteristics of the affected wetland. Platforms shall be limited to one hundred square feet in size, unless demonstrated through a wetland mitigation plan that a larger structure will not result in a net loss of wetland functions.
4. Trails and related facilities shall generally be located outside required buffers. Where trails are permitted within buffers they shall be located in the outer twenty-five percent of the buffer, except where wetland crossings or for direct access to viewing areas have been approved by the department.
5. Trails shall generally be limited to pedestrian use unless other more intensive uses, such as bike or horse trails, have been specifically allowed and mitigation has been provided. Trail width shall not exceed five feet unless there is a demonstrated need, subject to review and approval by the department. Trails shall be constructed with pervious materials except where determined infeasible.
6. Regional or public trails and trail-related facilities as identified in the 2013 Kitsap County Non-Motorized Facility Plan (and associated recognized community trails), and as amended, and provided design

considerations are made to minimize impacts to critical areas and buffers, shall not be subject to the platform, trail width, or trail material limitations above. Such trails and facilities shall be approved through special use review (Section 19.100.145), unless any underlying permit requires a public hearing.

G. Utilities. Placement of utilities within wetlands or their buffers may be allowed pursuant to the following standards and any other required state and federal approvals:

1. The utility maintenance or repair, as identified in Section 19.100.125(E), shall be allowed in wetlands and wetland buffers so long as best management practices are used.

2. Construction of new utilities outside the road right-of-way or existing utility corridors may be permitted in wetlands or wetland buffers only when: (a) no reasonable alternative location is available, (b) the new utility corridor meets the requirements for installation, replacement of vegetation and maintenance outlined below, and (c) as required in the filing and approval of applicable permits and special reports (Chapter 19.700) required by this title.

3. Construction of sewer lines or on-site sewage systems may be permitted in wetland buffers only when: (a) the applicant demonstrates that the location is necessary to meet state or local health code minimum design standards (not requiring a variance for either horizontal setback or vertical separation), and (b) there are no other practicable or reasonable alternatives available and (c) construction meets the requirements of this section. Joint use of the sewer utility corridor by other utilities may be allowed.

4. New utility corridors shall not be allowed when the wetland or buffer has known locations of federal- or state-listed endangered, threatened or sensitive species, heron rookeries or nesting sites of raptors which are listed as state candidate or state monitor, except in those circumstances where an approved habitat management plan indicates that the utility corridor will not significantly impact the wetland or wetland buffer.

5. New utility corridor construction and maintenance shall protect the wetland and buffer environment by utilizing the following methods:

a. New utility corridors shall be aligned to avoid cutting trees greater than twelve inches in diameter at breast height (four and one-half feet), measured on the uphill side, unless no reasonable alternative location is available.

b. New utility corridors shall be revegetated with appropriate native vegetation at not less than preconstruction densities or greater immediately upon completion of construction, or as soon thereafter as possible if due to seasonal growing constraints. The utility shall ensure that such vegetation survives.

~~c.~~ Any additional utility corridor access for maintenance shall be provided at specific points rather than by parallel roads, unless no reasonable alternative is available. If parallel roads are necessary, they shall be the minimum width necessary for access, but no greater than fifteen feet, and shall be contiguous to the location of the utility corridor on the side away from the wetland. Mitigation will be required for any additional access through restoration of vegetation in disturbed areas.

~~d.~~ Drilling for utilities/utility corridors under a buffer, with entrance/exit portals located (completely) outside of the wetland buffer boundary, provided that the drilling does not interrupt the ground water connection to the wetland or percolation of surface water down through the soil column. Specific studies by a hydrologist are necessary to determine whether the ground water connection to the wetland or percolation of surface water down through the soil column would be disturbed.

~~e.~~ The department may require other additional mitigation measures.

6. Utility corridor maintenance shall include the following measures to protect the wetland and buffer environment:

a. Painting of utility equipment, such as power towers, shall not be sprayed or sandblasted, unless appropriate containment measures are used. Lead-based paints shall not be used.

b. No pesticides, herbicides or fertilizers may be used in wetland areas or their buffers except those approved by the U.S. Environmental Protection Agency (EPA) and Washington Department of Ecology. Where approved, they must be applied by a licensed applicator in accordance with the safe application practices on the label.

Commented [BN(14)]: Per Guidance.

H. Parks. Development of public park and recreation facilities may be permitted in wetlands or their buffer subject to the provisions of Section 19.100.145, Special use review, and other applicable chapters of the Kitsap County Code, and any state or federal approvals. For example, enhancement of wetlands and development of trails may be allowed in wetlands and wetland buffers subject to special use requirements and approval of a wetland mitigation plan.

19.200.230 Wetland mitigation requirements.

A. Mitigation Sequencing. All impacts to wetlands or buffers shall be mitigated according to this title in the following order:

1. Avoiding the impact altogether by not taking a certain action or parts of actions.
2. Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to reduce impacts.
3. Using one of the following mitigation types, listed in order of preference:
 - a. Rectifying the impact by reestablishing, rehabilitating, or restoring the affected environment;
 - b. Compensating for the impact by replacing or providing substitute resources or environments; or
 - c. Compensating for the impact by improving the environmental processes that support wetland systems and functions.
4. Monitoring the impact and compensation and taking appropriate corrective measures.

B. Mitigation Report. Where mitigation is required under the sequencing in subsection (A) of this section, a mitigation report shall be provided in accordance with Section 19.700.715. Acceptance of the mitigation report shall be signified by a notarized memorandum of agreement signed by the applicant and department director or designee. The agreement shall refer to all requirements for the mitigation project.

C. Wetland Replacement Ratios.

1. The following ratios appearing below in Table 19.200.230 (Wetland Mitigation Replacement Ratios), as well as consideration of the factors listed in this section, shall be used to determine the appropriate amounts of restored, rehabilitated, created or enhanced wetland that will be required to replace impacted wetlands. The first number specifies the amount of wetland area to be restored, rehabilitated, created or enhanced, and the second number specifies the amount of wetland area lost.

**Table 19.200.230
Wetland Mitigation Replacement Ratios**

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	1:1 Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
All Category IV	1.5:1	3:1	1:1 R/C and 2:1 E	6:1
All Category III	2:1	4:1	1:1 R/C and 4:1 E	8:1
Category II estuarine	Case-by-case	4:1 rehabilitation of an estuarine wetland	Case-by-case	Case-by-case
All other Category II	3:1	8:1	1:1 R/C and 8:1 E	12:1
Category I forested	6:1	12:1	1:1 R/C and 20:1	24:1
Category I other (based on functions)	4:1	8:1	1:1 R/C and 12:1 E	16:1
Category I wetlands of	Not considered possible	Case-by-case	Case-by-case	Case-by-case

Wetland Category	Reestablishment or Creation Only	Rehabilitation Only	1:1 Reestablishment or Creation (R/C) and Enhancement (E)	Enhancement Only
high conservation value				
Category I coastal lagoon	Case-by-case	6:1 rehabilitation of a coastal lagoon	Case-by-case	Case-by-case
Category I bog	Case-by-case	6:1 rehabilitation of a bog	Case-by-case	Case-by-case
Category I estuarine	Case-by-case	6:1 rehabilitation of an estuarine wetland	Case-by-case	Case-by-case

2. The above ratios are based on the assumption that the rehabilitation or enhancement actions implemented represent the average degree of improvement possible for the site. Accordingly, in the appropriate circumstances identified below, the department may increase or decrease the ratios based on one or more of the following:

- a. Replacement ratios may be increased under the following circumstances:
 - i. Uncertainty exists as to the probable success of the proposed restoration or creation;
 - ii. A significant period of time will elapse between impact and establishment of wetland functions at the mitigation site;
 - iii. Proposed compensation will result in a lower category wetland or reduced functions relative to the wetland being impacted; or
 - iv. The impact was an unauthorized impact.
- b. Replacement ratios may be decreased under the following circumstances:
 - i. Documentation by a qualified wetland specialist demonstrates certainty that the proposed compensation actions will be successful. For example, demonstrated prior success with similar compensation actions as those proposed, and/or extensive hydrologic data to support the proposed water regime;
 - ii. Documentation by a qualified wetland specialist demonstrates that the proposed compensation actions will provide functions and values that are significantly greater than the wetland being impacted; or
 - iii. The proposed mitigation actions are conducted in advance of the impact and are shown to be successful.

D. Alternative Mitigation Plans.

1. The department may approve alternative wetland mitigation plans identified in this section that are based on best available science, such as priority restoration plans that achieve restoration goals identified in Title 22, Appendix C, Shoreline Restoration Plan. Alternative mitigation proposals must provide an equivalent or better level of protection of wetland functions and values than would be provided by the strict application of this chapter.

The department shall consider the following for approval of an alternative mitigation proposal:

- a. The proposal uses a watershed approach consistent with Selecting Wetland Mitigation Sites Using a Watershed Approach (Western Washington) (Ecology Publication No. 09-06-32, Olympia, WA, December 2009), or as amended.

Commented [BN(15): Need to include possibility for revision.

- b. Creation or enhancement of a larger system of natural areas and open space is preferable to the preservation of many individual habitat areas.
 - c. Other on-site mitigation, as described above, is not feasible due to site constraints, such as parcel size, stream type, wetland category, or geologic hazards.
 - d. There is clear potential for success of the proposed mitigation at the proposed mitigation site.
 - e. The plan contains clear and measurable standards for achieving compliance with the specific provisions of the plan. A monitoring plan shall, at a minimum, meet the provisions of the wetland mitigation plan (Chapter 19.700, Special Reports).
2. Off-Site Compensatory Mitigation.
- a. Considerations for determining whether off-site mitigation is preferable include, but are not limited to:
 - i. On-site conditions do not favor successful establishment of the required vegetation type, or lack the proper soil conditions, or hydrology, or may be severely impaired by the effects of the adjacent development;
 - ii. On-site compensation would result in isolation from other natural habitats;
 - iii. Off-site location is crucial to one or more species that is threatened, endangered, or otherwise of concern, and the on-site location is not;
 - iv. Off-site location is crucial to larger ecosystem functions, such as providing corridors between habitats, and the on-site location is not; and
 - v. Off-site compensation has a greater likelihood of success or will provide greater functional benefits.
 - b. When determining whether off-site mitigation is preferable, the value of the site-specific wetland functions at the project site, such as flood control, nutrient retention, sediment filtering, and rare or unique habitats or species, shall be fully considered.
 - c. When conditions do not favor on-site compensation, off-site compensatory mitigation should be located as close to the impact site as possible, but at least within the same watershed, while still replacing lost functions.
 - d. Off-site compensatory mitigation may include the use of a wetland mitigation bank or an in-lieu fee program.
 - i. Mitigation Banking. Kitsap County encourages the creation of a public or private mitigation banking system when feasible.
 - (A) The approval authority determines that it would provide appropriate compensation for the proposed impacts;
 - (B) The impact site is located in the service area of the bank;
 - (C) The proposed use of credits is consistent with the terms and conditions of the certified mitigation bank instrument; and
 - (D) Replacement ratios for projects using bank credits is consistent with replacement ratios specified in the certified mitigation bank instrument.

ii. In-Lieu-Fee Mitigation. Credits from an approved in-lieu-fee program may be used when all of the following apply:

(A) The approval authority determines that it would provide environmentally appropriated compensation for the proposed impacts.

(B) The proposed use of credits is consistent with the terms and conditions of the approved in-lieu-fee program instrument.

(C) Projects using in-lieu-fee credits shall have debits associated with the proposed impacts calculated by the applicant's qualified wetland professional using the credit assessment method specified in the approved instrument of the in-lieu-fee program.

(D) The impacts are located within the service area specified in the approved in-lieu-fee instrument.

3. Advance Mitigation. Mitigation for projects with pre-identified impacts to wetlands may be constructed in advance of the impacts if the mitigation is implemented according to federal, state and local laws and guidance on advance mitigation, and state water quality regulations consistent with Interagency Regulatory Guide: Advance Permittee-Responsible Mitigation (Ecology Publication No. 12-06-15).

E. Monitoring Requirements. Kitsap County shall require monitoring reports on an annual basis for a minimum of five years and up to ten years, or until the department determines that the mitigation project has achieved success. The wetland mitigation plan shall provide specific criteria for monitoring the mitigation project. Criteria shall be project-specific and use best available science to aid the department in evaluating whether or not the project has achieved success (see Chapter 19.700 and Sections 19.700.710 and 19.700.715, Special Reports).

19.200.235 Incentives for wetland mitigation.

Kitsap County recognizes that property owners wish to gain economic benefits from their land. The county encourages such mechanisms as the open space tax program (Chapter 18.12), conservation easements and donations to land trusts, in order to provide taxation relief upon compliance with the regulations in this title. Buffers dedicated as permanent open space tracts may qualify for the open space taxation program and will be offered the opportunity to be entered into this program. Kitsap County may offer to purchase these lands through the conservation futures fund, as funding is available.

For Public Review
February 22, 2021



Skokomish Indian Tribe

Natural Resources Department (360) 877-5213

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Skokomish Nation, WA 98584

Submitted Electronically:
ReviewSMP@co.kitsap.wa.us

March 3, 2021

Scott Diener: Manager
Kitsap County
Department of Community Development
Planning and Environmental Programs
614 Division Street
Port Orchard, WA 98366

Subject: Skokomish Tribe Comments: Kitsap County Shoreline Master Program Periodic Review 2020-2021

Dear Mr. Diener,

Thank you for the opportunity to participate in this process and to make comment.

The Skokomish Indian Tribe (Tribe) and reservation are located primarily within the Skokomish River Basin. The basin is part of the Tribe's much larger usual and accustomed gathering, fishing and hunting area (U&A) within the Hood Canal Watershed (Watershed). These waters are tributary to the waters of Puget Sound in Washington. The Tribe is heavily dependent on shell-fish gathering and fin-fishing for salmon within our U&A, not only for cultural and subsistence use, but also for commercial purposes. It is vitally important that Hood Canal is protected.

There are three **existential threats** to our treaty protected natural resources and thus, to our tribal treaty rights under the Treaty of Point No Point. In general, the Tribe also considers these to be threats to public resources here in Hood Canal.

