

**Attachment B: Revised Department of Ecology Required Changes to the Jefferson County Shoreline Master Program, Resolution #77-09, locally adopted December 7, 2009, Approved by Ecology with Required & Recommended Changes January 26, 2011/ Jefferson County Response/Alternatives as adopted December 16, 2013 by Ordinance #07-1216-13**

ITEM	SMP PROVISION	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	County RESPONSE (Acceptance or Alternative)	Ecology - RATIONALE
1	<b>Article 1.7.E</b>	Ocean Resource Management Act Compliance	<u>The planning and project review criteria in RCW 43.143 (Ocean Resources Management Act) and WAC173-26-360 (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>	<b>Alternative Proposal:</b> 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>	Required by statute and rule - RCW 43.143 (Ocean Resources Management Act) and WAC 173-26-360 (Ocean Management).  Jefferson County alternative is consistent with the original intent of Ecology's Required Change, the SMP Guidelines and RCW 90.58
2	<b>Article 1.6.A.2</b>	Critical Areas adopted by reference	<del>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.</del>	Agreed	Required deletion to avoid confusion about separate jurisdictional authorities
3	<b>Appendix A: Official Shoreline Map, add note to Page A-1 notes for Map #18 (West end of Jefferson County)</b>	Official Shoreline Environment Designation Map	<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>	<b>Alternative Proposal:</b> 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>	Consistent with RCW 90.58, the SMP Guidelines, and the Ocean Management Resources Act- and implementing their implementing rules, together with the purpose and designation criteria for Aquatic in the Jefferson County SMP submittal. Avoids default designation to Conservancy.  Jefferson County alternative, which adds the distinction of

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					Priority Aquatic, is consistent with the original intent of Ecology's Required Change, the SMP Guidelines and RCW 90.58
4	Article 2. A	Definitions	<p><b>Appurtenance, normal</b> 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.</p> <p><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></p>	<p><b>Alternative proposal:</b></p> <p><b>Appurtenance, normal</b> 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></p>	<p>As currently written, "appurtenance, normal" refers specifically to residential use. Appurtenances may also apply to other uses, with unlisted ones requiring conditional use approval.</p> <p>The phrase, "but are not limited to..." opens the category to any number of structures aside from those listed. In some case, those being allowed could have significant impacts. If garages were not added, these would require a permit.</p> <p>The definition needs to specify the structures identified as common and acceptable, to avoid disputes about three story rv garages or other structures that should get more scrutiny as to impacts.</p> <p>Added language is required to avoid arguments about what qualifies as normal appurtenances for SFRs while preserving appropriate regulatory flexibility</p>

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					<p>for all other uses.  <b>WAC173-27-040(g)</b></p> <p>Jefferson County alternative is consistent with the original intent of Ecology's Required Change, the SMP Guidelines and RCW 90.58</p>
5	<b>Article 2. S</b>	<b>Definitions</b>	<p>Revise "<b>Shorelines of statewide significance</b>" 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>.</p>	Agreed	<p>The SMP definition for "Shorelines of statewide significance" does not include the western coastal area of the county.</p> <p>Required by statute and rule (RCW 43.143 (Ocean Resources Management Act) and WAC 173-26-360, Ocean Management.</p>
6	<b>Article 4.1.D</b>	<b>Designation for Quinault Reservation</b>	<p>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></p>	Agreed	<p>Added per formal request of Quinault Indian Nation to better align with their Wilderness Designation of Ocean Coast lands.</p>
7	<b>Article 6.1.D.1</b>	<b>Cumulative Impacts Regulations</b>	<p>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,</p>	<p>Alternative proposal:</p> <p>Revise text to read as follows:</p> <ol style="list-style-type: none"> <li>1. <u>The Critical Areas provisions of JCC Chapter 18.22, dated March 17, 2008 [Ordinance #03-0317-08], and further amended on May 11, 2009</u></li> </ol>	<p>Added to clarify these provisions are not adopted by reference</p> <p>Jefferson County alternative is more specifically phrased, and is</p>

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			<p><u>Reasonable Economic Use Variance</u>, and enforcement decisions within shoreline jurisdiction shall be governed by this Program and not JCC Chapter 18.22.</p>	<p><u>[Ordinance #06-0511-09], are incorporated by reference, however, the following exceptions shall prevail for actions occurring within shoreline jurisdiction:</u></p> <ul style="list-style-type: none"> <li>i. <u>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></li> <li>ii. <u>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></li> </ul>	<p>consistent with the original intent of Ecology's Required Change, the SMP Guidelines and RCW 90.58</p>
8	Article 6.1.D.3	Cumulative Impacts Regulations	<p><del>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.</del></p>	Agreed	Required for clarification, since it may cause confusion about which provisions apply.
9	Article 6.D.3	Critical Areas Regulations	<p><del>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.</del></p>	Duplicate of above.	NA

