WORK SESSION
The work session convened at 9 a.m., Monday, December 11. Present were Commissioners Ozias, Johnson and Peach, and Administrator Jones.

Items of discussion per the agenda published December 7 were:
- Calendar / Correspondence
- Contract Change Order 2 with Aldergrove Construction, Inc. for the Courthouse Boiler Replacement Project
- Grant Agreement with Department of Commerce for Secure Crisis Residential Center
- Update on Heritage Advisory Board activities

Meeting recessed at 9:28 a.m. and continued to Joint Legislative at 9:38 a.m. Present were Representative Chapman, Representative Tharinger and Senator Van de Wege, Commissioners Ozias, Peach and Johnson, and Administrator Jones.

Joint Legislative Meeting
Clallam County Topics
- WSDOT projects (Elwha Bridge, Hwy 101 Simdars Road to Blyn)
- Health Care Integration
- Water/Dungeness Off-Channel Reservoir
Regional Topics
- Veterans Legislation
- Unfunded Mandates (Indigent Defense, Public Records)
- Department of Natural Resources work
- Capital Budget
- Ability of Counties to increase income

Joint Legislative Meeting discussions ended and the work session resumed at 10:45 a.m.

WORK SESSION – Continued
- Consideration of a Call for Hearing on the proposed vacation of a portion of Billy Smith Road
- Consideration of a Call for Hearing on the proposed changes to Clallam County Admin Policy 455 – Property Control
- Discussion with Treasurer regarding vacating the Office
- Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619CD
- Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619CS
- Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619D
- Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619MP
- Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619LC
- Discussion regarding letter of support for the City of Port Angeles efforts to maintain the quality and quantity of low cost water as promised by the Elwha River Ecosystem and Fisheries restoration Act
- Discussion regarding letter of support for the Quileute Tribe Transportation Safety Improvement Projects

Meeting adjourned at 11:47 a.m.
REGULAR MEETING OF THE BOARD OF CLALLAM COUNTY COMMISSIONERS

Chair Ozias called the meeting to order at 10 a.m., Tuesday, December 12. Also present were Commissioners Peach and Johnson, and Administrator Jones.

REQUEST FOR MODIFICATIONS/APPROVAL OF AGENDA
ACTION TAKEN: CBPm to adopt the agenda as presented, CRJs, mc

PUBLIC COMMENT
- Kenneth Reandeau, 181 W Lyre River Road, Port Angeles, thanked the Board for the letter of support for the City of Port Angeles regarding the Elwha River

CONSENT AGENDA
1a Approval of vouchers for the week of December 4
1b Approval of payroll for period ending November 30
1c Approval of minutes for the week of December 4
1d Letter of support for the City of Port Angeles efforts to maintain the quality and quantity of low cost water as promised by the Elwha River Ecosystem and Fisheries restoration Act
1e Letter of support for the Quileute Tribe Transportation Safety Improvement Projects
ACTION TAKEN: CRJm to adopt the consent agenda, CBPs, mc

REPORTS AND PRESENTATIONS
- CBP commented that the Forks Food Bank was very thankful for the donation from County employees. Quileute Tribal Council appreciates the letter of support from the Board for the Transportation Safety Improvement Project. He reports that he is presenting to the Forks Chamber of Commerce an update on the Board Natural Resources.
- CRJ reported that the Captain Joseph House held a memorial that was a very touching tribute for the soldiers that have died since 9-11.
- CMO thanked the County employees for food donations and specifically Loni Gores who thought of giving the donations to the Forks Food Bank.

CONTRACTS AND AGREEMENTS
2a Memorandum of Understanding Amendment 2 with Washington State Patrol for OPSCAN communications network
ACTION TAKEN: CRJm to approve, CBPs, mc

2b Consolidated Contract Amendment 17 with Washington State Department of Health for a decrease in funding of $20,992
ACTION TAKEN: CBPm to approve, CRJs, mc

2c Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619CD
ACTION TAKEN: CRJm to approve, CBPs, mc

2d Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619CS
ACTION TAKEN: CBPm to approve, CRJs, mc

2e Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619D
ACTION TAKEN: CRJm to approve, CBPs, mc
2f Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619MP
**ACTION TAKEN:** CBPm to approve, CRJs, mc

2g Agreement Amendment regarding a six month extension of the existing collective bargaining agreement with the Washington State Council of County and City Employees 1619LC
**ACTION TAKEN:** CRJm to approve, CBPs, mc

**BUDGET**
3a Approval of budget modifications for the week of November 27
**ACTION TAKEN:** CRJm to approve, CBPs, mc

**PUBLIC COMMENT**
- Ed Bowen, P.O. Box 111, Clallam Bay, thanked the Board for holding the Joint Legislative Meeting with State Representatives.
- Becca Korby, Director of Healthy Families, as a voice for those that don’t have representation, she commented on her concerns regarding the County funding for the homeless specifically the recommendations for funding from the Homelessness Task Force. The available funding is $409,000 and the requests totaled $1 million. As a representative of Healthy Families, one of the key providers in the county, she wants the Board to insure that the agencies requesting funding can meet the requirements, specifically the State HIMS system requirements. With decrease in local and government funding there is an emergent need and she feels the recommendations are inequitable. She asked for support from the county for the homeless as it is a collective responsibility to provide the basic needs of food, shelter, and clothing. (See attached)
- Ron Richards, 124 Township Line Rd, Port Angeles, Seconded the comments of Becca Korby and advised the Board to write to Congress and disagree with the cuts to funding.

**HEARINGS**
H1 Shoreline Master Program (SMP)
- Steve Gray provided staff report and the back ground of the program, he reviewed the jurisdiction of the County and typical land use. Stated that the plan is a multi-year process beginning in 2011 with multiple public meetings, advertisements and legal notices. There is a webpage that is dedicated and maintained for the SMP. Recommended a resolution adopting the plan. The County has received hundreds of comments and many regarding net pen aquaculture, and noted that the County does not have the jurisdiction to ban net pens. The State Department of Ecology is not banning, but is reworking net aquaculture once the investigation of the recent net pen failure is complete, possibly early 2018. There are bills being considered in State Legislature for an outright ban of net aquaculture.
- The Board asked questions and briefly discussed with Gray. CMO noted that several people submitted written comments to the Board for this hearing and though they will not be read aloud, they will become part of the record.
**ACTION TAKEN:** CRJm to Open the public hearing, CBPs, mc
- The following people spoke:
  o Darrell Wood, 334 Sutter Road, Port Angeles
  o Connie Beauvais, P.O. Box 129, Joyce (See attached)
  o Jim McEntire, 232 Woodland Drive, Sequim (See attached)
  o Ed Bowen, P.O. Box 111, Clallam Bay (See attached)
  o Ron Richards, 124 Township Line Rd, Port Angeles
  o Marguerite Glover, 103 Pond Lane, Sequim (See attached)
  o Lois Perry, 215 Stellar Ridge Lane, Sequim
  o Jane Vanderhoof, 114 W 2nd, Port Angeles
  o Darlene Schanfald, PO Box 2664, Sequim
  o Steve Koehler, 80 Percy Lane, Sequim
BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of December 11 – 15, 2017
Page 4

o Brian Grad, 245 Jake Way, Sequim
o Rein Attermann, 7402 Third Avenue, Seattle
o Jim Wesley, 4446 Eden Valley Road, Port Angeles
o Gilbert Stockton, 103 Sea View Drive, Port Angeles
o Jamie Michel, 115 East Railroad #213, Port Angeles (See attached)
o Lorna Vanderzanden, 10 West Bluff Drive, Port Angeles
o Tom Fagin, 141 Columbus Avenue, Port Angeles

Board recessed at 12:26 p.m. and reconvened at 12:35 p.m. to continue the hearing.

o James Loran, 345 Bear Meadow Road, Port Angeles
o Paul Hansen, 340 Frost Road, Sequim
o Ed Chadd, 307 West 6th Street, Port Angeles (See attached)
o Steve McCuen, 650 East Bluff Drive, Port Angeles
o Michael Rossootto, 1186 Mora Road, Forks (See attached)
o Alfredo Quarto, 4872 Deer Park Road, Port Angeles
o Carol Johnson, 123 Henry Boyd Road, Port Angeles
o Ron Gilles, 441 Maple Grove, Port Angeles (See attached)
o Mike Doherty, 112 South B Street, Port Angeles
o Jeff Leach, 605 Marshall Road, Sequim
o Jean Fleischfresser, 2052 Place Road, Port Angeles

• The following people were listed on the sign-up sheet and did not speak:
o Michael Clemens, 1217 East 7th Street, Port Angeles
o Jacob Carleson, 21 Marian Way, Sequim
o Betsy Robins, 114 North Peabody Street, Port Angeles
o Latrisha Suggs, 1835 West 6th Street, Port Angeles
• The following people sent in written testimony: Scott Lange; Pearl Hewett; Ian Miller; Steve McCuen; Mary Porter-Solberg; Darlene Scharfald; Delane Hewett; Liz Phelps; Wylie Clark; Diane Royall; Jeff Ward; Chiara Rose; Sue Ford; John Nolan; James Loran; Vicki Delorey; Karl Spees; Lois Perry; Dennis D. Reynolds Law Office; Diane D. Marks; Betsy Robins; Tony Foster, Chairman, Quileute Tribal Council; Diane M. Meyers, Northwest Resource Law

**ACTION TAKEN:** CRJm to close the public hearing, CBPs, mc

• The Board had a brief discussion on the public comments. CRJ and CBP had some questions about channel migrations. CBP requested that staff prepare comments on the public statements and requested more information on shoreline properties that will be impacted by buffers. CMO proposed that the Board address the Shoreline Management Plan again at a Work Session in January.

**PUBLIC COMMENT**
• Larry Campbell, 215 Gull’s Lane, Sequim, discussed issues regarding his driver’s license.

Meeting concluded at 1:45 p.m. and continued to 9 a.m., Monday, December 18.

PASSED AND ADOPTED this second day of January 2018

BOARD OF CLALLAM COUNTY COMMISSIONERS

________________________________________
Mark Ozias, Chair
BOARD of CLALLAM COUNTY COMMISSIONERS
MINUTES for the week of December 11 – 15, 2017
Page 5

ATTEST: Randy Johnson

Loni Gores, Clerk of the Board

Bill Peach

KEY TO ABBREVIATIONS:
AJJ Administrator Jim Jones, Jr. m moved
CMO Commissioner Mark Ozias mc motion carried
CRJ Commissioner Randy Johnson s seconded
CBP Commissioner Bill Peach
BOARD OF CLALLAM COUNTY COMMISSIONERS PUBLIC HEARING

Shoreline Master Program

I declare under penalty of perjury under the laws of the State of Washington that any testimony that I give is true and accurate.

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<td>Brian Grad</td>
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Signed on 12 December 2017 in Port Angeles, Washington
I declare under penalty of perjury under the laws of the State of Washington that any testimony that I give is true and accurate.

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Signed on 12 December 2017 in Port Angeles, Washington
Public Testimony
Clallam County
Shoreline Master
Program

Board of County Commissioners Public Hearing – H1

12 December 2017

Ed Bowen – P.O. Box 111, Clallam Bay, WA 98326
12/12/2017
Thanks Ed,

I’ve looped Loni in to be sure your comments are included in the public record for today’s hearing.

Mark O

As a courtesy copy, attached my written submission to the SMP Public Hearing today at 10:30.

Ed Bowen
Public Testimony
Clallam County
Shoreline Master Program

Board of County Commissioners Public Hearing – H1

12 December 2017

Ed Bowen – P.O. Box 111, Clallam Bay, WA 98326
12/12/2017
Being a citizen of Clallam County, I submit for the record (to include any county adopted plan submitted to the State-Dept of Ecology for review and approval) this document as my testimony, this 12th Day of December 2017 at the Clallam County Board of County Commissioners Shoreline Master Program Hearing – H1. I am an individual representing only myself and my personal opinion. I request a response to my questions, observations, concerns, objections, and suggestions.

My testimony addresses four topic areas in the plan before the BOCC today:

- Resource Conservancy SED designations – discriminatory application
- Channel Migration Zone designation (CMZ), and delineation based on four reports (studies) provided by Department of Ecology – A product of General Studies not supportable of a property taking
- Public Access – Public Land Access Before Private Property Regulation
- Additional areas of the plan and current version I believe need addressing

In addition, attached are my comments that I have submitted throughout the update process that are captured on the Clallam County SMP site, only as a matter of record with my belief (factual) that many comments formally submitted during the update process are not a matter of public record and I am concerned these will be “lost” or left out too.
Resource Conservancy SED designations:

Discriminates at least against parcels less than 20 acres, requiring 50 and 25 foot additional buffers to Residential Conservancy distances that Forest Practices buffers provides an exemption to 20 acre parcels. Discriminates in the sense that Forest Practices is used as a basis and purpose for this SED designation but the core principals of Forest Practices on buffers is not in conformity with the different parcels that get included in the reach of the designation. "...forest lands of long-term commercial significance." Such an approach also conflicts with the allowed development intent of the zoning "...Commercial Forest/Mixed Use 20 (CFM20), and Commercial Forest/Mixed Use 5 (CFM5)". A good example of this is the 20 acre landowner who chooses to host 19 of those areas in “open space” designation with timber management intentions, and 1 acre for a residential home site. Long-term commercial significance would not necessarily be focused on such a multi-use approach. This approach is likely to occur in WRIA 20 and an unjustified barrier is created by clumping these small landowners in to a commercial significance.

I previously presented each county commissioner (and the DCD director and Assessor) a version of SED map 28 that reflects 26 less-than-20 acre parcels in a given reach that are affected by this situation. Some of these parcels are also zoned R5, which is in conflict with the designation rational. 2.5.b is misrepresentative considering at least these two factors; and also factor in the same dynamics applied to adjacent Residential Conservancy designation just upstream. Since a build-out has not been performed to determine the extent of such scenarios, and the non-committal as was previously suggested to perform such a build out, exceptions for less-than-20 is probably the only reasonable fairness to address this apparent institutional discrimination. I believe this to be a significant negative impact, and I also believe it is a disproportional impact to the West End (WRIA 19 and 20) in relation to the likelihood of the number of parcels affected in the eastern end of the county. The visual of the east end where the Resource Conservancy overlay applies reflects the staff idea behind this designation: parcels in this designation are significantly large acreages (using McDonald Creek upstream as a test case).

In regards to land conversions, some “interests” have the desire to not be in favor of this; however, I believe this is a private property rights encroachment to do with one’s land under the guarantees of Fee Simple and future consideration. There are serious protocols, cost, and process for someone to take such action regarding forest CF conversions already; to the tune of being quite disproportional to what is required/allowed by other types of land conversions/zoning change processes. So much focus in defining this designation that further extends that disproportional burden on potential land conversions is therefore overreach of the intent of the SMA and private property rights. Any such solution to the less-than-20 must also apply to land conversions that produce less-than-20 parcels. Also consider the already restrictive process to subdividing property, if the concern for such activity would hamper the “county’s” agenda and intent with Resource Conservancy designation.
• 2.5.3.m creates a very subjective and restrictive taking for a preferred activity in the SMP: Single Family Home MAY be allowed?

Additional specific corrections to the plan to complement the less-than-20 option: (But given the parking in many different chapters the effect of this designation, analyses of the document needs to be performed to determine other probable disparities. I'm not sure the staff's word search approach is adequate for such. Is the statement in "2.5.3.a" adequate to cover my concern?)

➤ Accessory Dwelling Unit prohibition should not apply to less than 20 acre parcels, and the means to permit such should follow the same intent with Residential Conservancy. Table 2-1 footnote 4 should reflect language to provide the "exception".

➤ Buffer requirements should be equal to Residential Conservancy for less than 20 acre parcels, possibly Table 2-1 should reflect a footnote to express the "exception".

➤ Private Float Plane Moorage should be conditional use for less than 20 acre parcels, in conformity with Residential Conservancy.

Where in the world did the local desires of the citizens ever get included to thereby promote wilderness designation in the county at the cost to private property rights and freedoms? Get that term out of the "Purpose" and do a "word search" to get it out of the document. I might add, when is enough going to be enough: i.e. 95% of Olympic National Park being set aside in "WILDERNESS" and the additional pressure for the county in regards to Olympic National Forest.

An exercise to determine just how extensive this designation may reach, who it will affect:

Parcel Numbers 15-31-36-22-0000 and 15-31-36-22-0050 and zoned R5

➤ Determine the applicability of the SMP on these two abutting parcels to the SED map 28 delineations.

➤ Determine if any buffer distances would be required of these parcels for the purpose of the SMP SED Resource Conservancy.

➤ Determine if the CMZ delineations are applicable to these parcels in terms of the 50 foot set back from the CMZ if no risk determination (or whatever subjective CMZ studies might be required) is paid for by the landowner.
  ○ If the CMZ requirement would apply, given the "depth" of these two parcels, what would be their options? (And did these owners receive/mailed the public outreach post card making them aware?)
Channel Migration Zone designation (CMZ), and delineation based on four reports (studies) provided by Department of Ecology – A product of General Studies not supportable of a property taking:

In general, the designations (delineations) of what is being proposed in the Clallam County SMP Update regarding CMZs of the riparian areas under the jurisdiction of the SMP, are a product supported by four reports:

- one which was produced by a consultant to Ecology for “Clallam” that I refer to as Clallam 2011 (stated on the SMP website as a link titled “WRIA 17-19 CMZ Report - Dept. of Ecology”),
- one was a further study for Morse Creek area (which I am unfamiliar where that further study is captured or maybe incorporated as an appendix to the Clallam 2011 report),
- one produced by the Jamestown Tribe for the Dungeness (stated on the SMP website as a link titled “Delineation of Dungeness River - Jamestown S’Klallam”),
- and a report which is the predominate focus of my testimony and comment that is WRIA 20-specific produced by a consultant to Ecology (stated on the SMP website as a link titled “WRIA 20 CMZ Study - Dept. of Ecology”) that I refer to as Clallam 2013. *In my following comments and concerns, references to report details, figures, tables, and pages are in relation to this Clallam 2013 report.*

- Figure 4.1, page 16

Single reach, single stream (Sooes) assessed for WRIA 20. By delineating regional areas in this figure, there is no supporting evidence if the analysis depends also on using conclusions in other regional areas to support the model’s hypothesis. If such dependency is a tool in the analysis, that relationship and validation is imperative to reach a confidence level that goes beyond general details or looking at things from a “high altitude”.

- Chapter section 4.3

Stated LIDAR as the primary source, with dependence on DEM in the absence of LIDAR. The report does not address that condition, the extent of the difference, and the effects on the model due to the amount of difference occurring, especially in consideration of WRIA 20 if inferences are occurring in the report that rely on conclusions reached in other regional areas (Figure 4.1) that don’t have a similar amount of disparity.

Data types listed in tables 4.2 and 4.3 are considered for the purpose they serve in particular aspects of CMZs, how that is captured in the model has the potential for flaw if the weight of those factors in relation to the primary LIDAR/DEM components is not specified. If this has been accomplished, the report does not speak to the weighting of the different factors.
Misrepresentation of the theory being proposed to support the analysis, this supportive example for this landscape and reach of stream in the figure is in reality a direct component of an anthropogenic event not related to timber harvest when it attempts to connect a CMZ erosion factor to such activity. As far as delineating the CMZ boundary in this reach is in error given the data available from the T31NorthR15West April 17, 1899 Cadastral Survey and related field notes reflect potential river migration has all but not changed in some 118 years.

As an experience in this particular watershed, the Cadastral Surveys of the townships have proven to be an accurate level of detail of conditions, still today. Only refined by the accuracy improvement of GIS based surveys. Historically, the “War Department” maps of the early 1900’s and even the USGS topographical maps to follow incurred many inaccuracies when compared to the cadastral surveys and what actually was on the ground (in regards to environmental attributes such as stream locations, not necessarily the projected elevation lines). How DEMs were created and based on what data is therefore questionable if based on other inaccurate mapping and survey products. LIDAR is limited for the entire watershed, at least LIDAR that has been qualified to be accurate. Improvements to LIDAR data and the extent of that coverage may possibly have been captured, there has been a lot of interest by local entities and Federal interest to complete better LIDAR coverage; however, the report does not stipulate whether LIDAR has been improved upon or where coverage is provided. That should be stipulated in the SMP Plan as a footnote or reference component for supporting the CMZ delineations.

Additional technical note: the author of the report flawed in referencing this reach as Big Creek, which doesn’t exist. The correct reference is actually Big River, Ozette watershed, in proximity to the Hoko-Ozette Road and Nichols Road (SED Map 27). If the inference of the Figure is to support the model for the segment analyzed for the Sooes River, these exist in two different and disconnected watersheds, and development potential is different also.

Chapter 8 does not provide the associated maps; it is a blank page of details or other references. And since it is listed as page 47 and Appendix A Acronyms follows on page 48 it is apparent that maps are not captured in this report. The 2011 Clallam report does include maps with analysis for a segment of the Sooes River and for the neighboring WRIA 19 Hoko River, but does not provide a reflection of what appears to be a data rich system with a system that is likely weak in data (in this case the Sooes and Hoko versus the Big River in the Ozette/WRIA 20 watershed). An footnote-observation is the Hoko and Big River have a relevant historical geological connection (all one river system at one time), so it would be plausible to draw some assumptions between the two basins; however, I want to point out that a lack of data in the Ozette cannot be
relied upon to be satisfied solely by the data available in the Hoko. There has to be validation to build a level of confidence in the model in this case, to extrapolate solely is a flaw. (But I propose that if such comparison between high/low available data was used between the Sooes and Big Rivers, then the confidence level is even more questionable).

Logically, table 4.4 captures data that meets a qualified standard for GIS:

- National Hydrography Data
- Shoreline Management Act (SMA) Suggested Arcs
- SSURGO soil data
- Washington State Geology
- Landslides (DGFR)
- Light Detection and Ranging (LiDAR) elevation data
- DEM 10 m
- DEM 10 meter hillshade
- 2006, 2009 NAIP Orthophotos
- DOQQ
- Washington State 24K DRG Image Library
- FEMA Flood Hazard Zones
- Railroads
- Washington State Routes
- Washington State Local Roads

The three tables and the primary/alternate tools used to draw the conclusions of the report do not incorporate locally derived data. Unfortunately in many cases the local data would probably not fit neatly in any one of these tables (GIS quality or a specific labeled aspect) and it does not appear the model used (as spoken to in the report) or has the means to incorporate these variables or even considered a factor. And most likely even such data is unpublished or lack of being peer reviewed to establish confidence; but due to a lack of ground truth-ing by the study on those areas that are so dependent on where direct analysis was conducted, it is only reasonable to provide
some weight to those efforts to fill the data gap. In the condition I am addressing between the analyzed Sooes and Hoko system and that of the Ozette, a level of geomorphic evaluations have occurred by the WRIA 20 Instream Flow Rule process, the National Park Service water studies for Olympic National Park, and the ESA listed Ozette Lake sockeye NOAA recovery plan. Forest Practice CMER and RMAP are another potential source, especially since there is a visual connection to the extent of CMZ delineations and that of the proposed SED Resource Conservancy designations that are focused on areas of stated predominantly commercial forestry lands.

Considering all of this, I have reached the conclusion and concern the report does not provide what specific data was used for what individual stream system (and very apparent for all the streams not captured in Figure 4.1). The use of the report and its associated maps/delineations is highly questionable in that manner (using the concept of transparency). Confidence is very low that WRIA 20 delineations are anything but “general” in nature and therefore if used and relied on to set regulations and limitations of property use are legally flawed, given US Supreme Court decisions on the subject of property takings without compensation dependent on general studies, and as reflected in decisions that required proportionality tests and necessary to mitigate impacts caused by the proposed development. If the update plan continues to rely on this report for its delineation of the CMZs, that information on what data was used in each stream system is imperative to have any chance to defend the restrictions (and uncompensated takings) on such properties. Such is a requirement to determine the most general confidence of the model. Restrictions that create a taking because the current proposed plan using the results of the model/report results in it being dependent on the onus is on the landowner to use personal funds to qualify the delineation (even if only advertised to the public currently as high risk or low risk, the reality is yet to be seen). The report is a part of the update plan, but the report fails to also include the “data” of what data was used for each and every delineated area, at a “reach” scale would be preferred but at least at a stream system scale. That component is essential to be included in the plan’s documentation if it remains the intent of the county and the reviewing state agency to rely on the report as the means to change the CMZ delineations beyond the current Clallam County CMZ designations.

A point of record, and added concern, the report is reflected on the title page as “Draft”. This has been explained to me as subject to some form of finalization by Ecology. I understand the county staff was afforded the opportunity to comment to the report but lacked capacity to do so (and historically did not do so, apparently taking it at face value). I also understand that Ecology most likely will not include this report in their “published” report library, therefore for the purpose of supporting the plan it is essential the actual report and it’s “finalization” process be directly documented (archived as an attachment) in the plan (not as a “link” but just as the SEPA, Restoration Plan, and other documents are included). In addition, it is also understood this report will be “finalized” in the near term, yet to be determined. I know this was pointed out by staff that such finalization has yet been satisfied by Ecology, I am left when will that occur (not by the time this public hearing is held) and therefore even more so the question of its
legitimacy in being relied upon to set new restrictions on private property (as described above).

My recommendation, my need, the plan needs to be edited to reflect that all streams that were not specifically a function of the model using the primary data source and supported by other viable data sources are limited in scope for those delineations and are "advisory" only for those changes that "exceed" the current county designations.

If my government does not see fit to make this edit, or something similar regarding "advisory" as used in regards to Tsunami zoning, then at a minimum the need for language is essential to identify and address the burden on the landowner (the "Onus" concept used by the DCD director on several occasions with the public and also before the BOCC, resulting in a taking in the form of a burden to limit the landowner they must determine essentially a proportionate measure of mitigation) along with the application of such burden (specifying what that is, but this piece might not be needed if the language is there...just at this point in the process I don't have readily available/known) and allowed exceptions. Otherwise it is my opinion well-crosses the line in being respectful of due process and being subject to an uncompensated taking of property.
Public Access – Public Land Access Before Private Property Regulation:

Public Access being one of three major emphasis areas of the SMP, this plan places a lot of its focus on regulating such emphasis on private property, while having a desire (policy) that public access on public lands be pursued in some undefined fashion. This county has a long history of the private property owner making their property available for public access, both out of kindness/neighborly and that such as property tax incentives for open space type properties (i.e. timber holdings and hunters). But in all of this tradition, the option was voluntary, the property owner made the choice (including making the choice to receive any incentives). But to be regulated to make a choice of whether to sub-divide or build (develop-land divisions) or not subject to letting the public access one’s property without compensation goes beyond that traditional voluntary freedom; it elevates such “choice” in to a persuaded or subjugated taking for a key freedom to build one’s home or business. Think of the point of the family that owns a large track of land, wants to leave that land to their many children by sub-dividing it out, and under this plan they would have to incorporate a benefit to the public in order to achieve the benefit they want to provide their children – Plus 4. A story not so farfetched in this county.

Some would say that building (development) is a privilege and not a right; to that the same can be said public access across private property (without compensation it is still private property) is a privilege and not a right. In such a contest over privileges versus rights, it doesn’t take much rational from core individual freedoms to determine the privilege of building is supreme to the privilege of private property public access…only exception is for public interest through eminent domain and the associated just compensation rights.

This section is a regulation under the disguise of just being a privilege, as written. No basis for eminent domain for the benefit of the public is shown, and there is clearly no compensation…actually there’s the implication (and will likely be the case) the burden of cost on the owner to give away their rights and privileges at an expense of the property owner themselves. Which we can refer to just-compensation to the property owner by the property owner themselves.

To correct this if you don’t want to really make this section work, then just flip flop the words Policy and Regulation between the two sections 5.3.1 and 5.3.2 respectfully. (A bit of satire)

If you want to make it a bit better (if you continue to want to regulate those Plus 4 and commercial), then include a standing overarching policy in the plan that the practice of applying the regulation will be subjugated to the reality of whether public land in the reach of where public access and activity is needed is optimized first prior to the burden on the private property owner. So much public land is there but not accessible, and if the government can’t or won’t make those lands accessible then it can be rightfully defended there is no justification to burden the landowner to make up for that which is lacking. This is another form of the fallout from so much public land
being "locked up" forcing that closure on the private property owner to make up the loss...the loss for what the purpose of public access in the SMP must be focused on resolving. This goes hand and hand with requiring this of private property for shoreline access where there is no determined need (the public wanting or likely wanting access); projecting in to the future there will be a need, probably at least making a reservation for such. It can be said the same for all the public land and how is that working to improve access there for future projections. How will future Federal reservations and trust affect that future perspective?

- 5.3.1 Policies

My previous comment in the SMP process brought up the State Parks land on Mary Clark Road/Sol Duc. That comment was misrepresented in the process and the change in the plan is reflected in 5.3.1.6. The policy point made there should be captured in 5.3.1.3 that speaks to the same thing, but in general terms. Mary Clark Road/State Parks should be a standalone policy to address a county supported means to get to solving the stated access issue; lack of timber management on both sides of the Sol Duc has precluded at any level but extreme, the public's ready access to the river on lands that are set aside for the public's benefit as a state park. This track was previously WDNR Trust Lands and managed as such; since transfer to State Parks the timber hasn't been managed, and the area was not developed into an established park. State Parks has addressed this in other areas of the state by the state legislature providing authority to perform timber management practices for a specific "maintenance" reason.

In this case, recommend the following language for 5.3.1.6 as a county policy to address this to benefit public access for the purpose of the SMP:

_The county supports the State Parks Commission to manage the timber on the track of land on both banks of the Sol Duc River (commonly referred to as the Mary Clark Road/Hwy 101) for the benefit of the public to access this river system, with little public access available in the reach; and to recommend any needed legislation to be able to do so. Timber management could also be a funding windfall that supports a State Park plan to open and manage this track for the public's use and enjoyment._

- 5.3.1.7 (referred to as subsection 7 below)

If the way it is written is in anyway or fashion supposed to be addressing the comment I submitted, then staff missed the point completely. My comment, and what is essential at this point in time to capture because the SMP Update is supposed to address significant shorelines of the state, has to do with the county needs to reflect in the plan a policy to address the lands of the former Lake Aldwell (one of those significant bodies) and should show an interest in all of those lands of what are commonly referred to as the Elwha Project Lands. For ecological function, for water supplies as the Board has
recently been addressing, for recreation and public access to the Elwha River; something that is allowed under the 1992 Federal Act that calls for disposition of the lands that includes to the State for “use and development”.

To not do so continue the bureaucratic trend to push this can down the road resulting in there’s no planning being developed on what to do about these lands and waters of significance. Many opportunities exist, not just at the end of the county road on the west side of the river (WDFW high and dry boat launch) as subsection 7 is limited to. Those opportunities are scaled by the intent of the Federal Act that acquired them. The SMP needs to specify and plan for those possible opportunities; however, the county has not expressed in subsection 7 any of those opportunities let alone an interest. The SED map for this reach is questionable regarding what can and can’t be “developed” or land management in tune with the EIS and report compiled by the NPS on “compatible uses”.

Remember, these lands are not National Park Service subject to exclusive federal jurisdiction. These lands are not in Federal trust or reservation. State jurisdiction remains. (But I bet the Federal government is not paying property taxes or PILT) So with the jurisdiction factor alone, the SMP needs to be responsible and plan out all potential…not just an SED Map but everything surrounding public access and what that means.

The plan needs to capture a position of interest in these lands, as a matter of fulfilling the intent of the Federal Act. To not do so is a failure to the citizens of this county (and State) that do have a vested interest in these lands (one being the $29+ millions of tax money to purchase these lands).

If the plan is going to promote acquisition of private land for the purpose of public access (5.3.1.3) here is a case where that acquisition has already occurred (and paid for) however the public access has not been addressed. Show an interest, express it in the plan.

Suggested language 5.1.3.7a (add):

With the absence of Lake Aldwell, the county has an interest in the lands and associated uplands of the former lake (Commonly referred to as Elwha Project Lands) that might be afforded by PL 102-495 and sees value in such interest to insure public access along with the environmental qualities this law is attempting to achieve.

And reference to 9.2. The WAC 173.20.120 to this date classifies Lake Aldwell (320.8 acres) as a listed (delimits) body of water of significance, that includes it with the same purpose of lakes 1000 acres or more; this list is subject to change (superseded) per local SMP processes (WAC 173.20.044). The SMP process is the means to address “what is on the list versus what needs to be taken off”. This has not been addressed in the update and it is unaware if other county ordinances took such superseding actions; should an amendment to the list and then a reflection of the Elwha River (WAC
WAC 173.18.090) be included in 9.2? (The Elwha River thought is in the event the Township limitation regarding the 1,000 cfs MAF point stated in WAC 173.18.090, does not adequately capture the gain of this section of river/former Lake Aldwell)

- 5.3.2 Regulations

Very much an overreach to require public access across private property for Plus-4 (5.3.2.2) and Commercial (5.3.2.3) without do compensation. This is a taking. Where is the "balance" as stated in the policy 5.3.1.1? The embedded subsections are very tuned (reality) to the balance for environmental but little to no balance for private property rights.

➢ How will liability be handled? If this plan requires it and an incident to person occurs on the property, is the county then an accessory to the liability?

➢ Does the public access become an easement, even if not on paper then a prescriptive easement?

➢ Who pays for any needed improvements to insure public access over private property? Another possible taking of the property owner if the inference is the onus is on the property owner to make those improvements (thinking along the lines of "trails").

➢ Who pays for mitigation actions on the ground, studies, engineering, compliance and maintenance?
Additional areas of the plan and current version I believe need addressing:

- 8.3.4, page 8-3, last sentence: Remove requirement for approval and sanctioning by appropriate tribal authorities for alternative mitigation practices for citizens of the State. No constitutional based authority has been granted tribal authorities to impose their authority of approving such on the citizens-themselves of the State. This objection is also based on the tribal claim to being a sovereign entity; therefore the citizens are protected under that same premise being represented by the State as a sovereign entity. In addition, this also results in a violation of the tribal/citizens' treaty rights to protection from depredation to citizens property, and such intended practice of the citizen to use their property for full use and enjoyment receives a level of depredation in the event if the tribal authority so chose not to approve of or sanction a practice. Given this topic (requirement) was not addressed during any public forum or during other public meetings in the SMP Update process, the appearance of being trapped in the minutia of the lengthy and wordy document, the entire document (at large, all chapters and appendixes) requires review to determine where else such approval and/or sanctioning is being called for by “appropriate tribal authorities” may exist and is not legally substantiated. And removed!

This position is also submitted because the pressures on the State (through court influence and Federal overreach) to practice government to government relations with tribes (and in this case tribal authorities) takes a purely political and policy matter and force it down the throats of the citizens that they too must abide by such disparities to rights granted to the individual, and it is claimed that such attempts are a violation of the individual’s US Constitution Tenth Amendment regarding reservation not further granted. If the State so chooses not to stand up for its rights (in this case, even suggesting such language in a State and county process) then this further strengthens the purpose of the amendment to reserve to the citizen.

A possible solution (though I am not in support because I don’t want my county plans to be confusing with such intentions and suggested requirements; it creates an environment of holding the citizen hostage to a difficult understanding what one’s rights, freedoms, privacy, and privileges are): a provision for review and comment by such appropriate tribal authority to any State or Federal approval and sanctioning process would be the limit of representing the tribal interest (a provision as a result of court action that in itself is questionable but the citizens are forced to live with in the current environment of influence). This is demonstrated by such language in 9.3.6.
8.3.7.f Is the conditional term used in regards to a conservation easement, "perpetuity", a requirement of current law (RCW or WAC)? Could this be a determinable/negotiable period of time? If not a matter of law, the presence of any duration of time needs to be removed from any condition of establishing a conservation easement. And especially if due compensation is not incorporated into the plan. Otherwise, any conservation easement is not a value of mitigation for both parties (the owner and the "government") equally/fairly. Another example of holding the landowner hostage to an "undesirable scenario" when perpetuity creates little to no certainty for the landowner, especially given chance for changes and unknowns in the future.

8.3 at large, regarding fees and cost incurred by the landowner: The wording in the cost sections talks to such things as ANY cost incurred. This can quickly get abused and such appeal process must include appealing these subjective fee charges.

Public Comment 101717 posted on the SMP website of post Feb 2015 comments section: Olympic National Park's concern in regards to the county's SMP jurisdiction in the marine-outer coast Pacific Ocean. This question has not been clarified or remedied that the public is aware of. I fear this is a behind the scenes attempt between two government bodies addressing and developing a remedy. There are many aspects to the Federal jurisdiction that aren't completely understood by many, at the county and at Olympic National Park. Reference to the Governor's Deed is ironic since it contains conditions the Federal government must adhere to on behalf of the citizens and the State. Whatever gets decided in this apparent offline government to government discussion on the comment, the public must be allowed to comment and submit additional positions that will best serve the interest of those that have skin in the game (standing). It's also ironic that neither ONP nor the Federal government at large had a similar comment for the Jefferson County SMP, and in that case Jefferson County is egregious in similar fashion in regards to the jurisdictional issue that this commenter presents.

9.3.2.b With so much emphasis on "future generations", we that are currently living will never see the light of day. There has to be a balance or it will totally be irrelevant about future generations. To me, such wording of this subsection is just another effort to lock away land and opportunity. I therefore disagree and object to this limited scope; I consider this style to be a taking of my life, my liberty, my happiness. This entire section appears to be nothing but cut and paste from a grand scheme agenda, I suspect from the consultant. Some subsections in 9.3.2 are very extreme, such as this subsection, while others are at least questionable...presenting the image that human beings are bad for this...
planet. So at least add the words that equally emphasize the needs of the current human beings.

- 9.3.8 What in the world is “nonconsumptive uses that are sustainable”? Just being nonconsumptive is in itself sustainable because one is not consuming anything. What a bunch of hog wash fluffy language that only steels one’s full responsible use and enjoyment. This started with catch and release of fish, which in itself is harmful, and now we’re being forced in to not consuming anything. Delete this section; I show this as not a requirement of the law and something someone dreamed up that makes them feel good. For this plan to work and be accepted by the citizens of this county (the best medicine versus the enforcement action perceived as a police state) such nonconsumptive approaches again, takes the human out of the equation of a viable environment. Please remove.

- 10.3.1 Burden of Proof. The burden cannot only be on the landowner especially in addressing such issues/requirements as SED buffers and CMZ limitations such as using speculative conditions requiring the burden of validating the true conditions.

- 1.8.3 Regarding maps:
  - What is the process for amending the maps; is that a public process?
  - How do the CMZ designation lines on the maps become a requirement that any such development is subject to the landowner’s paying for an assessment? Given the sentence states “The map and database shall be used for planning purposes only.” Does this conflict with any other section in the plan that implies the landowner is responsible for the assessment that has been discussed at public meetings. If not, then it appears this solves the problem with the CMZ issue folks have...”for planning purposes only.” Is this perception correct? Section 1.12.2 creates advisory language too for maps and data.
3.9.2.5.a A good example of how biased this plan is to WRIA 20, and apparently to WRIA 19 somewhat. Very representative of eastern Clallam County programs and giving them a fee waiver, but the west end is left to pay its own way...even though same type programs/plans do exist within WRIA 20.

How does this plan, administrative section and such, relate and refer to the duties of the Shoreline and Sensitive Areas Committee, Clallam County Code Chapter 26.02? Also, the relationship to the Planning Commission as defined in Chapter 26.01.030 and Western Clallam County Planning Commission as defined in Chapter 26.01.062, in lieu of or geographically respectful of.

I make the claim that WRIA 20 received poor representative support:

- in creating its ICR, that is labored to be more than general in nature as stated quite often in the report, and there is even the concern over the qualifications of the authors to even perform the task of compiling such an ICR evaluation,
- the lack of public forums to discuss and solve locally key aspects of the draft plan, especially new topics such as No Net Loss and Cumulative Effect requirements, (Not just hosting a meeting to watch a presentation or the Planning Commission “taking comment”, but lack of a community discussion)
- CMZ analysis based on a single reach of a single river in the WRIA,
- predominate effect versus the eastern portion of the county of new SED categories that discount small landowners held to a higher land size standard (the Resource Conservancy example),
- the financial demographic of the west end versus that of the east end to accommodate onus funded mandates,
- the development potential between the west end and the east.
- The lack of WRIA 20 representation except for one WRIA 20 tribal representative on the DCD Shoreline Advisory Committee (not the one authorized by county code) used to draft with the consultant the plan.
- I believe the consultant tasked to fill the gaps in trying to bring WRIA 20 in to the rest of the county plan had limited scope, and mission creep was only second to the theory that pressure was to just get it done.

Suggested remedy to my claim should be the calling up of the Western Clallam County Planning Commission with instructions to incorporate the principals established in Chapter 31.06.020, to address the disparities that exist in the plan for WRIA 20:

Clallam County Code 31.06.020 RPC belief statements.

The residents of the RPC planning area believe that:

(1) Independence, private property rights and freedom from government intrusion are strongly valued within the RPC planning area. Land use regulation should incorporate these values and
only compromise them when: (a) highly significant objectives essential to the public health, safety or welfare cannot be attained in any other manner, or (b) the other beliefs expressed herein cannot be furthered in any other manner.

(2) Development should be encouraged and facilitated by land use regulation that is simple, user friendly, and inexpensive in application for both government and property owners.

(3) The rural character of the RPC planning areas should be encouraged.

(4) Regulations that reduce the value or use of private property shall be minimized. All land owners shall be fully compensated for any such regulation.

(5) Proper planning should promote the efficient construction and use of capital facilities.

(6) Large development projects can place a strain on municipal services to the detriment of other users. Large developments should mitigate these impacts.

(7) Segregation of land uses into generally defined and flexible Residential, Commercial and Industrial zoning classifications is a desirable means of preventing incompatible adjacent land uses and stabilizing property values.

(8) Home-based industries are an essential part of the economic vitality of the planning area and should be permitted in all zoning classifications to the extent compatible with surrounding land uses.

(9) Land use regulation should not impose burdens upon existing land uses due to the subsequent development of adjacent, incompatible land uses.

(10) The “grandfathering” of land uses is fundamental to the protection of private property rights and is of the highest importance to the people of the RPC planning area. Existing land uses shall not be rendered invalid nonconforming uses by changes in land use regulation.

(11) Public lands make up a large part of the RPC planning area. How this land is managed impacts the citizens and communities of the area significantly. Local citizens shall be entitled to full participation and representation on the uses of public lands in their region in order to help ensure a more stable economy and environment for the local communities to preserve the local culture, heritage and customs.
Merrill, Hannah

From: Merrill, Hannah
Sent: Monday, June 04, 2012 11:27 AM
To: zSMP
Subject: FW: SMP WRIA 20

From: Gray, Steve
Sent: Tuesday, May 08, 2012 12:27 PM
To: ‘Ed Bowen'; Lear, Cathy
Cc: Miller, Sheila Roark; Doherty, Mike; Merrill, Hannah
Subject: RE: SMP WRIA 20

Mr. Bowen,

The County’s presentation will include portions of the presentations from other areas of the County, but will be tailored to WRIA 20. The Preliminary Draft Shoreline Master Program (SMP) currently available for public review and comment includes policies, regulations, permit processes, grandfathering clauses, and other provisions proposed to apply county-wide and across Shoreline Environmental Designations (SED).

The Preliminary Draft SMP is a working draft. The County is targeting production of a revised Draft SMP in late-summer/early-fall for public comment, but may need additional time for certain update provisions. I will review the timeline at Thursday’s public forum.

Shoreline Environmental Designations (SED)
SED’s are a very important part of the SMP update, and as you correctly note the current version of the Preliminary Draft SMP available for public review does not have Preliminary Draft Maps for WRIA 20. This is due to additional analysis needed to be done for WRIA 20 and having to phase County resource allocation due to the significant amount of shoreline areas county-wide. For example, unique to WRIA 20 and also to western WRIA 19 is the situation of pockets of private-owned lands not associated with commercial timber production dispersed along shoreline areas. These pockets are generally situated along rivers and lakes that over their length are predominantly undeveloped forest land and located within a watershed area that is also predominantly forest lands. This circumstance requires a closer look at appropriate SED’s for these limited rural land areas available for development along west-end shorelines. We will focus on this issue at the upcoming forum.

County staff will be presenting a Preliminary Draft Shoreline Environmental Designation (SED) concept map at the upcoming public forum and will provide for opportunities following the forum for public comment.

Current information and analysis on WRIA 20 SED’s is found in the Final Draft WRIA 20 Preliminary SMP Elements Report (available on-line-see link below) developed by the Olympic Natural Resources Center (ONRC) under contract for Clallam County. This Report considered the results of the WRIA 20 Inventory and Characterization Report as it relates to where information suggests changes to existing SED’s may be warranted and where further evaluation is recommended.

The Preliminary Draft WRIA 20 SED Maps the County will present on Thursday consider:
- Draft WRIA 20 Preliminary SMP Elements Report
- Draft WRIA 20 ICR
- Preliminary Draft Shoreline Master Program, Chapter 3 Shoreline Environmental Designations (addresses draft designation criteria and purpose)
- Additional review by County of SED’s in relation to recent 2011 aerals, shoreline land use/land cover, zoning, existing parcels sizes/depths, and other information.
Sources of WRIA 20 Information Supporting the SMP Update

There is a significant amount of information that has been produced to support the SMP update related to WRIA 20. Most of this information was developed and made available to the public last year. Maps, documents, and other information to support the County's SMP Update related to WRIA 20 are available from the Clallam County Shoreline Master Program Home Page at: http://www.clallam.net/RealEstate/html/shoreline_management.htm

From the County's SMP Home Page, WRIA 20 specific or supporting information include:

Consistency Review Report – (Review of Existing SMP in relation to current State SMP Requirements and Guidelines - Applies to Whole County)
http://www.clallam.net/RealEstate/assets/applets/FINAL_ConsistencyReview_7-8-11.pdf

WRIA 17, 18, 19 and 20 Shoreline Inventory and Characterization Report Page
http://www.clallam.net/RealEstate/html/icrs-both.htm

WRIA 20 Documents and Maps: http://www.clallam.net/RealEstate/html/onrc_wria_20_maps.htm
- Final Draft WRIA 20 Inventory and Characterization Report (ICR)
- Final Draft WRIA 20 Preliminary SMP Elements Report
- Final Draft WRIA 20 Visioning Forum & Interviews Report
- Draft WRIA 20 Restoration Report
- WRIA 20 Map Portfolio
- City of Forks and Forks UGA On-line & Interactive Map Cabinet

I will be a Thursday’s forum in Forks. I am also available to meet with you and other interested parties to address WRIA 20 concerns as we move forward. In addition, our Department is also interested in establishing a WRIA 20 working group to meet in June-July (possibly longer) to focus on WRIA 20 SED’s and regulations of most interest related to the types of shoreline development to occur in WRIA 20. For example, residential development buffers/setbacks and shoreline commercial opportunities in rural areas. The targeted working group would consist of interested members (and representing interests) of NPCLE, and also expanded to include additional representation of WRIA 20 shoreline property owners (residential, commercial) and other shoreline owner interests. Will discuss further at Thursday’s forum.

Thank you for your interest.

Regards, Steve

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From: Ed Bowen [mailto:rockypst@olympen.com]
Sent: Tuesday, May 08, 2012 9:52 AM
To: Lear, Cathy; Gray, Steve
Cc: Miller, Sheila Roark; Doherty, Mike
Subject: SMP WRIA 20

With the SMP update WRIA 20 community meeting just two days away, it doesn't appear there are much of any materials available for us in WRIA 20 to educate ourselves on the update, certainly not at the level that's being afforded the rest of the county. I'm not finding any SED maps, and the only new materials appear to be only addressing Forks and the Forks UGA. The
presentation isn't available either for WRIA 20, I can only assume you will be using what was used for the other three meetings, but those don't hit home very much in WRIA 20. For the most part I can only draw perceptions from what's being developed in WRIA 19 and 18. The only new product I have to use is the access map, but the number one question is then going to be is this the only difference being addressed in WRIA 20, and what is being developed in WRIA 19 and 18 is going to be cut and paste for the remainder of the update?

Since there doesn't appear to be a rural citizen advocate from WRIA 20 participating in the advisory committee, I am requesting the county invite Pearl Rains Hewett to attend on Thursday in Forks as a citizen of the committee. It seems she has a good handle on what is all involved and I believe she would add to a good discussion at the meeting. I mentioned this to her and she doesn't have the means to get all the way out to Forks and back, so I would ask the county provide her transportation too (car pool with the staff is an idea).

Thanks,

Ed Bowen

Ozette Citizen
comment/question

Resource Conservancy Zones

How did the pocket small private landowners embedded within large timber holdings get addressed?

To hold them to a 150' buffer when just down the road a neighbor only is subjected to 100'?

This was suppose to be fixed in WRTP 20 - the scenario occurs across the WRTP.

Dec. 11, 2012
Merrill, Hannah

From: Ed Bowen [SMP@co.clallam.wa.us]
Sent: Tuesday, March 19, 2013 11:04 PM
To: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

To: SMP@co.clallam.wa.us

This message was sent via the Clallam Website Email Form 03-19-2013.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program
Comments: *G20 = General SMP Comment - Pacific Coast/WRIA 20: The landowners of WRIA 20 are not being represented with due process in this planning effort.

Dear Clallam County,

Public comment to the Shoreline Master Program Update, in the form of a query: Please inform me, along with the county’s designated representative to the North Pacific Coast Lead Entity, and those other interest within the NPCLE citizens committee when anyone with a private property interest under the jurisdiction of the Shoreline Master Program within the confines of the boundaries of WRIA 20, county’s portion, was solicited/invited to be a member of the SMP Update Advisory Committee, or whatever variant it is referred to as.

If so, please inform me whom that might be and if they chose to participate. It was stated on record today, March 19th, 2013, at the NPCLE Citizens Committee that an invite to be a member was afforded the county property owners in WRIA 20; the county representative asserted that position. A tribal representative challenged me to prove it did not occur, versus there is no clear evidence openly available to the public that public participation in WRIA 20 in this matter has occurred.
From: zSMP
Subject: Shoreline Master Program

To: SMP@co.clallam.wa.us

This message was sent via the Clallam Website Email Form 04-17-2013.

Name: Ed Bowen
Email: SMP@co.clallam.wa.com

Subject: Shoreline Master Program

Comments: *PPS = Public Participation Strategy

WRIA 20 specific

Submitted to the Planning Commission on April 17th because no action and no details have been afforded to the citizens of WRIA 20 as to justifying the contracting of ESA for the NO NET LOSS/Cumulative Effect Analysis addendum for WRIA 20. The response from the third district county commissioner does not explain the commissioners’ rational for accepting this approach. The public participation strategy approved by the county for this process mandates regional public forums, and specifically points out the requirement for the NO NET LOSS/Cumulative Effect component. Not only does the addendum process not afford a regional forum, it isn’t even transparent as to how the analysis will be conducted...(based on what criteria?).

Maybe somewhere in the process the public will be engaged, but at this time I have to strongly assume the decisions have already been made and now that public hearings are probably coming up this spring the chance for meaningful discussion is gone; this addendum is just one example that draws that conclusion.

For transparency:

Doherty, Mike MDoherty@co.clallam.wa.us
Tue 4/2/2013 9:48 PM

Hi Ed. We discussed your concerns for 15 minutes or so this morning in the Board Work Session. Additional information from DCD representatives during the discussion addressed several of your issues. On a few of the issues, such as public outreach, DCD committed to increased efforts in this regard in WRIA 20. In the regular meeting the Board approved the contract. mike doherty

Sent: Friday, March 29, 2013 1:09 AM
To: Doherty, Mike; Jones, Jim; Miller, Sheila Roark
Subject: Commissioners Worksession Agenda concern

Dear County Commissioners and Director of Community Development
In regards to the matter that comes before the Board at the April 2nd Worksession and Board Meeting, Agenda item 9 and 2b respectfully, my objection to moving forward at this time with this action.

ESA has entered into a Professional Services Agreement (PSA) with Clallam County to assist with the Shoreline Management Program (SMP) update (Contract No. 332.10.030), signed on September 21, 2010.

This is misleading; the contract was for services directly related to assisting with the SMP update for Clallam County’s portion of WRIA 17, along with WRIA 18 and 19. It did not and does not include contractual assistance to date for WRIA 20.

To enter into an amendment to this contract to now include a particular segment of the update for WRIA 20 is lacking in fair treatment of the process, and whether it is in the best interest of the citizens of WRIA 20 to add them to a contract where any applicable bid solicitation and other governmental practices haven’t been applied (at least the intent); at a minimum it’s questionable.

The county entered into an SMP Update agreement for assistance in WRIA 20 from the University of Washington’s ONRC. Though I have reservations to the products to date created by the ONRC (such as the draft ICR report), it does not appear any inquiry has been attempted to amend that contract to include this action before you. I contest the logic in considering in favor of the proposed amendment for a contractor that has not been engaged in the SMP technical discussion/workshops/public meetings specifically WRIA 20. Supporting rational is even the need to make this amendment has not been brought to the attention of the citizens of WRIA 20, at best lacking announcing or discussion with the public process within WRIA 20. At best someone has to be a professional at reading and understanding the County’s SMP web site. At best to intervene into this amendment would be taking an analysis process developed outside the geographic region of the Olympic Peninsula as a model, refined somewhat at best for the three eastern WRAs, and in essence applied carte blanche to the uniqueness of WRIA 20. All without due process to ground-truth any theories guiding the analysis.

As an example, it appears the County may have engaged this contractor on how small landowner parcels that exist within the propose Resource Protection zone, predominate industrial timber lands, would be affected by such designation. It appears this issue hasn’t ever been responded to in any of the materials to date, and even though brought up in several WRIA 20 public events there is no recognition this issue even exist in the Update’s analysis/drafts to date. This is a significant feature throughout WRIA 20, and I speculate at a more significant level than in the other three WRAs. If there was a proper logic to now include the contractor in the WRIA 20 portion of the update, the history of how the contractor addressed previously identified needs of the update for WRIA 20 should be in order; I therefore claim the contractor is not prepared to provide a clear and fair analysis for cumulative effect and no-net-loss. I clearly have a concern if the contractor is adequate (capable) when the result from the scope of work assumes:

...performing relatively simple GIS analyses using readily available datasets with direction and guidance from ESA. (Task 3.4)

This claim is further supported to remotely believe that a $5,000 amendment would make up for the claimed lapse in services, let alone bringing in to the discussion a reasonable person’s perception of what is needed to catch this contractor up to the times on just what is the WRIA 20 landscape...beyond just from discussion with an advisory committee existing for the eastern county issues or county staff providing their own personal opinions. I don’t even know where the $5,000 is coming from, who is going to pay for that? I’ve always
been concerned with what I consider to be funding from the EPA to create a model by focusing on the eastern portion of the county, for if this use of EPA provided funding is even proper/authorized by the US Congress. If the $5,000 is a component of the EPA funds, there again the disconnect with being open and transparent to the citizens of WRIA 20.

Open and Transparent to the citizens of WRIA 20, regarding this subject. To date there hasn’t been outreach to inform the citizens of this topic.

- Cumulative Effect has only been briefly mentioned in WRIA 20 public meetings, but never explored/specific comments solicited/or explained to the effects on citizens by addressing cumulative effect in the update.
- No-Net-Loss. Never explained
  - The definition of what it means and specifically within the geographic uniqueness of WRIA 20 (It’s never even been defined to the people)
  - The question of No-Net-Loss from what point in time, the original SMP establishment, this update, or some other time reference point
  - The ability to offset to the equation of No-Net-Loss the possibility and locations of an actual Net-Gain, and where those gains are measured from in reference to time.
  - The action addendum to the scope of work, Task 4.3, doesn’t consider this need and even the assumptions and deliverables have no specifics that would lead a reasonable person to the perception their interest was being positively represented.

I do not have confidence the contractor is even capable of solving this open and transparent need, let alone can do that with a $5000 budget; I believe this is even a worse condition than the claimed statement of county staff:

The Department needs assistance to prepare the WRIA 20 CIA/NNL Report Addendum due to limited staff resources.

This is also imposing an unfunded mandate on the citizen base to solve all this on our own because the intent of the public outreach policy approved by the Board isn’t being adhered to. This action has not been noticed to the public prior to the release of the Board’s March 26th worksession agenda on or about March 21; with the furlough day there wasn’t opportunity to check in for details/questions in a timely manner prior to the worksession. Then to appear at the worksession and the topic is pushed to a last minute point in the worksession, due time was not afforded resulting in basically push it to a later date for discussion. That later date is now on the April 2 worksession (last item again, will it get lost in the eastern county discussion items again) for movement to approve at the Board meeting immediately following. Again, a furlough day stands in the way of reasonable discussion; there has been no effort to discuss this topic with the public in WRIA 20 that I am aware of this past week.

In addition, this action has not been noticed in the two previous WRIA 20 groups solicited on the update: North Pacific Coast Lead Entity and the WRIA 20 water management plan Implementing Body. Nor has this need/action been briefed to the Clallam County Planning Commission, either as demonstrated in the meeting summary for March 6th or at the March 20th meeting (why wasn’t this even brought up at that public event given its-close proximity to this action date and the same requesting staff was at that meeting too?)

You may feel the need to approve this, it’s not that big of a thing probably on the scale of issues you have to deal with...even on the subject of the SMP Update. However, this action is indicative of the scale that is occurring within WRIA 20 with this update, lack of representation and active engaged public outreach and discussion.

With that occurring, a reasonable person couldn’t begin to grasp the bigger scale and direction to getting to an acceptable update to the SMP that serves the people of WRIA 20.
I objected to this action at the Board’s meeting of March 26th, haven’t heard a word about my concern since; and now it’s on the Board’s agenda. So the time I have had to spend today compiling these particulars doesn’t come cheap; I’ve already made a trip in to the courthouse once, on my dime. Time for the Board to represent my interest. Please don’t approve this amendment, please take it back to the people of WRIA 20 and give a sincere chance to be engaged in this update.

I request this be a matter of record and a written response. Thank you.
This message was sent via the Clallam Website Email Form 04-18-2013.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: *ICR20 = Inventory & Characterization Report - Pacific Coast/WRIA 20

As a matter of record so that we don't wake up one day and there's a magical change to the document, as of this comment the WRIA 20 ICR is a draft report, it has not been finalized and those interest identified in the public participation process, for the most part, have not been engaged since the May 2012 revision to address flaws/shortcomings in the draft version. This draft version is currently posted as of the time this comment is submitted. To conduct a shoreline master plan update based on a DRAFT document is very poor public policy; the draft can change with the wind and brings in to question transparency. Previous comments to these flaws and shortcomings have not been addressed in the revision:

ONRCs interviewing and reference materials are highly questionable, and has an inherent appearance of being biased. Even the authors of the report are questionable whether they were qualified to perform such analysis and reporting for what the purpose of the ICR is intended to support.

These points were commented on during initial drafts to the report and the comments were ignored.

There never has been an explanation or discussion with the citizens of WRIA 20 what the purpose of the revision to the draft was for and what the results were: what was revised?
I'm not sure if my question is being considered in a working draft of the secondary draft of 11/2012 or if my reference is actually towards a more recent version.

Chapter 4 General Policies and Regulations

4.1.3 Regulations -- Existing Uses

sub section 4.

"If a use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use, if allowed, shall comply with this program."

This sounds to me like a use-or-lose provision, similar to the water rights provision. Never have heard of loosing a structure "existing use" for not being a user, other than my own definition/terms and not "someone's" subject process.

My question is will the authors explain the rational, the purpose, the legality of such a provision which is seen as a taking, and how this remotely connects to the intent of shoreline management in respect to the balance between the land and the property owner?
Chapter 4 General Policies and Regulations
4.1.3 Regulations -- Existing Uses

sub section 4.

"If a use is discontinued for twelve consecutive months or for twelve months during any two-year period, any subsequent use, if allowed, shall comply with this program."

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My question is will the authors explain the rational, the purpose, the legality of such a provision which is seen as a taking, and how this remotely connects to the intent of shoreline management in respect to the balance between the land and the property owner?

submitted by Ed Bowen @ Aug. 7th PC mtg
My public comment for the Planning Commission meeting for August 21, 2013

- Six Year Transportation Plan, Item 3. Hoko-Ozette Road MP 19.6 needs to be addressed in this next year. Not just consider doing a study but take action. One solution is to set the goal to determine a solution and obtain the partnerships for funding, such as with the National Park Service to access the Federal highway access funds.

- From a general email sent out to the SMP interest groups, it was briefed a change in the update to the Elwha public lands:

  iii. Elwha River (between US 101 and SR 112 on public lands) – Changed from Resource Conservancy to Natural.

This is putting the cart before the horse, these lands have not been determined yet whom is going to be the owner per the federal legislation and to consider such activities that would be limited by a designation of Natural is very much premature. Also, Natural will impede any effort such as the SMP addresses as to “Public Access” to the river; how about infrastructure for such issues as addressing access for such public as handicap and disabled? There is a county road for the main purpose of access to this area and a WDFW boat launch high and dry….what’s to happen to these areas if this designation is Natural. There is a strong political image that the federal legislation calls for this designation; I totally disagree! So no, do not change the designation and the blame can be put on the Elwha project for not engaging the public on such issues as this.