1. Threats from climate change:

"The U.S. Fish and Wildlife Service (FWS) and the National Marine Fisheries Service (NMFS) (collectively, the Services) have acknowledged that the changing climate may threaten the survival of and habitat for some species. As noted by courts and legal scholars, the ESA does not expressly require the Services to consider the effect of climate change in their ESA decisions. However, the ESA and its implementing regulations (1) direct the Services to consider "natural or manmade factors affecting [a species'] continued existence" when determining whether a species should be protected under the ESA; and (2) require the Services to analyze cumulative effects on a species' survival when analyzing whether federal actions jeopardize a species protected under the Act". (See <https://www.everycrsreport.com/reports/R45926.html>; The Endangered Species Act and Climate Change: Selected Legal Issues: September 20, 2019)

However, the issuance of certain project construction permits can add to or exacerbate the effects of climate change. For instance, within the Water Resource Inventory Area's (WRIA's), the issuance of building permits by counties and/or cities for permit exempt wells has been a subject of controversy for some time regarding surface water and groundwater availability to meet instream flow rules, most of which are not being met by ongoing planning and regulatory efforts. Associated with building permits are also the construction of on-site sewage treatment, or septic systems, and the construction of impervious surfaces. These activities bring their own set of challenges to the conversation regarding habitat conservation, restoration, and mitigation, especially within county or city SMP buffers.

2. Threats to freshwater and marine habitat that support vital ecosystems within the Watershed. Examples include but are not limited to the following:

- Deleterious effects on water quantity and water quality:
 - A. Effects on water quantity caused by instream flow reductions of surface water and excessive groundwater withdrawal for drinking and irrigation (over-development)
 - B. Effects on water quality caused by:
 1. Point source pollution examples include mining activities and large on-site septic systems (LOSS).
 2. Non-point source pollution examples include resource extraction such as large scale timber harvesting, agricultural activities such as livestock watering, construction of residential scale impervious surfaces, vessels at mooring buoys, docks, marinas etc. and construction of residential scale septic systems.
- Loss of habitat: Disappearance of nearshore, intertidal, shoreline, and riverine habitat. This is caused by incremental and cumulative permitted incursion and development within the 200' shoreline management act/shoreline management program (SMP) designated buffer zones and the resultant re-classification of SMP designation buffers from low intensity to higher intensity uses in the "inventory and characterization" studies.
- Proliferation of in/over water structures: bulkheads, piers, floats (PRF), mooring buoys, off bottom or surface aquaculture/mari-culture structures or facilities, etc.

3. Threats that limit "physical" access by our tribal members to these waters so they may gather, fish, and hunt and practice their social and cultural Tribal Treaty Rights. Examples of these threats include, but are not limited to the following:

- Proliferation and cumulative effects of in/over water structures: bulkheads, piers, floats (PRF), mooring buoys, off bottom or surface aquaculture/mari-culture structures or facilities, etc. that impede the following:
 - ❖ Shellfish Harvesting: Tribal members harvest various shellfish species throughout Hood Canal in the U&A. Shellfish include clam and oyster harvest on private tidelands and the subtidal harvesting of geoduck. Geoduck is harvested from about 18 feet to 70 feet below zero tidal height. Tribal members also set pots for shrimp and crab in various locations.
 - ❖ Fin Fish/Salmon Harvesting: Fishing gear deployed in by tribal fishers in Hood Canal consists of marine set and drift gillnets, beach seines, and hand held gear (Dip Nets, Spears, Gaffs, Hook-and-Line). Gillnets can range in length from 660 to 1,980 feet and beach seines 600 to 990 feet. A beach seine generally is a webbed net, rectangular in shape, deep enough to touch the bottom and of variable length. To operate, one end of the net is anchored to the shore; using a boat, the opposite end is pulled in a semicircle away from the beach; this end is then pulled upstream and back to the shore to completely form a webbed circle. Gradually, the ends of this circle are tightened into smaller circles until the entrapped fish are accessible for sorting. Set gillnets have one end of the net anchored to the shore and the other end anchored by buoy in the water known as passive fishing gear; Drift gillnets have one end of the net in the boat at all times and the other end drifts behind the boat and is known as active fishing gear.

These structures cause damage or loss of tribal shellfish/finfish harvesting gear and are a danger to the health, safety and welfare of our tribal members who are fishing from the shore, diving for geoduck, or salmon fishing from a vessel.

These threats overlap, and are caused not only by natural processes, but by past, present, and ongoing human development within the Hood Canal Watershed in general and more specifically within terrestrial, freshwater, and marine areas that are under the jurisdiction of the following:

1. Clean Water Act (CWA) and the Navigable Waters Protection Rule as implemented jointly by the Environmental Protection Agency (EPA) and the United States Army Corps of Engineers (USACE) under various programs and permitting processes. For purposes of this document, the Tribe refers specifically to the 2020 USACE permitting program under Section 404 of CWA and Section 10 of the Rivers and Harbors Act for issuance of permits in Waters of the United States (WOTUS). This includes both individual permits and the issuance of permits under the Nationwide Permit Program (NWP). Permits covered under this document include, but may not be limited to the following:
 - A. 2020 USACE NWP 3 (Maintenance) activities that allows for *"the repair, rehabilitation, or replacement of any previously authorized, currently serviceable structure or fill, or of any currently serviceable structure or fill*

authorized by 33 CFR 330.3, or of any currently serviceable structure or fill that did not require a permit at the time it was constructed, Additionally, this NWP authorizes the repair, rehabilitation, or replacement of any currently serviceable structure or fill that does not qualify for the Clean Water Act section 404(f) exemption for maintenance." The Tribe does not support the rehabilitation, replacement, and related expansion of any "serviceable" structure in any SMP designated buffer that did not require a permit at the time it was built. What does "serviceable" mean? This may allow restoration or replacement of derelict or dilapidated non-functional structures (eg: bulkheads, mooring buoys, docks, or old PRF's) that should simply be demolished and removed so that the designated SMP area could be restored to it's natural function.

- B. 2020 USACE NWP 13 (Bank Stabilization) activities such as hard armoring/bulkheads should only be allowed if the property is in danger of damage or destruction. Bank stabilization with the use of hard armoring/bulkheads will not be required if the 200' "no build" buffer is maintained and enforced. More emphasis needs to be placed on soft armoring alternatives.
 - C. 2020 USACE NWP 10 (Mooring Buoys) activities that include structures such as PRF's
 - D. 2020 USACE Individual Shellfish Permits: All above bottom aquaculture (mari-culture) shellfish growing activities that require off bottom structures such as the following and that formerly required an NWP 48 but that now require a USACE Individual Aquaculture Permit.
 - Suspended "bag" culture (rebar)
 - Cage culture
 - Tray culture
 - Rack and bag culture
 - Surface or floating culture
 - E. 2020 USACE NWP A (Seaweed) and B (Finfish) activities that allow above bottom, in/over water mari-culture activities for multi-trophic seaweed, shellfish, and finfish mari-culture.
2. Revised Code of Washington (RCW 77.55): Construction Projects in State Waters as implemented by WA State Department of Fish and Wildlife under the Hydraulic Permit Approval (HPA) process.
 3. Coastal Zone Management Act (CZMA) as implemented by WA State Ecology (ECY) under the Coastal Zone Management Program (CZMP) planning process.
 4. NEPA and the Shoreline Management Act (SMA), as managed and implemented by Jefferson, Mason, and Kitsap counties under SEPA and the Shoreline Management Program (SMP) planning process.

Under this letter, the Tribe is categorically objecting to the issuance of permits by federal, state or local agencies under their respective authorities (including locally issued exemptions, substantial development, conditional use, or variance permits), that continue to allow these types of (new) development activities to occur within the 200' SMP jurisdictional limit on shoreline uplands or in/over aquatic and marine "waters of the state" or Waters of the United States (WOTUS). This does not include permits issued for conservation or restoration/recovery activities, but does include all permits issued to allow the aforementioned activities. The Tribe is premising these comments and this objection on the grounds that these activities, individually, and beyond de-minimus, are cumulatively deleterious, degradative and ultimately destructive to critical habitat for the survival of plants, shellfish, fish, and animals that are vital to the Tribe's ability to sustain our social structure, practice our culture, practice subsistence activities and to commercial fish. Pursuant to this the Tribe deems these activities as a threat to treaty protected natural habitat and/or to our treaty protected right to access these habitats and our natural resources. As such the Tribe requests that all permits be denied for these activities on the grounds that they constitute a violation of treaty rights under the Treaty of Point No Point. [REDACTED]

Thank you for the opportunity to comment. If you have any questions or concerns regarding these comments please contact Dana Sarff, Environmental Planner, at 360-877-5213 Ext 2201 or at dsarff@skokomish.org

Respectfully,



Joseph Pavel; Director of Natural Resources
Skokomish Tribe

Cc: Steve Heacock: SEPA Coordinator
Kirvie Mesebeluu-Yobech: Project Manager



816 Second Ave, Suite 200, Seattle, WA 98104
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futurewise.org

March 1, 2021

Kitsap County Department of Community Development
Planning and Environmental Programs
614 Division Street – MS36
Port Orchard, Washington 98366

Dear Department of Community Development:

Subject: Comments on the Kitsap County Shoreline Master Program Periodic Review 2020-2021 (Feb. 2, 2021 Draft).

Send via email to: ReviewSMP@co.kitsap.wa.us

Thank you for the opportunity to comment on the Kitsap County Shoreline Master Program Periodic Review 2020-2021. Futurewise strongly supports the review and update. Overall, we support the Department recommendations with a few concerns identified below. We also have some suggested improvements to provide for the recovery of important fish and wildlife resources such as the Chinook salmon and southern resident orcas and to begin addressing the adverse effects of global warming including sea level rise.

Futurewise works throughout Washington State to support land-use policies that encourage healthy, equitable and opportunity-rich communities, and that protect our most valuable farmlands, forests, and water resources. Futurewise has members and supporters throughout Washington State including Kitsap County.

Incorporate regulations to address accelerating sea level rise

The Shoreline Management Act and Shoreline Master Program (SMP) Guidelines require shoreline master programs to address the flooding that will be caused by sea level rise.¹ RCW 90.58.100(2)(h) requires that shoreline master programs “shall include” “[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages ...” WAC 173-26-221(3)(b) provides in part that “[o]ver the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas ...” “Counties and cities should consider the following when designating and classifying frequently flooded areas ... [t]he potential effects of tsunami, high tides with strong winds, sea level rise, and extreme weather events, including those potentially resulting from global climate change ...”² The areas subject to sea level rise are flood prone areas just the same as areas along bays, rivers, or streams that are within the 100-year flood

¹ Although the Shoreline Master Program (SMP) Guidelines are called “guidelines,” they are actually binding state agency rules and shoreline management program updates must comply with them. RCW 90.58.030(3)(b) & (c); RCW 90.58.080(1) & (7).

² WAC 365-190-110(2) underlining added. This regulation is part of the State of Washington Department of Commerce Minimum Guidelines to Classify Agriculture, Forest, Mineral Lands and Critical Areas.



plain. RCW 90.58.100(1) and WAC 173-26-201(2)(a) also require “that the ‘most current, accurate, and complete scientific and technical information’ and ‘management recommendations’ [shall to the extent feasible] form the basis of SMP provisions.”³ This includes the current science on sea level rise.

Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century.⁴ A recent analysis of sea-level measurements for tide-gage stations, including the Seattle, Washington tide-gauge, shows that sea level rise is accelerating.⁵ Virginia Institute of Marine Science (VIMS) “emeritus professor John Boon, says “The year-to-year trends are becoming very informative. The 2020 report cards continue a clear trend toward acceleration in rates of sea-level rise at 27 of our 28 tide-gauge stations along the continental U.S. coastline.”⁶ “Acceleration can be a game changer in terms of impacts and planning, so we really need to pay heed to these patterns,” says Boon.”⁷ The Seattle tide gage was one of the 27 that had an accelerating rate of sea level rise.⁸

The report *Projected Sea Level Rise for Washington State – A 2018 Assessment* projects that for a low greenhouse gas emission scenario there is a 50 percent probability that sea level rise will reach or exceed 1.8 feet by 2100 in the Manchester area of Kitsap County.⁹ *Projected Sea Level Rise for Washington State – A 2018 Assessment* projects that for a higher emission scenario there is a 50 percent probability that sea level rise will reach or exceed 2.3 feet by 2100 in the Manchester area of Kitsap

³ *Taylor Shellfish Company, Inc., et al., v. Pierce County and Ecology (Aquaculture II)*, Final Decision and Order Central Puget Sound Region Growth Management Hearings Board Case No. 18-3-0013c (June 17, 2019), at 10 of 81 footnote omitted.

⁴ National Research Council, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* p. 23, p. 156, p. 96, p. 102 (2012) last accessed on Feb. 26, 2021 at: <https://www.nap.edu/download/13389> and at the Dropbox link in the email transmitting this letter with the filename: “13389.pdf.”

⁵ William and Mary Virginia Institute of Marine Science, *U.S. West Coast Sea-Level Trends & Processes Trend Values for 2020* last accessed on Feb. 26, 2021 at: https://www.vims.edu/research/products/slrc/compare/west_coast/index.php and at the Dropbox link in the email transmitting this letter with the filename with the filename: “U.S. West Coast _ Virginia Institute of Marine Science Trend Values 2020.pdf.”

⁶ David Malmquist, *U.S. sea-level report cards: 2020 again trends toward acceleration* Virginia Institute of Marine Science website (Jan. 24, 2021) last accessed on Feb. 26, 2021 at: https://www.vims.edu/newsandevents/topstories/2021/slrc_2020.php and at the Dropbox link in the email transmitting this letter with the filename with the filename: “U.S. sea-level report cards_ 2020 again trends toward acceleration _ Virginia Institute of Marine Science.pdf.”

⁷ *Id.*

⁸ William and Mary Virginia Institute of Marine Science, *U.S. West Coast Sea-Level Trends & Processes Trend Values for 2020*.

