

Formal Jefferson County Response to Ecology on Changes to the Locally Approved Shoreline Master Program

On January 26, 2011 the Washington Department of Ecology (Ecology) issued its conditional approval of the Jefferson County Locally Approved Shoreline Master Program (LA-SMP) pending some required and recommended changes. The County has considered 63 possible changes to the LA-SMP and provides this response to Ecology to indicate what changes are accepted and where alternative and additional changes are proposed. The County’s rationale for each change is included at the end of this document. Proposed changes are shown below in line-in/line-out bill format with added text shown as underlined, and deleted text shown in ~~strikethrough~~:

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology’s Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
Ecology’s Attachment B. Required Changes						
1	Article 1.7.E	1-6	Applicability - Ocean Resource Management Act	<u>The planning and project review criteria in RCW 43.143 (Ocean Resources Management Act) and WAC 173-26-360 (Ocean Management) shall apply to all ocean uses and activities conducted within Jefferson County’s and the State of Washington’s jurisdiction, including those areas extending to the westernmost boundary of the State of Washington.</u>	Alternative Proposal	Add new item ‘E’ to read: <u>E. Ocean uses and activities conducted within Jefferson County’s and the State of Washington’s jurisdiction shall comply with RCW 43.143 (Ocean Resources Management Act) and WAC 173-26-360 (Ocean Management). Nothing in this paragraph is intended to expand or modify the applicability of RCW 43.143, WAC 173-26-360, or any subsections thereof, to ocean uses and activities not otherwise governed by those laws, administrative rules, or their subsections.</u>
2	Article 1.6.A.2	1-5	Critical Areas - REUV	2. Uses and developments within shoreline jurisdiction that meet the Reasonable Economic Use Variance provisions of JCC Chapter 18.22.090 shall require a shoreline variance in accordance with this Program.	Agree	Delete text as follows: 2. Uses and developments within shoreline jurisdiction that meet the Reasonable Economic Use Variance provisions of JCC Chapter 18.22.090 shall require a shoreline variance in accordance with this Program.

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3	Article 4.1.D Appendix. A -Map 18	4-1 Map #18	SEDs	Add text to page A-1: <u>The shoreline environment designation in ocean coastal areas waterward of the OHWM extending to the westernmost boundary of the State of Washington shall be aquatic.</u>	Alternative Proposal	Add text to Article 4.1.D and to Map #18 to read: <u>The shoreline environment designation in ocean coastal areas waterward of the OHWM extending to the westernmost boundary of the State of Washington shall be Priority Aquatic.</u>
4	Article 2.A.27	2-3	Definitions – Appurtenance, normal	Appurtenance, normal means a structure or use that is necessarily connected to a <u>primary use</u> and is located landward of the ordinary high water mark. <u>Normal appurtenances for residential development are garages(up to 3 cars), utilities, septic tanks, drainfields, as well as driveways, walkways, and fences plus initial clearing and grading for a new residence which does not exceed 250 square feet and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.</u>	Alternative Proposal	Appurtenance, normal means a structure or use that is necessarily connected to a <u>primary use</u> and is located landward of the ordinary high water mark. <u>Normal appurtenances for residential development are garages (up to 3 cars), utilities, septic tanks and drainfields, as well as driveways, walkways, and fences, plus initial clearing and grading for a new residence which does not exceed 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.</u>
5	Article 2.S.22	2-39	Definitions – Shorelines of Statewide Significance	Revise “ Shorelines of statewide significance ” definition to include (add) “ <u>...the area between the ordinary high water mark and the western boundary of the state, within Jefferson County and State of Washington jurisdiction, including harbors, bays, estuaries, and inlets</u> ”.	Agree	Add new item ‘a’ and reformat list to read as follows: <u>a. The area between the ordinary high water mark and the western boundary of the state, within Jefferson County and State of Washington jurisdiction, including harbors, bays, estuaries, and inlets.</u>

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6	Article 4.1.D	4-1	SEDs – Quinault Reservation	D. All areas within shoreline jurisdiction that are not mapped and/or not designated shall be designated Conservancy until the area is redesignated through a Master Program amendment, <u>except within the Quinault Indian Nation reservation where the upland designation shall be Natural and the waterward designation shall be Priority Aquatic.</u>	Agree	Add text to read: D. All areas within shoreline jurisdiction that are not mapped and/or not designated shall be designated Conservancy until the area is redesignated through a Master Program amendment, <u>except within the Quinault Indian Nation reservation where the upland designation shall be Natural and the waterward designation shall be Priority Aquatic.</u>
7	Article 6.1.D.1	6-4	Critical Areas - REUV	1. Subject to the exceptions listed below, the Critical Areas provisions of JCC Chapter 18.22, dated March 17, 2008, Ordinance #03-0317-08, and further amended on May 11, 2009 as Ordinance # 06-0511-09, are incorporated by reference, except that permit, nonconforming use, appeal, <u>Reasonable Economic Use Variance</u> , and enforcement decisions within shoreline jurisdiction shall be governed by this Program and not JCC Chapter 18.22.	Alternative Proposal	Revise text to read as follows: <u>1. The Critical Areas provisions of JCC Chapter 18.22, dated March 17, 2008 [Ordinance #03-0317-08], and further amended on May 11, 2009 [Ordinance #06-0511-09], are incorporated by reference, however, the following exceptions shall prevail for actions occurring within shoreline jurisdiction:</u> <u>i. All provisions listed in Sections D.2 - 13 and E.1 - 4 below (e.g. building setback, buffers, CASPs, reasonable use, non-conforming lots, water-oriented use/development) and provisions found in Article 10.6 of this Program (i.e. non-conforming development), shall be governed by this Program and not JCC Chapter 18.22; and</u> <u>ii. Sections of JCC Chapter 18.22 Article II and other sections of JCC Chapter 18 regarding permit process, administrative, nonconforming use, appeal, and enforcement provisions within shoreline jurisdiction shall be governed by this Program and not JCC Chapter 18.22.</u>

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8	Article 6.1.D.3	6-5	Critical Areas - REUV	3. Development applications that are processed according to the Reasonable Required deletion to avoid confusion Economic Use Variance provisions of JCC Chapter 18.22.090 shall be processed as a shoreline variance according to the provisions of this Program and WAC 173-27.	Agree	Delete text as follow: 3. Development applications that are processed according to the Reasonable Economic Use Variance provisions of JCC Chapter 18.22.090 shall be processed as a shoreline variance according to the provisions of this Program and WAC 173-27.
9	Article 6.D.3	6-5		DUPLICATE OF #8 ABOVE		
10	Article 7.C.3	7-18?	Dredging	Add: <u>Maintenance dredging may not be approved under exemption except within the existing footprint in accordance with previous approved plans.</u>	Agree	Add new item '7' to read: <u>Maintenance dredging may not be approved under exemption except within the existing footprint in accordance with previous approved plans.</u>
11	Article 7.2.F.5	7-10	Boating Facilities – Regulations - Residential Docks	5. The length of docks and piers accessory to residential use/development shall be no greater than that required <u>the minimum demonstrated necessary</u> for safety and practicality for the residential use. The maximum length for residential docks or piers shall be limited to sixty (60) <u>100 feet</u> as measured horizontally from the ordinary high water mark. The Administrator may approve a different dock or pier length when needed to: i. Avoid known eelgrass beds, forage fish habitats, or other sensitive nearshore resources; or ii. Reach adequate depths to accommodate watercraft; or iii. Accommodate shared use.	Agree	Revise to read as follows: 5. The length of docks and piers accessory to residential use/development shall be no greater than that required <u>the minimum demonstrated necessary</u> for safety and practicality for the residential use. The maximum length for residential docks or piers shall be limited to sixty (60) <u>one hundred (100) feet</u> as measured horizontally from the ordinary high water mark. The Administrator may approve a different dock or pier length when needed to: i. Avoid known eelgrass beds, forage fish habitats, or other sensitive nearshore resources; or ii. Reach adequate depths to accommodate watercraft; or iii. ii. Accommodate shared use.