- Very little information is being afforded the public to keep current with the SMP update process; the email release this week with the changes is highly questionable and limited in scope. I suggest that all SMP presentations provided to the Planning Commission be uploaded to the SMP web site for the public to view. I continue to question the content of the restoration plan for WRIA 20, based on a salmon recovery strategy is the best guess I can expect while discounting other goals and strategies….the county staff appear to ignore and discount that need. I might add that the lead entity for that strategy and also SMP discussion in the WRIA 20 has failed to meet this month, a bad precedence
when the public doesn't have any other venue in WRIA 20 to attend. Also, public comments to the SMP web site continue to be neglected, not posted.

Regards,

Ed Bowen
Clallam Bay, WA 98326
Public testimony on Clallam County Shoreline Master Program Update before Clallam County Planning Commission.

Written details of my testimony presented at Sekiu and Forks Public Hearings, February 12, 2015.

**Public Access:** The SMP update does not address public access to the aquatic environment across public lands, such as the parcel at Mary Clark Road on both sides of the Sol Duc River owned but not access-managed by WA State Parks Recreation, or the future intent and purpose of the land incorporated within the Lake Aldwell region under the Elwha River Ecosystem and Fisheries Restoration Act (EREFRA).

1. Parcels 123030440020, 123029330000, 123032140050, 123029310070, 123029430000, 123029440000, 123029410000, 123028330100, 123032120000, 123032110020, 123033210020

are inclusive in a track of land that was transferred from WDNR some years ago to State Parks, listed as a Regional Park (Greater 100 Ac). The land, and affiliated shoreline and timber, has not been managed which promotes access. Language in the plan should be included to instruct the State to manage such timber to allow for access, such as commercial thinning, that includes a road or trail plan that can be retained to allow for access. (refer to RCW 90.58.150)

2. The lands of the “former” Lake Aldwell,

being a lake designated Shorelines of the State (RCW 90.58.310) (WAC 173-20-120 with Statutory Authority: RCW 90.58.030, 90.58.120 and 90.58.200. WSR 85-09-043 (Order DE 85-05), § 173-20-120, filed 4/15/85; Order DE 76-16, § 173-20-120, filed 5/3/76; Order DE 72-14, § 173-20-120, filed 6/30/72,)) and the Elwha River designated within the current Clallam SMP (Appendix A 5. Increase public access to publicly owned areas of shorelines.)

is yet to be determined as to whom the EREFRA will convey as the new owner of the associated lands. Given the State is one of three eligible parties to such designation (ownership); the SMP should contain language that places emphasis on the State to be such owner to insure the public’s access and full use and enjoyment to this aquatic area. The county has a vested interest too, with a county road that provides that access along with an associated WDFW boat launch (high and dry).

**Channel Migration Zones (CMZ)**
High Potential CMZ and Low Potential CMZ: Why wasn’t analysis conducted to determine high and low potential? The plan appears to put that burden on the unknowing landowner to prove themselves, at their expense. To label CMZ’s in general and thus further restrict based on a DRAFT consultant’s report created for the Department of Ecology, and to be told this report was “internally reviewed” at DOE, is not credible science; Best Available Science is ground truth-ing. Otherwise remove the imperfection that is none other than a financial burden on the landowner to disprove the theory over fact.

The CMZ designations (in conjunction with my opinion of a flawed ICR by ONRC for WRIA 20) does not take into consideration river systems that aren’t glacially fed and have their own dynamics such as being “incised”.

WRIA 20

How many people show up at the public meetings for the SMP and come to find out their individual property is in question? The response given is “we can take a look at that”. Doesn’t that set a bad precedence that unless one show’s up, and “we can take a look at that” that results in something positive for the landowner, one is left to pay their way out of a restriction that in essence creates a taking without due process?

This is also demonstrated in WRIA 20 because the public forums on significant components of the plan as it applies to WRIA 20 were very limited and generalized. Nothing specific such as the new significant component of No-Net-Loss and Cumulative Effect; for which even the current status of that analysis for WRIA 20 is “Pending”, but yet we are being asked to move forward with this plan for approval. I say it is incomplete, due to a fatal public participation error.

Shoreline Master Program Update PUBLIC PARTICIPATION STRATEGY
March 2010, Revised March 2011

Regional Forums – Preliminary SMP Preparation:
County will hold regional forums on preliminary draft SMP preparation products developed, including presentation of draft goals, policies, designations, regulations, and other recommendations, draft restoration plan elements, and preliminary cumulative impacts/no net loss analysis.

Notice On Title:

I object to requiring Notice On Title for the purpose of Shoreline Management. This is terrible policy, a precedence created by Critical Areas ordinances which needs to be questioned also. This sets the bar of nothing but an encumbrance on the property owner of a clouded title, and serves no purpose that current real estate practices of disclosure and practical due diligence already provides. This is also an insidious
attempt to make the property owner the criminal; next will be a notice establishing a No-Net-Loss baseline. If Notice On Title is some form of enforcement activity, then why not include the right to due process for an encumbering “Take” of property by establishing buffers in the public’s interest?

Remove Section 5, page 7-2 in its entirety.

And I question Notice On Title for Feeder Bluffs on page 4-23 given the science for those feeder bluffs is subjective, each site has to be peer reviewed and not just based on some 40,000 foot model applied across the landscape before putting the burden of Notice On Title; that is, if this is considered to be a public safety issue and not limited to an environmental concern. Then the latter is a matter of taking without compensation.

Are these the only areas in the plan that addresses the policy of Notice On Title? This is a placeholder for such a complicated document for the public to use and rely on that the possibility exist some form of Notice On Title is embedded somewhere else in the plan that isn't transparent.

Submitted for your consideration and hopeful corrections to the draft SMP update prior to the commission determining what action you will be taking on this update.

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 04-02-2015.

Name: Ed Bowen

Email: smp@co.clallam.wa.us

Subject: Shoreline Master Program

Comments: Dear Clallam County Commissioners,

I say this because the public comment process online is now limited to voicing our citizen’s ideas to the Board of Clallam County Commissioners; not necessarily focused on a fault of the process but just to be clear why this is addressed to you at this time. The current phase of the process for the Shoreline Master Program Update plan (SMP) is with the Planning Commission and they are your advisors; so it would seem fitting that you can make request for them to look into matters of interest.

At the April 1st Planning Commission meeting staff spent a large proportion of time identifying a possible option for the commission to include in its deliberation of the issues: To have at an upcoming meeting presentation and discussion by the North Olympic Peninsula Resource Conservation & Development Council on what I believe I heard said at the commission is the forthcoming “what-if” product:
Projected Climate Change and Impacts for the North Olympic Peninsula.

It appears that without motion the commission agreed to this presentation. My point to you today is the commission did not appear to include other presentation options in their agreement; this is one particular aspect to be presented in what now stands to be their process of coming to a decision on the SMP they will or will not submit to you for consideration. I believe that singularity approach is flawed, if not alone on the basis of fair and balanced.

So I would suggest to you to provide guidance to your advisory commission that if presentations are going to be a part of their process that you would like to hear a multitude of particular aspects. What does that look like and what might be reasonable for the commission to consider? I would begin with consideration for the three following groups if they elected to participate:

Pacific Legal Foundation
(thinking along the lines of addressing the litigation potential from landowners if the SMP is flawed in those regulated respects)
Citizens Alliance of Property Rights
(thinking along the lines of where government's reach in to people's lives and freedoms has become a possible de-motivating factor in how those people are the very stewards of the land)

Jefferson County approved Shoreline Master Program Update Plan—possibly presented by the Olympic Stewardship Foundation
(thinking along the lines of a neighboring county with an approved updated plan and the problems with the plan that citizens have run in to)

Again, these groups may not be willing to present, but I provide them as a suggested list to consider inviting into this newly apparent component of the commission's deliberation process.

On the matter of "What-if", give thought to the idea “What if” there actually isn’t a period in the sentence after “Life, Liberty, and the Pursuit of Happiness” in the Declaration of Independence...and the possibility the declaration actually declares that the government derives its just power from the consent of the governed is an Unalienable Right endowed by one’s creator? This is a supremacy clause for intent within both our US and State Constitutions. For the purpose in this SMP matter whether the period is there or not there is context as to whether government understands this right when it considers how and when it regulates the people; the person. The Governed is not just one view point either.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 05-28-2015.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: For the record to whom it may concern; since it doesn't appear to concern the Clallam County Planning Commission given the information provided on the SMP website:

http://www.clallam.net/LandUse/smp.html

"The Planning Commission comment period has CLOSED.

Any comments received after February 27 will still be part of the record that will go to the Board of County Commissioners."

SMP update email sent out to interested parties on May 28th 2015 continues the apparent trend of the Planning Commission ONLY considering public comments and testimony provided related to the release of the November 2014 Draft version of the SMP Update:

"To Interested Parties (SMP Update Email Notification List):

Upcoming Schedule
The next few meetings of the Clallam County Planning Commission will focus on review and evaluation of written and oral comments received on the 2014 Draft SMP. Here is their upcoming meeting schedule:

- June 3, 2015: The Planning Commission at their Work Session will start addressing the public comments matrix. Staff and the Commission will focus on issues found in respective chapters related to the Draft November 2014 SMP concerns and evaluate recommendations and changes from the public.

- June 17, 2015: Work Session before the Planning Commission on public comments received on 2014 Draft SMP. Staff and the Planning Commission will continue to address each chapter of the 2014 Draft SMP/public comment matrix.

Planning Commission agendas can be viewed at:
http://www.clallam.net/LandUse/pcmeetings.html

For more information, visit the County SMP Update Home Page at:
http://www.clallam.net/LandUse/smp.html

Thank you again for your interest.

Staff Contacts:
Steve Gray, Planning Manager: 360-417-2520 Kevin LoPiccolo, Principal Planner: 360-417-2322
Deborah Kucipec, Planner: 360-417-2563"
I am identifying this as a flaw in the public/citizen’s process and to due process.

- On several occasions in public comment to the Planning Commission it was brought to this body’s attention that comments prior to a perceived August 2014 date have been/were submitted that are relevant to the update:
  - For the purpose those issues to date have not been addressed/answered in the Nov2014 Draft
  - This limitation on the extent of which comments would be considered/discussed/addressed by the commission was not made known to the public during the period of the now determined timeframe of public comment for consideration.
  - The decision is not a publicly discussed or decision made in an open meeting to the public. County staff presented the “concept” but no formal decision was or has been made by the commission, at least not in an open meeting and transparency.
  - The commission nor the Department of Community Development have not to this date explained as to the rationale behind this approach; why not openly consider public comments from the entire update process. An August 2014 date is brought up by county staff, without open explanation as to why that point in time. When reading the text of the current notification email I would like to emphasis why this runaround is occurring when you ask staff and the commission are they going to consider/answer/respond/include all comments received: “...will focus on issues found in respective chapters related to the Draft November 2014 SMP concerns”. If the intent is to also include those concerns that are not specifically incorporated within the NOV2014 Draft then why not be open and clear about that point. Otherwise, it’s a runaround. The best answer I can get to date is the individual Planning commissioners are at liberty to consider any comment they so choose. But will that public transparency?

- The commission is limiting what public comment can be made to the body now, along with focusing on hypotheticals and the attempt to address to the commission the flaw in such approach clearly in my opinion creates a significant bias in the commission’s approach. As an advisory body to the Community Development Director and the Board of Clallam County Commissioners, it does not appear to me the advice that is being generated by the commission is reliable.

It is essential that all public comments and issues brought to the attention of the update process be considered and addressed. It would be reasonable to expect an answer to all these comments too, and not leave that Planning Commission appearance that the SMP will be a product of SELECTIVE PUBLIC INPUT WITH LIMITED ISSUE SOLUTIONS.

Ed Bowen

P.O. Box 111
Clallam Bay, WA 98326
Comments: Per the DCD elected director, having the citizens' best interest, apparently feels the burden of proof should be on the backs of the citizen to full use and enjoyment of their private property: "The onus is on the owner to prove they are not in a CMZ". Channel Migration Zone, drafted by a consultant far far away as a function of the Department of Ecology that is still a draft, never finalized/adopted as a public matter of WAC or RCW, and flawed in data NOT used, let alone peer reviewed science; but used as a regulatory tool to preclude development. The epitome of unfunded mandate, to the tenth degree that is a taking in reality. Interpreted: Theorize the problem and put the cost and expense on the citizen to prove otherwise. The state Constitution states all authority comes from the consensus of the governed. The county does not have my consent to such authority to such an approach as the stated Onus (used to refer to something that is one's duty or responsibility). DCD elected director pacification to being irresponsible in this matter: "You're fine, you'll be fine." An opinion expressed, but also a 1st Amendment grievance expressed.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 01-10-2017.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: As presented to the county on many many occasions, the SMP update process has failed its public involvement policy to host forums on key components of the update. For WRIA 20 this specifically involves the Cumulative Impact and No Net Loss components; to date no public forum has been held in WRIA 20 on such components, and not known to occur anywhere in Clallam County for WRIA 20 for that matter.

With the lack of confidence in the ICR for WRIA 20 and the resulting significant impact of CMZ issues presented to landowners in WRIA 20 in the NOV 2014 draft, this is another key component that should have/should host a forum with the affected public.

But yet the county (and I believe it is the elected director DCD and key under-staff) spend more tax dollars for a consultant responsible for a scope of work to move forward with finalizing the updated plan; that should/could at least do something in line with the intent of such a forum, at least in responding with clarity what these key components of the update mean to the people of WRIA 20 by at least responding to comments/testimony received, but won't:

- The work will include a cumulative impacts GIS analysis for the shoreline "analysis areas" identified in WRIA 20.

- The GIS analysis does not include collecting any new data that is not otherwise readily available.

ESA will brief the County on the methodology in advance of the analysis but will not prepare multiple iterations of the analysis.

- this task does not include responding to individual comments.

This is wrong and I make the accusation the county is in violation of its published policy to public engagement on the Clallam County SMP Update.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 01-19-2017.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: Who is the Clallam County Planning Commission, what is their purpose in this update process? I express they are failing at their mission to address this update; there is enough evidence they are not publicly, at least openly, representing all the citizens of this county: specifically the citizens of WRIA 20. Zero open publically known activity since April of 2016. But yet they appear to still be "step" in the process and it sounds like they may hold a public hearing in WRIA 18 in the few months to come...APPEARS because that isn't even openly public. The SMP web site pretty much calls for citizens to tune in to the PC, a site that hasn't been updated since May 2015, but yet nothing in the materials openly public from the PC to show they have even considered the update since April 2016. Maybe even better evidence of this failure for openly public is the very bylaws they claim to operate under: Not made available what they were forecasted to consider at their public meeting on 18 Jan 2017, not included in the meeting packet made available on the web site but referenced in the meeting packet apparently provided to the members themselves. Even the web site doesn't have a current version of the bylaws, dated 2014.

So I am calling in to question and approaching a vote of no confidence this standing Planning Commission is operating in the roll of representing all the citizens of this county. It would be appropriate therefore for the BOCC to begin considering other applicable processes when it comes to an appointed commission's roll in the SMP update. I don't have confidence and therefore do not consent to the authority the PC may have the appearance of having on this update matter; per the state's constitution.
Reply comment to the CC Planning Commission and the DCD director:

I have no evidence that the planning commission in a public manner or otherwise addressed my comments for the process the planning commission elected to limit itself to. In reviewing all the public records and the matrix used in the planning commission meetings/publically available events I show only two comments of and concerns of mine out of those listed in the Matrix where the commission even brought the topic up, and even those did not have open comment and active discussion amongst the planning commission. At best, the staff support summarized in meeting minutes what it appears the staff "might have gotten the feeling" and pressed on without solution or consensus on the planning commission's part. So this draft is not ready to progress on those grounds with many many other reasons I have identified throughout the many years but apparently ignored/disregarded as superfluous.

And by the way, no cumulative impact/no net loss component created for WRIA 20, to include no public forum for WRIA 20 affected population on either components nor the appearance some know it all expert is going to assimilate the other reports to accommodate and capture WRIA 20...which is completely in error cause the county has taken the approach of discrimination on WRIA 20.

This is a matter of record.

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326
You are receiving this email because you are on the Clallam County Shoreline Master Program (SMP) Update email notification list. The County Department of Community Development (DCD) has just released a Revised SMP Draft (June 2017).

The Revised Draft SMP (June 2017) shows proposed revisions to the November 2014 Draft SMP that the Clallam County Planning Commission held regional public hearings on in February 2015. The Planning Commission reviewed public comments at various Commission regular-meetings in 2015-2016. The Revised Draft SMP (June 2017) is based on these deliberations, comments from the Department of Ecology, and other clarifications/corrections.

Next Basic Steps in the SMP Update Process:


- Release Updated Cumulative Impact Analysis/No Net Loss (CIA/NNL) Report on Revised Draft SMP (June 2017) [Anticipated by June 16, 2017]

- Planning Commission Recommendation to the Board of County Commissioners (BOCC)

- County Regional Public Workshops [Dates To Be Announced]

- BOCC hold public hearing(s) on Planning Commission Recommended Draft SMP. [Dates To Be Announced – Target August 2017]

- BOCC make final decision on “locally-adopted” SMP after considering public comments received.

- County submit “locally-adopted” SMP to the Washington Department of Ecology for additional public review and state approval.

Upcoming Planning Commission Meetings:

The Clallam County Planning Commission upcoming schedule to review the Revised Draft SMP (June 2017) is as follows:

June 7, 2017: County staff overview of the Revised Draft SMP (June 2017), planning process to-date, and upcoming schedule.

June 21, 2017:

- Consultant Presentation of Updated Cumulative Impact Analysis/No Net Loss Report on the Revised Draft SMP (June 2017)

- Continued Review of the Revised Draft SMP (June 2017)

July 5, 2017: Continued Planning Commission Review of the Revised Draft SMP (June 2017) and Possible Recommendation to the BOCC.
After July 5, 2017: *To Be Determined, as needed.*

Planning Commission meetings start at 6:30 pm and are held at the Clallam County Courthouse in the Commissioners Meeting Room, 223 East Fourth Street, Port Angeles (*After Hours Access is from the Public Meeting Entrance off 4th Street*). All Commission meetings are open to the public and provide opportunities for public comment.

**Where to Get More Information**

The Revised Draft SMP (June 2017), supporting SMP documents (e.g., shoreline inventory & characterization, restoration plan, others...), and other information can be viewed at:

**Clallam County SMP Update Home Page:**  [http://www.clallam.net/LandUse/SMP.html](http://www.clallam.net/LandUse/SMP.html)

**Staff Contacts:** Steve Gray, Deputy Director/Planning Manager at 360-417-2520 and Kevin LoPiccolo, Principal Planner, at 360-417-2322.

Thank you for your interest.

Steve Gray, Deputy Director/Planning Manager  
Clallam County Dept. of Community Development
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 06-22-2017.

Name: Ed Bowen

Email: SMP@co.clallam.wa.us

Subject: Shoreline Master Program

Comments: Be advised my concern that my county planners are not paying any attention to this subject, the No Net Loss and Cumulative Impact work claimed to have been conducted in regards to WRIA 20 is significantly flawed and dereliction on the county's duty's to uphold its responsibilities in this process. WRIA 20 has never received any form of the County's public outreach mandate, regarding forums to address significant components of the SMP update; in this case the NNL or CI. It's based on pure assumptions or a flawed and erroneous ICR process in WRIA 20. Inaccuracies throughout the report regarding WRIA 20 exist. To not hold such forums, the author of the report has failed a critical component in their data gap they claim; even a willingness to collect the data. Since it doesn't appear the Planning Commission is tasked to address these post Feb 2015 comments, I hold them also derelict in the duty of representing citizens of this county. NNL and CI: People getting rich producing pollution of the citizen's mind...resulting in no benefit to the very environment such pollution claims to address. Pollution that results in litigation. What a waist of time and money let alone people's lives.

If you think I'm so wrong, then just go to section 1.3 and identify the grant that WRIA 20 received to address NNL and CI. Seems very fitting to claim something to satisfy a report that doesn't tell the truth.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 06-22-2017.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: Has anyone ever notice just how this SMP process isn't transparent in it's public involvement process? Even the SMP web site doesn't bother to inform the public what the department briefs the BOCC on public forums:

County Regional Public Workshops [Dates To Be Announced-Target August 2017]

It can only be assumed the methodology is one that keeps those that sign the payment checks happy that the public is being involved but not letting that same public know they are privileged to such involvement. And they ask blazingly, "Why doesn't anyone ever show up?"

A world of two stories, internal and public.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 07-13-2017.

Name: Ed Bowen
Email: smp@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: The process continues to discriminate. The July 19th Planning Commission meeting packet dated July 12 2017 contains a section title Public Comment. But it is very obvious and fact that the Planning Commission process is discriminatory on just what and who’s comments they plan to consider. Not one single comment from this web based system (post Feb 2015) is in that packet. So how can they represent the citizens of this county without bias. I believe the fact of such a situation is becoming very clear.

And to whomever, don’t bother to recommend the contact suggestion at the PC web site; eight letters written and none acknowledged let alone responded to by the Planning Commission. The BOCC needs to direct the PC on what their duties are, and point out to them the obligations tasked under the SMP update public involvement and outreach policy.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 08-11-2017.

Name: Ed Bowen
Email: smp@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: Board of Clallam County Commissioners. The responsibility falls on your shoulders to hold the DCD department and the Planning Commission accountable for their lack of public engagement. No correspondence by the Planning Commission is in their apparent forte when it comes to submitting comments and concerns to their part of this update process. They do work at your pleasure, you need to correct this flaw in their service to the people of the county. The DCD department continues to amaze me in their arrogance of appearing to sit on a thrown in deciding on their complete lack of public engagement in this latest round of contracting of services to the consultant...if you don't think so, just ask the question yourself of how they filled the requirement in the scope of work when it comes to the criteria for public outreach and engagement. I've yet to hear a peep out of the process. Just look at the proposed SEPA checklist that is being considered by the PC this upcoming week; leaves out any discussion or content on the public component. And again, they continue to only capture and include in their meeting packets public comment they selectively choose to include. This is discrimination in the most basic of forms. So I hold you, the BOCC accountable for the lack of the accountability on the PC and the DCD department in the SMP update process. This "package" is no where near ready for it to be considered within your public BOCC process. I have to make a record of this because it is very apparent in my opinion this update is being pencil whipped in to a disgraceful taking of the people's rights and privileges.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 08-12-2017.

Name: Ed Bowen
Email: smp@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: The county continues not to follow its own policy and procedures, at least not made public. Evidence is there is no intent to engage the affected public in the SMP Update; fact made is in order to use county funding to conduct work on the update by a consultant, the public engagement criteria of the scope of work continues to be bypassed, at least put in a priority category there is zero confidence the affected public will receive the benefit of such criteria. The last public update notice of such "next steps" clearly reflects the component...DATE TO BE DETERMINED. However, to date no additional expression of determining such date has been made public. However, the staff of the DCD and the Planning Commission press on with "completing" for submission to the BOCC; this is clear to me there is not intent to uphold the public engagement Date to be announced next step.

- County Regional Public Workshops [Dates To Be Announced]

From June 2nd:

Next Basic Steps in the SMP Update Process:

- Release Updated Cumulative Impact Analysis/No Net Loss (CIA/NNL) Report on Revised Draft SMP (June 2017) [Anticipated by June 16, 2017]
- Planning Commission Recommendation to the Board of County Commissioners (BOCC)
  - County Regional Public Workshops [Dates To Be Announced]
- BOCC hold public hearing(s) on Planning Commission Recommended Draft SMP. [Dates To Be Announced – Target August 2017]
- BOCC make final decision on "locally-adopted" SMP after considering public comments received.
County submit "locally-adopted" SMP to the Washington Department of Ecology for additional public review and state approval.

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- Continued Review of the Revised Draft SMP (June 2017)

July 5, 2017: Continued Planning Commission Review of the Revised Draft SMP (June 2017) and Possible Recommendation to the BOCC.

After July 5, 2017: To Be Determined, as needed.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 09-28-2017.

Name: Ed Bowen
Email: smp@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: It appears that as of today the county department maintaining the web site for the SMP update has updated the information in regards to next steps. One point of confusion and one concern for the purpose of whomever is responsible for the public in this "now" phase of the update:

1. The statement on the web site: "The BOCC will reschedule and hold a public hearing(s) on the PC recommendation." The BOCC will reschedule, what is reschedule? Reschedule what? Has the BOCC decided publicly what its next steps are, to only hold a public hearing on the PC recommendation? What and when are the community forums on significant components of the plan going to be held? Who is responsible for carrying out the formal policy established to call for such action during the county's process? If the DCD and PC portion of the process did not accomplish this, it is reasonable to assume the BOCC is now responsible for this action for public forums and not just a public hearing on the PC recommendations. Then there's the contractual requirement of the consultant in the scope of work on the public component that to date has not been exercised (at least not publicly known).

2. Given the poor resolution to date on the management of public involvement in this process, as identified in previous recorded comments but not responded to or corrected, it is imperative that all records pertaining to this update period of time be archived and readily maintained as this leaves a stated process flaw with the DCD and PC, and moves in to this BOCC phase. All records to include those generated back during the ICR development and the so called SMP committee process several years ago.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 09-24-2016.

Name: Ed Bowen

Email: SMP@co.clallam.wa.us

Subject: Shoreline Master Program

Comments: My public comment to the Clallam County SMP Update is regarding Public Comment.

In a posting to the SMP Update website's public comment section, dated 10 August 2016, the "county-zSMP" provides a response to the comment that "...very meticulous records of all comments with written copies that are indexed and filed as they were received." I contest that statement and do not believe it is true. I suggest all citizens of the county consider if they have submitted public comment on the SMP Update, in their view whether it be at county hosted meetings (workshops, Planning Commission public meetings, community briefings/regional watershed processes such as the WRIAs or salmon lead entities), in letter to DCD or other branches of the county government, at the working group that met for quite some time back in the infant phases of the update process (previous DCD administration), or submitted using the online comment form/process at the SMP Update webpage. Consider if that public comment has been recorded and is/will be considered in the update process.

I brought to the attention of the current DCD elected director on at least three occasions over a period of a year what appeared to be two periods in time of public comments that such aren't posted to the SMP Update webpage for at least two of the three public comment sections:

- For the time period October 2013 to August 2014,
- and the time period February 28, 2015 to date

With no response of action apparently take to identify and correct if such comments during those periods were missing from the "...very meticulous records of all comments with written copies that are indexed and filed as they were received. " record, a public records request was submitted to aid in making such a determination. The results did show that comments were in the record keeping system, but apparently not a matter of the active record being relied upon in the update process. In other words, there are records of public comments submitted but apparently are not known to the update process. It became apparent that possibly some comments submitted via zSMP were either never received or lost. The irony of this is fueled by even those "found" records are to this date not a matter of the public
comment posting on the SMP Update website; the question is are they now even in the SMP Update file in a staff position’s folder let alone the file being maintained for use by the BOCC commissioners when the recommendation comes before them?

In addition and should be a concern to those citizens possibly affected, for the period of October 2013 to August 2014 the public records request found no such records submitted. A period of ten months and there aren’t public comments on record per the response to the public records request; a period when the draft was in the process of being prepared for consideration by the Planning Commission (the November 2014 version)? My comment is that I am very concerned of what in my view clearly is a period of lost and valuable public comment to the process. I don’t believe the County has a very meticulous record keeping system when the at-best “glitches” have been identified but even still have not be corrected. It would seem fitting that if the County is itself concerned about this matter, it too will reach out to the citizens of the county and inquire if they believe their public comment was submitted but active record of such doesn’t appear to be the case.
To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 10-07-2016.

Name: Ed Bowen
Email: smp@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: My public comment to the Clallam County SMP Update is regarding Public Comment.

It appears this public comment process still is not functioning, at least not in the sense of posting comments that are received from this citizen. Could this be an environment of discrimination on the part of the county to only consider comments received from select “public”? I have to believe this may very well be the case.

Submitted 24 September 2016:

In a posting to the SMP Update website’s public comment section, dated 10 August 2016, the “county-zSMP” provides a response to the comment that “...very meticulous records of all comments with written copies that are indexed and filed as they were received.” I contest that statement and do not believe it is true. I suggest all citizens of the county consider if they have submitted public comment on the SMP Update, in their view whether it be at county hosted meetings (workshops, Planning Commission public meetings, community briefings/regional watershed processes such as the WRIAs or salmon lead entities), in letter to DCD or other branches of the county government, at the working group that met for quite some time back in the infant phases of the update process (previous DCD administration), or submitted using the online comment form/process at the SMP Update webpage. Consider if that public comment has been recorded and is/will be considered in the update process.

I brought to the attention of the DCD elected director on at least three occasions over a period of a year what appeared to be two periods in time of public comments that such aren’t posted to the SMP Update webpage for at least two of the three public comment sections:

- For the time period October 2013 to August 2014,
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With no response of action apparently take to identify and correct if such comments during those periods were missing from the "...very meticulous records of all comments with written copies that are indexed and filed as they were received." record, a public records
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To: SMP@co.clallam.wa.us (Shoreline Master Program)

This message was sent via the Clallam Website Email Form 10-16-2016.

Name: Ed Bowen
Email: SMP@co.clallam.wa.us
Subject: Shoreline Master Program

Comments: My public comment to the Clallam County SMP Update is regarding Public Comment.

Third posting of the comment that the system does not include in its record on this SMP process. Maybe after posting this some one hundred times the county will realize it is denying my due process, but does it really care about the citizen if it continues to discriminate as such. That's not a question, that is a comment and a grievance submitted under the intent of the US Constitution First Amendment.

Submitted 6 October 2016

It appears this public comment process still is not functioning, at least not in the sense of posting comments that are received from this citizen. Could this be an environment of discrimination on the part of the county to only consider comments received from select "public"? I have to believe this may very well be the case.

Submitted 24 September 2016:

In a posting to the SMP Update website's public comment section, dated 10 August 2016, the “county-zSMP” provides a response to the comment that "...very meticulous records of all comments with written copies that are indexed and filed as they were received." I contest that statement and do not believe it is true. I suggest all citizens of the county consider if they have submitted public comment on the SMP Update, in their view whether it be at county hosted meetings (workshops, Planning Commission public meetings, community briefings/regional watershed processes such as the WRIAs or salmon lead entities), in letter to DCD or other branches of the county government, at the working group that met for quite some time back in the infant phases of the update process (previous DCD administration), or submitted using the online comment form/process at the SMP Update webpage. Consider if that public comment has been recorded and is/will be considered in the update process.

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Ed,  

I am not going to be at the meeting tomorrow but wanted you to know that I did receive your email. It is a bit early to know if these recommendation will have an impact on fair market value. When the plan is put into place we will then have to watch the market area to make the decision on fair market values. We are constantly monitoring changing market areas and analyzing the fair markets values. As you know from talking to me in the past I am not a fan on weighting in on hypothetical issues without my crystal ball (ha ha). I appreciate you keeping me informed on this issue, please continue keeping me in the loop of your email concerns. My door is always open if you would like to stop by too.

Thank you
Pam
Pamela R. Rushton  
Clallam County Assessor  
223 E. 4th Street Suite #2  
Port Angeles, WA 98362  

SUBJECT: Question... Has Analysis been compiled on the effects to property “Fair Market Value” in consideration of the draft Clallam Shoreline Management Plan Update? 

Dear Assessor Rushton, 

I hope you are aware the county is moving forward in its local efforts to significantly update the Clallam Shoreline Master Program, currently before the Board of County Commissioners in discussion and consideration for approval after the public hearing to be held December 12th. 

A topic/component of this update I have not heard in the several years this process has taken place is the requirement of RCW 90.58.290 for the Assessor to consider what restrictions impose on Fair Market Value: 

Restrictions as affecting fair market value of property. 

The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property.

I would ask that at this given point in time, unless this has already been accomplished, that you speak to this requirement as the Commissioners consider the draft plan. I would suggest and also my key areas of concern you “consider”:

- I don’t believe this consideration should be limited to during the assessment process, after the fact and after the update is approved (to include the Department of Ecology determination). I believe this consideration should be planed for within the development of the update even if it is a hypothetical. I say this because many aspects of this draft proposal rely on hypotheticals that establish restrictions that will clearly affect property value (actual market value and surely a consideration for Fair Market Value). I believe you should weigh in at this point, given the BOCC appears to be attempting to address the unknowns that the county staff and Planning Commission didn’t publicly address.

- Two areas I feel are good examples of need for Fair Market Value consideration:
  - Channel Migration Zone delineations on the SED maps, a hypothetical determination that doesn’t even have peer reviewed science to back it, which expands the regulation that limits where property owners can build, and the property owner’s option to pay out of pocket to prove they are not within the hypothetical determination (to obtain a real time low risk assessment).
  - The draft plan creates new designations (zones) adding a buffer restriction zone between the current “natural” and residential conservation; Resource Conservancy. A zone that is completely dependent on Forest Practices “commercial forest landowners” buffer requirements and applies that same outright buffer requirement criteria
(restriction certainly on the buffer size but very likely on the conditions required) on all parcels within that zone, to include those non-commercial landowners and especially the overreach regulation on properties less than 20 acres.

- Regarding the less than 20 acres, the RCW Less than 20 acres exemption is not a component of the RC designation. The economic benefits to Small Forest Landowners, of compensation in value for the requirements of having buffers through the WDNR Forestry Riparian Easement Program is not a land value option for those less than 20 acres and those that don’t plan to harvest timber on their land. So I consider that to be a disparity in equality of the value of the land when applying commercial forest regulated buffers throughout the “reach”.

- This can be demonstrated within my watershed with 26 individual parcels that directly will be in the worst case of the restrictions being within this proposed Resource Conservancy Shoreline Environmental Designation. The 27 is Clallam County itself as the landowner (and not the road system). Attached is the applicable SED map with those parcels highlighted/boxed in yellow.

- These are not the only areas/themes that I do believe the assessor needs to plan for, and the SMP plan itself needs to consider, in how much the components of the draft SMP plan will very likely affect the Fair Market Value; and not just negative value but that also of increased value...and I say the latter because of those citizens (and DCD) that believe there is Ecosystem Values (though I question the amount of ESV has as a roll in the value of private property...it’s an individual’s owner and not at large).

I would ask you to make those considerations now, engage in the BOCC discussion suggesting their upcoming work sessions on the SMP, the only remaining public forum before the hearing at Sequim on Tuesday 14 November you could possibly inquire and get other public input on the property value piece.

Please feel free to bring any thoughts and questions to me and I would like to be connected to the discussion if you so choose to take a “plan for” approach in addressing the requirements of RCW 90.58.290. Thank you.

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326

cc: BOCC
December 11, 2017

Clallam County Board of Commissioners (via email: SMP@co.clallam.wa.us)
223 E. 4th St., Suite 4
Port Angeles, WA 98362

Re: Port of Port Angeles Comments on Draft (September 2017) Clallam County Shoreline Master Program

Dear Mr. Ozias, Mr. Johnson & Mr. Peach:

The Port of Port Angeles appreciates the opportunity to provide comments to the County on the Draft (September 2017) Shoreline Master Program. The Port respects the amount of time and effort applied by the County Staff and all the stakeholders in preparing this document.

This letter includes an attachment that provide a detailed matrix containing our suggestions for alternative language in regards to parking at boating facilities and a recommendation that the buffer in the Marine Waterfront SED be reduced to from 100 feet to 25 feet. Thank you for the opportunity to comment.

Sincerely,
Port of Port Angeles

Jesse Waknitz
Environmental Manager

Attachment A – Port Comments
<table>
<thead>
<tr>
<th>Draft SMP Section</th>
<th>SMP Draft Language</th>
<th>Suggested Edit/Section (Highlighted Bold Blue)</th>
<th>Explanation of Suggested Edit</th>
</tr>
</thead>
</table>
| Chapter 3: Policies and Regulations for Specific Shoreline Uses and Developments | Section 3.6 Parking, Subsection 3.6.2 Regulations - Page 3-22                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | 5. If permitted within shoreline jurisdiction, parking facilities shall be located landward of shoreline buffers identified in Tables 6-1 and 6-2.  
10. Parking facilities serving individual buildings shall be located landward of the principal building being served, except when the parking facility is located within or beneath the structure and is adequately protected, or in cases when an alternate location would have less environmental impact on the shoreline.                                                                 | The allowance of accessory parking, within the proposed shoreline buffers, for authorized water oriented uses will allow for the necessary support and public access to existing, redeveloped or future recreational and boating facilities per WAC 173-26-2413(k). This section comments on the placement of accessory parking facilities within the proposed shoreline buffers, ensuring they are located in a manner that minimizes environmental impacts. |
| Chapter 4 Policies and Regulations for Shoreline Modifications                | Section 4.2 Boating Facilities  
4.2.2 (b)(5) Regulations – Marine and Moorage - Page 4-5                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   | c. Accessory parking facilities shall be located away from the water’s edge and landward of shoreline buffers prescribed by this Program.                                                                                                                                                                                                                                                                                                                                 | The allowance of accessory parking, within the proposed shoreline buffers, for authorized water oriented uses will allow for the necessary support and public access to existing, redeveloped or future recreational and boating facilities per WAC 173-26-2413(k). This section comments on the placement of accessory parking facilities within the proposed shoreline buffers, ensuring they are located in a manner that minimizes environmental impacts. |
| Chapter 6: Shoreline Buffers and Vegetation Conservation                     | Table 6.1 Shoreline Buffer Widths (in feet) by Environment Designation - Page 6-7                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                  | A shoreline buffer of up to 100’ from the ORM mark is proposed.                                                                                      | Reduce the buffer/width to 25’ for all uses, structures and development for the Marine Waterfront SED.                                                                                                                                                                                                                                                                                                                                                                             | The Port is concerned that the 100 foot buffer in the Marine Waterfront SED (Seals, Silver King, & Whiskey Creek) places restrictions on existing improvements and future redevelopment without corresponding ecological benefit. Any impacts from the development in these areas will be mitigated through the SEP and stormwater requirements already in place. These areas currently provide the only major water-oriented commercial, boating facilities and water access in the County, but consist of a small portion (2%) of the entire County shoreline. The current and future water-oriented uses of these properties should be maintained. |
I have worked on this extremely comprehensive draft shoreline master program with my fellow commissioners since shortly after I was seated on this Commission. I sat in the audience for most of the committee meetings that formed the draft plan in 2012. I watched as government officials, community members, tribal members, timber land owners, and environmentalists struggled to find compromise on each line and word in the draft. A consultant and the Department of Ecology gently and patiently worked to get the group to agreement and stay within the boundaries of the RCWs.

That being said, I have voiced from the beginning concern about the heavy hand of the Department of Ecology. While it is important to stay within legal boundaries, the Department has made sure that it approves every word and has itself offered many suggested rewordings so that it fits their template.

I am sure that this document is quite proper. There are certainly enough words in it. What better way to slow down or halt development in rural areas than to hand a new landowner this weighty book that only begins their permitting process. Such is “progress” in this new world.

While it looks like this program is all inclusive, in my mind there are still flaws that cause me to vote “no” on moving this document forward to the County Commissioners.

I am hopeful that when someone at the counter in the Department of Community Development reads this paragraph to a permit applicant that both parties will fully understand its intent:

“All timber harvesting situated within two hundred feet abutting landward of the ordinary high water mark with shorelines of statewide significance shall be conducted consistent with RCW 90.58.150 (selective harvest), as amended.”

I know that this is a direct quote from the RCW, but if there is only one staff member who can explain to an applicant exactly what that means, I hope that staff member is forever on duty. My point is that in explaining some things in the plan, the simple act of explaining has become complicated.

In spite of all the explaining, there is a phrase that is used several times that is not defined at all. “Development shall be discouraged in tsunami hazard zones.” I have asked the question “How will development be discouraged? Where are the tsunami hazard zones (on the county website—and can be changed at any time). Is the county planning for a 2’ surge? A 4’ surge? A 100’ wave? A 240’ wave? How often are these events expected?” I don’t know any of those answers, but development in Clallam Bay could be stopped in its tracks depending on the answers.
In spite of the specificity in this document, there has been a broad brush approach to several areas—100 year floodplains in the western part of the county and the general requirement of having a geotechnical report to prove that land will not move sufficiently if a structure is built less than 200’ from the edge of a bluff. No matter how well versed and knowledgeable an engineer is, he or she can only provide their opinion, and that opinion could be wrong. We have to find a way to make it less onerous on the landowner. A feeder bluff is not necessarily hazardous.

I am not in favor or reducing from 9 to 4 parcels in a development triggering the requirement to provide public access to the water.

And I still struggle with the trimming or removing of vegetation greater than 3” in diameter and a height of five feet, a vast change from CCC 27.12.900.

These are a number of the reasons I am not supporting this document.
SOME OBSERVATIONS ON THE MARINE BLUFFS OF CLALLAM COUNTY

PRELIMINARY DRAFT OF JULY 15, 2012

By Steve S. Luxton, MSc. PE
Senior Geotechnical Engineer
NTI Engineering and Land Surveying

NTI Engineering has been studying the marine bluffs of Clallam County since about 1986 when building setbacks were first regulated along coastal bluffs in Clallam County. Assessments of bluffs and shoreline slopes became much more important in the early 90’s as the Growth Management Act was introduced in Clallam and Jefferson Counties. Since the late 80’s, NTI professional geologists and geotechnical engineers have investigated hundreds of sites and observed many landslides and shoreline processes.

A few of our observations related to Clallam County’s marine shoreline and the processes taking place there are informally outlined below. Due to requests by former clients along Dungeness Bay, we have included some specific information on the shoreline processes and erosional mechanisms at Dungeness Bay with comparisons to the exposed bluffs to the west between MacDonald Creek and the Dungeness Recreation Area.

The Height and Form of Marine Bluffs

The most critical marine escarpments in Clallam County lie between Green Point and the Dungeness Recreation Area near the north end of Kitchen Dick Road. Coastal bluffs in this area are composed of Pleistocene sands, gravels and silts in variable concentrations depending upon position. The bluff height ranges from about 100 feet to nearly 150 feet along most of that reach. Much of the bluff in that section of the Clallam County shoreline have an upper section that is steeper than 75 degrees from the horizontal and some portions of the bluff may erode to a near-vertical condition.

The marine bluff within Dungeness Bay ranges in height from about 70 feet above mean sea level on the west near the Dungeness Spit to roughly 20 or 30 feet on the east near Inner Bay Road. The Dungeness Bay marine bluffs have a sloped section near the shoreline that rises at 45 to 50 degrees from the horizontal that obtains most of the bluff’s height.
Principal Erosional Mechanism -- Wind Driven Waves

One of the causes of coastal erosion on the bluffs facing the Strait of Juan de Fuca are heavy winter winds, waves, and alongshore currents which are driven from west to east by westerly wind. The waves attacking the shoreline along the Strait of Juan de Fuca have a fetch of over 20 miles, and they average 3 feet in height on windy days during the winter. Adding to these wind-driven waves are longer wave-length ground swells that pulse from Arctic storms thousands of miles from the Strait. These waves, which are much more energetic and highly erosive, attain heights of 6 feet or more along the Strait during infrequent winter Arctic storm periods.

The most severe rate of coastal erosion along the shoreline of Clallam County appears to occur along the Dungeness Recreation Area and the adjoining properties in Blue Ribbon Farms further to the west and south. These areas, which project northward and out into the wind and waves, experience the most intense wave attack and longshore drift due to currents; they are further eroded by rising winds that lift the fine sand and silt over the bluff’s rim.

The shoreline along Dungeness Bay is protected from most wind-driven waves by the Dungeness Spit. The waves arriving along most of the shoreline have a limited fetch and wave height of 1 to 2 feet while the larger and more dangerous ground swell waves are entirely absent. In the past twenty years, there have been only two occasions when Dungeness Spit was broached by waves driven by roaring winter winds from the west. Within days or at most a few weeks, these breaches in the spit were closed by the migration and longshore drift of sand and gravel into the washed-out section.

Saturation of the Subsurface By Ground Water

Winter and spring saturation by ground water are a factor in the erosion of the marine bluffs along the Strait of Juan de Fuca. The Pleistocene sediments forming the bluffs include thick sections of lacustrine glacial silt that was deposited at the bottom of “glacial lakes,” the result of ice-blocked drainage to the south and east. These sometime thick horizons of silt restrict the vertical migration of percolating rainfall that occurs over large upland areas. Thus, during wet periods in the winter and spring the saturated subsurface zone thickens and during very wet weather the water table occasionally rises to the surface forming shallow lakes in unexpected places. The ground water weighs down the soil and it tends to “float” the individual mineral grains, thus reducing the internal friction and shear strength of the soil.

Various Erosional Mechanisms Lead to Different Bluff Forms

The effects of high seasonal ground water has different effects on the bluff depending on the triggering conditions at the bluff’s toe. In the exposed sections along the Strait, toe erosion by waves and currents may undercut and over-steepen the lowest section of the bluff leading to a local slide. In winter and spring when the bluff is saturated with
emergent ground water, a small triggering slide at the bluff’s toe can cascade up the escarpment as “slabs” of the heavy saturated sediments slide off of the steep cliff. Vibration and ground motion of the slide often trigger secondary “slab” failures, thus widening the slide zone. The resulting piles of sandy slide debris deposited at the bottom of the bluff may be completely stripped away by the next winter’s longshore drift. Thus, the toe of the bluff may again be exposed and subject to further erosion and undercutting the next winter. As a result of these erosional conditions, the upper part of bluffs in this zone will take on a nearly vertical form.

On the west end in the 50 to 70 foot high section of the Dungeness Bay bluff, the primary erosional mechanism is mud sliding, slumping and slow creep of saturated sediments. A slumping section of the bluff can move slowly downslope for years. Infrequently the slumps develop into shallow mudslides here and there due to excess hydraulic pressure from seeping ground water. After prolonged rainfall, an occasional mudslide, sends mud, trees and brush well out into Dungeness Bay. The resulting mounds of slide debris remain at the bluff’s toe for many years while being very slowly eroded by tidal currents and weak longshore drift to the east. During many years, the bluff’s toe is protected and buttressed by the slump and slide debris. This type of erosion leads to the sloping bluffs seen along Dungeness Bay and the much slower rates of recession that occur there.

Within Dungeness Bay, a significant amount of the slide debris is silt-sized particles from the underlying sediments which restricted the drainage and led to the mudsliding. Thus, these slides and the absence of longshore-drift sorting leads to the sticky mud flats that characterize the area rather than the clean sand and gravel bars that provide ideal littoral habitat.

Along the eastern part of Dungeness Bay, ground water saturation and springs that lead to hydraulic instabilities are largely absent as the silty restrictive layers are not present in the bluff above the beach level. Thus, most of this section of bluff is well vegetated and quite stable with a very slow rate of recession.

Rates of Erosion and Bluff Recession Often Overstated

Rates of marine bluff recession along the Strait of Juan de Fuca probably vary between about 0.8 feet per year to less than 0.1 feet per year depending upon the position of the bluff. The most rapid erosion is being experienced at the Dungeness Spit Recreation Area where the bluff projects to the north directly athwart the onslaught of westerly wind and waves.

Average rates of recession can be estimated by inspection of the piles of slide debris on the beach at the end of winter in different parts of the coastline. A spring inspection of winter slides showed less than 10,000 cubic yards of talus and slide debris per mile of shoreline along the “Bluffs” section between Green Point and MacDonald Creek. A 10,000 cubic yard accumulation calculates to an average annual recession of 0.2 feet. The slide debris buttresses and protects the escarpment in the areas where the total load of
slide debris is not removed by longshore drift each year. Thus, the rate of bluff recession depends largely upon the capacity of the shoreline processes to remove the sediments that accumulate at the bluff's toe.

The capacity of the shoreline processes to remove sediment is variable depending on several factors: the most important of which is the exposure to the westerly wind-driven waves and Arctic ground swell which produce strong drift effects.

Due to the scalloping of the bluff by slides, observations of recession taken from a particular point cannot be developed into averages with much success. A 10-foot-thick slide scarp at one point leaves a cusp zone that is unlikely to slide for a very long time. Sudden slide events, once occurred, may not re-occur at a particular point for long periods of time due to the release in ground water pressure and reductions in internal stress that follow a slide. Because slides occur in sudden and relatively large cusps, averages are misleading and each site needs individual assessment based on its characteristics.

Key Determinants of Instability and Recession Over Time

As is well known, the length of time needed to obtain a specific recession at various reaches of a marine bluff is closely correlated to the bluff's height. Low bluffs typically have lower rates of recession due to lower forces that drive slides and instability. In addition, it is clear that the lines along which slides and slumps move are usually more vertical than horizontal, so it follows that low bluffs have narrower areas of unstable soil and they recede at lower rates. Other important factors in the rate of recession include:

* The occurrence of lateral ground water flows that peak after heavy rains
* The presence of silt and clay in the subsurface as opposed to, say, gravel.

Stability of Some Marine Bluffs In Clallam County Not Enhanced By Buffers

The presence of trees and native plants on sloping marine bluffs is, without a doubt, important to their stability. Plant roots reinforce the soil against tensile forces and they give the surface soil a deeper rooting in the more stable soils at depth. Plants also reduce soil moisture, thus reducing the weight and floatation effects that lead to sliding.

Some portions of the Clallam County Shoreline have bluffs that rise 120 feet in very steep barren escarpments where the principal erosional mechanisms are stress-releasing slab failures and toe-triggered cascading slab-type slides that move along nearly vertical lines. Sliding and recession are always more rapid in zones where lateral ground water flows occur due to upslope percolation of water and restrictive soil horizons or impervious strata in the subsurface.

For this type of bluff, vegetated buffers on the nearly level areas on the top of the bluff
have little or possibly no effect on the occurrence of instability or the bluff’s rate of recession. Actual erosion rates are keyed to the rate of talus removal at the toe of the bluff and the frequency and duration of deep saturation by ground water.

Shoreline Riparians Becoming Better Stewarts of Slopes and Bluffs

NTI’s experience working with bluff and coastal riparians suggests that most people are increasingly willing to take practical steps to keep their bluff and property stable. In the case of high bluffs with near vertical aspect, there is no practical action that a property owner can take to improve the bluff’s stability. But, where sloping bluffs occur, most owners now recognize the importance of retaining and encouraging slope vegetation and trees in steep slope areas and buffer zones. Due to the particular circumstances at each site, the use of deep vegetated buffers upland of the rim of the bluff may or may not contribute to overall stability.

We hope these brief notes are helpful to the Shoreline Management Program Advisory Committee and interested property owners.

Sincerely,

Steve S. Luxton MSc. PE
Senior Geotechnical Engineer
NTI Engineering and Land Surveying
1. The draft SMP designates the entire bluff facing Dungeness Bay from the base of Dungeness Spit to the base of Cline Spit as a “Priority Feeder Bluff”. This designation should be changed to "Bay" (the designation of most of Sequim Bay) or some new lesser bluff type (for example, medium bank). The point being we are not on a 150 ft bluff that erodes sand at 1 - 3 feet per year.

2. The draft SMP imposes a 150 ft. buffer from the top of the bluff. No scientific or engineering justification is given. The buffer or setback should be a function of bluff height, soil composition, and recession rate to name just a few variables. Since this (setback) will be for all practical purposes administered by the Building Permit process, it is not unreasonable to view the buffer/setback on a case by case basis, versus a blanket rule.

3. At the July 10th meeting of the SMP Advisory Committee, a complex, inadequately defined, expensive, and uncertain process to apply for a variance exception to the “150 ft.” setback from the top of the bluff rule”, was added to the SMP. Additionally, there is no stated methodology for measuring the setback for a structure.

4. The draft SMP imposes a designation of “grandfathered structures” as being “out of compliance”. This will result in decreasing future resale value of the property. This is in direct contradiction to the stated intent of the SMP to result in “no net loss”.

5. The draft SMP imposes restrictions on rebuilding of existing structures suffering catastrophic damage. This should be changed to allow for rebuilding on the same footprint subject to no change in bluff stability, distance to top of bluff and current building code requirements.

6. The draft SMP imposes onerous restrictions on property owners as it applies to landscaping and grounds maintenance of any areas within the “Bluff Buffer Zone”. Property owners should not have to seek “permission” to plant, prune, or otherwise maintain their bluff property.
90.58.020 Legislative findings—State policy enunciated—Use preference. 

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the statewide interest over local interest;
(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline;
(5) Increase public access to publicly owned areas of the shorelines;
(6) Increase recreational opportunities for the public in the shoreline;
(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and
prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]
Port Angeles Business Association
Comments on Clallam County Shoreline Master Plan (SMP) Update
Clallam County Board of Commissioners Hearing (same subject), 12/12/17

1. Department of Ecology guidance in the Washington Administrative Code regarding “No Net Loss of Ecological Function” is administrative in nature. The term has not been defined in law by the Washington State Legislature. To our knowledge, this term has not yet been adjudicated either in the State court system or in a Pollution Control Hearings Board action. To prevent needless court challenges to Clallam’s future SMP, a prudent, cautious approach should be taken in applying Ecology guidance limiting future loss of “ecological function” to the County’s SMP. For example, what is a shoreline “ecosystem” – where does it start and stop on County shorelines, and what does an “ecosystem” contain? We have not seen a good explanation of what this term means and what the impact of applying it to Clallam County is.

2. It appears that shoreline buffers will roughly double in size when compared to buffers called for in the current County SMP. We have not seen an explanation of why the current buffer size is scientifically inadequate specifically for shorelands in Clallam County in protecting environmental equities and values within “shorelands” (as defined in State law). If the SMP update leads to a large increase in unbuildable “shorelands” that should be fully justified, based on ample, peer-reviewed scientific analysis specific to Clallam County shorelands.

3. It also appears that proposed shorelands buffers will be applied to development projects according to the geology of the parcel and adjacent shoreline. Common sense dictates that buffers for rocky shorelines should be smaller than for a feeder bluff reach, or for a reach where the foreshore is being build up by littoral circulation from a feeder bluff system. Freshwater Bay and areas to the west comes to mind as an example of the former, and Three Crabs Road comes to mind as an example of the latter.

4. The discussion of buffer size is very complex and hard for the layperson to interpret. In general, regulatory schemes with this level of complexity require considerable up-front planning costs, and produce uncertainty and hesitance for landowners wishing to develop their properties, even for the preferred uses of shorelands found in the Shoreline Management Act (RCW Chap. 90.58). Far from what the underlying law actually encourages, this unnecessarily impinges upon property rights of those landowners and actually runs counter to the goals contained in the law.

5. If the expanded buffers in the draft SMP update are unmodified in the final version as approved by Ecology, there may be the possibility of a successful lawsuit alleging a “regulatory taking” for smaller parcels within County shorelands. It would be very helpful to our understanding of the potential for County taxpayers liability for Fifth Amendment just-compensation expenses if the County were to publish an overall legal analysis for buildable parcels within the County’s shorelands jurisdiction. This analysis would go hand-in-hand with the environmental analysis suggested in paragraph 2 above.

6. PABA incorporates and reiterates our organization’s prior comments on the draft SMP update contained in our letter of February 18th, 2015, copy attached.
Clallam County Department of Community Development
223 East Fourth Street, Suite 5
Port Angeles, WA 98362

February 18, 2015

Dear Planning Commission members,

Please find the following Port Angeles Business Association comments for the public hearing on the Shoreline Master Program ("SMP") Update

1. Section 10.3.5 (4) provides an opportunity for an applicant to request reconsideration of any final action on a permit. This request is to be "considered" by the "decision maker" without a written response or reasons for a change or for no change. Section 10.2.6 (1) gives the "review authority" broad discretion to condition permits—including those for permitted uses. Section 8.3.3 provides that the "administrator" shall specify mitigation measures to attain "no net loss" of ecological functions. Quantifying potential losses of ecological functions and mitigation for those losses will necessarily be very subjective because of the lack of site specific data that demonstrate cause and effect relationships. This creates the opportunity for ecological extortion on the part of the decision maker/review authority.

Requested changes:
- Establish a more robust reconsideration process beyond the county staff but less than the county hearings examiner—preferably to a local elected official.
- Require that a written response to the applicant be provided with detailed written reasons for any denial.
- Establish periodic citizens' oversight to insure that mitigation conditions are proportional to the likelihood and magnitude of reduced ecological functions.

2. The "no net loss of ecological functions" concept is stated as one of the "Governing Principles" of the State Guidelines (in the Washington Administrative Code but not the RCW). WAC 173-26-201(2)(c) explicitly allow impacts to ecological functions "necessary to achieve other objectives of RCW 90.58.020," for example, priority for single family uses and recreational moorage. The mitigation sequence can stop at the "minimize" step without mitigation for the impacts that could not be minimized. Under the State Environmental Policy Act ("SEPA") a declaration of non-significance can be issued for non-material impacts.

The "no net loss" requirement in the draft plan requires mitigation beyond that in SEPA and in the WAC. This excessive mitigation is also required in Section 8.3.4 that states "Compensatory mitigation measures shall occur in the vicinity of the impact or at an alternative location within the same watershed or appropriate section of marine shoreline (e.g., reach or drift cell) that provides greater and more sustainable ecological benefits."

Requested changes:
- Consider "no net loss of ecological functions" on an aggregate basis for the County shoreline as a whole and require such net loss to be material before an applicant is required to mitigate.

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- Establish a clear recognition that minimizing impacts to ecological functions is all an applicant is required to do if there is no material net loss for the County shoreline as a whole.
- Ensure that the SMP requirements are not more onerous on the applicant than those currently existing under SEPA.

3. RCW 90.58 makes a clear distinction between shorelines of statewide significance (annual flow 1,000 of cubic feet per second or more) and shorelines-of-the-state (annual flow of 20 up to 1,000 cubic feet per second). Different policies and protection measures exist for each. The draft SMP does not make that distinction, implying that either one is over protected or the other under protected.

Requested change:
- All of the setbacks and other protection measures for streams with flow rates between 1,000 and 20 cubic feet per second should be reduced.

4. RCW 90.58.150 provides for legislated rights regarding timber harvest adjacent to shorelines of statewide significance. These are not exemptions or variances. As such, these rights should not be restricted, as they are in the "Natural" shorelines designation, and they should not require a substantial development permit or mitigation, under section 8.3.1, to attain "no net loss of shoreline ecological function".

Requested change:
- Timber harvest as specified in the RCW should be a permitted use in all shorelines designations and should occur without mitigation or consideration for "no net loss".

5. There are substantial changes in the shorelines buffering requirements but there is no analysis of how often the existing plan buffers proved insufficient and what respects they proved insufficient.

Requested change:
- Document where and under what circumstances the existing shoreline buffers proved insufficient and what material harm was caused thereby. Adjust the new buffer proposals to address these specific circumstances. Leave the buffers unchanged where there is no documented specific reason for increasing them. If it is not broken, don't try to fix it.

6. The county provided 14 scientific documents to support the draft buffer requirements. Virtually all of these studies involved streams much smaller than the "shorelines of the state", thereby creating a false apparent need for larger buffers. For example, small streams are much more sensitive to stream temperature than "shorelines of the state" and therefore need larger buffers. Using small stream science for the much larger "shorelines of the state" therefore overstates the buffers needed.

Requested change:
- For "shorelines of statewide significance" adjust the buffers using only research from similar waterways. If such studies don't exist, keep the current buffers unchanged.

7. In its summary of the 14 scientific documents referred to above, the county reports a wide range of buffer requirements for various potential threats. Even though the minimum buffer widths in these studies centered around 10 to 30 feet, the county elected to use "best professional judgment" to require much larger buffers. This is particularly true for shorelines of statewide significance.

Requested change:
- Unless specific scientific studies explain why a buffer at the upper end of a range might be required, and those reasons exist on Clallam County shorelines, use the minimum (lower end of the range) buffers from the studies. "Best professional judgment" is not science. The Administrative Procedure Act requires that Washington State ecological rules adopt the Least Burdensome Alternative that would achieve the goals and objectives aimed for. Buffers that are wider than the minimum that can be justified scientifically as necessary would violate the Least Burdensome Alternative requirement and be unlawful and invalid under RCW 34.05.328(1)(e).

8. Proposed buffers were designed to address "Effects of climate change, including flooding, storm surges, and sea level rise, etc." (ESA Memo 12/11/12). This should be stated up front in the SMP.

  Requested change:
  - Chapter 1 of the SMP should state clearly that the policies and protection measures were designed to address climate caused changes to flooding, storm surges and sea level rise.

9. The Environmental Protection Agency has recently adopted "Connectivity of Streams and Wetlands—a Synthesis of Scientific Evidence." Using this, the Washington Department of Ecology has drafted the Washington Wetlands Protection Plan (comment period ended 12/31/2014). These two documents greatly expand wetlands into areas that have little or no surface waters. Without site specific wetland delineation landowners have no way of making informed comments to this draft plan. Nor do they have any way of evaluating the impact of these two new documents.