⁹ University of Washington Climate Impacts Group, *Visualization #1: Projected sea level change by year for 48.50N, -122.5W in Kitsap County*, accessed on Feb. 26, 2021 at: <https://cig.uw.edu/our-work/applied-research/wcrp/sea-level-rise-data-visualization/> and at the Dropbox link in the email transmitting this letter with the filename: “Visualization #1 Projected sea level change by year for 48.50N, -122.5W in Kitsap Cty.pdf.” The methodology used for these projections is available in Miller, I.M., Morgan, H., Mauger, G., Newton, T., Weldon, R., Schmidt, D., Welch, M., Grossman, E., *Projected Sea Level Rise for Washington State – A 2018 Assessment* (A collaboration of Washington Sea Grant, University of Washington Climate Impacts Group, Oregon State University, University of Washington, and US Geological Survey. Prepared for the Washington Coastal Resilience Project: updated 07/2019) last accessed on Feb. 26, 2021 at: https://cig.uw.edu/wp-content/uploads/sites/2/2019/07/SLR-Report-Miller-et-al-2018-updated-07_2019.pdf and at the Dropbox link in the email transmitting this letter with the filename: “SLR-Report-Miller-et-al-2018-updated-07_2019.pdf.”

Kitsap County Department of Community Development
Re: Comments on the Shoreline Master Program Periodic Review (Feb. 2, 2021 Draft)
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County.¹⁰ Projections are available for all of the marine shorelines in Kitsap County and Washington State.

The extent of the sea level rise currently projected for Kitsap County can be seen on the NOAA Office for Coastal Management Digitalcoast Sea Level Rise Viewer available at: <https://coast.noaa.gov/digitalcoast/tools/slr.html>. A copy of the map from the viewer showing two feet of sea level rise is at the Dropbox link in the email transmitting this letter with the filename: “Sea Level Rise Manchester Vicinity 2 ft.pdf.”

Projected sea level rise will substantially increase flooding. As Ecology writes, “[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems.”¹¹ Not only our marine shorelines will be impacted, as Ecology writes “[m]ore frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life.”¹²

Zillow recently estimated that 31,235 homes in Washington State may be underwater by 2100, 1.32 percent of the state’s total housing stock. The value of the submerged homes is an estimated \$13.7 billion.¹³ Zillow wrote:

It’s important to note that 2100 is a long way off, and it’s certainly possible that communities [may] take steps to mitigate these risks. Then again, given the enduring popularity of living near the sea despite its many dangers and drawbacks, it may be that even more homes will be located closer to the water in a century’s time, and these estimates could turn out to be very conservative. Either way, left unchecked, it is clear the threats posed by climate change and rising sea levels have the potential to destroy housing values on an enormous scale.¹⁴

Sea level rise will have an impact beyond rising seas, floods, and storm surges. The National Research Council wrote that:

Rising sea levels and increasing wave heights will exacerbate coastal erosion and shoreline retreat in all geomorphic environments along the west coast. Projections of future cliff and bluff retreat are limited by sparse data in Oregon and Washington and by a high degree of geomorphic variability along the coast. Projections using only historic rates of cliff erosion predict 10–30 meters [33 to 98 feet] or more of

¹⁰ University of Washington Climate Impacts Group, *Visualization #1: Projected sea level change by year for 48.50N, -122.5W in Kitsap County*.

¹¹ State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State’s Integrated Climate Response Strategy* p. 90 (Publication No. 12-01-004: April 2012) last accessed on Feb. 26, 2021 at: <https://fortress.wa.gov/ecy/publications/publications/1201004.pdf> and at the Dropbox link in the email transmitting this letter with the filename: “1201004.pdf.”

¹² *Id.* p. 17.

¹³ Krishna Rao, *Climate Change and Housing: Will a Rising Tide Sink all Homes?* ZILLOW webpage (Jun. 2, 2017) last accessed on March 1, 2021 at: <http://www.zillow.com/research/climate-change-underwater-homes-12890/>.

¹⁴ *Id.*

retreat along the west coast by 2100. An increase in the rate of sea-level rise combined with larger waves could significantly increase these rates. Future retreat of beaches will depend on the rate of sea-level rise and, to a lesser extent, the amount of sediment input and loss.¹⁵

These impacts are why the Washington State Department of Ecology recommends “[l]imiting new development in highly vulnerable areas.”¹⁶

Unless wetlands and shoreline vegetation can migrate landward, their area and ecological functions will decline.¹⁷ If development regulations are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment.¹⁸ This will increase damage to upland properties. Enclosed with this letter are maps showing the extent of wetlands at mean higher high water and at 1.5 feet of sea level rise in the Manchester area.¹⁹ A comparison of these two maps shows that there will be migration of wetlands in the in the Manchester area if the wetlands are not blocked by development.

Flood plain regulations are not enough to address sea level rise for three reasons. *Projected Sea Level Rise for Washington State – A 2018 Assessment* explains two of them:

Finally, it is worth emphasizing that sea level rise projections are different from Federal Emergency Management Agency (FEMA) flood insurance studies, because (1) FEMA studies only consider past events, and (2) flood insurance studies only

¹⁵ National Research Council, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* p. 135 (2012).

¹⁶ State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State’s Integrated Climate Response Strategy* p. 90 (Publication No. 12-01-004: April 2012).

¹⁷ Christopher Craft, Jonathan Clough, Jeff Ehman, Samantha Joye, Richard Park, Steve Pennings, Hongyu Guo, and Megan Machmuller, *Forecasting the effects of accelerated sea-level rise on tidal marsh ecosystem services* FRONT ECOL ENVIRON 2009; 7, doi:10.1890/070219 p. *6 last accessed on Feb. 26, 2021 at:

<http://nsmn1.uh.edu/steve/CV/Publications/Craft%20et%20al%202009.pdf>. *Frontiers in Ecology and the Environment* is a peer-reviewed scientific journal. *Frontiers in Ecology and the Environment* Journal Overview webpage last accessed on Feb. 26, 2021 at: <https://esajournals.onlinelibrary.wiley.com/journal/15409309>. Both at the Dropbox link in the email transmitting this letter with the filename: “Craft et al 2009.pdf” and “Frontiers in Ecology and the Environment - Journal Overview” respectively.

¹⁸ R. A. Feagin, S. M. Lozada-Bernard, T. M. Ravens, I. Möller, K. M. Yeagei, A. H. Baird and David H. Thomas, *Does Vegetation Prevent Wave Erosion of Salt Marsh Edges?* 106 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA pp. 10110-10111 (Jun. 23, 2009) last accessed on Aug. 11, 2020 at: <http://www.pnas.org/content/106/25/10109.full> and at the Dropbox link in the email transmitting this letter with the filename: “10109.full.pdf.” This journal is peer-reviewed. *Id.* p. 10113.

¹⁹ At the Dropbox link in the email transmitting this letter with the filenames: “Marsh Migration Manchester South MHHW.pdf” and “Marsh Migration Manchester South 1 and half foot of sea level rise.pdf.” Three maps of the same view are needed to show the three parts of the legend, so that is why there are three pages.

consider the 100-year event, whereas sea level rise affects coastal water elevations at all times.²⁰

The third reason is that flood plain regulations allow fills and piling to elevate structures and also allow commercial buildings to be flood proofed in certain areas.²¹ While this affords some protection to the structure, it does not protect the marshes and wetlands that need to migrate.

Because of these significant impacts on people, property, and the environment, “[n]early six in ten Americans supported prohibiting development in flood-prone areas (57%).”²² It is time for Washington state and local governments to follow the lead of the American people and adopt policies and regulations to protect people, property, and the environment from sea level rise. We recommend the addition of the following regulations as part of the shoreline master program periodic update:

X. New lots shall be designed and located so that the buildable area is outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.

X2. Where lots are large enough, new structures and buildings shall be located so that they are outside the area likely to be inundated by sea level rise in 2100 and outside of the area in which wetlands and aquatic vegetation will likely migrate during that time.

X3. New and substantially improved structures shall be elevated above the likely sea level rise elevation in 2100 or for the life of the building, whichever is less.

Also, to avoid flooding, erosion, and other adverse impacts on shoreline resources, we strongly recommend that the County take a comprehensive approach to adapting to sea level rise and its adverse impacts modeled on the process California’s coastal counties and cities use. The process includes six steps.²³

²⁰ Miller, I.M., Morgan, H., Mauger, G., Newton, T., Weldon, R., Schmidt, D., Welch, M., Grossman, E., *Projected Sea Level Rise for Washington State – A 2018 Assessment* p. 8 of 24 (A collaboration of Washington Sea Grant, University of Washington Climate Impacts Group, Oregon State University, University of Washington, and US Geological Survey. Prepared for the Washington Coastal Resilience Project: updated 07/2019).

²¹ Kitsap County Code (KCC) 15.12.090, KCC 15.12.100, KCC 15.12.110, & KCC 15.12.130.

²² Bo MacInnis and Jon A. Krosnick, *Climate Insights 2020: Surveying American Public Opinion on Climate Change and the Environment Report: Natural Disasters* p. 8 (Washington, DC: Resources for the Future, 2020) accessed on Feb. 26, 2021 at: <https://www.rff.org/publications/reports/climateinsights2020-natural-disasters/> and at the Dropbox link in the email transmitting this letter with the filename: “Climate_Insights_2020_Natural_Disasters.pdf.”

²³ *California Coastal Commission Sea Level Rise Policy Guidance: Interpretive Guidelines for Addressing Sea Level Rise in Local Coastal Programs and Coastal Development Permits* pp. 69 – 95 (Nov. 7, 2018) last accessed on Sept. 10, 2020 at: <https://www.coastal.ca.gov/climate/slrguidance.html> and at the Dropbox link in the email transmitting this letter with the filename: “0_Full_2018AdoptedSLRGuidanceUpdate.pdf.”

1. Determine the range of sea level rise projections relevant to Kitsap County's shorelines subject to tidal influence. The California Coastal Commission recommends analyzing intermediate and long-term projections because "development constructed today is likely to remain in place over the next 75-100 years, or longer."²⁴
2. Identify potential physical sea level rise impacts in Kitsap County's shorelines subject to tidal influence.
3. Assess potential risks from sea level rise to the resources and development on the shorelines subject to tidal influence.
4. Identify adaptation strategies to minimize risks. The *California Coastal Commission Sea Level Rise Policy Guidance* includes recommended adaptation strategies to consider.²⁵
5. Adopt an updated shoreline master program incorporating the selected adaption strategies.
6. Implement the updated shoreline master program and monitor and revise as needed. Because the scientific data on sea level rise is evolving, the California Coastal Commission recommends modifying "the current and future hazard areas on a five-to-ten-year basis or as necessary to allow for the incorporation of new sea level rise science, monitoring results, and information on coastal conditions."²⁶

Based on this proven model, we recommend that the following proposed policy be adopted as part of the shoreline master program periodic update.

Policy X. Kitsap County shall monitor the impacts of climate change on Kitsap County's shorelands, the shoreline master program's ability to adapt to sea level rise and other aspects of climate change at least every periodic update and revise the shoreline master program as needed. Kitsap County shall periodically assess the best available sea level rise projections and other science related to climate change within shoreline jurisdiction and incorporate them into future program updates as needed.

Adopt up-to-date riparian buffers in KCC 22.400.115C.2. on page 41/131 to protect Chinook habitat and other aquatic habitats

As has been reported in media and scientific reports, the southern resident orcas, or killer whales, are threatened by (1) an inadequate availability of prey, the Chinook salmon, "(2) legacy and new toxic contaminants, and (3) disturbance from noise and vessel traffic."²⁷ "Recent scientific studies

²⁴ *Id.* p. 74.

²⁵ *Id.* pp. 121 – 162.

²⁶ *Id.* p. 94.

²⁷ State of Washington Office of the Governor, Executive Order 18-02 Southern Resident Killer Whale Recovery and Task Force p. 1 (March 14, 2018) last accessed on Feb. 26, 2021 at:

indicate that reduced Chinook salmon runs undermine the potential for the southern resident population to successfully reproduce and recover.”²⁸ The shoreline master program update is an opportunity to take steps to help recover the southern resident orcas, the Chinook salmon, and the species and habitats on which they depend.

The Shoreline Master Program (SMP) Guidelines, in WAC 173-26-221(3)(c), provides in part that “[i]n establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and *Management Recommendations for Washington's Priority Habitats*, prepared by the Washington state department of fish and wildlife where applicable.”

The State of Washington Department of Fish and Wildlife has recently updated the Priority Habitat and Species recommendations for riparian areas. The updated management recommendations document that fish and wildlife depend on protecting riparian vegetation and the functions this vegetation performs such as maintaining a complex food web that supports salmon and maintaining temperature regimes to name just a few of the functions.²⁹

The updated *Riparian Ecosystems, Volume 1: Science synthesis and management implications* scientific report concludes that the “[p]rotection and restoration of riparian ecosystems continues to be critically important because: a) they are disproportionately important, relative to area, for aquatic species, e.g., salmon, and terrestrial wildlife, b) they provide ecosystem services such as water purification and fisheries (Naiman and Bilby 2001; NRC 2002; Richardson et al. 2012), and c) by interacting with watershed-scale processes, they contribute to the creation and maintenance of aquatic habitats.”³⁰ The report states that “[t]he width of the riparian ecosystem is estimated by one 200-year site-potential tree height (SPTH) measured from the edge of the active channel or active floodplain. Protecting functions within at least one 200-year SPTH is a scientifically supported approach if the goal is to protect and maintain full function of the riparian ecosystem.”³¹ These recommendations are explained further in *Riparian Ecosystems, Volume 2: Management Recommendations A Priority Habitats and Species Document of The Washington Department of Fish and Wildlife*.³²

https://www.governor.wa.gov/sites/default/files/exe_order/eo_18-02_1.pdf and at the Dropbox link in the email transmitting this letter with the filename: “eo_18-02_1.pdf.”

²⁸ *Id.*

²⁹ Timothy Quinn, George F. Wilhere, and Kirk L. Krueger, technical editors, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* pp. 265 – 68 & p. 270 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia, WA: Updated July 2020) last accessed on Feb. 26, 2021 at: <https://wdfw.wa.gov/publications/01987/> and at the Dropbox link in the email transmitting this letter with the filename: “wdfw01987.pdf.” This report was peer-reviewed. *Id.* pp. 11 – 12.

³⁰ *Id.* p. 270.

³¹ *Id.* p. 271.

³² Amy Windrope, Terra Rentz, Keith Folkerts, and Jeff Azerrad, *Riparian Ecosystems, Volume 2: Management Recommendations A Priority Habitats and Species Document of The Washington Department of Fish and Wildlife* (Dec. 2020) last accessed on Feb. 26, 2021 at: <https://wdfw.wa.gov/publications/01988> and at the Dropbox link in the email transmitting this letter with the filename: wdfw01988.