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12	Article 8.2.A.10	8-4	Aquaculture Policies	1. Commercial and recreational shellfish areas including Shellfish Habitat Conservation Areas are critical habitats. Shellfish aquaculture activities within all public and private tidelands and bedlands are allowed uses. Such activities include but are not limited to bed marking, preparation, planting, cultivation, and harvest. Nothing in this program should be construed as to preclude their use.	Agree	Delete text to read as follows: 10. Commercial and recreational shellfish areas including Shellfish Habitat Conservation Areas are critical habitats. Shellfish aquaculture activities within all public and private tidelands and bedlands are allowed uses. Such activities include but are not limited to bed marking, preparation, planting, cultivation, and harvest. Nothing in this program should be construed as to preclude their use. Note: Also see combined response to #13 - 15 below.
13	Article 4.3 – Use Table	4-6	Use Table – Net Pens/Finfish	Net Pens/Finfish X* X* X* X* X* X*	Alternative Proposal	Add and delete text to read as indicated in combined response for #13, 14 and 15 below:
14	Article 8.2.B.1 and 2 Article 8.2.C.1 through 6 Article 8.2.D.8 and 9	8-4 to 8-8	Aquaculture – Prohibitions Aquaculture – Shoreline Environment Regulations Aquaculture – Regulations - General	B. Uses and Activities Prohibited Outright 1. Net pens, as defined in Article 2, are prohibited. 2. Finfish aquaculture <u>requires conditional use approval.</u> 3. Applicants for aquaculture activities that use or release herbicides, pesticides, antibiotics, fertilizers, non-indigenous species, parasites, pharmaceuticals, genetically modified organisms, feed or other materials known to be harmful into surrounding waters is prohibited. <u>must demonstrate all significant impacts have been mitigated.</u>	Alternative Proposal	Add and delete text to read as indicated in combined response for #13, 14 and 15 below:

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
15	Article 8.2.A.12 and 13	8-4	Aquaculture - Policies	12. Net pens, as defined in Article 2, should not be allowed. 13. Finfish aquaculture that uses or releases herbicides, pesticides, antibiotics, fertilizers, pharmaceuticals, non-indigenous species, parasites, genetically modified organisms, or feed into surrounding waters <u>must demonstrate all significant impacts have been mitigated.</u> should not be allowed.	Alternative Proposal	Add and delete text to read as indicated in combined response for #13, 14 and 15 below:

Combined Response for Required Changes #13, 14 and 15:

Add and delete text to read as follows:

Article 2 Definitions

E.15. Experimental aquaculture means aquaculture that ~~uses~~ cultivates new species, or uses growing methods or harvesting techniques that have not previously been ~~cultivated~~ used in the state of Washington and that differ significantly from common practice.

I.17. In-water finfish aquaculture means the farming or culture of vertebrate or cartilaginous food fish for market sale when raised in facilities located waterward of the ordinary high water mark in freshwater or saltwater water bodies, in either open-flow or contained systems. This includes net pens, sea cages, bag cages and similar floating/hanging containment structures and is intended to reflect the definition of ‘marine finfish rearing facilities’ (RCW 90.48.220), but does not include restoration/enhancement facilities used expressly to improve populations of native stocks.

Article 4. 3 Allowed Use Table

Table 1 - Permitted, Conditional and Prohibited Uses by Shoreline Environment Designation						
<p>P = Use may be permitted subject to policies and regulations of Program. May require Shoreline substantial development permit or Statement of exemption approval. See Articles 6, 7, 8, 9 and/or 10 for details.</p> <p>C(a) = Conditional use administrative. See Articles 2, 9 and 10 for definition, criteria and process details.</p> <p>C(d) = Conditional use discretionary. See Articles 2, 9 and 10 for definition, criteria and process details.</p> <p>X = Prohibited use.</p> <p>* = Exceptions and limitations may apply as noted in the Program. See specific section for details.</p>						
	Environment Designations					
	Waterward of OHWM		Landward of OHWM			
	Priority Aquatic	Aquatic	Natural	Conservancy	Shoreline Residential	High Intensity
Aquaculture:						
Net Pens/Finfish	X*	X*	X*	X*	X*	X*
<u>In-water Finfish (including Net Pens)</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>	<u>X</u>

<u>Upland Finfish</u>	<u>X</u>	<u>P*</u>	<u>X</u>	<u>C(d)</u>	<u>X</u>	<u>C(d)</u>
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Article 8.1 Agriculture

A. Policies – Add new policy:

8. The County recognizes the importance of local food production, both on land and in water areas, when properly managed to control pollution and prevent environmental damage. As consistent with the Jefferson County Comprehensive Plan, RCW 36.70A.030, and RCW 90.58.065, the commercial growth of food fish/finfish, shellfish and other aquatic plants and animals is considered agricultural production, however, for purposes of this Program, such food production that is water-dependent or located in water areas (“in-water”) should be managed as aquaculture and aquaculture activities, as defined in Article 2.

B. Shoreline Environment Regulations – Add and delete text to read:

1. Priority Aquatic: New agricultural activities, except aquaculture, are prohibited. ~~Farming and management of shellfish and other aquatic products are subject to the Aquaculture policies and regulations (Article 8 section 2) of this Program.~~
2. Aquatic: New agricultural activities, except aquaculture, are prohibited.
3. Natural: New agricultural activities, except aquaculture, are prohibited, except that low intensity...

C. Regulations – Add new regulation:

3. Farming and management of food fish/finfish, shellfish or other aquatic plant or animal products shall be subject to the Aquaculture policies and regulations (Article 8 section 2) of this Program.

Article 8.2 Aquaculture

A. Policies

1. Aquaculture is a preferred, water-dependent use of regional and statewide interest that is important to the long-term economic viability, cultural heritage and environmental health of Jefferson County.
2. The County should support aquaculture uses and developments that:
 - i. Protect and improve water quality; and
 - ii. Minimize damage to important nearshore habitats; and

- iii. Minimize interference with navigation and normal public use of surface waters; and
 - iv. Minimize the potential for cumulative adverse impacts, such as those resulting from in-water structures/apparatus/equipment, land-based facilities, and substrate disturbance/modification (including rate, frequency, and spatial extent).
3. When properly managed, aquaculture can result in long-term ecological and economic benefits. The County should engage in coordinated planning to identify potential aquaculture areas and assess long-term needs for aquaculture. This includes working with the Department of Fish and Wildlife (DFW), the Department of Natural Resources (DNR), area tribes and shellfish interests to identify areas that are suitable for aquaculture and protect them from uses that would threaten aquaculture's long-term sustainability.
 4. Aquaculture use and development should locate in areas where biophysical conditions, such as tidal currents, water temperature and depth, will minimize adverse environmental impacts. Individual aquaculture uses and developments should be separated by a sufficient distance to ensure that significant adverse cumulative effects do not occur.
 5. The County should support tideland aquaculture use and development when consistent with this Program and protect tidelands and bedlands that were acquired and retained under the Bush and Callow Acts by not permitting non-aquaculture use and development on these tidelands.
 6. Intensive residential uses, other industrial and commercial uses, and uses that are unrelated to aquaculture should be located so as not to create conflicts with aquaculture operations.
 7. The County should promote cooperative arrangements between aquaculture growers and public recreation agencies so that public use of public shorelines does not conflict with aquaculture operations.
 8. Experimental forms of aquaculture involving the use of new species, new growing methods or new harvesting techniques should be allowed when they are consistent with applicable state and federal regulations and this Program.
 9. The County should support community restoration projects associated with aquaculture when they are consistent with this Program.
 10. Commercial and recreational shellfish areas including Shellfish Habitat Conservation Areas are critical habitats. Shellfish aquaculture activities within all public and private tidelands and bedlands are allowed uses. Such activities include but are not limited to bed marking, preparation, planting, cultivation, and harvest. ~~Nothing in this program should be construed as to preclude their use.~~ [Note: See Required Change #12]
 11. Chemicals and fertilizers used in aquaculture operations should be used in accordance with state and federal laws, and this Program.
 12. ~~In-water finfish aquaculture use/development, including net pens as defined in Article 2, should not be allowed.~~
 13. Finfish aquaculture that uses or releases herbicides, pesticides, antibiotics, fertilizers, pharmaceuticals, non-indigenous species, parasites, viruses, genetically modified organisms, ~~or~~ feed, or other materials known to be harmful into surrounding waters should not be allowed unless significant impacts to surrounding habitat and conflicts with adjacent uses are effectively mitigated.