  Requested changes:
  - There needs to be a comprehensive analysis of how these two documents will change the proposed shorelines jurisdictional area.
  - In the interest of providing certainty to property owners as to what rights and restrictions attach to each specific land parcel, there needs to be a definitive map showing, for SMP purposes, the delineations of all wetlands with significance for the SMP. Property owners should not have to bear the burden of any uncertainty of where the wetlands are or might be deemed to be in the future if definitions change.

10. Section 10.3.1 states: “Permit applicants/proponents have the burden of proving that the proposed development is consistent with the criteria set forth in RCW 90.58 and this Program.” How is this possible when Section 8.3 provides for a county staff person to quantify a suspected "net loss" of ecologic functions and to specify permit conditions that mitigate for that potential loss? Section 8.3 creates a very subjective moving target that puts an applicant in the untenable position of having to accept the opinion of a county staff person that the proposed development, with that staff person's conditions, is consistent with RCW 90.58.

  Requested changes:
  - Establish more robust reconsideration process beyond the county staff but less than the county hearings examiner—preferably a local elected official.
  - Establish periodic citizens' oversight to ensure that mitigation conditions are proportional to the likelihood and magnitude of reduced ecological functions.

11. WAC 173-26-186(5) requires the county or Department of Ecology to conduct a "Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property". Where is that evaluation? How are the subjective concerns and mitigation requirements that surround the "no net loss" concept considered? The standard in Section 8.3.1 of the
SMP of "extraordinary hardship and denial of reasonable use of the property" is much too restrictive, as an unconstitutional taking without compensation can occur through a diminution in value of property far short of a complete "denial of reasonable use".

Requested change:
- Prepare the property rights taking analysis required under state law.

12. The buffer requirements for wildlife habitat and other ecological functions and for visual benefits appear to be a tax on individual landowners for a public benefit. This is particularly unfair because the broad shorelines designations do not represent the very site specific variations in shorelines characteristics. Additionally, there appears to be no way (including financial feasibility) for a landowner to reduce the buffer requirements based on site specific conditions.

Requested change:
- Compensate landowners for the public benefits that they are being required to produce. Allow for alternate protection measures that take into account local site conditions.

13. Section 10.2.10 reads: "Required fees for all shoreline substantial development permits, shoreline conditional use permits, shoreline variances, statements of exemption, appeals, pre-application conferences and other required approvals shall be paid to the County at the time of application in accordance with the Clallam County Consolidated Fee Schedule in effect at that time."

For permitted uses, especially single family homes, there is no evaluation of the total costs of obtaining a substantial development permit. A high total cost of getting a permit can essentially be a prohibition against building and arguably a substantial taking of property rights.

Requested changes:
- Show the entire cost for some typical shorelines conditions and shorelines uses.
- Cap the total cost of fees in connection with obtaining a substantial development permit for a permitted use such as building a single family home.

14. Sections 6.3 and 6.5 imply that natural vegetation is preferred in buffers. While there is an exception for hazard tree removal it is not broad enough to remove trees that eventually will cause landslides because they have grown beyond the slope and soil capacity to hold them.

Requested change:
- Develop a procedure or guide lines to address tree removal when trees show signs of instability.

The Port Angeles Business Association respectfully request that you do not pass the SMP as currently drafted, without making the changes necessary to address all of the points raised above.

Thank you for your consideration.

Sincerely,

Edna Petersen
President
90.58.020 Legislative findings—State policy enunciated—Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

1. Recognize and protect the statewide interest over local interest;
2. Preserve the natural character of the shoreline;
3. Result in long term over short term benefit;
4. Protect the resources and ecology of the shoreline;
5. Increase public access to publicly owned areas of the shorelines;
6. Increase recreational opportunities for the public in the shoreline;
7. Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single-family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58.
Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]
Advisory Memorandum and Recommended Process for Evaluating Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property

DECEMBER 2015
Given the existence of good studies focused on local shoreline sensitivities and impacts from global warming, the County's SMP could be considered negligent if current projections aren't integrated, or at the very least, acknowledged as a concern.

Furthermore, “hard” shoreline armoring such as rip rap and sea walls, even if mitigated, will impact the neighboring properties, coastal sedimentation system, and nearshore ecology, and these risks need to be acknowledged in the SMP. At the Clallam County Planning Commission meeting of 6/21/17, the consultant for Clallam County on the SMP mentioned that there are approximately 83 parcels in the 3 Crabs and Diamond Point areas that could be permitted to install hard armoring to protect their properties.

Olympic Climate Action has submitted comments on two prior drafts of the SMP, and we are concerned not to see evidence in many cases that our comments were incorporated or even considered. We would appreciate an acknowledgment of and response to our current and prior comments.

Thank you for your consideration.

Sincerely,

[Signature]

Representing Olympic Climate Action
Date: 12 December 2017

To: Board of Clallam County Commissioners

From: Olympic Climate Action

Re: Comments on September 2017 draft Shoreline Master Program

My name is Ed Chadd, and I live at 307 W. 6th St. in Port Angeles. I am here representing Olympic Climate Action, a group of local citizens dedicated to researching, educating, and acting on the issue of climate change, with a distinctly local focus. We have a mailing list of more than 700, and our monthly meetings consistently draw 15-20 Clallam County residents concerned about climate change education, adaptation, and mitigation. These comments on the County's draft Shoreline Master Program reflect the consensus of our group, developed at these monthly meetings over the course of more than two years.

We believe one goal of the SMP should be to inform Clallam County residents of potential climate change impacts. In a prior draft, Goal #13 was “To protect people and property from adverse impacts related to climate change and to promote resiliency in responding to climate change impacts.” We note with concern that this goal has been removed from the current draft, and we would like a clearly-stated reason as to why.

We note that FEMA recently acknowledged that the current floodplain insurance rate mapping project is not utilizing recent research findings related to storm surge. While the mapping is supposed to be correcting out-of-date floodplain maps, FEMA admits these updates will still not be current.

Any coherent long-range plan for management of our shorelines would necessarily want to acknowledge increasingly-likely impacts from sea level rise and storm surge, and to forewarn current and future residents of the potential for property damage. The potential for impacts TO the environment FROM property damage is also a concern for many of us.

In Clallam County, sea level is expected to rise by over half a foot within 30 years and could rise more than 4 feet by 2100, with slight differences depending on which end of the County you're talking about. Specific details about these projections are available in the Climate Preparedness Plan for the North Olympic Peninsula, originally published in 2015 by a consortium of local governments, NGOs, businesses, and citizens, including Clallam County, and more recently updated for the sea-level rise maps.

Our mission: We seek a safe, prosperous, sustainable future for residents of the Olympic Peninsula by addressing the threat of climate change. www.olyclimate.org
December 11, 2017

Clallam County Board of Commissioners
223 East Fourth Street
Port Angeles, WA 98362

Dear Commissioners,

Members of the Sequim Association of REALTORS Government Affairs Committee have reviewed the most recent draft of the Clallam County Shoreline Master Program (SMP). We appreciate the opportunity to comment and have a number of concerns.

First, we believe the recommendations of the Port Angeles Business Association are very well thought out and should be incorporated in the SMP before you adopt the final SMP.

The concept of “No Net Loss” is proposed to be measured against a county-wide 2012 baseline. How then, does the Administrator measure mitigation measures that occur in the vicinity of the impact? We believe the whole concept of “No Net Loss” is not clearly defined or stated and will be unenforceable. This places extreme liability not only on property owners but also on county government. Any regulation that is not clearly stated and fully defined becomes subject to interpretation. At that point, the county will require additional employees to become so thoroughly educated and informed on the regulation as to be able to “interpret” the regulations. Furthermore, “interpretation” opens the county to litigation by property owners that might easily entertain a distinctly different “interpretation”.

The buffer requirements established in Chapter 7 greatly exceed those recommended in the 14 scientific documents cited by the county and “best professional judgement”. If there is a need to adopt buffers (especially shoreline) that are at the upper end of the range, those buffers should be based on science rather than judgement. Science that is peer reviewed is the only way to justify this restriction on private property use.

The restrictive allowances for development in Section 6.3.2 do not provide a reasonably sized dwelling plus driveway. The market value of a shoreline lot justifies an upscale home and an impervious driveway.

The US Department of Interior in their comment of Feb 24, 2015 stated “Unlike many other areas around Puget Sound, Clallam County has many pristine aquatic areas and shorelines that are in great condition or have been restored, and provide many benefits to the people and wildlife in the area. Recognizing this fact, we suggest the SMP follow a higher standard than is required by the Shoreline Management Act’s minimum protection requirement”. We believe that to follow a higher standard flies in the face of the Administrative Procedures Act that requires ecological rules adopt the Least Burdensome Alternative that achieve stated goals and objectives.

The Sequim Association of REALTORS respectfully request that you do not pass the SMP as currently drafted without making changes necessary to address the points raised above, as well as those of the Port Angeles Business Association.

Thank you for your consideration.

Sincerely,

[Signature]
Moratorium on Fish Pens

WHEREAS the commercial and recreational salmon fishing activities are both providing economic benefits to Washington State;

WHEREAS millions of dollars (federal, state, local and tribal) have been spent during the past decade on projects addressing the coastal and inland waters of the state in efforts to protect native salmon stock listed as threatened or endangered by the Endangered Species Act;

WHEREAS hundreds of citizen volunteers have donated thousands of hours to restoration of native salmon runs, and tribes have invested millions in restoring and maintaining healthy salmon runs; and

WHEREAS the Puget Sound Partnership and its Action Agenda and other regional plans were created to expand and enhance the restoration efforts;

WHEREAS the task of the Puget Sound Partnership (PSP) is to “ensure” (as endorsed by former Governor Christine Gregoire in the preamble to the PSP) that the Sound will forever be a thriving, natural system with clean marine and fresh waters, healthy and abundant native species, natural shoreline and places for public enjoyment and vibrant economy that prospers in productive harmony with a healthy Puget Sound;

WHEREAS WAC-173-26-201 (3)(E)(iii) requires that County’s Shoreline Master Programs “shall achieve no net loss of ecological function and address the cumulative impacts on shoreline ecological function that would result from future shoreline development and uses that are reasonably foreseeable”;

WHEREAS all the environmental challenges to aquaculture listed in NOAA’s Draft Aquaculture Policy (Feb 2011), to wit “nutrient and chemical wastes, water use demands, aquatic animal diseases and invasive species, effects on protected and sensitive marine areas, potential competition and genetic effects on wild species, effect on endangered or protected species, effects upon habitat for other species, and use of forage fish for aquaculture feeds”, are all risks related to Atlantic Salmon Fish Farms;

WHEREAS WAC173-26-201 (2)(f) states that SMPs “be designed to achieve overall improvements to ecological functions over time when compared to the status upon adoption”;

WHEREAS WAC 173-26-201 (3)(f)(111)(c) states that shoreline ecological functions in marine waters include “removing excessive nutrients and toxic compounds”; WHEREAS the indication of a highly contagious and lethal Infectious Salmon Anemia (ISA) virus has been discovered in juvenile Sockeye Smolt in British Columbia;
WHEREAS that virus, discovered in Canada, tested positive to the European strain of ISA and suggests there is a likelihood of it having originated from Atlantic Salmon Fish Farms;

WHEREAS no country has gotten rid of the ISA virus once the virus arrives; and

WHEREAS Washington State Environmental Policy Act of 1971 (SEPA) RCW Chapter 43.21c states that: “Master Program shall indicate that, where required, mitigation shall be applied in the following sequence of steps in order of priority with (e)(i)(A) of this subsection being top priority - (A) avoiding the act altogether by not taking a certain action”;

WHEREAS the WSDCC Resolutions committee revisited Resolution 568 at its February 1, 2014 meeting in Vancouver, WA;

THEREFORE BE IT RESOLVED that the Washington State Democratic Central Committee, recognizing the significance and validity of the precautionary principle, submit this resolution and to urge the Governor to issue a moratorium on all new in-water fin fish net-pen aquaculture for Atlantic Salmon in the Coastal waters of Washington State until there is peer-reviewed evidence in place ensuring there is essentially no risk to native salmon runs.

Submitted by the Agriculture and Rural Caucus to the Washington State Democratic Central Committee for consideration at its January 28, 2012 meeting in Shelton. (Date Submitted 1/28/2012)

The WSDCC Resolutions Committee “AMENDED THIS RESOLUTION AND RECOMMENDED A PASS” at its January 28, 2012 meeting in Shelton.

The WSDCC “PASSED” this resolution at its January 28, 2012 meeting in Shelton.

The WSDCC Resolutions Committee “AMENDED THIS RESOLUTION AND RECOMMENDED A PASS” at its February 1, 2014 meeting in Vancouver.

The WSDCC “PASSED” this resolution at its February 1, 2014 meeting in Vancouver.
What is an Atlantic salmon net pen?

A net pen is an open containment cage in the ocean designed with the purpose of raising Atlantic salmon from egg to adult for retail sale. Net pens are floating feedlots that can hold hundreds of thousands of Atlantic salmon at a time. This graphic demonstrates their known impacts on the marine environment.

**FISH MEAL & FISH OIL**

Using wild-caught fish to feed farmed fish puts pressure on wild fish populations and can impact other wildlife that depend on them for food.

**DRUGS & CHEMICALS**

Antibiotics, pesticides, and other chemicals often used in net pen aquaculture flow out of the pens and can harm the broader marine ecosystem.

**FECAL WASTE**

High concentrations of Atlantic salmon produce vast amounts of untreated fecal waste. Additionally, phosphorus, carbon, and nitrogen are released into the environment as inorganic waste.

**PARASITES & DISEASE**

Disease, pathogens, and parasites are amplified in crowded net pens and spread rapidly to wild fish. In 2012, over 1,000,000 pounds of farmed salmon in Puget Sound were killed by IFN, a deadly and infectious salmon virus.

**ESCAPEMENT**

Escaped fish transmit diseases and parasites to wild fish, and compete with those same populations for food and habitat.

**MARINE MAMMALS**

Impacts on wild fish populations can affect the amount of food available for marine predators such as orcas. Seals, sea lions, sharks, birds, and other marine wildlife can be attracted and harmed by net pens as well.

**SEA FLOOR IMPACTS**

High amounts of fecal waste land and settle on the sea floor, reducing aquatic biodiversity.
Clallam County Board of Commissioners  
223 East Fourth Street  
Port Angeles, WA 98362

Dear Commissioners,

Members of the Sequim Association of REALTORS Government Affairs Committee have reviewed the most recent draft of the Clallam County Shoreline Master Program (SMP). We appreciate the opportunity to comment and have a number of concerns.

First, we believe the recommendations of the Port Angeles Business Association are very well thought out and should be incorporated in the SMP before you adopt the final SMP.

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The restrictive allowances for development in Section 6.3.2 do not provide a reasonably sized dwelling plus driveway. The market value of a shoreline lot justifies an upscale home and an impervious driveway.

The US Department of Interior in their comment of Feb 24, 2015 stated “Unlike many other areas around Puget Sound, Clallam County has many pristine aquatic areas and shorelines that are in great condition or have been restored, and provide many benefits to the people and wildlife in the area. Recognizing this fact, we suggest the SMP follow a higher standard than is required by the Shoreline Management Act’s minimum protection requirement”. We believe that to follow a higher standard flies in the face of the Administrative Procedures Act that requires ecological rules adopt the Least Burdensome Alternative that achieve stated goals and objectives.

The Sequim Association of REALTORS respectfully request that you do not pass the SMP as currently drafted without making changes necessary to address the points raised above, as well as those of the Port Angeles Business Association.

Thank you for your consideration.

Sincerely,

Michael E. McAleer  
Co-Chair, Gov’t Affairs

Marguerite Glover  
Co-Chair, Gov’t Affairs
Dear County Commissioners,

I would like to thank the Planning Commission, your Planning Staff, and you, for working on the update to the Shoreline Master Program.

I am in total agreement with the Port Angeles Business Association’s (PABA) original letter and update; and, I support the letter that I signed, brought forward by the Government Affairs Committee of the Sequim Association of REALTORS®.

I have quite a concern about the increasing of the buffer widths in most cases, for this updated SMP. Most ecosystem scientists and biologists will agree that quality of habitat can be better than quantity. One size does not fit all. Some wetlands have more diversity of plant life and higher functions, than do others. Side channels of streams/rivers, can allow for salmon to rest and spawn, and wind up being more valuable than the main stem of the river during flood conditions.

I have seen instances where a property owner has enhanced a buffer, rather than degraded it. We have some wonderful, pristine shorelines in Clallam County, and some that have destroyed. With partners like the Clallam Conservation District, Fish and Wildlife, the Tribe, the North Olympic Land Trust, Army Corps of Engineers, and others, we have enhanced shorelines and wetlands. These improvements must be allowed into the calculations of “No Net Loss,” for the county, when determining that some private properties will be “okay,” just left as is, continuing lawns or agriculture. We need to have fairly large setbacks from feeder bluffs, where possible, as those bluffs WILL erode. Other properties are more stable, and vegetation can help that. But, in order for the county to continue to get the large property taxes that come with shoreline property, those people need to be able to enjoy their views and property. Some trees will need to be limbed up, and views preserved. Some of these property owners have been paying high taxes for decades, to the county. To now have the property devalued through large buffers, less ability to trim or remove vegetation, and decreasing of structure size and impervious surface, is quite a blow to the landowner. “No Net Loss” needs to be defined more specifically.

Another approach is to allow the property owner to do some adaptive management strategies to provide for enhancement of buffers, without making them larger. Back in 2010, we had a presentation and paper from Robert R Fuerstenberg, an Ecologist, from Vashon, about “A Context-based Approach to Shoreline and Critical Areas Management.” Some interesting ideas that could provide flexibility for the property owner, while still protecting the environment and habitat. Here is a link to that paper: https://www.warealtor.org/docs/default-source/ga-resources/shoreline-critical_areas_management.pdf?sfvrsn=4

Since we all live in Clallam County, I have a concern with the Channel Migration Zones maps out in the West End. These maps are not very accurate; and, I believe that the county should apply for some grants to try to make them more reliable. The East end of the county has benefitted from decades of research on the Dungeness River, by Ecology, the Tribe, the county, Fish and Wildlife, and others.
I am hoping that more time will be given, to review all of the public testimony that you are gathering, maybe do some changes to the draft SMP, and possibly, have one more hearing.

Thank you.

Respectfully submitted,

Marguerite A Glover
103 Pond Lane Sequim WA 98382
marg@sequim.com
360-461-3365
11 December 2017

Clallam County Board of Commissioners
223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015

Comments on proposed netpen regulations, Clallam County SMP update.

Clallam County is updating their Shoreline Master Program (SMP). The current draft updated version allows netpens in Clallam County waters. Our comments to this SMP update include but are not limited to the following. Additional comments may be provided in the future.

We feel strongly that both the existing and any new proposed net pen facilities should be removed from waters of the state completely, and relocated to upland, closed system facilities. Before finalizing the SMP, Clallam County should update SMP language to prohibit in-water net pens from marine waters and require that they be converted to upland closed aquaculture systems. A new in water facility, as currently proposed by Cooke Aquaculture, should absolutely not be built at all. Pre SMP-update Production at the current location should absolutely not continue, or be increased.

The ecosystem impacts of net pens are well documented. The Millennium Ecosystem Assessment (2005) clearly identified aquaculture as a major threat, stating: "The greatest threat to coastal systems is the development-related conversion of coastal habitats... through coastal urban sprawl, resort and port development, aquaculture, and industrialization" (emphasis added).

Aquaculture, including net pens, are a significant source of marine plastic debris (Hinojosa and Thiel 2009, Thiel et al 2011, Arthur and Baker 2011). Locally, the current net pen site in Port Angeles harbor was one of the top source of marine debris in early Clallam MRC/NWS Commission derelict gear clean up efforts (Clallam MRC, personal communication).

Net pen ecosystem-scale impacts are significant. They concentrate and propagate parasites and disease for native stocks of salmon and forage fish (Morton et al 2011, Krkošek et al 2013, Morton et al 2008). Atlantic salmon net pens in British Columbia have recently been documented as the likely point of introduction of Piscine reovirus into...
Ecologically the siting of both the existing net pens and the proposed new facility site is extremely poor. The Strait of Juan de Fuca is a major migratory corridor for many of the region’s salmon, forage fish, bird, and marine mammal species. The site is just offshore of the eastern edge of the Elwha drift cell and at the beginning of the Dungeness drift cell. Both reach support world scale ecosystem processes, including sediment delivery, forage fish and salmon migration, and forage fish spawning, whale and bird migration.

The Strait of Juan de Fuca is an extremely important migratory, rearing, and feeding corridor for many of the region’s critically endangered and declining salmon and forage fish stocks, and many use shallow and inshore areas including those associated with the proposed project site. These include sockeye, Chinook, coho, steelhead, chum, cutthroat, and bull trout, surf smelt, sand lance, herring, and eulachon. Surf smelt spawn on the beaches adjacent and just down drift of this proposed facility (Fresh 2006, Quinn 2009, Melnychuk et al 2010, Moore et al 2010, Shaffer et al 2012, Parks et al 2013, Wefferling, 2014, Fresh et al unpublished data). Ecto-parasitic copepods are observed regularly on juvenile herring and sand lance along the central Strait nearshore (Shaffer unpublished data), indicating that impacts from the existing net pen facility are already occurring.

Placing net pens at the new high energy location will not only assure increased structural failure, resulting in pollution and plastic and metal wreckage on the shoreline. It will also insert disease, parasite, and pollution vectors more directly into the head of the Salish sea water system as well as the migratory path of majority of Salish Sea salmon and forage fish species that use the Strait of Juan de Fuca as they transit to and from inland waters.

Ecosystem services analysis have repeatedly proven that protecting and restoring intact natural capitol systems—which when functioning don’t cost a penny, and do not contaminate our marine ecosystems but instead contribute to the economic efficiency of our communities—are the only meaningful way to sustain our highly valued region (Flores 2014). The Ecosystem Services Valuation that Clallam County co-authored documented that the stretch of shoreline included in this project proposal has some of the highest value and intact services of the region that should be protected (Flores et al 2014). In the context of salmon farms, protection means total avoidance of marine waters and ecosystems. This is possible thru upland and closed systems.

Because of the importance of our region’s fish and ecosystems they depend on, the state of Washington and federal government has spent literally billions of dollars over the last two decades to restore the ecosystem and fisheries resources of Puget Sound. In 2015, the top 12 proposed restoration projects alone of Washington state’s Puget Sound Partnership were estimated to cost $173 million dollars (Dunagan 2015). Projects have included hundreds of millions of federal and state dollars for the Elwha dam removals, the largest dam removal in the world, and ongoing efforts to restore and protect the Dungeness
Literature Cited


To: Clallam Co. Board of Commissioners

NO FISH FARMING PENS!!

Sincerely,
Diane D. Morris

728 Carolina
Port Angeles WA 98362
December 12, 2017
From: pearl hewett <phew@wavecable.com>
Sent: Tuesday, December 12, 2017 7:55 AM
To: zSMP
Cc: Ozias, Mark; maryjane.robins@mail.house.gov; Brian and Brooke; judymiller173@frontier.com; Tracy Horn; notac@olypen.com; steve.tharinger@leg.wa.gov; Sandy Rains; Delane Hewett; Vi; Van De Wege, Rep. Kevin; parlette.linda@leg.wa.gov; Office of Jesse Young; Mike Chapman; connie beauvais; gaelary@olypen.com; Stephanie Noblin; Ivan Stocker; LIZ BOWEN; lizziephel@aol.com; Sandy Collins; ahlburgk@msn.com; marg@sequim.com; randy simmins; Wylie clark; info@justwateralliance.org; Darol Johnson; Glen Morgan; Ross Krumpe; Louise Gliatto; RON SUSLICK; harry bell; Jim Boyer; Dick Pilling; Dan Clem; Rene*; Amanda Hewett; Art Ayres; Karl Spees; dianne l; Tyler, Ross; brian winter; office@konp.com; Pam Roach; JOSH HOWARD; Winborn, Mary Ellen; Johnson, Randy; Peach, Bill; diane royall; joni howard; Tristin Hewett; Lois Perry; Sue Forde; Rick Forschler ; Amy Cruver; levi howard; chuck cushman; Janet Fowler

Subject: 2017 SMP Update 727 Comments

2017 SMP Update 727 Comments

Posted on December 12, 2017 6:49 am by Pearl Rains Hewett Comment

THE CLALLAM COUNTY BOCC PUBLIC FORUM ON THE SMP DRAFT UPDATE IS TODAY, DEC 12, 2017 AT 10:30AM

I SHALL NOT ATTEND

I'VE SPENT NEARLY SEVEN OF MY GOLDEN YEARS COMMENTING ON ISSUES OF CONCERN TO AND FOR VESTED PRIVATE SHORELINE PROPERTY OWNERS, ON THE SMP UPDATE JAN 26, 2011 TO DEC 12, 2017

THERE ARE 727 PUBLIC COMMENTS POSTED ON THE SMP WEBSITE

I'VE MADE AT LEAST 150 OF THEM

THE CUTOFF DATE FOR CLALLAM COUNTY SMP UPDATE DRAFT PUBLIC COMMENTS TO THE BOCC IS TODAY, DEC 12, 2017.

PUBLIC COMMENTS HAVE NOT BEEN UPDATED SINCE DEC 6, 2017?

WILL YOUR PUBLIC COMMENTS AFTER DEC 6, 2017 TO THE CLALLAM COUNTY BOCC BE EXCLUDED BECAUSE THEY HAVE NOT BEEN POSTED?

MY SMP COMMENTS AFTER DEC 6, 2017 ARE POSTED ON behindmyback.org

March 18, 2015: THERE WERE 617 WRITTEN SMP PUBLIC COMMENTS POSTED ON THE SMP WEBSITE when somebody? prepared an SMP public oral and written comments “MATRIX” On 160+ of the 617 Public Comments?
A new summary of public comment document, undisclosed to the public, 32 page SMP document, generated for, to be used by and considered by, the Clallam County Planning Commission in their decision making process on the SMP Update Draft.


WERE YOUR SMP PUBLIC, ORAL COMMENTS OR QUESTIONS OF CONCERN INCLUDED WITHIN THE ARBITRARY DCD CUT OFF DATES THAT PROVIDED THE SMP 160+ MATRIX" FOR THE CLALLAM COUNTY BOCC?

* [PDF]

www.clallam.net

www.clallam.net/LandUse/documents/619_PHewett.pdf

SMP and other Matrix Mumbo Jumbo March 18, 2015: This work session on the 2014 SMP Update is anticipated to be generally ... Behind My Back I A Thousand Wrongs?

PUBLIC COMMENTS HAVE NOT BEEN UPDATED SINCE DEC 6, 2017?

WILL YOUR PUBLIC COMMENTS AFTER DEC 6, 2017 BE EXCLUDED FROM CONSIDERATION BY THE CLALLAM COUNTY BOCC BECAUSE THEY HAVE NOT BEEN POSTED?

THERE ARE 726 PUBLIC COMMENTS POSTED ON THE SMP WEBSITE

SMP UPDATE ISSUES AND CONCERNS?

CLICK ON THE LINKS READ ALL OF THEM

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<td>040816-PHewett</td>
<td>030115 – PHewett</td>
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<td>060217-EBowen</td>
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<td>031315 – KSpees</td>
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<td>031415 – KSpees</td>
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<td>091016-LPerry</td>
<td>031515 – KSpees</td>
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<td>101616-EBowen</td>
<td>032115 – PHewett</td>
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</tbody>
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2014 Comments

122914 – MQuinn
121614 – OCA
111814 – PHewett
111814 – PHewett
111714 – PHewett
091514 – PHewett
081814 – PHewett

Comments received prior to 2014 HERE

CLICK ON THE LINK “HERE” LINK ABOVE.

WHAT WAS YOUR PUBLIC COMMENT CONCERNED 2013-2012-2011?

WERE YOUR SMP PUBLIC, ORAL COMMENTS OR QUESTIONS OF CONCERN INCLUDED WITHIN THE ARBITRARY DCD CUT OFF DATES THAT PROVIDED THE SMP 160+ MATRIX” FOR THE CLALLAM COUNTY BOCC?

• **DOE SMP PUBLIC SMP COMMENTS FROM 5/31/11 #100 TO ...**

citizenreview-clallamcounty.org/2012/07/roe-smp-public-smp...

TO WHOM IT MAY CONCERN A COMPLETE LIST OF CLALLAM COUNTY DOE SMP COMMENTS 2010-2012 Available on Clallam County SMP website. http://www.clallam.net/realestate/html ...

DOE SMP PUBLIC SMP COMMENTS FROM 5/31/11 #100 TO 7/02/12 #284
TO WHOM IT MAY CONCERN

A COMPLETE LIST OF CLALLAM COUNTY DOE SMP COMMENTS 2010-2012

Available on Clallam County SMP website.

http://www.clallam.net/realestate/html/shoreline_management.htm

All public comments are subject to Public Disclosure.

I will complete the comments on #1 to #99 and document the pros and cons.

Pearl Rains Hewett

July:
  - 070212 – RKonopaski – G
  - #284 clarifying the setbacks on marine shorelines?

June:
  - 062312 – ESpees – G
  - 175-150 + 10 foot setbacks
  - 061712 – PHewett – G
  - DOE private meeting
  - 061412 – PHewett – G
  - Futurewise and Grays Harbor
  - 061412 – PHewett – SED
  - WHAT IS THE ECONOMIC FUTURE OF CLALLAM COUNTY?
  - 061112 – PHewett – G
  - See Nollan, 483 U.S. 825, 837 (1987). precautionary setbacks
  - 060912 – PHewett – G
  - 060712 – PHewett – G
  - #277 Citizens’ Alliance for Property Rights v. Sims. 65% taking violates law
  - 060312 – ESpees – G
  - #276 public access to our shorelines

May:
  - 053012 – PHewett – SED
  - #275 RE-DESIGNATE TO FRESHWATER RURAL
  - 052912 – PHewett – G
  - #274 COORDINATION PROCESS 43 UNITED STATES CODE SECTION 1712
  - 052412 – RCahill – SMPdraft
  - #273 the spirit and intent of the Department of Ecology’s Shorelands and Environmental Assistance, publication number 09-06-029,
  - 052212 – JBlazer – SED
  - #272 The problem... my parcel and the 2 parcels to the south would be hard pressed to build residences that take advantage of the marine view using the 175 ft setback in the proposed designation of Freshwater Conservancy.
  - 052112 – MBBlack – SMPdraft
  - #271 The overall concern I have is that you are in fact taking future uses away from private land holders without clearly acknowledging doing so.
  - 051712 – PHewett – G
  - #270 SELLING AND BUYING DOE SMP NON-CONFORMING PROPERTY
  - 051612 – PHewett – PPS
  - #269 SMP Public Forum participation
  - 051512 – ASoule – SMPdraft
  - #268 SMP references to sea level rise
  - 051212 – PHewett – G
  - #267 FORKS SMP PUBLIC FORUM MAY 10, 2012
  - 051212 – KNorman – SED
• #266 I hope that you will reconsider the classification of these lots based on this information as to do otherwise would be a severe hardship on the owners of the lots and would constitute a "taking" of the land.
  051112 – FutureWise-PPS – SMPdraft
• #265 Clallam County v. Futurewise 7 years + lawsuit Carlsborg. The current SMP updates are an opportunity to significantly improve protection for the straits and the county’s other shorelines.
  050812 – EBowen – G20
• #264 S. Gray to Ed Bowen Final Draft WRIA 20 Preliminary SMP Elements Report
  050812 – WFlint – SED
• #263 The Lower Lyre River should be designated as Freshwater Residential (FRSD), and not Freshwater Conservancy (FC) as it is now proposed.
  050812 – PHeWett – G
• #262 SCIENTIFIC PAPERS AND THE DUE PROCESS OF LAW DOE has consistently ignored questions asked on SMP comments, posted on the Clallam County SMP Update website, and at SMP Advisory meetings. I am requesting answers to the following questions to comply with the core principles of Due Process and the DOE SMP taking of private property in Clallam County.
  050712 – USFWS – SMPdraft
• #261 The Service strongly supports maintaining the feeder bluffs in their natural functioning condition.
  050612 – PHeWett – G
• #260 If it is not recorded with the Clallam County Auditors Office it is not on the Property Title. What should be recorded with the Auditors office for Public Record?
  050512 – ESpees – G
• #259 The premise of the SMA/SMP Undate ‘that there is and environmental crisis’ that requires a draconian governmental intervention is bogus.
  050412 – LMuench – G
• #258 I think you would best be served by showing shrubs as well as trees. Since the graphics are done, what about a red arrow pointing to the trees saying “may be limbed for views.” This is a major issue with shoreline land owners.
  050412 – ESpees – G
• #257 The ECONOMIC IMPACT of the DoE imposed SMA/SMP Update for 2012 will be staggering!!!
  050412 – PHeWett – G
• #256 Clallam County DOE SMP update, written text, uses our safety and protection as an excuse to take, restrict and control the use/development of our private property.
  050312 – JSettcher – G
• #255 I appreciate the public benefit of a healthy ecosystem but oppose the taking of private property by prohibiting private landowners from applying the best engineering practices to resist natural whims.
  050212 – PHeWett – G
• #254 REAL ESTATE MARKET VALUE OF NON-CONFORMING PROPERTY
  April:
  042812 – PHeWett – G
• #253 FEMA AND OTHER POLICY SPECIFIC INSURANCE COVERAGE
  042812 – PHeWett – G
• #252 House Bill 2671 If a county appeals the (DOE) Department of Ecology’s final action on their local shoreline master program and the appeal is given to the Growth Management Hearings Board?
  042812 – PHeWett – G
• #251 No. 87053-5 IN THE SUPREME COURT OF THE STATE OF WASHINGTON
  042612 – PHeWett – G
• #250 CLALLAM COUNTY - NEGLECT OF WIRA 20 SMP PRIVATE PROPERTY OWNERS
  042112 – Spees – G
• #249 this insane outrageous governmental over reach under the thinly veiled cover of saving the environment. The problem now is not the environment.
  042112 – PHeWett – G
• #248 PARTIAL DISCLOSURE OF SMP IMPACT ON PRIVATE PROPERTY OWNERS
  041812 – PHeWett – G
• #247 The statistics introduced at the last SMP Advisory meeting, on how many private property owners, property and single family dwellings will become non-conforming by the SMP Draft marine 175’, 150’ plus 10’ setbacks, has not been posted on the SMP web site.
  041712 – Port of PA – G
• #246 Table 4.1 the proposed draft buffer in row “a” should be modified from 100’ to 50’
  March:
  032912 – PHeWett – G
• #245 THE MOST UNSCIENTIFIC PARTS OF THE DOE CLALLAM COUNTY SMP ARE, that even with DOE’S 1616 employees and a billion dollar budget DOE doesn’t have a single analyst capable of compiling and reporting
the most important documented/published scientific statistics provided by The Clallam County Inventory and Characteristic reports.

- #244 ESA Adolfsen’s consultant’s failure to comply with WA State Law RCW 90.58.100 Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion.

- #238 These shorelines are critical for wildlife and natural ecological functions. I favor large setbacks. I favor development restrictions.

- #236 There is no way that these voluminous shoreline land use policies can be understood. It takes no imagination to understand that this process is not ‘due process’ in the taking of beneficial use of our Private Property

- #234 It may also be possible that under certain development conditions, if done to minimize impervious surface and maximize water infiltration, could enhance the function of the buffer and perhaps allow for a narrower buffer.

- #233 Lake Sutherland is a perfect example of Ecology’s NO NET LOSS.

- #242 Thus, all regulation is evil by its nature and it is repressive. The best regulations are those that are the least that is necessary to accomplish their intended legitimate purpose. And “legitimate” is not to be broadly construed.

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- #231 The first half establishes the expected character of shoreline buffers, and is well stated. But the second half goes on to state that only 80% of the buffer vegetation is protected, and that 20% can be used for lawns and other use areas.

- #230 NO NET LOSS MENTIONED In law RCW 36.70A.480 (4) Shoreline master programs shall provide a level of protection to critical areaslocated within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources as defined by department of ecology guidelines adopted pursuant to RCW 90.58.060.

- #229 The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program.


- #227 TRIBAL comment

January:

- #226 TRIBAL comment


- #224 ESA Adolfsen’s consultant’s failure to comply with WA State Law RCW 90.58.100 Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion.

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February:

- #222 FutureWise – SMPdraft

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- #219 The policies, goals, and provisions of chapter 90.58 RCW and applicable guidelines shall be the sole basis for determining compliance of a shoreline master program.


- #217 TRIBAL comment
SMP Comments 2011:
December:
• 120811 – PHewett – G
• #225 WETLANDS NOT ON SMP MAPS Attachments: Lowell OREGON Local Wetland Inventory Report DRAFT.docx
• 120811 – PHewett – G
• #224 Perkins and Coie Your Request on Tacoma SMP Attachments: 12-13-10 letter to Gary Brackett.pdf; SMA and
Public Access.pdf
• 120711 -OlympicEnvironmentalCouncil (OEC) – G
• #223 Sea level rise and climate change
• 120611 – WDOE- ICR20
• #222 Draft WRIA 20 Inventory and Characterization
November:
• 113011 – ESpees – G
• #221 In the WRIA Process and the SMA/SMP Update Process the concept of State regulation of land use based on
Feeder Bluffs and Littoral Drift Cells is a False Construct.
• 112511 – ESpees – G
• #220 The Doe’s current cram-down of NNL and increased set-backs based on precautionary principle and ‘new
understandings of science’ (non-science/non-sense/pseudo-science) should be rejected.
• 112411 – ESpees – G
• #219 It’s content is extremely pertinent to the work we are doing in Clallam County’s SMA/SMP Update.
• 111611 – MPfaff-Pierce – SED
• #218 Specifically, I am requesting that you reclassify the entire Whiskey Creek Beach Resort area as Modified
Lowland. Right now you are proposing that a short area west of the creek be designated as Modified Lowland and the rest
as High Bank.
• 111111 – JPetersen – SED
• #217 Many activities would be prohibited without really looking at the specifics.
• 111011 – PHewett – G
• #216 This is on the DOE Public Trust Doctrine web site (88 pages)”Finally, SMP’S, unlike other comprehensive plans,
are adopted as WAC’S and become part of the state’s Shoreline Master Program. As such, all local SMP rules, regulations, designations and guidelines BECOME STATE LAW AND ARE ENFORCEABLE. In this manner, protection of
public trust resources and uses becomes binding.”
• 110711 – PHewett – G
• #215 SMP FOLLOW THE LETTER OF THE LAW
• 110711 – PHewett – G
• #214 Court: Washington Supreme Court Docket: 84675-8 Opinion Date: August 18, 2011 Judge: Johnson Areas of
In affirming the Court of Appeals, the Supreme Court explained that even though there is significant local government
involvement in the creation of SMPs, the process is done in the shadow of the Department of Ecology’s (DOE) control.
• 110711 – PHewett – G
• #212 EXCLUDED SMP DOE WAC’S DO NOT BECOME LAW
• 110511 – ESpees – NNL
• #211 In keeping with regard to no net loss was unclear and without any foundation.
• 110511 – ESpees – G
• #210 The law has recently been perverted by State Agencies to usurp private property rights, an uncompensated State
taking by regulation.
• 110511 – PHewett – G
• #209 There is no WA State law requiring any taking of private property for public access on the Clallam County SMP
Update.
• 110411 – PHewett – G
• #208 WHO CAN STOP DOE WAC’S FROM BECOMING STATE LAWS?
• 110411 – PHewett – G
• #207 Victory for PLF Whatcom County’s shoreline management rules conflict with state law, which mandates that
counties “shall provide for methods which achieve effective and timely protection against loss or damage to single family
residences and appurtenant structures due to shoreline erosion.” RCW 90.58.100.
• 110411 – PHewett – G
• #206 BY Law there IS NO mention of the words “imminent or danger or soft armoring” IF THIS WORDING IS USED
ON THE CLALLAM COUNTY SMP, IN SPITE OF THE FACT THAT IT CONTRADICTS WA STATE LAW RCW 90.58.100
Protection of single family residences IT WILL BECOME CLALLAM COUNTY LAW.

- 110311 – WDFW – ICR
- #205 A useful tool may be to describe, in general, the range of possible existing conditions within any portion of the shoreline.
- 100111 – JLarson – ICR
- #203 I made at last SMP-WG meeting be incorporated into record
- 102011 – PHewett – SED
- # 202 Who's toes will you be stepping on by using this? Will you be able to notify the private property owners that are inadvertently compromised? Are there any single family residences, in any areas, where you have not specifically provided comment on protection by law?
- 102011 – PHewett – SED
- #201 Is this another WAC overstepping it’s authority and the LAW?
- 101911 – PHewett – NNL
- #200 The concept of no net loss in this State originated with earlier efforts to protect wetlands. In 1989, Governor Booth Gardner signed an Executive Order establishing a statewide goal regarding wetlands protection.
- 101811 – JEstes – G
- #199 There are 3,289 shoreline property owners in Clallam County about to be subject to further regulation and restriction on the use of their land.
- 101711 – PHewett – G
- #198 Unconstitutional Conditions of WAC 173-26-191 Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property.
- 101711 – WSP – ICR
- #197 Any additional comments on the two Clallam County SMP Inventory and Characterizations Reports are due by October 31, 2011
- 101111 – PHewett – G
- #196 WAC’S ARE NOT LAW’S? Guidelines Are Not Law’s? Rules Are Not Law’s?
- 100811 – PHewett – ICR
- #195 WAC 365-195-905 Criteria for determining which information is the best available science
- 100611 – PHewett – G
- #194 REMOTE VIEWING AND SPACIAL DATA I did not find a State- of- the art- GSI and remote sensing facility for WA State?

No b comment for #193?
- 100411 – PHewett – G/ICR
- #192 Please bring the SMP Public Comments up to date.
- 100311 – JAtom – G
- #191 As a property owner in Clallam County, I cannot imagine that you, as servants of the county, would even consider placing additional restrictions on residents who live near shorelines (marine, rivers, streams and lakes). Already we find ourselves so restricted that we are unable to use large portions of our “privately” owned property.
- 100111 – PHewett – G
- #190 Is it the intent, of two Elected County Commissioners, that total control of all private property in Clallam County, be given to the Federal Government and the WA State DOE, one way or the other?

September:
- 092611 – PHewett – G/ICR
- #189 Taking of Private Property for Public Access I insist that ESA Adolfson give us the total land acreage of private property that is affected by the SMP Update subject to NO NET LOSS and taking for Public Access.
- 092511 – PHewett – G
- #188 Noxious Weed Control - LMD#2 Lake Sutherland

There is no #187 public comment?
- 092211 – PHewett – G
- #186 SHORELINE RESIDENTS SWAMPTED BY REGULATIONS
- 092211 – PHewett – ICR
- #185 I tried to stress the fact that it is not lack of public land, it is the lack of public access to that publically owned land, that is the problem.
- 092211 – PHewett – ICR
- #184 CLALLAM COUNTY SHORELINE INVENTORY AND CHARACTERISTIC REPORT Based on the “Best Available Science?”
There is a small, August:

- #160 WSP – ICR
- #161 Not able to copy
- #162 I urge you to look at the reach/s or resource issues within all reaches for accuracy, omissions, and errors.
- #163 There is no comment #163
- #164 There is no comment #164
- #165 WA State SMP is requiring Public access on private property at the expense of the property owner.
- #166 I would like to see every effort made to ensure the constitutional rights of private property ownership made by those who have influence in our lawmaking process. These rights have been encroached upon over the years and there is a renewed concern today by many private citizens.
- #167 These rights have been encroached upon over the years and there is a renewed concern today by many private citizens.
- #168 The characterization needs to be revised to include existing CLALLAM specific information and appropriate relevant recommendations that are in this existing information.
- #169 Chris Byrnes commented on the yellow dots off shore (indicating "no appreciable drift"), argued that if it was so small, there wouldn't be drifting anyway.
- #170 SILT DAMAGE FROM ELWHA TO DUNGENESS SPIT?
- #171 The SMA/SMP and the WRIA processes are a means of locking up, transferring ownership to the State, and regulating the use of these areas/preventing private economic and other beneficial use of these prime areas.
- #172 It is more loony insanity being foisted on the Citizens of the State of Washington by a Government and their agents that are out of control.
- #173 It lists it as a slide area although for the past 32 years we have had no indication of any land movement or building shift.
- #174 There is obviously no "ground truthing" of the information in this report.
- #175 Incidentally, many of the docks and other development may encroach onto State owned aquatic lands without proper DNR authorization.
- #176 I gave my opinion about 'locking up' shorelines property based on salmon and endangered species as a pretext.
- #177 The Shoreline Master Program Update is rigged. NNL & larger setbacks do not represent the 'will of the people'. It does not protect the rights of the Citizens.
- 083111 – ESpees – G
- 083111 – WDNR – ICR
- 083111 – MarineResourcesCouncil – ICR
- 083111 – JLewis – CR/ICR
- 083111 – ESpees G
- 082511 – ElwhaMorseMgmtTeam – ICRMaps
- 082511 – CoastalWatershedInstitute – ICR
- 082811 – PHewett – G
- 082411 – PHewett – G
- 082511 – WDNR – ICR
- 082411 – PHewett – G
- 082511 – ElwhaMorseMgmtTeam – ICRMaps
- 082511 – CoastalWatershedInstitute – ICR
- 082511 – MarineResourcesCouncil – ICR

091011 – PHeWett – G

#181 CLALLAM COUNTY SECTION 35.01.150 Real property assessments. PROTECTION FOR LOSS OF PRIVATE PROPERTY VALUE? The restrictions imposed by the Shoreline Master Program shall be considered by the County Assessor in establishing the fair market value of the property.

091011 – PHeWett – G

#180 PUBLIC COMMENT REPORT ON SMP Public Forum July 14, 2011

090411 – JLewis – CR/ICR

#179 Public access across our property through our wetlands and over our berm to our private beach would be of great concern to us. Here are some questions and concerns we'd like addressed and you consider amending the provisions for providing public shoreline access:

090311 – ESpees – G

#178 The Drift Cells, Littoral Drift, and Feeder Bluffs Construct are so much BS/Smoke and Mirrors.

090311 – ESpees – G

#177 The Shoreline Master Program Update is rigged. NNL & larger setbacks do not represent the 'will of the people'. It does not protect the rights of the Citizens.

090211 – ESpees – G

#176 I gave my opinion about 'locking up' shorelines property based on salmon and endangered species as a pretext.

August:

083111 – WDNR – ICR

#175 Incidentally, many of the docks and other development may encroach onto State owned aquatic lands without proper DNR authorization.

083111 – MarineResourcesCouncil – ICR

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083111 – JLewis – CR/ICR

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083111 – ESpees G

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082811 – PHewett – G

#170 SILT DAMAGE FROM ELWHA TO DUNGENESS SPIT?

082511 – ElwhaMorseMgmtTeam – ICRMaps

#169 Chris Byrnes commented on the yellow dots off shore (indicating "no appreciable drift"), argued that if it was so small, there wouldn't be drifting anyway.

082511 – CoastalWatershedInstitute – ICR

#168 The characterization needs to be revised to include existing CLALLAM specific information and appropriate relevant recommendations that are in this existing information.

082511 – DAbbott – G

#167 I would like to see every effort made to ensure the constitutional rights of private property ownership made by those who have influence in our lawmaking process. These rights have been encroached upon over the years and there is a renewed concern today by many private citizens.

082411 – PHewett – G

#166 WA State SMP is requiring Public access on private property at the expense of the property owner.

There is no comment #164

There is no comment #163

081011 – MarineResourcesCouncil – ICR

#162 I urge you to look at the reach/s or resource issues within all reaches for accuracy, omissions, and errors.

There is no comment #161
There is no comment #159

There is no comment #158

080511 – PHewett – ICR

#157 Wetlands are not included on SMP Update maps showing the areas that are a threat and risk of development.

There is no comment #156

There is no comment #155

080111 – FutureWise – ICR

#154 The Sierra Club
July:

072611 – WASeaGrant – ICR

#153 Coastal Hazards Specialist

There is no comment #152

072211 – PHewett – G

#151 Fact or Fiction, It is illegal to collect water in a rain barrel?
The State owns all rainwater?

072011 – CCPICom – ICR

#150 The July Forum attendance was low and those that intended appeared to be struggling with the information presented and the questions to ask.

There is no comment #149

072011 – PHewett – ICR

#148 Marine and Fresh water reach’s impaired by water temperature
072011 – PHewett – G

#147 Freshwater reaches impaired by water temperature (32) Marine reaches impaired by water temperature (6) Contaminated Marine Reaches (5)

Contaminated Freshwater Reaches (2) plus several

072011 – ESpees – G

#146 What the hell does NNL (No Net Loss of ecological function) mean? What is the plan for the amount of setbacks? What is the basis of this vague indefinable policy?

072011 – PHewett – ICR20

#145 On page 5-14 HOKO_RV_05 is not listed. Shore line length 3.8 miles and Reach area 246.40 acres 100% timber

071711 – PHewett – G

#144 TOP TEN PUBLIC SMP UPDATE CONCERNS

071711 – ESpees – G

#143 Tribes not affected by Shoreline Mgmt. Plan Updates

071611 – ESpees – G

#142 the DoE/EPA attempt to strip the Citizens of their private property rights.

071611 – ESpees – G

#141 It uses Drift Cells and Littoral Drift as excuses to take away private use and protections of private property. This has to do with ‘feeder bluffs’

071211 – TSimpson – ICR

#140 Page 6-12 Needs Correction :Lines 19-22

071211 – PHewett – ICR

#139 COLD ENOUGH?Based on their own reports and data, the amount of tree canopy, logging, development and public access are NOT factors in the impaired water temperature? Perhaps 50 years ago the water WAS cold enough?

071211 – PHewett – ICR

#138 Why is Green Crow the only contaminator mentioned by name? We should be given the exact location of every specific contaminated site and the full identity of EVERY contaminator.

071111 – ESpees – G

#137 Conspicuously absent from the report of the first meeting is an accounting of the economical impact.

070811 – PHewett – ICR

#136 If more public access is needed, it is not the responsibility of Private Property Owner’s to provide it.

070811 – PHewett – ICR

#135 The Clallam County SMP update requires private property owners to give public access to their privately owned marine shorelines, prior to permitting development.
June:
- 062811 - JLMcClanahan - G20
- #131 She was very concerned about any potential regulatory changes that would result in the loss of options for using their two parcels in the future.
- 062411 - RTMcAvoy - G20
- #130 they are against any such change for the reasons stated herein.
- 062411 - DMansfield - G20
- #129 Adamant about no further restrictions on property
- 062411 - PCwidden - G20
- #128 Concerns about changing the current SMP status from Rural to Conservancy.

No comment #127
- 062011 - JEstes - G
- #126 detail on how members of the public and affected property owners are being notified

No Comment # 125
- 060611 - WDOE - CR
- #124 local DOE
- 060611 - PortofPA - CR
- #123 LIMIT NOT PROHIBIT
- 060411 - ESpees - CR
- #122 The salmonid stocks in Clallam County are not limited by freshwater habitat
- 060311 - JamestownSKlallamTribe - CR
- #121 Tribal Comment
- 060311 - HBeall - CR
- #120 This is not required by the RCW nor the WAC. WAC 173-26-241
- 060311 - WSP - CR
- #119 State Park comment
- 060311 - WDOE - CR
- #118 Local DOE
- 060311 - ESpees - CR
- #117 By Dr. Robert N. Crittenden
- 060211 - RCrittenden - CR
- #116 the low abundance of these stocks is also being used, to perpetrate the deception that it is caused by habitat loss
- 060211 - JEstes - CR
- #115 the CR is one of several steps the County will take to consider if any existing "policies or regulations need to change." There must be demonstrated need for any changes and all affected landowners should be invited to consider any changes.
- 060211 - SForde - G
- #114 Which one of my individual rights are you protecting with the Shoreline Master Plan and/or any updates to it? The answer: None – in fact, you are violating them.
- 060211 - QuileuteNation - CR
- #113 Tribal comment
- 060211 - CRogers - CR
- #112 -Page 4 typo error
- 060211 - QuileuteNation - CR
- #111 Tribal comment
- 060111 - AStevenson - CR
- #110 a marked up PDF of the Consistency Review
- 060111 - ESpees - G
- #109 SMP Update - SMP Update Rigged Process

No comment #108
- 060111 - PLeavett - G #107
- TOTALITARIAN: by definition(concerned with) arrogating (to the state and the ruling party) all rights and liberty of every choice, including those normally belonging to individuals, etc.
- 060111 - MTWalker - G
- #106 The SMP should be rejected in all it's forms. It erodes our rights and freedoms, does not comply with and is in
fact contrary to the Constitution, is poorly written, poorly organized, vague, and its objectives are ambiguous/obscure.

May:
- 053111 – ESpees – G
- #104 The SMP erodes our rights and freedoms
- 053111 – ESpees – G
- #103 The NNL Policy, larger setbacks and buffers, and new forced public access to private property will further erode our freedoms.
- 053111 – MGentry – G
- #102 Green Point, group. 35 were invited and 17 showed up plus Dave Hannah was there to answer questions on bluff stability. Of the 17 only one was aware of SMP or said they had been contacted about forums.
- 053111 – PHewett – G / CR
- #101 Pacific Legal Foundation If government blocks access to your land, it has committed a taking Dunlap v. City of Nooksack

CLICK ON THE LINK BELOW...

Comments received prior to 2014 HERE
- 052911 – ESpees – G
- 052911 – PHewett – G
- 052811 – ESpees – G
- 052811 – RHale – G
- 052711 – ESpees – G
- 052711 – PHewett – G
- 052611 – MGentry – G
- 052111 – PHewett – G
- 051811 – JPetersen – CR
- 051811 – NOTAC – CR
- 051311 – PHewett – G
- 051311 – PHewett – G
- 051311 – PHewett – G
- 051011 – TSummer – G
- 050611 – PHewett – G
- 050611 – PHewett – CR
- 050511 – PHewett – CR
- 050511 – PHewett – CR
- 050511 – PHewett – G

April:
- 042611 – ESpees – G
- 042311 – MBlack – G
- 042011 – KAhlburg – G
- 041811 – QuileuteNation – G
- 041411 – RColby – G
- 041411 – TSimpson – G
- 041211 – BBrennan – G
- 041111 – NN – G
- 041111 – MGentry – G
- 041111 – NN – G
- 041111 – RMorris – G
- 041111 – NMessmer – G
- 041011 – RMorris – G
- 041111 – RMorris – G

March:
- 031511- PHewett – G
- 031511 – RMorris – G
- 031511 – RMorris – G
- 031411 – MGentry – G
- 031111- JWare – G
- 030211 – PHewett – G
- 030211 – PHewett – G
February:
- 021711 – M Langley – G
- 021511 – PHewett – G
- 020211 – RBrown – G

January:
- 012611 – MBoutelle – G
- 012111 – CAbrass – G
- 011811 – DJones – G

2010:
- 110810 – WDNR – G
- 080510 – PSP – G
- 031010 – WDOE – PPS
- 030910 – WDOE – PPS
- 030810 – LMuench – PPS
- 030410 – QuileuteNation – PPS
- 022410 – FutureWise – PPS
- 020910 – JMarrs – PPS

2009:
- 120509 – DemComm – G

Posted in Shoreline Mgmt. Plan

This entry was posted in A Land Grab is a Land Grab, A MATTER OF COLLUSION?, Economic Impact, ESA AMOK IN THE SMP UPDATE, ESA SMP Cookie Cutters, RED FLAG WARNING, Shoreline Management Plan, SMP Cumulative Impact on People, Tenacity and Bother, The Good vs. the Bad and the Ugly, The Science of Uncertainty?, The Undue Influence of Nonprofits, Undisclosed? Bureaucrats Sabotage, WA State Dept. of Ecology, WHAT A MESS, Who is Appointed, Who is Elected, Who is Responsible?. Bookmark the permalink. Edit

SMP Update Thank you for your comments
Gores, Alanna

From: Ozias, Mark
Sent: Tuesday, December 12, 2017 9:56 AM
To: 'Dennis D. Reynolds Law Office'
Cc: Gores, Alanna
Subject: RE: Draft SMP Update (External Email: USE Caution)

Mr. Reynolds,

Thank you for your detailed comment. I am cc-ing Clerk of the Board Loni Gores to ensure they become part of the official record at today’s public hearing.

Sincerely,

Mark Ozias
Clallam County Commissioner

From: Dennis D. Reynolds Law Office [mailto:dennis@ddrlaw.com]
Sent: Monday, December 11, 2017 1:20 PM
To: zSMP
Cc: Ozias, Mark; Johnson, Randy; Peach, Bill; tedi_buck@yahoo.com
Subject: Draft SMP Update (External Email: USE Caution)

Dear Commissioners:

Please treat this email as a comment on the proposed Updated Clallam County Shoreline Master Program.

I grew up in Port Angeles. We own property developed with a single-family home and appurtenances located at 21576 Hwy 101, Port Angeles, near Hecklesville (MP 2165). Our parcel is in the Shoreline Residential Conservancy designation.

I am counsel litigating several challenges to Updated SMPs, including the Jefferson County SMP. The Jefferson County SMP matter is a test case; it is pending review before the Washington State Supreme Court. My submitted comment, however, is personal, and not made in a representational capacity.

We commend use of RCW 90.58. 620 to avoid a non-conforming use status for developed shoreline properties. Ecology’s pronouncement states that such non-conforming uses are intended to be phased out over time without any just compensation. In other words, it is a label of “illegal but tolerated for now.”

I have several suggestions as a good citizen.

One, the County can take into account local circumstances. This includes a high percentage of government owned land and dedicated open space preserved from development.

Two, we urge the County be faithful to the intent of the Shoreline Management Act as approved by the voters in 1971. A policy of balance, not prohibition, is what the Legislature promised the public when the SMA was offered for citizen approval. The SMA, passed by the Legislature in 1971 and adopted by public initiative the following year, represents a compromise between the interests of government, environmentalists, business interests, and property owners. See R.L. Bush, GOVERNING PUGET SOUND (Puget Sound Books 1982).

Both Measures agreed that the law did not adequately address the use and development of the shorelines, and agreed that it was in the State’s interest to provide better planning and coordination. However, the competing Measures diverged on how to accomplish that general goal. Measure 43B (the SMA) stated its purpose as “planning and fostering all reasonable and appropriate uses and to enhance the public interest,” and specifically set forth a variety of uses, including single-family homes and appurtenant structures such as docks, to be given preference under the law. James C. Barron, SHORELINE MANAGEMENT — WHAT ARE THE CHOICES? Wash. State Univ., Ext. Mimeograph 3524, pp.2-3 (Dec. 1971). Whereas, Measure 43 (the WEC proposal) set multiple environmental goals, expressly prioritizing environmental protection over private property rights. Barron, supra, at 4. Indeed, the WEC proposal would have created a “public[] right to an unpolluted and tranquil environment.” Id. at 7.

Thus, the SMA was presented as a law that would strike a balance between property and the environmental by recognizing the importance of protecting the shoreline environment, while encouraging appropriate development. See Futurewise v. W. Washington Growth Mgmt. Hearings Bd., 164 Wn.2d 242, 244, 189 P.3d 161 (2008) (The goal of the SMA is “balancing use and protection.”).

Now, under the guise of “no net loss (“NNL”),” Ecology is essentially implementing the WEC proposal, calling it “the correct balance.” With due respect, the County should act within the limits of the law when it was approved by citizen vote. In this regard, the SMA policies (RCW 90.58.020) have remained unchanged over the years, and do not contain Ecology’s guiding principle.

Of particular significance, Measure 43B (the SMA) recognized that shoreline regulation may not violate property rights and stated a goal of “fostering” appropriate development and uses of the shorelines, “specifically prohibiting few if any uses ....” Crooks, supra, at 457. To drive that point home, the Legislature amended its proposed measure to withdraw from Ecology and local governments the right to use eminent domain, stating in the voters’ pamphlet, “[t]here is no local or state takeover of private land.” Id. at 452 nn.170-71, 457. Indeed, the Voter Pamphlet for Measure 43B (the SMA) states:

The Act Doesn’t Prohibit Development. The goals of the Act are to coordinate land development, to encourage development which is compatible with shoreline resources, and to discourage development which is not.

Private Property Rights and Increased Recreational Opportunities. Your property remains your own and private. There is no local or state take-over of private land.


Thus, commentators viewed the SMA as unlikely to generate claims of regulatory taking because “private property ... [would] seldom be subject to restrictions which severely diminish economic value.” Crooks, supra, at 456. The commentators also pointed out that publicly owned lands are “particularly adapted to some uses” (for example, wilderness or conservation areas), which “would tend to destroy the economic value of privately owned shorelines.” Id. Yet, the new regulations propose significant conservation buffers.

Third, we strongly urge a more through review of the efficacy of the existing regulatory structure. A compliant CIA must be prepared before a new SMP can be adopted. The CIA must consider and assess the benefits provided by existing regulations and project mitigation imposed under Shoreline Management Act (“SMA”) permitting and State Environmental Policy Act (SEPA) authority:
Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the act . . . Evaluation of such cumulative impacts should consider: ... (iii) **Beneficial effects** of any established regulatory programs under the other local, state, and federal laws.

WAC 173-26-186(8d) (emphasis supplied).