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10	<b>Article 7(C)(3)</b>	<b>Dredging</b>	Add: <u>Maintenance dredging may not be approved under exemption except within the existing footprint in accordance with previous approved plans.</u>	Agreed	Required to ensure that exemption is not applied for expansion of existing dredge sites.
11	<b>Article 7.5</b>	<b>Residential Dock Regulations</b>	<p>5. The length of docks and piers accessory to residential use/development shall be <del>no greater than that required</del> <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 <del>sixty (60)</del> <u>100 feet</u> as measured horizontally from the ordinary high water mark.</p> <p>The Administrator may approve a different dock or pier length when needed to:</p> <ul style="list-style-type: none"> <li>i. Avoid known eelgrass beds, forage fish habitats, or other sensitive nearshore resources; or</li> <li><del>ii. Reach adequate depths to accommodate watercraft; or</del></li> <li>iii. Accommodate shared use.</li> </ul>	Agreed	<b>WAC 173-26-231(3)(B)</b> As written, the provision specified allowing docks up to 60 feet - but had a waiver provision of indeterminate length. Changes required emphasize making docks only as long as needed, and to establish a bright line for the maximum rather than leaving it open ended. This version will be clearer, easier to administer and also generally more protective.
12	<b>Article 8.2 (A) (10)</b>	<b>Aquaculture Policies</b>	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. <del>Nothing in this program should be construed as to preclude their use.</del>	Agreed	The highlighted language is very broadly written and could be misconstrued. This requires clarification.

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13	Use Table	Net Pen/Finfish Aquaculture Ban	<del>Net Pens/Finfish X* X* X* X* X* X*</del>	Alternative proposal	<p>Use Table needs to replace X for Prohibited to C for Conditional Use to reflect change required in Article 8.2(B)(1)</p> <p>Jefferson County alternative as described in their <b>Attachment 2</b> is consistent with the original intent of Ecology's Required Change, the SMP Guidelines-notably WAC 173-26-241(2) and (3)(b), WAC 173-26-251, and RCW 90.58.020</p>
14	Article 8.2 (B) (1) and (2)	Net Pen/Finfish Aquaculture regulations	<p><b>B. Uses and Activities Prohibited Outright</b></p> <ol style="list-style-type: none"> <li><del>1. Net pens, as defined in Article 2, are prohibited.</del></li> <li>2. Finfish aquaculture <u>requires conditional use approval.</u></li> <li>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 <del>is prohibited.</del> <u>must demonstrate all significant impacts have been avoided.</u></li> </ol>	Alternative proposal	<p>A total ban on a water-dependent use such as net pen aquaculture was considered in terms of the policy rationale presented by the Board of County Commissioners.</p> <p>It was recognized there was considerable public support for banning net pens based on concerns about water quality and ecosystem health. Ecology considered whether there was enough discussion and evidence of a science basis in the record to support a ban.</p>

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					<p>We conclude there is not a conclusive science basis on the record to support such a ban. We further determined, and perhaps more importantly, that from a legal standpoint there is no authority for an outright ban through Jefferson County's SMP.</p> <p><b><i>A required change removes the prohibition on net pen fisheries and finfish aquaculture. A requirement for Conditional Use approval applies to both.</i></b></p> <p>Jefferson County alternative as detailed in their <b>Attachment 2</b> is consistent with the original intent of Ecology's Required Change, the SMP Guidelines, notably WAC 173-26-241(2) and (3)(b), WAC 173-26-251, and RCW 90.58.020</p>
15	<b>Article 8.2.A.12 and 13</b>	<b>Aquaculture Policies</b>	<p><del>12. Net pens, as defined in Article 2, should not be allowed.</del></p> <p>13. Finfish aquaculture that uses or releases herbicides, pesticides, antibiotics, fertilizers, pharmaceuticals, non-indigenous species, parasites, genetically modified</p>	<b>Alternative proposal</b>	Jefferson County alternative as detailed in their <b>Attachment 2</b> is consistent with the original intent of Ecology's Required Change, the SMP Guidelines and RCW 90.58