Based on these new scientific documents, we recommend that shoreline jurisdiction should include the 100-year flood plain³³ and that the buffers for rivers and streams in shoreline jurisdiction be increased to use the newly recommended 200-year SPTH and that this width should be measured from the edge of the channel, channel migration zone, or active floodplain whichever is wider. New development, except water dependent uses should not be allowed within this area.³⁴ This will help maintain shoreline functions and Chinook habitat.

The proposed amendments to KCC 22.400.120.C.2.c must recognize that movement from uplands through the riparian area, and to the water body must be maintained. See page 46/131

Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications documents that “[c]onnectivity in riparian areas occurs not only parallel to the stream (previous section), but also orthogonally to the channel in a lateral dimension — from the stream through the riparian area into uplands—and the vertical dimension in the hyporheic zone.”³⁵ These movements include surface and ground water, sediment, large wood, other organic debris,³⁶ and animals that may spend part of their day or year in upland areas and part of the day or year along the water body. Lateral expansion in buffers, even in already cleared areas, can block these important movements. Foundations from house expansion can block subsurface flow and the migration of animals, even where the area has already been cleared.

Proposed KCC 22.400.120.C.2.c should not allow expansions in buffers where these important movements are blocked. We recommend that proposed KCC 22.400.120.C.2.c.iii be modified to read as follows with our additions double underlined and our deletions double struck through:

iv. Expansion of a single-family residence below the reduced standard buffer may be allowed through an administrative variance for limited expansions of no more than 25% of the existing gross floor area or 625 square feet, whichever is less, if expanding into an existing legally cleared area, the expansion is and located no further waterward than the existing structure, and the expansion will not hinder the movement of surface or ground water, wood, organic debris, sediment, or other materials, or animals between the water body, riparian area, and uplands.

³³ Authorized by RCW 90.58.030(2)(d)(i).

³⁴ Timothy Quinn, George F. Wilhere, and Kirk L. Krueger, technical editors, *Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications* pp. 270 – 71 (A Priority Habitat and Species Document of the Washington Department of Fish and Wildlife, Olympia, WA: Updated July 2020).

³⁵ *Id.* p. 256.

³⁶ *Id.*

Require analysis of all geological hazards which can adversely impact a proposed development and require case-by-case determinations of landslide buffers based on the risk to the proposed development. Please see KCC 22.700.120 Geotechnical report and geological report on pages 124 – 127/131

The March 22, 2014, Oso landslide “claimed the lives of 43 people, making it the deadliest landslide event in United States history. Of the approximately 10 individuals who were struck by the landslide and survived, several sustained serious injuries.”³⁷ Several years before, a family of four was killed by shallow debris flow that initiated above Rolling Bay Walk on Bainbridge Island crushing their home.³⁸ So properly identifying geologically hazardous areas and protecting people from geological hazards is important.

Homeowner’s insurance does not cover the damage from landslides. “Insurance coverage for landslides is uncommon. It is almost never a standard coverage and is difficult to purchase inexpensively as a policy endorsement.”³⁹

None of the Oso victims’ homes were covered by insurance for landslide hazards.⁴⁰ And that is common when homes are damaged by landslides.⁴¹ For example, on March 14, 2011, a landslide damaged the home of Rich and Pat Lord.⁴² This damage required the homeowners to abandon their

³⁷ Jeffrey R. Keaton, Joseph Wartman, Scott Anderson, Jean Benoît, John deLaChapelle, Robert Gilbert, David R. Montgomery, *The 22 March 2014 Oso Landslide, Snohomish County, Washington* p. 1 (Geotechnical Extreme Events Reconnaissance (GEER): July 22, 2014) last accessed on March 1, 2021 at: http://www.geerassociation.org/index.php/component/geer_reports/?view=geerreports&layout=build&id=30. If the American territories are included, then the Oso landslide is the second deadliest landslide in American history. R.M. Iverson, D.L. George, K. Allstadt, *Landslide mobility and hazards: implications of the Oso disaster* 412 EARTH AND PLANETARY SCIENCE LETTERS 197, 198 (2015). The Geological Society of America gave an award to *The 22 March 2014 Oso Landslide, Snohomish County, Washington*. Hannah Hickey, Joseph Wartman, David Montgomery honored for Oso landslide report p. 1 (July 15, 2016).

³⁸ Edwin L. Harp, John A. Michael, and William T. Laprade, *Shallow-Landslide Hazard Map of Seattle, Washington* p. 2 (U.S. Geological Survey Open-File Report 2006–1139: 2006) last accessed on March 1, 2021 at: <http://pubs.usgs.gov/of/2006/1139/> and at the Dropbox link in the email transmitting this letter with the filename: “of06-1139_508.pdf.”

³⁹ Robert L. Schuster & Lynn M. Highland, *The Third Hans Cloos Lecture: Urban landslides: socioeconomic impacts and overview of mitigative strategies* 66 BULLETIN OF ENGINEERING GEOLOGY AND THE ENVIRONMENT 1, p. 22 (2007) last accessed on March 1, 2021 at: https://www.researchgate.net/publication/225794820_The_Third_Hans_Cloos_Lecture_Urban_landslides_socioeconomic_impacts_and_overview_of_mitigative_strategies.

⁴⁰ Sanjay Bhatt, *Slide erased their homes, but maybe not their loans* *The Seattle Times* (April 2, 2014) last accessed on March 1, 2021 at: http://old.seattletimes.com/html/latestnews/2023278858_mudslidefinancial.xml.html.

⁴¹ *Id.*

⁴² Ian Terry, *Abandoned and trashed after mudslide, Edmonds house now for sale* *The Herald* (Feb. 11, 2015). The house is for sale after the bank who held the Lords’ mortgage took ownership of the home. *Id.* Last accessed on March 1, 2021 at: <http://www.heraldnet.com/article/20150211/NEWS01/150219829>.

home on Norma Beach Road near Edmonds, Washington. Because their homeowner's insurance did not cover landslides, they lost their home.⁴³ This loss of what may be a family's largest financial asset is common when homes are damaged or destroyed by landslides or other geological hazards.

Landslide buyouts are rare and when they occur the property owner often only recovers pennies on the dollar. The property owners bought out after the Aldercrest-Banyon landslide in Kelso, Washington destroyed their homes received 30 cents on the dollar.⁴⁴ This underlines why preventing development in geologically hazardous areas is just plain ordinary consumer protection.

Landslides in Western Washington can run out long distances. The 1949 Tacoma Narrows Landslide, in Tacoma "failed catastrophically along steep" 300 feet high bluffs and ran out 1,500 feet into Puget Sound.⁴⁵ This is five times the bluff height. The 2014 Oso slide ran out for over a mile (5,500 feet) even though the slope height was 600 feet.⁴⁶ This was nine times the slope height. Recent research shows that long runout landslides are more common than had been realized.⁴⁷ This research documents that over the past 2000 years, the average landslide frequency of long runout landslides in the area near the Oso landslide is one landslide every 140 years.⁴⁸ The landslides ran out from 656 feet to the 6,561 feet of the 2014 landslide.⁴⁹ The 2013 Ledgewood-Bonair Landslide on Whidbey Island extended approximately 300 feet into Puget Sound.⁵⁰ In a study of shallow landslides along Puget Sound from Seattle to Everett, the average runout length was 197.5 feet (60.2

⁴³ *Id.* p. *6.

⁴⁴ Isabelle Sarikhan, *Sliding Thought Blog, Washington's Landslide Blog* Landslide of the Week – Aldercrest Banyon Landslide July 29, 2009 last accessed on March 1, 2021 at: <https://slidingthought.wordpress.com/2009/07/29/landslide-of-the-week-aldercrest-banyon-landslide/>.

⁴⁵ Alan F. Chleborad, *Modeling and Analysis of the 1949 Narrows Landslide, Tacoma, Washington* xxxi ENVIRONMENTAL AND ENGINEERING GEOSCIENCE 305 p. 305 (1994) last accessed on March 1, 2021 at: <https://pubs.geoscienceworld.org/aeg/eeg/article-abstract/xxxi/3/305/137520/modeling-and-analysis-of-the-1949-narrows?redirectedFrom=fulltext>. Environmental & Engineering Geoscience is a peer-reviewed journal. Environmental & Engineering Geoscience Complete Author Instructions p. 1 of 6 (May 8, 2012).

⁴⁶ Jeffrey R. Keaton, Joseph Wartman, Scott Anderson, Jean Benoît, John deLaChapelle, Robert Gilbert, David R. Montgomery, *The 22 March 2014 Oso Landslide, Snohomish County, Washington* p. 56 & p. 144 (Geotechnical Extreme Events Reconnaissance (GEER): July 22, 2014).

⁴⁷ Sean R. LaHusen, Alison R. Duvall, Adam M. Booth, and David R. Montgomery, *Surface roughness dating of long-runout landslides near Oso, Washington (USA), reveals persistent postglacial hillslope instability* GEOLOGY pp. *2 – 3, published online on 22 December 2015 as doi:10.1130/G37267.1; Geological Society of America (GSA) Data Repository 2016029, *Data repository for: Surface roughness dating of long-runout landslides near Oso, WA reveals persistent postglacial hillslope instability* p. 4. Geology is a peer-reviewed scientific journal. Geology – Prep webpage last accessed on Aug. 11, 2020 at: <http://www.geosociety.org/GSA/Publications/Journals/Geology/GSA/Pubs/geology/home.aspx#overview>.

⁴⁸ Sean R. LaHusen, Alison R. Duvall, Adam M. Booth, and David R. Montgomery, *Surface roughness dating of long-runout landslides near Oso, Washington (USA), reveals persistent postglacial hillslope instability* GEOLOGY p. *2, published online on 22 December 2015 as doi:10.1130/G37267.1.

⁴⁹ Geological Society of America (GSA) Data Repository 2016029, *Data repository for: Surface roughness dating of long-runout landslides near Oso, WA reveals persistent postglacial hillslope instability* p. 4.

⁵⁰ Stephen Slaughter, Isabelle Sarikhan, Michael Polenz, and Tim Walsh, *Quick Report for the Ledgewood-Bonair Landslide, Whidbey Island, Island County, Washington* pp. 3 – 4 (Washington State Department of Natural Resources, Division of Geology and Earth Resources: March 28, 2013) last accessed on March 1, 2021 at: http://www.dnr.wa.gov/publications/ger_qr_whidbey_island_landslide_2013.pdf.

Kitsap County Department of Community Development
Re: Comments on the Shoreline Master Program Periodic Review (Feb. 2, 2021 Draft)
March 1, 2021
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m) and the maximum runout length was 771 feet (235 m).⁵¹ So only requiring development that is in a geologic hazard area to comply with the geologically hazardous area requirements as KCC 22.700.120D does not adequately protect people and property. So we recommend that all construction, development, earth movement, clearing, or other site disturbance which may be adversely impacted by a geological hazard require a geological report and if necessary a geotechnical report.

The Joint SR 530 Landslide Commission recommends identifying “[c]ritical area buffer widths based on site specific geotechnical studies” as an “innovative development regulation[]” that counties and cities should adopt.⁵² So we recommend that all properties that may be adversely impacted by a geological hazard should have their buffers based on a critical areas report for that site. Construction should not be allowed in buffer areas. These standards are necessary to protect Kitsap County families and their largest investment, their homes.

Thank you for considering our comments. If you require additional information, please contact me at telephone 206-343-0681 Ext. 102 and email: tim@futurewise.org.

Very Truly Yours,



Tim Trohimovich, AICP
Director of Planning and Law

Enclosures via a Dropbox link

⁵¹ Edwin L. Harp, John A. Michael, and William T. Laprade, *Shallow-Landslide Hazard Map of Seattle, Washington* p. 17 (U.S. Geological Survey Open-File Report 2006–1139: 2006).

⁵² The SR 530 Landslide Commission, *Final Report* p. 31 (Dec. 15, 2014) last accessed on March 1, 2021 at: http://www.governor.wa.gov/sites/default/files/documents/SR530LC_Final_Report.pdf and at the Dropbox link in the email transmitting this letter with the filename: “SR530LC_Final_Report.pdf.”



State of Washington
DEPARTMENT OF FISH AND WILDLIFE

Mailing Address: 600 Capitol Way N, Olympia, WA 98501-1091 • (360) 902-2200 • TDD (360) 902-2207
Main Office Location: Natural Resources Building, 1111 Washington Street SE, Olympia, WA

March 1, 2021

Jeff Rimack, Director
Kitsap County, Department of Community Development
619 Division Street
Port Orchard, Washington 98366

SUBJECT: Kitsap County Shoreline Master Program and Critical Areas Ordinance Draft Update

Dear Mr. Rimack,

The Washington Department of Fish and Wildlife (WDFW) appreciates the opportunity to review the periodic updates to the Kitsap County Shoreline Master Program and Critical Areas Ordinance. The partnership and collaboration between our agencies are greatly valued, and we attended the first open house on December 17, 2020, ready to provide comments and work together to protect Kitsap County's natural resources. While we intend to more formally review and potentially comment on the SMP Periodic Review during the official public comment period, we would like to utilize this initial draft comment period to provide informal recommendations based on our preliminary review.

In addition to our specific comments provided in the table below, WDFW would also like to highlight the completion of both volumes of our updated Priority Habitats and Species (PHS) publications on riparian ecosystems, focusing on the needs of fish and other aquatic wildlife. In May 2018, we released the manuscript of *PHS Riparian Ecosystems, Volume 1: Science Synthesis and Management Implications*, which meets the criteria for Best Available Science (relative to your CAO) and/or new scientific and technical information (relative to your SMP). In December 2020, we released the final manuscript of *PHS Riparian Ecosystems, Volume 2: Management Recommendations* in which WDFW provides recommendations on how best to apply the science in Volume 1 through the lens of our agency's mandate. These documents focus on the important habitat functions and values provided by freshwater riparian areas (in particular, around rivers and streams), and include, among other things, new guidance about viewing "riparian management zones" as not simply buffers for streams and rivers, but as habitats in and of themselves. While we do not have specific draft language to offer at this time, WDFW would like to start talking with you about how these newer PHS resources can best be applied to the landscape within Kitsap County.

Mr. Jeff Rimack
March 1, 2021

We respect the challenge the County faces in crafting a document that is responsive to many competing and legitimate interests. Thank you for considering these comments for incorporation into the periodic updates.

Specific comments on the periodic update are provided in the following table.