Fourth, there are serious questions regarding the science behind marine buffers. I enclose an expert analysis for your consideration. You should also request and review Dr. Flora’s studies submitted to the City of Bainbridge Island.

Thank you for your kind attention to these comments and the enclosure.

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IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON – DIVISION II

OLYMPIC STEWARDSHIP FOUNDATION, et al., CITIZENS’ ALLIANCE FOR PROPERTY RIGHTS JEFFERSON COUNTY, CITIZENS’ ALLIANCE FOR PROPERTY RIGHTS LEGAL FUND, MATS MATS BAY TRUST, JESSE A. STEWART REVOCABLE TRUST, and CRAIG DURGAN, and HOOD CANAL SAND & GRAVEL LLC dba THORNDYKE RESOURCE,

Appellants,

v.

STATE OF WASHINGTON ENVIRONMENTAL AND LAND USE HEARINGS OFFICE, acting through the WESTERN WASHINGTON GROWTH MANAGEMENT HEARINGS BOARD; STATE OF WASHINGTON, DEPARTMENT OF ECOLOGY; and JEFFERSON COUNTY,

Respondents.

and

HOOD CANAL COALITION,

Respondents/intervenor.

No. 47641-0-II

DECLARATION OF KIM SCHAUMBURG RE CITED SCIENTIFIC LITERATURE IN SUPPORT OF JEFFERSON COUNTY MARINE BUFFERS AND LIMITS ON USE

SCHAUMBURG DECLARATION - 1
[90049-3]
I, Kim Schaumburg, hereby declare and state as follows:

1. I am a consultant for Appellant Olympic Stewardship Foundation ("OSF") in the captioned matter. In that capacity I am authorized to submit this Declaration on behalf of OSF and its members who are the individually named parties in this matter.

2. I am an environmental consultant. My business contact information is: BioResources, LLC, UBI 602 774 496, 10112 Bayview Road KPN, Vaughn WA 98394, 253-884-5776 or 253-225-2973. I graduated from UW in 1981 with a Bachelor of Science Degree in Fisheries. For the past dozen years, I have made a living providing habitat assessments and other studies to governmental entities on behalf of hundreds of private clients. Those studies address on-site conditions and recommended project mitigation. As part of my work, I often consult scientific literature and agency policies or regulations. Part of my work includes original research of site conditions and monitoring of mitigation success.

3. I have personal knowledge of the facts and circumstances set out in this Declaration. I am competent to testify to the matters asserted herein. I am not an attorney. I do not intend to make legal interpretations.
Overview

4. I have been asked to provide comment on the science ostensibly supporting a 150-foot marine shoreline buffer and 10-foot setback prescribed by Jefferson County in its Shoreline Master Program (“SMP”) update. In the process of evaluating the science cited regarding marine shorelines and the ecological functions of the adjacent upland areas referred to by the State of Washington Department of Ecology (“Ecology” or “WDOE”) and Jefferson County (“the County”) as the “marine riparian zone/area/system,” it was surprising to find how little original research, if any, has been conducted. Synthesized science has been substituted and used because of the lack of original research. The term synthesized science can generally be defined as a review or summary of existing scientific literature that consists of primary (original) research and/or synthesized science, or scientific literature with a working hypothesis that utilizes primary research and/or synthesized science. Here is an example of the latter:

Our working hypothesis is that marine riparian systems provide functions similar to those described for freshwater riparian systems and are likely to provide additional functions unique to marine nearshore ecosystems.

5. Because there is virtually no research on marine riparian functions of Puget Sound, the logical path would have been to study these functions. However, this course was not taken by Brennan, J.S. and H. Culverwell or other researchers in this state who instead used "synthesized science" extrapolated from freshwater studies. (I address the problems and limits of this approach below, ¶¶ 14-19, pp.11-17; ¶¶ 37-43, pp.37-40; ¶¶ 44-47, pp.41-44).

6. I submit that it would not be irrational to wonder if agency science based on a working hypothesis and (primarily) synthesized science might be biased, *e.g.*, overly focused on protection without regard to (a) associated mitigation or (b) policy considerations as to how far use of private property can be regulated within constitutional limits. Others have the same thought. As one former federal official has stated:

> What constitutes an allowable cost is not a matter solely of science. These deliberations require multi-faceted consideration of all of the consequences of the decision to include the effects on natural resources and the legal, social, political and economic consequences of the decision. Resource agencies must follow legislative mandates and rigorous rule making procedures before environmental criteria are codified in regulatory (RCW) or
administrative (WAC) codes. Natural resource agencies such as the Department of Ecology and the Department of Fish and Wildlife are not generally charged with making multi-faceted appraisals, they are charged with protecting fish and wildlife, water, air, soil and sediment quality, etc. These one-dimensional tasks lead to one-dimensional thinking that is evident in the Best Available Science (Sheldon et al, 2005) written by WDOE and even more so in the WDFW recommendations of (Knutsen and Naef, 1997) describing perceived wetland and stream buffer requirements for protecting water quality and wildlife.


7. Another uncertainty is the definition of the term "marine riparian," and the area that it encompasses. In 2014, the Washington Department of Fish and Wildlife ("WDFW") defined the marine riparian zone as "shore habitat that extends inland from the Ordinary High Water Mark ("OHWM") to that portion of the terrestrial landscape that is influenced by, or that directly influences, the aquatic ecosystem." The terms "influenced by" or "directly influences" are vague and fail to address the degree of influence, although they imply that the marine riparian "terrestrial landscape" directly influences Puget Sound but is not directly influenced in return. "Riparian areas contain elements of both

SCHAUMBURG DECLARATION - 5
[90049-3]
aquatic and terrestrial ecosystems which mutually influence each other and occur as transitions between aquatic and upland habitats” (Knutson, K. L., and V. L. Naef 1997).

8. In my opinion, the term marine riparian as it is used in the cited studies in reference to upland shoreline habitat is a misnomer. Uplands are not marine riparian zones as those terms are commonly understood. There is authentic marine riparian habitat along or on the shorelines of Puget Sound that may be found in association with estuarine wetlands, rivers, streams, or other sources of freshwater influx. “In addition, the nearshore includes streams and rivers to the upstream extent of tidal influence, and their riparian areas” (Cereghino, P., J. Toft, C. Simenstad, E. Iverson, S. Campbell, C. Behrens, J. Burke 2012). Simenstad et al. (2011) has proposed four classes of tidal wetlands. Riparian areas associated with estuarine wetlands, rivers, streams, or other sources of freshwater influx may have slightly different functions than freshwater riparian areas, but there is a two-way exchange of water and materials, which, in my opinion, is what primarily differentiates riparian areas from upland or other terrestrial habitat. Marine riparian areas as described by Best Available Science (“BAS”), on the other hand, have significantly different functions than freshwater riparian areas (this will be addressed later, infra, ¶ 28-36, pp.28-37).
9. Upland marine shorelines located landward of OHWM differ significantly from stream reaches in mature forested areas, rivers and their associated floodplains, etc., described in the freshwater studies defined as "Riparian Zones. The National Research Council (2002) states:

Riparian areas on the other hand are primarily defined by their position as those lands bordering streams, rivers, and lakes. (And there is no justifiable reason to exclude shorelines of estuaries and marine coasts.) Although wetlands and riparian areas provide many of the same environmental functions, the differences between their definitions are reflected in vastly different levels of protection.

10. With due respect, in my opinion, it is illogical and counterproductive to label shorelines of estuaries and marine coasts as "riparian areas" unless those areas possess the specific habitat functions that meet the criteria of riparian areas. There are numerous isolated rivers, streams, estuaries, and wetlands with associated riparian areas along the shorelines of Puget Sound. There are also many miles of shorelines with no wetland or riparian habitat. The latter is valuable habitat but not "riparian." Therefore, there is justifiable reason to exclude shorelines of Puget Sound and marine coasts from being classified as riparian if they are not actually "riparian." My opinion is based upon accepted definitions of riparian areas. In this regard, please see Exhibit A attached hereto,
Common Definitions of Riparian Areas From Accredited Sources, by reference made a part hereof.

11. The fundamental feature of freshwater riparian areas is the two-way exchange of water between the stream/river and the shoreline, a process that benefits both the water body and its riparian boundary. Conversely, the exchange of water between marine riparian areas (shoreline upland) and intertidal Puget Sound or marine coasts is primarily one-way and appears to primarily benefit the salt water body. The exchange of energy and matter between marine riparian areas and Puget Sound is also primarily one-way, into the salt water body. In addition, marine riparian systems feature primarily facultative upland (FACU) plants, as well as upland (UPL) and facultative (FAC) species, while freshwater riparian systems feature predominantly facultative wetland (FACW), obligate wetland (OBL), and facultative (FAC) plant species. Facultative upland plants are species that predominately occur on drier or more m esic (moderately moist) sites in geomorphic settings where water rarely saturates the soils or floods the soil surface seasonally. Hereafter in this document, the term marine riparian will refer to upland marine shoreline areas that are misidentified as marine riparian areas in this state, unless otherwise stated.
**Fresh Water Science Substituted for Lack of Original Marine Study**

12. It is widely recognized that original studies of marine shoreline function is lacking:

Little has been studied or written regarding riparian or buffer functions along West Coast marine shorelines or estuaries; Brennan, J.S., and H. Culverwell (2001) recently presented a summary that largely seeks to overcome the dearth of directly relevant studies by extrapolation of the extensive freshwater riparian data base to the estuarine and marine shorelines of Puget Sound. While such literature syntheses are useful, they often fail to provide sufficient detail to allow the user to determine the conditions under which work in each cited reference was performed and therefore its relevance to specific situations and shoreline characteristics.


Research on freshwater riparian areas is relevant to marine riparian areas and vice versa. A panel of 14 scientists with expertise related to riparian ecosystems generally agreed that “findings from studies of freshwater riparian areas are transferable to marine riparian areas, although some processes and functions are unique to marine riparian areas.” *Protection of Marine Riparian Functions in Puget Sound, Washington*, Appendix H, 2009. This document also concludes that “riparian areas
provide ecological functions regardless of whether they are adjacent to freshwater or marine water bodies" (Section 1).

The ecological benefits of buffers are discussed extensively in the following documents, which are briefly reviewed below. The first three documents were developed by the Aquatic Habitat Guidelines program, a partnership of state agencies, which conducted extensive reviews of the scientific literature for these documents. Ecology has participated in the development of the Aquatic Habitat Guidelines documents. The fourth document in the list was developed by the Washington Department of Fish and Wildlife.

*Protection of Marine Riparian Functions in Puget Sound, Washington, 2009,* focuses on the benefits of riparian areas for seven riparian functions along marine waters: water quality, fine sediment control, shade/microclimate, large woody debris, litter fall/organic matter inputs, hydrology/slope stability and wildlife: “This document was developed to provide shoreline planners and managers with a summary of current science and management recommendations to inform protection of ecological functions of marine riparian areas...Specifically, we summarize the range of marine riparian buffer widths (Appendix G) needed to meet particular levels of ecosystem function based on a literature review and input from an expert panel workshop,” according to an overview of the document. “Because much of the literature was related to freshwater riparian systems, we assembled an interdisciplinary science panel to inform the process of adapting fresh water studies to marine nearshore environments.
(Marine Riparian Workshop Proceedings 2008; Appendix H).”

Handbook, pp.13-14.¹

**Synthesized Science and Problems With Its Use**

14. From the Ecology Handbook:

*Protecting Nearshore Habitat and Functions in Puget Sound, 2007, revised 2010,* provides “a synthesis of current science on several important nearshore habitats and processes, and directions for where to find data and specific recommendations for moving through the mitigation sequence; from avoidance of new activities and reducing impacts from approved activities, to mitigating for cumulative impacts. In addition to helping local planners prepare SMP updates, this document will also assist Ecology in their review to ensure that SMP updates are based on good science,” according to an introduction.

*White Paper - Ecological Issues in Floodplains and Riparian Corridors, 2001,* examines and synthesizes the literature pertaining to the current state of knowledge on the physical and biological effects of alluvial river channelization, channel confinement, and various channel and floodplain modifications. It also examines and summarizes literature on the mitigation, rehabilitation and restoration of rivers affected by these human modifications. Data gaps in our current understanding of physical and biological process, the effects of human modifications, and appropriate rehabilitation

¹ *See Administrative Record, Case No. 14-2-0008c, AR 000004350-51.*
or restoration techniques are also reviewed," according to the executive summary.


15. From *Protecting Nearshore Habitat and Functions in Puget Sound*, 2007, revised 2010:

In 2009, the Aquatic Habitat Guidelines Program endorsed the white paper, *Protection of Marine Riparian Functions in Puget Sound, Washington*. The purpose of this white paper is to provide shoreline planners and managers with a summary of current science and management recommendations to inform the protection of ecological functions of marine riparian areas.

The Washington Department of Fish and Wildlife (WDFW), along with other state agencies and others in the scientific community have been developing "best available science (BAS)" for the nearshore environment. This "BAS" for a variety of topics has been synthesized in recently released white papers .... (pp.1-3; 1-4).

16. When using synthesized science in creating synthesized science, the researcher must assume that the referenced material is accurate. As set out below (¶ 23, p.23), however, there are conceded gaps in the science. In addition, since even primary research is conducted from the perspective of the researcher, it is expected that there is an inherent potential for error. It is probable that the potential for error increases
when primary research is integrated into synthesized scientific literature and, again, when that synthesized literature is used to synthesize more literature, and so on. Science is not a static discipline. In the course of completing this declaration, I found that BAS had referenced material from the 1930s and 1940s with the majority of references from the 1980s and 1990s, twenty to thirty years ago. Of course, our knowledge and understanding of the natural world continues to evolve, inevitably revealing some mistakes in interpretation in the existing literature, as well as causing some material and ideas to become out of date. (Egger 2009).

17. Synthesized science also seems to suffer some of the same problems associated with second-hand information. For example, in 1988, R. F. Keuler published primary research entitled, *Map showing coastal erosion, sediment supply, and longshore transport in the Port Townsend 30- by 60-minute quadrangle, Puget Sound Region, Washington.* This short report describes selected physical processes and conditions along approximately 600 km of inland marine coast in the Port Townsend quadrangle (Keuler 1988). Keuler’s conclusion, which has been cited in numerous synthesized BAS documents, is that eroding coastal bluffs are the primary source of beach sediment on most Puget Sound beaches.

- From Puget Sound Nearshore Partnership 2007,

Johannessen and MacLennan, *Beaches and Bluffs of Puget Sound:*

_SCHAUMBURG DECLARATION - 13_
"Coastal bluffs are the primary source of sediment for most Puget Sound beaches," (Keuler 1988).

- From WDFW 2014 Johannessen, J., A. MacLennan, A.
  Blue, J. Waggoner, S. Williams, W. Gerstel, R. Barnard, R. Carman, and
  bluffs are the primary source of beach sediment on most Puget Sound
  beaches (Keuler 1988, Johannessen and MacLennan 2007).

- From King County 2005. Johannessen, J.W., A.J.
  MacLennan, and A. McBride. 2005, Inventory and Assessment of Current
  and Historic Beach Feeding Sources/Erosion and Accretion Areas for the
  Marine Shorelines of Water Resource Inventory Areas 8 & 9: “However,
  river and stream sediment input is thought to be responsible for on the
  order of 10% of beach sediment in Puget Sound, with the majority (90%)
  originating from bluff erosion” (Keuler 1988).

18. I am not a geologist, but I have no doubt that Keuler is correct regarding North and Central Puget Sound, where his research was conducted. I also agree with his assessment that manmade modifications alter coastal erosion patterns. However, I think that further unbiased primary research needs to be conducted studying the impacts of manmade shoreline modifications and associated mitigation. See Declaration of

Robert F. Cousins dated February 18, 2016, ¶ 16. A high percentage of
the bluff-rimmed coast in the Port Townsend quadrangle is eroding, and the Strait of Juan de Fuca is a moderate to high wave energy environment. However, South Puget Sound is a shallower, lower energy system with numerous large streams and several large rivers. Primary research conducted in 2005 indicates that rivers and streams are an important source of beach feeding sediments in several large inlets in Thurston County. From Thurston Regional Planning Council, 2005. Herrera Environmental Consultants. *Marine Shoreline Sediment Survey and Assessment:*

The sediment supply [in Totten Inlet] is approximately evenly divided between the fluvial supply (primarily Skookum, Kennedy, and Schneider Creeks) and landslides (including bluff erosion). Eld Inlet is similar to Totten Inlet in that the sediment supply is approximately evenly divided between the fluvial supply (Perry and McLane Creeks) and landslides (including bluff erosion). Budd Inlet is the only inlet in Thurston County that is fed by a large river, the Deschutes. More sediment is transported by the Deschutes River than by any other stream in Thurston County except for the Nisqually River; this sediment is now trapped in Capitol Lake. Along the western part of Budd Inlet, it appears that there is little bluff or backshore erosion even in unarmored areas. It appears that the bluffs in Budd Inlet are relatively unerosive and subsequently contribute little sediment to the beach.
19. So it appears that approximately one-third of Puget Sound may function differently than the other two-thirds in terms of sediment delivery processes. It would be reasonable to argue that two-thirds is a majority, which validates the statement “Coastal bluffs are the primary source of sediment for most Puget Sound beaches.” However, the following statement from the Department of Ecology epitomizes one of the potential problems associated with environmental policy based on synthesized science – the deterioration of factual information as synthesized science is processed from each new perspective. From WDOE 2014:

The sand supply for Washington's southwest coast ocean beaches comes from the Columbia River basin. On the other hand, the sediment supply which maintains Puget Sound beaches comes principally from the slow, chronic erosion of the Puget Sound banks and bluffs, and rather little from the watersheds.

Contrast Ecology's statement to this statement from USGS 2011:

Research suggests 70 percent of the sediment load delivered to Puget Sound is from rivers and 30 percent is from shoreline erosion, but the magnitude of specific contributions is highly uncertain.

The Key Cited Studies

20. To provide comment to this Court, I reviewed many of the studies cited by the County and Ecology to support the County SMP
update. I focused on the key studies mentioned by the Western Washington Growth Management Hearings Board ("the Growth Board"), Case No. 14-2-0008c. Therein, the Growth Board states:

On the contrary, the Board found the SMP, the SI, and the CIA replete with scientific evidence demonstrating how the County met legal requirements to establish buffers and address vegetation conservation ... 

* * *

Specifically, SI Chapter 6 cites twenty pages of scientific articles which were discussed publicly and reviewed and approved by Ecology to satisfy the inventory requirements in WAC 173-26.166

[Footnote 166: OSF Ex. 124 and ECY003927, Jefferson County Final Shoreline Inventory and Characterization Report (SI) – Revised November 2008 at Ch. 6.]

What appears to be one of the underlying bases of CAPR’s concerns is the SMP’s imposition of a standard 150-foot buffer on all marine shorelines. CAPR states there is no scientific justification in the record for that buffer width. To the contrary, the SI includes summary references to numerous scientific studies which address varying buffer width recommendations. Those studies focused on the effectiveness of various buffer widths in protecting water quality and provision of wildlife habitat and travel corridors. In almost all instances, the studies recommend
Buffers consisting of ranges. For example, the SI refers to a 2001 analysis from Levings and Jamieseon which suggested buffers of 300 to 450 feet for marine shores. Other studies considered the effectiveness of different buffer widths in the removal of sediments (82- to 300-foot buffers would remove approximately 80% – Brennan & Culverwell; a minimum of 98 feet – May) and, various pollutants including nitrogen (27 feet to reduce by 60%, 200 feet to reduce by 80% – Desbonnet; Pentec), metals, and organic chemicals, agricultural runoff (minimum of 79 feet for 20% slopes and 160 feet with 30% slopes with slight erosion – Brennan & Culverwell), and fecal coliform from septic symptoms (115 feet – Young; Pentec). Recommendations for wildlife are significantly wider; the average width for wildlife habitat was 288 feet (Knutson & Naef). Exhibit 2960-1822 is an illustration summarizing recommended buffer widths and clearly depicting the ranges: 15 feet to 450 feet for various purposes.

[Footnote 243: SI, p.5-7.]
[Footnote 244: Id., p.5-8.]

Ibid., pp.69-70.

**Context of Key Cited Studies Is Not On Point**

21. The seven documents cited by Brennan et al. 2009 are not on point regarding marine buffers. Castelle et al. was listed twice in the narrative text by Brennan as one of the main seven buffer documents; however, the seven documents were listed again in Appendix B and
Wenger 1999 was the seventh, which is a wetland document. Here is a brief summary of each:

- **FEMAT 1993.** The Forest Ecosystem Management Assessment Team (FEMAT) was formed in 1993 with a directive to assess management options for managing federal lands within the range of the Northern Spotted Owl along the west coast of the United States (Brennan et al 2009). The forest plan presents buffer effectiveness curves that were created to represent the relationship between freshwater buffer width and stream banks.

- **Castelle et al. 1992.** This report focuses on the role of upland wetland buffers and their effectiveness in protecting ecosystem functions, and was developed for Washington State agencies to consult when creating policies for wetland protection. The report contains a literature review, an agency survey of freshwater buffer requirements of areas throughout the United States, and a field study of buffers in King and Snohomish counties.

- **Knutson and Naef 1997.** This report was written for the WDFW and reviews freshwater riparian habitat functions. It provides buffer recommendations only in that context.

- **Desbonnet et al 1994, 1995.** Both papers focus on the role of vegetated buffers in coastal areas and provide recommendations.
(Brennan et al 2009). Both are synthesized and reference U.S. East Coast locations:

Although the documenting research for actual performance along the coast is relatively meager, the functional mechanisms that apply to inland riparian buffers should similarly apply to coastal buffers. Until such time that research on coastal vegetated buffer function, use, and benefit are better developed, it will have to be assumed that inland buffer information approximates that of the coast.

(Emphasis supplied).

- **May 2000.** This synthesized report covers buffers as means of protection for freshwater riparian habitat functions for stream systems in Kitsap County (Brennan et al. 2009).

- **Wenger 1999.** This synthesized review was created to provide guidelines on riparian buffers for local officials and natural resource managers in Georgia.

  - Of the approx. 75 literature citations for the seven buffer functions in *Protection of Marine Riparian Functions in Puget Sound*, 2009, only ten were not synthesized; of those, three were nitrate or nitrate/phosphorus studies, while Castelle et al. 1992, which is primarily synthesized was cited seven (7) times.

- **Levings and Jamieson 2001** is a synthesized study that concluded there was insufficient data in the scientific literature to recommend protective buffer distances to ensure no harmful alteration, disruption, or destruction on marine riparian habitats. The authors recommended that consideration be given to buffers proposed by the Clayoquot Sound Scientific Panel (MoF, 1996) and Puget Sound (Anon, 2001), then admitted that, as far as they knew, the proposed buffers were developed without extensive research on marine riparian systems.

- **Pollock, M. M. and P. M. Kennard, 1998.** *A Low-risk Strategy for Preserving Riparian Buffers Needed to Protect and Restore Salmonid Habitat in Forested Watersheds of Washington*. The title describes the context of this Study.

- **Johnson, A.W. and D. Ryba. 1992.** *A Literature Review of Recommended Buffer Widths to Maintain Various Functions of Stream Riparian Areas*. King County Surface Water Management Division, Seattle. The title describes the context of this Study.
22. The Growth Board references the Jefferson County Final Shoreline Inventory and Characterization Report ("SI"), revised November 2008. In Section 2.2.2, there is a reference to Stanley, et al. (2005). This is one of the few references to "Buffers," and it relates to fresh water buffers. In Section 3.3.2.4, "Freshwater Processes," I found a reference to Castelle et al., 1994 (May, 2000). This is another one of the few references to "Buffers" and it relates to only wetland and stream buffers, as do all the others found listed such as Johnson, A.W. and D. Ryba. 1992. In Section 5.2, "Preliminary Buffer Recommendations," I found references to PenTec Environmental. 2001; Pollock, M. M. and P. M. Kennard, 1998; and, Brennan and Culverwell, 2004, again some of the few references to "Buffers." These studies related only to estuary, wetland, and stream buffers. I found no references to marine shoreline buffers that explicitly apply to Puget Sound, Hood Canal, the Pacific Ocean, or the Straits of Juan de Fuca, or generally, to marine waters on the west coast of Washington State or its estuaries.

23. The additional studies the Growth Board decision cited for the Jefferson County SMP Update are briefly summarized below:

- **Levings and Jamieson 2001** is a synthesized study, noted above, p.21.
- Brennan, J.S., and H. Culverwell 2004 is a synthesized report assessing marine riparian functions by reliance on freshwater studies. There is no independent or new study of marine areas.


- Pentec Environmental 2001 is a synthesized report on the Use of Best Available Science in City of Everett Buffer Regulations. It addressed wetland, stream, and estuarine buffers.

- Young et al 1980 tested vegetative buffer strips for their ability to control pollution from feedlot runoff.

- Knutson and Naef 1997 is noted above, p.19.


- Johnson, A.W. and D. Ryba. 1992 is noted above, p.21.

24. As to the cited science, there are gaps:

Scientists, land managers and policy makers discussed whether riparian (stream side) forest management and policy for state, federal and private lands in western Washington are consistent with current science. Answers were mixed: some aspects of riparian policy and management have a strong basis in current science, while other aspects may not....

* * *

.... Answers that came out of our two-day symposium were mixed: some aspects of
riparian policy and management are consistent with current science, but in other areas there appear to be gaps between policy and management and current science.


The Cited Studies Are Not New Studies But a Synthesis of Synthesized Work

25. The “science” cited by Ecology for marine buffers referenced by the Growth Board is actually a literature survey of freshwater studies. All of the four documents recommended by the Washington State Department of Ecology SMP Handbook (Chapter 11) are an amalgamation of synthesized science. Additionally, six of the seven documents referenced in Protection of Marine Riparian Functions in Puget Sound, Washington, 2009 (that helped determine the document’s recommended marine riparian buffer widths) are also synthesized, with the seventh being primarily synthesized. On the last point, the synthesis is conceded in each of the cited documents. For example, from Protecting Nearshore Habitat and Functions in Puget Sound, 2007, revised 2010:

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…provides “a synthesis of current science on several important nearshore habitats and processes....”

* * *

The Washington Department of Fish and Wildlife (WDFW), along with other state agencies and others in the scientific community have been developing “best available science” (BAS) for the nearshore environment. This BAS for a variety of topics has been synthesized in recently released white papers.

From Protection of Marine Riparian Functions in Puget Sound, Washington, 2009:

This document summarizes our literature review and synthesis of scientific and technical information on riparian areas and presents recommendations to help protect marine riparian functions from common human activities.

From White Paper - Ecological Issues in Floodplains and Riparian Corridors, 2001:

This white paper examines and synthesizes the literature pertaining to the current state of knowledge on the physical and biological effects of alluvial river channelization, channel confinement, and various channel and floodplain modifications....

From Management Recommendations for Washington’s Priority Habitats:

Riparian, 1997:

Agency biologists develop management recommendations for Washington’s priority
habitats and species through a comprehensive review and synthesis of the best scientific information available.

**Perceived Relevance of Freshwater Studies to Marine Environment Is Based Upon Presumption, Not Fact**


Most of the current science on riparian management areas and buffers comes from studies of freshwater systems. Attention to marine riparian processes and functions has only emerged in the literature during the past decade, and research in this area is increasing (WDFW 2009). However, where the freshwater riparian area function is similar to functions in the marine system (e.g., large woody debris recruitment, shade, nesting and migration habitat for wildlife) these studies are appropriate to apply to planning and regulatory decisions and reflect BAS.

Because much of the literature is related to freshwater riparian systems, an interdisciplinary science panel was assembled to inform the process of adapting fresh water studies to marine nearshore environments for the white paper, *Protection of Marine Riparian Habitat Functions in Puget Sound, Washington*. The consensus of the science panel is that freshwater riparian buffer research as generally depicted in
Table III.7 is applicable to the marine environment. This is supported by a number of publications (e.g. Desbonnet et al. 1994, 1995; NRC 1996; NRC 2002; Brennan and Culverwell 2004) that find riparian areas provide ecological functions regardless of whether they are adjacent to freshwater or marine water bodies.

Protecting Nearshore Habitat and Functions in Puget Sound, 2007, revised 2010 (emphasis supplied).

27. There is no doubt that riparian areas provide ecological functions wherever they are located. There is also no doubt that land adjacent to marine water bodies provides ecological functions; however, being adjacent to a marine shoreline is neither a typical nor an essential riparian characteristic. Thus, the specific functions must be assessed for each environment, freshwater or marine. The “functions” emphasized by Ecology and the “interdisciplinary panel” are:

- Water quality
- Fine sediment control
- Shade/microclimate
- Large woody debris (LWD)
- Detritus and nutrients
- Fish and wildlife habitat
- Hydrology/slope stability.
While there are moderate similarities between some of the seven functions, the magnitude of the differences precludes the "assumption" that freshwater riparian or wetland BAS is applicable to marine riparian systems.

28. The marine riparian functions listed above that are the focus of upland shoreline habitat exhibit some general similarities to freshwater riparian functions; however there appear to be more differences between the two systems than similarities, which precludes the "assumption" that freshwater riparian or wetland BAS is applicable to marine riparian systems. Similarities and differences in (the seven) habitat functions between freshwater and marine riparian systems were examined using Brennan et al, 2009 and the following BAS for freshwater riparian areas unless otherwise cited:

29. Addressing the seven functions identified by the Working Group, in order, in my opinion, there are many more differences than similarities between freshwater and marine systems, as set out immediately below.

30. **Water quality** functions are strongly similar in both marine and freshwater riparian systems, including surface runoff interception/infiltration and nutrient/pollution abatement. However:

   - Many [interdisciplinary science] panelists believed that relative to the larger watersheds that deliver pollutants to Puget Sound, marine riparian areas contribute a small fraction of the ecological function in mitigating water quality impacts at a landscape scale. (Brennan et al. 2009).

   Additionally, water temperature and dissolved oxygen content are two fundamental water quality functions that are significantly benefited by freshwater riparian systems. Marine riparian systems, on the other hand, have little to no impact on water temperature and dissolved oxygen content, nor is Puget Sound dependent on marine riparian areas for cool oxygenated water.

   **Conclusion:** Primary functions are similar but the magnitude differs significantly.
31. The primary functions of **Fine sediment control** reflect the opposite sediment needs of marine and freshwater riparian systems. Maintaining natural erosion and sediment transport processes is critical to maintaining Puget Sound beaches. Eroding coastal bluffs appear to be the primary source of beach sediment on most Puget Sound beaches. (Keuler 1988, Johannessen and MacLennan 2007). Erosion and retreat of coastal bluffs is a complex function of wave-induced toe erosion, driven by major storms coupled with high water levels, and hillslope mass-wasting, typically triggered by heavy rainfall and elevated groundwater levels (Gerstel *et al.* 1997, Hampton *et al.* 2004).

The [interdisciplinary science] panelists felt strongly that it was very important to maintain natural sediment inputs from marine riparian areas into Puget Sound — that perhaps the biggest threat to marine systems from human activity is the reduction of sediment inputs by armoring shorelines and disrupting natural erosion of bluffs. This is in sharp contrast to freshwater systems, where riparian areas are managed to minimize human-induced fine sediment inputs which substantially impact habitat and water quality of freshwater streams. (Brennan *et al.* 2009).

On the other hand, the most commonly recognized ecological functions of the freshwater riparian corridor includes reducing fine sediment input into the stream system through floodplain retention,
filtering, and streambank protection. The physical structure provided by riparian vegetation slows water, mechanically filters and stores fine sediment, and holds materials in place. (Swanson et al., 1982; Gregory et al., 1991; Knutson and Naef, 1997; Naiman and Decamps, 1997; May et al., 1997; Naiman et al., 2000).

Marine riparian systems are a significant source of critical sediment inputs to Puget Sound beaches, while freshwater riparian systems work to alleviate sedimentation. In short, Puget Sound benefits from erosional processes to marine riparian areas, while streams, rivers, and other freshwater bodies benefit from the alleviation of erosional processes by freshwater riparian areas.

**Conclusion:** Primary functions differ significantly.

32. **Shade/microclimate** is a critical freshwater riparian habitat function for Pacific Northwest streams and some rivers, as canopy-cover shade is essential for maintaining cool temperatures of both surface and ground waters. On larger rivers, riparian vegetation has less influence on water temperatures, but overhanging vegetation creates a cooler microclimate for fish and other aquatic life. Puget Sound water temperatures, on the other hand, are largely unaffected by shade cast by riparian vegetation. Additionally, shade from riparian areas generally covers only a small band along the upper intertidal area or, on steep,
erosional bluffs is sparse or lacking altogether, although limited studies report that desiccation is the most commonly reported factor responsible for setting the upper elevational limits of survival for intertidal animals.

It should be made clear that overhanging-vegetation induced shade appears not to be a factor in the survival rates of surf smelt eggs, or the eggs of Pacific sand lance (Ammodytes), that happen to be deposited on upper intertidal beaches in the fall-winter months when the threat of excessive thermal stress is low."


There was emphasis on the importance of shade being restricted to summer versus winter spawning populations, but that even in summer non-shaded beaches are sometimes populated with viable eggs. For example, beaches with constant wave action were said to facilitate the burying of surf smelt eggs several cm below the beach surface, were [sic] shade, moisture and temperature regimes assumedly facilitate egg survival.

(Lemieux, J.P., Brennan, J.S., Farrell, M., Levings, C.D., and Myers, D. 2004). Also, the influence of shading depends on the orientation of the shoreline with maximum shade on beaches with northern exposure.
In freshwater riparian areas, shade provides critical cooling of surface and ground waters. In marine areas, shade may provide moderate benefits to invertebrates in the upper intertidal zone.

Conclusion: Primary functions differ significantly.

33. **Large woody debris** ("LWD") inputs from marine riparian systems performs some similar functions as LWD in freshwater riparian systems, generally as a source of food and habitat for invertebrates, fish, and wildlife; but on a smaller scale, both spatially and in magnitude of importance. LWD functions provide only moderate, localized benefits to the Puget Sound shoreline. However, LWD inputs from freshwater riparian systems are an integral component of Western Washington streams, rivers, lakes, etc. and perform critical habitat functions, including dissipation of flow energy, streambank protection, streambed stabilization, sediment storage, and instream cover and habitat diversity. Riparian forests play a key role in the control of stream channel morphologic features, including sinuosity, gradient, width, and pool formation and frequency. In comparison, large woody debris on the marine shoreline is often a transient feature, and has a negligible role (if any) in the control of shoreline morphologic features.

The role of large woody debris in estuaries and nearshore areas has likewise received
little study but can be reasoned to be far less important than it is in streams.

(Pentec 2001).

Conclusion: Primary functions differ significantly.

34. The function of detritus and nutrients is essential for freshwater riparian systems. Heavily shaded riparian areas along small streams lack sufficient sunlight for primary production and are dependent on nutrient inputs from terrestrial sources. Mid- to lower-reach streams and rivers rely on a combination of detritus (allochthonous) inputs and primary production. Riparian vegetation is the primary carbon source for freshwater streams and rivers. In general, Puget Sound is dependent on primary production in its own waters fueled by the recycling of nutrients from sediments in the water column, the exchange of water with the coastal ocean, the atmosphere, and the surrounding watershed, primarily via rivers, streams, stormwater drainages, and wastewater. Puget Sound receives only modest detritus (allochthonous) inputs from marine riparian areas.

Excessive organic detritus on beaches was said to be a known deterrent to [forage fish] egg survival, perhaps via inducing asphyxiation by reducing gas exchange across egg surfaces.
(Tsawwassen, BC. Lemieux, J.P., Brennan, J.S., Farrell, M., Levings, C.D., and Myers, D. 2004.) Nutrients, such as nitrates and phosphates, that benefit freshwater riparian systems (due to differences between systems in sediment, vegetation, and hydrology) can be detrimental to marine riparian areas and contribute to the eutrophication of Puget Sound by fueling unnaturally high rates of primary production (i.e. algae and macroalgae blooms). Food webs in shallow water nearshore habitats are largely based on the heterotrophic processing of detritus produced by senescing marine algae, estuarine and saltmarsh vascular plants, and especially eelgrass. (Long 1982).

Riparian vegetation is the primary carbon source for freshwater riparian areas, while coastal marine areas are dependent on primary production fueled by nutrients from their own recycled detritus, etc., the coastal ocean, the atmosphere, and the surrounding watershed, primarily via rivers, streams, stormwater drainages, and wastewater. Conclusion: Primary functions differ significantly.

35. **Fish and wildlife habitat** functions are not well documented in marine riparian systems. The primarily one way exchange of water, energy, and matter is expected to limit species diversity in the marine riparian system as it lacks the hydrology for a transition between upland habitat and the shoreline. In contrast, freshwater riparian systems
are biologically diverse and complex ecosystems that are documented to contain more wildlife and vegetation species than surrounding upland areas.

**Conclusion:** Primary functions are similar but the magnitude differs to an unknown degree.

36. **Hydrology and slope stability** functions in marine riparian systems seem predisposed to facilitate erosional processes that deliver sediments to Puget Sound beaches. While vegetation provides some stability, even heavily vegetated, permeable sediments on moderate to steep slopes can be easily destabilized by high precipitation, winds, etc. Marine riparian areas lack complex hydrology functions, as there is no significant two-way exchange of water between systems. In contrast, freshwater riparian areas support much different, more complex, and diverse hydrology functions, including water storage capacity, surface water-groundwater interaction, and the exchange of water and nutrients between surface and subsurface water through a shallow, below ground area called the hyporheic zone. Vegetation along streams and rivers slows flood waters and allows for ground water interception and infiltration, which can reduce flooding in downstream areas. Freshwater riparian floodplain forests influence channel migration. Freshwater riparian
vegetation provides channel and bank stability functions along streams and rivers intended to limit damaging erosional processes.

Conclusion: Hydrology functions differ significantly; there are moderate similarities between slope stability functions.

**FEMAT Curves Established for Freshwater Environments Have Limits**


Scientists at a (2010) Riparian Adaptive Management Symposium claim that the FEMAT curves are “a series of relationships that described how various ecological functions of the riparian zone change with distance away from the stream bank.”

38. According to *Protection of Marine Riparian Functions in Puget Sound*, Washington, 2009:

Because much of the literature was related to freshwater riparian systems, we assembled an interdisciplinary science panel to inform the process of adapting fresh water studies to marine nearshore environments (Marine Riparian Workshop Proceedings 2008). We used FEMAT (1993) curves as a tool to communicate with the science panel. First developed in 1993 for freshwater environments, FEMAT curves depict the relationship between ecological functions
and the width of mature riparian forests along a generalized shoreline. Relationships between ecological function and width of riparian zones for specific shorelines may differ from this generalized model due to site-specific factors such as slope, soil, geomorphology, plant community type, disturbances, anthropogenic alterations, etc. A riparian function curve for wildlife was not developed due to the complexity of life history requirements for the wide variety of wildlife found in marine riparian areas, as well as the lack of scientific information on this topic.

The decision to adapt FEMAT-style curves for the marine environment was based on the assumption that studies used as the basis for developing these curves can be generally applied to the marine environment. The rationale for this application relates to the similarities of riparian functions between marine and freshwater systems and the support for this application from a number of publications (e.g., Desbonnet et al. 1994, 1995; NRC 2002; Brennan and Culverwell 2004) and the science panel.

The summary of literature reviews, buffer recommendations and adapted FEMAT curves were provided to the science panel at a workshop to solicit their opinion as to the applicability of the riparian function curves to the marine environment. The consensus of the science panel is that freshwater riparian buffer research as generally depicted in the FEMAT curves is applicable to the marine environment. Exceptions are noted in the workshop proceeding. The
recommendations contained in this guidance document are the result of these efforts.

(Emphasis supplied).

39. According to the Ecology Handbook:

Appendix G also provides an average buffer width needed to achieve 80 percent effectiveness, based on the literature reviewed. Finally, the appendix also provides minimum buffer widths to achieve greater than or equal to 80% effectiveness, according to curves developed by FEMAT, the Forest Ecosystem Management Assessment Team. The effectiveness curves were first developed in 1993 to depict the relationship between ecological functions and the width of mature riparian forests along a [sic] generalized shorelines. The science panel working on the *Marine Riparian Functions* document adapted the FEMAT style curves for the marine environment.

Handbook, p.16.

40. It seems a fair statement that the Working Group made an *assumption* based upon a presumption. It assumed that the FEMAT curves, which are based upon freshwater studies, can be “generally applied” to the marine environment, and it also presumed that freshwater environment functions are relevant to marine areas because the two are fundamentally the same.

41. The term “presume” is defined as “to think that (something) is true without knowing that it is true : to take for granted.”
The term “assumption” is defined as: “an assuming that something is true: a fact or statement (as a proposition, axiom, postulate, or notion) taken for granted.” (http://www.merriam-webster.com/dictionary/assumption.)

42. It does not appear that the Workshop considered the following:

A major shortcoming in the existing literature on buffer function along streams is that most of it is based on studies conducted along streams in forested watersheds that have undergone varying degrees of logging. (Pentec, 2001).

43. Best Available Science claims that the FEMAT curves depict the relationship between ecological functions and the width of mature riparian forests along a generalized shoreline, while scientists at a (2010) Riparian Adaptive Management Symposium claim that the FEMAT curves are a series of relationships that described how various ecological functions of the riparian zone change with distance away from the stream bank. A heading from the original document (FEMAT 1993, Ch. V p.26), “Riparian Processes as a Function of Distance from Stream Channels,” reveals that the latter is correct. The FEMAT curves were developed to ascertain buffer widths from a stream bank in a mature riparian forest.
Northwest forest, a very specific environment, not a “generalized shoreline,” as claimed by Best Available Science.

**Limits of Use of Cited Studies**

44. Dr. Michael Dosskey, Research Riparian Ecologist, USDA-Forest Service National Agroforestry Center, University of Nebraska, a recognized expert on the use and limitations of buffers, made an early presentation on the issue of designing protections for resource lands through the use of buffers. He cautioned that studies from one type of situation are rarely transferable directly to another in a different physical and geological setting. His program was entitled “...ensure that policies and programs... are based on sound science....” Dr. Michael Dosskey presentation at Law Seminars International conference, “Agricultural Lands in Transition,” March 11, 2002 in Everett, Washington. His caution is logical.

45. The freshwater stream studies have not been updated, another compromising factor. Yet, the use of presumption appears to be by choice. The WDOE is quite dedicated to synthesizing and updating Best Available Science (“BAS”) on freshwater wetlands. From WDOE 2013, *Update on Wetland Buffers: The State of the Science, Final Report.* Hruby T. Washington State Department of Ecology Publication #13-06-11:

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[90049-3]
In 2005 the Washington State Department of Ecology (Ecology) published a synthesis of scientific information available on freshwater wetlands, their functions, and their management [i.e. Stanley et al 2005]. The purpose of the synthesis was to provide local governments in the state with the best available science (BAS) when managing their wetland resources.

Our scientific knowledge is continually increasing and changing and we recognized that the synthesis would need periodic updates. Much of the information presented is still valid, but research in the last decade has provided new data to expand and clarify many of the conclusions made in the original synthesis [i.e. Stanley et al 2005]. This is especially true for the information on the role of buffers in protecting wetland functions.

The objective is to synthesize the information on buffers that was published between 2003 and the winter of 2012.

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Several jurisdictions, including Island County and San Juan County, have developed their own syntheses of scientific research based on some of the more recent information on buffers. These syntheses focused on the wetlands found within their jurisdiction and the information may be limited relative to other areas in the state.

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The focus of current research is still on the role buffers play in protecting the microclimate of streams. However, we judge that this information has a limited applicability to wetlands.

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We did not find any references on the relationship between buffers and fish in wetlands for the initial synthesis in 2005 [i.e., Stanley et al 2005]. The studies reviewed addressed the effect of riparian buffers on fish populations in stream and river systems. It is difficult to extrapolate the results of studies in streams to those in wetlands because the habitat provided by streams is quite different from that in wetlands.

46. So, wetland science is updated regularly, while marine riparian BAS has been synthesized from primarily synthesized science that is decades old. Is the latter rational or consistent with WDOE policy? Current BAS on wetlands from a particular county may not be applicable to wetlands in another jurisdiction in this state, yet it is acceptable for researchers to use freshwater riparian/wetland BAS (from this and other states) and east coast shoreline BAS, the latter being both synthesized and dated (1994 & 1995), to synthesize BAS for the marine shoreline? So, research on riparian areas is not applicable to wetlands. This is rational. Then why is it applicable to the marine shoreline? And it is not even current research. This is irrational. Freshwater stream habitat BAS is difficult to extrapolate to freshwater wetland habitat because streams are quite different from wetlands. This makes sense. So why is freshwater wetland and stream/river BAS extrapolatable to the saltwater marine shoreline which is markedly different? See, infra, ¶¶ 7-8.

SCHAUMBURG DECLARATION - 43 [90049-3]
47. As I understand it, the Washington Legislature promulgated two laws addressing Ecology's and WDFW's agency science, RCW 34.05.272 and RCW 34.05.271, true and accurate copies of which are attached hereto as Exhibit B and Exhibit C. Attached hereto as Exhibit D, by reference made part of this Declaration, is Ecology's RCW 34.05.272 explanation of its science. I am not a lawyer, so make no legal determination as to compliance with RCW 34.05.272. I did not find any buffer marine studies on Ecology's website or supported justification for its presumption as to the applicability of freshwater studies to marine studies. It does not appear that WDFW has complied with RCW 34.05.271.

**The Marine Riparian Workshop**

48. It appears that Ecology has relied upon the work of the Marine Riparian Workshop to validate its science. The Growth Board in another SMP update appeal recognized this reliance:

As to the relationship between freshwater riparian functions and marine riparian functions, Herrera's August 2, 2011 memorandum to planning staff explains:

Much of the existing riparian and buffer literature is related to freshwater systems, therefore, Washington Department of Fish and Wildlife established a panel of scientists in 2008 to assess the freshwater riparian scientific literature to determine
its applicability to marine shoreline systems. The result of the literature review, and the Marine Riparian Workshop proceedings conducted by the scientific panel in 2008 was a common consensus that freshwater riparian buffer research was conceptually applicable to marine shorelines [Brennan, et al. Protection of Marine Riparian Functions in Puget Sound, Washington, Washington Sea Grant, for WDFW, 2009.]

SMP Appendix C, p.320. Nonetheless, the Addendum calls for “more focused studies that apply to marine shorelines and that are specific to the shoreline conditions and typical land uses found in the city of Bainbridge Island.” Id. at 71.


49. The following individuals comprised the membership in the Marine Riparian Workshop: Jim Agee (UW), Derek Booth (UW, Stillwater Sciences), Jim Brennan (UW Sea Grant), Randy Carman (WDFW), John Marzluff (UW), David McDonald (SPU), Bob Naiman (UW), Michael Pollock (NMFS), Tim Quinn (WDFW), Steve Ralph (Stillwater Sciences, Inc.), Si Simenstad (UW), Kathy Taylor (WDOE), Dan Tonnes (UW), Steve Toth (independent consultant). The methods that were used to conclude that freshwater riparian and wetland buffer research
is applicable to the marine environment were listed in Brennan et al. 2009 and have been summarized as follows:

From *Protection of Marine Riparian Functions in Puget Sound, Washington, 2009:*

We [Brennan et al] paid particular attention to buffer-effectiveness research; that is, research focused specifically on the performance of buffers of varying widths at protecting riparian function for both freshwater and marine settings within and outside the Puget Sound region. We examined seven riparian buffer review documents to help determine the buffer widths that have been recommended to protect the seven riparian functions. We reviewed books, journals, online gray literature from government sites (USGS, US EPA, USDA, Washington State Departments of Ecology, Natural Resources, and Fish and Wildlife); online databases [Web of Science, CAB Abstracts, ProQuest, ScienceDirect, Agricola], and bibliographies.

We summarized buffer width recommendations from Appendix C to achieve 80-100% effectiveness. Finally we provide buffer width recommendations to meet 80% effectiveness based solely on FEMAT curves. We found no effectiveness studies for litter fall or hydrology/slope stability and thus do not report on this function in terms of buffer width effectiveness. For all other function, we report on the buffer widths that achieve 80% effectiveness as opposed to other values of effectiveness simply because most of the studies could be summarized at this level.
Because much of the literature was related to freshwater riparian systems, we assembled an interdisciplinary science panel to inform the process of adapting freshwater studies to marine nearshore environments (Marine Riparian Workshop Proceedings 2008). We used FEMAT (1993) curves as a tool to communicate with the science panel.

First developed in 1993 for freshwater environments, FEMAT curves depict the relationship between ecological functions and the width of mature riparian forests along a generalized shoreline. Relationships between ecological function and width of riparian zones for specific shorelines may differ from this generalized model due to site-specific factors such as slope, soil, geomorphology, plant community type, disturbances, anthropogenic alterations, etc. A riparian function curve for wildlife was not developed due to the complexity of life history requirements for the wide variety of wildlife found in marine riparian areas, as well as the lack of scientific information on this topic.

The summary of literature reviews, buffer recommendations and adapted FEMAT curves were provided to the science panel at a workshop to solicit their opinion as to the applicability of the riparian function curves to the marine environment. The workshop was held on November 19, 2008 at the University of Washington. It included 14 scientists representing multiple disciplines relevant to riparian function and processes. The consensus of the science panel is that freshwater riparian buffer research as generally depicted in the FEMAT curves is applicable to the marine environment.
50. A comment letter provided to the City of Bainbridge Island states, in part, as regards the Habitat Guidelines Group:

An additional concern is reliance on ad hoc or personal views of regulators instead of true peer reviewed science. For instance, it appears that some of the City’s “Technical Advisors” use the work of the Aquatic Habitat Guidelines Working Group. If one looks at the website for this “working group,” it states that the agencies involved in the multi-agency project “do not necessarily endorse any of the information provided by these links,” which include the guidelines the Working Group favors. If one reads further, it is acknowledged that the guidelines are based upon the Working Group’s personal perception of “ecological values” and their assumptions about how ecosystems function, and “our priorities for protecting aquatic systems.”

The Working Group’s membership includes no policy-makers. The Working Group’s guidelines are not adopted as rules and regulations under the Administrative Procedures Act, RCW 34.05. Further, none of its member guidelines involve any analysis for consistency with SMA policies or consideration of private property rights.

This is a group of public employees who appear to be pushing an agenda which has not seen the light of day through public review and comment via consideration or adoption of rules and regulations. Under the Washington Administrative Procedures Act, “general policies” (if the guidelines could be so considered) are illegal and unenforceable unless adopted as a rule or regulation which
includes a public review and comment process. See RCW 34.05.010(16); RCW 34.05.375.


The Studies Do Not Address “No Net Loss”

51. Under the guise of ensuring “No Net Loss” (“NNL”), the County and Ecology determined that prescriptive buffers on a blanket or “global” basis are required in Jefferson County to preserve marine riparian functions. This presumption is unsupported for five independent reasons.

One, a University of Washington Study published in 2004 entitled “Implementing ‘No Net Loss’ for Washington State Shoreline Management” questions the scientific basis for NNL. The Study notes that ecological function is not a fully understood or spelled out concept and that “Problems lie in the need to clearly define function” (Goldstein, 1999; Ehrenfeld, 2000) and to recognize that “relationships among ecosystem functions are complex and not readily predictable or generalizable” (Ehrenfeld, 2000). This seems like a reasonable assessment. Two, the scientific support of “marine riparian buffers” (by use of freshwater studies) is largely inapplicable, and is set out above, ¶¶ 12-3, pp.9-11; ¶¶ 21-23, pp.18-23. Three, the SI is not sufficiently detailed to make site-specific decisions, so the buffer default planning tool
was employed even though many scientists believe detailed mapping of shoreline conditions is the better regulatory approach. **Four,** the science is in isolation. In other words, it does not study the net effect on the shoreline environment of residential home development and use after the imposition of statutorily required mitigation. **Five,** as set out more fully below, the “marine shorelines studies” cited by the Growth Board are not in fact true studies of the marine environment as potentially affected by residential development, but instead, a synthesis of synthesized science regarding (primarily) freshwater wetlands and riparian zones.

**Conclusions**

52. Here is a summary of my conclusions, which also apply to Hood Canal and the Straits of Juan de Fuca:

- Puget Sound is a series of fjord estuaries that features numerous isolated rivers, streams, estuaries, and wetlands with associated riparian areas along its shorelines. There are also many miles of shorelines with no wetland or riparian habitat. A riparian area can be generally defined as a transitional (vegetated) area between terrestrial and freshwater aquatic ecosystems through which energy, materials, and water pass. Contrarily, Ecology’s recommended Best Available Science (“BAS”) from the *Shoreline Master Programs Handbook* defines Riparian buffers as a “separation zone” between a water body and a land use
activity for the purposes of protecting ecological processes, structures, functions. The functions of a marine "separation zone" differ substantially from those of a mature forest and stream, river, or other freshwater riparian zone.

- While marine riparian and freshwater riparian areas appear to exhibit similar water quality functions involving surface runoff interception/infiltration and nutrient/pollution abatement within BAS's previously discussed seven functions, there are more differences than similarities. In addition, the fundamental feature of freshwater riparian areas is the two-way exchange of water between the stream/river and the shoreline, a process that benefits both the water body and its riparian boundary. Conversely, the exchange of water between marine riparian areas (shoreline upland) and intertidal Puget Sound is primarily one-way and appears to predominantly benefit Puget Sound.

- *Marine riparian* and freshwater riparian areas are different ecosystems with unique features and functions.

- Very little research has been conducted, around Puget Sound or elsewhere, regarding marine riparian areas. Instead, BAS has been synthesized, almost exclusively, utilizing studies of freshwater systems, including wetlands, rivers, streams, lakes, and their associated riparian areas. It is somewhat disturbing to find that an unknown
percentage of BAS in Washington State is synthesized science based primarily on synthesized science. The *Merriam-Webster Dictionary* defines synthesize as: to make (something) by combining different things; to combine (things) in order to make something new. Science is defined as the systematic knowledge of the physical or material world gained through observation and experimentation. In the process of synthesized science, observation and experimentation is focused on previously published science. It would be imprecise to say that synthesized science is based on second-hand information, but at what point in a chain of synthesized science does science begin to disintegrate?

- In 2008, an interdisciplinary science panel was assembled by Jim Brennan, Project Manager, Washington Sea Grant; Hilary Culverwell, Starrfish Consulting; Rachel Gregg, Washington Sea Grant; and Pete Granger, P.I., Washington Sea Grant to inform the process of adapting fresh water studies to marine nearshore environments. The FEMAT curves, which were developed in 1993 for freshwater environments, were used as a tool to communicate with the science panel. The explanation for adapting the FEMAT curves to the marine environment was based on an assumption. Specifically, the assumption that studies used as the basis for developing these curves can be generally applied to the marine environment. Use of the word "assumption" implies
that conjecture not science was utilized in concluding that science
synthesized for forested streams (FEMAT 1993) was adaptable to marine
riparian systems. The primary rationalization by BAS for using the
FEMAT curves to determine marine riparian buffer widths was their
assertion that many of the functions of freshwater riparian areas are
similar to marine riparian areas. Research from other BAS (some of
which is included in this Declaration at ¶ 28-29) reveals otherwise.

- In addition to the many differences between freshwater
  riparian and marine riparian habitat functions, marine riparian areas also
  provide functions that are unique to nearshore ecosystems due to
differences in biogeochemical processes, ocean influences, and differences
in the biota between fresh and marine environments. Therefore, it seems
reasonable to conclude that freshwater riparian and/or wetland BAS is not
applicable to upland marine shoreline areas categorized by BAS as marine
riparian areas.

- The cited studies do not address the efficacy of the existing
  regulatory regime or the positive effects of commonly employed project
mitigation.

///
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED this _____ day of March, 2016, at Vaughn, Washington.

_______________________________
KIM SCHAUMBURG
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

EXECUTED this 15th day of March, 2016, at Vaughn, Washington.

KIM SCHAUMBURG
CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of March, 2016, I caused the
document to which this certificate is attached to be delivered for filing via
e-mail:

Clerk of Court
Court of Appeals, Division II
coa2filings@courts.wa.gov, email

I further certify that on this date, I caused a copy of the document
to which this certificate is attached to be delivered to the following via e-
mail and Priority U.S. mail as follows:

Dionne Padilla-Huddleston, AAG, WSBA #38356
Attorney General of Washington
Licensing & Administrative Law Division
800 Fifth Avenue, #200 (M/S TB-14)
Seattle, WA 98104-3188
dionnep@atg.wa.gov, email
for Respondent Growth Management Hearings Board

Paul J. Hirsch, WSBA #33955
Hirsch Law Office
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pjh@hirschlawoffice.com, email
for Petitioners Citizens' Alliance for Property Rights Jefferson
County, Citizens' Alliance for Property Rights Legal Fund, Mats
Mats Bay Trust, Jesse A. Stewart Revocable Trust, & Craig Durgan

Duana Koloušková, WSBA #27532
Vicki E. Orrico, WSBA #16849
JOHNS MONROE MITSUNAGA KOLOUŠKOVÁ, PLLC
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kolouskova@jmnlaw.com; orrico@jmnlaw.com;
charlot57TB@jmnlaw.com, email
for Petitioner Hood Canal Sand & Gravel dba Thorndyke Resource

SCHAUMBURG DECLARATION - 55
[90049-3]
<table>
<thead>
<tr>
<th>David S. Mann, WSBA #21068</th>
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<tr>
<td>Gendler &amp; Mann, LLP</td>
</tr>
<tr>
<td>615 Second Avenue, #560</td>
</tr>
<tr>
<td>Seattle, WA 98104</td>
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<tr>
<td><a href="mailto:mann@gendlermann.com">mann@gendlermann.com</a></td>
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<td><em>Attorneys for Intervenor Hood Canal Coalition</em></td>
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<tr>
<td>Olympia, WA 98502</td>
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<tr>
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<td>for Respondent State of Washington Dept. of Ecology</td>
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<th>Mark R. Johnsen, WSBA #11080</th>
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<td>Karr Tuttle Campbell</td>
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<tr>
<td>701 Fifth Avenue, #3300</td>
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<tr>
<td>Seattle, WA 98104</td>
</tr>
<tr>
<td><a href="mailto:mjohnsen@karrtuttle.com">mjohnsen@karrtuttle.com</a>, email</td>
</tr>
<tr>
<td>for Respondent Jefferson County</td>
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</table>

Declared under penalty of perjury under the laws of the State of Washington at Bainbridge Island, Washington this 16th day of March, 2016.

Jon Brenner
Paralegal
Common definitions of riparian areas from accredited sources:

**USDA, 1996**

Riparian areas are lands that occur along watercourses and water bodies. Typical examples include flood plains and streambanks. They are distinctly different from surrounding lands because of unique soil and vegetation characteristics that are strongly influenced by the presence of water.

**EPA, 2005**

Riparian areas are defined as a vegetated ecosystem along a water body through which energy, materials, and water pass. Riparian areas characteristically have a high water table and are subject to periodic flooding and influence from the adjacent water body. These systems encompass wetlands, uplands, or some combination of these two landforms. They will not in all cases have all the characteristics necessary for them to be also classified as wetlands.

Wetlands are defined as those areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

**Oregon Department of Fish and Wildlife, 2006**

Riparian habitats are those adjacent to rivers and streams or occurring on nearby floodplains and terraces. Riparian habitats are shaped and maintained through seasonal flooding, scour, and soil deposition. Floods replenish nutrients, recharge groundwater, and reset successional processes. Riparian habitats occur along rivers and streams at all elevations, from valley bottom floodplains to alpine torrents. Riparian habitats also include springs, seeps, and intermittent streams, and many low elevation alluvial floodplains confined by valleys and inlet.

**NOAA, 2016**

Area with distinctive soils and vegetation between a stream or other body of water and the adjacent upland.

**U.S. Forest Service, 2000**

Riparian areas are geographically delineated areas, with distinctive resource values and characteristics that are comprised of the aquatic and riparian ecosystems, floodplains, and wetlands. They include all areas within a horizontal distance of 100 feet from the edge of perennial streams or other water bodies. A riparian ecosystem is a transition between the aquatic ecosystem and the adjacent terrestrial ecosystem and is identified by soil characteristics and distinctive vegetation communities that require free and unbound water.

While many definitions of riparian habitat are based on a few selected attributes (e.g., moist soils and plants that are adapted to wet conditions), WDFW utilizes a structural and functional definition that is more ecologically complete and better describes the needs of fish and wildlife. A riparian habitat area (RHA) is defined as the area adjacent to aquatic systems with flowing water (e.g., rivers, perennial or intermittent streams, seeps, springs) that contains elements of both aquatic and terrestrial ecosystems which mutually influence each other.


Riparian areas are lands adjacent to streams and lakes (Hall 1988). The interactions between the land and water create a diverse and productive habitat for plants and animals. The availability of water, moist rich soils and a variety of plants make the area attractive to wildlife, livestock and people. The size of the riparian area and the extent of interaction between the land and the water vary with the size of the stream (Bilby 1988).