B. Uses and Activities Prohibited Outright

1. ~~In-water finfish aquaculture use/development, including net pens as defined in Article 2, shall be prohibited in Jefferson County waters.~~

~~2. Finfish aquaculture that uses or releases herbicides, pesticides, antibiotics, fertilizers, non-indigenous species, parasites, pharmaceuticals, genetically modified organisms, feed, or other materials known to be harmful into surrounding waters is prohibited.~~

C. B. Shoreline Environment Regulations

1. Priority Aquatic: Aquaculture activities may be allowed subject to the use and development regulations of the adjacent upland shoreline environment, except finfish aquaculture is prohibited.
2. Aquatic: Aquaculture activities may be allowed subject to the use and development regulations of the adjacent upland shoreline environment.
3. Natural: Aquaculture activities, except for geoduck aquaculture, may be allowed subject to policies and regulations of this Program. Geoduck aquaculture may be allowed with a conditional use permit (C(d)). Finfish aquaculture is prohibited.
4. Conservancy: Aquaculture activities, except for geoduck aquaculture, may be allowed subject to policies and regulations of this Program. Geoduck and upland finfish aquaculture may be allowed with a conditional use permit (C(d)).
5. Shoreline Residential: Aquaculture activities, except for geoduck aquaculture, may be allowed subject to policies and regulations of this Program. Geoduck aquaculture may be allowed with a conditional use permit (C(d)). Finfish aquaculture is prohibited.
6. High Intensity: Aquaculture activities may be allowed subject to policies and regulations of this Program, except upland finfish aquaculture may be allowed with a conditional use permit ((C)d).

C. Regulations – General

1. When a shoreline permit is issued for a new aquaculture use or development, that permit shall apply to the initial siting, construction, and/or planting or stocking of the facility or farm. If the initial approval is a shoreline substantial development permit, it shall be valid for a period of five (5) years with a possible one-year extension. If the initial approval is a conditional use permit, it shall be valid for the period specified in the permit.
2. Ongoing maintenance, harvest, replanting, restocking of, or changing the species cultivated in any existing or permitted aquaculture operation is not considered new use/development, and shall not require a new permit, unless or until: **[Note: See Proposed Clarification #21]**
 - i. The physical extent of the facility or farm is expanded by more than twenty-five percent (25%) or more than twenty-five percent (25%) of the facility/farm changes operational/cultivation methods compared to the conditions that existed as of the effective date of this Program or any amendment thereto. If the amount of expansion or change in cultivation method exceeds twenty-five percent (25%) in any ten (10) year period, the entire operation shall be considered new aquaculture and shall be subject to applicable permit requirements of this section; or
 - ii. The facility proposes to cultivate species not previously cultivated in the state of Washington.

3. Aquaculture uses and activities involving hatching, seeding, planting, cultivating, raising and/or harvesting of planted or naturally occurring shellfish shall not be considered development, as defined in Article 2, and shall not require a shoreline substantial development permit, unless:
 - i. The activity substantially interferes with normal public use of surface waters; or
 - ii. The activity involves placement of any structures as defined in Article 2; or
 - iii. The activity involves dredging using mechanical equipment such as clamshell, dipper, or scraper; or
 - iv. The activity involves filling of tidelands or bedlands.
4. The County shall assess the potential for interference described in 8.2.C.3 on a case-by-case basis. All proposed new aquaculture uses or developments shall submit a Joint Aquatic Permit Application (JARPA) and SEPA checklist to enable assessment by the county. Activities shall not be considered to substantially interfere with normal public use of surface waters, unless:
 - i. They occur in, adjacent to or in the immediate vicinity of ~~public waters including~~ public tidelands; and [Note: See Required Change #18]
 - ii. They involve the use of floating ropes, markers, barges, floats, or similar apparatus on a regular basis and in a manner that substantially obstructs public access, or passage from public facilities such as parks or boat ramps; or they exclude the public from more than one acre of surface water on an ongoing or permanent basis.
5. Aquaculture activities not listed in 8.2.DC.3 and listed activities that fail to meet any of the criteria in 8.2.C.4 A.2 shall require a shoreline substantial development permit (SDP) or conditional use permit (CUP), and shall be subject to all of the following regulations: [Note: See Recommended Change #13]
 - i. Subtidal, intertidal, floating, and upland structures and apparatus associated with aquaculture use shall be located, designed and maintained to avoid adverse effects on ecological functions and processes.
 - ii. The County shall consider the location of proposed aquaculture facilities/farms to prevent adverse cumulative effects on ecological functions and processes and adjoining land uses. The County shall determine what constitutes acceptable placement and concentration of commercial aquaculture in consultation with state and federal agencies and Tribes based on the specific characteristics of the waterbody, reach, drift cell, and uplands in the vicinity of the farm/facility.
 - iii. Upland structures accessory to aquaculture use that do not require a waterside location or have a functional relationship to the water shall be located landward of shoreline buffers required by the Program.
 - iv. Overwater work shelters and sleeping quarters accessory to aquaculture use/development shall be prohibited.
 - v. Floating/hanging aquaculture structures and associated equipment shall not exceed six (6) feet in height above the water's surface. The Administrator may approve hoists and similar structures greater than six (6) feet in height when there is a clear demonstration of need. The six foot height limit shall not apply to vessels.
 - vi. Floating/hanging aquaculture facilities and associated equipment, except navigation aids, shall use colors and materials that blend into the surrounding environment in order to minimize visual impacts.

- vii. Aquaculture use and development shall not materially interfere with navigation, or access to adjacent waterfront properties, public recreation areas, or tribal harvest areas. Mitigation shall be provided to offset such impacts where there is high probability that adverse impact would occur. This provision shall not be interpreted to mean that an operator is required to provide access across owned or leased tidelands at low tide for adjacent upland owners.
 - viii. Aquaculture uses and developments, except finfish aquaculture, shall be located at least six hundred (600) feet from any National Wildlife Refuge, seal and sea lion haulouts, seabird nesting colonies, or other areas identified as critical feeding or migration areas for birds and mammals. Finfish facilities, including net pens, shall be located 1,500 feet or more from such areas. The County may approve lesser distances based upon written documentation that US Fish and Wildlife Service (USFWS), Washington Department of Fish and Wildlife (WDFW) and affected tribes support the proposed location.
 - ix. Aquaculture use and development shall be sited so that shading and other adverse impacts to existing red/brown macro algae (kelp), and eelgrass beds are avoided.
 - x. Aquaculture uses and developments that require attaching structures to the bed or bottomlands shall use anchors, such as helical anchors, that minimize disturbance to substrate.
 - xi. Where aquaculture use and development are authorized to use public facilities, such as boat launches or docks, the County shall reserve the right to require the applicant/proponent to pay a portion of the maintenance costs and any required improvements commensurate with the applicant's/proponent's use.
 - xii. Aquaculture use and development shall employ non-lethal, non-harmful measures to control birds and mammals. Control methods shall comply with existing federal and state regulations.
 - xiii. Aquaculture use and development shall avoid use of chemicals, fertilizers and genetically modified organisms except when allowed by state and federal law.
 - xiv. Non-navigational directional lighting associated with aquaculture use and development shall be used wherever possible and area lighting ~~should~~ shall be avoided and minimized to the extent necessary to conduct safe operations. Non-navigational lighting shall not adversely affect vessel traffic.
 - xv. Aquaculture waste materials and by-products shall be disposed of in a manner that will ensure strict compliance with all applicable governmental waste disposal standards, including but not limited to the Federal Clean Water Act, Section 401, and the Washington State Water Pollution Control Act (RCW 90.48).
6. Prior to approving a permit for floating/hanging aquaculture use and development or bottom culture involving structures, the County may require a visual analysis prepared by the applicant/proponent describing effects on nearby uses and aesthetic qualities of the shoreline. The analysis shall demonstrate that adverse impacts on the character of those areas are effectively mitigated.

