



January 10, 2012

Mr. Michael Lewars, Chair  
Bainbridge Island Planning Commission  
c/o Libby Hudson, Long Range Planning Manager  
280 Madison Avenue  
Bainbridge Island, WA 98110

Sent by email to: Libby Hudson (pcd@ci.bainbridge-isl.wa.us)

**Re: Bainbridge Island Shoreline Master Program Update**

Dear Chair Lewars and Planning Commission:

Thank you for the opportunity to comment on the draft Shoreline Master Program (SMP) Update. **Futurewise** is a statewide citizens group that promotes healthy communities and cities while protecting working farms, working forests, and shorelines for this and future generations. **People For Puget Sound** is a nonprofit, citizens' organization whose mission is to protect and restore Puget Sound and the Northwest Straits.

Overall, there are many strong aspects of the draft Bainbridge SMP Update which we support. However, we have the following key concerns:

- The way that the draft SMP has been released for public review which is confusing.
- The environmental designations, especially the natural environment, fail to adequately protect the shoreline ecology.
- Uses that will damage the environment are not precluded where necessary to protect shoreline ecological functions
- Buffer system, while good, has some loopholes that need to be closed
- The allowed uses and use preferences should be listed in a table, and their regulations should be specific enough that the impacts can be predicted and managed to prevent a net loss of shoreline ecological functions.
- The term "compensatory mitigation" needs to be used when the regulations describe such activity. And compensatory mitigation requirements need to be provided that are specific to different types of development – especially those that have inherent ecological impacts.

***Shoreline Master Program Updates Are Necessary To Protect And Recover Puget Sound***

The Shoreline Management Act was adopted by the legislature in 1971 and approved by the state's voters to protect the state's shorelines. Unfortunately, it has not fully succeeded. The scientific evidence is that we still harming our shorelines resources. For example,

Nearshore impacts occur despite our existing policy and regulatory framework. According to the 2007 State of the Sound report, development actions across the Puget Sound region have caused eelgrass, forage fish, salmon, rockfish, marine birds and orca populations to decline (PSAT 2007). Ten species are listed as threatened or endangered by the state or federal government and an additional 33 marine species are identified as

species of concern, meaning their populations also are at risk. Declines in these species' populations are directly related to the destruction, degradation, and fragmentation of the habitats on which they rely. Much of this damage occurred prior to the development of our existing regulatory framework, but significant ecosystem impairments have also occurred since the advent of the major regulatory initiatives in the 1970s.<sup>1</sup>

So we see that our shorelines, including Puget Sound, continued to be in peril. But scientists tell us we can do better.

Regulations can reduce and sometimes prevent impairments to nearshore habitats and habitat-forming processes. By imposing standards for the location, density, size, design, and operation of roads, housing, businesses, and industries, regulations can protect valuable habitats from destruction and minimize effects of development on sediment supply and transport, erosion and accretion, surface and groundwater flows, primary production, food webs, habitat-species interactions, and other processes.<sup>2</sup>

One of the reasons we continue to adversely impact shoreline ecological functions is that shoreline master programs (SMPs), policies and regulations for the management of our shorelines, are out of date. They failed to incorporate policies and regulations to address the evolving scientific understandings of our impact on shoreline ecological functions and how we can prevent those impacts. For most SMPs in Washington State, the current required update is the first comprehensive update. It is important that we get this update right: That we fully incorporate the current scientific data on what we need to do to protect Puget Sound. Otherwise, the damage to Puget Sound will continue.

### ***We Support The SMP Update But Oppose The Manner Of Its Release***

We support the comprehensive update of the Bainbridge Island SMP. While our overall impression is that the SMP is fairly good, there are still a few major changes and many minor changes that are needed. However, this impression is based on incomplete and disjointed materials resulting from the manner the SMP has been released for review. We have several concerns:

- (1) We do not have a complete SMP to review. It is critical to have a complete SMP to understand how all the parts work together. We originally delayed our comments in hopes that a complete SMP would be available for review. However, that never happened, even though we repeatedly requested it, and had heard that the draft was done and in the hands of the planning commissioners. The SMP was only developed, released, and reviewed in parts – first by the taskforce groups, then by the Planning Commission. Now that the Planning Commission review of the individual parts is complete or nearly so, it appears that the SMP is largely set in stone. We understand that the goal was to allow for high quality public input through meetings and committees but the gradual release made it extremely difficult to review the SMP update as an interconnected whole.
- (2) Even after delaying our review until all the individual parts were released, all the material composing the SMP is not available for review. The Administrative and Definition sections were only put on the website recently (the definitions in November). Even assembling all the parts from

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<sup>1</sup> Margaret Clancy, M., Ilon Logan, Jeremy Lowe, Jim Johannessen, Andrea MacLennan, F. Brie Van Cleve, Jeff Dillon, Besty Lyons, Randy Carman, Paul Cereghino, Bob Barnard, Curtis Tanner, Doug Myers, Robin Clark, Jaques White, Charles A. Simenstad, Miriam Gilmer, & Nancy Chin, *Management Measures for Protecting the Puget Sound Nearshore* p. 8-2 (Puget Sound Nearshore Ecosystem Restoration Project Report No. 2009-01, Washington Department of Fish and Wildlife, Olympia, Washington: 2009). Accessed on Dec. 19, 2011 at: [http://www.pugetsoundnearshore.org/technical\\_reports.htm](http://www.pugetsoundnearshore.org/technical_reports.htm). This report had external peer review. *Id.* at p. \*ix.