The term “riparian” is derived from the Latin word “riparius” meaning “of or belonging to the bank of a river” (Naiman and Decamps 1997). Riparian area refers to the land and vegetation adjacent to streams, rivers, wetlands, and lakes that are influenced by perennial or intermittent water (Naiman and Bilby, 1998).

Riparian vegetation refers specifically to plant communities occurring within the riparian area that are adapted to wet conditions and are distinct from upland communities (Gregory et al., 1991).

Encyclopedia of the Earth, 2014

Riparian zones are ecosystems located along the banks of rivers, streams, creeks, or any other water networks. Usually riparian zones are narrow strips of land that line the borders of a water source. Riparian flora and fauna are often distinctly different from those found in adjacent communities because of the water-rich soils found in the riparian zone.


Riparian buffers are generally recognized as a “separation zone” between a water body and a land use activity (e.g., timber harvest, commercial or residential development) for the purposes of protecting ecological processes, structures, functions) and/or mitigating the threat of a coastal hazard on human infrastructures (National Wildlife Federation 2007). As used here, buffers are defined as separation zones (as above) that are relatively undisturbed by humans and thus represent mature vegetation consistent with the potential of the site.
Riparian areas are transitional between terrestrial and aquatic ecosystems and are distinguished by gradients in biophysical conditions, ecological processes and biota. They are areas through which surface and subsurface hydrology connect water bodies with their adjacent uplands. They include those portions of terrestrial ecosystems that influence exchanges of energy and matter with aquatic ecosystems (i.e., zone of influence). Riparian areas are adjacent to perennial, intermittent, and ephemeral streams, lakes, and estuarine-marine shorelines.
RCW 34.05.272

Department of ecology—Significant agency action—Identification and categorization of sources of information used.

(1) This section applies only to the water quality and shorelands and environmental assistance programs within the department of ecology.

(2)(a) Before taking a significant agency action, the department of ecology must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of ecology shall make available on the agency's web site the index of records required under RCW 42.56.070 that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's web site, the department of ecology must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;

(ii) Internal peer review: Review by staff internal to the department of ecology;

(iii) External peer review: Review by persons that are external to and selected by the department of ecology;

(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;

(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:

(A) Federal and state statutes;

(B) Court and hearings board decisions;

(C) Federal and state administrative rules and regulations; and

(D) Policy and regulatory documents adopted by local governments;

(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;

(vii) Records of the best professional judgment of department of ecology employees or other individuals; or

(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(3) For the purposes of this section, "significant agency action" means an act of the department of ecology that:

(a) Results in the development of a significant legislative rule as defined in RCW 34.05.328; or

(b) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute.

(4) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis.
NOTES:

Finding—Intent—2013 c 69: "(1) The legislature finds that it is critically important that scientific information used to inform public policy be of the highest quality and integrity. Furthermore, the legislature recognizes that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making. (2) Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way." [2013 c 69 § 1.]
Department of fish and wildlife—Significant agency action—Identification and categorization of sources of information used.

(1)(a) Before taking a significant agency action, the department of fish and wildlife must identify the sources of information reviewed and relied upon by the agency in the course of preparing to take significant agency action. Peer-reviewed literature, if applicable, must be identified, as well as any scientific literature or other sources of information used. The department of fish and wildlife shall make available on the agency's web site the index of records required under RCW 42.56.020 that are relied upon, or invoked, in support of a proposal for significant agency action.

(b) On the agency's web site, the department of fish and wildlife must identify and categorize each source of information that is relied upon in the form of a bibliography, citation list, or similar list of sources. The categories in (c) of this subsection do not imply or infer any hierarchy or level of quality.

(c) The bibliography, citation list, or similar list of sources must categorize the sources of information as belonging to one or more of the following categories:

(i) Independent peer review: Review is overseen by an independent third party;
(ii) Internal peer review: Review by staff internal to the department of fish and wildlife;
(iii) External peer review: Review by persons that are external to and selected by the department of fish and wildlife;
(iv) Open review: Documented open public review process that is not limited to invited organizations or individuals;
(v) Legal and policy document: Documents related to the legal framework for the significant agency action including but not limited to:
   (A) Federal and state statutes;
   (B) Court and hearings board decisions;
   (C) Federal and state administrative rules and regulations; and
   (D) Policy and regulatory documents adopted by local governments;
(vi) Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under the processes described in (c)(i), (ii), (iii), and (iv) of this subsection;
(vii) Records of the best professional judgment of department of fish and wildlife employees or other individuals; or
(viii) Other: Sources of information that do not fit into one of the categories identified in this subsection (1)(c).

(2)(a) For the purposes of this section, "significant agency action" means an act of the department of fish and wildlife that:

(i) Results in the development of a significant legislative rule as defined in RCW 34.05.328;
(ii) Results in the development of technical guidance, technical assessments, or technical documents that are used to directly support implementation of a state rule or state statute; or
(iii) Results in the development of fish and wildlife recovery plans.

(b) "Significant agency action" does not include rule making by the department of fish and wildlife associated with fishing and hunting rules.
(3) This section is not intended to affect agency action regarding individual permitting, compliance and enforcement decisions, or guidance provided by an agency to a local government on a case-by-case basis.

[2014 c 21 § 1; 2013 c 68 § 2.]

NOTES:

Finding—Intent—2013 c 68: "(1) The legislature finds that it is critically important that scientific information used to inform public policy be of the highest quality and integrity. Furthermore, the legislature recognizes that a public benefit is derived from greater transparency as to what scientific information, data, or records are being used to inform public policy or relied upon in agency decision making.

(2) Therefore, in order to help ensure that agencies routinely use scientifically credible information in conducting their policy-making functions, it is the intent of the legislature to have those sources of scientific information reviewed and relied upon by agencies be identified in a clear and transparent way." [2013 c 68 § 1.]
### Agency Actions Subject to RCW 34.05.272

Ecology's Water Quality Program (WQ) and Shorelands and Environmental Assistance Program (SEA) are required to identify the information sources relied upon in support of certain agency actions defined by RCW 34.05.272. This requirement was adopted by the Washington State Legislature in July 2013 (HB 1113) and modified in June 2014 (HB 2262).

The law identifies significant legislative rules and certain types of technical guidance, technical assessments, and technical documents as the agency actions subject to its requirements. Examples of agency actions subject to RCW 34.05.272 include:

- **Water Quality General Permits:** Every water quality general permit is issued with a companion Fact Sheet that identifies the sources of information and public process relied upon for issuing the general permit. The fact sheet can be found on the web page for each individual general permit. **More about Water Quality general permits.**

- **Shoreline Master Program Handbook:** The online Shoreline Master Program (SMP) Handbook is updated in segments. Each updated segment includes an updated list of the information sources relied on for that segment. A list of information sources is also added to each new segment and the list is updated when the text is revised.

The law does not apply to individual permitting, compliance and enforcement decisions, or guidance provided by Ecology to local governments on a case-by-case basis. The law is not retroactive. An index of published documents subject to RCW 34.05.272 is available. For actions taken after June 12, 2014, the categories of information are identified as required. (see below)

### Index of Agency Publications Subject to RCW 34.05.272

The publications on the following page have been determined to fall under the requirements of RCW 34.05.272.

Information sources used in preparing these publications can be found in the bibliography, list of references or list of information sources at the back of each document. Information sources for rules can be found in the appendix of the Concise Explanatory Statement. (A complete file for all rules is available upon request from Ecology’s Rules Coordinator.)

Documents prepared after June 12, 2014 also identify information sources by the following 11 categories:

1. Peer review is overseen by an independent third party.
2. Review is by staff internal to Department of Ecology.
3. Review is by persons that are external to and selected by the Department of Ecology.
4. Documented open public review process that is not limited to invited organizations or individuals.
5. Federal and state statutes.
6. Court and hearings board decisions.
7. Federal and state administrative rules and regulations.
8. Policy and regulatory documents adopted by local governments.
9. Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under other processes.
10. Records of best professional judgment of Department of Ecology employees or other individuals.
11. Sources of information that do not fit into one of the other categories listed.

**See the list of Ecology documents.**

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Supporting Literature for Significant Actions (19 publications 2013-2015)

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<td>15-10-013</td>
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<td>Economic Impact Analysis: Draft Aquatic Mosquito Control National Pollutant Discharge Elimination System (NPDES) General Permit</td>
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https://fortress.wa.gov/ecy/publications/UIPages/PublicationList.aspx?IndexTypeName=Topic&Name...
IN THE COURT OF APPEALS
OF THE STATE OF WASHINGTON – DIVISION II

OLYMPIC STEWARDSHIP
FOUNDATION, et al., CITIZENS’
ALLIANCE FOR PROPERTY
RIGHTS JEFFERSON COUNTY,
CITIZENS’ ALLIANCE FOR
PROPERTY RIGHTS LEGAL FUND,
MATS MATS BAY TRUST, JESSE A.
STEWARD REVOCABLE TRUST,
and CRAIG DURGAN, and HOOD
CANAL SAND & GRAVEL LLC dba
THORNDYKE RESOURCE,

Appellants,

v.

STATE OF WASHINGTON
ENVIRONMENTAL AND LAND
USE HEARINGS OFFICE, acting
through the WESTERN
WASHINGTON GROWTH
MANAGEMENT HEARINGS
BOARD; STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY; and
JEFFERSON COUNTY,

Respondents.

and

HOOD CANAL COALITION,

Respondents/intervenor.

No. 47641-0-II

FACSIMILE AFFIDAVIT /
DECLARATION GR 17
RE DECLARATION OF KIM
SCHAUMBURG

GR 17 DECLARATION - 1
[90049-3]
I, Jonathan Brenner, hereby declare and state as follows:

1. I am the paralegal for the Dennis D. Reynolds Law Office, attorney of record for the OSF Petitioners in the above-captioned matter, and make this Declaration pursuant to GR 17(a)(2).

2. The name of the document to be filed with a facsimile signature, to which this Declaration is attached, is DECLARATION OF KIM SCHAUERUBG RE CITED SCIENTIFIC LITERATURE IN SUPPORT OF JEFFERSON COUNTY MARINE BUFFER AND LIMITS OF USE (“the Schaumburg Declaration”).

3. The Schaumburg Declaration consists of 74 pages, including a facsimile copy of page 54 bearing the signature of Kim Schaumburg, together with 13 pages of exhibits and this GR 17 declaration (3 pages), for a total of 77 pages. I have examined the Schaumburg Declaration (with exhibits) and have determined that the document is complete and legible.

///
///
///
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GR 17 DECLARATION - 2
[90049-3]
I declare under penalty of perjury under the laws of the State of Washington that the foregoing is true and correct to the best of my knowledge and belief.

DATED this 16th day of March, 2016, at Bainbridge Island, Washington.

Jonathan Brenner, Paralegal
Thanks for your response, Bill. I sincerely hope you will vote against this onerous draft plan.

Sue

On Sun, Dec 10, 2017 at 12:03 PM, Peach, Bill <bpeach@co.clallam.wa.us> wrote:

Sue

Thank you for your comments. I question whether the plan would be approved. The issue to follow is how revisions to the current proposal are made.

Bill

Sent from my iPhone

> On Dec 9, 2017, at 7:58 AM, Sue Forde <sue98382@gmail.com> wrote:
> 
> To: bpeach@co.clallam.wa.us (Commissioner Bill Peach)
> 
> This message was sent via the Clallam Website Email Form 12-09-2017.
> 
> Name: Sue Forde
> 
> Email: sue98382@gmail.com
> 
> Subject: Draft Shoreline Management Plan
> 
> Comments: Dear Commissioner Peach,
> 
> I write in opposition to the draft Shorelines Management Plan. It is
> a difficult-to-understand document for the ordinary citizen, with
> several obscure definitions for the terms “no net loss”, and
> “restoration”; and one that will bring more rules and regulations on
> top of too many regulations that currently exist, encumbering and
> costing the people of Clallam County.
> 
> Individuals are capable of caring for their own properties without
> government interference, oversight, more rules and regulations, and
> more “enforcement”, which could potentially cost hundreds or thousands
> of dollars in order to comply with top-down, subjective dictates.
And, there is already a Clallam Code in place regarding shoreline management. We need less regulation, not more. The more regulation, the more costly property (and government) becomes, the more fees and taxes go up, and the fewer people can afford to live here.

Furthermore, as I understand it, the final decisions as to how the plan is implemented would be made by the State Department of Ecology, with no real affordable recourse short of potentially long, expensive and involved lawsuits – which usually ends up with the individual being harmed, and the taxpayers paying for the State to defend themselves – a lose-lose situation.

With the current climate in Washington D.C. to reduce regulations and offer citizens more freedom as expected under our US and State constitutions, I urge you to vote “no” on this draft plan.

Please do what is right for the people of the county, not for the bureaucrats in Olympia.

Thank you for your consideration.

Sincerely,

Sue W. Forde
P. O. Box 3457
Sequim, WA 98382
Gores, Alanna

From: Ozias, Mark  
Sent: Monday, December 11, 2017 8:33 AM  
To: 'Lois Perry'  
Cc: Gores, Alanna  
Subject: RE: SMP letter from Lois Perry (External Email: USE Caution)

Ms. Perry,

Thank you for your note. I have included our Clerk on my reply to ensure your comment is made part of the public record for tomorrow’s SMP public hearing.

Merry Christmas to you too!

Sincerely,

Mark Ozias  
Clallam County Commissioner

From: Lois Perry [mailto:lomayk@gmail.com]  
Sent: Sunday, December 10, 2017 9:01 PM  
To: Peach, Bill; Johnson, Randy; Ozias, Mark  
Subject: SMP letter from Lois Perry (External Email: USE Caution)

Dear Commissioners Johnson, Peach and Ozias,

Please note that I oppose the Shoreline Management Plan due to regulations, fees, enforcement, and excessive burdens to property owners and taxpayers. 
I encourage you to please make a decision for our county that would not hurt those who put you into this office of responsibility.
I appreciate the work you are doing for us and wish you a Merry Christmas.

Lois Perry  
215 Stellar Ridge Ln.  
Sequim, WA 98382  
lomayk@gmail.com
I'll do it.

Jim

Jim

Karl has asked that his comments are read into the record. I would like him to receive the same consideration the board gives to all written comments. If there is time to read other comments, please read his.

Please share this message with Mark and Randy.

Bill

Sent from my iPhone

Begin forwarded message:

From: Karl Spees <76ccap@gmail.com>
Date: December 8, 2017 at 2:36:42 PM PST
To: Karl Spees <76ccap@gmail.com>
Subject: Citizen Comment for the Clallam County Commissioners 12/12/17 (External Email: USE Caution)

Open Letter to the Clallam County (CC) Commissioners 10/10/17

(For multiple medical reasons I cannot attend the CC Commissioners Public Hear 12/12/17 on this topic. Please have a County Employee read this open letter for your/their consideration.)

*****

Subject: Clallam County Shoreline Master Plan Update (SM-PU)

The SM-PU is a good idea perverted.
The Democrat appointed WA State DOE (Department of Ecology) is imposing their convoluted partisan ideology thru this sham machination of public input disguised as Due Process. At great public expense the DOE has socially engineered 'a taking of Private Property Rights' from the Citizens of Clallam County. This harms private property owners, reduces the value of shoreline property, and reduces the County Tax Base. The SM-PU document is exceedingly long, onerous, ambiguous and unintelligible to the prudent person. In reality the SM-PU bypasses WA’s Legislative Process creates Law thru their Appointed Partisan Bureaucrats.

The current Clallam County Shoreline Master Plan Update should be rejected. Because it is being forced on us by the partisan DOE, if it is not accepted (reinforced) by the CC Commissioners, Judicial Challenges by private Citizens will have a better chance at finding Justice for their Private Property Grievances.

Dr. Karl Spees, MD member of the most recent CC SM-PU Citizen Advisory Committee

My public testimony concerns do not preclude the elected DCD Director or the elected CC Commissioners from creating policies managing and regulating 'Common Sense' rules for use of Shoreline Property.
The SMPU is 'a bill of goods' being forced on us by the WA DOE.

Please Support Pearl in her campaign to stop this nonsense.

Marv Chastain spent too much of his life's energy fighting the Govt' insane removal of the Elwha Dams. Make no mistake this outrageous Govt action was shoved down our throats against the will of the people. **Tourists, hikers, and campers can no longer access the Elwha Road which was once the Entrance of the Olympic National Park.** The historical CCC Elwha Campground has been destroyed. Trumper Swan colony has been dispersed and lost. The 'fish' would eventually return if the nylon nets were simply removed from the mouths of the Rivers. (Fish Boxes and hatcheries would give these govt disasters a 'kick-start'.) This SMPU has many similar characteristics.

Do not make a similar mistake with the CC SMPU cram- down. **Do not let Pearl's efforts be futile.**

Thx Pearl
K of PA
***

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**Clallam Co SMP Sucked in by RCW 90.58.110**

Posted on December 8, 2017 11:54 am by Pearl Rains Hewett Comment

After researching the Clallam County SMP Update from 2009, Discovery is in its infancy with a multitude of unanswered questions.

NOV 14, 2017 QUESTION, Were the citizens of Clallam County, and our pristine private shoreline property, just sucked into the contract with ESA Adolfson, by a process of coordination, linked to Jefferson County, Port Townsend and Sequim for consistency and compliance?

DEC 8, 2017 DISCOVERY

YES INDEED, ... **CLALLAM COUNTY WAS SUCKED IN BY RCW 90.58.110**

Development of program within two or more adjacent local government jurisdictions—Development of program in segments, when.

(1) Whenever it **shall** appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director **shall** designate such region and notify the appropriate units of local government thereof. It **shall** be the duty of the notified
units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.

---

Did Clallam Co need an SMP Update in 2010?

Posted on November 6, 2017 5:31 pm by Pearl Rains Hewett

DID CLALLAM COUNTY NEED A FULL BLOWN $600,000.00 SMP UPDATE?

I THINK NOT.

SMP PUBLIC COMMENT #584 022415 - DeptOfInterior

snippet

"UNLIKE MANY OTHER AREAS OF PUGET SOUND CLALLAM COUNTY HAS PRISTINE AQUATIC AREAS AND SHORELINES THAT ARE IN GREAT CONDITION OR HAVE BEEN RESTORED AND PROVIDE MANY BENEFITS TO THE PEOPLE AND THE WILDLIFE IN THE AREA"

RECOGNIZING THIS FACT, Were the citizens of Clallam County, and our pristine private shoreline property, just sucked into the contract with ESA Adolfson, by a process of coordination, linked to Jefferson County, Port Townsend and Sequim for consistency and compliance?

YES INDEED, ...

WHEN IT APPEARED TO THE DIRECTOR

AND, THE DIRECTOR DESIGNATED,

AND, THE DIRECTOR NOTIFIED

AND THE 2017 CLALLAM COUNTY SMP UPDATE WAS SUCKED INTO

BY THE DIRECTOR USING THEIR “SHALL” POWER UNDER RCW 90.58.110

Development of program within two or more adjacent local government jurisdictions—Development of program in segments, when.

(1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof.

It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW 90.58.080.

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.
RECOGNIZING THIS FACT....

So long, as my name is Pearl Rains Hewett (AKA Pearl Revere) I shall continue running through cyber space with red flag warnings, asking questions and disseminating documented facts.

AND LAYING DOWN THE LAW ON THE CLALLAM COUNTY SMP UPDATE.

SEND YOUR COMMENTS TO THE BOCC smp@co.clallam wa.us

Open Letter to the Clallam County (CC) Commissioners  

(For multiple medical reasons I cannot attend the CC Commissioners Public Hear 12/12/17 on this topic. Please have a County Employee read this open letter for your/their consideration.)

*****

Subject: Clallam County Shoreline Master Plan Update (SM-PU)

The SM-PU is a good idea perverted.

The Democrat appointed WA State DOE (Department of Ecology) is imposing their convoluted partisan ideology thru this sham machination of public input disguised as Due Process. At great public expense the DOE has socially engineered ‘a taking of Private Property Rights’ from the Citizens of Clallam County. This harms private property owners, reduces the value of shoreline property, and reduces the County Tax Base. The SM-PU document is exceedingly long, onerous, ambiguous and unintelligible to the prudent person. In reality the SM-PU bypasses WA’s Legislative Process creates Law thru their Appointed Partisan Bureaucrats.

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Dr. Karl Spees, MD member of the most recent CC SM-PU Citizen Advisory Committee

My public testimony concerns do not preclude the elected DCD Director or the elected CC Commissioners from creating policies managing and regulating ‘Common Sense’ rules for use of Shoreline Property.
Ms. DeLorey,

Thank you for forwarding this – I have cc-d our Clerk to ensure that it becomes part of the public record for the Shoreline Master Plan public hearing.

While the Department of Ecology will not currently accept a Plan that contains an outright ban (underscoring the importance of the legislative advocacy you’re taking on) we will have the ability to place a variety of restrictions and/or limitations on net pens and the draft Plan as it currently exists is more restrictive than the current plan.

Sincerely,

Mark Ozias

Dear Commissioners Ozias, Johnson and Peach:

Attached please find a recently adopted Resolution approved by the Clallam County Democratic Party. We greatly appreciate your serious consideration of our position on this matter.

Sincerely,

Vicki DeLorey

Corresponding Secretary

Clallam County Democratic Party
Mr. Loran,

Thank you for taking the time to offer your opinion to the County Commissioners on an issue that has come before them. I’ll make sure that each of them sees a copy of your message, and I’m sure they will take your comments into consideration before making any decisions.

Sincerely,

Jim Jones, Jr.
Clallam County Administrator

From: James Loran [mailto:jvlcm1@olypen.com]
Sent: Tuesday, December 05, 2017 9:19 AM
To: Jones, Jim
Subject: SMP (External Email: USE Caution)

Clallam County Council,

I call upon the Clallam County Council to enact measures, rewrite governing documents, adjust the permitting process... do everything and anything within its power to be the responsible stewards for the marine environment in ways that only it can do.

When the Clallam County Council approves the Shoreline Management Plan being considered, please be sure that sufficient protections have been written into it that will discourage potential applicants for marine-based fin fish net-pen aquaculture permits from making application.

Applications for permit for upland based Recirculating Aquaculture Systems (RAS) is the only fin fish aquaculture application that Clallam County should approve via its permitting process. Appropriate language supporting and even promoting RAS should be written into the SMP.

The Clallam County Council has the ability to be responsible stewards for the marine environment in this manner if only it chooses to. I implore the Council to do so.

James V. Loran, a resident of Clallam County.
jvlcm1@olypen.com
206.355.6896
Mr. Nolan,

Thank you for your note. I am cc-ing our Clerk on this response to ensure your comment becomes part of the public record. We will be holding a public hearing later this month, though I suspect it is highly likely that no action will be taken at the close of the hearing as the Commissioners will surely have a large amount of public input to absorb.

Sincerely,

Mark Ozias

-----Original Message-----
From: John Nolan [mailto:beeber@olypen.com]
Sent: Sunday, December 03, 2017 9:15 AM
To: Ozias, Mark
Subject: SMA

To: mozias@co.clallam.wa.us (Commissioner Mark Ozias)

This message was sent via the Clallam Website Email Form 12-03-2017.

Name: John Nolan

Email: beeber@olypen.com

Subject: SMA

Comments: I am urging you to reject the new proposed SMA draft. I have been a resident of East Clallam Co. since 1970 and have property on Salt water the entire time. Our beaches and tidelands are adequately protected by current rules. We should not give more power to state agencies and take existing rights from property owners. If you vote against expanded SMA draft You can count on my vote next election.
Chiara,

Thank you for your note. The subject of net pens is really important and one that the Commissioners are taking extra time to understand as we review the Shoreline Master Plan update.

I am cc-ing our Clerk to ensure that your comment is included with all those we are receiving that relate to the SMP. My understanding is that the status of the current net pen operation is in limbo, as the Governor and Department of Ecology have put a hold on net pen related activities pending further review.

Sincerely,

Mark Ozias
Clallam County Commissioner

From: Chiara Rose [mailto:chiara@studentsforthesalishsea.org]
Sent: Tuesday, November 28, 2017 11:18 AM
To: Ozias, Mark; Johnson, Randy; Peach, Bill
Subject: Hello wonderful Clallam County Commissioners (External Email: USE Caution)

As you all are aware, a bi-partisan issue has come forward.

Invasive Atlantic Salmon net-pens that are sucking from our natural shared resources.

Here is a Guest Editorial by a Republican State Representative.

Communities off the coast of the Salish Sea are taking action. From Port Angeles, to Seattle, to Lummi Nation to The San Juan Islands to Musgamaq Nation.

I live at 407 Charles Rd. in Port Angeles WA 98363.

I am wondering if you would consider taking emergency action to protect our waters. The current net pens need to be banned.

Thanks for listening,

Chiara
Shimmin, Paula

From: Darlene Schanfald <darlenes@olympus.net>
Sent: Saturday, November 25, 2017 8:11 PM
To: Ozias, Mark
Subject: SMP comments (External Email: USE Caution)
Attachments: 2017-FINAL SMP comments.docx

Mark:

I finally finished comments on the SMP. These were for OEC and another organization. Sierra Club will be commenting, too, maybe similarly to what is in the attachment below.

You wanted to see how we could work together on the SMP. Let me know what you think when you have a change to review the attached comments.

Best,

Darlene Schanfald

PS I was looking through the recommended increase in costs for the Health Dept. Do we have landfills? If so, where? Who in the County is doing anaerobic digesting? Energy recovery? Incineration? (P 5)
November 25, 2017

Greg Ballard
Clallam County Department of Community Development
RE: Shoreline Master Program Update
223 East Fourth Street, Suite 5
Port Angeles, WA 98362
SMP@co.clallam.wa.us
gballard@co.clallam.wa.us

I am submitting this for the Olympic Environmental Council and Friends of Miller Peninsula State Park, both 501c3 non profits. Comments are based on the Planning Commission Recommendation - September 2017 draft. http://www.clallam.net/LandUse/documents/PCFinalSMP_Sept2017_clean_000.pdf

We wish to compliment you on tightening the language since the last draft. Thank you staff, Consultant Margaret Clancy, and Planning Commission. This 2017 draft is a much better document than earlier ones.

Some of our 2015 comments were addressed; many were not, so we are resubmitting the latter in addition to others relevant to new language inserted in this draft. Herein, follows our questions and suggestive modifications chapter by chapter. Of course, we support the three main policy objectives — shoreline natural resources and functions protections, public shoreline access, and water dependent uses (in some cases), and in that order. As 501(c)(3) organizations focusing on the intertwining of natural resource protections and public health, our comments come from the perspective of protection for our natural resources and functions as a priority.

First, general comments.

**TERMINOLOGY**

Thank you for deleting the nebulous meaning word “significant” in many places. Remaining are “minimize,” and “balance.” These offer no definitive positions. These terms invite subjectivism and do not suffice to protect our resources. Where used, the language should be given more specificity. Too, mitigation is very overused; almost everything appears able to be mitigated, thus weakening the intent of the three main policy objectives.

**AQUACULTURE**

The Draft Program proposes to site floating fish pens and shellfish farming in almost ALL County waters/shorelines. There is no distinction made between small scale family shellfish farming and large corporate shellfish farming. This needs to be considered.

RCW 90.58.020; WAC 173-26-186(8). WAC 173-26-020(13) defines “ecological function” to be the work performed or the role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline’s natural ecosystem.” Therefore, while aquaculture is of interest to WA State, it is not its priority for shoreline and water use, regardless of the politics.

We do not concur that corporate shellfish farms on acres of shorelines is commercially good. At least 50% of the product are sent to Asia, and the growers make the money while we are left with the polluted water, sediment and beaches, as well as lost property values.
And now Western and British Columbia Tribes, along with environmental organizations, state legislators, and many of the general public have taken positions and legal action to halt net pen fish farms for non-native species. There have been three or four major Atlantic salmon escapements into the Sound and a farm collapse from a disease. This industry has proven itself, worldwide, to be a major polluter and the food often unhealthy. Clallam County should be bold and oppose this industry in its water system. If the industry is to continue, it must do so upland.

While the Shorelines Management Act (SMA) does not preclude development on the shorelines, its policies seek to protect against adverse affects to the land, to the vegetation, to the wildlife and to the waters of the state and their aquatic life so that there is “no net loss in ecological function.” Thus, the SMA ultimately strives to preserve the ecological functions of the shorelines and not allow for their degradation.

Also under Agriculture, we comment about a 30 year rotation of forest lands.

**SETBACKS**
Buffer averaging is not a good idea for new development or totally rebuilt sites. (For guidance, see the scientific analysis just completed by Dave Parks of the WA State Department of Natural Resources. *Bluff Recession in the Elwha and Dungeness Littoral Cells, Washington, USA. Environmental & Engineering Geoscience, Vol. XXI, No. 1, January 2015; and Mapping and Monitoring Bluff Erosion with Boat-based LIDAR and the Development of a Sediment Budget and Erosion Model for the Elwha and Dungeness Littoral Cells, Clallam County, WA.)*

Where properties are too small for a home site with safe setbacks for an estimated 75 year period, perhaps a small vacation structure or a green house could be allowed. Without doubt, for the protection of property owners, natural resources, and County residents that could be sued, the County should disallow properties being built where it is perceived these properties would put property owners in harms way. If these properties are platted or built upon, the County should instruct property owners to move their structures back in order to not be washed away or fall over a bluff. The County could additionally consider ways to assist property owners, if need be, such as setting up a fund to assist lower income property owners with relocating their structures and, in some cases, purchasing properties at a modest price. These properties could not be resold by the property owners so this would be a win-win for all. This would protect the County and taxpayers against law suits from having let these properties be built on and later learning the house and lives are threatened.

In Chapter 2, references to advising property owners of climate change and sea level rise impacts should all be “shall” rather than “should.” The County must be responsible for informing property owners, current and future, that could be threatened by these.

**ARMORING/STABILIZATION/JETTIES, etc.**
This language could be tightened and more protective of shorelines and marine life.

**OTHER**
We also comment on mining, dams and permits

**SPECIFIC COMMENTS**
CHAPTER 1
Let's replace “no net loss” (NNL) with “NO LOSS!” I.E. NET O (zero).

"...Local master programs shall include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline; (WAC 173-26-186 (8b))

1.9.1.a
RE: mention of Section 10.2.1, 10.2.2 and 10.2.3 of this SMP. As written, it leads a reader to think these sections are in the RCWs rather than in the SMP. It would be clearer to say “… Section 10.2.1, 10.2.2 and 10.2.3 of this SMP.”

1.10.4 Authority
"The County shall periodically… “ “Periodically” indicates a set time. Can you state this time period in the SMP? Annually? Bi-annually? Other?

1.11.4. “All County development regulations including, but not limited to, zoning subdivision, “
Delete comma after “to”.

1.11.7. Consistent with the policy and use preferences of RCW 90.58.020, Clallam County should balance the policy goals of this Program along with consideration for other relevant local, state, and federal regulatory and non-regulatory programs
Give examples.

“Thus if the use/development is prohibited in the upland Shoreland area”
Place a comma after “Thus” and another comma after “area”

See footnote 3 on page 61; then consider it in relation to Chapter 3 (3.3)

CHAPTER 2

2.3 Aquatic Designation (A)
2.3.2 Purpose: The purpose of the Aquatic designation is to protect and restore the quality and health of marine and fresh waters and the species that depend upon them, while allowing for limited modification for water-dependent uses and public access when located in appropriate areas and developed to avoid a net loss of shoreline functions.

But other language allows uses and mitigations. It is mentioned late in the plan that the number of docks in any one place should mainly be for more than one user and with consideration of the number in the area and consideration of other aquatic issues. Even though there is a rank order of actions to consider, basing this on mitigation re: NNL is of concern, because docks in any area will change the water/sediment dynamics.

Consider a community dock rather than individual ones within the same community.

2.4 Natural Designation (N)
We believe this can also include areas that can be restored, not just to the Elwha and the Lower Dungeness. This came up in a conversation with Ecology over a Pt Angeles City reach that if a polluted site was restored to its original/near original environment, such as Ennis Creek for example, it would be eligible for a Natural designation. There might be other Clallam Co. areas that in the future would be such a fit.

2.6.3.e Shoreline Residential Conservancy/SRC
“hunting” Hunting what? Does this include shooting? If so, please confirm whether shot/bullets must be lead free.

CHAPTER 3
Shoreline mining anywhere near residential zones is not appropriate. Beyond damage to natural resources, this impacts wildlife and disturbs area residents with noise and dust. We believe the Jefferson County SMP language is more specific and provides homeowners and recreational users better protection, as well as better protection for our natural resources. Please see the following:

Policies
3.1.1. Replace “should” with “shall” throughout

3.1.1.6 Can we do better than “encourage?” Isn’t BAS required?

3.1.2.1.a Manure spreading. Is this spreading intended to be restricted to farm land? This must be disallowed off farm land and within one mile of residential areas, as it comes with a host of problems: methane emissions, drift, malodors, respiratory health impacts, fly attraction, toxins that could be in the animal manure, and stormwater runoff.

This brings up the unintended point that manure is part of commercial compost/fertilizer that any homeowner, etc. can purchase and use. And animal includes humans. Whatever animal waste – human or non human – ends in the wastewater treatment plant, it will be in most commercial composts. Some language needs developing around this issue. We’d be available to work with you on this.

3.1.2.1.h Change “best management practices” to “best available science.” NOTE the following: “Wickham ruled that best management practices were not the same as best available science, the standard required under GMA, because they were not designed to “protect” the “function and values” of critical areas nor give “special consideration” to the presence of salmon.”

Court overrules decision on Island County growth management

3.1.2.1.i Livestock access to shorelines and buffers should be prohibited, not “mitigated.” It is a loophole. There should not be a waiver.
“Because the Court finds the Dairy’s manure presents a risk of harm to human health, it may also necessarily present a risk of harm to the environment.”
UNITED STATES DISTRICT COURT EASTERN DISTRICT OF WASHINGTON  Case 2:13-cv-03016-TOR Document 320 Filed 01/14/15 CARE &Center for Food Safety v. Cow Palace

Add a new section: “CAFOs in Clallam County are prohibited”
http://www.foodsafetynews.com/2015/01/antibiotic-resistance-travels-on-dust-from-feedlots/_.VMUq7F-z5

3.2 AQUACULTURE
The Washington Administrative code (WAC 173-26-181) provides these priorities for Shorelines of State Significance.

Master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the state-wide interest over local interest;
(2) Preserve the natural character of the shoreline;
(3) Result in long term over short term benefit;
(4) Protect the resources and ecology of the shoreline;
(5) Increase public access to publicly owned areas of the shorelines;
(6) Increase recreational opportunities for the public in the shoreline;
No mention is made of Aquaculture or commercial use), yet this Program makes aquaculture a priority.

The concerns in this Draft, as in earlier ones, are floating fish pens and CAFO sized shellfish projects. Fish pens should be sited on land and only where no harm comes to water bodies. This industry earns enough money to locate farms upland. The CAFO sized shellfish farms cannot be done safely. Plastic pipes and nets are used. These float away, pipes break up into plastic pieces, and nets harm wildlife and interfere with recreational use of shorelines and beyond. Aesthetically, large scale aquaculture is not pleasing. Small scale shellfish farmers that hand plant for their own use and/or sell locally. These do not have the impact of the CAFO sized operations that ruin the environment and are not intended for local use or bolstering our local economy.

This Draft, like those earlier, does not recognize the specific factors discussed in the SHB decision which are present in Clallam County’s beaches adjacent to Natural Shorelines: “high energy sub tidal environments, bordering on continuous eelgrass beds that provides spawning habitat for nearby herring and are habitat and refuge for other forage fish, including juvenile salmon and various aquatic organism” - SHB No. 13-016. Page 52, paragraph 20. Too, fish wastes and uneaten feed from cages or from PVC tubes cause nutrient loading in waters which then degrade marine waters.

In sum, we do not accept the premise that "Aquaculture is of statewide interest and important to the long-term economic viability, [not historical] cultural heritage and environmental health of Clallam County." (3.2.1.1). The dollar benefit is for the grower and the lessor and the industry while harmful to the natural resources, wild animals, and neighbors’ property values. None of these can be mitigated, and the suggested mitigations are inadequate. The Draft Plan must determine what size shellfish farms can be allowed, allowing the “mom & pop” sized ones only, and allowing only fin fish farming upland.

**GENERAL**

If aquaculture is permitted, **ensure that the following is added in Section 3.2.5:**

Prior to approving a permit for a new aquaculture use or development, the Administrator shall require, at a visual analysis prepared by the applicant/proponent describing effects on nearby uses and aesthetic qualities and visual aesthetics of the shoreline.

Cumulative Impact Analysis – Expanded requirements

Applicants proposing complex projects, such as multi-species farms, farms on shorelines of statewide significance, farms that have the potential to harm habitat, community recreation use or significant degradation of views and aesthetic values, farms within low-energy shorelines areas including but not limited to bays, coves and estuaries and areas situated adjacent to identified critical areas; farms proposed in areas adjacent to existing aquaculture actives: or when the proposal is the first of its kind in the areas shall be required to provide additional base line information that may include:

a. Aquatic and benthic organism diversity and abundance
b. Sediment compaction
   c. Littoral drift estimates;
   d. Multi-level current flow data;
   e. Water quality
   f. Analysis of flushing rates g. An analysis of impacts of farms within water bodies or within the vicinity of the proposal and
   h. An analysis of visual, aesthetic impacts, and real estate impacts of farms proposed adjacent to residential and high intensity residential SEDS

A cumulative impact analysis shall be required for existing aquaculture sites within an inlet, bay or defined feature and a full EIS and cumulative impact analysis shall be required for new aquaculture projects within the same Shoreline Environment Designation.

The Administrator shall require the applicant to provide baseline and periodic surveys, assessments, and/or operational monitoring by an independent qualified consultant to determine the magnitude of any significant adverse impacts. Permits shall include specific performance measures and provisions for
adjustment within a specific time period or termination of the project if monitoring indicates adverse environmental impacts that cannot be adequately mitigated.

FIN FISH
Prior to approving a permit for a new aquaculture use or development, the Administrator shall require a plan to address the potential for net pens to be swept from moorings into navigation lanes and how this will be kept from happening, along with listing fines if it does happen.

If in-water fin fish aquaculture is permitted, the Administrator shall require an operations plan that includes annual monitoring and projections for improvements at the site (e.g. pens, booms, etc.) and their relationship to the natural features (e.g. bathymetry, shorelines, etc.). Also required will be the source of eggs, juveniles, and bloodstock; type of feed used and feeding methods; chemical use (e.g. antifouling, antibiotics, etc.); and predator control measures.

It has been reported that up to 70 percent of the phosphorus and 80 percent of the nitrogen fed to fish is released into the water through organic wastes, and underneath the floating cages there can be dead zones surrounded by areas extending out 500 feet of decreased diversity. (See: Beveridge, M.C.M. 1996. Cage Aquaculture, 2nd ed. Edinburgh, Scotland: Fishing News Books: 346.; and Boesch, D.F., R.H. Burroughs, J.E. Baker, R.P. Mason, C.L. Rowe, and R.L. Sieffert. 2001. Marine Pollution in the United States: Significant Accomplishments, Future Challenges. Pew Oceans Commission, Arlington, Virginia.)

- A salmon farm of 200,000 fish, “releases an amount of nitrogen, phosphorus, and fecal matter roughly equivalent to the nutrient waste in the untreated sewage from 20,000, 25,000, and 65,000 people, respectively.” (See: Hardy, R.W. 2000. Urban legends and fish nutrition. Aquaculture Magazine 26(6):47-50.)

Four out of twelve salmon net pens in Washington State discharged 93 percent of the amount of ‘total suspended solids’ into Puget Sound as the sewage treatment plant serving the city of Seattle.


Clallam County has several fish streams and rivers where native salmon can be replaced by escaping salmon who suffer from disease acquired in the fin fish net pens. Once this disease spreads into the native streams, the natural runs decline significantly. This has happened in Canada, South America and Norway.

Indeed, On January 10, 2015, a hurricane hit the southern end of Norway, releasing numerous fish, diseased and ready to spawn, now in the wild! Chains the fish fin farms purchased had been certified to withstand 70 tons of load and broke at 30 tons. - See more at: http://alexandramorton.typepad.com/alexandra_morton/2015/01/farmed-steelhead-threaten-norwegian-wild-salmon.html#sthash.VEJ0fqNp.dpuf Now Norway is deciding that all fin fish farms must be on land. For the full story, go to <http://alexandramorton.typepad.com/alexandra_morton/2015/01/farmed-steelhead-threaten-norwegian-wild-salmon.html> This has already happened here when 300,000 farmed atlantic salmon escaped the pen in the Port Angeles Harbor and fishermen found farmed fish in wild salmon streams.

On November 13, 2017, the Wild Fish Conservancy filed a lawsuit against Canadian-based Cooke Aquaculture over its August Cypress Island net pen collapse and the escapement of over 100,000 Atlantic salmon, found as far away as British Columbia and the State of Oregon. Under the Clean Water Act, each of the salmon are considered a federal violation, therefore costing Cooke Aquaculture daily for each fish not caught.

SHELLFISH
A distinction needs to be made between small, local shellfish farmers who carefully plant and harvest shellfish and that of the large acreage projects requiring tubes, nets, cages, poles, etc.. The NNL and eco function affects are different between the two.

- Other Plan shortcomings are that it:
  - does not provide adequate mitigation for geoduck impacts,
  - does not require an adequate assessment of the cumulative impact on Shorelines of State Significance, Does not protect river estuaries from a net loss of ecological functions as provided for in (RCW 90.58.020) and,
  - does not give the County’s land use administrator strong language in which to assess the mitigation of a project or provide for compliance of the conditions

Serious shellfish farming problems:

- Birds and fish mistake small plastic pieces for food. Ingestion of plastics as detrimental consequences including gastrointestinal blockages, ulceration, perforation and death. Some species suffer from false sensation of satiation and die of starvation after mistaking plastic for food.

- The aquaculture industry has not been able to contain their plastic pipes or plastic nets on the farm sites in Puget Sound. Geoducks push the pipes out of the soil as they mature in their development. Wave action from storms loosen pipes. When labeling of pipes and equipment was required in Pierce County, the pipes were found miles away from the beach site where it was installed. The Center for Biological Diversity, a non-profit organization in California, filed a petition with the Environmental Protection Agency in August of 2014 asking the EPA to issue rules to protect water quality from plastic pollution under the Clean Water Act.


Add to Plan language:
Any commercial geoduck aquaculture shall not be permitted in Natural shoreline designations, or in estuaries where shorebirds seek protection from windstorms, in the aquatic zones of Dungeness spit, Discovery Bay, or Sequim Bay or in adjacent to beaches that contain forage fish -- sand lance, smelt or herring spawning or pre-spawner herring areas as outlined in WDFW spawning data, or located within
one half mile of a winter steelhead stream, fall chum stream, Coho stream, or fall Chinook stream as listed on WDFW SalmonScape maps.

To determine the long term impacts of geoduck planting and harvesting, a monitoring plan should be required as a condition of a permit. Monitoring shall be required prior to bed preparation and prior planting then again after harvesting. Monitoring shall include impacts on shorebirds, benthic community, water quality and impacts on adjacent eelgrass beds. It should note species richness, altered species abundance and distribution, change in community intertidal structure composed of surface species, sub-surface species and bivalves.

To be clear, we oppose the allowance of in-water aquaculture fin fish and large shellfish projects. These acidify waters, ruin bottomlands, and pose other harm. Allowing this industry everywhere gives it priority use of our waters and shorelines. This is not “beneficial” for anyone but the growers. It is not beneficial to residents, recreational users, nor wildlife — who should have first rights to the shoreline and water. It is not a priority of the State’s use of shorelines or waters.

This industry and its widespread use throughout the Strait-Sound is political, irresponsible, and pushed by Ecology. The County should refuse the widespread use of its tidelands and waters for this industry.

The City of Bainbridge Island has called a moratorium and reversed its former position to allow what Ecology is pushing Clallam County to adopt. Clallam County should place a moratorium on siting the industry on tidelands in in waters to until the Bainbridge Island case is determined.

http://www.ci.bainbridge-isl.wa.us/DocumentCenter/View/4501

3.2.1.3 Using the term “minimize” contradicts paragraph 3.2.1.2’s intent, which is to not permit where there would be a result in net loss.

3.2.1.5 Use of chemicals and fertilizers. These State and Federal regulations are lax and oversight and enforcement by staff is discouraged. This may change when the report to the Governor is released, but history has shown agencies have a ‘hands off’ policy, even if it is just a spoken one.

3.2.1.7 Delete the word “significant.”

3.2.1.10 This wording conflicts with Policy 3.2.1.2. Non native fin fish should not be allowed.

3.2.1.14 This would be giving up County authority, which you should not do.

3.2.2.1 Regulations -- General
Add to this, “Cumulative impacts must be considered.”

3.2.2.13 Helical anchors do disturb bottomlands, especially given the number needed to anchor a net pen.

3.2.2.17 Replace “may” with “shall.” “The County shall require applicants…”

3.2.3 Regulations - Commercial Geoduck Aquaculture
We oppose 1.& 3. that commercial geoduck aquaculture may be permitted in all shoreline environment designation and through a CUP and that a single CUP may be submitted for multiple sites within an inlet, bay or other defined feature. This does not equate with NNL. This is politics above natural resource protection and beach access.
3.2.3.3 — a single CUP for multiple sites is unsafe. .4 through .6 = bad and .7 is weak. Setting up geoduck farms, planting and harvesting all ignore the needs of other wildlife to the natural setting prior to geoduck farming. Animal life beneath and above the sediment and sand are native to the area and should not be disturbed. Other wildlife dependent on these natives should be recognized and their “livelihood” not taken away by planting these farms.

3.2.4.3 Regulations – Fin Fish Aquaculture. Aquatic fin fish aquaculture by its very nature is polluting. Minimizing all the toxic products possibly released that are named in this sub section for the size of these facilities, these releases would not be minimal to the surrounds. Again, fin fish projects should be cited upland.

3.2.4.13-16 is good tighter language. Add that these cannot be sited in open waters.

3.2.4.1: Can this come under substantial development rather than CUP?

3.2.4.3: Replace BAC with BAS technologies; delete “and minimize” so that it reads …and practices to avoid release of herbicides…

3.2.4.7: Vaccination is bad, to, as this travels up the food chain. Healthy food does not need medication.

3.2.4.9: These should not be in-water, and non-native species should not be allowed.

3.2.4.10: The agencies mentioned promote this industry and work for the industry and do not carry out their mandates, as seen from the COOKE debacle at Cypress Island and their admittance to not carrying out their mandates to protect marine life and public health.

3.2.4.16, Line 1: Replace “may” with “shall:” The County shall require the applicant to provide.....

Application Requirements for Aquaculture – Section 3.2.5

3.2.5.6 We suggest aquaculture be permitted as substantial developments (SDP) rather than conditional uses. The latter is controlled by Ecology. The former is controlled by the County and allows County residents to be invested with the authority. A SDP can be made as stringent as a CUP.

They should not be in open waters.

Section 3.3.1 Policies is weak; filled with “should” and “avoids”

3.3.1.6 delete "should be encouraged," and replace with “will provide public access…”

Section 3.3.2.2 “project proponent demonstrates” We witnessed this with Icicle/Cooke net pens. Of course, the proponent will write up favorable info for itself. This is not oversight. Does the next paragraph give confidence?

3.3.3.4 Are the minimum needed to accommodate = pro-industry

3.3.2 Commercial and Industrial Development - Regulations

3.3.2.11 “To preserve shoreline views, new commercial and industrial structures shall not exceed 40 feet in height above the average grade level.” 40 ft/4 stories seems high. What makes 40 ft necessary? Are the views from the shoreline or just from bluffs?

3.4.1.6 Forest Practices

FORESTY It looks pretty standard for protecting the interests of timber companies.

It defers forestry under Shoreline Management to the standard (awful) Forest & Fish Rules, which were written by the timber industry and passed without scientific validity. The only scientific assessments of F&F at the time found the rules to be not protective.
Shoreline management forestry harvest limitations are concerning. Timber companies can take 30 percent of the trees each 10 years. Cuts 30 percent of the trees in shoreline-managed areas every 10 years is roughly a 30-year rotation. It is not realistic to expect to protect our shorelines and their ecological functions with trees that are 30 years old or younger. Normal forestry is a 40-year rotation on private lands (governed by F&F) and 60 years on DNR lands (managed by the Habitat Conservation Plan of 1997). So there is really no protection for shoreline harvesting.

It's difficult to tell if 3.4.2 (2a) gives them the right to do more clear cutting when someone asks. 3.4.2.2(b) clearly does.

**Lacking is protecting shorelines from pesticides.** The DNR is responsible for issuing forestry pesticide permits, but the agency is uninformed about what timber companies are doing. Aerial spraying requires a permit, but there is no enforcement or monitoring. The DNR doesn't know what pesticides or pesticide cocktails are being used. Spraying for road maintenance, which typically involves stream crossings, is unregulated. No permit is needed. Along shorelines, no one checks to see how many pesticides make it into water. We know from USGS studies that every stream carries a pesticide load.

3.4.1.4: "should use best management practices" is a low bar. BMP should be replaced with “best available science.” In the wake of the Oso landslide, it is said that the DNR is reexamining policies on logging/road building/conversions on landslide-prone areas. These proposed policies should be accessed to see if they might strengthen the requirements of onsite soils/slope stability analysis before planned activities are allowed. This brings me to the following two points:

- steep areas need larger buffers

**ADD LANGUAGE RE: CLEARING BIOMASS --** Scraping logged land of limbs, trunks, etc. is detrimental to such land and results in runoff, as well as removes materials for animal needs. Some language should be added that prohibits scraping logged lands.

**3.5 Mining.**

Please add this new section: **Fracking County sand or shoreline resources shall be prohibited.**

6. Mining
A. Policies
1. Mining, as defined in Article 2, should be located and conducted so as to provide long-term protection of water quality, fish and wildlife species and habitat, to cause the least amount of disruption to the natural shoreline character, resources and ecology, and to avoid net loss of ecological functions in accordance with this Program and other applicable laws.
2. Mining should not be located and conducted where unavoidable adverse impacts to other uses or resources equal or outweigh the benefits from mining.
3. Mining should not interfere with public access or recreation on the shoreline.
4. Mining should only be permitted when the proponent provides appropriate studies and detailed operation plans demonstrating all of the following:
   i. Fish habitat, upland habitat and water quality will not be adversely affected. Etc...

**RECREATION**

3.7.1.2 **TYPO:** “publically-owned lands” should be spelled publicly-owned

3.7.2.13 **Primitive campsites...** give examples of places these could be set up.

**Add language such as:** ... as long as areas are maintained – no damage and no garbage is left.
3.7.2.11 Large recreational developments/Master Planned Resorts should be required to consider climate change-future projections of available water, and permitting agencies should have to ensure home owners and others in those reaches that they would have potable water at least 75 years into the future before a MPR is approved to take water.

3.10.2.7: Signs. Add “neon” to prohibited.

3.11.1.5-7: Transportation Policies. Replace “to minimize the need” with “to not need the following”

3.11.1.9 & 17 “Roads and railroads shall be located to minimize the need for routing surface waters into and through culverts.” Is Clallam County expecting to have new railroads?

3.12.1.1 Utilities Policies Replace “should” with “shall.” “New public or private utilities shall be located inland…”

3.12.2, etc. Dams, hydroelectric generating facilities, off-shore wind tidal energy systems should be prohibited.

3.12.3 Regulations 4. should be 1, then renumber those following. Regardless, we do not support dams nor hydroelectric.

3.12.6 Regulations – Off-shore Wind/Tidal Energy Systems These can be harmful to the marine system; quite disturbing. 5.a-e makes the point. What is the science on this?

3.12.7 Regulations – Oil, Gas, and Natural Gas Transmission.

3.12.7.1: Delete from “unless to impacts.” End the paragraph on lines 4 with “will not be permitted.”

3.12.7.1 Delete “areas – infeasible. End with “shoreline.”

3.12.7.3-5: Delete these paragraphs.

3.12.8 Regulations-Municipal/Public Sewage Systems

Where are the outfall pipes in the county?

Public sewage is not clean or safe, due to the many thousands of contaminants and multiple pathogens it can contain. Spewing the effluents along with storm water overflows into open water bodies has and will continue to damage marine life, as is showing up in sediments, animals and their food. For some recent reports, see <http://www.wvu.edu/salishseaconference/docs/AbstractsByTrack.pdf> SSEC 2014 Presentation Abstracts - Western Washington University. There are a number of abstracts on BOD and effluent impacts on sea life. See also, <http://toxics.usgs.gov/pubs/Fs-027-02/index.html> Pharmaceuticals, Hormones, and Other Organic Wastewater Contaminants in U.S. Streams, June 2002. See also, Science for Sale, David L. Lewis, 2014.

Further, both the WA State Dept. of Health and the WA State Dept. of Ecology have publicly stated that 60% of Puget Sound pathogens are from sewage plants.

It is well known that many products are not treated by sewage treatment; that WWTPs were designed before many contaminants were known to be harmful at low concentrations; that treatment does not effectively remove contaminants, pathogens, and other; that the “escapees” persist when emptied into water bodies; and that minuscule sized particles like microbeads cannot be filtered out with the solids and wind up in water bodies and animals — including those sold for human consumption or are eaten higher up the food chain and then sold for human consumption. This also includes antibiotic resistant bacteria
and viruses which, by the way, can be created in WWTPs. For further references, see the attached brochure.

To continue, whatever is released in outfall pipelines should be required to be regularly sampled and analyzed for many known constituents and pathogens, and the best available science used for decontaminating as much as possible should be required in this SMP. Expense should not be spared as any dollar saved up front will save many dollars costing marine life and eventually our own health from food taken from the waters; costs which need to be factored in.

Further, the effluent should not be recycled on land, whether Class A or by any other designation, due to its toxicity.

3.12.10 Regulations – Stormwater Facilities -- f should be first; i.e., a. Add to the present a. prevention rules need to be created that these upland facilities don’t destabilize areas, especially those on bluffs.

3.12.10.d Is 35 ft sufficient? Think sea level rise and larger and more forceful wave action, which is now experienced.

CHAPTER 4

4.2.2.1.c Why would one want to co-locate marinas and shellfish beds?! This is not healthy for shellfish beds.

4.2.2.8 Replenishing sediment. “If new or expanded marina facilities adversely affect net sediment transport or other coastal processes to the detriment of nearby beaches or habitats, the marina operator shall be required to periodically replenish the substrate in these areas to offset adverse impacts.” Will this really offset adverse affects of net sediment transport or coastal processes? Will the sediments be analyzed for contaminants?

4.2.5.7 Are private single-family residential piers and docks extending over water 50 ft too far?

4.3.2.1 Dredging allowed in all designations (but Natural)???

4.5.2.10: Dams should not be allowed. That is what harmed the Elwha salmon and what is harming the Columbia fish. We are trying to bring the back from the brink. Allowing dams reverses the efforts.

4.6.1 POLICIES

4.6.1.4 Delete “should” and replace with “shall.”

4.6.1.5 Delete the opening phrase, “Over time.”

4.6.1.8 Replace “minimizes’ with “does not impact.”

4.6.1.14 Delete the word “substantially.” And over time, these could be cumulative, which should be avoided.

4.6.3.3. Additional Rules – Existing Structural Shoreline Armoring Reorder. C should be a; d should be b; a should be c; etc. .

add to the end of e: so as not to impact the properties; and

add to f: shall not contain toxic ash
4.6.8 Regulations - Breakwaters, Jetties, and Seawalls  Explain how these can enhance habitat? If these are needed to protect water dependent uses such as harbor, marina or ports, then these uses should not be sited. Mitigation as listed in point c. is not possible. We strongly recommend these structures not be allowed. (4.6.8.1.c. Adverse impacts on water circulation, sediment transport, fish and wildlife migration, shellfish, and aquatic vegetation can be effectively mitigated.)

CHAPTER 5
GENERAL POLICIES AND REGULATIONS

5.1.3.7.c  Single family residential enlargements/expansions should not be given variances or other approvals to expand into buffers, critical areas, or heights above established limits by this Program. Why bother to have a Program if these are allowed?

CHAPTER 7  CRITICAL AREAS WITH SHORELINE JURISDICTION

7.6. Regulations – Wetland Protection Standards  New shoreline uses and developments shall be located, designed, constructed, and maintained to avoid wetland areas and their buffers. Impacts to wetlands and their buffers shall be prohibited except when all of the following conditions are met:

a. The use or development is specifically allowed by this Program; and

b. All reasonable measures have been taken to avoid adverse effects on wetland functions and values; and

c. Compensatory mitigation is provided, in accordance with Section 8.3 of this Program, for all adverse impacts that cannot be avoided; and

d. The amount and degree of alteration are limited to the minimum needed to accomplish the project

COMMENT:  This language sounds more like wetland destruction than wetland protections. We should protect them all instead of allowing passage into them.

7.7 REGULATIONS--  Thanks for defining the Types S. F. Np and Ns the first time it is used.

7.13.1 GEOLOGICALLY HAZARDOUS AREA BUFFERS  A minimum buffer of 50 ft is too shallow. This is not protection over a 75 yr period as required—25 years, if lucky. Variances should not be given in such areas. These may not be buildable areas.

7.14.2 If the County signs off on this and there is an accident, the County—meaning the citizens of the County – are liable. Any property owner that accepts this option should wave his/her right to sue the County.

7.18.4 Cides of any kind should be disallowed in critical aquifer recharge areas on any size acreage. BAS should replace BMP.

CHAPTER 8 - MITIGATION AND NO NET LOSS

8.3.4 “…or an alternative…ecological benefits.” New shoreline use and development should be kept from adverse impacts. Out-of-kind mitigation sanctions area impacts and net loss. Stick with the overall goal cited in 8.5.1 – no net loss of functions, acreage and values.
CHAPTER 9 SHORELINES OF STATEWIDE SIGNIFICANCE

9.1.2.a “Recognize and protect the statewide interest over local interest.” This is a double edged sword. They are both important. When agencies are not protecting our shorelines of statewide significance, like promoting aquaculture throughout which will be very harmful, local jurisdictions must be able to stand up and protect these resources — these “shorelines of local interest,” and have the ability to take legal action when needed.

This language puts business interests over community interests, such as seen in the aquaculture section, meant to benefit a few businesses, but which is harmful to marine systems, shorelines and residential property owns. It is not beneficial usage for the commons.

9.3.1.c: “Preferred!” Delete “preferred which are”. Rewrite: Uses shall be consistent with control of pollution...

9.3.2.e: NO! “...such as commercial shellfish.” “…and comments from related industry associations…” substantiates our concerns in 9.1.2.a We notice that citizen and environmental inputs were not included. 9.3.2.g is substantially better, but what about corporations that can later claim shellfish beds, cross private properties, and claim those shellfish? Is their permit timeless or are the permits for a set period of time and not automatically renewed? Even under CUP, are these never-expiring permits? 9.3.2.12 states these massive corporations that benefit only themselves and not the local community “shall be protected.” If there is another interpretation, please spell it out. 9.3.2.13 – Delete the word “significant.” Here again, the large shellfish company impacts are well known, even to the courts, as are fish farm net pen companies. Protecting them should cease.

CHAPTER 10. ADMINISTRATIVE SECTION
Section 10.2.7: Expiration of Permits and Permit Exemptions

Other communities found that time limits for construction permits did not adapt well to the on-going nature of aquaculture projects. E.G., due to the fact that the long term impacts of geoduck aquaculture has not been studied, we suggest that permits, once granted, be limited to a five (5) year period or for a period of one planting and harvesting cycle, whichever comes first.

Extension of Permit (10.2.7) or Permit Revision (10.2.9) should not be allowed for aquaculture projects without an environmental EIS and showing that the substrate, water quality, priority habitat species, forage fish spawning area have not experienced a net loss of ecological functions during the five (5) year period.

Darlene Schanfeld, Ph.D.
OEC Secretary
FMPSP Chair
Diane, you really hit the nail on the head.

NGO's are mostly funded by grants which are
given away by non elected bureaucrats with our
money!

Our elected representatives need to reel in the
bureaucracies! T
his is totally out of hand!

Well said Delane, I have to agree.
This certainly looks like the foundation of a lawsuit, should the SMP prove unfavorable to the landowners, facts and expert opinions being what they are. Why do you need more and additional restrictions (e.g. an update) unless you are going for a higher standard then "Pristine". I can only imagine one standard higher; untouched by human hand. Is that where the EPA wants to take this eventually? Just setback the properties until they are no more? Restrict them until they have no human use? One foot at a time...

Why not celebrate the "Pristine" nature of the shoreline and the caretakers of the land. Isn't this the very definition of man AND the biosphere? isn't this the standard we are looking for and already have with the existing SMP and existing EVIDENCE?

It really is sad that as long as there are grants to be awarded, budgets to use or lose, and NGAs to award them to, it really doesn't matter if there is a problem or not. It's not like its our money they are spending...