D. Regulations – Finfish

1. Surveys & Monitoring- For experimental finfish aquaculture use/development, and for other proposed finfish aquaculture activities subject to a shoreline substantial development permit (SDP) or a conditional use permit (CUP), the County will require, at the applicant/proponent's expense, baseline and periodic surveys, assessments, and operational monitoring by a County-approved consultant to determine the success of the project and/or the magnitude of any adverse impacts. Permits for such activities shall include specific performance measures and provisions for adjustment or termination of the project at any time if monitoring indicates significant, adverse environmental impacts that cannot be adequately mitigated.

2. **Experimental Scope** - Finfish aquaculture use or development approved on an experimental basis shall not exceed two (2) acres in area (except land based projects and anchorage for floating systems) and three (3) years in duration; provided that, the County may issue a new permit to continue an experimental project as many times as is deemed necessary and appropriate by the Administrator.
3. **Harmful Materials** - Any finfish operation/facility that uses or releases herbicides, pesticides, antibiotics, fertilizers, non-indigenous species, parasites, viruses, pharmaceuticals, genetically modified organisms, feed, or other materials known to be harmful into surrounding waters shall demonstrate all significant impacts have been mitigated. When state or federal agencies/permits require the owner/operator to prepare records/reports on the use of such chemicals/materials, copies shall be provided to the County.
4. **Mortality Events** - In the event of a significant fish kill at the site of any finfish operation/facility, the owner/operator shall submit a timely report to the County Public Health and Community Development departments stating the date and extent of the loss, cause of death, and detailed remedial action to prevent reoccurrence.
5. **Siting, Use Conflicts & Impacts** - Proposals for in-water and upland finfish aquaculture activities, including net pens as defined in Article 2, may be allowed with conditional use approval (C(d)) subject to the policies and regulations of this Program, provided that any adverse environmental impacts, facility siting, and use compatibility issues related to the following are demonstrated to be adequately mitigated. Conditions of approval may address:
 - a. Environmental impacts such as:
 - i. In- or over-water processing, sorting, culling, washing or similar activities;
 - ii. Broodstock supply is state-approved;
 - iii. Copies of state- or federal-required monitoring reports provided to County;
 - iv. Copies of required analysis of potential discharge per NPDES provided to County;
 - b. Facility siting issues such as:
 - i. Site characterization and baseline survey including photo/computer simulation of visual impact for any in-water facility located within 1,500' of OHWM;
 - ii. In-water operations/facilities shall locate 2 nautical miles from Type S streams and 1 nautical mile from Type F streams unless documented conflicts with navigation prove this infeasible;
 - c. Use compatibility issues such as:
 - i. Direct light, reflected glare, and security lighting;
 - ii. Odor control;
 - iii. Upland operations must be screened from view by fences, berms, and/or vegetation unless visual assessment shows unnecessary.
6. **Enhancement/Restoration** - Fish pen structures (such as for temporary holding or diversion) solely and directly established and managed for purposes of native salmon enhancement and/or restoration are not considered net pens for purposes of this Program, as defined in Article 2.

E. Regulations – Application Requirements

- ~~6~~ 1. Prior to issuing a permit for any proposed ~~bottom culture or floating/hanging culture~~ aquaculture use or development, the County may require copies of permit applications and/or studies required by state and federal agencies to ensure provisions of this Program are met, including, but not limited to, the following information:
- i. Anticipated harvest cycles and potential plans for future expansion or change in species grown or harvest practices
 - ii. Number, types and dimensions of structures, apparatus or equipment.
 - iii. Predator control methods.
 - iv. Anticipated levels of noise, light, and odor and plans for minimizing their impacts.
 - v. Potential impacts to animals, plants, and water quality due to the discharge of waste water from any upland development.
 - vi. Proof of application for an aquatic lands lease from the Washington State Department of Natural Resources (DNR) or proof of lease or ownership if bedlands are privately held.
 - vii. Department of Health (DOH) Shellfish Certification Number.
 - viii. Department of Fish and Wildlife (DFW) commercial aquatic farm or non-commercial, personal consumption designation.
 - ix. Proof of application for any permits required by the U.S. Army Corps of Engineers, Department of Health, or other agency
 - x. Proof of application for any state and federal permits/approvals including any required federal consultation under Section 7 of the Endangered Species Act (16 U.S.C. § 1531 et seq., ESA).
- ~~7~~ 2. Prior to approving a permit for floating/hanging or upland aquaculture use and development or bottom culture involving structures, the County may require a visual analysis prepared by the applicant/proponent describing effects on nearby uses and aesthetic qualities of the shoreline. The analysis shall demonstrate that adverse impacts on the character of those areas are effectively mitigated.

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
16	Article 8.3.F.1.iii and iv	8-10	Commercial Use – Regulations for Non-water-oriented	<p>F. Regulations – Non-water-oriented Use/Development</p> <p>Non-water-oriented commercial uses are prohibited on the shoreline unless they meet the following criteria:</p> <p>ii. The use is part of a mixed-use project that includes an associated water-dependent use or <u>and</u>- The commercial use provides a significant public benefit in the form of public access and/or ecological restoration.</p> <p>OR</p> <p>iii. Navigability is severely limited at the proposed site; or <u>and</u> The commercial use provides a significant public benefit in the form of public access and/or ecological restoration.</p>	Alternative Proposal	<p>Revise to include language provided in WAC 173-27-241(3)(d) to read as follows:</p> <p>1. Non-water-oriented commercial uses are prohibited on the shoreline unless they meet the following criteria:</p> <p><u>i. The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or</u></p> <p><u>ii. Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.</u></p>
17	Article 8.4.C.3	8-12	Forest Practices – Shoreline Environment Regulations	In the Natural Environment, Conservancy: Forest practices may be allowed <u>with Conditional Use approval</u> , subject to the policies and regulations of this Program	Alternative Proposal	<p>Revise language specific to the Natural Shoreline Environment Regulations to read as follows:</p> <p>3. Natural: Forest practices may be allowed <u>with Conditional Use approval</u>, subject to the policies and regulations of this Program.</p>
18	Article 8.2.D.4	8-5	Aquaculture – Regulations	<p>Activities shall not be considered to substantially interfere with normal public use of surface waters, unless:</p> <p>i. They occur in, adjacent to or in the immediate vicinity of public waters including public tidelands; and</p>	Agree	<p>Delete text to read as follows:</p> <p>Activities shall not be considered to substantially interfere with normal public use of surface waters, unless:</p> <p>i. They occur in, adjacent to or in the immediate vicinity of public waters including public tidelands; and</p>