<sup>2</sup> *Id.*

the website does not create a complete SMP. Critical tables are referenced in the text, but are not available on the website: a buffer table, a mitigation options table, and a table of allowed uses. Furthermore, the inventory is not available on the website. It is supposed to include both the maps for habitat areas which have specific regulations, and the maps showing the factors used to determine the buffer at different locations. There should be maps for eelgrass and kelp, forage fish spawning areas, bluffs, spits, etc. Without these, we cannot determine whether regulations that may seem acceptable (or not) are actually being implemented on the ground and where they are being implemented.

- (3) The method used to develop and review the individual parts discourages and impedes the participation of those who cannot invest the resources necessary for an extensive and repetitive review process. The resources necessary to travel, attend meetings, re-familiarize oneself with material, and write letters on dozens of parts is extraordinary. The taskforce groups' parts could have been released as a preliminary draft for comments, followed by review of the parts. Instead, the parts were withheld till they were reviewed by the Planning Commission, and a complete SMP will be released after the Planning Commission has largely completed their review in preparation to sending to the City Council.

The overall concern we have is that the SMP is being put into final draft form for review by the City Council, and essentially set in stone with no meaningful opportunity to review and comment on how all its different component systems function together. Consequently, we are forced to assemble the parts that are available and perform a review on an incomplete SMP in the hopes of affecting changes before the draft is set in stone.

We do think that there are good aspects to the SMP. While there will be pressure to weaken these elements, we urge you to retain them. Examples of well-developed components of the SMP include:

- The buffer system is unique, and has the potential to deal with problems of other buffer systems we have seen. It appears to be the intent to protect areas with extensive vegetation with largely science-based buffers (though we do have important recommended changes). However, we are concerned that it will still result in a net loss of buffer and shoreline ecological functions unless fixes are made.
- In-water development such as docks, aquaculture, and stabilization appear to have thorough regulations.
- The SMP succeeds in one of the most difficult tasks. Many of the sections addressing specific types of development are thorough and well developed to capture the common impacts of the development – especially boating facilities, moorage, transportation, utilities, and filling, excavation, and dredging.

While there are good components, there are some areas where we recommend changes to meet the requirements of the Shoreline Management Act (SMA) and the Shoreline Master Program Guidelines (SMP Guidelines). We have attached three Futurewise guidance documents to help inform the update effort. These three documents address much broader issues that influence a SMP's fundamental ability to meet the state requirements. Our comments for improvements reference the information in these guidance documents.

- **Futurewise's Guidance on No-Net-Loss of Ecological Function, Cumulative Impact Analysis and Restoration Planning.** This document focuses on the SMA and SMP Guidelines requirements for a framework that accomplishes no-net-loss, including the need to build mitigation sequencing into the structure of the SMP. It also discusses the pitfalls in actually making it happen, including erroneous assumptions about accounting for impacts allowed by the SMP that have no logical basis in science or the practice of assessing development impacts. Of particular importance are the SMA preferences for controlling uses that cause loss of

shoreline ecological function. Lastly it describes the jurisdiction’s responsibility to compensate for impacts allowed by the SMP in the cumulative impact analysis.

- **Futurewise’s Guidance on Establishing Shoreline Environments.** This document focuses on the SMA and SMP Guidelines requirements for protecting the remaining areas of intact shorelines using protective environments (in both upland and in-water areas), and their importance in accomplishing mitigation sequencing. It also discusses the pitfalls in establishing environments, such as mixing developed and undeveloped areas within an environment, accurately establishing jurisdiction, and providing complete maps.
- **Futurewise’s Guidance on Buffer Options Using Science.** This document describes the SMA and SMP Guidelines requirements, and the pitfalls in establishing a buffer system that is compatible with buffer science. It includes methods for dealing with the range of different buffer conditions from intact areas to heavily developed areas, and covers using small buffers for heavily developed locations. It explains why small buffers don’t work to protect ecological functions unless they are accompanied by built-in mitigation in the form of enhancement requirements to offset the built-in impacts that come with small buffers. We understand that small buffers are not consistent with the buffers in the National Marine Fisheries Service – Northwest Region’s *Endangered Species Act Section 7 Consultation Final Biological Opinion for Implementation of the National Flood Insurance Program in the State of Washington, Phase One Document – Puget Sound Region*.<sup>3</sup> The city will need to carefully consider the potential consequences of using such small buffers.

These documents and our comments in this letter reference the SMA requirements to use current up-to-date science in developing the SMP. Futurewise has prepared a “CAO on CD” that we are also attaching with the paper copy of this letter. The scientific literature included in it supports the use of current science for both Critical Areas Ordinances and Shoreline Master Programs. We wish these documents and the science literature on the CD to be included in the record for the SMP update.