From: pearl hewett
<phew@wavecable.com>

Sent: Saturday, November 11, 2017 9:34:34 AM

To: ZMP

CC: mark mozas; maryjane.robins@mail.house.gov;
Brian and Brooke; judymiller173@frontier.com; Tracy Horn;
notac@olypen.com; Tharinger, Rep. Steve; Sandy Rains; Delane Hewett; Vi Van De Wege, Rep. Kevin; parlette.linda@leg.wa.gov; Office of Jesse Young; Mike Chapman; connie beauvais; Bob McGonigel; Stephanie Noblin; Ivan Stocker; LIZ BOWEN; lizziephel@aol.com; Sandy Collins; ahlburgk@msn.com; marg@sequim.com; randy simmins; Wylie clark; info@justwateralliance.org; Darol Johnson; Glen Morgan; Ross Krumpe; Louise Gliatto; RON SUSLICK; harry bell; Jim Boyer; Dick Pilling; Dan Clem; Rene”; Amanda Hewett; Art Ayres; Karl Spees; dianne l; Ross Tyler; brian winter; office@konp.com; Pam Roach; JOSH HOWARD; Mary Ellen Winborn; Randy Johnson; Bill Peach; joni howard; Tristin Hewett; Lois Perry; Sue Forde; Rick Forschler -; Amy Cruver; levi howard; chuck cushman; Janet Fowler; diane royall

Subject: Clallam Co SMP Update Laying Down the Law

Clallam
Co SMP Update Laying Down the Law
Posted on
November
11, 2017 8:57 am
by Pearl Rains
Hewett

Comment

FIRST, LAY A FOUNDATION IN EVIDENCE
A DOCUMENT OR OTHER PIECE OF EVIDENCE WHICH ASSURES THE COURT OF THE TALENT AND EXPERIENCE OF A WITNESS OR THE AUTHENTICITY OF THE DOCUMENT OR ARTICLE.
THE SHORELINE INVENTORY AND CHARACTERIZATION PROVIDE THE FOUNDATION FOR THE ENTIRE SMP UPDATE PROCESS
SMP Handbook: Chapter 7, Shoreline Inventory and Characterization
https://nam03.safelinks.protection.outlook.com/?url=www.ecy.wa.gov%2Fprograms%2Fsea%2Fshorelines%2FSMP%2FHandbook%2FChapter7.pdf&data=O2%7C01%7Cwylieclark%40msn.com%7C1fd01a3aca664ab68c5308d529f278e5%7CB84df9e7fe9f640a8f435aaaaaaaaaa%7C1%7C0%7C636461043736231994&data=g5Rwy1T2lu7u%2ByvVuVgtLVdsndoHf2Uy328VX0EBk0QXQ%3D&reserved=0
THE 2010 SHORELINE INVENTORY AND CHARACTERIZATION IN CLALLAM COUNTY DID PROVIDE THE FOUNDATION FOR THE ENTIRE 2017 SMP UPDATE PROCESS.
LAY A FOUNDATION IN EVIDENCE
FEB 24, 2015 DEPT. OF THE INTERIOR (DOI), the US Fish and Wildlife Service and the maritime national wildlife refuge complex (NWRC)
SMP PUBLIC COMMENT #584 022415 —
"UNLIKE MANY OTHER AREAS OF PUGET SOUND CALLAM COUNTY HAS PRISTINE AQUATIC AREAS AND SHORELINES THAT ARE IN GREAT CONDITION OR HAVE BEEN RESTORED AND PROVIDE MANY BENEFITS TO THE PEOPLE AND THE WILDLIFE IN THE AREA. RECOGNIZING THIS FACT, WE SUGGEST THAT THE SMP FOLLOW A HIGHER STANDARD THAN IS REQUIRED BY THE WA STATE SHORELINE MANAGEMENT ACT'S MINIMUM PROTECTION REQUIREMENT" OR... OR... OR... PARTICULARLY AN EXPERT WITNESS LAY A FOUNDATION IN EVIDENCE, TO PROVIDE TO THE JUDGE THE QUALIFICATION OF A WITNESS (PARTICULARLY AN EXPERT WITNESS)

Recognizing this fact,...

As a concerned citizen of Clallam County, I did lay a foundation in evidence many documents or many other pieces of evidence which assures the court of the talent and experience of a witness or the authenticity of the document or article.

In spite of my laying down the chain of documentary evidence on the Clallam County SMP update from Dec 5, 2009 to Nov 11, 2017.

Wherein: the goal of this rule is to allow parties to present all of the evidence that bears on the issue to be decided.

Wherein: probative facts are data that have the effect of proving an issue or other information. Probative facts establish the existence of other facts.

Wherein: they are admissible as evidence and aid the court in the final resolution of a disputed issue.

Why would anyone believe me?

Nov 9, 2017 I met with elected Clallam County DCD Director Mary Ellen Winborn. We spoke for about an hour. The bottom line... pretty much went like this.

Mary Ellen said, "We have to leave this 2017 DCD 2017 SMP update to the professionals"....

Why would anyone believe you?

Really, why would anyone believe me.

Why indeed, because a document or other piece of evidence which assures the court of the talent and experience of a witness or the
AUTHENTICITY OF THE DOCUMENT OR ARTICLE.
I DID IN FACT LAY A FOUNDATION
IN EVIDENCE DOWN THE CHAIN OF DOCUMENTARY EVIDENCE ON THE
CLALLAM COUNTY SMP UPDATE FROM DEC 5, 2009 TO NOV 11,
2017.
CLALLAM CO SMP UPDATE LAYING DOWN THE
LAW
WHY AM I MAKING A FEDERAL CASE OUT OF
THIS?
The EPA GRANTED AND FUNDED THE
CLALLAM COUNTY DCD SMP UPDATE DRAFT.
A US ENVIRONMENTAL PROTECTION ASSISTANCE
GRANT TO CLALLAM COUNTY WA FOR PROJECT NO
PO-00108801-1-2-3. IT COST AMERICAN TAXPAYERS
$1,329,915.00 DOLLARS.

MAKING A FEDERAL CASE OUT OF
THIS......

THE RULES OF EVIDENCE BY FEDERAL LAW
Congress in 1975 adopted the
are the official rules in federal court proceedings. Most
states now also have codified rules of evidence based on
these federal rules. Both state and federal rules of
evidence serve as a guide for
judges and attorneys so that they can determine whether to
admit evidence—that is, whether to allow evidence to be
observed by the judge or jury making factual conclusions in
a trial.

EVIDENCE RELEVANCE OF ADMISSIBILITY
RELEVANCE One important
benchmark of admissibility is RELEVANCE. Federal
Rule of Evidence 402 states, in part, “All relevant
evidence is admissible, except as otherwise
provided.” THE GOAL OF THIS
RULE IS TO ALLOW PARTIES TO PRESENT ALL OF THE EVIDENCE
THAT BEARS ON THE ISSUE TO BE DECIDED,
and to keep out all evidence that is immaterial or
that lacks
Probative value. Evidence that is offered to help prove
something that is not at issue is immaterial

PROBATIVE RULES OF EVIDENCE

Having the effect of proof,
tending to prove, or actually proving.
When a legal controversy goes to
trial, the parties seek to prove their cases by the
introduction of evidence. All courts are governed by RULES
OF EVIDENCE that describe what types of evidence are
admissible.
One key element for the admission
of evidence is whether it proves or helps prove a fact or
issue. If so, the evidence is deemed probative. Probative
evidence establishes or contributes to proof.

PROBATIVE FACTS ARE DATA THAT
HAVE THE EFFECT OF PROVING AN ISSUE OR OTHER
INFORMATION.
PROBATIVE FACTS ESTABLISH THE EXISTENCE OF OTHER FACTS.

They are matters of evidence
that make the existence of something more probable or less probable than it would be without them.

THEY ARE ADMISSIBLE AS EVIDENCE AND AID THE COURT IN THE FINAL RESOLUTION OF A DISPUTED ISSUE

Behind My Back | Did Clallam Co need an SMP Update in 2010?
https://nam03.safelinks.protection.outlook.com/?url=www.behindmyback.org%2F&data=02%7C01%7Cwyteleclark%40msn.com%7C1fd01a3aca664ab6c5308d529f278e5%7C84df9e7fe9f640af8435aaaaaaaaaa%7C1%7C0%7C636461043736231994&sdata=K4yErh7J6O3mc2H%2BCyM1b43hDUKsv%2FPDg%3D&reserved=0.../06/did-clallam-co-need-an-smp-update-in-2010

Behind My Back | 2017 SMP Draft New Black Lines and Purple
https://nam03.safelinks.protection.outlook.com/?url=www.behindmyback.org%2F2017%2F11%2F10%2F7347&data=02%7C01%7Cwyteleclark%40msn.com%7C1fd01a3aca664ab6c5308d529f278e5%7C84df9e7fe9f640af8435aaaaaaaaaa%7C1%7C0%7C636461043736231994&sdata=G4NdGwsK6JVVQtDACX5QBtxp5ykr1IsfVvCV648sYY%3D&reserved=0

SAT NOV 11, 2017 WHAT ARE YOU GOING TO DO ABOUT IT?
THE DEADLINE FOR PUBLIC COMMENT ON THE DCD 2017 SMP DRAFT UPDATE IS DEC 12, 2017....
Email your comments to: SMP@co.clallam.wa.us
Clallam County Board of Commissioners
What will happen in eight months? who knows?
Meanwhile this Tenacious Clallam County Country Bumpkin is doing the usual....

I’ll just keep making more 2017 SMP Update
Draft Public comments, posting them on my website, and sending around in cyberspace.

This entry was posted in
A Country Bumkins Discovery,
A Federal Case of Facts,
A Land Grab is a Land Grab,
A lesson on Granting and Funding,
A TIME TO COMMENT,
A TIMELY MESSAGE,
Abuse of Power,
An Act is A Law,
An Act of Congress,
An Area of Statewide Concern,
AN INSIDE JOB,
AN SMP HISTORY LESSON,
Anyone can make a difference,
SIMPLY PUT,
SMP Cumulative Impact on People,
Why Would Anyone Believe Me?
Shimmin, Paula

From: lizziephel@aol.com
Sent: Sunday, November 12, 2017 10:49 AM
To: wylieclark@msn.com; phew@wavecable.com; zSMP; Delane@datasphere.com; dyroyall@yahoo.com
Cc: Ozias, Mark; maryjane.robins@mail.house.gov; muddyshoes@olynet.com; judymiller173@frontier.com; thornjosie@gmail.com; notac@olypen.com; steve.tharinger@leg.wa.gov; rains@olypen.com; ultravi@frontier.com; Kevin.VanDeWege@leg.wa.gov; parlette.linda@leg.wa.gov; jyoung4statehouse@gmail.com; mike.chapman@leg.wa.gov; beauvais@olypen.com; gaelary@olypen.com; snoblin@gmail.com; ivan.stocker@nwtzl.com; lizbowen@sisqtel.net; skwimmer@olypen.com; ahlburgh@msn.com; marg@sequim.com; rcunlimited77@msn.com; info@justwateralliance.org; radcen52@yahoo.com; glenmorgan89@gmail.com; rossk@q.com; wezgliatto@nctv.com; rruslick@wamail.net; harry@greencrow.com; baysiders@cablespeed.com; rightguy@olypen.com; danclem@suddenlink.net; mromantico@earthlink.net; amandahewett848@hotmail.com; artayres@olypen.com; 76ccap@gmail.com; d2lsh@techline.com; Tyler, Ross; brian_winter@nps.gov; office@konp.com; pam.roach@leg.wa.gov; howardson81@gmail.com; Winborn, Mary Ellen; Johnson, Randy; Peach, Bill; howardjl@hotmail.com; charismental@gmail.com; lomayk@gmail.com; clallamgop@gmail.com; rick@forschler.org; acruver@co.pierce.wa.us; levi_howard@hotmail.com; ccushman@pacifier.com; jlfowler300@gmail.com

Subject: Re: Clallam Co SMP Update Laying Down the Law

What I don't understand is why all of the taxpayers can see this and the blasted elected officials and bureaucrats can't (or don't want to).

Liz Phelps

P.S. I expect to have some moron try to make us move our house back another 500 feet from the beach.

-----Original Message-----
From: Wylie Clark <wylieclark@msn.com>
To: pearl hewett <phew@wavecable.com>; zSMP <ompco.clallam.wa.us>; Delane Hewett <Delane@datasphere.com>; diane royall <dyroyall@yahoo.com>
Cc: mark mozias <mozias@co.clallam.wa.us>; maryjane.robins <maryjane.robins@mail.house.gov>; Brian and Brooke <muddyshoes@olynet.com>; judymiller173@frontier.com; Tracy Horn <thornjosie@gmail.com>; notac@olypen.com; Rep. SteveTharinger <Steve.Tharinger@leg.wa.gov>; Sandy Rains <raims@olypen.com>; Vi <ultravi@frontier.com>; Rep. KevinVan De Wege <Kevin.VanDeWege@leg.wa.gov>; parlette.linda <parlette.linda@leg.wa.gov>; Office of Jesse Young <jyoung4statehouse@gmail.com>; Mike Chapman <mike.chapman@leg.wa.gov>; connie beavais <beavais@olypen.com>; Bob McGonigel <gaelary@olypen.com>; Stephanie Noblin <snoblin@gmail.com>; Ivan Stocker <ivan.stocker@nwtzl.com>; LIZ BOWEN <lizbowen@sisqtel.net>; lizziephel <lizziephel@aol.com>; Sandy Collins <skwimmer@olypen.com>; ahlburgh <ahlburgh@msn.com>; marg <marg@sequim.com>; randy simmins <rcunlimited77@msn.com>; info <info@ustwateralliance.org>; Darol Johnson <radcen52@yahoo.com>; Glen Morgan <glenmorgan89@gmail.com>; Ross Krumpe <rossk@q.com>; Louise Gliatto <wezgliatto@nctv.com>; RON SUSLICK <ruslick@wamail.net>; harry bell <harry@greencrow.com>; Jim Boyer <baysiders@cablespeed.com>; Dick Pilling <rightguy@olypen.com>; Dan Clem <danclem@suddenlink.net>; Rene <mmromantico@earthlink.net>; Amanda Hewett <amandahewett848@hotmail.com>; Art Ayres <artayres@olypen.com>; Karl Spees <76ccap@gmail.com>; dianne L <d2lsh@techline.com>; Ross Tyler <rttyler@co.clallam.wa.us>; brian winter <brian_winter@nps.gov>; office <office@konp.com>; Pam Roach <pam.roach@leg.wa.gov>; JOSH HOWARD <howardson81@gmail.com>; Mary Ellen Winborn <mwinborn@co.clallam.wa.us>; Randy Johnson <rjohnson@co.clallam.wa.us>; Bill Peach <bpeach@co.clallam.wa.us>; joni howard <howardjl@hotmail.com>; Tristin Hewett <charismental@gmail.com>; Lois Perry <lomayk@gmail.com>; Sue Forde <clallamgop@gmail.com>; Rick Forschler - <rick@forschler.org>; Amy Cruver <acruver@co.pierce.wa.us>; levi_howard@hotmail.com;
Shimmin, Paula

From: lizziephel@aol.com
Sent: Monday, November 13, 2017 1:50 PM
To: wylieclark@msn.com; phew@wavecable.com; zSMP; Delane@datasphere.com; dyroyall@yahoo.com
Cc: Ozias, Mark; maryjane.robins@mail.house.gov; muddyshoes@olynet.com; judymiller173@frontier.com; thornjosie@gmail.com; notac@olypen.com; steve.tharinger@leg.wa.gov; rains@olypen.com; ultravi@frontier.com; Kevin.VanDeWege@leg.wa.gov; parlette.linda@leg.wa.gov; jyoung4statehouse@gmail.com; mike.chapman@leg.wa.gov; beauvais@olypen.com; gaelary@olypen.com; snoblin@gmail.com; ivan.stocke@nwtzl.com; lizbowen@sisqtel.net; skwimmer@olypen.com; ahlburgk@msn.com; marg@sequim.com; rcunlimited77@msn.com; rossk@q.com; wezgliatto@nctv.com; rsuslick@wamail.net; harry@greencrow.com; baysiders@ablespeed.com; rightguy@olypen.com; office@konp.com; pam.roach@leg.wa.gov; howardson81@gmail.com; Johnson, Randy; Peach, Bill; howardjl@hotmail.com; charismental@gmail.com; lomayk@gmail.com; clallamgop@gmail.com; rick@forschler.org; acruver@co.pierce.wa.us; levi_howard@hotmail.com; ccushman@pacifier.com; jlfowle300@gmail.com

Subject: Re: Clallam Co SMP Update Laying Down the Law

So if it burns down we can't rebuild.................somehow I don't feel any better.

Liz

-----Original Message-----
From: Winborn, Mary Ellen <mwinborn@co.clallam.wa.us>
To: lizziephel <lizziephel@aol.com>; wylieclark <wylieclark@msn.com>; phew <phew@wavecable.com>; zSMP <zSMP@co.clallam.wa.us>; Delane <Delane@datasphere.com>; dyroyall <dyroyall@yahoo.com>
Cc: Ozias, Mark <mozias@co.clallam.wa.us>; maryjane.robins <maryjane.robins@mail.house.gov>; muddyshoes <muddyshoes@olynet.com>; judymiller173 <judymiller173@frontier.com>; thornjosie <thornjosie@gmail.com>; notac <notac@olypen.com>; steve.tharinger <steve.tharinger@leg.wa.gov>; rains <rains@olypen.com>; ultravi <ultravi@frontier.com>; Kevin.VanDeWege <Kevin.VanDeWege@leg.wa.gov>; parlette.linda <parlette.linda@leg.wa.gov>; jyoung4statehouse <jyoung4statehouse@gmail.com>; mike.chapman <mike.chapman@leg.wa.gov>; beauvais <beauvais@olypen.com>; gaelary <gaelary@olypen.com>; snoblin <snoblin@gmail.com>; ivan.stocker <ivan.stocker@nwtzl.com>; lizbowen <lizbowen@sisqtel.net>; skwimmer <skwimmer@olypen.com>; ahlburgk <ahlburgk@msn.com>; marg <marg@sequim.com>; rcunlimited77 <rcunlimited77@msn.com>; info <info@justwateralliance.org>; radcen52 <radcen52@yahoo.com>; glenmorgan89 <glenmorgan89@gmail.com>; rossk <rossk@q.com>; wezgliatto <wezgliatto@nctv.com>; rsuslick <rsuslick@wamail.net>; harry <harry@greencrow.com>; baysiders <baysiders@cablespeed.com>; rightguy <rightguy@olypen.com>; danclem <danclem@olypen.com>; mrromantic <mrromantic@earthlink.net>; amandahewett848 <amandahewett848@hotmail.com>; artayres <artayres@olypen.com>; 76ccap <76ccap@gmail.com>; d2lish <d2lish@techline.com>; Tyler, Ross <tyler@co.clallam.wa.us>; brian_winter <brian_winter@nps.gov>; office <office@konp.com>; pam.roach <pam.roach@leg.wa.gov>; howardson81 <howardson81@gmail.com>; Johnson, Randy <johnson@co.clallam.wa.us>; Peach, Bill <peach@co.clallam.wa.us>; howardjl <howardjl@hotmail.com>; charismental <charismental@gmail.com>; lomayk <lomayk@gmail.com>; clallamgop <clallamgop@gmail.com>; rick <rick@forschler.org>; acruver <acruver@co.pierce.wa.us>; levi_howard <levi_howard@hotmail.com>; ccushman <ccushman@pacifier.com>; jlfowle300 <jlfowle300@gmail.com>

Sent: Mon, Nov 13, 2017 9:54 am
Subject: RE: Clallam Co SMP Update Laying Down the Law
From: diane royall <dyroyall@yahoo.com>
Sent: Monday, November 13, 2017 3:14 PM
To: wylieclark@msn.com; phew@wavecable.com; zSMP; Delane@datasphere.com; dyroyall@yahoo.com; lizziephel@aol.com
Cc: Ozias, Mark; maryjane.robins@mail.house.gov; muddyshoes@olynet.com; judymiller173 @frontier.com; thornjosie@gmail.com; notac@olypen.com; steve.tharinger@leg.wa.gov; rains@olypen.com; ultravi@frontier.com; Kevin.VanDeWege@leg.wa.gov; parlette.linda@leg.wa.gov; jyoung4statehouse@gmail.com; mike.chapman@leg.wa.gov; beauvais@olypen.com; gaelary@olypen.com; snoblin@gmail.com; ivan.stocker@nwtzl.com; lizbowen@sisqtel.net; skwimmer@olypen.com; ahlburgk@msn.com; marg@sequim.com; rcnlimited77@msn.com; info@justwateralliance.org; racden52@yahoo.com; glemorgan89@gmail.com; rossk@q.com; wezgliatto@ntcv.com; rsuslick@wamail.net; harry@greencrow.com; baysiders@cablespeed.com; rightguy@olypen.com; danclem@suddenlink.com; mrromanticco@earthlink.net; amandaheuwett848@hotmail.com; artayres@olypen.com; 76ccap@gmail.com; d2lish@techline.com; Tyler, Ross; brian_winter@nps.gov; office@konp.com; pam.roach@leg.wa.gov; howardson81@gmail.com; Johnson, Randy; Peach, Bill; howardj@hotmail.com; charismental@gmail.com; lomayk@gmail.com; clallamgop@gmail.com; rick@forschler.org; acruver@co.pierce.wa.us; levi_howard@hotmail.com; ccushman@pacifier.com; jlfowler300@gmail.com

Subject: Re: Clallam Co SMP Update Laying Down the Law

My other question would be, if a person purchased their property with a certain designated zoning, and then the zoning changes, is the purchased property still zoned for what I bought it for or is it now something different? Am I protected for the future I had planned for when buying my land? Is my land eligible for the Grandfather clause? Mind you things were changed without notification or fair warning. And if my zoning changings and ruins my future and my property value as such would I be entitled to a much lowered property tax?

On Mon, 11/13/17, <lizziephel@aol.com> wrote:

Subject: Re: Clallam Co SMP Update Laying Down the Law
To: wylieclark@msn.com, phew@wavecable.com, smp@co.clallam.wa.us, Delane@datasphere.com, dyroyall@yahoo.com
Cc: mozias@co.clallam.wa.us, maryjane.robins@mail.house.gov, muddyshoes@olynet.com, judymiller173@frontier.com, thornjosie@gmail.com, notac@olypen.com, steve.tharinger@leg.wa.gov, rains@olypen.com, ultravi@frontier.com, Kevin.VanDeWege@leg.wa.gov, parlette.linda@leg.wa.gov, jyoung4statehouse@gmail.com, mike.chapman@leg.wa.gov, beauvais@olypen.com, gaelary@olypen.com, snoblin@gmail.com, ivan.stocker@nwtzl.com, lizbowen@sisqtel.net, skwimmer@olypen.com, ahlburgk@msn.com, marg@sequim.com, rcnlimited77@msn.com, info@justwateralliance.org, racden52@yahoo.com, glemorgan89@gmail.com, rossk@q.com, wezgliatto@ntcv.com, rsuslick@wamail.net, harry@greencrow.com, baysiders@cablespeed.com, rightguy@olypen.com, danclem@suddenlink.net, mrromanticco@earthlink.net, amandaheuwett848@hotmail.com, artayres@olypen.com, 76ccap@gmail.com, d2lish@techline.com, rtyler@co.clallam.wa.us, brian_winter@nps.gov, office@konp.com, pam.roach@leg.wa.gov, howardson81@gmail.com, rjohnson@co.clallam.wa.us, bpeach@co.clallam.wa.us, howardjl@hotmail.com, charismental@gmail.com, lomayk@gmail.com, clallamgop@gmail.com, rick@forschler.org, acruver@co.pierce.wa.us, levi_howard@hotmail.com, ccushman@pacifier.com, jlfowler300@gmail.com

Date: Monday, November 13, 2017, 1:49 PM
Sheila,

I forgot to mention the most important thing about the **Unposted SMP Committee Comments**.

We were told as a committee, at meetings that our comments *would be posted on line?*
The comments started being posted and then they stopped?

**When the comments stopped being posted what were we supposed to think?**

At the first SMP meeting on Jan. 26, 2011 the **10 private property owners from Lake Sutherland were fearful of the SMP Update.**
They were fearful of what their government was going to do to them.
**When American Citizens are afraid of their government, it is unacceptable to me.**
Their FEAR was a wake up call to me.

**From Jan. 26, 2011, I have spent over 6 months researching laws and a thousand other issues relevant to their fear.**

As members of the Invited SMP Citizens Advisory Committee, many individuals felt they had **important factual comments** to share.

It is very disappointing.

Pearl Rains Hewett
Member of the Invited SMP Update Citizens Advisory Committee
----- Original Message ----- 
From: pearl hewett
To: XXX
Sent: Tuesday, February 08, 2011 9:01 AM
Subject: PARTS OF SMP JUDGED TO BE UNCONSTITUTIONAL 1995

I will hand deliver a copy of the lawsuit to Sheila, Director of Community Development today. And if when I get around to it, also get copies of the judgement to other interested parties.
FYI
Pearl

Feb. 8, 2011

Sheila,

This a copy of a lawsuit filed and won by my father, George C. Rains Sr. in 1995 against Clallam County and the Dept of Community Development. The Judge declared that parts of the Clallam County’s Shoreline Master Program, in place at the time, were unconstitutional.

My feeling is, that in the best interest of Clallam County's current updating of the SMP, it should be investigated.

FYI
Pearl Rains Hewett
Trustee of the George C. Rains Sr. Trust
Sheila,

I forgot to mention the most important thing about the Unposted SMP Committee Comments.

We were told as a committee, at meetings that our comments would be posted on line? The comments started being posted and then they stopped?

When the comments stopped being posted what were we supposed to think?

At the first SMP meeting on Jan. 26, 2011 the 10 private property owners from Lake Sutherland were fearful of the SMP Update. They were fearful of what their government was going to do to them. When American Citizens are afraid of their government, it is unacceptable to me. Their FEAR was a wake up call to me.

From Jan. 26, 2011, I have spent over 6 months researching laws and a thousand other issues relevant to their fear.

As members of the Invited SMP Citizens Advisory Committee, many individuals felt they had important factual comments to share.

It is very disappointing.

Pearl Rains Hewett
Member of the Invited SMP Update Citizens Advisory Committee
Shimmin, Paula

From: pearl hewett <phew@wavecable.com>
Sent: Tuesday, October 24, 2017 1:46 PM
To: Peach, Bill
Cc: Johnson, Randy; Ozias, Mark; Winborn, Mary Ellen
Subject: ESA ADOLFSON WA State SMP COOKIE CUTTERS

To my Clallam County elected representatives

SMP COOKIE CUTTING April 17, 2011

Interestingly enough the name Kramer and co. (Adolfson?) was mentioned. ESA Margaret Clancy and Kramer did Jefferson County and Port Townsend? SMP Someone said that Jefferson County just let a cookie cutter SMP be done?

2011 THE TIP OF THE ESA ADOLFSON COOKIE CUTTING IN WA STATE SMP UPDATES

IF YOU LOOK ON LINE FOR ESA ADOLFSON CONSULTANTS MARGARET CLANCY AND JIM KRAMER YOU WON’T FIND THEM UNDER COOKIE CUTTERS, HOWEVER YOU WILL FIND THEM ASSOCIATED WITH 24 COOKIE CUTTING SMP UPDATES IN WA STATE.

CITY OF TACOMA, CLALLAM COUNTY, CITY OF SAMMISH, KENMORE, ISSAQUAH, WOODWAY, PIERCE COUNTY, MASON COUNTY, ISLAND COUNTY, CITY OF SHORELINE, WHATCOM COUNTY, VANCOUVER, TUKWILLA, DUVALL, CLARK COUNTY, LACEY, GIG HARBOR, MULKITO, RENTON, JEFFERSON COUNTY, CITY OF RIDGEFIELD, EATONVILLE, PUYALLUP, CITY OF UNIVERSITY PLACE AND THE CITY OF LOWELL IN OREGON.

WHATCOM COUNTY WA PLANNERS AND ESA ADOLFSON PAID CONSULTANTS/ FACILITATORS MADE UP THEIR OWN RULES ON THE WHATCOM COUNTY SMP UPDATE? AND THEIR COMMISSIONERS LEGISLATED THOSE RULES INTO LAW?

AND THIS IS WHAT HAPPENED ..... THE CASE IS LUHRS V. WHATCOM COUNTY, A 10 YEAR LEGAL BATTLE, , WITH WHATCOM COUNTY TAXPAYERS PAYING TO FIGHT AGAINST A SHORELINE PROPERTY OWNER LEGAL RIGHT, WA STATE LAW (RCW 90.58.100 ) THAT SPECIFICALLY GIVES COASTAL LANDOWNERS THE RIGHT TO PROTECT THEIR HOMES FROM EROSION.

WHAT WILL HAPPEN IN CLALLAM COUNTY NOW THAT THE DCD PLANNERS AND ESA ADOLFSON FACITITATORS MADE UP THEIR OWN RULES ON CLALLAM COUNTY 2017 SMP UPDATE?
Hi Bill,

You asked, this is my response

Thank you for meeting with me,

Pearl

THE SMP PUBLIC PARTICIPATION STRATEGY?

WHO IN CLALLAM COUNTY GOVERNMENT DETERMINED THE “EARLY” NOTIFICATION PRIORITIES FOR

WHO WAS NOTIFIED EARLY? AND WHO DECIDED TO EDUCATE “KEY” PARTIES AND PROVIDE SPECIAL BRIEFINGS?

DECEMBER 5, 2009 THE DEMOCRATIC PARTY ALREADY HAD AN SMP STRATEGY?

SMP Comments 2009-2010

2009:

• 120509 – DemComm – G

2010:

• 020910 – JMarrs – PPS
• 022410 – FutureWise – PPS
• 030410 – QuileuteNation – PPS
• 030810 – LMuench – PPS
• 030910 – WDOE – PPS
• 031010 – WDOE – PPS
• 080510 – PSP – G
• 110810 – WDNR – G

Behind My Back | SMP Public Comment # 160

www.behindmyback.org/2015/02/11/smp-public-comment-160
Specifically, WDFW is considering public land for public access on the Elwha River.

Public Access to Public land is a really, really big deal on the 2017 Clallam County SMP Update.

THERE IS ONLY ONE SPOT OF/ FOR FREE PUBLIC ACCESS, ON LAKE SUTHERLAND A BOAT LAUNCH AND RESTROOM PROVIDED BY WDFW THE ACCESS SITE PROVIDES A CONCRETE PAD BOAT LAUNCH AND TOILETS.

Lake Sutherland - Fish Washington | Washington Department of Fish ...

wdfw.wa.gov/fishing/washington/473/
PLANTS OF TROUT INTO LAKE SUTHERLAND HAVE BEEN SUSPENDED WHILE DAM REMOVAL and ... THE WDFW ACCESS SITE PROVIDES A CONCRETE PAD BOAT LAUNCH AND TOILETS.

Locate this lake
This feature shows the general location of the selected body of water. Directions may not include routes to boat launches or other water access sites. Check below for access sites or read the description for specific access information.

PLEASE NOTE: THERE IS ONE TINY SIGN ON THE RIGHT SIDE OF HIGHWAY 101 THAT SAYS PUBLIC BOAT LAUNCH.
IF YOU DIDN'T KNOW THE FREE ACCESS WAS THERE, AND YOU WEREN'T LOOKING FOR IT MOST TOURISTS WOULD DRIVE RIGHT BY THE TINY SIGN MISS IT.

The 361-acre lake is surrounded with vacation cottages and year-round homes. Mostly private, THERE IS FISHING ACCESS AT ONE SPOT ALONG THE SHORE. Because so many of the residences are seasonal, the lake is surprisingly uncrowded most of the time.

Lake Sutherland - Fish Washington | Washington Department of Fish ...
Plants of trout into Lake Sutherland have been suspended while dam removal and ... The WDFW access site provides a concrete pad boat launch and toilets.

PLEASE NOTE: If you're considering a visit to Lake Sutherland,

Lake Sutherland, Washington, USA Vacation Info - Lakelubbers

https://www.lakelubbers.com/lake-sutherland-1012/
If you're considering a visit to Lake Sutherland, in Washington's Olympic ... The ice-free temperate climate allows fishing on open water year round. ... one comes upon Sequim, with plenty of golf courses, public beaches and boat launches.

Lake Sutherland, Washington, USA

Nearby Lakes  Weather Forecast

Credits

Lake Sutherland Photo Gallery

If you're considering a visit to Lake Sutherland, in Washington's Olympic Peninsula and Pacific Coast Region, you're in for a real treat! The all-sports lake lies within one of the most scenic areas of the northwest and brags having about the best kokanee salmon fishing anywhere. Only 10 miles south of the Strait of Juan de Fuca, the clear waters lie nearly at the edge of majestic Olympia National Park and Forest. Mount Angeles rises 6454 feet on the southern horizon. The 361-acre lake is surrounded with vacation cottages and year-round homes. Mostly private, there is fishing access at one spot along the shore. Because so many of the residences are seasonal, the lake is surprisingly uncrowded most of the time.

Lake Sutherland was named after John J Sutherland; the first settler to build a cabin along the shore in 1856. What Mr Sutherland didn't know was that Lake Sutherland was once the eastern portion of much bigger Lake
Crescent. The large glacial lake was separated by a massive landslide from Stormking Mountain in dim pre-history, resulting in several distinct fish species evolving in Lake Crescent. This didn’t happen at Lake Sutherland as diverse species still had access to the lake via Indian Creek, tributary of the Elwha River. Lake Sutherland lost its access to ocean-going fish when dams were built on the Elwha River in 1913, leaving the landlocked kokanee salmon in the lake. The landlocked salmon now spawn in Lake Sutherland then swim downstream to Lake Aldwell behind the dam for the season. As the dam is scheduled for removal, a more normal migration pattern is expected to resume.

Larger Map

Of glacial origin, Lake Sutherland is somewhat warmer than neighboring Lake Crescent as it is considerably shallower. Water contact activities are thus more attractive here than at some area lakes: swimming is popular, as are sailing, wind-surfing, water-skiing, tubing and jet skiing. More residents and visitors likely engage in canoeing and kayaking than power boating simply because the area attracts nature lovers, hikers and explorers of the nearby Olympic National Forest. A great many of the residences along the shore are available for lease as vacation rentals much of the year. The somewhat exclusive area boasts much higher-value real estate and the visitor who selects lodgings here can expect all of the amenities.

Fishermen plan for months for fishing trips to Lake Sutherland. A premier kokanee sockeye salmon fishery, the lake also holds a good supply of cutthroat and rainbow trout. An active stocking schedule assures a good supply of ‘keeper’-sized trout from the hatcheries on the Sol Duc River every year. The lake greets returning generations of fishermen each year. New visitors are regularly recruited via the well-exercised bragging rights of successful past fishermen. The ice-free temperate climate allows fishing on open water year round.

A prefect spot to act as home base for an extended vacation, Lake Sutherland is located only 17 miles from the port city of Port Angeles. Here, one can take the ferry to Victoria, British Columbia, on Vancouver Island or enjoy a chartered fishing trip. The small city offers all amenities a visitor might want, including movies, night life and shopping. The headquarters for Olympic National Park are located in Port Angeles and the road to famed Hurricane Ridge goes south out of town. Here, the non-hiker can drive up 5240 feet to view the breathtaking vistas within the mostly roadless park. A few short miles up the shore, one comes upon Sequim, with plenty of golf courses, public beaches and boat launches. Home of the famed Dungeness crabs, Dungeness sand spit (the longest in the United States) provides for the Dungeness National Wildlife Refuge. Farther east,
the quaint Victorian seaport of Port Washington boasts Fort Worden State Park, with a musical venue in a renovated WWI blimp hangar where concerts are regularly held. Jazz and Blues festivals occur regularly here. Bicycling routes are available along the entire journey.

Going west from Port Angeles, one can follow the coastal road to view whales, watch bald eagles hunting along the shore and end up at Neah Bay, home of the Makah Native Americans. A cultural museum at Neah Bay includes archeological discoveries that are the result of uncovering a 500 year old village buried by a landslide; exhibits include a longhouse, canoes, artwork, daily living and fishing tools. More extensive exhibits/tours are available with reservations. Going south from Neah Bay, one can stop at First Beach in the La Push area for beautiful views of the amazing sea stacks along the coastline. Near La Push, one can find the trailheads for entering the Hoh and Quinault Rainforests. The Hoh supports the largest unmanaged elk herd in the world and gets 12 to 14 feet of rain a year! Only 50 miles from lake Sutherland, it's an easy day trip.

Four of the famed waterfalls on the Olympic Waterfall Trails are in the Lake Sutherland area. Maps are available on-line and at the Ranger Stations. And, no one can visit this area of Olympic national Park without at least one visit to the Sol Duc Hot Springs. Formerly a private therapeutic mineral springs resort, the property was purchased by the National Park Service in 1920s. It is now operated by a concessionaire and visits to the pools are kept at very reasonable cost. And a pleasant afternoon can be had cycling or hiking the Spruce Railroad Trail along the north shore of Lake Crescent. The trail is an old railroad bed once used to transport spruce lumber for aircraft use. Restoration work is being done on the two tunnels along the rail bed and then they, too, will be opened to the public.

Limited improved camping facilities are available in the Lake Sutherland area but there are many wilderness camping areas in the nearby National Forest. So, camper or cottager, there's a perfect spot near Lake Sutherland for you. Spend a week or a month . . or even the entire season exploring all that the Olympic Peninsula has to offer. The perfect lake, the perfect vacation rental and the perfect place to tour nature's majesty: come to Lake Sutherland and begin your personal odyssey.

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Please LINK to our homepage or to this Lake Sutherland page.
IT SEEMED LIKE A GOOD IDEA AT THE TIME
Based on this 1971 premise

1971 Rod Mack:

ENVIRONMENTAL PERSPECTIVE is one of many perspectives,

MY OBSERVATION IS THAT IN AREAS WHERE ECONOMICS IS A PRIME CONSIDERATION—

IN THE SMALLER, LESS AFFLUENT COMMUNITIES—

THERE IS A HIGHER PRIORITY FOR JOBS AND TAX BASE THAN THERE IS PRIORITY FOR ENVIRONMENTAL CONCERNS

Rod Mack My charge, when I joined ECOLOGY IN 1971, was developing the regulations related to the permit system of the Shoreline Management Act (SMA) as well as the guidelines.

Those GUIDELINES were basically instructions FOR LOCAL GOVERNMENTS’ preparation of their Master Programs as well as standards or criteria for evaluating developments that took place on the shorelines, AGAIN, BY LOCAL GOVERNMENT.

2017 Pearl Rains Hewett:

ENVIRONMENTAL PERSPECTIVE is one of many perspectives,
MY OBSERVATIONS FROM JAN 26, 2011 TO OCT 22, 2017 IS THAT IN AREAS WHERE ECONOMICS IS A PRIME CONSIDERATION—IN THE SMALLER, LESS AFFLUENT
President Trump was elected Nov 8, 2016 because

FOR AMERICAN CITIZENS, THE VOTERS, IN AREAS WHERE ECONOMICS WAS A PRIME CONSIDERATION, THERE WAS A HIGHER PRIORITY FOR JOBS AND TAX BASE FOR HARD WORKING MIDDLE CLASS CITIZENS IN THE USA, THAN THERE WAS A PRIORITY FOR ENVIRONMENTAL CONCERNS.

Indeed, Trump’s priority one was rolling back the federal job killing regulations, and returning power back to the people.

WHAT HAPPENED TO US BETWEEN 1971 AND OCT 22, 2017 ON THE CLALLAM COUNTY 2017 SMP UPDATE?

TRICKLE DOWN FEDERAL JOB KILLING REGULATIONS. period

ENACTED BY CONGRESS CONTROLLED AND MANDATED BY FEDERAL APPOINTED AGENCIES AND ENVIRONMENTALISTS placed exclusive, planning and regulatory authority with federal appointed government agencies EPA ETC....

Aug 13, 2013 I POSTED “SMP and Water 1970-2013” on behindmyback.org on and sent it to ZSMP as a public comment.

SMP and Water 1970-2013

Posted on August 13, 2013 11:22 am by Pearl Rains Hewett Comment

IT SEEMED LIKE A GOOD IDEA AT THE TIME?
Based on this 1971 premise

NOV 17, 2014 I POSTED IT AGAIN.....


NOV 17, 2014 – www.behindmyback.org/2013/10/06/ad-valorem-tax-dilemma/ ... permit system of the Shoreline Management Act (SMA) as well as the guidelines. ... The FEDERAL road to WA State ECOLOGY’S SMP and WATER HELL was ... it said, if a state wants to do a program, here’s some MONEY to do it; then, once ...

NOW, WE ARE FACED WITH THE CLALLAM COUNTY 2017 SMP UPDATE

WHAT AM I GOING TO DO ABOUT THAT...

THE USUAL...
From: pearl hewett
To: zSMP
Sent: Tuesday, August 13, 2013 1:09 PM
Subject: SMP and Water 1970-2013

This is my public comment on the
Clallam County SMP Update

Pearl Rains Hewett

1971 Rod Mack: ENVIRONMENTAL PERSPECTIVE is one of many perspectives,
my observation is that in areas where ECONOMICS is a prime
consideration—in the smaller, less affluent
communities—there is a higher priority for jobs and tax
base than there is priority for environmental concerns

IT SEEMED LIKE A GOOD IDEA AT THE TIME?
Based on this 1971 premise

Rod Mack: My charge, when I joined ECOLOGY IN 1971, was developing the regulations related to the permit system of
the Shoreline Management Act (SMA) as well as the guidelines. Those GUIDELINES were basically instructions FOR
LOCAL GOVERNMENTS' preparation of their Master Programs as well as standards or criteria for evaluating
developments that took place on the shorelines, AGAIN, BY LOCAL GOVERNMENT.

IT SEEMED LIKE A GOOD IDEA AT THE TIME?
Both by premise and legislative intent

IN 1971....

In 1972 the SHORELINE MANAGEMENT ACT PASSED

The FEDERAL road to SMP and WATER HELL was PAVED with good intentions?

AND HOW MUCH FEDERAL MONEY?

When the Federal Coastal Zone Management Act came along, it said, if a state wants to do a program, here's
some MONEY to do it; then, once it's done, here's some MORE MONEY to manage it.

There's a definite tie. The Federal Coastal Zone Management Act came about in '72 at virtually the same time our
Shoreline Management Act was finally approved.

We were watching it very closely, because the federal law provides SUBSTANTIAL FUNDING to states that
develop management programs. Here, we had the Shoreline Management Act.

MORE FEDERAL MONEY AND MORE FEDERAL MONEY AND MORE FEDERAL MONEY

BAIT AND SWITCHED TO FEDERAL CONTROL
When? and how did we lose our right to local government?
When? and how were the appointed given state RULE by WAC?
When? and how were federally appointed agencies given ultimate power?

WHEN INDEED...
THE EXPLOSION OF FEDERAL LEGISLATION ENACTED
BETWEEN 1970 AND 1980 TO PROTECT THE ENVIRONMENT

HISTORY Shoreline Act 40, 263 From 1971-2005
Washington State Department of Ecology
Ecology Publication #05-01-006
A 570 page report the first 35 years, 1970 – 2005

UPDATE 2013 STATE? SHORELINE MANAGEMENT ACT?
HAS BECOME FEDERALLY ENACTED
SHORELINE MANAGEMENT BY APPOINTED FEDERAL AGENCIES.

1971 The ENVIRONMENTALISTS proposed the state’s jurisdiction would include 500 feet back from the water’s edge, providing for a strip of land, 500 feet wide, that would be the jurisdiction of their bill.

1971 They, the ENVIRONMENTALISTS also placed primary, almost exclusive, planning and REGULATORY AUTHORITY WITH THE DEPARTMENT OF ECOLOGY, instead of LOCAL GOVERNMENT
Resulting in a very STRONG ROLE by the STATE and a much lesser role by LOCAL GOVERNMENT.

That initiative got enough signatures to go on to the ballot at the next general election. Seeing that, THE LEGISLATURE THEN DECIDED, as is allowed and provided for under the state’s constitution, to enact their version to put on the ballot, which was the 1972 SHORELINE MANAGEMENT ACT, which ultimately passed. The basic difference between the initiative and the act was that the act named a strip 200 feet from the water’s edge as the area of jurisdiction, and then set up the joint state/local approach.

2013 WA STATE SHORELINE MANAGEMENT ACT? AND WATER?

A much lesser role of STATE AND LOCAL government?

FEDERAL APPOINTED AGENCIES EDICTS MANDATING TO THE WA STATE DEPARTMENT OF ECOLOGY

WA STATE DEPARTMENT OF ECOLOGY’S WAC’S, EDITICS, RULING, REGULATING AND ENFORCING OF LOCAL COUNTY AND CITY GOVERNMENT

ENACTED BY CONGRESS CONTROLLED AND MANDATED BY FEDERAL APPOINTED AGENCIES AND ENVIRONMENTALISTS placed exclusive, planning and regulatory authority with federal appointed government agencies EPA ETC....

RESULTING IN A VERY STRONG ROLE BY THE ACTS OF CONGRESS and AMENDMENTS TO THOSE ACTS and DELIGATING ALL POWER TO APPOINTED FEDERAL AGENCIES AND ENVIRONMENTALISTS.

IF WILD OLYMPICS WAS FEDERALLY ENACTED jurisdiction would include 500 feet (or more) back from the water’s edge, providing for a strip of land, 500 feet (or more) wide, that would be the FEDERAL jurisdiction of that ACT.

Chapter Seven – Saving the Shorelines 2005
The Plan to Protect the Coastlines
An interview with Rodney Mack
February 2, 2005
Position held at time of interview:
Retired, formerly Program Manager for the Shorelands and
Environmental Assistance Program,

From an environmental standpoint, given the two versions of the shorelines legislation, the environmentalist version talked about a jurisdictional area. In other words, what areas, what pieces of geography, the act applied to.

**Our Shoreline Management Act was probably, with maybe the exception of California, the strongest law of its kind in the country at the time.** This was right at the beginning of the ENVIRONMENTAL MOVEMENT, and what we were doing was groundbreaking. It wasn’t a case where we could pick up the phone and call some other state and say, hey, what did you guys do in dealing with this? Other states were calling us.

When the Federal Coastal Zone Management Act came along, it said, if a state wants to do a program, here’s some MONEY to do it; then, once it's done, here's some more MONEY to manage it.

There’s a definite tie. The Federal Coastal Zone Management Act came about in ’72 at virtually the same time our Shoreline Management Act was finally approved.

We were watching it very closely, because the federal law provides SUBSTANTIAL FUNDING to states that develop management programs. Here, we had the Shoreline Management Act.

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History is GOOD
EXACTLY WHAT WAS WA STATE PLANNING IN 2005?

shoreline development 259, 262, 264

WA STATE WATER

There’s an old saying, “In the Eastern United States, we take water for granted. In the WEST, we take water from each other.

My comment WHISKEY IS FOR DRINKING; WATER IS FOR FIGHTING OVER

---

Chapter 4, Troubled Waters: Rivers, Streams, and Salmon Recovery
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Habitat, Hydropower, Hatcheries and Harvest, Dick Wallace
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Protecting In-stream Flows, Ken Slattery
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History is GOOD
EXACTLY WHAT WAS WA STATE PLANNING IN 2005?
WA STATE ON WATER

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Water Quality Program 11, 18, 80, 118, 139, 165-166,
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2005 WA STATE DEPT OF ECOLOGY AND CONGRESS

CONGRESS 2, 6, 70, 125, 130, 133, 186-187, 193,
356-359, 372-373, 376, 378-379, 382, 387-388,
391-392, 400, 462, 505, 524

2013 WA STATE DEPT OF ECOLOGY AND CONGRESS


1966 CONGRESS ENACTS FEDERAL Endangered Species Act
Congress passed the ESA as part of the explosion of federal ... – Gale
www.gale.cengage.com/pdf/samples/sp657497.pdf
by ES ACT – Related articles

Congress passed the Endangered Species Preservation Act in 1966, ... Congress enacted significant MORE amendments in 1978, AND MORE 1982, and MORE 1988,

1969 The National Environmental Policy Act of | Department of Energy
Full text of the National Environmental Policy Act (NEPA) of 1969, as amended, available as a download. NEPA established a national policy for the environment...

1972 Coastal Zone Management Act – Office of Ocean and Coastal... coastalmanagement.noaa.gov/czm/czm_act.html
Congressional Action to Help Manage Our Nation's Coasts... growth in the coastal zone by passing the Coastal Zone Management Act (CZMA) in 1972. The Act...

1972 CONGRESS ENACTS FEDERAL Clean water act
CWA | Civil Enforcement | Compliance and Enforcement | U.S. EPA
www.epa.gov/Compliance/civil/cwa/index.html

Congress passed the ESA as part of
THE EXPLOSION OF FEDERAL LEGISLATION ENACTED
BETWEEN 1970 AND 1980 TO PROTECT THE ENVIRONMENT.

This is the short form for email.

Click on the top link to read the full 2000 word comment
6/6/2012 Private Meeting with DOE Bureaucrats

We had the meeting on June 6, 2012. (4) DOE employees, Gordon White (The WA State Manager of Shoreline Programs) Paula Ehlers (Regional Director) Peter Skowland and Clallam County DOE rep. Jeffree Steward drove up from Olympia for our private meeting.

Behind My Back | DOE Private meeting 6/6/2012

www.behindmyback.org/2013/01/30/doe-private-meeting-662012/

Jan 30, 2013 – THE WA STATE DOE, STATE POLICY PEOPLE asked Steve Gray Deputy Director Clallam County Department of Community Development for my …

RED FLAG WARNING

WA STATE DOE SMP IS THE SOLE PRODUCT OF DEPT. OF ECOLOGY

ON APPEAL, THE WA STATE SUPREME COURT RULED THAT THE SHORELINE MANAGEMENT PROGRAM IS THE SOLE PRODUCT OF THE APPOINTED DEPT. OF ECOLOGY.

• Behind My Back | It's Who They Are That Concerns Me

www.behindmyback.org/2017/10/17/its-who-they-are-that-concerns-me

Oct 17, 2017 · Behind My Back … AND, IT'S WHO THEY ARE THAT CONCERNS ALL OF US. To be continued…. This entry was posted in A Fearful Reminder, …

INDEED, THE SHORELINE MANAGEMENT PROGRAM (SMP) IS THE SOLE PRODUCT OF APPOINTED BUREAUCRATS IN WA STATE DEPT. OF ECOLOGY (DOE).
PRIOR TO THAT JUNE 6, 2012 MEETING WITH THE WA STATE DOE, STATE POLICY PEOPLE (THE BUREAUCRATS)

I made a list of my concerns as red flag warnings from Pearl Revere

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RED FLAG #1

When American citizens are afraid of what their government is going to do to them, that is unacceptable to me. Jan. 26, 2011 DOE SMP Public Forum.

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RED FLAG #2

When ELECTED OFFICIAL IGNORE THE FEARS AND CONCERNS of American citizens, that is unacceptable to me

1. Senator Hargrove
2. Rep. Van DeWege
4. Clallam County Sheriff Benedict
5. Clallam County Commissioner Tharinger
6. Commissioner Mike Chapman
7. Commissioner Mike Doherty
8. WA State Attorney General Rob McKenna

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RED FLAG #3

FEAR AND CONCERNS WA STATE AND APPOINTED AGENCIES

1. WA STATE DEPT. OF ECOLOGY
2. AND OTHER UNKNOWN agencies?
3. WHITE BOATS (identified themselves as for the DOE SMP)?
4. WHITE BOATS (identified themselves as from the state)?
5. Ariel surveillance of all Lake Sutherland homes, property and docks?
6. DNR?
7. WSDOT (inter agency contract with DFW) inspecting 101 culverts.
8. DFW illegal trespass on all Lake Sutherland private property.

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RED FLAG #4

WA STATE DOE SMP IS THE SOLE PRODUCT OF DEPT. OF ECOLOGY ON APPEAL, THE WA STATE SUPREME COURT RULED THAT THE SHORELINE MANAGEMENT PROGRAM IS THE SOLE PRODUCT OF THE APPOINTED DEPT. OF ECOLOGY.

-------------------------------

RED FLAG #5

WA STATE DEPT. OF ECOLOGY
1. DOE SMP WAC'S (Over stepping WA State SMP LAW)
2. Failure to provide an SMP ECONOMIC IMPACT STATEMENT FOR CLALLAM COUNTY.
3. DOE WAC directs Clallam County on how to deny permits to private property owners until they submit to regulations and/or restrictions that may be illegal or unconstitutional at State level.
4. Page 88 DOE WA State Public Trust Doctrine (DOE unconstitutional creation of law without due process). They admit in writing they have done it once?
5. DOE approval of Shoreline Management Updates that are in conflict with RCW _______ in the protection of single family residence?
6. DOE excessive setbacks, taking of private property, non-conforming, loss of value, use and enjoyment.
7. DOE WAC, denies permitted development of private property and requires the taking of private property for public access.

JUNE 6, 2012 MY PRIVATE MEETING WITH WA STATE DOE BUREAUCRATS

Posted as DOE PRIVATE MEETING 6/6/12 cont.

The WA State DOE, state policy people asked Steve Gray Deputy Director Clallam County Department of Community Development for my contact information, by name as an individual, Pearl Rains Hewett.

Regional Director Paula Ehlers called me at home and requested a private meeting with me.

We had the meeting on June 6, 2012. (4) DOE employees, Gordon White (The WA State Manager of Shoreline Programs) Paula Ehlers (Regional Director ) Peter Skowland and Clallam County DOE rep. Jeffree Steward drove up from Olympia for our private meeting.

Paula Ehlers told me I was allowed to invite 2-3 people. I invited (7).

Steve Gray, Deputy Director/Planning Manager
Dr. Robert Crittenden, biologist, expert witness and paid consultant.
Dick Piling, Realtor, Republican Chairman of Clallam County
Harry Bell, Business men's assoc. He is Green Crow, the company owns a lot of WA State forestland, he is well know at state level SMP Advisory Committee
Connie Beavais, Manager of Crescent Water District, informed, active Member of the Appointed Planning Dept.
MD retired, Karl Spees, SMP Advisory Committee, CAPR 13, very active private property owner
Attorney Mary Pfaff, Member of the SMP Advisory Committee, had a Dr. appointment and did not attend.

The WA State DOE Team, was a lot more interested in my guests, than they were in me.
None of the invited (6) that attended were asked to leave.
Interesting to note, we had the meeting at the courthouse (Steve Gray reserved the room) On the way into the DOE meeting, we ran into several interesting? interested? people. Sheila Rourke Miller, Jim McEntire and Mike Chapman.

WHAT WAS THE MEETING AGENDA? Intel?
DOE? I have no idea?
I asked all of my invited guests to independently, based on their area of expertise and concerns, to prepare (5) questions for the DOE meeting.

I personally, showed them the map, graphically demonstrating the SMP TAKING affected of the 175', 150 plus 10' setback on Burt Reid's 7 acre priority feeder bluff private property. I spoke of the other property owners, all 474 of them, up to 88% would become totally non-conforming.

I asked them, as I pointed to the map, as the US Supreme Court Justices asked an EPA witness in the 9 to zero ruling against the EPA, on the Sackett Case, “If this was your investment property? How happy would you be? What would you do? Just plant a few bushes and walk away?
I did not take notes, I did listened and made an occasional indignant comment.
By definition, “indignant” Angry at unfairness angry or annoyed at the apparent unfairness or unreasonableness of something.

We did agreed that we were all American’s first and we do recognize private property rights.
WHAT DID WE ACCOMPLISH – LEARN?

Gordon White told us that, the appointed WA State Ecology Director Ted Sturdevant, (ANOTHER BUREAUCRAT) is aware of the concerns of the Clallam County private property owners (all 3300 of us)

WA State DOE is not required to provide an economic impact statement for Clallam County.

My personal conclusion,
The DOE is aware of the SMP economic impact on Clallam County government.
The DOE is aware that they are TAKING private property value without compensation.
The DOE is aware, that If private property owners keep fighting, we can reduce the setbacks, through our local government.

My conclusions are based on the following
18 months of research on line,
WA State Law, protection of private property
WAC’S, DOE proposed budget 2010-2013
WA State Public Trust Doctrine
Lawsuits, WA State Supreme Court Rulings
United States Supreme Court Rulings
Pacific Legal Foundation battles and BIG WINS
documented information on many other WA State SMP’S,
“Conspiracy Exposed” George C. Rains Sr.
“Access Denied to Inholder property”,
Attending county meetings, public forums,
Reading every word of the Clallam County DOE SMP Update and every SMP Public Comment,
Clallam County Chapter 35,
Water rights, reserved water rights,
60 years of recorded history from George C. Rains Sr.
To name just a FEW areas I have researched, questioning, challenging, communicating and disseminating all of it. (can what I know hurt them?)

I have great things going for me.
I AM AN AMERICAN
I AM NOT AFRAID OF WHAT THE GOVERNMENT IS GOING TO DO TO ME.
I freely play, the one card I have, guaranteed to me by the United States Constitution
FREEDOM OF SPEECH.

American’s working together to protect Constitutional and private property rights, they (light candles) by disseminating, research, keep us informed, reform us, post emails, encourage and support our FREEDOM.
Karl Spees, CAPR 13
Lois Krafsky-Perry, Citizen Review Online.
Sue Forde Citizen Review Online
Marv Chastin

This entry was posted in Private Property Rights, Shoreline Management Plan, WA State Dept. of Ecology.

MOVING FORWARD, OCT 19, 2017

WHAT ARE “YOU” GOING TO DO ABOUT THAT 2017 SMP UPDATE?

WHAT AM I GOING TO ABOUT IT?
THE USUAL......

Post this 2017 SMP Update comment on behindmyback.org

Then, email it to the Clallam County Board of Commissioners, at: SMP@co.clallam.wa.us and others.

To be continued...

This entry was posted in A BUREAUCRATS AGENDA, Abuse of Power, Paul and Pearl Revere, RED FLAG WARNING, Shoreline Management Plan, SMP Cumulative Impact on People, The Undue Influence of Nonprofits, The We's who WANT, Wetlands, WHAT A MESS, When is a Taking a Taking?, Who is Appointed, Who is Elected, Who is Responsible?, Word Gets Around in Cyberspace
It's Who They Are That Concerns Me

Posted on October 17, 2017 9:42 am by Pearl Rains Hewett Comment

THEY ARE THE GOVERNMENT’S BUREAUCRATS THAT INSTILLED FEAR IN THEIR OWN CITIZENS.

THE PROGRESSIVE BUREAUCRATS, in WA DC, in Clallam County, WA State, Dept. of Ecology (DOE) and their globalist entourage etal. Paid, environmentalists’ Facilitators, including the United Nations Agenda.

When the fearful citizens came forward on Jan 26, 2011

I said something.

“When American citizen fear what their own government is going to do to them, that is unacceptable to me.”

At this point in time, Oct 17, 2017 why bother with the FEAR the Clallam County SMP Update caused, and became a matter of public record on Jan 26, 2011?

UPDATE JUNE 19, 2017

IT’S WHO THEY ARE THAT CONCERNS ALL OF US

I RECEIVED A PHONE CALL FROM A CONCERNED (FEARFUL) CLALLAM COUNTY CITIZEN LAST NIGHT....

“PEARL, HAVE YOU READ THE NEW SMP UPDATE DRAFT?

DO YOU KNOW HOW STEVE GREY AND (ESA CONSULTANT) MARGARET CLANCY HAVE CHANGED IT?

DO YOU KNOW WHAT’S IN IT?”

THE CONCERNED CITIZEN SAID,
"PEARL, WHAT ARE YOU GOING TO DO ABOUT THIS?"

SO I DID THIS ABOUT THAT

- Behind My Back | June 20, 2017 Clallam County SMP Update

www.behindmyback.org/2017/06/20/6755

My public comment Vested Clallam County Citizens have been fearful of how the SMP Update will affect their private property use since Jan 26, 2011. INDEED, THIS IS ...

WHAT HAVE I BEEN DOING ABOUT THAT? 2011-2017

OVER 170 PUBLIC COMMENTS ON THE SMP UPDATE

This is post # 1005 on my blog/website

- Behind My Back

www.behindmyback.org

Informing U.S. Citizens of how various government agencies are violating the Constitution, taking away private property rights, and infringing on American liberties ...

- Tribal Right Issues · Wetlands · WA State Dept. of Ecology · When is a Taking a Taking

THE PROGRESSIVE BUREAUCRATS REPUTATION PRECEDES THEM.

Progressive Economics: The Rise Of Bureaucracy In America – Forbes


Oct 27, 2015 – Unelected bureaucrats promulgate more than ten times as many of the rules that Americans must obey as do our elected representatives.

Regulation’s Stranglehold On Millennials’ Futures – Forbes

https://www.forbes.com/sites/.../05/.../regulations-stranglehold-on-millennials-futures/

May 25, 2015 – Americans are moving from obeying laws passed by elected bodies to REGULATIONS PROMULGATED BY UNELECTED BUREAUCRATS. These pages of ...

At this point in time, Oct 17, 2017

WHAT AM I GOING TO DO ABOUT THAT CLALLAM COUNTY SMP UPDATE.

Make this post # 1005 on my blog/website
And make another SMP Update Public Comment.