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
19	Article 4.3 - Use Table Article 8.7.B.5	4-7 8-22	Recreation - Shoreline Environment Regulations for Non-water-oriented	Article 8.9: Shoreline Residential: Water-oriented commercial use and development may be allowed subject to policies and regulations of this Program. Non-water-oriented commercial uses may be allowed as a conditional use. Shoreline Residential: Water-oriented recreational use and development is allowed subject to the policies and regulations of this Master Program. Non water-oriented recreation is prohibited. <u>may be allowed as a conditional use.</u>	Alternative Proposal	Revise Use Table to show Recreation use/development in Shoreline Residential designation allowed as conditional use discretionary (C(d)). Revise text to read as follows: Shoreline Residential: Water-oriented recreational use and development is allowed subject to the policies and regulations of this Master Program. Non water-oriented recreation is prohibited. <u>may be allowed as a conditional use.</u>
20	Article 4.3 – Use Table	4-7	Use Table – Residential Boathouses	Boathouses accessory to single family residences X X X C(a) P P XXXC(a) C(a) C(a) “A single water-dependent boathouse, as defined in Article 2, accessory to single family residential development may be allowed with a conditional use permit and in accordance with Article 6 section 1.E.4.iii and other provisions of this Program.”	Agree	Revise Table 1 to be consistent with Article 8.8.E.3 to read as follows: Boathouses accessory to single family residences: PA AQ NAT CONS SR HI X X X C(a) P P <u>X X X C(a) C(a) C(a)</u> [Note: This will make the use a C(a) in the Shoreline Residential and High Intensity designations.]
21	Article 8.3.F.1.iii	8-10		DUPLICATE OF #16 ABOVE		

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
22	Article 9.3.A.9	9-4	Exemptions – Residential Docks	<p>Residential Docks - Construction of an individual/single-user or shared dock for private non-commercial pleasure craft, for use by the owner, lessee, or contract purchaser of a single-family or multi-family residences. The private dock exemption applies <u>to dock construction cost as specified in RCW 90.58.030(3)(e)</u>. if either:</p> <p>i. In saltwater, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500). For the purpose of this section saltwater shall include the tidally influenced marine and estuarine water areas of the state including local marine waters and all associated bays, inlets and estuaries;</p> <p>ii. In fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five (5) years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Program.</p>	Agree	<p>Revise text to read as follows:</p> <p>Residential Docks - Construction of an individual/single-user or shared dock for private non-commercial pleasure craft, for use by the owner, lessee, or contract purchaser of a single-family or multi-family residences. The private dock exemption applies <u>to dock construction cost as specified in RCW 90.58.030(3)(e)</u>. if either:</p> <p>i. In saltwater, the fair market value of the dock does not exceed two thousand five hundred dollars (\$2,500). For the purpose of this section saltwater shall include the tidally influenced marine and estuarine water areas of the state including local marine waters and all associated bays, inlets and estuaries;</p> <p>ii. In fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction having a fair market value exceeding two thousand five hundred dollars (\$2,500) occurs within five (5) years of the completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this Program.</p>
23	Article 9.5.C	9-7	Critical Areas - REUV	<p>C. Proposals that qualify as a Reasonable Economic Use Variance pursuant to JCC Chapter 18.15.220 shall require a shoreline variance.</p>	Agree	<p>Delete text to read as follows:</p> <p>C. Proposals that qualify as a Reasonable Economic Use Variance pursuant to JCC Chapter 18.15.220 shall require a shoreline variance.</p>

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
24	Article 10.6.H.1	10-7	Non-conforming Development – Expansion w/o CUP or Variance	H. Expansion/Enlargement without Conditional Use Permit or Shoreline Variance: 1. Single Family Residential: The Administrator may allow <u>a one time</u> landward enlargement or expansion of non-conforming single family residences by the addition of space to the exterior of the main structure or the addition of normal appurtenances without a shoreline conditional use permit or shoreline variance provided, and subject to, the following:	Agree	Add text to read as follows: 1. Single Family Residential: The Administrator may allow <u>a one-time</u> landward enlargement or expansion of non-conforming single family residences by the addition of space to the exterior of the main structure or the addition of normal appurtenances without a shoreline conditional use permit or shoreline variance provided, and subject to, the following:
25	Article 6.1.E.2.i	6-7	Critical Areas – Regulations - Buffer Exceptions – Common Line Buffer	The proposed residence must be located within 300 <u>100</u> feet of an...	Alternative Proposal	Decline; no text change: 'The proposed residence must be located within 300 feet of an...' [Note: This required change was indicated by Ecology Findings and Conclusions (page 40) but inadvertently omitted from Attachment B. Required Changes.]
26	Appendix A. Official Shoreline Map	Maps #2 and 3	Map #2. Quimper; Map #3 Glen Cove; Marine Shoreline Reach CCC	Ecology has shifted its policy on shoreline jurisdiction during the course of the County's SMP Update. Port Townsend Paper Corporation's aerated stabilization basin (ASB) also known as the Mill Pond does not meet statutory and administrative criteria for shoreline jurisdiction. The lagoon area to the south of the ASB/Mill Pond does meet jurisdiction criteria due to the hydrologic connection to Port Townsend Bay and the size of the water body.	Agree	Revise Maps #2 and 3 to remove Mill Pond from SMP jurisdiction but keep lagoon. [Note: See draft revised maps attached] [Note: This required change was communicated verbally to the Board on June 6, 2011 by the Ecology Project Officer. County received a letter indicating this direction on June 24, 2011.]

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
Attachment C. Recommended Changes						
1	Article 1.2.F	1-4	Applicability – Quinault Tribe	F. The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals. Add: <u>Where Tribal concerns are expressed in relation to SMP jurisdiction, those shall be resolved through appropriate government to government consultation in accordance with Washington State Centennial Accord and the RCW.</u>	Agree	Add text to read as follows: F. The provisions of this Program shall not apply to lands held in trust by the United States for Indian Nations, tribes or individuals. <u>Where Tribal concerns are expressed in relation to SMP jurisdiction, those shall be resolved through appropriate government to government consultation in accordance with Washington State Centennial Accord and the RCW.</u>
2	Article 2.B.22	2-7	Definitions - Buffer	22. Buffer or buffer zone, strip, or area means the area adjacent to a shoreline or critical area that separates and protects the area from adverse impacts associated with adjacent land uses. A buffer is measured horizontally and perpendicularly from the ordinary high water mark <u>to the foundation of a structure</u> , and includes the three-dimensional airspace above.	Decline	None
3	Article 2.C.13	2-10	Definitions – Community Dock	Community dock means a dock that serves multiple residential properties including upland and waterfront lots in a subdivision or similar community setting. <u>See also “shared use.”</u>	Agree	Add text to read as follows: Community dock means a dock that serves multiple residential properties including upland and waterfront lots in a subdivision or similar community setting. <u>See also “Shared use.”</u>

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
4	Article 2.F.24 and 25	2-19	Definitions – Frontage Setback	<u>Frontage Setback: For purposes of determining setback locations relative to Ordinary High Water Mark on a site, perpendicular measurements shall be made from the nearest waterward edge of the foundation.</u>	Decline	None [Note: See also Recommended Change #6.]
5	Article 2.S.9	2-37	Definitions – Shared Use	<u>Shared Use means water access facilities for residential use, such as docks, which are shared by two or more owners. This can apply to adjoining waterfront lots or waterfront lots sharing access with upland properties.</u>	Alternative Proposal	Add new text and reformat numbering to read as follows: 9. Shared use means a facility shared by two or more lots/parcels. This can apply to facilities for adjoining lots or facilities shared between waterfront and upland properties; comparable to 'Community Structure' per JCC 18.10.030. See also 'Community dock'.
6	Article 2.N.8	2-29	Definitions – Non-conforming Lot	Nonconforming lot means a legal lot of record in existence prior to the effective date of this Program and any amendments thereto, on which it is not possible to construct as structure outside of/landward of the shoreline buffer or which does not otherwise meet the minimum lot size requirements as set forth in this Program. <u>For building envelope location purposes, frontage line shall be measured perpendicular to the ordinary high water mark as measured from the waterward foundation corners of adjacent structures.</u>	Alternative Proposal	Add text to read as follows: 1. Nonconforming lot means a legal lot of record in existence prior to the effective date of this Program and any amendments thereto, on which it is not possible to construct as structure outside of/landward of the shoreline buffer or which does not otherwise meet the minimum lot size requirements as set forth in this Program. <u>Depth of lot is measured as the distance from ordinary high water mark to the inside edge of the frontage setback.</u> [Note: See also Proposed Clarification # 4.]