### ***SMP Needs to Implement the SMA Policy, No-Net-Loss of Ecological Function, and Mitigation Sequencing***

Our comments below are organized around a fundamental principle of the SMA and SMP Guidelines – building the concept of no-net-loss of ecological functions into an SMP. A summary of this method is provided below. Futurewise’s guidance document dealing with no-net-loss, cumulative impacts, and restoration planning provides a detailed discussion of how to build no-net-loss and the resulting concept of mitigation sequencing into the SMP, as required by the Guidelines.

Of particular importance is that the Shoreline Management Act (SMA) policy statement in RCW 90.58.020 lists the primary policy objective of the act [with added emphasis]: “This policy contemplates protecting against adverse effects to the public health, *the land and its vegetation and wildlife, and the waters of the state and their aquatic life*, while protecting generally public rights of navigation and corollary rights incidental thereto.” In addition, the SMA policy provides that “[p]ermitted uses in the shorelines of the state shall be designed and conducted in a manner to *minimize*, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public’s use of the water.” And most specifically, the SMP Guidelines require that SMPs have to be “designed” to accomplish no-net-loss of ecological function, and states this in multiple locations.<sup>4</sup>

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<sup>3</sup> Accessed on Dec. 19, 2011 through: <http://www.nwr.noaa.gov/Salmon-Habitat/ESA-Consultations/FEMA-BO.cfm>

<sup>4</sup> See for example WAC 173-26-186(8)(b).

This means that the SMP and its array of policies and regulations are themselves to be designed using mitigation sequencing in order to accomplish no-net-loss of ecological functions. These include designating environments, establishing buffers, and developing regulations that address the common impacts of development. All of this is accounted for in the Cumulative Impacts Analysis which looks at the impacts allowed by the regulations, not the impacts they prevent.

In addition, a mitigation sequencing standard is required for individual projects to meet. The Bainbridge SMP uses the word mitigation many times – especially in Environmental Impacts section, but in other places as well. The word “mitigation” means the sequence of mitigation starting with avoidance, then minimization, then compensation for remaining impacts.<sup>5</sup> However, we are concerned that in many places in the SMP the word mitigation is used in instances that describe compensation. While other terms of mitigation - avoidance and minimization – are use freely, compensation is not. We recommend that the terms be used correctly throughout the SMP. When the full concept of mitigation and the sequence is discussed, the word mitigation should be used. When describing the instance of replacing lost functions, the word “compensation” or “compensatory mitigation” should be used to clearly communicate the need to replace lost functions from impacts. The most important examples from the Environmental Impacts section are the following, with ~~strikeout~~ and underlined recommended edits:

In the applicability paragraph. The list is supposed to be a list of the main means of mitigation, but compensation should be in the list too. “All shoreline development and activity shall be located, designed, constructed, and managed in a manner that avoids, minimizes and/or ~~mitigates~~ compensates for adverse impacts to the environment.”

In Impact Analysis and No Net Loss Standard #1. In this section, the same issue as above is present: “... in a manner that protects ecological functions, and ecosystem wide processes and avoids, minimizes and/or ~~mitigates- compensates for~~ adverse impacts...”

Also in standard #1. This includes a good list of common ways to avoid and minimize impacts, but it doesn’t include any statements to compensate for the impacts. We recommend adding: “(f). Provide compensatory mitigation for any remaining impacts.”

Impact Analysis and No Net Loss Standard #3. In this section, the standard refers to the use of mitigation options found in a table for residential projects. These are compensatory mitigation options, but the standard doesn’t mention this. We recommend: “To ~~mitigate-compensate for~~ anticipated impacts and meet the no net loss standards ...”

The mitigation table mentioned above is not found on the website, so we are unable to determine if the ideas planned to compensate for impacts are adequate to cover common residential impacts. The typical examples we see in other SMPs are often acceptable for degraded areas, but cannot compensate for impacts to the more intact shorelines that are common on Bainbridge Island. Our recommended edits to the sentence described in the previous paragraph should be supplemented as follows: “To ~~mitigate-compensate for~~ anticipated impacts and meet the no net loss standards in 1 and 2 above, and applicant for a residential development in the Urban and Shoreline Residential environments...”

In the Submittal Requirements section, Standard #1 refers to a mitigation plan, but doesn’t actually require the submittal of a mitigation plan. A mitigation plan is where you will find details of the compensatory mitigation. We recommend: “In addition to the general submittal requirements for ... ..., ~~the-a~~ mitigation plan shall be provided, and shall address the following: ...”

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<sup>5</sup> See WAC 173-26-201(2)(c).

### ***Build Mitigation Sequencing Into Environment Designations***

As described on our guidance document addressing shoreline environments, the environment system must be designed using mitigation sequencing, and is one of the fundamental components of the SMP. Designing the shoreline environments is particularly important for two reasons (1) because the environments control the corresponding use limits within those environments, and (2) the draft SMP bases the buffer system on the environments. While the SMP is generally good, the largest problem is the gap in protection for intact areas within the Urban Conservancy environments (and to a lesser degree the Shoreline Residential environments), which regulate uses within them consistent with the developed areas – not consistent with the intact areas.