AT THIS POINT IN TIME, Oct 17, 2017

WHY BOTHER WITH THAT CLALLAM COUNTY SMP UPDATE.

BECAUSE I HAVE BEEN AN INTEREST PARTY SINCE JAN 26, 2011

--- Original Message ---

From: zSMP

Sent: FRIDAY, OCTOBER 13, 2017 8:57 AM

SUBJECT: PROPOSED CLALLAM COUNTY SHORELINE MASTER PROGRAM (SMP)

INTERESTED PARTIES,

You are receiving this notice because you are on the County's Shoreline Master Program (SMP) Update email notification list. The County Planning Commission recommended to the Clallam County Board of Commissioners a Draft SMP (September 2017) to update and replace: (1) the existing 1976 SMP (last amended 1992); and (2) procedures for administration (e.g., permit process) of the SMP in Chapter 35.01, Shoreline Management, of the Clallam County Code (CCC).

PUBLIC HEARING: A public hearing on the recommended SMP before the Clallam County Board of Commissioners is scheduled for December 12, 2017 at 10:30 a.m., or as soon thereafter as possible in the Commissioners' Meeting Room of the Clallam County Courthouse, 223 East 4th Street, Room 160, Port Angeles, Washington. All persons wishing to comment are welcome to either submit their written comments before the hearing is commenced or present written and/or oral comments in person during the public hearing. Written comments should be sent to the Clallam County Board of Commissioners, 223 East 4th Street, Suite 4, Port Angeles, WA 98362-3015, or emailed to: SMP@co.clallam.wa.us

REGIONAL PUBLIC FORUMS: Prior to the public hearing, the County Dept. of Community Development will host 4 public forums to provide information on the SMP:

Thursday, November 2, 2017 at 6:00 p.m.
Sekiu Community Center, 42 Rice St., Sekiu WA

Monday, November 6, 2017 at 6:00 p.m.
Rainforest Arts Center, 35 N. Forks Ave., Forks WA

Wednesday, November 8, 2017 at 6:00 p.m.
Clallam County Courthouse, 223 E. 4th St., Port Angeles WA

Tuesday, November 14, 2017 at 6:00 p.m.
John Wayne Marina, 2577 W. Sequim Bay Rd., Sequim WA

SUMMARY: The SMP addresses compliance with the state Shoreline Management Act (SMA), RCW 90.58, and state SMP Update Guidelines (WAC 173-26). It includes goals and policies, regulations for new development and uses, and administrative procedures (e.g., permit process).

AREAS SUBJECT TO SMP: The SMP applies to all marine waters, reaches of rivers and streams where the mean annual flow is more than 20 cubic feet per second, and lakes and reservoirs 20 acres or greater in size that are under the jurisdiction of Clallam County and to lands adjacent to these water bodies (together with lands underlying them) extending
landward 200 feet in all directions from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and associated wetlands and river deltas. To consolidate regulations, the proposed SMP also includes the full extent of the mapped 100-year floodplain and land necessary for buffers to protect critical areas as defined in RCW 36.70A that are overlapping or otherwise coincident with the shoreline jurisdiction as allowed pursuant to RCW 90.58.030(2)(d)(i,ii). The City of Forks is also considering the SMP for rivers inside the city limits. Maps showing the approximate lateral extent of the shoreline jurisdiction and proposed shoreline environmental designations are found in Exhibit A-Shoreline Maps of the proposed SMP.

**SMP DOCUMENTS AND INFORMATION:** The [Draft SMP—Planning Commission Recommendation (September 2017)](http://www.clallam.net/LandUse/SMP.html) is available for review at the Department of Community Development in the Clallam County Courthouse and on the County’s SMP Update web page at: [http://www.clallam.net/LandUse/SMP.html](http://www.clallam.net/LandUse/SMP.html).

The existing 1976 SMP (last amended 1992) and related administrative procedures in Chapter 35.01 CCC, Shoreline Management; supporting SMP Update documents including, but not limited to Shoreline Inventory and Characterization Reports, Shoreline Restoration Plan, Cumulative Impacts Analysis and No Net Loss Report, and Consistency Review Report; and other information are also available at the Department and on the [County SMP Update website](http://www.clallam.net/LandUse/SMP.html). For questions, contact the Department at 360-417-2420.

Steve Gray, Planning Manager

Clallam County Department of Community Development

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The bottom line...

**AT THIS POINT IN TIME, Oct 17, 2017**

**WHY BOTHER WITH THAT CLALLAM COUNTY SMP UPDATE.**

**BECAUSE I HAVE BEEN AN INTEREST PARTY SINCE JAN 26, 2011**

**AND, IT’S WHO THEY ARE THAT CONCERNS ALL OF US**

To be continued....

Hi Merry,

Can you please post the Forks and Seiku meetings on our events page?

Thanks,

Lissy

Lissy Andros, Executive Director
Forks Chamber of Commerce
1411 S. Forks Avenue
Forks, WA 98331
360-374-2531 office
903-360-4449 cell
director@forkswa.com
www.forkswa.com

From: Peach, Bill [mailto:bpeach@co.clallam.wa.us]
Sent: Friday, October 13, 2017 11:15 AM
To: Christi Baron <cbaron@forksforum.com>; Lissy Andros <director@forkswa.com>; Don Grafstrom <d_grafstrom@centurytel.net>; Lonnie Gores <tholden@co.clallam.wa.us>
Subject: Proposed Clallam County Shoreline Master Program (SMP) Nov 6 in Forks

Please share the Nov 6 mtg in forks will be at 6pm at the rainforest arts center.

There will be a meeting in Seiku on November 2 at 6:00pm at the community center.

Lonnie

Please forward this message to the members of the Crescent advisory committee and to the Clallam Bay chamber of commerce.

Thanks

Sent from my iPhone

Begin forwarded message:
Interests Parties,

You are receiving this notice because you are on the County’s Shoreline Master Program (SMP) Update email notification list. The County Planning Commission recommended to the Clallam County Board of Commissioners a Draft SMP (September 2017) to update and replace: (1) the existing 1976 SMP (last amended 1992); and (2) procedures for administration (e.g., permit process) of the SMP in Chapter 35.01, Shoreline Management, of the Clallam County Code (CCC).

PUBLIC HEARING: A public hearing on the recommended SMP before the Clallam County Board of Commissioners is scheduled for December 12, 2017, or as soon thereafter as possible in the Commissioners’ Meeting Room of the Clallam County Courthouse, 223 East 4th Street, Room 160, Port Angeles, Washington. All persons wishing to comment are welcome to either submit their written comments before the hearing is commenced or present written and/or oral comments in person during the public hearing. Written comments should be sent to the Clallam County Board of Commissioners, 223 East 4th Street, Suite 4, Port Angeles, WA 98362-3015, or emailed to: SMP@co.clallam.wa.us

REGIONAL PUBLIC FORUMS: Prior to the public hearing, the County Dept. of Community Development will host 4 public forums to provide information on the SMP:

Thursday, November 2, 2017 at 6:00 p.m.
Sekiu Community Center, 42 Rice St., Sekiu WA

Monday, November 6, 2017 at 6:00 p.m.
Rainforest Arts Center, 35 N. Forks Ave., Forks WA

Wednesday, November 8, 2017 at 6:00 p.m.
Clallam County Courthouse, 223 E. 4th St., Port Angeles WA

Tuesday, November 14, 2017 at 6:00 p.m.
John Wayne Marina, 2577 W. Sequim Bay Rd., Sequim WA

SUMMARY: The SMP addresses compliance with the state Shoreline Management Act (SMA), RCW 90.58, and state SMP Update Guidelines (WAC 173-26). It includes goals and policies, regulations for new development and uses, and administrative procedures (e.g., permit process).

AREAS SUBJECT TO SMP: The SMP applies to all marine waters, reaches of rivers and streams where the mean annual flow is more than 20 cubic feet per second, and lakes and reservoirs 20 acres or greater in size that are under the jurisdiction of Clallam County and to lands adjacent to these water bodies (together with lands underlying them) extending landward 200 feet in all directions from the ordinary high water mark; floodways and contiguous floodplain areas landward 200 feet from such floodways; and associated wetlands and river deltas. To consolidate regulations, the proposed SMP also includes the full extent of the mapped 100-year floodplain and land necessary for buffers to protect critical areas as defined in RCW 36.70A that are overlapping or otherwise coincident with the shoreline jurisdiction as allowed pursuant to RCW 90.58 030(2)(d)(i,ii). The City of Forks is also considering the SMP for rivers inside the city limits. Maps showing the approximate lateral extent of the shoreline jurisdiction and proposed shoreline environmental designations are found in Exhibit A-Shoreline Maps of the proposed SMP.
SMP DOCUMENTS AND INFORMATION: The Draft SMP—Planning Commission Recommendation (September 2017) is available for review at the Department of Community Development in the Clallam County Courthouse and on the County’s SMP Update web page at: http://www.clallam.net/LandUse/SMP.html

The existing 1976 SMP (last amended 1992) and related administrative procedures in Chapter 35.01 CCC, Shoreline Management; supporting SMP Update documents including, but not limited to Shoreline Inventory and Characterization Reports, Shoreline Restoration Plan, Cumulative Impacts Analysis and No Net Loss Report, and Consistency Review Report; and other information are also available at the Department and on the County SMP Update website. For questions, contact the Department at 360-417-2420.

Steve Gray, Planning Manager

Clallam County Department of Community Development
Hi Mark

That sounds like a good path forward.
I’ll let you know how the conference call goes.

Jeff

On Oct 17, 2017, at 4:47 PM, Ozias, Mark <mozias@co.clallam.wa.us> wrote:

Hi Jeff,

Thanks for the note. We are scheduling maybe three work sessions to talk over the SMP update in detail; I have a request in to our planner to see how those are shaping up so that I can suggest the appropriate work session for you and/or others from the MRC to spend a few minutes addressing the issue, if that sounds appropriate to you.

Thanks –

Mark

Hi Mark

This morning, I received an email from Rich Childers, the Executive Director of the Northwest Straits Commission, regarding the drafting of a formal statement regarding net pen aquaculture in Washington State. Given the sensitivity of this issue within and outside of Clallam County, I will not commit the MRC (or the County) to a position on this until I learn more about the tone of the potential “unified” message, and have vetted it with you and your fellow Commissioners. In our discussion within the MRC, we realize that there are honest differences of opinion concerning whether this form of aquaculture makes sense for Clallam County or Washington State. All MRC members agree the MRC and Commission should promote public dialog and discussion of the pros and cons as a way of helping folks understand the tradeoffs related to this industry. Other counties and MRC’s have taken a much stronger stance on net pens, as evidenced by the message below.

If you have questions on any of this, feel free to call me at (360) 461-9604. I can also meet in person in the next few weeks.

Best regards,
Begin forwarded message:

From: "Richard Childers" <childers@nwstraits.org>
Subject: MRC chair call Net Pen discussion
Date: October 13, 2017 at 11:16:39 AM PDT
To: <jaward@olypen.com>, "Elsa Schwartz" <eschwartz@estuaries.org>, <ashley.h.mackenzie@gmail.com>, "Terry Turner" <TTurner@opalco.com>, "Jamey Selleck" <james.selleck@earthlink.net>, <fperez@stillaguamish.com>, <eleanorehines@gmail.com>, <cisboatin2@yahoo.com>
Cc: <Hart@nwstraits.org>, <horst@nwstraits.org>, "Nicole Jordan" <jordan@nwstraits.org>, <nan.mckay10@gmail.com>

MRC Chairs;

A volume of emails have been circulating of late regarding Atlantic salmon net pen aquaculture and MRC involvement and perspective on this issue. One question that has been elevated is "should and/or can the MRCs and NWSC develop a unified position on this issue"? The San Juan Island MRC has initiated an effort to draft a position letter for SJI county and other MRCs may be interested in collaborate on this position statement. Recognizing each MRC needs to work closely with their respective County Commissioners on this issue and regulations governing net pens will likely be addressed during the 2018 Legislature session. That said, I think it would be beneficial to have a conference call with all MRC chairs to discuss this issue and get a collective perspective on how best to proceed. I was hoping to get a call scheduled soon (next week) and created a doodle poll for your availability. Please enter your availability into the poll ASAP.

https://doodle.com/poll/xn85tytigbmqx2iw

Rich Childers, Director,
Northwest Straits Commission
10441 Bayview Edison Road
Mount Vernon, WA 98273
360-428-1085, C 360 853-3904
www.nwstraits.org | facebook | twitter
<image001.jpg>
Shimmin, Paula

From: pearl hewett <phew@wavecable.com>
Sent: Saturday, October 14, 2017 11:04 AM
To: zSMP
Cc:

Subject: SMP 19 Unresolved Issues 2012-2017

SMP 19 Unresolved Issues 2012-2017

Posted on October 14, 2017 9:24 am by Pearl Rains Hewett Comment

Another 2017 SMP Update concern to Clallam County Commissioner

At the July 10, 2012 SMP Committee Advisory meeting

Two thirds or more of the SMP Advisory Committee

VOTED TO WALK AWAY AND LEAVE 19 UNRESOLVED SMP ISSUES ON THE TABLE,

against my suggestion that we needed an additional August meeting to complete our duty to the citizens and private property owners, as SMP advisors, prior to the final SMP draft proposal being written.

LEAVING 19 OR MORE PROPOSED SMP DRAFT ISSUES RELATED TO THE DOE SMP TAKING OF PRIVATE PROPERTY without argument, suggestions or comment?

Part two, What happened to us? the 3000 and the 19 unresolved issues behind our back, behind closed doors by the SMP Update bureaucrats and the paid facilitators?

THE SMP Advisory Committee

Pearl Rains Hewett Trustee—— Original Message ——

From: pearl hewett
To: Lois Perry ; Sue Forde ; zSMP
Subject: SMP COMMENT ON THE SMP Advisory Committee

This is my comment 

on the SMP Advisory Committee 

George C. Rains Estate 

Concerned Member SMP Advisory Committee 

At the July 10, 2012 SMP Committee Advisory meeting 

Two thirds or more of the SMP Advisory Committee 

VOTED TO WALK AWAY FROM THE TABLE, 

against my suggestion that we needed an additional August meeting to complete our duty to the citizens and private property owners, as SMP advisors, prior to the final SMP draft proposal being written. 

The SMP Advisory Committee that represent the 3300 Clallam County shoreline private property owners is approximately as follows. 

1/3 = 10 private interest groups 

1/3 = 10 paid government employees 

1/3 = 10 SMP Affected taxpaying private property owners (only 8 at this meeting) 

DOES THE MAKEUP OF THIS COMMITTEE EXPLAINS WHY? 

THEY VOTED TO WALK AWAY FROM THE TABLE 

LEAVING 19 OR MORE PROPOSED SMP DRAFT ISSUES RELATED TO THE DOE SMP TAKING OF PRIVATE PROPERTY without argument, suggestions or comment? 

July 14, 2012 FIRST SMP PUBLIC COMMENT 

On the 19 unresolved SMP issues that went to the Planning Dept ... 

Jul 4, 2015 THREE YEARS LATER SECOND SMP PUBLIC COMMENT 

On the 19 unresolved SMP issues that went to the Planning Dept ... 

19 Unresolved SMP Issues AN SMP Public ... – Clallam County 

www.clallam.net/LandUse/documents/635_PHewett.pdf 

Jul 4, 2015 – On 19 unresolved SMP issues that went to the Planning ... The 19 unresolved SMP issues on July 10, 2012 ..... Of ...www.behindmyback.org.
July 14, 2012 FIRST SMP PUBLIC COMMENT continued…

(1) DISCUSSED AND QUESTIONED? The undecipherable table with the percentages, the 15% of whatever? It made no sense to me either? Jay Pedersen could help with his knowledge of what he thought it actually was/represented? It would be very helpful to members of the committee.

The written text related to the undecipherable table below

220. Minor new development Grading shall not exceed 500 cubic yards; and ii. Land disturbing activities shall not exceed 20,000 square feet, except that on parcels less than five (5) acres, land disturbing activities must not exceed fifteen (15) percent of the gross parcel size; and iii. The total cumulative footprint of all structures on a parcel must be less than 4,000 square feet; and iv. The total cumulative impervious surface area on the parcel must be less than ten (10). All land disturbing activities must be located on slopes less than fifteen (15) percent; and vi. All land disturbing activities must comply with any critical area buffer and other protection standards established for parcels created by land division.

(2) DISCUSSED AND QUESTIONED? NOT ADDRESSED

The limited number of trained specialists, Jay’s comment was in reference to the county SMP requiring specialists, to perform the mitigation tests. If a property owner could even find one to do the testing? The time delay and cost would be prohibitive.

(3) PRESENTED NOT DISCUSSED

SMP Excessive restrictions on all forms of developments. I am extremely concerned about the additional restrictive requirements written into the SMP update for major development. They are counter-productive to the economic recovery of Clallam County, they restrict the ability of business and citizens to create employment opportunities in both Clallam County and Port Angeles. Why are the Dept. of Community Development and the planning biting off their own feet? Why are they creating these obsessive restrictions on all developments?

The way Steve was talking it, with all the added bells and whistles, it was to make any form of mitigation for anything totally infeasible, creating a like it or lump it, situation for all development by business or private shoreline property owners.

(4) PRESENTED- DISCUSSED but NOT ADDRESSED

The cumulative effect of setbacks SHORELINE, WETLAND and HABITAT Ed Bowen did a good job when he pointed out an example of the enormous loss of private property use with the setbacks on Lake Pleasant, in conjunction with the yet undetermined, Clallam County DOE designated WETLANDS.

(5) PRESENTED NOT ADDRESSED

More additional HABITAT setbacks

It was impressive how smoothly Margaret and Steve just added on the additional habitat setbacks, but did not mention endangered species.
Rare, endangered, threatened and sensitive species means plant and animal species identified and listed by the Washington State Department of Natural Resources, Washington Natural Heritage Program, Washington State Department of Fish and Wildlife, or the U.S. Fish and Wildlife Service, as being severely limited or threatened with extinction within their native ranges.

Threatened species means a species that is likely to become an endangered species within the foreseeable future, as classified by the Washington Department of Fish and Wildlife, the Department of Natural Resources, Washington Natural Heritage Program, or the federal Endangered Species Act.

(6) ED BOWEN COMMENT NOT ADDRESSSED

Recording means the filing of a document(s) for recordation with the County auditor.

(7) NO DISCUSSION OR RESOLUTION (not required by law)

Restoration means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including, but not limited to, revegetation, removal of fill, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

(8) DOE DESIGNATED WETLANDS NOT IDENTIFIED OR INCORPORATED

Wetlands have no boundaries, adjoining wetlands could restrict the use of your property.

Wetlands means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs and similar areas. Wetlands do not include those artificial wetlands intentionally created for non-wetland sites, including, but not limited to, irrigation and drainage ditches, grass lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands created as mitigation and wetland modified for approved land use activities shall be considered as regulated wetlands.

PROHIBITED EXCEPTION DISCUSSED AND RESOLVED BY RCW

Provisions for protection SHALL be included in SMP update.

Revetment means a sloped wall constructed of rip-rap or other suitable material placed on stream banks or other shorelines to retard bank erosion and minimize lateral stream movement.

Rip-rap means dense, hard, angular rock free from cracks or other defects conductive to weathering often used for bulkheads, revetments or similar slope/bank stabilization purposes.

(9) DISCUSSED UNDEFINED NO RESOLUTION [insert final date]

3.1.1 Shoreline Environment Designations
1. A shoreline environment designation has been assigned to each segment of the shoreline in accordance with this section. The designations are based on the following general factors:

2. The ecological functions and processes that characterize the shoreline, together with the degree of human alteration as determined by the [insert final date] Shoreline Inventory and Characterization Report and subsequent technical analyses; and

(10) NOT PRESENTED OR DISCUSSED

EXPENSE OF SPECIALISTS FOR APPROVAL

1. c. Hazard Tree Removal: Removal of a hazard tree may be allowed in the buffer when trimming is not sufficient to address the hazard. Where the hazard is not immediately apparent to the Administrator, the hazard tree determination SHALL be made after Administrator review of a report prepared by a qualified arborist or forester.

(11) NOT PRESENTED OR DISCUSSED

EXPENSE OF SPECIALISTS FOR APPROVAL

1. Invasive Species Management: Removing invasive, non-native shoreline vegetation listed on the Clallam County Noxious Weed List may be allowed in the buffer when otherwise consistent with this Program. The disturbed areas must be promptly revegetated using species native to western Washington. The Administrator SHALL require a vegetation management plan prepared by a qualified ecologist, forester, arborist, or landscape architect prior to approving the invasive species removal. The vegetation management plan SHALL identify and describe the location and extent of vegetation management. For properties within designated landslide or erosion hazard areas, the Administrator may require review of the vegetation management plan by an engineering geologist or geotechnical engineer to ensure that the vegetation management will not cause or exacerbate hazards associated with soil or slope instability. The location and size of the invasive species management area SHALL be clearly defined on the site plan

(12) NOT DISCUSSED – ADDRESSED OR RESOLVED

Taking of Value of view property by limited 20% KEYHOLE view corridor. If 50% of the value of your shoreline property is for the view? Losing 80% the view value will affect the true and real value of your property

4.2.4 Regulations – Shoreline Buffers

3. Buffer Condition: Shoreline buffers shall be maintained in a predominantly well vegetated and undisturbed condition to ensure that the buffer provides desired buffer functions including shade, habitat, organic inputs, large woody debris, slope stability, water storage, biofiltration, contaminant removal, and fine sediment control. Up to eighty percent (80%) of the buffer area shall be vegetated with native trees and shrubs. The remaining twenty percent (20%), or at least fifteen (15) linear feet of the water frontage, whichever is greater, may be retained as lawn for active use.

4. Allowed Uses and Buffer Modifications: The Administrator may allow limited clearing, thinning, and/or pruning to accommodate specific shoreline buffer uses and modifications identified in this section. Such allowances shall not require compensatory mitigation provided that the amount and extent of the clearing, limbing, and/or pruning are the minimum necessary to accommodate the allowed use and all other requirements of the Program are met.

(13) view corridor NOT DISCUSSED OR ADDRESSED limited and selective tree removal, pruning, and/or limbing in the buffer

1. View Corridors: The Administrator may allow limited and selective tree removal, pruning, and/or limbing in the buffer to create a view of the shoreline when otherwise consistent with this Program. The removal, pruning,
and/or limbing shall not require any ground-disturbing equipment and shall not materially alter soils or topography.

(15) NOT DISCUSSED OR ADDRESSED

EXPENSE OF SPECIALISTS FOR APPROVAL

Administrator shall require a view clearance plan

The Administrator shall require a view clearance plan prepared by a qualified ecologist, forester, arborist, or landscape architect prior to approving the view corridor. The view clearance plan shall identify and describe the location and extent of the proposed tree removal, pruning, and limbing and shall demonstrate compliance with American National Standards Institute (ANSI) A300 Standards for Tree Care Operations (Tree, Shrub, and Other Woody Plant Management — Standard Practices). For properties within designated landslide or erosion hazard areas, the Administrator may require review of the view clearance plan by an engineering geologist or geotechnical engineer to ensure that the proposed removal, pruning, and/or limbing will not cause or exacerbate hazards associated with soil or slope instability. The location and size of the view corridor shall be clearly defined on the site plan.

1. Private Pathways: Private pathways which provide pedestrian access to the shoreline may be allowed within the buffer provided they are constructed of pervious material, are less than or equal to six (6) feet wide, and follow a route that minimizes erosion and gullying.

(16) NOT DISCUSSED OR ADDRESSED

Taking of Private property for Public access

The removal of any reference to the taking of private property for Public access, Clallam County has the highest public access to public land in WA State. At the Private DOE meeting on June 6, 2012 Gordon White agreed that we have sufficient cause 51% to remove any taking of private property for public access.

(17) NOT DISCUSSED, MENTIONED AND DISMISSED

EPA. Precautionary setback are not legal

As questioned by Rob McKenna, why are the DOE SMP setbacks more restrictive the EPA. Precautionary setback are not legal.

(18) LEGALITY OF 80% TAKING NOT DISCUSSED NOT ADDRESSED

ONE HUNDRED PERCENT (100%) NON-CONFORMING PROPERTY

1. At least eighty percent (80%) of the buffer area between the structures and the shoreline and/or critical area is maintained in a naturally vegetated condition.

What provisions have the DOE made to stay within the LAW?

"It is now undisputed that the county had no authority to deprive residents of the use of their own private property," CAO’S "65 PERCENT" SEIZURE OF PROPERTY PLF Lauds Supreme Court for "Driving a Stake Through One of the Most Extreme Assaults on Property Rights in the U.S."

SEATTLE, WA; March 4, 2009: The Washington Supreme Court
the CAO limited rural landowners with five acres or more to clearing only 35 percent of their property, forcing them to maintain the remaining 65 percent as native vegetation indefinitely. Rural landowners owning less than five acres were allowed to clear only 50 percent of their parcels. Affected landowners had to continue paying taxes on the portion of the property rendered useless by the CAO.

(19) NOT DISCUSSED OR ADDRESSED

The provisions of WAC173-26-191 anything that may be illegal and unconstitutional at a State level, may also be illegal and unconstitutional at a county level AND shall not be included in Clallam County SMP update.

WAC 173-26-191

Agency filings affecting this section

Master program contents.

2 The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline. Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property. The policies may be pursued by other means as provided in RCW 90.58.240. Some development requires a shoreline permit prior to construction. A local government evaluates a permit application with respect to the shoreline master program policies and regulations and approves a permit only after determining that the development conforms to them. Except where specifically provided in statute, the regulations apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required, and are implemented through an administrative process established by local government pursuant to RCW 90.58.050 and 90.58.140 and enforcement pursuant to RCW 90.58.210 through 90.58.230.

Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property.

So? The illegal and unconstitutional policies on private property, may be pursued by other means and implemented through an administrative process established by local government.

Oct 14, 2017 added information on Clallam County SMP Update, paid facilitators MARGARET CLANCY, JIM KRAMER.

No Net Loss of Ecological Function?

This work was funded through a grant from the National Fish and Wildlife Foundation.

Prepared by MARGARET CLANCY, JIM KRAMER and Carol Macllroy
prohibit new building lots from being created in the 100-year floodplain limit new roads in the floodplain that unregulated development or illegal activities will not occur at a level significant enough to affect flood storage. It will not be possible to fully avoid all impacts from the development of these lots through SMP policies and regulations.

So? The illegal and unconstitutional policies on private property, may be pursued by other means and implemented through an administrative process established by local government?

Through, an administrative process established by the Clallam County DCD Planning Dept?

(19) NOT DISCUSSED OR Addressed

The provisions of WAC173-26-191 anything that may be illegal and unconstitutional at a State level may also be illegal and unconstitutional at a county level AND, shall not be included in Clallam County SMP update.

If any of you read this complete comment? You understand fully, why I am critical of the two thirds majority of the Advisory Committees that failed to complete their responsibility to the citizens and private property owners of Clallam County, prior to the final SMP Draft Proposal.

Pearl Rains Hewett

WHO WERE THE SMP ADVISORY COMMITTEE MEMBERS

THAT VOTED TO WALK AWAY FROM THE TABLE

LEAVING 19 OR MORE PROPOSED SMP DRAFT ISSUES RELATED TO THE DOE SMP TAKING OF PRIVATE PROPERTY without argument, suggestions or comment?

PDF]

Clallam County Shoreline Master Program Committee ...

www.clallam.net/LandUse/.../CiCoSMPC2013.pdf

Clallam County DOES THE MAKEUP OF THIS COMMITTEE EXPLAINS WHY?

THEY VOTED TO WALK AWAY FROM THE TABLE

LEAVING 19 OR MORE PROPOSED SMP DRAFT ISSUES RELATED TO THE DOE SMP TAKING OF PRIVATE PROPERTY without argument, suggestions or comment?
REMEMBER... This is just

Part Two: The history of us, the collective 3000?

What happens to one of us, happens to all of us.

You the elected are responsible for what happens to all of us.

The Bottom Line....

As one of the 3000, I shall continue my comments and concerns on the SMP Update
day after day, week after week, month after month as I have done prolifically since 2011.

To be continued....

This entry was posted in A PREDICTABLE game, A Progressive Agenda, A question of DUE DILIGENCE, A TIMELY MESSAGE, Ecology Empowered by WA Law, Ecology's Cumulative Impact on People, Ecology's Questions and Answers, FACTS are troublesome things, Fatal Error in Due Process?, Getting YOU STARTED, INDECIPHERABLE RULES, Learning From History?, NO NET LOSS?, No Significant Impact?, Not in my backyard, Open Public Meeting Act (OPMA), Paul and Pearl Revere, People with a Policy, Pin the Tail on the Donkey, Politically Motivated, POLITICALLY PARTISAN, SIMPLY PUT, SMP Cumulative Impact on People, So many Questions - NO ANSWERS, Tenacity and Bother, The We's who WANT, Undisclosed? Bureaucrats Sabotage.

This is the short email form CLICK ON THE TOP LINK TO READ THE 3000+ WORD DOCUMENT
Shimmin, Paula

From: pearl hewett <phew@wavecable.com>
Sent: Friday, October 13, 2017 12:31 PM
To: zmp@co.clallam.wa.us
Cc: Winborn, Mary Ellen; Peach, Bill; Johnson, Randy; Ozias, Mark; maryjane.robins@mail.house.gov; Brian and Brooke; judymiller173@frontier.com; Tracy Horn; notac@olycom.com; steve.tharinger@leg.wa.gov; Sandy Rains; Delane Hewett; Vi; Van De Wege, Rep. Kevin; parlette.linda@leg.wa.gov; Office of Jesse Young; Mike Chapman; connie beavais; gaelary@olycom.com; Stephanie Noblin; Ivan Stocker; LIZ BOWEN; lizziephel@aol.com; Sandy Collins; ahlburgk@msn.com; marg@sequim.com; randy simmins; Wylie clark; info@justwateralliance.org; DarolJohnson; Glen Morgan; Ross Krumpe; Louise Gliatto; RON SUSICK; harry bell; Jim Boyer; Dick Pilling; Dan Clem; Rene"; Amanda Hewett; Art Ayres; Karl Spees; dianne L; bruinc@wsdot.wa.gov; Tyler, Ross; brian winter; office@konp.com; Pam Roach; JOSH HOWARD; joni howard; Tristin Hewett; Lois Perry; Sue Forde; Rick Forschler ;-) Amy Cruver; levi howard; chuck cushman; Janet Fowler

Subject: SMP Update Concerns to Commissioners

SMP Update Concerns to Commissioners

Posted on October 13, 2017 10:21 am by Pearl Rains Hewett Comment

Oct 13, 2017 .... You, the elected Commissioners are now, at this late date, concerned about the Public Participation Strategy for the 2017 Clallam County SMP Update.

You are planning open meetings, asking for public comments, and yes, you are planning the date for a public forum.

Just noting, 2010: The Clallam County Board of Commissioner's expects to adopt a final SMP-Update Public Participation Strategy extended to March 16, 2010 @ 10 a.m. at the Board of Clallam County Commissioners Regular Meeting, 223 East 4th Street, Room 160, Port Angeles, Washington.

Part one: Oct 13, 2017 , The history of us, the collective 3000 private shoreline property vested stakeholders? What happened to us between Dec 5, 2009 and Jan 26, 2011?

Dec 5, 2009. the FIRST public comment on the SMP Update was submitted and posted.

Jan 26, 2011 The SMP Public participation strategy? The first, by invitation only SMP Update meeting was held by ESA Adolfson's paid, facilitators Margaret Clancy and Jim Kramer.

Not one of Clallam County's elected representatives bothered to attended this meeting. Not, Commissioners', Tharanger, Chapman, Doherty or DCD director Miller. It was a bureaucrats meeting.

What you, the elected, don't know, have been denied access to by bureaucrats, about SMP Update 600 plus public comments can hurt all Clallam County citizens.
Resolution regarding County Shoreline Management Plan

WHEREAS the nature of amendments to the plan as might be adopted by the Clallam County Board of Commissioners may not adequately protect the quality of local waters from harmful development; and

WHEREAS participation in the Shoreline Management Plan review process will be open to the public in a series of meetings over the next two years or more;

THEREFORE be it resolved that the Clallam County Democratic Central Committee appoint a subcommittee of interested members to monitor the progress of the Shoreline Management Plan review, to suggest communications to the county of the concerns or interests of Democrats in the elements of the plans and any proposed amendments, and to issue quarterly reports on the review process to the Central Committee.

December 5, 2009
I did, I was appointed by DCD Miller.

Cathy Lear said I must read everything. I did and that was when I started making Public SMP Update Comments.

By May 5, 2011,

I was an angry, concerned vested stakeholder of private shoreline property and a member of the appointed Citizens Advisory Committee

050511 – PHewett – G

• #70 We, as a Citizens Advisory Committee, are not there to give input, constructive comment, or recommendation, we are there to be indoctrinated on compliance, based on misleading pie charts and statistics compiled and presented by ESA Adolfson. "Reading out loud" by Pearl Hewett of WAC 173-26-191 illegal or unconstitutional.

By July 07, 2012, I was a very frustrated, angry, concerned vested stakeholder of private shoreline property and a member of the Citizens Advisory Committee

July 7, 2012 I was so concerned about the SMP Update I compiled the

COMPLETE LIST OF CLALLAM COUNTY DOE SMP PUBLIC COMMENTS 2009-2012

I am concerned with, the comment numbers with no comments? The fact that it took me 12 hours to compile the following information?

Unfortunately the links 2009-2012 SMP public comments are not linked to the SMP Update

Not one of Clallam County elected representative from 2011 is still in office.

Please note, there is only one county employee, Steve Gray, still employed by Clallam County that is still rewriting and revising the SMP Update. Unless? County employee Cathy Lear is representing someone?

And, Steve is still being directed by the ESA Adolfson paid consultant, facilitator Margret Clancy.

Just saying, Margaret Clancy is not legally responsible for whatever content she and Steve decide to put into the SMP Update.

Just asking? Have Clallam County elected representatives sought or received any legal counsel?

Am I concerned? YOU BET...

ARE YOU CONCERNED? Read the 2009-2012 comments, go find and read the 600 plus SMP public comments,. You, the elected, not bureaucrats, are responsible for the fate of Clallam County, you are the ultimate and final SMP Update decision makers.


A concerned vested stakeholder of private shoreline property in Clallam County WA.

Pearl Rains Hewett

Trustee George C. Rains Sr. Estate
July 07, 2012 COMPLETE LIST OF CLALLAM COUNTY DOE SMP PUBLIC COMMENTS 2009-2012

--- Original Message ---

From: pearl hewett

To: undisclosed concerned citizens and elected officials

Sent: Saturday, July 07, 2012 10:02 AM

THE SHORT FORM IS THIS EMAIL
CLICK ON THE TOP LINK TO READ THE FULL 6300 WORD DOCUMENT

The bottom line.....

REMEMBER... This is just

Part one: The history of us, the collective 3000?

You the elected are responsible for what happens to all of us.

Shimmin, Paula

From: Ozias, Mark
Sent: Monday, October 09, 2017 10:57 AM
To: ‘Mary Porter-Solberg’
Subject: RE: Shoreline Master Plan

Thanks for the nice note, Mary. I will reach out to Darlene to be sure the SMP work is on her radar.

Hope you have a lovely fall and winter in the sunshine!!!

Mark O

---

From: Mary Porter-Solberg [mailto:hikernut@live.com]
Sent: Friday, October 06, 2017 5:10 PM
To: Ozias, Mark
Subject: RE: Shoreline Master Plan

Mark,

I appreciate your reaching out to the Sierra Club about the SMP. Yes, I have been following the progress online and as a matter of fact, I took a look at the latest version yesterday morning. I was especially interested to see if anything in the Aquaculture section of the SMP had changed, but it looked similar to the original version.

At one time, I was attending all the meetings, but now that I travel to Arizona in the Winter, I am unable to attend.

Darlene Schanfald keeps the North Olympic Group of the Sierra Club informed about the SMP and I keep Olympic Peninsula Audubon Society (OPAS) informed of its progress (to the best of my ability).

I am sure that Sierra Club North Olympic Group will provide comments on the SMP and I appreciate your email reminder. I also believe that a Sierra Club representative or representatives will be present at the public hearing on December 12, but I will be out of state and unable to attend.

By the way, just an FYI that OPAS has introduced a resolution to Audubon Washington asking Washington State to ban Atlantic salmon net pens in our marine waters. The Audubon State Chapters will meet this year in our area on October 13 at the Jamestown Tribal Center in Blyn to discuss state conservation issues and our introduction of the resolution will be discussed during that time. We understand that one of our WA State representatives is working on introducing legislation this January with the intent to ban Atlantic salmon net pens in marine waters. We advocate for onshore (over land facilities). I believe that you heard in an email from Dr. James R. Karr about the Atlantic salmon net pens in a letter that he sent to Governor Inslee.

Thanks for all that you do as Clallam County Commissioner and your ongoing support of issues that will help our community and our environment.

Mary

---

From: Ozias, Mark [mailto:mozias@co.clallam.wa.us]
Sent: Friday, October 6, 2017 4:30 PM
To: Mary Porter-Solberg <hikernut@live.com>
Subject: Shoreline Master Plan
Hello Mary –

I hope this note finds you well. I’m wondering whether the Sierra Club has been tracking the work the Planning Commission has done the past few months regarding the SMP?

The Commissioners scheduled a public hearing on December 12 to take testimony on the draft updated Plan; we will be scheduling several public forums prior to that date as well as tackling the document in several pieces over the course of several work sessions.

The Planning Commission-approved draft SMP is available online; I hope the Sierra Club makes comment, and I would like to understand the Club’s concerns and thoughts prior to the December hearing.

Let me know how I can help –

Thanks,

Mark O
Hello Darlene —

I hope this note finds you well. I'm wondering whether the Sierra Club has been tracking the work the Planning Commission has done the past few months regarding the SMP?

The Commissioners scheduled a public hearing on December 12 to take testimony on the draft updated Plan; we will be scheduling several public forums prior to that date as well as tackling the document in several pieces over the course of several work sessions.

The Planning Commission-approved draft SMP is available online; I hope the Sierra Club makes comment, and I would like to understand the Club's concerns and thoughts prior to the December hearing.

Let me know how I can help —

Thanks,

Mark O
Shimmin, Paula

From: Ozias, Mark
Sent: Thursday, October 05, 2017 11:58 AM
To: ‘Steve McCuen’
Subject: RE: Shoreline master plan

Mr. McCuen,

The Public Hearing on December 12 will take place at 10:30 am in the Commissioners’ meeting room. Like all of our meetings, it will be live-streamed and the video will be posted to the county website shortly thereafter. I haven’t yet heard about dates for the public meetings that will precede this December date but those should be set and publicized shortly.

You are welcome to provide written testimony at any time; the Clerk of the Board will be sure that all three Commissioners receive it. I’m not certain of the status of the MDNS but encourage you to call Steve Gray at 360-417-2520 or Mary Ellen Winborn at 360-417-2323 for clarification.

Sincerely,

Mark Ozias
Clallam County Commissioner

From: Steve McCuen [mailto:steve-mccuen@wavecable.com]
Sent: Thursday, October 05, 2017 10:51 AM
To: Ozias, Mark
Subject: Re: Shoreline master plan

Is there an attachment to this email No 12/13 75
Mr. McCuen,

We did not vote on any revisions, or even look at the SMP update, yesterday. Rather, we outlined the public process that will take place in the next few months to ensure that we are doing all that we can to solicit input.

The Board of Commissioners will hold a public hearing on the SMP on December 12. Prior to that, three public meetings are being scheduled across the county to provide information, answer questions and solicit input. The BOCC will also break the document down for more detailed analysis over the course of three or four work sessions between now and December 12.

We will work to publicize these meetings as broadly as possible.

Thank you for your interest!

Sincerely,

Mark Ozias
Clallam County Commissioner
Virus-free. www.avg.com
Commissioner,

I have lodged a formal grievance complaint of discrimination by the DCD department for selectively possessing certain citizen's submissions to the SMP Update process, while selectively removing from the process other citizens submissions, me for one. I don't expect the DCD to take this seriously, and thus am escalating it to the BOCC for a request for investigation. I would suggest you also include in the investigation the criteria you approved in the most recent consultant contract regarding public outreach and engagement in the attempt to finalize the current draft; I claim they have failed to meet that component of the scope of work in the slightest extent.

Director,

Make notice for the record I claim a grievance of discrimination on your department’s part in who’s public comment you accept and acknowledge in your SMP Update process. I would strongly suggest you seek your necessary legal advice in this matter. I expect better, and apparently I am never going to get resolution in being “locked up” in your office with my grievance. So I will make record that on many occasions I have made substantive comment to this update and your department’s record keeping has proven not to have those “records” (from a public records request) and over eight letters sent to your department by the US mail in recent times that your “system” has no acknowledgment of having in possession/addressing. But yet you seem to selectively receive the submissions by a certain few county citizens.

I am requesting of the BOCC to launch an investigation in to this matter, but in the interim I am making the official grievance one last time to you the elected official that your department is discriminatory to this citizen, and there’s viable evidence to other citizens also.

I totally disapprove of how your department has performed in the SMP Update.

I would suggest you also include in the investigation the criteria you approved in the most recent 2017 consultant contract regarding public outreach and engagement in the attempt to finalize the current draft; I claim they have failed to meet that component of the scope of work.

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326
Hello Commissioner Ozias,

Here is an editorial from the Olympian that provides some insight about some of Olympia's SLR adaptation efforts:

http://www.theolympian.com/opinion/editorials/article63718717.html

Ian Miller

On 2/24/2016 1:26 PM, Ozias, Mark wrote:

Thank you for the presentation and the follow up information. I look forward to benefitting from your expertise and experience.

Mark O

Sent from my iPhone

On Feb 23, 2016, at 2:28 PM, Ian Miller <immiller@uw.edu> wrote:

Hello Commissioner Ozias,

As a follow up to my presentation yesterday (with Kate Dean) on the recently released "Climate Change Preparedness Plan for the North Olympic Peninsula" (available at http://www.noprcd.org/#!about2c1yuo) I am going to reference you to the following for a summary of going-ons in the SLR adaptation world in Washington municipalities. This isn't a complete list. I also don't include tribes on here, but the Swinomish, the Jamestown S'Klallam Tribe, the Quinault and the Tulalip all have active projects that I know of to assess impacts, identify vulnerabilities and/or implement adaptation actions for sea level rise:

1) In San Juan County, a project by the Friends of the San Juans produced a very nice analysis of how existing local, county and state laws bear on questions regarding how government can work with sea level rise adaptation. It is available here: http://www.sanjuven.org/documents/Loring_2014_sea_level_rise_regulatory_review.pdf

I haven't heard if San Juan County has acted on any of the recommended actions in the report, but have reached out to some colleagues there with that question.

2) In Island County I am currently part of a project that seeks to incorporate
SLR projections into their SMP, Comp plans, and salmon and ecosystem recovery plans. We are early in the process and there are no specific accomplishments to report, but we have active involvement from county planners and emergency management staff...a clear indication that they are moving seriously on this.

3) Kate mentioned the work the City of Olympia has done to build SLR thresholds into their planning, with a set of actions associated with those thresholds.

4) The City of Seattle (http://www.seattle.gov/environment/climate-change/planning-for-climate-impacts) and King County (http://www.kingcounty.gov/environment/climate-change-resources/impacts-of-climate-change.aspx), perhaps not surprisingly given their populations, have moved through assessing vulnerability to sea level rise and have even (as I understand it) initiated a few on-the-ground projects to address infrastructure impacts.

5) Bellingham and Tacoma have both reached out to partners at the UW Climate Impacts Group for help with assessing SLR vulnerability.

Please view me as a resource if and when Clallam County moves forward with an updated action plan.

Ian

Ian M. Miller
Coastal Hazards Specialist, Olympic Peninsula | Washington Sea Grant
College of the Environment | University of Washington
Oceanography Instructor | Peninsula College
T 360.417.6460

Ian M. Miller
Sea Grant Washington
Coastal Hazards Specialist, Olympic Peninsula | Washington Sea Grant
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Ian

---

Ian M. Miller
Coastal Hazards Specialist, Olympic Peninsula & Washington Sea Grant
College of the Environment & University of Washington
Oceanography Instructor & Peninsula College
T 360.417.6480
Mary Ellen

I would like to stop by to understand Pearl Hewett's comment on consultation in WRIA 20.

Thanks

Bill Peach

Sent from my iPad

Begin forwarded message:

From: "pearl hewett" <phew@wavecable.com>
Date: February 18, 2015 at 3:42:31 PM PST
To: "zSMP" <sm@co.clallam.wa.us>, "Karl Spees" <76ccap@gmail.com>, "Lois Perry" <lomayk@gmail.com>, "Sue Forde" <sue98382@gmail.com>, <yellowbanks@hotmail.com>, <notac@olypen.com>, "Jo Anne Estes" <estesjoanne@gmail.com>, "harry bell" <harry@greencrow.com>, "Stephanie Noblin" <snoblin@gmail.com>, "Judi Hangartner" <smartawareness@wavecable.com>, "mary pierce pfaff" <mpfaffpf@olypen.com>, "Jay Petersen" <fourse@olypen.com>, <ahlburgk@msn.com>, "Bill Peach" <bpeach@co.clallam.wa.us>, "jim McEntire" <jmcentire@co.clallam.wa.us>, "mike chapman" <mchapman@co.clallam.wa.us>
Cc: "Lois Perry" <lomayk@gmail.com>, "Sue Forde" <sue98382@gmail.com>, <yellowbanks@hotmail.com>, <notac@olypen.com>, "Jo Anne Estes" <estesjoanne@gmail.com>, "harry bell" <harry@greencrow.com>, "Stephanie Noblin" <snoblin@gmail.com>, "Judi Hangartner" <smartawareness@wavecable.com>, "mary pierce pfaff" <mpfaffpf@olypen.com>, "Jay Petersen" <fourse@olypen.com>, <ahlburgk@msn.com>, "Bill Peach" <bpeach@co.clallam.wa.us>, "jim McEntire" <jmcentire@co.clallam.wa.us>, "mike chapman" <mchapman@co.clallam.wa.us>
Subject: SMP Public Comment #161

There is an SMP Planning Commission meeting tonight Wed. Feb 18, 2015
Clallam County Courthouse at 6:30 pm
If any part of the following comment concerns you PLEASE attend.

SMP Public Comment #161
To Clallam County Planning Commission
And, Commissioners' McEntire, Chapman and Peach
Concerning fatal errors in due process, not posting SMP public comments
Omitting SMP public comments and a failure to provide complete and accurate summaries of SMP Public Meetings during the entire SMP process of the Nov. 2014 proposed SMP Update Draft

Failure to notify interested parties (WRIA 20 shoreline property owners and members of the advisory committee on SMP meetings)

Failure of CLALLAM COUNTY government to provide critical early and continuous public participation in to the SMP Update
The purpose and intent of nearly a year of inactivity on SMP public meetings and participation on the SMP Update? A cooling off period, if we ignore them for a year maybe they will just go away?

FAILURE TO POSTED AND RESPOND TO SMP PUBLIC COMMENTS

----- Original Message -----
From: Jo Anne Estes
To: Merrill, Hannah; Gray, Steve
Sent: Friday, August 19, 2011 12:07 PM
Subject: WHAT IS NO NET LOSS WORKGROUP?

SMP PUBLIC COMMENT #440 posted 10/4/13

Failure to provide public outreach and participation to WRIA 20 throughout the process.

This is an SMP Public comment
WA STATE RCW 42.56.030
Pearl Rains Hewett

SMP EXCLUSION AND OMISSION
WRIA 20 private property owners are PART OF CLALLAM COUNTY SMP UPDATE
There were no private property owners representing WRIA 20 seated at the table for the Clallam County SMP Update Committee.

Shall we question why the WRIA 20 private property owners were and are IN MANY CASES, being treated like SECOND CLASS CITIZENS and were not informed, not invited, not selected, not appointed, not allowed to actively participate in SMP Public Meetings?

Failure to make a special effort to reach the under-represented WRIA 20 throughout the process communities/stakeholders.

AND, Failure to ENCOURAGE PARTICIPATION

Sent: Tuesday, May 10, 2011 8:48 AM
THEY want us to be upset and discouraged, Mike Chapmen suggested I should/could QUIT.

Don't let life discourage you; everyone who got where she is had to begin where she was.

Pearl Rains Hewett
Chapter 42.30 RCW
OPEN PUBLIC MEETINGS ACT
This is the Legislative declaration on RCW 42.30.010
The legislature finds and declares that all public commissions, boards, councils, committees, subcommittees, departments, divisions, offices, and all other public agencies of this state and subdivisions thereof exist to aid in the conduct of the people's business. It is the intent of this chapter that their actions be taken openly and that their deliberations be conducted openly.

The people of this state do not yield their sovereignty to the agencies which serve them. The people, in delegating authority, do not give their public servants the right to decide what is good for the people to know and what is not good for them to know. The people insist on remaining informed so that they may retain control over the instruments they have created. [1971 ex.s. c 250 § 1.]

Notes:
Reviser's note: Throughout this chapter, the phrases "this act" and "this 1971 amendatory act" have been changed to "this chapter." "This act" [1971 ex.s. c 250] consists of this chapter, the amendment to RCW 34.04.025, and the repeal of RCW 42.32.010 and 42.32.020.

As related to the Washington State Shoreline Management Act, RCW 90.58

RCW 90.58.130
Involvement of all persons and entities having interest means.

To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments.

[1971 ex.s. c 286 § 13.]

Shoreline Master Program Update
AND THE CLALLAM COUNTY SMP PUBLIC PARTICIPATION STRATEGY
March 2010 Revised March 2011
4.1 Phase I - Public Participation Program
Clallam County will incorporate public participation in all phases of the SMP process, document public participation efforts (e.g., public meetings, community events)
AND KEEP A RECORD OF PUBLIC COMMENTS RECEIVED.

UNPOSTED SMP COMMENTS
Citizens Advisory Committee on the update of the SMP

----- Original Message -----
From: pearl hewett
To: sgray@co.clallam.wa.us
Cc: earnest spees
Sent: Wednesday, March 02, 2011 2:07 PM
Subject: Clallam County Shoreline Management Plan 1976 and Citizens Advisory Committee 2011

Steve

Re: Clallam County Shoreline Management Plan 1976
I read the 1976 SMP
My biggest concern would be Page 8 Section 8.
Lake Sutherland Private property owners have every reason to be fearful.
Is it history repeating itself? Like the National Park take over of all private property on Lake Crescent?

I was just a girl when it happened, but I have living memory of the grief it caused.

Citizens Advisory Committee 2011
While the WA State law about participation does NOT specify private property owners.
Our Family Trusts own 900 acres of land in Clallam County, we have paid tax on our private property for over 60 years.
We have property in water sheds, including the Sol Duc River, Elwha River and Bagley Creek, legal water rights, hundreds of acres of designated Forest land, logging concerns, a gravel pit, property for development and a rock quarry.
With 60 percent of Clallam County under Private ownership;
I ask you?
Has anyone (as private property owner) EVER had a right to, or been entitled to, or had a position on the CCDCD Citizens Advisory Committee on the update of the SMP?

Pearl Rains Hewett PR-Trustee
George C. Rains Sr. Trust

----- Original Message -----
To: SMP@co.clallam.wa.us  
Cc: Gray, Steve  
Sent: Tuesday, March 15, 2011 9:53 AM  
Subject: ESA Adolfson's focus study groups

I read the focus study groups report prepared by ESA Adolfson.

It was not representative of the meeting I attended on Jan. 26, 2011. There was no mention of Lake Sutherland and the outpour of concern by the private property owners. State boats taking pictures of their docks and homes etc. The fear of what the update of the SMP would mean to their private property by making all of them non-conforming.

I feel that the report was biased, it did not address the issues proportionately, that in their reporting they did misrepresent and not report private property owner's spoken grievances.

In ESA Adolfson's compliance attempt, they placed far more emphasis on the state take over of private property beach's and the impute from agencies and business's then the concerns of the 60% of private property owners in Clallam County.

I find it very disappointing that our Clallam County Commissioners have allowed a totally self serving group of conservationists to publish biased findings and facts as the result of these public focus groups.

Pearl Rains Hewett

--- Original Message ---

From: pearl hewett  
To: Gray, Steve  
Sent: Tuesday, April 12, 2011 8:32 AM  
Subject: Fw: STATE DIRECTIVE BY WAC 173-26-191

Steve,

Jim Kramer asked for a copy of this WAC.

I would also like to add this as my comment on the Advisory meeting on 4/11/11. Has a direct link for advisory comments been established?

Pearl Rains Hewett  
Advisory Committee Member

--- Original Message ---

From: pearl hewett
To: Lear, Cathy  
Sent: Saturday, April 16, 2011 12:00 PM  
Subject: RCW’S FOR PROTECTION OF PRIVATE PROPERTY

Cathy and Margaret,

After listening to the questions asked by concerned citizens at both public and the advisory SMP update meetings,

I would like to submit, as my comments, the following RCW’S to educate, inform and clarify private property owners of their rights and protection under WA State law.

Pearl Rains Hewett  
Advisory Committee Member

PROTECTION FOR PRIVATE PROPERTY

Protection of single family residences

RCW 90.58.100

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

PRIVATE PROPERTY PROTECTION

Unintentionally created "Wetlands"

RCW 90.58.030

Definitions and concepts.

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities,
wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

PRIVATE PROPERTY PROTECTION

LAKE SUTHERLAND

RCW 90.24.010

Petition to regulate flow  Order  Exceptions.

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain a certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after notice to the department of fish and wildlife and a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

[1999 c 162 § 1; 1985 c 398 § 28; 1959 c 258 § 1; 1939 c 107 § 2; RRS § 7388-1.]

Notes:

Effective date -- 1985 c 398: "Sections 28 through 30 of this act shall take effect January 1, 1986." [1985 c 398 § 31.]

Lake and beach management districts: Chapter 36.61 RCW.

----- Original Message -----  
From: pearl hewett  
To: earnest spees; Jo Anne Estes  
Sent: Tuesday, April 12, 2011 9:21 AM  
Subject: STATE DIRECTIVE BY WAC 173-26-191

All,  
I find this unacceptable.
Directing and identifying how our Clallam County Officials can **withhold permits** to private property owner's because the State can not legally or constitutionally regulate our private property at a state level. We must question every addition into our revised Clallam County SMP that **goes beyond** State SMP requirement.

FYI
Pearl

**WAC 173-26-191**

*Agency filings affecting this section*

**Master program contents.**

The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline. Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property. The policies may be pursued by other means as provided in RCW 90.58.240. Some development requires a shoreline permit prior to construction. A local government evaluates a permit application with respect to the shoreline master program policies and regulations and approves a permit only after determining that the development conforms to them. Except where specifically provided in statute, the regulations apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required, and are implemented through an administrative process established by local government pursuant to RCW 90.58.050 and 90.58.140 and enforcement pursuant to RCW 90.58.210 through 90.58.230.

**UNPOSTED SMP PUBLIC COMMENTS**

----- Original Message -----  
**From:** earnest spees  
**To:** Sheila Roark Miller - DCD Director 2010; Steve Gray  
**Cc:** Karl Spees; pearl hewett; Kai Ahlburg  
**Sent:** Sunday, April 24, 2011 11:28 AM  
**Subject:** Shoreline Advisory Committee Minutes.

Please forward to: 
Margaret Clancy & Jim Kramer

1. We would like a copy of the minutes of the first Clallam County Shoreline Advisory Committee. We need know if our comments were recorded to our satisfaction or whether we need to resubmit them.

2. We were told that we would be given a website with your slides and material used in your presentation. Also a site to submit additional comments.

It will be good to see the half million +dollars the County has paid ESA Adolfson for the public input and the
representation of the Citizens of Clallam County to be well spent.

Karl Spees - Representative of the CAPR Advisory Committee Member

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UNPOSTED SMP PUBLIC COMMENTS

----- Original Message ----- 
From: pearl hewett  
To: Jo Anne Estes ; earnest spees  
Cc: Gray, Steve  
Sent: Monday, April 25, 2011 7:39 AM  
Subject: Fw: Shoreline Advisory Committee Minutes.

JoAnne,  
See below,  
I agree with Karl  
I have emailed comments to Cathy Lear and Margaret Clancy.  
I have questions. The consultants pie charts indicate 65% of Clallam County shorelines are private property?  
When less than 17.1% (or less) of the **entire County** is private property?  
We have no link to an Advisory Committee comment site.  
We have no link to a public comment site.  
I read the 25 page report of Jefferson County's public comments on their SMP update, after the fact.  
I want to know what comments are being made about Clallam County's SMP update and I want to know before the fact.  
Pearl  
Advisory Committee Member

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As Members of the Clallam County Shoreline Advisory Committee.  
**WE DID NOT RECEIVE ANY RESPONSE** Sheila Roark Miller - DCD Director 2010 ; Steve Gray

----- Original Message ----- 
From: pearl hewett  
To: earnest spees ; pat tenhulzen ; Jo Anne Estes  
Cc: marv chastain  
Sent: Tuesday, April 26, 2011 9:35 AM  
Subject: All SMP public comments PRIVATE?

All  
I am working on comments and recommendation to the SMP update.  
Since, all of the SMP public comments are being held private?  
I guess we will have to find a way to make our privatized, public comments PUBLIC?  
Were all of Jefferson County public comments held private until after the fact?
How can we get a public web site so public comments are made PUBLIC? Perhaps we could use WA State Full Disclosure law?

Pearl
Advisory Committee Member

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I guess we will have to find a way to make our privatized, public comments PUBLIC?

SO I ended up sending this SMP comments to Jim Jones??
I had his email address

UNPOSTED SMP COMMENT

----- Original Message ----- 
From: pearl hewett
To: jim jones
Sent: Tuesday, April 26, 2011 1:23 PM
Subject: TAKING OF PRIVATE PROPERTY FOR PUBLIC SHORELINE ACCESS

1. COMMENTS AND RECOMMENDATIONS FOR CLALLAM COUNTY SMP UPDATE

Jim,
Because you are in a position to influence the outcome of the SMP update and I am both on the Advisory Committee and a private property owner I feel compelled to inform you on issues of concern, not what is spoken at meetings, like last night, but as written comment.
As Commissioner Doherty mentioned last night, times are changing.

I have spent the last three months on line researching, complying and analyzing, statistics, laws, Port Townsend’s SMP update, the 7th revised addition of the WRIA, trespass by WFDW, Pacific Legal foundation, Jefferson County 25 page public comments on their SMP update, noxious weed control and attending public meeting, just to mention a few.
I felt that both Commissioner Doherty and Shelia we unprepared for public comment last night.

The trespass discussed by WDFW was on 4 parcels of Rains Sr. Trust Land.
The fear of the people on Lake Sutherland was my comment at a Commissioners meeting.
I found and have been circulating the Oregon taking of property value.

I will provide only documented information to you.
I am passionate about private property and Constitutional rights.

1. TAKING OF PRIVATE PROPERTY FOR PUBLIC SHORELINE ACCESS
Statistics taken from
Clallam County future land use map
79.2 % of Clallam County is PUBLIC LAND
17.1% of Clallam County is PRIVATE PROPERTY
3.7% other

79.2% (or more) of Clallam County is PUBLIC LAND and it's SHORELINES are available for PUBLIC ACCESS.

My public comment and recommendation for the SMP update is that no additional private property be taken for PUBLIC SHORELINE ACCESS.
Any additional PUBLIC SHORELINE ACCESS on private property shall be strictly on a volunteer basis and not a requirement for permits.
Owning 79.2% of Clallam County, the Olympic National Park, National Forest Lands and the Dept of Natural Resources should be encouraged to provide PUBLIC SHORELINE ACCESS.

Pearl Rains Hewett
As Trustee of the George C. Rains Trust
Private property owner
Advisory Committee Member

AND I ended up sending this SMP comments to Jim Jones??
I had his email address

UNPOSTED SMP COMMENTS

----- Original Message ----- 
From: pearl hewett
To: jim jones
Sent: Tuesday, April 26, 2011 1:36 PM
Subject: WA RCW'S THAT PROTECT PRIVATE PROPERTY RIGHTS

Jim,

DCD Sheila Miller suggested that fear of the government may be dispelled by educating.

Instead of educating fearful Lake Sutherland private property owners, why not help them?

I researched and found three laws that protect private property owner.

3. COMMENTS AND RECOMMENDATIONS FOR CLALLAM COUNTY SMP UPDATE

Any WA State RCW's that are beneficial to the rights and protection of private property owners should be included in the Clallam County SMP update.

PRIVATE PROPERTY PROTECTION

LAKE SUTHERLAND

RCW 90.24.010
Petition to regulate flow  Order  Exceptions.

Ten or more owners of real property abutting on a lake may petition the superior court of the county in which the lake is situated, for an order to provide for the regulation of the outflow of the lake in order to maintain certain water level therein. If there are fewer than ten owners, a majority of the owners abutting on a lake may petition the superior court for such an order. The court, after notice to the department of fish and wildlife and a hearing, is authorized to make an order fixing the water level thereof and directing the department of ecology to regulate the outflow therefrom in accordance with the purposes described in the petition. This section shall not apply to any lake or reservoir used for the storage of water for irrigation or other beneficial purposes, or to lakes navigable from the sea.