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
7	Article 6.1.E.1.iii	6-7	Critical Areas – Regulations - Buffer Exceptions – Non-conforming Lots	iii. All single family residences approved under this section shall not extend waterward of the common-line buffer; as measured in accordance with 6.7.B; and	Agree	Delete text to read as follows: iii. All single family residences approved under this section shall not extend waterward of the common-line buffer; as measured in accordance with 6.7.B; and
8	Article 6.1.B.8	6-3	Critical Areas – Regulations - No Net Loss & Mitigation	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. When determining whether offsite mitigation provides greater and more sustainable benefits, the County shall consider limiting factors, critical habitat needs, and other factors identified by the locally adopted shoreline restoration plan [insert date of adoption or resolution number], or an approved watershed or comprehensive resource management plan.	Agree	Add text to include appropriate reference date upon final adoption of restoration plan; [anticipated to be same date as final adoption of SMP by local ordinance].

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
9	Article 6.4.B.4.iii	6-20	Vegetation Conservation – Regulations – View Maintenance	<p>iii. Maintenance trimming of vegetation with main stem or supporting structures less than three (3) inches in diameter, except tree topping. Vegetation removal is not included;</p> <p>Maintenance trimming of the limbs or branches on a trees or shrub that has a main stem less than three (3) inches in diameter;</p>	Alternative Proposal	<p>Delete redundant text and delete 's' to read as follows:</p> <p>iii. Maintenance trimming of vegetation with main stem or supporting structures less than three (3) inches in diameter, except tree topping. Vegetation removal is not included;</p> <p>v. Maintenance trimming of the limbs or branches on a trees or shrub that has a main stem less than three (3) inches in diameter;</p> <p>[Note: See also Proposed Clarification # 9.]</p>
10	Article 6.1.E.2.iii	6-8	Critical Areas – Regulations - Buffer Exceptions – Common Line Buffer	<p>iii. Existing Home on One Side: Where there is only one existing residence adjacent to the proposed residence, the standard buffer shall be determined as the greater of either 1) a common line drawn between nearest corner <u>of the foundation for the</u> adjacent residence and the nearest point of the standard buffer</p>	Alternative Proposal	<p>Revise and add text to read as follows:</p> <p>iii. Existing Home on One Side: Where there is only one existing residence adjacent to the proposed residence, the standard <u>common line</u> buffer shall be determined as the greater of either 1) a common line drawn between nearest corner <u>of the foundation for the</u> adjacent residence and the nearest point of the standard buffer...</p>

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
11	Article 7.2.F.9	7-11	Boating Facilities – Regulations - Residential Docks	<p>9. Residential developments with more than four (4) lots or dwelling units may be granted permits for community docks that are shared by at least one other owner. No more than one (1) dock/pier or float may be permitted for each three (3) adjoining waterfront lots, with necessary access easements to be recorded at the time of permitting.</p> <p>Single-user docks, piers and floats for individual residential lots may be permitted in existing subdivisions approved on or before January 28, 1993, only where a shared facility has not already been developed. Prior to development of a new single-user dock/pier/float for a single residential lot, the applicant shall demonstrate that:</p>	Agree	<p>Revise formatting to read as follows:</p> <p>9. Residential developments with more than four (4) lots or dwelling units may be granted permits for community docks that are shared by at least one other owner. No more than one (1) dock/pier or float may be permitted for each three (3) adjoining waterfront lots, with necessary access easements to be recorded at the time of permitting.</p> <p>10. Single-user docks, piers and floats for individual residential lots may be permitted in existing subdivisions approved on or before January 28, 1993, only where a shared facility has not already been developed. Prior to development of a new single-user dock/pier/float for a single residential lot, the applicant shall demonstrate that:</p>
12	Article 8.8.D.2	8-26	Residential – Regulations – Primary Residences	<p>2. The buffer requirements in Article 6 of this Program apply to residences, normal appurtenances, and accessory dwelling units, except that docks, floats, and pedestrian beach access structures and other water-dependent and water related structures accessory to residential use may be permitted to encroach into the buffer in accordance with the applicable provisions of this Program. <u>Accessory residential structures must be sited and designed to not require shoreline armoring within 100 years.</u></p>	Alternative Proposal	<p>Delete and add text to read as follows:</p> <p>2. The buffer requirements in Article 6 of this Program apply to residences, normal appurtenances, and accessory dwelling units, except that docks, floats, and pedestrian beach access structures and other water-dependent and water related structures accessory to residential use may be permitted to encroach into the buffer in accordance with the applicable provisions of this Program. <u>Accessory structures must be sited and designed to not require shoreline armoring within 100 years.</u></p>

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
13	Article 8.2.D.5	8-6	Aquaculture - Regulations	Aquaculture activities not listed in 8.2.D.3 and listed activities that fail to meet any of the criteria in 8.2.C.4 <u>8.2.A.2</u> shall require a shoreline substantial development permit (<u>SDP</u>) or conditional use permit (<u>CUP</u>), and shall be subject to all of the following regulations:	Agree	Revise text to read as follows: 5. Aquaculture activities not listed in 8.2.D.3 and listed activities that fail to meet any of the criteria in 8.2.C.4 <u>8.2.A.2</u> shall require a shoreline substantial development permit (<u>SDP</u>) or conditional use permit (<u>CUP</u>), and shall be subject to all of the following regulations:
14	Article 10.20.B	10-16	Violations & Penalties	B. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this Program shall be subject to a fine of not more than five thousand dollars (\$5,000), imprisonment in the county jail for not more than ninety (90) days, or both.	Alternative Proposal	Add and delete text to read as follows: B. Any person who willfully violates any court order or regulatory order of injunction issued pursuant to this Program shall be subject to a fine of not more than five thousand dollars (\$5,000), <u>or</u> imprisonment in the county jail for not more than ninety (90) days, <u>or both, neither of which shall exceed the maximum fine or imprisonment stated in RCW 9.92.020 as currently enacted or as may hereafter be amended.</u>
Additional Revisions Proposed for Clarification						
1	Article 6.1.A.3	6-1	SPAADs and vesting	None	Proposed Clarification	Add text to read as follows: The County should recognize and honor buffers and setbacks established by existing plats, <u>preliminary plats, issued permits, binding site plans (BSPs) and site plan approval advance determinations (SPAADs)</u> , and by development agreements that are consistent with RCW 36.70B.

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
2	Article 6.1.D.7	6-5	SPAADs and vesting	None	Proposed Clarification	Add text to read as follows: The County shall recognize and apply a buffer or setback established by existing plats, <u>preliminary plats, issued permits, binding site plans (BSPs) and site plan approval advance determinations (SPAADs)</u> , or a development agreement that is consistent with RCW 36.70B.
3	Article 2.F.5	2-16	Definitions – Fill	None	Proposed Clarification	Line 28: Delete ' than '
4	Article 2.N.8	2-29	Definitions – Nonconforming lot	None	Proposed Clarification	Line 27: Revise ' as ' to ' <u>a</u> '
5	Article 2.R.9	2-35	Definitions – Recreation, shoreline	None	Proposed Clarification	Line 5: Revise text to read as follows: '...means <u>a commercial or public</u> activity intended for personal enjoyment...'
6	Article 2.R.14	2-35	Definitions – Residential development	None	Proposed Clarification	Line 35: Add text to read as follows: '...non-transient occupancy <u>including single-family, multi-family, and creation of new residential lots by land division.</u> '
7	Article 2.W.3	2-44	Definitions – Water-dependent use	None	Proposed Clarification	Line 3: Revise asterisk notation to indicate source = '**' WAC, not '***' RCW
8	Article 6.1.E.1.i	6-6	Critical Areas – Regulations - Buffer Exceptions – Non-conforming Lots	None	Proposed Clarification	Line 28: Add text to read as follows: "1. Nonconforming Lots – Development Allowed without a Variance (<u>Modest Home Provision</u>): New single-family..." Line 34: Revise text to read as follows: '6.1.D. <u>6</u> '