Since most jurisdictions have extensive areas of developed shorelines, it is critical to design the shoreline environments to protect the remaining ecological functions in the jurisdiction. This is accomplished by identifying the well-functioning areas and designating them with the Natural and Conservancy environments (or an equivalent), and equally importantly, by limiting uses in the Management Policies and use limits so these areas are not converted to higher intensity uses. *By protecting the remaining areas of higher functions with protective environments, the SMP accomplishes the avoidance and minimization steps in mitigation sequencing.*

If the higher functioning areas are allowed to convert to higher intensity uses in the use limits, they will experience a loss of ecological functions that site-specific project mitigation almost certainly cannot mitigate due to elimination of wildlife habitat, increased disturbances that drive off wildlife, increases in impervious surface, and loss of vegetation both inside and outside the buffer. The loss of these areas greatly complicates the Cumulative Impacts Analysis and Restoration Planning, because it is extremely difficult to replace these ecological functions and natural features.

### **Natural and Shoreline Residential Conservancy Environments must be more protective**

We have reviewed the environments map in comparison to the air photos on Google Earth for Bainbridge Island. While not 100% perfect, there is a visible distinction between the Shoreline Residential and Shoreline Residential Conservancy environments that appear to follow common on-the-ground characteristics. This is particularly important since the buffer system is based on the environments and cannot work if the environments do not match the vegetation characteristics and development pattern.

However, the same cannot be said for the distinctions between Shoreline Residential Conservancy, and the next protective upland environment – Natural. (We exclude Island Conservancy from the protective environment class since it is applied only to public and private park-like areas, regardless of their natural character, and allows intense recreation uses.) Our overall concern is that areas with intact vegetation need to be designated with environments that will protect that vegetation from intense development that will otherwise eliminate it. Protecting our remaining intact vegetation in the shore area of Puget Sound is critical in the effort to recover the health of the Sound, because so much of the shoreline has been degraded.

### **Environment criteria should not overlap.**

The draft SMP environment system suffers from several problems in the protection of areas with intact vegetation, each of which are described in detail in our attached guidance document addressing environments:

- (1) The draft SMP uses key designation criteria that are the same for Natural, Island Conservancy, and Shoreline Residential Conservancy, effectively making the designation of any particular site discretionary. Protecting intact shorelines is not discretionary.
- (2) The Shoreline Residential Conservancy environment was subjected to a self-described “Designation Strategy” described in the SMP. The strategy provides many ways to avoid

designating intact areas as Natural. It effectively eliminates the meaningful use of the Natural environment, and places the remaining intact areas in the Shoreline Residential Conservancy environment. However, WAC 173-26-211(5)(a)(iii) provides that a “natural” environment designation should be assigned to shoreline areas if the “shoreline is ecologically intact” or if other criteria are met. So we recommend that intact shorelines be designated as Natural.

- (3) The Shoreline Residential Conservancy environment incorporates a wide range of development intensity from heavily developed residential areas, to largely intact segments with a sprinkling of residences within them, to large segments of intact shorelines. Yet using the same set of regulations for both developed and intact areas cannot protect the intact areas, as required in the SMP Guidelines.
- (4) The use limits for Shoreline Residential Conservancy are developed to allow continued development of the most intensely developed locations found in it, but the same use limits are applied to the intact areas.
- (5) The buffer system uses the environments as a basis to set buffer widths, but the widths set for Shoreline Residential Conservancy cannot protect the intact areas found in it, as these areas have intact vegetation wider than the buffer. The buffers range from 75’ to 115’ to 150’. The buffer system could work if the environment were limited to more distinctly developed areas, and the more intact areas were designated as Natural.
- (6) The implementation of the Natural environment is used only for pristine areas, which is contrary to both the draft SMP section for the environment, and the SMP Guidelines.<sup>6</sup> Sites with very low densities of residential development, and limited linear development (a road, trail, armoring) that are otherwise intact should be designated Natural.

The Shoreline Residential Conservancy, Island Conservancy, and Natural environments include several designation criteria that are the same.

- ***Shoreline Residential Conservancy*** includes several criteria from the SMP Guidelines recommended Urban Conservancy environment, but then applies it to residential areas. At the same time it includes several criteria, and even lists from the SMP Guidelines recommended Natural environment: areas with severe limitations, steep slopes and landslide hazard areas, geo-hydraulic shoreforms (e.g., accretion beaches, point bars, spits), wetlands and estuaries, biodiversity maintenance (high habitat value areas), and areas that retain important ecological functions, even though partially developed. Following the SMP Guidelines would place these areas in the Natural environment, not the Shoreline Residential Conservancy environment.
- ***Island Conservancy*** appears to be based on the SMP Guidelines recommended Urban Conservancy. The designation criteria limit it to public lands, and voluntarily designated lands. Thus it is mainly intended for parks, and allows intensive uses such as boating facilities and structural modifications. However, just like the Shoreline Residential Conservancy environment, it includes many of the same criteria from the SMP Guidelines recommended Natural environment that are listed above. Following the SMP Guidelines would place some of these areas in the Natural environment.
- Lastly the ***Natural*** environment description does a good job of implementing the SMP Guidelines environment. It too includes criteria and lists for sensitive shorelines that are similar to the other two environments. However, the criteria are not applied on the ground (i.e., on the maps) because those same criteria are used in the other environments to designate these lands as Shoreline Residential Conservancy and Island Conservancy, instead of Natural.