[1999 c 162 § 1; 1985 c 398 § 28; 1959 c 258 § 1; 1939 c 107 § 2; RRS § 7388-1.]Notes:

Effective date -- 1985 c 398: "Sections 28 through 30 of this act shall take effect January 1, 1986." [1985 c 398 § 31.]
Lake and beach management districts: Chapter 36.61 RCW.

PROTECTION FOR PRIVATE PROPERTY

Protection of single family residences

RCW 90.58.100

(6) Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

PRIVATE PROPERTY PROTECTION

Unintentionally created "Wetlands"

RCW 90.58.030

Definitions and concepts.

(h) "Wetlands" means areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a
road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

Pearl Rains Hewett
AS Trustee of the George C. Rains Trust
Private property owner
Advisory Committee member

----- Original Message -----
From: Jo Anne Estes
Sent: Sunday, February 27, 2011 10:31 AM
Subject: Public Meeting on SMP tomorrow

Hello, everyone~

As a fellow conservative and defender of property rights, I am calling on you with an urgent request to attend the Clallam County Commissioners meeting tomorrow at 9:00 a.m. when the Shoreline Master Program update will be discussed. Meeting information can be found at

http://www.clallam.net/board/assets/applets/monwork.pdf. This agenda item is planned for 9:45 a.m.

Any public comment you are willing to provide is greatly appreciated. Make your voice heard! Even if you do not wish to comment, plan to attend the meeting to get a first hand view of our county government.

Thanks for your consideration.
Jo Anne Estes
An Advisory Committee member

----- Original Message -----
From: earnest spees
To: Karl Spees
Sent: Sunday, February 27, 2011 9:17 AM
Subject: Public Meeting on SMP tomorrow!!!!!!!

Defenders of Property Rights (Article on A8 in today's PDN)
Tomorrow, Monday 2/28/11, there will be a meeting in the commissioners meeting room, Clallam County Courthouse, on the Shoreline Master Program, SMP, Update.
The meeting is at 0900 (AM) and will allow public input. Unfortunately this is when most people have jobs and will be working.
They may be just probing, checking our body temperature, the strength of their opposition to the draconian new rules restricting and regulating use of our private property. (This may be a classic battle of the citizens, 'we the people' against the big government agenda.)
Please attend and participate.

Karl Spees - Pres CAPR 13
An Advisory Committee member
----- Original Message -----
From: pearl hewett
To: earnest spees
Sent: Sunday, February 27, 2011 11:08 AM
Subject: Re: Public Meeting on SMP tomorrow!!!!!

Yes, I will be there.
How did you find out?
They sure as hell didn’t let me know!
imagine that?
pearl
An Advisory Committee member

----- UNPOSTED SMP PUBLIC COMMENTS -----

----- Original Message -----
From: Jo Anne Estes
To: Merrill, Hannah ; Gray, Steve
Sent: Friday, August 19, 2011 12:07 PM
Subject: What is No Net Loss Workgroup?

Hello Hannah and Steve:

I saw this Notice on the Clallam County Website:

Thursday: August 18, 2011 - No Net Loss Work Group , Clallam County BOCC Room 160, 223 East Fourth Street, Port Angeles, 10a.m.-2:00 p.m.

Is this something either of you are leading? If not, please forward my email to the correct person. I could not make the meeting yesterday.

Could you please forward me all copies of the meeting agendas and minutes to date for this group? I would like to gather this as soon as possible so I can get up to speed.

Do you know if the Shoreline Advisory Committee been tasked with participating with the No Net Loss workgroup? If so, I do not recall getting notice. Please add my email address to the distribution list for all minutes and agendas of the No Net Loss workgroup.

Thanks very much. Have a great weekend!
Jo Anne Estes

I did respond to Jo Anne Estes (a member of the Shoreline Advisory Committee)
From: pearl hewett
To: Jo Anne Estes
Cc: earnest spees
Sent: Friday, August 19, 2011 12:54 PM
Subject: Re: What is No Net Loss Workgroup?

Jo Anne,

When people asked about the NO NET LOSS at the public SMP meeting after our Aug.committee meeting (only 16 people showed up) I asked about the no net loss committee? Who are they? They have had only 1 meeting? Steve Grey admitted, they had only had one meeting. I fear they are from the appointed 9 in the Planning Dept.? Steve did not identify them.

Your letter to the PDN was good. Unfortunately too many people have taken the "Wait and see what they do attitude"
Then, they will start screaming and yelling, after the fact!
You are correct when you say we, as private property owners, are not represented proportionally on the SMP update committee. In fact we are not represented PERIOD. Remember the meeting we attended at the Audubon.

I have emailed, questioned, complained, bitched, requested info, made comments, spoken out at public meetings, been ignored when I raised my hand at the John Wayne Marina Public Forum, sent many DOE, Clallam County maps with their statistics documenting their errors and omissions

(August 19, 2011) AND have yet to received a single response from the Planning Dept, Sheila, Hannah and Steve Grey do not respond.

The committee members comments are not put on line as we were told they would be?

Are we just, the required by LAW invited?

Does anything we do have any effect on the outcome?

Are our comments even given to the Appointed 9?

FYI
ESA Adolfson completed a report on Puget Sound for the National Fish and Wildlife Federation in WA DC prior to our Jan 26, 2011 SMP meeting.

Keep up the good work,

Pearl Rains Hewett
Disappointed member of the Clallam County Invited SMP Update Citizens Advisory Committee.
Pearl,

You might contact the owner of the Lake Pleasant Grocery 327-3211.

Bill Peach

Sent from my iPad

On Feb 19, 2015, at 9:22 AM, pearl hewett <phew@wavecable.com> wrote:

Hi Bill,

Public comments DO MAKE A DIFFERENCE on the SMP UPDATE.

The following is in regard to the restrictive SMP setbacks on Lake Pleasant.

Do you know someone that is being affected on Lake Pleasant that could do the research on the Lake Pleasant's Inventory and Characteristic report, the impaired and or contaminated report done by the DOE?

IF?

ECOLOGY'S SCIENTIFIC REPORT PROVES THAT Lake Pleasant water is Sparkling clean, 100 percent as pure as the day it was created. YOU HAVE A LAKE WITH "NO NET LOSS" OF ECOLOGICAL FUNCTION.

I accomplished it.

The 35 foot setback on Lake Sutherland remains in place, in spite of the SMP Update.

IT WAS EASY.

Lake Sutherland's Inventory and Characteristic report, the impaired and or contaminated report done by the DOE.

ECOLOGY'S SCIENTIFIC REPORT PROVED THAT Lake Sutherland's water is Sparkling clean, 100 percent as pure as the day it was created. SO WE HAVE A LAKE WITH "NO NET LOSS" OF ECOLOGICAL FUNCTION.
IT WAS EASY BUT? it took an Indian war to get it changed from 50 feet back to 35 feet.

NO ESA SMP CONSULTANTS, IF AND OR BUTS ABOUT IT! The 35 foot setback on Lake Sutherland remains in place.

Pearl
FYI

Bill Peach

Sent from my iPad

Begin forwarded message:

From: "Scott Lange" <sklange@comcast.net>
Date: February 13, 2015 at 3:17:11 PM PST
To: <mwinborn@co.clallam.wa.us>, <bpeach@co.clallam.wa.us>, <SMP@co.clallamwa.us>
Cc: <bpeach@co.clallam.wa.us>, <SMP@co.clallamwa.us>
Subject: Suggestíons for Code and Permit Enforcement Within the SMA Jurisdiction

Dear Ms. Winborn,

I am directing this message to you because under the Clallam County Charter you are the official charged with enforcing land use statutes. I am copying Commissioner Peach because of our dialogue yesterday following the SMP hearing in Sekiu. I am also copying the Shoreline Commission because my comments are a follow up to the public comments I made during the hearing. The intent of this message is to make constructive suggestions regarding the critical need to address code enforcement issues associated with the pending SMP revision.

Let me first clarify my intentions. While I value the largely undeveloped state of Clallam County (marine) shorelines, I do favor and support the necessity of both commercial and residential development. In the Sekiu area I believe true commercial development in the urban center areas, and perhaps even beyond, are critical to the public’s access to the shoreline resource and to the economic viability of the community. I am not a tree hugger or whale saver – I understand the practical realities of expanding populations and the public’s increasing desire to access Clallam County shorelines. I am also an advocate of individual property rights.

I am also well aware of the profile of your various constituencies. Most, I suspect, would prefer to do what they please with their shoreline properties without governmental interference and restrictive codes. The reality, however, is that unfunded State mandates impose a duty on Clallam County to regulate despite the preferences of its residents. Public officials obviously must continually balance the equities here and at times it can be enormously difficult to impose the duties of law on citizens who just want their small place in paradise.

My interest in shoreline codes started with the ongoing and egregious infractions across from my Clallam Bay residence. Those infractions became much more personal when they caused substantial damage to my natural adjacent shoreline property in late 2006. This damage set in motion a quest for
justice and compliance that has consumed years of my life and hundreds of thousands of dollars in legal fees. Along the way I’ve learned the law and also learned that Clallam County would rather fight in court than make a simple acknowledgement that violations have occurred. More recently, as I’ve participated in the Hamilton matter along with fellow local citizens, I’ve realized that not only does the County not enforce the law, it rolls out the red carpet for those clever individuals who think they can lie and circumvent it.

As I stated yesterday, the Shoreline Management Act requires local governments to “ensure that no uses are made of shorelines that are inconsistent with the SMA and/or the local SMPs”. This is not a discretionary standard. By failing to prevent such uses, local government itself violates the Act and becomes subject to fines and penalties as well as potential damages. Unlike criminal statutes which are constructed and construed differently, the SMA requires compliance and response by local government when violations are confirmed. Prosecutorial discretion is not available, in part because prosecutorial discretion by case law first requires investigation of the alleged violation. Under Washington’s Constitution, Clallam County is obliged to follow the “general law”. From what I have directly observed it has not done so.

“Lack of resources” has often been cited as the basis for the County’s inaction in response to violations. The Act does not make compliance contingent on availability of resources. Each time the County asserts enforcement impotence due to lack of funds it risks payment of damages and civil penalties for allowing violations to persist or by aiding and abetting those who would violate the law. Statutes of limitations do not extinguish SMA violations. The Act states that each day a violation persists is a new violation. They continue until abated. And, through the terms of CCC Title 20, any code or permit violation is a public nuisance, therefore subject to public nuisance law and RCW 7.48.190, which precludes any such nuisance from becoming legal regardless of the passage of time. Clallam County passed Ordinance 812 (Title 20) for the primary purpose of circumventing the restrictions on enforcement that RCW 36.70C would otherwise impose. In doing so, it enabled enforcement of even long standing violations, but also condemned itself to unending liability for its own SMA violations.

For my own situation; in the interest of the citizens of Clallam County and the State in general; and in the interest of compliance with the Washington and US Constitutions, Clallam County must address the enforcement issue. It’s time to think outside the traditional box. Without credible enforcement, the County is the target of litigation that could snowball badly, and there is no deterrent to the continued abuse of applicable public standards that has reached acute proportions.

If in fact the County does not have the resolve or the resources to enforce State laws and its own codes, it should revise its code to empower citizens to pursue the injunctive relief for such violations that currently vests solely with the County. In my review of County codes throughout the state I found two approaches that would be preferable to reliance on an underfunded and/or apathetic enforcement standard. In Island County residents may file a complaint that alleges a code or permit violation with the County building official. Notice is provided to the alleged violator and a hearing before the hearing examiner is scheduled within 30 days to resolve the matter. (See ICC 17.03.250). In Kitsap County, adjacent property owners are granted the direct right to seek injunction to address alleged violations. (See KCC 17.530.030). Both of these approaches provides aggrieved parties the ability to directly initiate action that will address the alleged violation. The Island County approach obviously involves the hearing examiner which may increase that individual’s case load and associated County expense, but the Kitsap County approach grants access to injunctive relief at the aggrieved party’s expense.

While the SMA provides explicit authority for private citizens to pursue damages arising out of SMA violations, injunctive relief under the Act is restricted to local jurisdictions, the State AG, and in some
cases the Department of Ecology. A citizen can pursue injunctive relief via public nuisance law, but only if that individual can establish they have been “specially” affected by the public nuisance. Citizens in Clallam County can file a code complaint under Title 20 but then must rely on the County to take action. The County has incorrectly asserted that its duty to enforce the SMA is discretionary, notwithstanding the explicit requirements of CCC 20.28, and Title 20 has been effectively useless as a means of addressing shoreline violations. In my own case, the County has actually exacerbated my ability to address the violations by asserting RCW 36.70C (Land Use Petition Act or LUPA) as the basis for inaction, providing cover and special privilege to the violators. This is why my legal action has gone on for over six years now at an expense of over $150,000. It is unconscionable that an individual citizen should have to fight local government to enforce the public interest.

Because the SMA imposes a duty upon Clallam County to enforce its provisions, the County’s current failure to enforce violations is a liability time bomb waiting to go off. Something needs to be done. The County’s duties under the SMA are distinguishable from its duties in connection with non-shoreline jurisdictions, where the County’s enforcement authority and duty IS discretionary. It makes sense then in order to address the current lack of land use enforcement the County start with an enforcement process that is limited to the shoreline (and perhaps critical areas) jurisdictions. Constituents opposed to infringment of property rights can understand the necessity of State law compliance but for the approximately 90-95% of County lands not in the shoreline jurisdiction they will appreciate the County’s discretionary standard. There seems to be little political risk in this approach.

By limiting the enforcement emphasis to State mandated compliance, the County can manage its limited enforcement resources. At the same time, it can elect to broaden citizen rights to pursue direct injunctive relief to further enhance compliance and deterrence against cheaters. As the SMA provides “zone of interest” rights to landowners within a specified distance of proposed land use developments and activities, it would be logical to afford those same individuals access to direct injunction rights to pursue violations. If shoreline residents are truly to be considered “shoreline stewards” the right to contribute to enforcement seems quite logical.

Reliance on a system of allowing direct injunctive relief to citizens within the SMA “zone of interest” would also facilitate better community policing of shoreline jurisdictions. In general, if adjacent landowners do not have a problem with a shoreline use, no action will be taken, even when those uses or activities actually conflict with the applicable standards. Only when adjacent landowners or the County have objections to shoreline uses or developments will the enforcement authority be invoked and exercised. This provides for an elegant “balancing of the equities” and while not a situation of total “laissez faire” as to land use compliance it does provide a common sense acknowledgement of private property rights that may conflict with the written standards.

If the system of citizen driven compliance is initiated the County’s right and duty to initiate enforcement is not compromised or diminished. With the adoption of Title 20 the County retains indefinite ability to address violations and can initiate abatement when it so pleases. While this may conflict with LUPA’s public policy objective of “finality”, the hard reality is that “finality” went out the window when the County, like almost all other Washington counties, implemented the public nuisance standard for enforcing code and permit violations.

There are multiple pieces to this puzzle and an adequate resolution of the lack of enforcement problem requires some understanding of each element. What I have suggested here does not address all aspects of the current problem. After observing DCD staff in the Hamilton hearings it is clear that enforcement won’t occur if the County continues handing out shoreline permits like candy canes at Christmas. County permitting officials should not grovel and waive code requirements to satisfy incomplete and highly questionable permit requests when they clearly don’t conform to code and SMP requirements. If an applicant wants the privilege of use of shoreline property they should not expect
that privilege to come with the added special privilege of exemption from public standards. And when an applicant misrepresents or omits important information to obtain approvals they should not expect the County to defend their permit rights just because they hold a signed piece of paper. Honest efforts will only come when applicants are held to the public standard and further realize enforcement continues beyond the approval process.

To conclude I note that it is the codes and regulations we promulgate that establish fair and equal standing in society. As Americans we derive predictability and order based on knowledge of public standards as written in the ordinances we pass. The values of properties we own are established by the rules that attach to those properties. An honest person should not have to bear witness to another unscrupulous person buying the same property and tripling its value by deception and dishonesty. When different rules apply to different individuals the entire order of society is thrown into disarray. Life reverts to a feudal state where entitlement is granted arbitrarily and capriciously the privileged few rather than equally to all. There is no point in making new regulations if the will to enforce them is absent. Fairness dictates we live equally by the rules we enact.

Thank you for listening.

Sincerely,
Scott Lange
P.O. Box 189
Sultan, WA 98294
425-210-8531

This email has been checked for viruses by Avast antivirus software.
www.avast.com
Ed,

Thank you for your note and for your thoughtful comments. I apologize for the length of the public hearing and we will be certain your comments are added to the record for that meeting.

I appreciate your raising the issue of public engagement and will work with the Director of Community Development to learn more about what is planned in this arena.

Sincerely,

Mark O

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From: Ed Bowen [mailto:rockytot@olypen.com]  
Sent: Tuesday, January 10, 2017 6:18 PM  
To: Jones, Jim; Peach, Bill; Ozias, Mark; rjohnson@clallam.wa.us  
Subject: Additional public comment to the BOCC 10JAN2017 second public comment period

Dear commissioners,

In my rushed effort to express my public comment this afternoon regarding the SMP sole source approval, I have now reviewed the 9JAN2017 BOCC worksession video and have these additional comments to submit for your consideration:

As presented to the county on many many occasions, the SMP update process has failed its public involvement policy to host forums on key components of the update. For WRIA 20 this specifically involves the Cumulative Impact and No Net Loss components; to date no public forum has been held in WRIA 20 on such components, and not known to occur anywhere in Clallam County for WRIA 20 for that matter. With the lack of confidence in the ICR for WRIA 20 and the resulting significant impact of CMZ issues presented to landowners in WRIA 20 in the NOV 2014 draft, this is another key component that should have/should host a forum with the affected public.

But yet the county (and I believe it is the elected director DCD and key under-staff) spend more tax dollars for a consultant responsible for a scope of work to move forward with finalizing the updated plan; that should/could at least do something in line with the intent of such a forum, at least in responding with clarity what these key components of the update mean to the people of WRIA 20 by at least responding to comments/testimony received, but won't:
The work will include a cumulative impacts GIS analysis for the shoreline "analysis areas" identified in WRIA 20.

The GIS analysis does not include collecting any new data that is not otherwise readily available. ESA will brief the County on the methodology in advance of the analysis but will not prepare multiple iterations of the analysis.

this task does not include responding to individual comments.

(Cut and pasted from the scope of work the BOCC approved sole source at today's meeting.)

This is wrong and I make the accusation the county is in violation of its published policy to public engagement on the Clallam County SMP Update.

Regards,

Ed Bowen
P.O. Box 111
Clallam Bay, WA 98326
MEMORANDUM

December 28, 2017

RE: SMP Comment Attachments

Please note the following two letters both have attachments which are too large in size to upload to the internet. These attachments are available for review in the Clallam County Board of Commissioners Office. If anyone would like a copy of these attachments please submit a Public Records Request to the County.
December 6, 2017

Clallam County Board of Commissioners
223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015

RE: Shoreline Master Program Update

Dear Commissioners:

The Quileute Tribe appreciates the opportunity to comment on the Clallam County Planning Commission’s September 2017 draft Shoreline Master Program update recommendation (hereinafter “draft SMP”). The Tribe commends the Planning Commission and the Clallam County Department of Community Development staff for the time, thought and effort devoted to producing the draft SMP. The draft SMP represents a significant improvement over the County’s current Shoreline Master Program. However, our review indicates that the draft SMP fails to meet the County’s stated goal, and the state’s legal requirement, to achieve no net loss of ecological functions within shoreline jurisdiction.¹ As such, the draft SMP would allow negative impacts to shoreline habitat and ecological processes, threatening to further diminish fish and wildlife populations in the Quileute Tribe’s Usual and Accustomed fishing areas (U&A) and undermine salmon and steelhead restoration efforts to which the Tribe, the County, citizens of the county, and many partners and stakeholders have devoted vast time and resources over the years. To promote our mutual goals of protecting shoreline ecological functions and restoring fish and wildlife resources within Clallam County, the Quileute Tribe offers these comments for improving the draft SMP before adoption by the Board of Commissioners.

¹ “Local master programs shall include policies and regulations designed to achieve no net loss of [ ] ecological functions.” WAC 173.26.186(8)(b). “Master programs shall contain policies and regulations that assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.” WAC 173.26.201(2)(c). “To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities.” WAC 173.26.186(8)(d).
**Interests of the Quileute Tribe**

The Quileute Tribe is a signatory of the Treaty of Olympia (January, 1856) with the Hoh Tribe and the Quinault Indian Nation. Under the Treaty of Olympia, the tribes reserved the right of taking fish both on and off the reservation at all usual and accustomed grounds and stations ("U&A") and to hunt or gather on "open and unclaimed lands" within the treaty area, which extends hundreds of square miles beyond the tribes' current day reservations. The Quileute Tribe’s U&A includes over 800 square miles of fishing watershed on the Olympic Peninsula and a marine area extending out along eighty miles of coastline, from Cape Alava in the north to the Queets River mouth in the south, and westward at least 40 nautical miles. The Quileute Tribe’s ceded territory and its reserved rights of hunting and gathering extend from Mount Olympus to the Pacific Ocean, and include the Lake Ozette, Cedar Creek, Quillayute River, and Goodman Creek watersheds.² The Quileute Tribe’s treaty rights and territorial claims have been affirmed in various federal court decisions within the *United States v. Washington* proceedings. See, e.g., 384 F. Supp. 312 (W.D. Wash. 1974) (the “Boldt decision”); 129 F.Supp.3d 1069 (2015) (affirming Quileute’s ocean fishing boundaries).

Given our treaty rights to fish, hunt, and gather throughout vast areas of Clallam County, as well as marine areas affected by land use practices regulated by Clallam County, the Quileute Tribe has a keen interest in the draft SMP under consideration by the Clallam County Board of Commissioners.

The 2016 State of Our Watersheds Report prepared by the Quileute Tribe in collaboration with the Northwest Indian Fisheries Commission (NWIFC) and the other 19 NWIFC member Tribes, which we are submitting in support of this comment letter, is filled with examples of a single, repeating trend, and documentation that that trend has continued despite marginal improvements in land use regulation since the publication of the prior State of the Watersheds Report in 2012:

key habitat features, such as streamside vegetation, habitat connectivity and streamflows, are imperiled by human activities. This extensive loss and degradation of habitat threatens salmon, tribal cultures and tribal treaty-reserved rights.

State of the Watersheds, 2016, p. 9. Within the Quillayute River system, water quantity peak flows, water quantity low flows, road densities, and forest cover are key indicators of ecological health that have been identified as declining from 2012 to 2016. *Id.*, pp. 178-189. These and other key ecological functions, and the capacity of species and shoreline habitat to respond to new development and increasing shoreline uses, as well as climate change, will be strongly affected by the County’s Shoreline Master Program. A climate change vulnerability assessment

² Within Clallam County, the Quileute Tribe’s U&A and ceded areas include virtually all of WRIA 20, and given that the Cumulative Impacts Analysis and No Net Loss Report prepared for the County’s draft SMP addresses WRIA 20 separately from other areas of the County, much of our analysis and comments here focus specifically on WRIA 20.
prepared for the Treaty of Olympia Tribes by the Climate Change Research Institute at Oregon State University, which we are also submitting as support for this letter, states that

It is imperative to develop local management strategies to minimize the effects of climate change, and to recover and maintain the productivity of Pacific salmon and other native fish and aquatic organisms.

Climate Change Vulnerability Assessment for the Treaty of Olympia Tribes, A Report to the Quinault Indian Nation, Hoh Tribe, and Quileute Tribe, prepared by the Oregon Climate Change Research Institute, February 2016, p. 8.

The Tribe believes that the final two paragraphs of page 1-6 of the draft SMP paint too rosy a picture of the habitat conditions in the western part of Clallam County. While it is true that, with the exception of Lake Ozette Sockeye, we have no salmonids listed under the Endangered Species Act, we have avoided the urban development impacts to our shorelines, and it is still a very attractive area for fishermen, the reality is that there have been significant impacts in recent decades to salmonid populations and ecological functions from changes in streamflow regimes and temperatures, channel modification, loss of side-channel habitat and floodplain refugia, large woody material recruitment, and other shoreline ecological functions subject to County jurisdiction. Given the significant and continuing degradation of shoreline ecological functions within Clallam County, the resources at stake, and the confounding impacts of climate change, it is not sufficient to simply slow down or “minimize” the loss of shoreline ecological functions through incremental improvements to existing regulations and programs. The County’s Shoreline Master Program must meet the legal requirement to achieve no net loss of ecological resources within its shoreline. It is with this sense of perspective and gravity, and in a spirit of collaboration, that the Quileute Tribe offers these comments for achieving no net loss and improving various other aspects of the draft SMP.

The draft SMP Appears to Allow Continuing Net Loss of Ecological Functions

The Quileute Tribe’s concerns that the draft SMP will allow a continued net loss of shoreline ecological functions is based on several deficiencies within the draft SMP and supporting documents.

Inadequate riparian buffers:

While the draft SMP appropriately conforms with Department of Ecology guidance regarding vegetative buffers for wetlands, the draft SMP does not require adequate buffers for riparian and marine areas as set forth in Table 6-1 or for Aquatic Habitat Conservation areas as set forth in Table 7-6. The state Shoreline Management Act guidelines require local jurisdictions to identify, assemble, and use “the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern” WAC 173.26.201(2)(a). The Washington Department of Wildlife’s “Management Recommendations for Washington’s Priority Habitats, Riparian” as published in 1997 and periodically updated, gathers and
synthesizes the best available science concerning riparian buffers. The riparian buffers recommended in WDFW’s Priority Habitats document are significantly larger than the buffers the draft SMP proposes in tables 6-1 and 7-6, and according to WDFW, buffers must extend from the edge of the channel migration zone (CMZ) to protect riparian functions. The buffers proposed in the draft SMP are not only smaller than those recommended by WDFW, the buffers proposed in the draft SMP extend only from the ordinary high water mark (OHWM). Moreover, draft SMP regulation 6.3.2.4 would allow 20% of these already inadequate buffers to be eliminated, apparently up to and including the waters’ edge. These inadequate buffer requirements will result in continuing loss of shoreline ecological functions.

The draft SMP recognizes the scientific significance of the WDFW Priority Habitat and Species Management Recommendations by citing it as “guidance” for the preparation of mitigation plans by qualified professionals. Regulation 8.3.8.b. However, the draft SMP inexplicably does not require compliance with the recommendations therein. To achieve no net loss of shoreline ecological functions, the Quileute Tribe believes the final SMP must require compliance with WDFW’s “Management Recommendations for Washington’s Priority Habitats, Riparian”, including applying the buffers from the edge of the CMZ rather than the OHWM, and that the County not allow 20% of the riparian and aquatic habitat buffers to be eliminated for any reason.

Unclear drafting:

Regulation 8.3.1 of the draft SMP requires that “Proponents of new shoreline use and development shall employ measures to mitigate unavoidable adverse impacts to ensure no net loss of shoreline ecological functions and to sustain shoreline ecosystem processes.” Regulation 8.3.1 is unequivocal, makes no exceptions for specific types of use or development. The Quileute Tribe strongly supports the inclusion of regulation 8.3.1 in the final SMP. The No Net Loss Report is similarly unequivocal that “To achieve no net loss, the SMP requires each project to mitigate impacts by first avoiding, then minimizing adverse effects, then replacing damaged resources through compensatory mitigation efforts (this mitigation sequence is required in Section 8.3 of the SMP).” No Net Loss Report, p. 4 (emphasis added). Thus, according to the County’s own analysis, the no net loss standard must be achieved by each and every development project and use through mitigation sequencing and permit conditions.

The drafting problem the Tribe has identified is that the various sections of Chapters 3, 4 and 5 make inconsistent cross-references to the requirements of Section 8.3. Many sections expressly adopt chapter 8 by cross-reference. (E.g., Regulation 3.8.2.4.c “residential use and development shall comply with . . . the mitigation and no let loss requirements of Chapter 8”; Regulation 3.11.2.2 “transportation facilities, including trails, shall comply with the applicable provisions of Chapters 6 . . . , 7 . . . 8 . . . ”; Regulation 3.12.2.5 “The proponent [of utilities developments] shall provide compensatory mitigation for any unavoidable impacts to the shoreline environment in accordance with Section 8.3 of this Program.”). However, sections of the draft SMP addressing some of the most harmful activities do no cross-reference Chapter 8 or do so in a way that could cause confusion as to whether the no net loss standard applies. For example, the regulations on mining in Section 3.5 require generally that mining comply with the
no net loss provisions of the SMP, but do not expressly adopt the requirements of Section 8.3. The regulations for shoreline stabilization projects in Section 4.6.2.17 require that such projects shall be “designed to avoid and reduce adverse impacts to ecological functions as demonstrated by a mitigation plan pursuant to Chapter 8 of this Program.” “Designed to avoid and reduce adverse impacts” suggests a weaker standard than “employ measures ... to ensure no net loss,” which is the actual standard enunciated in Chapter 8. The Cumulative Impacts and No Net Loss Report, at page 151, states that “the potential for new armoring could result in a substantial impact” in four of the nine freshwater WRIA 20 areas analyzed in the report. It is therefore extremely important that the final SMP not suggest to the proponents of shoreline armoring, or any other use or development, that the standards of Chapter 8 do not apply, or that there is any room for interpreting Chapter 8 to require something less than no net loss of ecological functions.

As the County’s own No Net Loss Report firmly establishes, the no net loss standard will only be met if the County requires that each and every development project and use achieve no net loss through the mitigation sequence, including the provision of compensatory mitigation. The Quileute Tribe believes that the language of regulation 3.12.2.5 regarding utilities presents the clearest, simplest, and most accurate statement in the draft SMP concerning this no net loss requirement. We therefore recommend that Chapter 3, 4 and 5 each begin with a statement that establishes that this standard applies to each use or development addressed in that chapter. Thus, we recommend chapters 3, 4 and 5 should each begin with the statement that:

Notwithstanding any other statement or omission in this chapter, each use and development described in this chapter, and the construction, operation and maintenance of any facilities associated therewith, shall not cause a net loss of shoreline ecological functions or processes or adversely impact other shoreline resources and values. The proponent shall provide compensatory mitigation for any unavoidable impacts to the shoreline environment in accordance with Section 8.3 of this Program.

Absent the addition of this language at the beginning of each of these chapters, language of this nature should at the very least be added to Sections 3.5 and 4.6.

No Net Loss Report reliance on slow economic growth

The determination that the draft SMP will achieve no net loss of ecological functions, at least within WRIA 20, appears to be entirely predicated on a presumption that the economy of the west side of the Olympic Peninsula will be depressed throughout the planning horizon and that the SMP can be strengthened in some future amendment cycle if/when economic activity increases. The Cumulative Impacts Analysis and No Net Loss Report prepared for the draft SMP (hereinafter “No Net Loss Report”) includes numerous statements to the effect that loss of ecological functions in WRIA 20 will not occur because “recent development trends and anticipated growth within western Clallam County suggest that low levels of new lot development on undeveloped lots will occur” and the “actual pressure to create new shoreline lots is relatively low given current population projections and trends for this remote part of the

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The Tribe does not believe that the County should be relying on a weak economy to achieve the no net loss requirement. Neither does the Tribe think the County should rely on the ability to quickly adopt strengthening amendments to the SMP should economic growth improve. The No Net Loss Report seems to assume that stronger economic growth occur resulting to losses of ecological functions, the County can remedy this through the 8-year periodic review required by WAC 173.26.090. However, WAC 173.26.090 is clear that the periodic review is “distinct from the comprehensive updates required by RCW 90.58.080(2)” WAC 173.26.090(2)(d)(ii). The legal requirements are that the Master Program “update”-the action currently before the Board of Commissioners – must satisfy the no net loss requirement, and the periodic review must “assure that the master program complies with applicable law and guidelines in effect at the time of the review.” WAC 173.26.090(2)(d)(1)(A). The periodic review is not an excuse or a mechanism for adopting or correcting a Master Program that was incapable of achieving no net loss because of an incorrect economic forecast. The County should be planning for economic growth in WRIA 20 and the SMP should be sufficient to achieve no net loss of ecological functions under any economic growth scenario.

Even with its apparent reliance on a low level of economic activity in WRIA 20 and the inadequate riparian buffers discussed above, the No Net Loss Report still anticipates that in various of the analysis areas, shorelines within WRIA 20 will potentially experience new shoreline armoring, riparian forest loss and impacts from view/corridor access allowances, floodplain/CMZ development and forest loss within the flood plain, and overwater coverage and associated modification to shoreline habitat and water quality. No Net Loss Report, pp. 113 – 129. These are exactly the type of cumulative impacts that cause a net loss in ecological functions. Given the very site-specific nature of key salmonid habitat requirements such as spawning grounds and cold-water pools, impacts that might not appear significant when considered as a percentage of the overall land base or stream mileage can have a severe ecological impact if concentrated in a particular spot (such as Coho spawning and rearing habitat in Lake Creek). Thus, it will be absolutely imperative that the Administrator scrupulously and uniformly apply and enforce the protective provisions of the SMP to each and every project, development and use as set forth in Chapter 7 of the No Net Loss Report for the SMP to actually achieve the no net loss standard.

No binding commitments to restoration activities:

The state Shoreline Management Act guidelines have numerous provisions requiring master programs to “include goals, policies and actions for restoration of impaired shoreline ecological functions.” WAC 173.26.201(2)(f). This includes identifying existing and ongoing projects that are currently being implemented or are “reasonably assured of being implemented,” “identifying prospective funding for those projects and programs,” and providing mechanisms or strategies to “ensure” that restoration projects and programs will be implemented according to plans. The rationale for requiring these binding commitments to restoration activities is that the no net loss standard is unlikely to be met even when compensatory mitigation is required for every project because mitigation occasionally fails, regulations (such as riparian buffers) often prove to be inadequate, variances get granted, the compensatory mitigation required in a permit

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condition may not always actually fully compensate for the impact, various uses are not regulated by the SMP or are grandfathered, mitigation monitoring and maintenance requirements may be ignored or abandoned, and individuals sometimes do not comply with the regulations and enforcement is imperfect.

The Countywide Shoreline Restoration Plan prepared in support of the draft SMP does a good job of identifying the restoration goals and activities throughout the County and the many entities working to restore habitat and shoreline ecological functions. However, virtually all of the restoration activities identified in the Restoration Plan are voluntary, and except for stating an intent, “depending on interdepartmental coordination, partnerships, and the availability of staff and grant funding,” to implement at least one restoration project within the first five years of the plan, the draft SMP falls far short of the SMA guidelines requirements to identify restoration projects “reasonably assured of being implemented,” identifying prospective funding for those projects, and “ensuring” that the identified projects and programs will be implemented.

There can be no doubt that even with the more protective measures set forth in the draft SMP, as may be improved upon by the Board of Commissioners, incremental and cumulative losses of shoreline ecological functions will continue to accrue. In order to achieve the legally mandated no net loss standard and set a trajectory for restoring the County’s invaluable salmon and steelhead populations, the Quileute Tribe strongly encourages the County to make binding commitments of staff and resources, including dedicated funding, to implement projects and programs identified in the Countywide Shoreline Restoration Plan prepared in support of the SMP update.

Do Not Deter or Unnecessarily Complicate or Increase the Cost of Invasive Plant Control

The No Net Loss Report, at page 52, correctly notes that “One of the greatest habitat concerns in WRIA 20 relates to the spread of invasive weeds along the shorelines of the major rivers” and goes on to describe the serious negative impacts of various species of invasive weeds. As described in detail in the accompanying State of Our Watersheds Report, the Quileute Tribe has invested and intends to continue to invest significant resources in invasive weed removal. The state Shoreline Management Act guidelines indicate that SMPs should encourage rather than deter the removal and control of invasive weeds. (“Vegetation conservation provisions include . . . the control of invasive weeds and nonnative species.” WAC 173.26.221(5)(a); “Master programs should include provisions fostering habitat and natural system enhancement projects. Such projects may include . . . removal of nonnative or invasive plants . . . .” WAC 173.26.231(3)(g).)

The Quileute Tribe finds that Section 6.5.4 would significantly undermine essential beneficial invasive weed removal and control activities. The SMP should include policies, and regulations only to the extent they are necessary, that encourage and facilitate invasive weed removal and control, rather than unnecessarily increasing the cost or otherwise creating disincentives to it. The Quileute Tribe therefore request that Section 6.5.4 be deleted or substantially revised to address the following concerns:

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• As currently drafted, Section 6.5.4 states "Removing invasive, non-native shoreline vegetation listed on the Clallam County Noxious Weed List may be allowed in the buffer when otherwise consistent with this Program." It is the Tribe’s understanding that landowners have a legal responsibility to control noxious weed on their property. The SMP should not create a legal conflict for landowners seeking to comply with noxious weed removal requirements or unnecessarily burden or interfere with a landowner’s ability to do so.

• As currently drafted, Section 6.5.4 states "The disturbed areas must be promptly revegetated using species native to western Washington." “Promptly” is vague and some sites cannot be revegetated promptly after treatment of invasive species is conducted.

• As currently drafted, Section 6.5.4 states "If the area of invasive removal exceeds 0.25 acre, the administrator shall require a vegetation management plan prepared by a qualified ecologist, forester, arborist, or landscape architect." This provision can add substantial costs and otherwise create a strong deterrent for landowners to take a beneficial, habitat-enhancing action, which in the case of noxious weeds, they may be legally required to control regardless of the SMP.

• As currently drafted, Section 6.5.4 states "Use of herbicides within buffer areas, shall be limited to ‘fish and wildlife friendly’ herbicides approved by the Washington State Department of Fish and Wildlife”. What defines “fish and wildlife friendly”? A more appropriate term would be “aquatically labeled”; and to the best of our knowledge, the Washington State Department of Fish and Wildlife is not responsible for approving such chemicals – the Department of Ecology is responsible for regulating these herbicides.

WAC 173.26.221(2)(c)(iv)(C)(III) states that in regard to critical freshwater habitats, the SMP shall implement standards that “include provisions that facilitate authorization of appropriate restoration projects.” (Emphasis added.) The Tribe considers invasive plant control and removal to be a restoration activity, and per this WAC, the SMP should include policies and regulations that facilitate rather than impede invasive weed removal.

Section 5.2.2.3 of the regulations for “clearing, grading, and filling” provide that “Fill materials placed within shoreline jurisdiction shall be from an approved source and shall consist of clean sand, gravel, soil, rock or similar material. The use of contaminated material or construction debris shall be prohibited.” The Quileute Tribe supports these requirements, and believes they should be expanded to address invasive weed sources that can and often do contaminate fill materials. Because fill materials have become a major vector for the transmission of invasive weeds, it is our understanding that the U.S. Forest Service is implementing a weed-free certification program for gravel quarries on the Peninsula. The Quileute Tribe therefore finds that it would be reasonable and a significant benefit to ensuring no net loss of ecological functions to modify Section 5.2.2.3 as follows:

Fill materials placed within shoreline jurisdiction shall be from an approved source and shall consist of clean sand, gravel, soil, rock or similar material that is certified to be free of invasive weeds. The use of contaminated material or construction debris, including material or debris that is contaminated with invasive weed seeds or parts, shall be prohibited.
Resolve All Conflicts with Restoration Projects

As discussed above, the state Shoreline Management Act guidelines include numerous provisions encouraging and requiring restoration provisions in SMPs, and the Quileute Tribe plays a major role in entities planning, promoting and funding restoration activities in WRIA 20, as well as implementing its own extensive restoration activities. The draft SMP specifies in at least nine places that the County should review proposals for a use or development “to determine if any such development would thwart or substantially compromise planned restoration actions in the vicinity of the project,” and that the County “should work with the proponents of each project to resolve likely conflicts between the proposed facility and planned restoration.” The Tribe strongly supports this concept, but we believe that the term “in the vicinity of the project” is vague and unnecessarily limiting, and therefore should be deleted. Through the preparation of the Countywide Shoreline Restoration Plan for the draft SMP, as well as its participation in many of the entities engaged in restoration activities in the County, County staff are or will be aware of potential conflicts between new development/uses and restoration activities. If a new development or use has the potential to thwart or substantially compromise planned restoration activities, the County should work to resolve any such conflicts regardless of the proximity or distance between the development and the restoration activity. Suggesting that such conflicts need to be resolved, even if known to all involved, only if the restoration activities are “in the vicinity of the project” does a great disservice to the Tribe, the County, and the many citizens, partners, stakeholders and funders working so hard to restore habitat in the County. The “in the vicinity” clause appears on pages 3-2, 3-5, 3-13, 3-21, 3-26, 3-34, 3-38, 4-3, 4-12, and possibly elsewhere. The Tribe recommends doing a “search and delete” on this term.

The minimum permitting requirements of Section 10.3.0 should also be amended to add a requirement that a permit applicant identify any restoration projects known to the applicant that might be impacted by the proposed development or use.

Water Quality – “Pollutants” Should Be Broadly Defined

Section 5.4.1.1.a sets forth a policy that prevents the direct discharge of pollutants to surface and ground waters, but the draft SMP does not define “pollutant.” In addition to chemicals and toxic substances people typically think of as “pollutants,” suspended sediments that cause turbidity and foul spawning gravels, dissolved gases, and other substances constitute “pollutants” that impact fish and wildlife and can cause a loss of ecological functions. The Quileute Tribe recommends adding a definition of pollutant to Chapter 11. The definition, when read in conjunction with Section 5.4.1.1.a, should clearly establish that the discharge of any chemical, biological or physical substance that causes or contributes to a water body failing to meet state water quality standards is prohibited.
Prohibit Hydroelectric Development in Anadromous Fish Waters by Regulation

The policies for utilities state that “In determining the appropriateness of a stream or river for hydroelectric development, the recommendations and conclusions of the Northwest Power and Conservation Council or equivalent state-adopted site ranking study should be considered.” Draft SMP Section 3.12.1.14. The Northwest Power and Conservation Council’s hydropower recommendations resulted from a rigorous, multiyear study and public process that included extensive input from Washington State agencies, tribes throughout the Pacific Northwest, hydropower developers, electric utilities, the Bonneville Power Administration, and the public. The Power and Conservation Council maintains a process whereby its program and recommendations can be updated and amended as new information is developed. The key recommendation resulting from the Council’s process is that there should be no new hydroelectric development in stream reaches utilized by anadromous fish. Given the importance of salmon and steelhead to the ecology and economy of Clallam County, and the huge amounts of resources the Quileute Tribe, citizens of the County, and many others have invested in restoring salmon and steelhead, there should be an absolute prohibition by regulation against developing new hydroelectric facilities in stream reaches utilized by anadromous fish, as well as other important and sensitive species of fish and wildlife. Because the Northwest Power and Conservation Council’s plan includes all of the data needed for these determinations, and to at least some degree already represents a regulatory bar against developing new hydroelectric projects in anadromous zones and other sensitive fish and wildlife areas, the Quileute Tribe strongly recommends that the County include an additional regulation in Section 3.12.3 requiring compliance with the Northwest Power and Conservation Council’s hydropower “Protected Areas” program. This can be achieved by amending Regulation 3.12.3.4 as follows so that it gives regulatory force to the “policy” enunciated in Section 3.12.1.14:

4. Dams and associated power generating facilities shall not be permitted except in the rare instance where there is clear evidence that the benefits to County residents outweigh any potential adverse ecological impacts. The criteria for approving such facilities will depend on the specific location including its particular physical, cultural, and ecological conditions. Dams and associated power generating facilities shall not be permitted in areas designated as “Protected Areas” by the Northwest Power and Conservation Council or an equivalent state-adopted site ranking program.

Additional Provisions Regarding Hazard Trees

Standing snags provide extremely important habitat functions, as do trees, especially large trees, whose fall is imminent. Building near such trees should be prohibited. In Section 6.5.3 and any other section addressing potential hazard trees, the Quileute Tribe recommends that potential hazard trees on a site should be taken into consideration prior to permitting and construction. Removal of a known hazard tree within a buffer should not be allowed if a structure is built within or too close to the tree, unless there was no other suitable building site.
At the minimum, mitigation should be required if hazard trees are removed from the buffer due to construction being done to close to the buffer.

**Non-native Finfish Net Pen Aquaculture Should Be Prohibited**

Draft SMP Policy 3.2.1.10 states “Commercial net pen aquaculture operations that propagate non-native finfish species should be monitored and have contingency plans to address escapement, disease transmission, or significant waste-related environmental impacts.” The Quileute Tribe believes that non-native finfish aquaculture poses a significant threat to native finfish, and therefore a threat to the shoreline ecological functions supported by healthy runs of native fish. The Tribe therefore strongly opposes non-native net pen aquaculture.

The Quileute Tribe recommends that Policy 3.2.1.10 be revised to state:

*Commercial net pen aquaculture operations that propagate non-native finfish species shall be prohibited.* Commercial net pen aquaculture operations that propagate non-native finfish species should be monitored and have contingency plans to address escapement, disease transmission, or significant waste-related environmental impacts.

**Monitoring and Enforcement**

The County’s No Net Loss Report acknowledges and emphasizes that the SMP will be effective in preventing impacts “provided that it is effectively implemented.” No Net Loss Report, p.178 (emphasis in original). The No Net Loss Report also emphasizes that “[m]itigation sites must be monitored and maintained until they achieve the desired functions and fully compensate for the impacts.” Id., p. 156.

Improving the effectiveness of enforcement has been one of the key strategies identified for improving regulatory effectiveness to achieve salmon sustainability in the Washington Coast Sustainable Salmon Plan.

... the effectiveness of any law or regulation is entirely dependent on the ability of government agencies to encourage or enforce compliance. Enforcement has proven to be a weak link in the regulatory toolbox for protecting salmon habitat. This is largely due to lack of funding for staff in the field to observe and cite violations.

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In addition, when citations are issued, penalties are often not imposed, or, if levied, fail to provide sufficient incentive to obey the law. Without enough teeth in a Critical Area Ordinance, for example, it can be more profitable to harvest a
shoreline tree, pay the penalty, and then keep the harvested tree. When such a violation occurs, the damage to the environment can take years to correct. Fines should be large enough to deter violations; otherwise, violators can justify and absorb the fines as a cost of doing business. Enforcement tools should also include the potential seizure and forfeiture of equipment.

Washington Coast Sustainable Salmon Plan, p. 115. WAC 173.26.191(2)(a)(iii)(C) states that Administration” “permit review”, and “enforcement” are each separate and distinct functions, and that while administration and enforcement can be addressed within the SMP or in a separate ordinance, each local government must establish a program for enforcement, as provided in RCW 90.58.140(3).

The Quileute Tribe shares the concern expressed in the Sustainable Salmon Plan quoted above about a lack of funding for staff in the field to observe and cite violations. The remedies and enforcement section of the draft SMP appears to provide County staff with the appropriate authorities and legal tools to enforce compliance with the SMP. However, without adequate staff to inspect permit compliance and investigate potential violations, the mere existence of these authorities and tools will not achieve compliance with the Program and will result in a net loss of ecological functions over time.

Lack of enforcement in the field is a major concern for the Quileute Tribe regarding a wide array of local, state and federal laws intended to protect fish and wildlife and their habitat. The Tribe confronts inadequate local, state and federal enforcement issues on a regular basis in many areas of natural resources management. The Quileute Tribe believes that potential lack of enforcement in the field is one of the most significant problems with the SMP. The Tribe therefore strongly encourages the Board of Commissioners to identify and commit to, whether in the SMP itself or a separate ordinance, a level of enforcement staffing adequate to ensure compliance with the SMP. The Tribe recommends that the County dedicate the penalties and proceeds of enforcement actions to the enforcement program, and provide such other funding as is needed to fully staff, train, equip, and deploy officers and inspectors to ensure full implementation and compliance with the SMP regulations and monitoring requirements.

The Tribe also has specific concerns regarding the details of mitigation monitoring under the draft SMP. The draft SMP appropriately requires mitigation activity to be “monitored and maintained to ensure that it achieves its intended functions and values,” and requires a bond or other financial surety to “ensure the mitigation is carried out successfully. Regulations 8.3.5.e and g. However, whereas mitigation “sites” are, appropriately, required to be protected in perpetuity (Regulation 8.3.5.f), compensatory mitigation “projects” need only be monitored in most cases for a period of three years (Regulation 8.4.1.f), and portions of mitigation performance bonds may be released at “specific performance milestones” without any express requirement that such milestones be measured after the minimum three year monitoring milestone (Regulation 8.4.1.h). The Tribe believes that meeting the no net loss standard and the other policy and legal requirements of the SMA and the SMP requires a more rigorous minimum monitoring regime and schedule to be established in Regulation 8.4.1.f, and that the bonding requirements in Regulation 8.4.1.h be directly tied to that schedule, with clarification that no
portion of a bond may be released until after the minimum monitoring period has been complied with, at the least.

Climate Change

"Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information." WAC 173.26.201(2)(b). Climate change is a changing condition which should be addressed throughout the SMP. The impacts of climate change in the Pacific Northwest and Clallam County are likely to include changes in annual and seasonal precipitation, declining snowpack, higher storm frequency, alterations to streamflows and flood risk (including extreme low summer flows that limit upstream salmon migration and extreme fall, winter and spring flows that disrupt spawning activity, scour spawning beds, and alter stream morphology, side channel habitat, and other refugia), increasing freshwater and marine water temperatures, sea level rise, and ocean acidification. SMP policies and regulations, and individual permit decisions, need to anticipate and address these changes in order to achieve the goals of the SMP.

Various passages of the draft SMP acknowledge climate change and sea level rise. For example, Section 1.4, the “SMP Update Vision”, acknowledges that the effects of climate change and sea level rise are likely to intensify the threats of erosion and landslides. However, except for policies that the implications of climate change be accounted for in restoration efforts (Section 3.9.1.6) and the location and design of new transportation uses and developments (Section 3.11.1.8), the draft SMP does not appear to include any meaningful response to climate change. The Tribe notes that it is somewhat ironic that the draft SMP recommends that restoration efforts should take account of climate change, but only establishes a parallel policy for one of the many other uses and development activities addressed.

The Tribe has two recommendations as to how to address the implications of climate change in the SMP. First, Chapters 3, 4, and 5 should each include a generally applicable policy statement that parallels the language in Sections 3.9.1.6 and 3.11.1.8 (e.g., “Each use and development addressed in this chapter should take into account the implications of climate change to ensure the resiliency and sustainable of the use or development and its ability to achieve no net loss of ecological functions and other aspects of this Program.”) Second, each regulation that requires a geotechnical report to be prepared, or allows a technical report or professional judgment to be used, to establish or contest a geological hazard, channel migration zone or flood way determination, bluff or streambank erosion and armorng, and other such issues should require that the report/professional address the potential impacts of climate change. So, by way of just one example, Regulation 7.13.4 should be amended so that the geotechnical report required be to establish a “stable life” of at least seventy-five years for a new development in a geologically hazardous area to address potential impacts of climate change and sea level rise, not merely existing conditions.
Conclusion

As noted at the beginning of these comments, the Quileute Tribe finds that the draft SMP is a significant improvement over the current SMP, but that it needs to be strengthened further to achieve the goal and legal mandate of achieving no net loss of shoreline ecological functions. The protection and restoration of these ecological functions is vital to the exercise of the Tribe’s treaty rights and the preservation of our culture. The improvements we have recommended in these comments will ultimately benefit the County and its citizens as well as the Tribe. We look forward to the Board of Commissioners’ adoption of an improved SMP and to working in partnership with the County to continue to protect and restore the natural resources that we all cherish and depend upon.

Sincerely,

[Signature]

Tony Foster, Chairman
Quileute Tribal Council

Enclosures (on electronic storage media):

State of Our Watersheds, Quileute Tribe and Northwest Indian Fisheries Commission, 2016
Management Recommendations for Washington’s Priority Habitats, Riparian, Knutson and Naef, WDFW, December 1997
Washington Coast Sustainable Salmon Plan, Washington Coast Sustainable Salmon Partnership, May 7, 2013
Climate Change Vulnerability Assessment for the Treaty of Olympia Tribes, A Report to the Quinault Indian Nation, Hoh Tribe, and Quileute Tribe, prepared by the Oregon Climate Change Research Institute, February 2016

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December 12, 2017

Via Email (SMP@co.clallam.wa.us)
without reference materials

Via Hand delivery
with reference materials

Clallam County Board of Commissioners
223 East 4th Street, Suite 4
Port Angeles, WA 98362-3015

Re: Shoreline Master Program Update

Dear Board of Commissioners:

Thank you for the opportunity to comment on Clallam County’s Shoreline Master Program Update. Our firm represents Cooke Aquaculture Pacific ("Cooke Aquaculture"), a salmon farming company that operates eight salmon farms in Washington State, including operations in Clallam County.

I. Cooke Aquaculture’s Interest in the Clallam County Shoreline Master Program Update

Cooke Aquaculture is the current operator of salmon farms in Puget Sound that have operated for over thirty years, producing 15,000,000 pounds of salmon annually and creating 80 full-time living wage jobs in many rural and coastal communities in Washington. Included in these operations are salmon farms (the Port Angeles farms) operated by Cooke Aquaculture in Clallam County. Cooke Aquaculture is part of the global company Cooke Aquaculture Inc., which has salmon farming operations on the east coast of Canada, in Scotland, and in Chile, and is the only salmon farming company in the State of Maine. As a vertically integrated company, Cooke has management over the entire value chain, from egg to plate. This includes in-house feed, farming, processing, sales and marketing, equipment manufacturing and service, transportation and logistics, and research and fish health divisions. With more than thirty years of farming experience, a solid track record of compliance in multiple jurisdictions, and third-party certification as well as a successful brand in the marketplace, Cooke is well situated to continue to support its Washington operations at every level.
Cooke Aquaculture's production of sustainably raised salmon is an important component of the stated national goal of encouraging the development of aquaculture in the United States. For over three decades, as set forth in the National Aquaculture Act of 1980, it has been "in the national interest," and has been a "national policy" of federal agencies to encourage and develop sustainable aquaculture in the United States. 16 U.S.C. § 2801. Domestic production of seafood like that produced by Cooke Aquaculture contributes to reducing our dependence on imported fish and shellfish, which reduces trade imbalances, creates jobs and economic opportunity, particularly in rural communities, and strengthens domestic food supplies. The United States has declared that the responsibility of increasing aquaculture production in the United States is one that should rest with the private sector. 16 U.S.C. § 2801(a)(6).

Washington's state policies mirror this national goal of encouraging aquaculture in the United States. The state Shoreline Management Act establishes as preferred uses those that are "dependent upon use of the state's shoreline." RCW 90.58.020. Aquaculture is a confirmed water dependent use under the Washington Department of Ecology's Shoreline Master Program guidelines and longstanding decisions by the Shorelines Hearings Board. *Holland v. Kitsap County*, SHB No. 86-22 (February 29, 1994). Further, water dependent uses such as aquaculture are a recognized high priority under the Shoreline Management Act, which requires local jurisdictions to structure their Shoreline Master Programs in a manner that allows for such water dependent uses. WAC 173-26-201(2)(d).

It is within that general context that Cooke Aquaculture operates its net pen aquaculture facilities in Washington, including those in Clallam County and which give it special interest in the portions of the draft Shoreline Master Program updates that relate aquaculture.

II. Salmon Farming is Compatible with Resources Protected by the Shoreline Management Act

The Shoreline Management Act and Shoreline Master Program that updates to Shoreline Master Programs utilize on scientifically- and technically-based information. See RCW 90.58.100(1) WAC 173-26-201. Cooke Aquaculture is providing with this letter multiple peer-reviewed scientific papers, which are also listed in the bibliography attached to this letter as Exhibit A and submitted electronically. As described in this scientific literature, aquaculture facilities that are sited properly and managed consistent with the extensive applicable permit requirements have little to no impact on the surrounding environment.

The conclusions of the Shorelines Hearings Board and the Pollution Control Hearings Board are consistent with aquaculture science, and the compatibility of net pen aquaculture with the resources protected by the Shoreline Management Act is well established. Indeed, over the past three decades, the Shorelines Management Hearings Board and the Pollution Control Hearings Board have repeatedly examined various permits for net pen aquaculture and, in all instances, they concluded that the facilities were consistent with the goals of the Shoreline Management
Act. The Shorelines Management Hearings Board and the Pollution Control Hearings Board have also concluded that, as governed by the extensive regulatory framework applicable to net pen aquaculture, net pen facilities have no significant adverse impact to the environment or the resources protected by the Shoreline Management Act.¹

III. Salmon Farming is Extensively Regulated by Expert Agencies

Net pen aquaculture practices are subject to an existing comprehensive regulatory framework, including NPDES permits issued by Washington Department of Ecology and the application of Washington Department of Fish and Wildlife requirements regarding the transport of eggs and smolt, and the monitoring and reporting of diseases. This regulatory framework is informed by decades of research into the potential impacts of net pen aquaculture that has been incorporated into Washington’s established net pen sediment standards and NPDES permit monitoring requirements.

The draft Shoreline Master Program update correctly references this comprehensive regulatory framework. The draft update also proposes to give the County discretion on when to defer to this comprehensive regulatory framework. Cooke Aquaculture agrees that deference should be given to other permitting agencies, which have significant experience with net pen aquaculture facilities. Cooke Aquaculture asks that the County clarify that the County will defer completely to those agencies that have established regulations, defined standards, and issued permits for net pen aquaculture facilities. The County should not create the potential for inconsistent regulatory standards that apply to aquaculture by retaining the right to define additional standards, regulations or permit conditions different than or inconsistent with the existing comprehensive regulatory framework. Not only does this create an uncertain regulatory regime for businesses like Cooke Aquaculture, it is not clear that the County has the authority to introduce different or additional standards for net pen aquaculture, which are the exclusive purview of other agencies.

¹ See Jamestown Klallam Tribe and Sea Farm of WA v. Clallam County, Shorelines Hearings Board No. 88-4 and 88-5 (May 5, 1989) (overturning the denial of a Shoreline Development Permit by Clallam County for a salmon farm in Discovery Bay); Skagit System Cooperative v. Skagit County, State Department of Ecology, Shorelines Hearings Board No. 88-14 (Oct. 41, 1989) (overturning denial of an SDP by Skagit County on the basis that the facility met the criteria in Skagit County's SMP for a conditional use permit); Clean Up South Sound v. Swecker Sea Farms, Shoreline Hearings Board. No. 88-38 (July 13, 1989) (affirming issuance of permits for salmon farm in Mason County); Marine Environmental Consortium v. Global Aqua-USA LLC, Pollution Control Hearings Board No. 96-257 (Nov. 30, 1998) (dismissing an appeal of NPDES permits for twelve net pen facilities and concluding that the permits did not violate the requirements of the Clean Water Act or Ecology's NPDES regulations); Echo Bay Community Association v. Pierce County, Shorelines Hearings Board No. 05-027 (April 14, 2006) (affirming the issuance of an SDP, a CUP and the related SEPA analysis for those permits for a herring net pen operation in Pierce County).
IV. Specific Comments on the Draft Shoreline Master Program Update

Cooke Aquaculture offers the following additional comments on specific portions of the draft update:

- Draft Section 3.2.4, item 12, should read “required for changes in the benthos” not “required for changes in the bathos.”
- Draft Section 3.2.4, item 12, includes a vague reference for monitoring and reporting “changes.” The NPDES permit requirements include baseline sampling prior to the first stocking of fish at the facility and require monitoring against existing state sediment management standards and criteria for the net pen facility and reporting of benthic impacts. Cooke Aquaculture asks that the County defer to regulatory framework that already exists under the NPDES permitting regime.
- Draft Section 3.2.4, item 12, allows the County to regulate for the “appearance of scavengers in the water column.” Cooke Aquaculture is unsure what is intended by this provision; “scavengers” occur naturally throughout the water column in the marine environment and are part of the ecosystem.
- Draft Section 3.2.4, item 16, allows the County to determine the “magnitude of any adverse impacts.” As written, this provision presupposes “adverse” or negative impacts. More importantly, there has been significant research into the potential impacts of net pen aquaculture from which the existing regulatory system draws. This research demonstrates that sediment or water quality impacts can be remediated quickly through mitigation measures. Cooke Aquaculture asks that the County defer to Ecology’s experience with and responsibility for NPDES permits for net pen aquaculture, rather than attempt to impose an unclear standard of impact.

Each of these examples provides further elaboration on the need for and the reasonableness of deferring to the existing comprehensive regulatory regime.

In addition, Cooke Aquaculture refers to and incorporates by reference its prior responses to public comments submitted on permit applications submitted under the Shoreline Master Program, which extensively describe the scientific literature and the impacts of net pen aquaculture facilities.

V. Conclusion

Cooke Aquaculture appreciates the opportunity to provide these comments and the County’s work preparing the draft Shoreline Master Program Update. Cooke Aquaculture is committed to responsibly operating net pen aquaculture facilities in Washington and Clallam County, and looks forward to continuing to work with the County and the Washington Department of Ecology as the County finishes this update to its SMP.
Very truly yours.

Diane M. Meyers

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