Comments from Washington Department of Fish & Wildlife on Kitsap County Shoreline Master Program Periodic Update, 2021

Page	Section	Comments	Suggested language
17	22.150.570	Additional clarification is needed to help differentiate between "soft" and "hybrid" bank protection.	Suggest clarification such as "Hard elements may be incorporated into Hybrid bank protection if those elements are used only for anchoring large wood and will not significantly impact shoreline processes such as erosion, wood recruitment, or littoral drift. Hard elements must not function as bank protection, groins, or beach grade control. A maximum of 15% of the project length may include hard armor features. The Washington State Department of Fish and Wildlife or the Department of Ecology may be consulted by the County to help determine whether hard anchoring elements will impact shoreline processes or function as bank protection, groins, or beach grade control."
17	22.150.570	Likewise, if beach nourishment is required or proposed as mitigation for a bulkhead, does the bulkhead now qualify as a "hybrid?"	Suggest adding clarification such as "Beach nourishment used for compensatory mitigation does not reclassify a project as a hybrid structure."
46	22.400.120(D)[c]	Proposed language specifies grating with 40% light penetration on stair landings. WDFW suggests making this 60% light penetration, which would be consistent with the state Hydraulic Code requirements for overwater structures.	change 40% to 60%
46	22.400.120(D)[d]	WDFW recommends that Kitsap County require tram landings to be landward of the ordinary high water line.	Preferred: "Tram landings shall be located landward of the ordinary high water line." Alternative: "Tram landings shall be located landward of the ordinary high water line where feasible. Where infeasible, compensatory mitigation for the landing footprint waterward of the ordinary high water line may be required."
51	22.400.135(A)(3)	WDFW does not support the use of stringline setbacks if the setbacks would increase the need for future bank protection at the site. For example, if adjacent existing structures have bank protection, that could indicate those structures are not adequately set back, and a stringline setback should not be used.	"Stringline setback must not be used if the setback would increase the need for future bank protection at the site."
69	22.500.105[C](11)(e)	Recommend requiring delineation of critical areas within 200 feet of the project to ensure the project won't impact critical area buffers.	add "within 200 feet of proposed site activities, including clearing, grading, or construction"
99-106	22.600.160	This section in general is a bit unclear on what portions apply to marine vs freshwaters. Please add clarification	
102	22.600.160[C](3)	Please clarify whether this is for docks in lakes or just marine shorelines? In lakes, dock pilings are typically smaller and not placed 20 feet apart.	

Comments from Washington Department of Fish & Wildlife on Kitsap County Critical Areas Ordinance Periodic Update, 2021

2	19.200.210[C]	<p>This section is not consistent with most recent guidance from the Department of Ecology. WDFW recommends updating this section to meet "no net loss" requirements.</p>	<p>Suggest that section C be replaced with the following suggested language from the Department of Ecology:</p> <p>C. The following wetlands may be exempt from the requirement to avoid impacts, and they may be filled if the impacts are fully mitigated based on the remaining actions in this chapter. If available, impacts should be mitigated through the purchase of credits from an in-lieu fee program or mitigation bank, consistent with the terms and conditions of the program or bank. In order to verify the following conditions, it is essential that a critical area report for wetlands be submitted.</p> <p>1. All isolated Category IV wetlands less than 4,000 square feet that:</p> <ul style="list-style-type: none"> a. Are not associated with riparian areas or their buffers b. Are not associated with shorelines of the state or their associated buffers c. Are not part of a wetland mosaic d. Do not score 6or more points for habitat function based on the 2014 update to the Washington State Wetland Rating System for Western Washington: 2014 Update (Ecology Publication #14-06-029, or as revised and approved by Ecology) e. Do not contain a Priority Habitat or a Priority Area for a Priority Species identified by the Washington Department of Fish and Wildlife, do not contain federally listed species or their critical habitat, or species of local importance identified in the regulatory code <p>2. Wetlands less than 1,000 square feet that meet the above criteria and do not contain federally listed species or their critical habitat are exempt from the buffer dimensions contained in this Chapter.</p>
"4-5"	Table 19.200.220(A)	<p>WDFW does not oppose this change, as it is suggested by the Department of Ecology. However, WDFW would like to acknowledge that the proposed changes to habitat scores are less protective than the current code. This is because with the proposed changes, wetlands will need to receive one additional habitat point to receive the larger buffer prescriptions. There are many wetlands that provide habitat for fish. For example, many wetlands adjacent to streams and headwater wetlands provide off-channel overwintering habitat that is critical for juvenile salmonids. Even with the current ratings, it is possible for fish habitat wetlands to score low enough that their prescribed buffer does not even meet the current buffer for Type F (fish habitat) streams (150 feet). The proposed change makes this situation more likely. WDFW suggests that Kitsap County consider including an additional requirement for wetlands that provide fish habitat, including seasonal fish habitat, to receive a standard buffer width of 150 feet for consistency with the buffer widths for Type F streams.</p>	

Mr. Jeff Rimack
March 1, 2021

Thank you for considering these comments in your review. Please contact me at (360) 620-3601 to discuss any questions you might have.

Sincerely,

A handwritten signature in cursive script that reads "Brittany N. Gordon". The signature is fluid and elegant, with a long, sweeping tail on the final letter.

Brittany N. Gordon
WDFW Habitat Biologist
Brittany.Gordon@dfw.wa.gov



JAMESTOWN S'KLALLAM TRIBE

1033 Old Blyn Highway, Sequim, WA 98382

360/683-1109

FAX 360/681-4643

March 2, 2021

Kirvie Mesebeluu-Yobech
Department of Community Development
Planning and Environmental Programs
614 Division St. – MS36
Port Orchard, WA 98366

RE: SMP Periodic Review Comments

Dear Kirvie Mesebeluu-Yobech,

The wealth and well-being of the Jamestown S'Klallam Tribe (JST) and the Kitsap County's communities are intricately tied to our waters and associated freshwater and marine resources. JST submits the attached comments for the Kitsap Shoreline Master Program periodic review of 2020-2021. We appreciate the County's efforts to perform its periodic review of the Shoreline Master Program (SMP). The Tribe supports restoration projects and commercial aquaculture of native and naturalized species to provide for local seafood, improve water quality and protect the Tribe's Treaty Rights.

We appreciate your consideration of these comments and thank you for this opportunity to participate in Kitsap County's Periodic Review of their Shoreline Master Program.

Sincerely,

Sissi P. Bruch

Sissi P. Bruch, PhD
Environmental Planning Biologist
Natural Resources Department
Jamestown S'Klallam Tribe
1033 Old Blyn Highway
Sequim, WA 98382
Phone: 360-461-3006
Email: sbruch@jamestowntribe.org

Kitsap County Shoreline Master Program Comments
Jamestown S’Klallam Tribe
March 2, 2021

Note: Quoted text comes from the Shoreline Master Program Draft. Re-write sentence (From: To:). Comments and changes are highlighted to make reading easier.

1. 22.100.120.B – “Developments not required to obtain shoreline permits or local review”
 - a. .5 – “Projects on shorelands that are under the exclusive federal jurisdiction as established through federal or state statutes, e.g., military bases, national parks” **Comment: Military bases and national parks are encouraged to meet Shoreline Master Program requirements.**
2. 22.200.115.C – “Management Policies.”
 - a. 1. From: “Standards for buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality **should be** set to assure no net loss of shoreline ecological function.” To: **Set** standards for buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality to assure no net loss of shoreline ecological function.
 - b. 2. From: “Multifamily and multi-lot residential and recreational developments **should** provide public access and joint use for community recreational facilities.” To: Multifamily and multi-lot residential and recreational developments **shall** provide public access and joint use for community recreational facilities.
 - c. 3. From: “Access, utilities, and public services **should** be available and adequate to serve existing needs and/or planned future development. To: Access, utilities, and public services **shall** be available and adequate to serve existing needs and/or planned future development.
 - d. 4. From: “Commercial development **should be** limited to water-oriented uses. To: **Limit** commercial development to water-oriented uses.
3. 22.200.120.C – “Management Policies”
 - a. 1. From: “Uses that preserve the natural character of the area or promote preservation of open space, floodplain or other sensitive lands either directly or over the long term **should** be the primary allowed uses. Uses that result in restoration or preservation of ecological functions **should** be allowed if the use is otherwise compatible with the purpose of the environment and the setting.” To: **The primary allowed uses** are uses that preserve the natural character of the area or promote preservation of open space, floodplain or other sensitive lands either directly or over the long term. Uses that result in restoration or preservation of ecological functions **shall** be allowed if the use is otherwise compatible with the purpose of the environment and the setting.”
 - b. 3. From: “Public access and public recreation objectives **should be** implemented whenever feasible and ecological impacts can be mitigated.” To: **Implement** public access and public recreation objectives whenever feasible and ecological impacts can be mitigated.
 - c. 4. From: “Water-oriented uses **should** be given priority over non-water-oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses **should** be given highest priority.” To: **Priority is** given to water-oriented uses over non-water-oriented uses. For shoreline areas adjacent to commercially navigable waters, **the highest priority is given** to water-dependent uses.

- d. 5. From: Any development in the urban conservancy designation **should** implement low impact development techniques, as much as is feasible, in order to maintain and mitigate ecological functions.” To: Any development in the urban conservancy designation **shall** implement low impact development techniques, as much as is feasible, in order to maintain and mitigate ecological functions.
4. 22.200.125.C “Management Policies”
 - a. 1. From: “Uses **should** be limited to those **which** sustain the shoreline area’s physical and biological resources, and those of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Developments or uses that would substantially degrade or permanently deplete the physical and biological resources of the area **should** not be allowed.” To: **Limit uses** to those **that** sustain the shoreline area’s physical and biological resources, and those of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Developments or uses that would substantially degrade or permanently deplete the physical and biological resources of the area **are** not allowed.
 - b. 2. From: “New development **should** be designed and located to preclude the need for shoreline stabilization. New shoreline stabilization or flood control measures **should** only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied.” To: **Design and locate new development** to preclude the need for shoreline stabilization. New shoreline stabilization or flood control measures **shall** only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied.
 - c. From: “Residential development standards shall ensure no net loss of shoreline ecological functions and **should** preserve the existing character of the shoreline consistent with the purpose of the “rural conservancy” environment.” To: Residential development standards shall ensure no net loss of shoreline ecological functions **and preserve** the existing character of the shoreline consistent with the purpose of the “rural conservancy” environment.
5. 22.200.130.C – “Management Policies.”
 - a. 1. From: “Any use that would substantially degrade or result in a net loss of ecological functions or natural character of the shoreline area **should** not be allowed. The following new uses **should** not be allowed: commercial, industrial and non-water-oriented recreation.” To: Any use that would substantially degrade or result in a net loss of ecological functions or natural character of the shoreline area **are** not allowed. The following new uses **are** not allowed: commercial, industrial and non-water-oriented recreation.
 - b. 2. From: “Any alteration **should be** designed with low impact development methods, or be capable of restoration to the natural condition, where feasible. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions **should** not be allowed.” To: **Design** any alteration with low impact development methods, or be capable of restoration to the natural condition, where feasible. New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions **are** not allowed.
6. 22.200.135.C – “Management Policies”
 - a. 2. From: “When new over-water structures are proposed for residential development of two or more dwellings, joint use or community dock facilities **should** be utilized rather than single-use facilities.” To: When new over-water structures are proposed for residential development of two or more dwellings, joint use or community dock facilities **shall** be utilized rather than single-use facilities.

- b. 4. From: “Existing over-water residences may continue through normal maintenance and repair, but **should** not be enlarged or expanded. New over-water residences **should** be prohibited.” To: Existing over-water residences may continue through normal maintenance and repair, but **shall** not be enlarged or expanded. New over-water residences **are** prohibited.
- c. 6. From: “Development over or in critical freshwater or saltwater habitats **should** be limited to those **which** mitigate impacts according to mitigation sequencing, and development standards for that development activity.” To: **Limit** development over or in critical freshwater or saltwater habitats to those **that** mitigate impacts according to mitigation sequencing, and development standards for that development activity.
7. 22.300.100 “Critical areas and ecological protection.”
 - a. D – From: “Permitted uses and developments **should be** designed and conducted in a manner that protects the current ecological condition, and prevents or mitigates adverse impacts.” To: **Design and conduct** permitted uses and developments in a manner that protects the current ecological condition, and prevents or mitigates adverse impacts.
 - b. E – From: “Shoreline ecological functions **that should be** protected include, but are not limited to:” To: **Protected** shoreline ecological functions include, but are not limited to:
 - c. G – From: “In assessing the potential for new uses and developments to impact ecological functions and processes, the following **should be** taken into account:” To: In assessing the potential for new uses and developments to impact ecological functions and processes, the following **shall** be taken into account:
8. 22.300.105.B. From: “Nonnative vegetation requiring use of fertilizers, herbicides/pesticides, or summer watering is **discouraged**.” To: Nonnative vegetation requiring use of fertilizers, herbicides/pesticides, or summer watering is **prohibited**.
9. 22.300.110.A. From: “Shoreline use and development **should** minimize impacts that contaminate surface or ground water, cause adverse effects on shoreline ecological functions, or impact aesthetic qualities and recreational opportunities, including healthy shellfish harvest.” To: Shoreline use and development **shall** minimize impacts that contaminate surface or ground water, cause adverse effects on shoreline ecological functions, or impact aesthetic qualities and recreational opportunities, including healthy shellfish harvest.
10. 22.300.115 “Shoreline use and site planning.”
 - a. B. – From: “Secondary preference **should be** given to water-related and water-enjoyment uses. Non-water-oriented uses **should be** limited to those locations where the above-described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Act.” To: **Give** secondary preference to water-related and water-enjoyment uses. **Limit** non-water-oriented uses to those locations where the above-described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Act.
 - b. D. – From: “Through appropriate site planning and use of the most current, accurate and complete scientific and technical information available, shoreline **use and development should be** located and designed to avoid the need for shoreline stabilization or actions that would result in a net loss of shoreline ecological functions.” To: Through appropriate site planning and use of the most current, accurate and complete scientific and technical information available, **locate and design** shoreline **uses and developments** to avoid the need for shoreline stabilization or actions that would result in a net loss of shoreline ecological functions.
 - c. G. – From: “Aquaculture activities **should be** located, designed and operated in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline

ecological functions and processes.” To: **Locate, design, and operate** aquaculture activities in a manner that supports long-term beneficial use of the shoreline and protects and maintains shoreline ecological functions and processes.

d. I. – From: “Aquaculture facilities **should be** designed and located to avoid: To: Design and locate aquaculture facilities to avoid:

e. J. – From: “Upland uses and modifications **should be** properly managed to avoid degradation of water quality of existing shellfish areas.” To: **Properly manage** upland uses and modifications to avoid degradation of water quality of existing shellfish areas.

