

Attachment B: Jefferson County March 1, 2010 SMP

Ecology Required Changes –

The following changes are required to comply with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III):

ITEM	DRAFT SMP Provision (Cite)	TOPIC	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	DISCUSSION/RATIONALE
1	Article 1.7.E	Ocean Resource Management Act Compliance	<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>	Required by statute and rule - RCW 43.143 (Ocean Resources Management Act) and WAC 173-26-360 (Ocean Management).
2	Article 1.6.A.2	Critical Areas adopted by reference	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.	Required deletion to avoid confusion about separate jurisdictional authorities, and for clarification regarding which provisions apply, which should be only the SMP variance criteria.
3	Appendix A: Official Shoreline Map, add note to Page A-1 notes for Map #18 (West end of Jefferson County)	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>	Consistent with RCW 90.58, the SMP Guidelines and Ocean Management Resources Act and their implementing rules, together with the purpose and designation criteria for Aquatic in the Jefferson County SMP submittal. Avoids

				default designation to Conservancy	
4	Article 2. A	Definitions	<p>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.</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>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</p>	

				<p>preserving appropriate regulatory flexibility for all other uses.</p> <p>WAC173-27-040(g)</p>
5	Article 2. S	Definitions	<p>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>.</p>	<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	Article 4.1.D	Designation for Quinault Reservation	<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>	<p>Added per formal request of Quinault Indian Nation to better align with their Wilderness Designation of Ocean Coast lands.</p>
7	Article 6.1.D.1	Cumulative Impacts Regulations	<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, <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>Required deletion to avoid confusion about separate jurisdictional authorities, and for clarification regarding which provisions apply, which should be only the SMP variance criteria.</p>
8	Article 6.1.D.3	Cumulative	<p>3. Development applications that are processed according to the Reasonable</p>	<p>Required deletion to avoid confusion</p>

		Impacts Regulations	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.	about separate jurisdictional authorities, and for clarification regarding which provisions apply, which should be only the SMP variance criteria.
9	Article 6.D.3	Critical Areas Regulations	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.	Required deletion to avoid confusion about separate jurisdictional authorities, and for clarification regarding which provisions apply, which should be only the SMP variance criteria.
10	Article 7(C)(3)	Dredging	Add: <u>Maintenance dredging may not be approved under exemption except within the existing footprint in accordance with previous approved plans.</u>	Required to ensure that exemption is not applied for expansion of existing dredge sites.
11	Article 7.5	Residential Dock Regulations	<p>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.</p> <p>The Administrator may approve a different dock or pier length when needed to:</p> <ul style="list-style-type: none"> 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. 	<p>WAC 173-26-231(3)(B)</p> <p>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.</p>

12	Article 8.2 (A) (10)	Aquaculture Policies	<p>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.</p>	<p>The highlighted language is very broadly written and could be misconstrued. This requires clarification.</p>
13	Use Table	Net Pen/Finfish Aquaculture Ban	<p>Net Pens/Finfish X* X* X* X* X* X*</p>	<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>
14	Article 8.2 (B) (1) and (2)	Net Pen/Finfish Aquaculture regulations	<p>B. Uses and Activities Prohibited Outright</p> <ol style="list-style-type: none"> 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> 	<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> <p>We conclude there is not a conclusive science basis on the record to support</p>

				<p>such a ban. We further determined that from a legal standpoint there is no authority for an outright ban through an SMP.</p> <p><i>A required change removes the prohibition on net pen fisheries and finfish aquaculture. A requirement for Conditional Use approval applies to both.</i></p>
15	Article 8.2.A.12 and 13	Aquaculture Policies	<p>12. Net pens, as defined in Article 2, should not be allowed.</p> <p>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.</p>	Water dependent uses can be allowed in appropriate areas when impacts can be mitigated consistent no net loss requirements.
16	Article 8.3.F 1 (iii) and (iv)	Commercial Use regulations	<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 and- 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>	Required per WAC 173-27 241(3)(D)

17	Article 8.4.C.4	Forest Practices	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	Requires Conditional Use in Natural designated shorelines, consistent with the purpose of the subject environment.
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 public waters including public tidelands; and	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 prohibited <u>may be allowed as a conditional use.</u>	Inconsistent to allow non-water oriented commercial activity and to prohibit non-water oriented recreation. Required change is consistent with the purpose of the shoreline residential environment.
20	Use Table/ P8-27	Boathouses	Boathouses accessory to single family residences XXX C(a) PP-XXX C(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	Replace with C(a) to reflect conditional use requirement in all environments. Required per WAC 173-26-241(3)(j)

			Program.”	
21	8.11.F 1 (iii) Page 8- 10	Non-water-oriented uses	<p>F. Regulations – Non-water-oriented Use/Development</p> <p>1. Non-water-oriented commercial uses are prohibited in shoreline jurisdiction unless they meet the following criteria:</p> <ul style="list-style-type: none"> i. The site is physically separated from the shoreline by another property or public right of way; or ii. The use is part of a mixed-use project that includes an associated water-dependent use; <u>and/or</u> iii. Navigability is severely limited at the proposed site; or iv. The commercial use provides a significant public benefit in the form of public access and/or ecological restoration. 	Navigability must be limited “AND commercial use must provide significant public benefit.
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). if either:</u></p> <ul style="list-style-type: none"> 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; 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. 	Dollar amounts are adjusted periodically per the statute.
23	Article 9.5.C	Variance Permit Criteria	C. Proposals that qualify as a Reasonable Economic Use Variance pursuant to JCC Chapter 18.15.220 shall require a shoreline variance.	Required for clarification, since it may cause confusion about which provisions apply and to avoid confusion about

				separate jurisdictional authorities. Only the SMP variance criteria 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> <p>.</p>	<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>