These overlapping policies for the three shoreline environments builds in a discretionary element such that any intact area can be arbitrarily designated as Shoreline Residential Conservancy or Island Conservancy instead of Natural. Such discretion does not exist in the SMP Guidelines – protecting intact areas is not discretionary. We recommend that the Shoreline Residential Conservancy and Island

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<sup>6</sup> WAC 173-26-211(5)(a)(iii).

Conservancy environments be edited to remove the criteria that are intended for the Natural environment.

**Designation Strategy should be eliminated.**

The environment system is bolstered by the draft SMP's stated "designation strategy," which specifically uses a "broad brush approach" contrary to the SMP Guidelines. WAC 173-26-211(5)(a) states that the Natural environment should be used down to the parcel level. A broad brush approach cannot meet this requirement. In addition, according to the guidelines, the area doesn't have to be in pristine condition, just "relatively free of human influence."<sup>7</sup> An area should also be designated Natural based on whether it "is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety." Such is the case in many of the remaining intact areas due to steep slopes that are common, and the rare occurrence of large blocks of intact vegetation remaining along the island's shoreline.

The "designation strategy" also includes 9 strategy items. While all of them can be used to designate an intact area as Shoreline Residential Conservancy rather than Natural, several go to interesting lengths to do so. Some are even default designations unrelated to the on-the-ground natural character – using the underlying zoning or public ownership. All these strategies will specifically allow intact areas to be placed within the Shoreline Residential Conservancy environment, but then the SMP establishes use limits to allow intensive residential development in those intact areas. *We recommend* that the designation strategy be eliminated.

**Specific Natural environment recommendations.**

*We recommend* that the following largely intact areas be designated as Natural, because they have dense intact vegetation or other sensitive features indicated in the SMP Guidelines as needing a Natural environment. These areas meet the criteria found in the draft SMP for the Natural environment. However, most of them are proposed as Shoreline Residential Conservancy; though a number are Island Conservancy. The allowed development in Shoreline Residential Conservancy is based on the highly developed portions, such that the intact areas can also be developed to that intensity.

Island Conservancy could be used for some of these areas, but only if its description is changed to apply more broadly to non-park-like areas and to implement the use limits and very-low-intensity limits of the SMP Guidelines Natural environment. As currently applied on the map and implemented in the use limits, the Island Conservancy appears intended for more active recreation areas, so the intact areas within it also need to be designated Natural.

- Inland-most tip of Manzanita Bay – approximately 300 feet between residences is intact and should be Natural.
- North side of Battle Point – approximately 500 feet between residences is intact and should be Natural.
- The estuarine tips of Fletcher Bay, especially those segments with intact vegetation, should be Natural.
- The 1100 feet along Gazzam Lake Park, north of the subdivision at the end of Crystal Springs Drive, is undeveloped and should be Natural.
- There is an estuary at the east end of Point White Drive. The estuary and the segment to the west should be Natural. The segment appears to have limitations such as wetlands and beach frontage that fill shoreline jurisdiction, other than the road.
- Large parts of the ~3/4 mile Fort Ward Park shoreline should be Natural except for the intensively developed recreation areas. These areas are completely intact within shoreline jurisdiction, other than the road.

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<sup>7</sup> WAC 173-26-211(5)(a)(i).

- The ~1/4 mile segment of Country Club Drive, west of Upper Farms Rd. is completely intact within shoreline jurisdiction, other than the road.
- Most of the wetland/estuarine tip of Blakely Harbor should be Natural except for the intensively developed recreation areas.
- The harbor-side of the point (name unknown) north of Blakely Harbor is undeveloped within shoreline jurisdiction for 750 feet and should be Natural.
- North of Yeomalt Point, 1000 feet of bluff face between Pleasant Lane and Broomgerrie Rd. is intact within shoreline jurisdiction and should be Natural.
- The Murden Cove estuary is largely undisturbed within shoreline jurisdiction, except for about 4 houses at the very edge of shoreline jurisdiction. This area should be Natural.
- A ~3/4 mile bluff segment along Rolling Bay from Sunrose Lane to just south of Winthers Road is completely intact within shoreline jurisdiction and should be Natural.
- Much of Bloedel Park is intact inside shoreline jurisdiction and should be Natural, except for the intensely used recreation areas.
- Approximately 800 feet at the end of North Street is intact and should be Natural.

The ecological value of these intact areas is important for the protection of Bainbridge's Puget Sound shoreline, yet they are purposeful designated to allow development. It is critical for meeting the SMP Guidelines and the no-net-loss requirement that the city re-evaluate these "broad brush" segments, and break them into areas with consistent development patterns to differentiate the intact areas from the developed areas. These highly functioning areas need better protection than that provided by the Shoreline Residential Conservancy environment, which allows several intense types of development in them. Unless the intact areas are re-designated Natural, substantial changes will be needed throughout the regulations to limit development in the Shoreline Residential Conservancy environment so that it can protect the intact areas within it. If these areas are placed in environments that allow their conversion to human uses (as they are currently proposed), the lost ecological function and habitat areas must be accounted for in the Cumulative Impact Analysis. Compensation for the loss of such areas is nearly impossible at the project level and will fall to the city to pay for it.