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			organisms, or feed into surrounding waters <u>must demonstrate all significant impacts have been avoided.</u> <del>should not be allowed.</del>		
16	<p><b>Article 8.3.F 1 (iii) and (iv)</b></p> <p><b>Page 8-22</b></p>	<p><b>Commercial Use regulations</b></p>	<p><b>F. Regulations – Non-water-oriented Use/Development</b></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 <del>or and</del>- 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; <del>or and</del> The commercial use provides a significant public benefit in the form of public access and/or ecological restoration.</p>	<p><b>Alternative proposal</b></p> <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 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>	<p>Required per WAC 173-27 241(3)(D)</p> <p>Navigability must be limited “AND commercial use must provide significant public benefit.</p> <p>Jefferson County alternative is consistent with the original intent of Ecology’s Required Change, the SMP Guidelines and RCW 90.58</p>
17	<p><b>Article 8.4.C.4</b></p>	<p><b>Forest Practices</b></p>	<p>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</p>	<p><b>Alternative proposal</b></p> <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>	<p>Requires Conditional Use in Natural designated shorelines, consistent with the purpose of the subject environment.</p> <p>Jefferson County alternative is corrective, consistent with the original intent of Ecology’s Required Change, the SMP</p>

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18	Article 8.5	Aquaculture	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 <del>public</del> <del>waters including</del> public tidelands; and	<b>Agreed</b>	All waters of the state are public, and without removal of noted phrase this provision could be construed to say that all aquaculture activities interfere with normal public use of waters of the State.
19	Article 8.9	Commercial Uses, non-water oriented	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 <del>prohibited.</del> <u>may be allowed as a conditional use.</u>	<b>Alternative proposal</b>  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 <del>prohibited.</del> <u>may be allowed as a conditional use.</u>	Inconsistent to allow non-water oriented commercial activity and to prohibit non-water oriented recreation.  Jefferson County alternative adds change to use table and is consistent with the original intent of Ecology's Required Change, the SMP Guidelines and RCW 90.58
20	Use Table/ P8-27	Boathouses	Boathouses accessory to single family residences <del>XXX C(a) P P XXX C(a) C(a) C(a)</del>  "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."	<b>Agreed</b>	Replace with C(a) to reflect conditional use requirement in all environments. Required per WAC 173-26-241(3)(j)

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21	8.11.F 1 (iii) Page 8- 10	Non-water-oriented uses	<p><b>F. Regulations – Non-water-oriented Use/Development</b></p> <p>1. Non-water-oriented commercial uses are prohibited in shoreline jurisdiction unless they meet the following criteria:</p> <p>i. The site is physically separated from the shoreline by another property or public right of way; or</p> <p>ii. The use is part of a mixed-use project that includes an associated water-dependent use; <u>and/or</u></p> <p>iii. Navigability is severely limited at the proposed site; or</p> <p>iv. The commercial use provides a significant public benefit in the form of public access and/or ecological restoration.</p>	<p><b>Duplicate of #16 above</b></p>	<p>NA</p>
22	Article 9.3.9	Exemptions	<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> <del>if either:</del></p> <p>i. <del>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;</del></p> <p>ii. <del>ii. In fresh waters the fair market value of the dock does not exceed ten thousand dollars (\$10,000), but if subsequent construction</del></p>	<p><b>Agreed</b></p>	<p>Dollar amounts are adjusted periodically per the statute.</p>

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			<p><del>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.</del></p>		
23	Article 9.5.C	Variance Permit Criteria	<p><del>C. Proposals that qualify as a Reasonable Economic Use Variance pursuant to JCC Chapter 18.15.220 shall require a shoreline variance.</del></p>	Agreed	Required for clarification, since it may cause confusion about which provisions apply.
24	Article 10.6.A.4.H Page 10-7	Expansion of non-conforming structures	<p>H. Expansion/Enlargement without Conditional Use Permit or Shoreline Variance:</p> <p>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:</p>	Agreed	<p>As written, the provision could have been exercised any number of times in order to gradually achieve a greater expansion than was intended to be allowed and justified as satisfying the no net loss standard.</p> <p>Further, such increased expansion would be inconsistent with statewide policy on non-conforming uses, whereas limiting the use of the provision keeps it to the intended allowance for a specified expansion.</p>
25	Article 6.1.E.2	6-7	Critical Areas – Regulations – Buffer Exceptions – Common Line Buffer	<p><del>The Proposed residence must be located within 300 feet of an...</del></p>	<p>Alternative Proposal Decline; not text change:                      ‘The proposed residence must be located within 300 feet of an...’                      [Note: This required change was</p>

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					<p>indicated by Ecology Findings and Conclusions (page 40) but inadvertently omitted from Attachment B: Required Changes.</p> <p>Jefferson County demonstrated the effect of this provision was minimal based on limited potential applications; Ecology accepts that showing and strikes the required change.</p>
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.	<p>Agree Revise Maps #2 and 3 to remove Mill Pond from SMP jurisdiction but keep lagoon. [Note: See draft revised maps attached]</p> <p>[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.]</p>