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
9	Article 2.D.10 Article 6.4.B.3.i and 6.4.B.4	2-12 6-19 6-20	Definitions – DBH Vegetation Conservation – Regulations – View Maintenance	None	Proposed Clarification	Add new definition and reformat numbering to read as follows: <u>10. Diameter at breast height (DBH) means the diameter of a tree at 4 ½ feet above the ground measured from the uphill side.</u> Add text to read as follows: 3. i. '...hazard tree as defined by the Program. Tree topping is prohibited <u>when main stem/trunk is over 3" diameter at breast height (DBH).</u> ' 4.v. Maintenance trimming of the limbs or branches on a tree or shrub that has a main stem less than three (3) inches in diameter <u>at breast height (DBH);</u> Note: See Also Recommended Change #9.
10	Article 6.6	6-22	Shoreline Setbacks and Height	None	Proposed Clarification	Move section and renumber accordingly to occur alphabetically between 'Public Access' and 'Vegetation Conservation'
11	Article 7.2.B.2.ii	7-6	Boating Facilities – Shoreline Environment Regulations – Aquatic	None	Proposed Clarification	Line 19: Add comma to read as follows: ...'piers, floats...'
12	Article 7.2.G.3.vii	7-13	Boating Facilities – Marina Regulations	None	Proposed Clarification	Line 31: Revise text to read as follows: ...'Washington Department <u>of</u> Health guidelines and National Shellfish...'

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
13	Article 7.2.H.2	7-16	Boating Facilities – Mooring Buoy Regulations	None	Proposed Clarification	Line 6: Revise text to read as follows: ' <u>...(NSSP) standards</u> , and other state Departments...'
14	Article 7.2.H.8	7-16	Boating Facilities – Mooring Buoy Regulations	None	Proposed Clarification	Line 23: Revise text to read as follows: '...no circumstances shall mooring buoy <u>density exceed</u> state Department of Health...'
15	Article 8.8.B.4	8-25	Residential – Uses & Activities Prohibited Outright	None	Proposed Clarification	Line 28: Move 'or' to end of 4.iv. and capitalize 'Result' for 4.v.
16	Article 10.6.I.1.i	10-8	Non-conforming Development – Expansion/Enlargement with a CUP	None	Proposed Clarification	Line 28 - 29: Add text to read as follows: '...or the expansion/enlargement occurs <u>vertically</u> , laterally or landward, but not waterward, of the structure.'
17	Appendix A		Maps #2,3 and 4	None	Proposed Clarification	Delete 'Old' to read 'Fort Townsend State Park
18	Article 2.A.4	2-1	Definitions – Accessory structure	None	Proposed Clarification	Delete, add and reformat text to read as follows: ' Garages, <u>Boathouses</u> , barns, <u>decks</u> , storage sheds...'
19	Article 7.8.E.2.iv	7-32	Shore Armor – Regulations – New or Expanded	None	Proposed Clarification	Revise text to read as follows: iv. When necessary to protect <u>an existing, lawfully established primary water-oriented use , including a residence, but not including a boathouse or other accessory structure</u> , that is in imminent danger of loss or substantial damage from erosion caused by tidal action, currents, or waves.

ITEM	LA-SMP Provision	LA-SMP Page	Topic	Ecology's Required or Recommended Change	Jefferson County Response	Changes to the Locally Approved SMP
20	Article 7.8.E.5.iii	7-33	Shore Armor – Regulations – New or Expanded	None	Proposed Clarification	Add new item 'iii' to read as follows: <u>'Be prepared by a licensed professional engineer or geologist or other qualified professional with appropriate credentials.'</u>
21	Article 8.2.D.2	8-5	Aquaculture – Regulations – General	None	Proposed Clarification	Add text to read as follows: Ongoing maintenance, harvest, replanting, restocking <u>of,</u> or changing the species cultivated in any existing or permitted aquaculture operation <u>is not considered development, and</u> shall not require a new substantial development permit (SDP), unless or until:
22	Article 6.1.E.4	6-11	Critical Areas – Regulations - Buffer Exceptions – Water-oriented Use/Development	None	Proposed Clarification	Lines 17 – 2: Revise text to eliminate redundancy on to read as follows: iv. <u>Public or private</u> beach access structures accessory to residential, commercial, industrial, port or other allowed use/development; and v. Public access structures, including but not limited to docks, piers, and floats; and
23	Appendix A. Official Shoreline Map	Maps #8, 9, 12 and 13	Map #8.North Port Ludlow, #9.Port Ludlow, #12. Shine, and #13 Paradise Bay; Marine Shoreline Reach DD	None.	Proposed Clarification	Revise Maps #8, 9, 12 and 13 to change the section of Reach DD from the southern extent of the town homes (located north of Burner Point) to the northern extent of the Master Planned Resort from High Intensity (brown) to Shoreline Residential (blue) shoreline environment designation (SED). [Note: See draft revised maps attached]

Jefferson County Rationale:

Attachment B. Required Changes

1. County supports consistency with RCW and WAC provisions of the Ocean Resources Management Act.
2. County supports consistency with RCW and WAC provisions of the Ocean Resources Management Act.
3. County supports a change for consistency with RCW and WAC provisions of the Ocean Resources Management Act, and recommends the Priority Aquatic designation as more appropriate than Aquatic based on the protected status of National Marine Sanctuary and National Park coastal resources.
4. County supports most of the required revision, but excludes the 'up to 3 cars' threshold for garages because impervious surface requirements are adequately addressed in JCC 18.30.070.
5. County supports consistency with RCW and WAC provisions of the Ocean Resources Management Act
6. County supports the change to provide better alignment with Quinault Indian Nation Wilderness designation of Ocean Coast resources.
7. County supports a change to avoid confusion about jurisdictional authority and proposes alternate text revisions to improve clarity.
8. County supports the change to avoid confusion about jurisdictional authority.
9. *Skipped as duplicate.*
10. County supports the change to ensure exemption is appropriately applied.
11. County supports the change to ensure dock lengths are appropriate to a demonstrated need and to specific site conditions while ensuring adequate protection of shoreline resources. We recognize the utility of having dimensional standards and that this provision allows administrative adjustment. Further, should a situation deem it, the Shoreline Variance option could allow deviation from the standard if criteria are satisfied.
12. County supports the change to ensure provision is not misconstrued.

13. Jefferson County proposes to allow new upland finfish aquaculture use/development with a conditional use permit. The use would be limited to the Aquatic, Conservancy and High Intensity shoreline designations. This allowance recognizes that an upland operation may require water intake and discharge components located waterward of the ordinary high water mark (OHWM). In-water finfish aquaculture, including net pens and floating contained systems, is proposed to be prohibited.

The County recognizes a complete prohibition of a water-dependent, preferred shoreline use would make the County vulnerable to a legal challenge. Instead the County proposes to allow the use only in appropriate areas in order to ensure no net loss of shoreline resources and to minimize use conflicts that result from incompatible activities in close proximity. This will provide appropriate shoreline locations where this intensive agricultural use can occur while ensuring adequate protection of nearshore habitat such as marine riparian and submerged aquatic vegetation, benthic communities, and migration corridors for endangered salmonids, and minimize the potential for use conflicts anticipated along the Natural and Shoreline Residential designated shorelines. The specific performance standards made part of this SMP are consistent with state guidance on finfish aquaculture use/development with respect to siting, use conflicts, and environmental impacts. Further, the provisions clarify aquaculture as a subset of agricultural use/development to be managed by the more specific aquaculture policies and regulations of the Program.

The County proposes to modify the *Locally Approved SMP* to include these provisions as a matter of legislative discretion and after a "reasoned, objective

evaluation of the relative merits of the conflicting data” collected by this County as is allowed per WAC 173-26-201(2)(a)(iii).