#### High Quality Aquatic Areas Need Better Protection

We are pleased to see that the city is attempting to implement the new SMP guidelines requirements to identify aquatic areas that are highly functioning and provide special protection for them. We too recommend not treating all of the state shorelines with the same Aquatic environment, policies, and regulations. This city does this using the Aquatic Conservancy environment. While we support this approach, we also see there are "Potential Aquatic Conservancy" areas mapped. The ecological importance of these areas is well documented. ***We recommend*** that they be designated Aquatic Conservancy.

While we support the use of the Aquatic Conservancy, it is limited in application to estuary and lagoon situations. Other locations of higher function are not identified and protected. Our typical recommendation for these situations is a strategy that the SMP partially uses – using the adjacent upland environments as a proxy for more detailed limits and standards for the in-water areas. This of course assumes that the intact upland areas are accurately designated so they can serve as the proxy of higher quality water areas. ***We recommend*** adding a requirement that in-water development must also be consistent with the use limits and regulations of the adjacent upland environments. This could be repeated in all the different use limits sections for the different types of development, but would be better placed as a single standard with the other General Regulations that apply to all development (possibly in the Environmental Impacts section). This appears to be considered in a few limited instances, but we recommend it be a systematic strategy for Aquatic and Aquatic Conservancy.

### ***Uses That Damage the Environment Must be Prohibited or Include Special Protections***

A number of our comments in this letter are based on incorporating the SMA preference of water-dependency in both use limits and the vegetation management system. The draft SMP does a good job at accurately incorporating water-dependency into many uses, with a few exceptions for which we have comments below. But these points are also relevant to the issue of buffers, which are discussed in the next section.

#### **Background**

The origins of SMA preferences are found in the policy statements of RCW 90.58.020. Paragraphs 2 and 3 are described in our guidance documents. Paragraph 4 - the implementation paragraph - is discussed below and provides specifics for how to use preferences. Additional requirements dealing with preferences are provided in the SMP Guidelines.<sup>8</sup> And our guidance document on buffers provides additional discussion about the role of water-dependency for buffers. Water-dependency is critical in developing a SMP that accomplishes mitigation sequencing.

Both the SMA and the SMP Guidelines have explicit requirements establishing ecological protection, water-dependency, and public enjoyment preferences. They are based on the fourth paragraph of the SMA policy section, which is the implementation statement [with emphasis added]:

*“In the implementation of this policy the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state’s shoreline.”*

The SMP Guidelines principles for general use provisions (in WAC 173-26-241(2)(a)) further provide that [with emphasis added]:

Shoreline master programs shall implement the following principles:

- (i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state’s shoreline areas. ....
- (iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state’s shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses. ...

The two preferences for water-dependency and protection from pollution and environmental damage incorporate the understanding that uses needing to be in or near the water are preferred but inherently can damage the environment. Of course, like all development, the SMA and SMP Guidelines require that they must minimize the damage and compensate for their impacts. Conversely, uses that don’t need to be in or near the water must control pollution and avoid damage to the environment to be considered preferred uses. Otherwise they are non-preferred, because the damage they cause to shoreline resources is the opposite of the SMA Policy. Such uses must be prohibited or carefully controlled with special requirements. They cannot be treated the same as preferred uses are treated; otherwise there is no effect to the preference.

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<sup>8</sup> WAC 173-26-251.

Since many ecological functions come from native intact vegetation,<sup>9</sup> degrading that vegetation (including further degrading already degraded vegetation) causes damage to the environment. This is important for two reasons.

- (1) Developing intact areas with intensive uses removes large areas of vegetation. This initial stage of developing land causes the largest loss of ecological functions on a site, and is of a scale that cannot be compensated for on-site. So designating the remaining intact areas with a Natural environment, and then limiting uses and modifications to low intensity stops the loss of functions. The SMP Guidelines limit uses in the Natural areas to those that are very-low intensity (including low density residential), and are either water-dependent or will prevent damage. Other uses should be prohibited.
- (2) Where development is allowed, uses and development that meet an intact science-based buffer go far in preventing damage. If a development has no need to be in the water or providing access to the water, it should be outside the buffer, where it will cause the least amount of damage. Development within a science-based intact buffer that is not a water-dependent use causes damage, is contrary to SMA policy, and is non-preferred. It must be prohibited or somehow carefully limited, as the SMP Guidelines require. Thus, water-dependent uses need to be in the buffer and are preferred; but other uses can meet the buffer while still maintaining their function. Non-water-dependent uses must prevent harm to the environment, and the primary means of doing this is to meet the buffer. Of course degraded buffers, whether small or science-based, cannot work to mitigate development impacts. As an extreme example, even a completely concreted shoreland area that is converted from a use with low human presence to intense human presence will have new impacts, because the human presence will drive off or disturb sea life.