11. 22.300.130.D – From: “Publicly owned, undeveloped road-ends, tax-title lands and rights-of-way adjacent to salt and freshwater shorelines **should be** evaluated for use as public access points.” To: **Evaluate** publicly owned, undeveloped road-ends, tax-title lands and rights-of-way adjacent to salt and freshwater shorelines for use as public access points.

12. 22.300.145 “Shorelines of statewide significance.”

a. B.1.a. – From: “The Washington Departments of Fish and Wildlife and Ecology, affected tribes, other resources agencies, and interest groups **should** be consulted for development proposals that could affect anadromous fisheries or other priority species or habitats.” To: **Consult** the Washington Departments of Fish and Wildlife and Ecology, affected tribes, other resources agencies, and interest groups for development proposals that could affect anadromous fisheries or other priority species or habitats.

b. B.2.c. – From: “In order to reduce adverse impacts to the environment while accommodating future growth, new intensive development activities **should** upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.” To: In order to reduce adverse impacts to the environment while accommodating future growth, new intensive development activities **shall** upgrade and redevelop those areas where intensive development already occurs, rather than allowing high intensity uses to extend into low intensity use or underdeveloped areas.

c. B.3.b. – From: “Actions that would convert resources into irreversible uses or detrimentally alter natural conditions that are characteristic of shorelines of statewide significance **should be** severely limited.” To: Severely limit actions that would convert resources into irreversible uses or detrimentally alter natural conditions that are characteristic of shorelines of statewide significance.

d. B.4.b. – From: “In order to ensure the long-term protection of ecological resources of statewide importance, activities impacting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments **should be** severely limited.” To: In order to ensure the long-term protection of ecological resources of statewide importance, **severely limit** activities impacting anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds and other unique environments.

e. B.6.a. – From: “Public access and recreation requirements **should** take into account the activities of state agencies and the interests of the citizens of the state to visit public shorelines.” To: Public access and recreation requirements **shall** take into account the activities of state agencies and the interests of the citizens of the state to visit public shorelines.

f. C.1. – From: “As such, Kitsap County **should** work to minimize use conflicts, exercise responsibility toward the canal’s resources, and require commitment to water quality preservation.” To: As such, Kitsap County **shall** work to minimize use conflicts, exercise responsibility toward the canal’s resources, and require commitment to water quality preservation.

- g. C.2 – From: “In planning for the future development of Hood Canal, the statewide interest **should** be protected over the local interest.” To: In planning for the future development of Hood Canal, protect statewide interest over local interest.
 - h. C.3. – From: “As such, the HCCC has developed an integrated watershed management plan, incorporated herein by reference, which **should** be consulted for guidance when reviewing new shoreline projects on Hood Canal.” To: As such, the HCCC has developed an integrated watershed management plan, incorporated herein by reference, which **shall** be consulted for guidance when reviewing new shoreline projects on Hood Canal.
13. 22.400.100 “Existing development.”
- a. A.2. – From: “All lawfully established uses, both conforming and nonconforming, may continue and may be repaired, maintained, **expanded or modified** consistent with the Act and this program.” To: All lawfully established uses, both conforming and nonconforming, may continue and may be repaired **and** maintained, consistent with the Act and this program. **Comment: Non-conforming developments should not be allowed to have their non-conformity increase by expanding and modifying their uses, footprints, etc.**
 - b. B.1.a. – From: “Lawfully constructed structures, including those approved through a variance, built before the effective date of this program shall be considered **conforming**, with the exception of existing over-water residences, which shall be considered nonconforming.” To: Lawfully constructed structures, including those approved through a variance, built before the effective date of this program shall be considered **non-conforming, including** existing over-water residences. **Comment: If structures could not meet the requirements of this program today, then they should be considered non-conforming as they no longer meet the current law. Any changes to them should be restricted to ensure they reduce their current impact on the shoreline. This program is in place to protect the shoreline. Allowing these existing developments to expand and be modified is not protecting the shoreline. We suggest adding language stating that landowners are exposing themselves to higher costs in perpetuity since their property is within the portion of the shoreline**
 - a. anticipated to erode.
 - b. B.1.c. – From: “Lawfully constructed conforming structures may be expanded or redeveloped in accordance with the mitigation standards of Chapter 22.800, Appendix B (Mitigation Options to Achieve No Net Loss for New or Re-Development Activities), and all other applicable regulations. Such expanded or redeveloped structures shall be considered conforming.” To: Lawfully constructed conforming structures **that meet this program’s requirements** may be expanded or redeveloped in accordance with the mitigation standards of Chapter 22.800, Appendix B (Mitigation Options to Achieve No Net Loss for New or Re-Development Activities), and all other applicable regulations. Such expanded or redeveloped structures shall be considered conforming.
 - c. B.1.d. – From: “In the event that a legally existing structure is damaged or destroyed by fire, explosion or other casualty, it may be reconstructed to configurations existing immediately prior to the time the structure was damaged or destroyed, provided a complete the application submittal is made for the necessary permits within twelve six months of the date the damage or destruction occurred, and the restoration is completed within two years of permit issuance or the conclusion of any appeal on the permit.” To: In the event that a legally existing structure is damaged or destroyed by fire, explosion or other casualty **(excluding weather or climate change related incidence)**, it may be reconstructed to configurations existing immediately prior to the time the structure was damaged or destroyed, provided a complete the application submittal is made for the necessary permits within twelve six months of the date the damage or destruction occurred, and the

restoration is completed within two years of permit issuance or the conclusion of any appeal on the permit. Such construction will occur without net ecological loss. Comment: Existing developments that are damaged due to rising seas and weather events should not be reconstructed in the same footprint as it will likely happen again. These structures must be reconstructed to meet current requirements. The re-construction process assures no net loss of shoreline ecological functions.

14. 22.400.110 “Mitigation”

- a. B.3. Proposals that use ratios different from those prescribed in this program, that seek to obtain alternative buffers (Section 22.400.120(C)), or that include larger modifications in a buffer (Section 22.400.120(D)) may be approved if justified in a shoreline mitigation plan consistent with Section 22.700.140 when prepared by a qualified professional as defined in Section 22.150.505(B). Where applicable, a shoreline variance may be required in accordance with Section 22.500.100(E).

15. 22.400.115 “Critical Areas.”

- a. C.1.b. & C.2.b. – “Where a lot cannot accommodate required buffers due to size, shape or topography, the alternatives for new development (Section 22.400.120(C)(1)) and alternatives for existing development (Section 22.400.120(C)(2)) shall apply.” Comment: In meeting the requirement for “no net loss of ecological functions”, no tool is more important than the proper use of buffers. Yet buffer provisions do not begin to ensure that this fundamental requirement will be met. Especially problematic are the various provisions for reducing buffer widths to accommodate development. In the small number of cases where the lots cannot accommodate development, these properties should become eligible for a buy-back option. Buy-back values should be based upon the properties’ values *appraised as though the properties were buildable*. Our recommended provisions for habitat buffers are as follows:

- No reductions of habitat buffer widths are allowed.
- Buffer averaging is not allowed.
- Construction of commercial or residential structures (including attachments and outbuildings) is not allowed within habitat buffers.
- Minor New Development definition should be revised as follows:
 - The impervious area limit shall be < 4,000 square feet.
 - The cumulative footprint shall be < 2,500 square feet.

16. 22.400.120 “Vegetation conservation buffers.”

- a. B.2. – See comment above
- b. B.3. – Buffers may be reduced for single-family residences and water-oriented uses in the rural conservancy designation, natural designation, and shorelines of statewide significance (Hood Canal) ... Comment: Delete - Property owners should not have the expectation to be able to build in natural or rural conservancy areas, especially if buffers preclude construction. Education of residents needs to occur regarding the limitation of their undeveloped parcels.
- c. C.1. Comment: Infill provisions should be removed. The existing lots, which currently do not meet the buffer setbacks should not be a reason to allow more non-conformity to occur. These buffers were set to protect the shoreline water quality and ecological function. By allowing infill provision, you are ensuring increased impact to the shorelines with each new septic system, each new person, pet, etc. impacting these critical areas.
- d. C.2. Comment: Existing developments in sensitive shoreline designations must understand that they would not be allowed to be constructed today. Expansion should not be allowed,

especially waterward and reduction of buffers to accommodate this does not meet the goal of this program.

- e. D.1.f.v. From: “Boat houses shall be prohibited in the natural environment.” To: Boat houses shall be prohibited in the natural environment **designation**.

17. 22.400.125 “Water quality and quantity.”

- a. B. – From: “For sites outside of the census-defined urban areas, or the UGAs, the creation or cumulative addition of impervious surfaces that results in five percent or more of the development site being covered in impervious surfaces or the creation or cumulative addition of ten thousand square feet of impervious surfaces from the predevelopment conditions, whichever is **greater**, is a major development, and requires stormwater mitigation through an SDAP.” To: For sites outside of the census-defined urban areas, or the UGAs, the creation or cumulative addition of impervious surfaces that results in five percent or more of the development site being covered in impervious surfaces or the creation or cumulative addition of ten thousand square feet of impervious surfaces from the predevelopment conditions, whichever is **smaller**, is a major development, and requires stormwater mitigation through an SDAP.

18. 22.400.150 “Flood hazard reduction measures.”

- a. B.1. “Development in floodplains shall not significantly or cumulatively increase flood hazard.” **Comment: Any development in the floodplains alone may not significantly increase flood hazard, but cumulative, all the impervious areas will have an effect and it will be hard to justify each individual request. We recommend a moratorium on building construction within 1 meter vertical height above OHWM (Ordinary High Water Mark) on the FEMA coastal flooding and marine tsunami zones. This is a very modest moratorium to prevent construction of houses certain to be flooded from storm surge in the next several decades within the flooding and tsunami hazard zones.**

19. 22.500.100 “Permit application review and permit types.

- a. C.3.c. “Construction of the normal protective bulkhead common to single-family residences. A “normal protective” bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the OHWM for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion;” **Comment: Homes built under the old rules too often constructed their house within reach of shoreline erosion. Eventually they must relocate their structure or armor the shoreline in an attempt to protect their investment. Future development will add more degradation to intact shorelines. For many of the public, the low level of degradation means that much development can occur before environmental harm would begin to show. New, creative measures must be developed and implemented to achieve No Net Loss. We recommend a strong mitigation funding system, where new purchasers of shorelines properties pay into a mitigation account used to purchase or restoration shorelines. Substantial development permits should apply.**
- b. C.3.h. “Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single-family and multiple-family residences.” **Comment: We are concerned about the proliferation of docks and mooring buoys in areas with shellfish resources. The State Department of Health has criteria that require a shellfish closure when densities are exceeded (10 boats in a given area). The county should have a map of shellfish resources, areas used currently for commercial shellfish production, and docks and language to limit the proliferation of each (really boats) to prevent shellfish closures or downgrading a growing-area classification. Here is sample language for buoys that will prevent a**

downgrade in the classification of a shellfish growing area: “The installation and use of mooring buoys (including commercial and recreational buoys) in marine waters shall be consistent with all applicable state laws, including WAC 246-282, the current National Shellfish Sanitation Program standards (NSSP), and other state Departments of Fish & Wildlife, Health, and/or Natural Resources standards.” This text should also be applied to the table in 22.600.100.

- c. E.4.a & E.5.a. – “That the strict application of the bulk, dimensional or performance standards set forth in Chapters 22.400 and 22.600 precludes, or significantly interferes with, reasonable use of the property” **Comment: Variances and administrative variances are supposed to be for “extraordinary circumstances imposing unnecessary hardships.” Not being able to build a house on a currently empty lot due to buffer restrictions should not be considered reasons to grant variances. The current empty lot can serve compatible uses such as recreation and day uses which are reasonable uses of the property.**
20. 22.600.120 “Barrier structures and other in-stream structures.”
 - a. C.1. From: “When located waterward of the OHWM, barrier structures and other in-stream structures shall be allowed only where necessary to support:” To: When located waterward of the OHWM, barrier structures and other in-stream structures shall be allowed only **when no net loss of shoreline ecological functions occurs and** where necessary to support:
 21. 22.600.130 “Commercial development.”
 - a. B.8. – From: “Non-water-oriented commercial uses meeting these criteria must obtain a CUP.” To: Non-water-oriented commercial uses meeting these criteria must obtain a CUP **and assures no net loss of shoreline ecological functions.**
 22. 22.600.140 “Fill”
 - a. A.4. – From: “In addition, any amount of fill activity on slopes steeper than thirty percent, or within the mandatory setback of a steep slope, wetland, stream, lake or Puget Sound, may require a SDAP. To: In addition, any amount of fill activity on slopes steeper than thirty percent, or within the mandatory setback of a steep slope, wetland, stream, lake or Puget Sound, may require a SDAP **and assures no net loss of shoreline ecological functions.**
 - b. C.2. – From: “Where necessary, fill in shoreline jurisdiction shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration. To: Where necessary, fill in shoreline jurisdiction shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration **and assures no net loss of shoreline ecological functions.**
 23. 22.600.145 “Forest practices/timber harvest.”
 - a. C.9. – From: “Where a threat to human life or property is demonstrated, or where view thinning is allowed in accordance with the vegetation conservation buffer standards in Section 22.400.120, the department may allow removal of hazard or view trees within shoreline jurisdiction.” To: Where a threat to human life or property is demonstrated, or where view thinning is allowed in accordance with the vegetation conservation buffer standards in Section 22.400.120, the department may allow removal of hazard or view trees within shoreline jurisdiction **only if it assures no net loss of shoreline ecological functions.**
 24. 22.600.155 “Mining”
 - a. B.1.d. “The activity demonstrates no net loss of shoreline ecological functions through avoidance, minimization and mitigation of adverse impacts during the course of mining and reclamation.” **Comment: The wording of “during the course of mining and reclamation” can encompass many years/decades. How will the County monitor the continual**

mitigation of mining through this SMP and assure no net loss of shoreline ecological functions?