A detailed description of how Jefferson County, a rural community of some 29,000 residents, arrived at this alternative is provided herein. The foundation of the process consists of input from Ecology and by the interested public and stakeholders.

In the 1/26/2011 conditional approval letter from Ecology, two reasons were given as rationale for rejecting the proposed outright ban on all finfish aquaculture: 1) the water-dependent status of the use; and 2) the lack of adequate science to support a ban. Both concerns are responded to below.

Water-dependent Use -

The definition for ‘Water-dependent use’ provided in Article 2.W.3 of the LA-SMP is consistent with the definition provided by WAC 173-26-020 (39) that reads:

“Water-dependent use” means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

The County recognizes finfish aquaculture as a water-dependent use because of the standard industry practice to locate in or near natural water bodies for the purpose of water intake and discharge. State guidance contained in WAC 173-26-241 (3)(b)(i)(A) reflects this reality and states,

“Aquaculture is the culture or farming of fish, shellfish, or other aquatic plants and animals. . . This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the

shoreline. Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.”

The County does note there are numerous examples of upland finfish farming without any connection to surface waters. In Montana, freshwater Coho salmon are being raised in upland facilities operated on water supplied from a well. There are other land based fish farm operations that use wells and/or re-circulating systems in British Columbia, the Dakotas, Kansas, New York and Indiana. This is emergent technology that could challenge the precept of aquaculture’s water-dependent status given current regulatory definitions, but the County does not address that issue here.

The allowance of upland finfish aquaculture is provided in lieu of in-water operations to address the risks to ecological functions and in response to unique local conditions, as evidenced by the largely-intact shoreline conditions in comparison to other Puget Sound jurisdictions, millions of dollars invested in local restoration efforts, and extensive citizen concerns. The issue will be reconsidered in light of any new science and technical information available at the time of the next comprehensive update.

Current Science -

Arising from Ecology’s response, the County conducted further investigation in greater detail of the science in support of and opposition to finfish aquaculture, with special focus on in-water operations such as net pens. The Finfish Bibliography

includes some 125 documents including peer-reviewed journal articles, state and federal agency policy and technical guidance, permit samples from existing Puget Sound net pen operations, Shoreline Master Programs from other Puget Sound jurisdictions, a programmatic EIS document and other sources of pertinent information. The Bibliography includes documentation submitted during formal public comment and constitutes a representative sample of the available science. The Bibliography contains recently published “current” science such as the February 2011 report of Michael Price *et al.* on juvenile salmon runs.

Recent correspondence from Ecology to the Northwest Straits Commission (September 2011) clarifies that the state relies primarily on key documents such as the 1986 Aquaculture Siting Study and Guidelines, and the 2002 NOAA Technical Memo #53. The County has considered these same sources of information and others from that era (i.e. 1988 Use Conflicts Study; 1990 Final Programmatic EIS; 2001 NOAA Technical Memo #49), but also relies on more current science from the 2003 – 2011 era.

Upon review of the items listed in the Finfish Bibliography, the County concludes that while the science before it is in conflict and does not present a consensus opinion, there is considerable evidence that in-water finfish aquaculture, such as net pens, can be detrimental to shoreline functions and processes, including native salmon populations - especially migrating juveniles. There are many risks recognized in relation to net pen operations:

- Biodeposits – food and feces
- Chemical Use - pesticides, pharmaceuticals, etc
- Disease - bacteria, viruses
- Parasites - sea lice
- Escapement - GMOs, breed/compete with natives

- Impacts to Puget Sound – low dissolved oxygen, shellfish beds, forage fish, kelp & eelgrass, mammals, ongoing restoration efforts

In addition, there are risks for conflicts with adjacent shoreline uses such as aesthetics, lighting, glare, noise, and odor. NOAA concurs (in its summary of the relevant science) that such risks are present.

The statute requires that the SMP balance appropriate shoreline activities with adequate protection of the resources. The SMP Guidelines (WAC 173-26-186) require that shoreline use and development is regulated to ensure “no net loss of ecological functions”. Further, the Guidelines (WAC 173-26-201(3)(g)) require that when less is known the SMP take a more protective approach to avoid unanticipated impacts and to reasonably assure that shoreline resources are protected. The current science is inconsistent. Therefore, the County concludes it has no choice but to err at this time on the side of caution and protection. The County believes the science dictates that in-water finfish aquaculture, including net pens, is not an appropriate use of shorelines of the state in Jefferson County waters.

14. See #13 above.

15. See #13 above.

16. County supports a change for consistency with WAC requirements and proposes alternate text revisions to improve clarity.

17. County supports a change for consistency with WAC requirements and proposes alternate text revisions to improve clarity.

18. County supports the change to ensure provision is not misconstrued.

19. County supports the change to ensure document consistency between non-water oriented commercial and recreational uses and with the purpose and criteria for the Shoreline Residential environment designation.

20. County supports the change for consistency with WAC requirements.

21. *Skipped as duplicate.*

22. County supports the change for consistency with RCW requirements where dollar amounts are periodically adjusted.
23. County supports the change to avoid confusion about jurisdictional authority.
24. County supports the change to ensure consistency with statewide policy on non-conforming uses.
25. County proposes to maintain a 300' separation for this provision because it is already limited for view purposes and only allowed on non-conforming lots. Cumulative Impacts Analysis shows that some 750 of the approximately 6,200

shoreline parcels will become non-conforming to the new buffers making this provision applicable to just 12% of the parcels, or ~3% of the land area. Further, of the parcels anticipated to become non-conforming, only some 225 (30%) are vacant leaving the provision most likely used on a mere 4% of all shoreline parcels or ~1% of the land area. Given the limited applicability of this provision, the County affirms the 300' separation is appropriate.

26. County supports the change to ensure consistency with state policy guidance.

Attachment C. Recommended Changes

1. County supports the change to assuage Quinault Indian Nation concerns about conflict resolution.
2. County declines the change because buffer depth does not depend on presence/absence of a structure.
3. County supports the change to include internal referencing for better clarity.
4. County declines the change because frontage setback is measured from road or adjacent parcel, not from OHWM. A related issue is addressed in Recommended Change #6.
5. County supports a change for clarity and proposes alternate text revisions to improve clarity between related terms, internal consistency, and consistency with similar terms used in the Jefferson County Code.

6. County supports a change for clarity and proposes alternate text revisions to improve clarity and internal consistency between definitions and regulatory provisions.
7. County supports the change for clarity.
8. County supports the change and will add the appropriate date as soon as possible.
9. County supports the change to eliminate text redundancy and to correct grammatical error. A related issue is addressed in Proposed Clarification #9.
10. County supports a change for clarity and proposes alternate text revisions for clarity.
11. County supports the change for clarity.
12. County supports a change for clarity and proposes alternate text revisions for clarity.
13. County supports the change for accuracy.
14. County supports a change for clarity and proposes alternate text revisions for better consistency with RCW requirements.

Additional Revisions Proposed for Clarification

1. County proposes text revision to further specify intent for vesting.
2. County proposes text revision to further specify intent for vesting.
3. Typographical error (Typo)

4. Typo
5. County proposes text revision for clarity.
6. County proposes text revision for clarity.

7. County proposes text revision for accuracy.
8. County proposes text revision for accuracy.
9. County proposes text revision for clarity. New definition is consistent with WAC 222-16-010 Forest Practices Board.
10. County proposes formatting revision for internal consistency.
11. Typo
12. Typo
13. Typo
14. County proposes text revision for clarity and for consistency with RCW requirements.
15. County proposes formatting revision for accuracy.
16. County proposes text revision for clarity.
17. County proposes text revision for accuracy.
18. County proposes text revision for internal consistency.
19. County proposes text revision for clarity.
20. County proposes text revision for clarity and internal consistency.
21. County proposes text revision for clarity.
22. County proposes text revision to eliminate redundancy and for clarity.
23. County proposes to revise Official Shoreline Map to more accurately apply the purpose and criteria for shoreline environment designations (SEDs).