If an intact science-based buffer is not applied, the development will harm the environment - so there must be a good reason to allow it. This is why the SMA establishes the preference for water-dependent uses, and establishes the Shoreline Variance and Conditional Use Permit processes – they ensure there is a hardship or other good reason for not meeting a buffer (or other regulation). Areas of existing development inside a buffer width are one reason. And of course, like all development, the SMA and SMP Guidelines require that the impacts be compensated for.

#### SMA Preferences Must be Implemented in the SMP

The draft SMP suffers from several problems that prevent it from implementing the three main SMA preferences: (1) preventing harm from intensive uses to intact areas, (2) water-dependency, (3) preventing harm and pollution from non-water-dependent uses and their modifications.

*Intense uses should not be allowed in intact areas.* Above, we discussed the problems with identifying and protecting intact areas on Bainbridge Island with the Natural environment. The development allowed in intact areas within the other environments is not of low intensity, as required by the SMP Guidelines, and does not protect the existing vegetation both inside and outside a science-based buffer width. Intense uses are allowed systematically in Shoreline Residential Conservancy, intense recreation and boating facilities are allowed in Island Conservancy, most structural modifications are allowed in the three conservancy environments (including Aquatic Conservancy), and the buffers for the three conservancy environments cannot protect the intact areas in them. Our comments on use limits, below, describe specific problems in more detail. In summary, many types of uses are allowed or not allowed in the environments as a whole (or with little definition), even though

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<sup>9</sup> EnviroVision, Herrera Environmental, and Aquatic Habitat Guidelines Program, *Protecting Nearshore Habitat and Functions in Puget Sound* pp. II-37 – II-40 and pp. III-33 – III-35 (October 2007, Revised June 2010). Accessed on December 9, 2011 at: <http://wdfw.wa.gov/publications/pub.php?id=00047> and on the CAO on CD enclosed with the paper original of this letter in Data CD 1 in the “Fish & Wildlife Habitat\Marine & Saltwater Habitats” directory with the filename: “wdfw00047.pdf.”

some specific uses are more intense or more damaging, and others less so. The more intense and damaging uses should be prohibited in the protective environments, and should be conditional uses in certain other environments. Including intact areas in more protective shoreline environments would reduce the importance of this problem.

One reason for the limited application of the Natural environment, despite the designation criteria, is that the presence of a house appears to be used to exclude the area from the Natural environment, as illustrated in the use limits which prohibit residential uses. The SMP Guidelines do not require the site to be “pristine”, and allows single family residences as a conditional use.<sup>10</sup> We support use limits that protect the Natural environment, but not those that are used to prevent its application to intact areas.

*Water-dependency is well incorporated in the draft SMP.* As previously noted, the SMP does a good job of incorporating water-dependency into most use limits, though we do have a some specific recommendations for development standards. They mainly deal with lack of definition in specific use categories.

*The draft SMP does not ensure prevention of harm from non-water-dependent uses.* The problem is in applying the water-dependency and intensity use limits of the primary use to the modifications that are developed to support the primary use. More specifically, non-water-dependent uses (especially residences since they are the most common development) AND the modifications built or carried out to support them, must prevent damage to the environment (not just compensate for damage done). This includes all modifications in the water or a science-based buffer width, such as armoring, patios, clearing vegetation, grading, and docks. One exception is that single family docks that are for boating (not other purposes) are considered a water-dependent use. Modifications for non-water-dependent uses that cause damage are supposed to be prohibited or have careful criteria, such as variances or conditional use permits.

### ***Improve Buffer Requirements to Ensure Avoidance and Minimization***

**Background** Our guidance document on buffers describes the many different situations that the buffer and vegetation management system must meet. All of them are common on Bainbridge Island. These include areas that are completely intact within shoreline jurisdiction, areas heavily developed along the water but intact landward, and areas heavily developed throughout shoreline jurisdiction. These are challenging situations, but there are solutions that meet the SMA science requirement. The proposed buffer system is unique among the SMPs we have reviewed. In many ways it can address the different buffer situations on Bainbridge Island better than a typical buffer system. There are some gaps, however, that need to be closed and we recommend supplementing it to deal with all situations present on Bainbridge Island.

As described above, the water-dependency preference is important in building mitigation sequencing and no-net-loss into the SMP. As our guidance document on buffers describes, buffers are a critical part of implementing the water-dependency preference. When intact and based on science, they provide an initial step in avoidance and minimization of the impacts of non-water-dependent development, but only if applied consistently. Specifically, uses that do not have to be in or near the water (water-enjoyment, water-related, and non-water-oriented uses) cannot cause damage or pollution without a good reason. So they must meet the buffer and take other actions to prevent damage and pollution. This applies to residences and their modifications, and to recreation use (including trails) and their modifications – these are the most common forms of development on Bainbridge Island. Since the SMP Guidelines state that the SMP should “prohibit or apply special conditions” to uses causing damage or pollution, exceptions to applying buffers should be limited to

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<sup>10</sup> WAC 173-26-211(5)(a)(iii).

when there is a good reason that can apply “special conditions.” These exceptions are summarized below and are included in our recommendations:

- Water-dependent uses by their nature have to be in or near the water.
- Linear facilities (roads and utilities) are not water-dependent, but by their linear nature require them to cross water features, and provide access or services to the water. The SMP Guidelines have specific avoidance and minimization requirements for them.
- Structures that are threatened by erosion may need shore stabilization.
- Hardship situations may require granting relief from the buffer standard through the Variance or Conditional Use Permit criteria.
- Maintenance and operations of existing development (but not expansion or replacement)
- Some buffer systems are detailed enough to limit application of small buffers to certain areas. But they must provide detailed development standards that protect shorelines, and (most importantly) require compensatory mitigation for the inherent impacts of development.