25. 22.600.160 “Mooring structures and activities.”

- a. B.6. & B.9. “If for residential moorage, demonstration that existing facilities, including public moorage within ten driving miles of the applicant’s parcel, are not adequate or feasible to accommodate the proposed moorage; **Comment: Ten driving miles is too short a distance. We are concerned about the proliferation of docks and mooring buoys in areas with shellfish resources. The State Department of Health has criteria that require a shellfish closure when densities are exceeded (10 boats in a given area). The county should have a map of shellfish resources, areas used currently for commercial shellfish production, and docks and language to limit the proliferation of each (really boats) to prevent shellfish closures or downgrading a growing-area classification. Here is sample language for buoys that will prevent a downgrade in the classification of a shellfish growing area: “The installation and use of mooring buoys (including commercial and recreational buoys) in marine waters shall be consistent with all applicable state laws, including WAC 246-282, the current National Shellfish Sanitation Program standards (NSSP), and other state Departments of Fish & Wildlife, Health, and/or Natural Resources standards.”**

26. 22.600.175 “Shoreline stabilization.”

- a. C.11.b.i. – “That the primary structure will be damaged within three years as a result of natural shoreline erosion in the absence of hard armoring structures;” **Comment: Homes built under the old rules too often constructed their house within reach of shoreline erosion. Eventually they must relocate their structure or armor the shoreline in an attempt to protect their investment. New, creative measures must be developed and implemented to achieve No Net Loss. We recommend a strong mitigation funding system, where new purchasers of shorelines properties pay into a mitigation account used to buy out properties in harm’s way or pay for restoration projects on shorelines.**

27. 22.600.185 “Utilities.”

- a. C.2.c. “To the maximum extent possible, sewage treatment plant outfalls shall be located where their effluent will not negatively impact commercial and recreational shellfish and other critical habitat and marine resource areas. Mitigation may be required for any adverse impacts to fisheries and wildlife resources, natural systems and sensitive areas.” **Comment: From Puget Sound Nutrient Source Reduction Project: Volume 1: “Excessive nutrients in rivers and from point sources flowing into the Sound, such as municipal wastewater treatment plants, deplete dissolved oxygen below the water quality standards.” (Page 9). Sewage treatment plants are currently negatively impacting shellfish, critical habitat, and marine resource areas. Mitigation needs to begin today.**

3/2/2021

The hillside behind our home is very steep, unstable and has an enormous amount of water coming off of it, from a stream that is located somewhere in the hillside. I would like to be sure this area remains undeveloped. There had been a previous slide years ago, and the vegetation that exists seems to be helping to hold the bank. Any type of construction or disruption of the slope would certainly result in another devastating slide.

We understand there are plans in place for 7 homes on the hillside along Beach Drive East. The construction would certainly disrupt the already steep and unstable slope, and would cause enormous amounts of run off storm water. The water during rains currently runs like a river down our driveway and into the small ditch along Beach Drive.

Thank you for continuing to protect our existing homes, from another devastating slide.

Landa Fuchs and Rob Dutton
2363 Beach Drive East
Port Orchard
360-990-5544

3/2/2021

I'd like to suggest something that is related to the SMP but may not be within the purview of the current review. I've always thought the incentives for shoreline mitigation should be adjusted. I haven't read the SMP for several years so I may not understand the current mitigation process completely. I'm referring to section 8.9 in the draft I have from 2013. As I understand it, if someone wants to do something prohibited by the SMP they can offset any potential environmental damage by performing a mitigating activity so that no net loss of environmental health occurs.

One problem with the system is that it gives an advantage to a property owner who has not improved the environmental health of his/her property over someone who has. For example, if a land owner puts in pervious pavement or native plants the landowner will not have those options for mitigation while a neighbor who has done nothing will.

This may not sound like a big permitting problem but I think the current system sort of discourages people who understand the SMP from taking the initiative to make environmental improvements now if they think they may ever want to, let's say, build into a buffer in the future. The solution I've always imagined is sort of a mitigation bank system. So, if you put in pervious pavement just because you think it's good for the environment you get credit from the county if you need to do mitigation in the, let's say, next 10 or 15 years. Also, if you sell your property in that time period the mitigation credit travels with the deed.

I think this kind of mitigation bank might be more beneficial than one might think because, for most people, the absolute benefit to the environment of installing pervious pavement is a little fuzzy - sort of theoretical - but the costs and time involved are very concrete (couldn't resist the play-on-words). A mitigation system such as what I'm suggesting would make everything more real because one could argue that it represents a direct addition to the value of the property.

I really don't know - a system something like this may already exist. I hope so. If not, something to think about.

Carl Shipley



THE SUQUAMISH TRIBE

NATURAL RESOURCES DEPARTMENT
PO Box 498 Suquamish, WA 98392-0498

March 2, 2021

Kirvie Mesebeluu-Yobech, Planner
Steve Heacock, SEPA
614 Division Street, MS-36
Port Orchard, WA
98366

RE: Kitsap County Shoreline Master Program Periodic Review (February 2021) and
Determination of Non-Significance

Dear Ms. Yobech and Mr. Heacock,

Thank you for the opportunity to review and comment on the proposed amendments to the Kitsap County Shoreline Master Program (SMP) and associated code revisions (draft dated 2/1/2021). The Tribe seeks protection of all treaty-reserved natural resources through avoidance and minimization of negative impacts to habitat and natural systems within its adjudicated usual and accustomed fishing area (“U & A”). The Tribe reviews projects and regulations which might affect the health and sustainability of tribal resources and that may impact treaty-reserved resources.

The Tribe has reviewed the above referenced project and has the following comments. Some comments may be similar to those previously communicated, but which continue to be unresolved or require clarification.

General

The revised Shoreline Master Program does not acknowledge the Tribe’s extensive use of the shorelines. The Suquamish people have lived, gathered food stuffs, ceremonial and spiritual items, and hunted and fished for thousands of years in western Washington. Beaches in particular are of significant cultural value to the Tribes, and tribal members continue commercial, ceremonial, and sustenance fishing and shellfish harvesting on Kitsap County shorelines. Fisheries resources are tribal-trust resources that require healthy habitats and are therefore crucial to the economic and cultural well-being of the Tribe. The Tribe requests the County to add general language acknowledging that the tribes have treaty-reserved rights associated with the shorelines of Kitsap County and that the Shoreline Master Program shall not interfere with those reserved rights. A suggested location for this general acknowledgement would be in KCC 22.300.120.

Shoreline Master Program Period Review- Draft (February 2021)

22.150.545 Setback

Please clarify that the setback is the greater of either the vegetation conservation buffer,

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geotechnical setback or the view line. While the view blockage section in KCC 22.400.135 does address this, it is important that ‘setback’ also be defined in this way. Recommend, “...*buffer, geotechnical setback, or a view line established by the shoreline structure setback line, whichever is greater, ...*”.

22.150.570 Shoreline Stabilization

Please clarify this definition with regards to the added language for ‘hybrid’ structures. This currently reads that if any portion is hard, then the project shall be considered ‘hybrid’. The ‘any portion’ could be 90%, in which case the project would not likely meet the criteria for review as a hybrid structure under the proposed language in 22.600.175. Recommend revising to, “...*may be considered hybrid...*”, referencing the appropriate subsection in 22.600.175 with said criteria.

22.200.100 and 22.400.115 Critical Areas

While it is clear that the shoreline jurisdiction is extended to the outer ordinary high water mark of associated streams and wetlands, it is not as clear whether the required buffer would be that of the shoreline environmental designation or that of the wetland category or stream type. Since many shoreline buffers are less protective than stream and wetland buffers, language should be added that the greater of the two shall apply.

22.400.120(B)(2) Reduced Standard Buffer

The Tribe concurs with this added language to clarify that vegetation conservation buffer reductions in all shoreline environment designations may only be approved when demonstrated necessary through the mitigation sequencing process, and if the proposed reduction will result in no net loss of shoreline ecological functions and other variance criteria. This will help to ensure that resources are protected to the greatest extent feasible and that buffer reductions are not granted unless necessary. However, the Tribe does not support buffers of less than 50-feet as they would not be protective of water quality functions. In addition, such reductions cannot result in the need for future bank protection. Recommend adding language to this section to emphasize this requirement.

22.400.120(B)(2)(f)

Under subsection (f), please clarify either a minimum administrative stream buffer reduction, or, that any amount of shoreline stream buffer reduction will require a Shoreline Variance. Currently, the referenced provisions of section (C) are for further reducing a buffer below the already reduced standard buffer, however no reduced buffer is provided for shoreline streams. Since many of the shoreline streams in Kitsap County have some Channel Migration Zone (CMZ) associated with them, it would not be recommended to provide a reduced standard buffer, as there are likely floodplain habitats and geotechnical issues that will need wider and more protective buffers and setbacks.

22.400.120(C)(2)(c)(iv)

Please clarify what type of ‘administrative variance’ is being referenced. Is this a Type II Variance that will allow for appropriate noticing and comment period but no hearing, or a Type I administrative buffer reduction, which does not require noticing or comment period? The Tribe is

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opposed to buffer reductions below the reduced standard buffers (or below 50-feet) without a variance, as this provides opportunity to review and comment on potential impacts to treaty-reserved resources.

22.400.120.(D)(1)(a) Trails

- Remove boardwalks as a preferred ‘pervious’ surface. If boardwalks are to be included, they should be grated similar to overwater structures, not solid decking. This will allow for continued infiltration and herbaceous vegetation growth, thereby minimizing impacts to the buffer.
- When planning for trails, bridges and other structures ensure that coordination with WDFW and local Tribes occurs to ensure protection of treaty reserved natural and cultural resources.
- Trails should not be located within wetland or riparian (freshwater or marine) habitat areas for most of their length. Instead, locate trails well away from streams, wetlands, shorelines, and their associated buffers.
- Loop trails are perceived as "more interesting" however, there must be some compromise when it significantly increases the impacts (including but not limited to encroachment, vegetation removal, introduction of invasive species, erosion, human intrusion, and soil disturbance). A linear trail is the much better choice as it would still provide access and limit impacts.
- Creosote and Pentachlorophenol should not be used for any part of trail structures. It is preferred that if wood is used it should be only untreated wood (cedar is best).

22.400.120(D)(1)(c) Stairs

This section should be simplified to read, “...permitted per the exemption criteria...” and reference appropriate code and WAC sections. Beach stairs are not considered ‘normal appurtenances’ to a single-family residence per the WAC definition, and therefore would only qualify for an Exemption to a Shoreline Substantial Development Permit if the structure is a replacement or under the Fair Market Value threshold criteria. Even when above Ordinary High Water, stairs are not a listed appurtenance and therefore do not qualify under that criteria. Stairs can heavily impact shoreline buffers, shoreline habitat, and treaty-protected fisheries. Shoreline exemption permits (Type I) do not require noticing to allow the Tribe to comment on resource protections. Therefore, the circumstances under which this exemption process is used should be more limited.

22.400.120(D)(1)(f) Water-Oriented Storage

Boat houses should be prohibited in natural and conservancy designations and not be allowed in areas that support shellfish, forage fish or marine vegetation.

22.400.130(B)(1) Historic, Archaeological, Cultural, Scientific and Educational Resources

This section states that, “*Tribal historic preservation officers (THPOs) for tribes with jurisdiction will be provided the opportunity to review and comment on all development proposals in the Kitsap County shoreline jurisdiction, both terrestrial and aquatic...*”. However, Type I permits for which there are no public notice or comment period requirements are not, in most cases, being shared with the Tribe to allow for this opportunity to review for both natural and cultural tribal-resources. Please clarify how this opportunity to comment is provided. As this section is the only regulatory section in the SMP which addresses the Tribal treaty-resource protections, it is critical that this be addressed.

22.400.135 View Blockage

Clarify that building up to the view line shall not be criteria for a buffer reduction, administrative or otherwise. Mitigation sequencing is still required. The added language in 22.400.120(B)(2) may help to ensure this happens, but it should also be clarified in the view blockage sections as well.

22.400.140 Bulk and dimension standards.

For transparency, it is recommended to add language that the Tribe does not support buffers less than 50' as anything less is not backed up by Best Available Science, especially in regard to water quality.

22.500.105(B) Pre-application and Staff Consultations

With regard to the required staff consultation for any new over-water structure or shoreline armoring, the Tribe is requesting to be notified of these meeting opportunities to coordinate with the County and applicant on any up-front concerns regarding Tribal fisheries or cultural resources. This will both ensure treaty-protected resources are addressed, and provide clarity of expectations to the applicant and County staff.

22.600.160 Mooring Structures and activities (3) Piling

- Mooring structures should not be allowed in areas where they would impact Tribal Treaty fishery activities or result in a commercial shellfish harvest area downgrade.
- Cumulative impacts should be addressed with any No Net Loss / Shoreline Mitigation Report, not just for a Conditional Use Permit. This should especially be provided for any overwater structures (docks, buoys, etc.).

22.600.175 Shoreline Stabilization

- Add that any proposed project that will be seeking to obtain a 'hybrid' bulkhead status shall require a staff consultation. The Tribe requests that we have the opportunity to participate in these discussions to ensure that treaty resources are not diminished by reviewing the proposal under a hybrid status.
- Clarify that any compensatory mitigation efforts (beach nourishments, etc.) shall not be used for a project to qualify as 'hybrid'.
- Any sediments used to quality must be appropriately sized material and matching an appropriate reference area as per WDFW as material that is too large will result in armored beaches.

22.600.180 Transportation

The exception noted for public roads belongs in the Shoreline Stabilization section, not in Transportation, as it states, "...development necessary to protect existing public roads in existing rights-of-way."

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19.200 Wetlands

The Tribe acknowledges that the proposed amendment to the wetland habitat scores are consistent with the most recent Department of Ecology guidance. However, what this still does not address is that a low-habitat scoring wetland may still be providing habitat for fish, such as off-channel rearing habitat or downstream hydrology as a headwater wetland. The lower habitat score, resulting in a lesser prescribed buffer in such instances, makes it more likely that this type of wetland would not even meet the buffer of 150-feet required of Type F streams. It is recommended, then, to add language to require that wetlands which are providing seasonal or perennial fish habitat receive a standard buffer width of 150-feet to be consistent with Type F stream buffer widths. This would not be inconsistent with the currently proposed amendment, but will provide for similar resource protections as other fish habitat.

19.200 and 19.300 Mooring structures (non-shoreline)

Under the Comprehensive SMP Update (2014), the CAO was incorporated into the SMP and certain provisions previously in the SMP regarding freshwater habitats were removed. The 2017 CAO update did add back in ‘bank stabilization’ in Fish and Wildlife Habitat Conservation Areas (KCC 19.300.315(K)), but it did not add back in criteria for overwater structures on non-shoreline lakes/wetlands. It is highly recommended to add a clarifying section stating that, *“Any mooring structure proposed on non-shoreline jurisdiction waterbodies follow the same development standards as provided for in KCC 22.600.160 for freshwater.”*

Title 15- Frequently Flooded Areas

15.08.140 Floodway

The Tribe acknowledges that this amendment is to comply with the definition provided by the Federal Emergency Management Agency (FEMA). However, the Tribe finds the exemption language in this definition, as is, to be problematic for the continued efforts by tribes, state, and local agencies to restore floodways and their associated critical habitats. The language states, *“The floodway does not include lands that can be reasonably expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state or a political subdivision of the state.”* This exemption does not acknowledge that many floodways can be (and are) restored or that said control devices may create a false sense of security resulting in increased development in the flood-controlled area. These historical floodways must not be discounted, as their restoration and conservation are critical to the health of treaty-protected fisheries. It is recommended that language be added to state, *“This exemption shall not mean, however, that a Habitat Assessment per KCC 15.13 will not be required to ensure no harm will occur to any federally listed species and associated habitats.”*

Thank you for the opportunity to comment on the above referenced proposal. Please keep us informed of any project status and any related project actions. If you have questions or concerns, please don’t hesitate to email at kbarnhart@suquamish.nsn.us .

March 2, 2021

Sincerely,

A handwritten signature in blue ink, appearing to read "Kathlene Barnhart". The signature is fluid and cursive, with the first name "Kathlene" written in a larger, more prominent script than the last name "Barnhart".

Kathlene Barnhart
Ecologist, Natural Resources Department

CC:

Chris Waldbillig, Washington Department of Fish and Wildlife
Brittany Gordon, Washington Department of Fish and Wildlife
Maria Sandercock, Washington Department of Ecology

3/3/2021

Thank you for the opportunity to provide public comment at the joint hearing on March 2. To clarify my perspective I'd like to follow up on my earlier written comments with two additional written comments per my oral remarks last night:

1. Change proposals to SMP should make added costs and burden on property owners explicit.

As a shoreline property owner, I greatly appreciate the efforts of DCD staff and management and overall I am a very satisfied "client" of DCD. I have found DCD team members to be both diligent and reasonable. I believe that DCD staff proposals for changes to the SMP have been made in good faith based on their experience carrying out the 2014 ordinance. And I don't feel that property owner rights should be the only consideration: I understand that protection of the shoreline ecosystem to a "no net loss" standard is an overriding goal, and that making the permitting process more efficient (e.g. by improving clarity of code provisions) is also a worthwhile goal.

That being said, it does not appear that any estimates have been made by DCD staff of the added cost or burden (in terms of reasonable uses impaired) on waterfront property owners of each proposed change. The existing SMP already significantly burdens shoreline property owners. I don't think the Commissioners should approve changes to the SMP that add cost or burden to waterfront property owners without explicitly weighing said costs and burden against purported benefits, particularly if such changes are justified only by improved "clarity".

As just one example, the proposed change to the "Trails" section would require homeowners to hire an engineer = and potentially then also pay for stormwater facilities - just to create or renovate a simple trail to reach the top of their bank through a buffer that could be 200' wide. Beach stairs: fine, let's make sure they are engineered. But for a flat trail - already permitted as part of a vegetation management plan and restricted as to materials and width - this is overkill and could end up costing \$10,000 per affected waterfront homeowner, for no material benefit. At a minimum, if DCD staff feels the benefit of a proposed change warrants added cost and burden on property owners, a cost-benefit summary should be provided to make this explicit and something the Commissioners can consider. Absent that, no changes should be made from the 2014 ordinance that would add cost or burden to property owners, such as this proposed change to "Trails" provision.

2. View Blockage should, per the original ordinance, consider whatever large structure is closest to water on adjacent lots

Regarding the View Blockage provisions, the original ordinance of Resolution 240-1984 was entirely unambiguous regarding its intrinsic definitions of what structures would and would not be considered for view blockage purposes. Namely, the structure closest to the water on or proposed for a lot that was large enough or high enough to potentially block views. Nothing about what type of structure it was, such as whether it was a residence or even habitable. That the 2014 SMP can be construed as having some ambiguity in this provision is clearly, as evidenced by its drafts, an inadvertent result of poor merging of definitions. And the 2014 SMP is not even really ambiguous, it's only that DCD staff has, at least in recent years, chosen to interpret this provision, at odds with the plain language of its definitions, to consider only primary residences for view blockage purposes, not other structures. The proposed changes in this regard seek to enshrine DCD's preferred (mis)interpretation, contrary to the clear original legislative intent and plain language of 240-1984. And I believe that original language was completely correct: it's unfair and unreasonable to force a property owner whose view is blocked by neighbor's two-storey ADU or boathouse to push their proposed home farther back on their lot (or

require them to go through an expensive "Conditional Waiver" process), simply because another building on that neighbor's lot is deemed to be "primary". If the Commissioners explicitly wish to significantly alter the intent and clear language of the 1984 view blockage ordinance they passed that should be clearly communicated, including to the public, and deliberated upon. Otherwise, its original sense should be retained.

Thank you very much for your consideration.

William McCoy
21026 Miller Bay Rd NE
Poulsbo, WA 98370



March 2, 2021

Kitsap County Planning Commission
619 Division Street
Port Orchard, Washington 98366

SUBJECT: Shoreline Master Program Update

Honorable Commissioners:

Kitsap Alliance of Property Owners (KAPO) has reviewed the proposed changes / amendments to the 2014 adopted Shoreline Master Program. Our comments submitted herein, while brief in summary carry with them substantial concern that DCD staff is using every excuse possible to increase the regulatory environment of Kitsap County's permitting process. In case there is any misunderstanding of why that is a concern, KAPO would like to challenge each member of the Planning Commission to individually apply for a Shoreline Substantial Development Permit (SSDP) and do so without involving any professional consultant assistance. KAPO can assure each and everyone on the Commission and likely to include DCD staff that none of the Commissioners could undertake such a task to include the professionals on the Commission.

KAPO, whose organizational formation came about because of shoreline property owner concerns about excessive regulation twenty-one years ago has an abiding and long-standing objection to regulation for regulation sake. Year after year we have watched Kitsap County staff, appointed and elected officials adopt regulations, specifically in the shoreline and environmental area that have no real scientific basis, and are not founded on a hard analysis of whether past development has created a problem or contributed to a loss (in any way) of habitat or the attributes the residents of the County value. For example, KAPO has requested Kitsap County perform an analysis of prior existing regulations, i.e., those in effect between 1975 and 1999 to document the effect of development permitted under those regulations.

The response to KAPO's request is, "the County cannot afford to undertake such a "baseline study." The County therefore, cannot assert there is a "baseline of existing conditions without such foundational information. No one, not the State Department of Ecology staff, State Legislators, Kitsap County or City officials can make any claim about promoting "no net loss" absent a baseline study. And no one can assert with any credibility that "any permit allowing new development" creates a net loss. There is no metric to draw such a conclusion.

"The small landholders are the most precious part of a state." - Thomas Jefferson

With the foregoing as a preface to KAPO's assessment of the proposed Shoreline Master Program Update/Amendments, here are our organizations concerns:

1. DCD staff has ignored interested citizens in the staff report presentation to the Planning Commission by the failure to attach a "hard copy" of the "Consistency Analysis Report prepared by The WATERSHED COMPANY. KAPO understands that the Planning Commission received an earlier copy of this report to be reviewed in one of their work-study sessions. The public has for all-intents-and-purposes has never seen it or had a chance to review its contents. This comment is made because the report is not easily found on DCD's website and only discoverable by clicking on a "hot link" on page 5 of the staff report.
2. Several times in the staff report reference is made to "additional regulations" to be found in an appendix or an attachment to the SMP. For example, reference is made to Appendix F, "List of Shoreline Waterbodies." Another reference is to Appendix E (without stipulating whether this appendix is to the SMP or the CAO). Appendices, by definition are for supplemental information and not for setting forth a subset of new regulations. The same is true for "attachments" of which there are six others besides Appendix F. If staff is going to provide the public with material they can review, all attachments and/or appendices need to be attached to the staff report as delivered to the Planning Commission and made available to the public before their public hearing. Just referencing what may or may not be found on the County's website represents a total disservice to the public, many of which are shoreline property owners. The public review process is therefore flawed.
3. Pertinent to The WATERSHED COMPANY's Consistency Analysis Report, there is no "mandate" for proposed changes beyond page 18 of their report. While it may be desirable to make some changes such as extending the length of time for "non-conforming uses and structures" to be re-established, most of the rest should have detailed vetting involving shoreline property owners and professionals who prepare permit applications. KAPO recommends that all such "nice to have" or staff preferred code changes be removed from Shoreline Master Program Update consideration. No such vetting has taken place. What the staff details as "public involvement" is nothing more than a tale of how staff has informed the public what these regulations will do to them. For example, absent from the staff report is any instance when members of the public made a comment or recommendation that resulted in "language change" in the proposed SMP or one of the related ordinances. Also, there was not even a summary of comments DCD staff did receive. Again, the so-called citizen involvement is nothing more than a presumption.
4. Regarding the answer to the question posed about what is necessary for state law compliance verses internal consistency compliance with other County codes, it would appear the only necessity prompting amendments to the SMP are those that comply with state law. After June 30, 2021 if there is still other

compliance issues the County wants to resolve, the DCD work program can include the work with allowance for detailed vetting of proposed code language.

5. Other Issues for Consideration all items 1-24 should be set aside, i.e., removed from the SMP update with the possible exception of items No. 3 and 24. The remaining 22-items should be vetted in detail, involving shoreline property owners and professionals who assist such property owners with permitting. The proposed language for each of the 22 remaining items is problematic. To prevent the circumstance of “regulation for regulation sake,” DCD staff, the Planning Commission and ultimately the Board of County Commissioners, along with members of the public need to first identify and then analyze:
 - a.) “the problem that needs resolution;
 - b.) “how pervasive the problem is;”
 - c.) what options exist besides code language to address the problem;
 - d.) whether any proposed regulatory measures would impinge on the rights of people who own the property and their constitutional rights of property use;
 - e.) what the minimum code provisions might be, if code language is necessary, that could address the problem if the first three metrics have been defined; and
 - f.) finally, an assessment has to be made to determine whether or not the County can afford to impose code regulations – both the cost of staff and other County resources.
6. One proposed ordinance change in the “Other Items for Consideration” that is particularly objectionable is No. 15 “Exemptions from SDPs that still must go through a Substantial Development Permit process. **This is an absurd and untenable requirement of the highest order!!!!!!!!!!!!** It is stipulating among other exempt activities and structures, that single-family homes and accessory buildings will be subject to a permit process that takes 6-months to a year to complete before a building permit can be issued either for a new home or an addition to an existing home. This a huge penalty for the property/home owner that will cost thousands of dollars for what here-to-for has been an allowed use without such penalty and allowed with no significant adverse impact on the environment.

Besides this objection, DCD permitting does not have enough man/woman power to process such permits. It is adding an unnecessary workload to an already stressed staff that cannot process permits in a timely manner, i.e. 120-days (with or without a Hearing Examiner approval). Such a proposed requirement is a thoughtless example of why there is a need for *“an assessment of whether or not the County can afford to impose code restrictions, both the cost of staff and other County resources.”* **And it is case in point for why there is a need for the kind of filtering criteria listed in 5. a-f above!**
7. Relative to the “Findings,” that the Planning Commission will adopt, there is no mention of the impact this Update will have on application fees. Also, there is

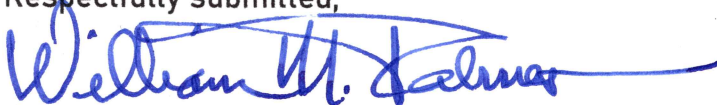
no consideration, what-so-ever of the situation of "fee compoundment." While this term is not in anybody's lexicon, it describes the situation where an applicant has a project that seemingly requires three-shoreline related permits, a Shoreline Conditional Use Permit, a Shoreline Variance and a Shoreline Substantial Development permit. The combined fees an applicant has to pay in this situation equates to \$10,913.00. That equates to approximately 84 hours of staff processing time for just one project. Quite candidly, if staff is spending any more time processing an application (regardless of interruptions) than 18-hours, they are wasting the applicant's money!!! Perhaps there is an argument proffered that such a "fee compoundment" would rarely or ever occur. The fact that it could occur even once should be cause for concern! Yet, DCD has a current application (supposedly in process) where the applicant has been coerced into paying all three fees and for interest sake, this applicant is making no physical improvements to their property. When these three fees are added to land use related application fees, the applicant has paid the County \$22,000+ in application fees. **There is no way under God's green earth that such fee amounts can be justified, except when "regulation is adopted for regulation sake."** Even making allowance for staff to prepare four staff reports (most of which is "boiler plate" thus 25 hours of staff time), that leaves the applicant paying for 144 hours of wasted staff time.

If staff is proposing "amendment fixes" to the SMP, why is this issue ignored?

Perhaps KAPO's comment letter is a singular expression of public objection to this SMP update. If that is indeed the case, then the Planning Commission should know that there are many, many property owners affected by such rule changes and in the staff's rush to present documents for public hearing, without prior analysis and proper vetting, again see point Number 5 above, regulations will be implemented for no other reason than for "regulation sake" and because DCD staff or the unaccountable staff of the Department of Ecology want regulations - regulations that in many cases the County cannot afford to implement. Whenever that is true, the property owner or the citizen of the County pays the price, not the staff person or even the elected officials.

Again, KAPO is recommending only the State law compliance amendments to the SMP be adopted at this time. All other proposed amendments should be postponed until they can be thoroughly vetted as described in our Point Number 5 above.

Respectfully submitted,



William M. Palmer, President
KITSAP ALLIANCE OF PROPERTY OWNERS