### Vegetation Management Reorganization and Text Recommendations to Clarify Buffers

The Vegetation Management section found on the website is Section 4.1.3. It appears to include several good features, but this is unclear because of the scattered and duplicative nature of the regulations found in it. It is very difficult to determine if the good protection measures actually apply, or if there are outright or nuanced waivers and exceptions to them. For example, there are several sections that waive the buffer (General reg #3, Location and Design reg #6, General Alteration Standard #2, the Residential Alteration Standard, the Commercial Alteration Standard, and the Park Alteration Standard). It may be that these are intended to be descriptions of what can be allowed to reduce the buffer, or allowed through a permit review, but they are written in such a way that the buffer doesn't apply to the lists. While some items in the lists are descriptions of maintenance and operation of existing development, some items allow waiving the buffer for new development or views. As another example, there is a 65% coverage concept scattered throughout the standards, which is unclear if it applies to intact areas and protective environments. And exceptions to rules are found throughout the section.

While there are many good standards, one of our biggest concerns is that standards addressing similar issues are scattered throughout the section. A structure is needed to ensure there is a comprehensive treatment provided for each of the issues. Because of the scattered nature, the only way we can make comments we can be sure will fit into a comprehensively protective system is to provide recommendations for reorganization and grouping of similar issues, accompanied by text edits. Our recommendations are grouped and organized to provide a framework that is clear in its intent and application. But we first provide an overview of the organization that we recommend:

- 4.1.3.5 – Reserve this for General Buffer Standards establishing the overall approach of vegetation management. Some of these standards are found in the other two sections and should be moved to this section. It must implement the vegetation policies and SMP Guidelines, which cover all vegetation, especially native vegetation inside and outside the buffer. It should establish the buffer, and the general requirements to protect vegetation. It should specifically state the limited instances of what does not have to meet the buffer. Lastly it should describe the details of how vegetation-related compensatory mitigation is to be accomplished - and not just for development in the buffer.
- 4.1.3.6 - Delete this section. Move the buffer standards to the general requirements. Move the Shoreline Structure Setback Line to be with the reduction options, below.
- 4.1.3.7 – Use this section for Buffer Reduction options. It needs to be clear that there are some criteria to ensure there is a good reason for granting the buffer reduction and causing additional damage to the environment.
- 4.1.3.8 / 4.1.3.9 / 4.1.3.10– Delete these small sections, and move the lists of allowances not needing to meet the buffer to the Buffer Reduction section.

Our specific recommendations are below. Sections that are rearranged will need to be renumbered. Indents indicate subparagraphs of the more general requirement. The full SMP text is not provided unless we recommend edits using strikeout and underline format. Explanation of our edits is provided in *bold italic notes* with the text.

4.1.3.1 Applicability – as proposed

4.1.3.2 Goal – as proposed

4.1.3.3 Vegetation Conservation Management Policies – as proposed, though edits may be needed to accurately support the final vegetation system.

4.1.3.4 Regulations – Exceptions – as proposed, though it seems redundant with other sections.

4.1.3.5 Regulations – General

#. *Overall vegetation protection.* Place 4.1.3.5.2 here: “~~Free retention outside the SB;~~ ~~but~~ Development within the shoreline jurisdiction; shall be located and designed to protect existing native vegetation from disturbance as much as possible. Buffer vegetation shall also be protected by the buffer standards. Development shall compensate for impacts to all existing native vegetation areas to meet the ~~vegetation management~~ standards of No Net Loss of ecological function, Section 4.1.2. See Table 4-2. The Administrator may require site plan alterations to retain significant trees, including minor adjustments to the location of building footprints, adjustments to the location of driveways and access ways, or adjustment to the location of walkways, easements or utilities.”

*Note: Grammatically, “tree retention” does not have to meet standards, “development” does. All existing native vegetation needs to be protected and subject to no-net-loss, as intended by the policies. The no-net-loss standards are much broader than vegetation, and broader than just the buffer. The administrator’s authorization should extend to all native vegetation areas.*

*Note: If native vegetation outside the buffer is protected, the common situation of intense development along the water-line with extensive intact vegetation behind it will be addressed by the SMP.*

#. *Clearing and grading plan.* Place 4.1.3.7.2.a here. It establishes a clearing and grading plan requirement that is needed. It currently applies only within the shoreline buffer (SB), but should apply within all shoreline jurisdiction.

#. *Establish buffer.* Place 4.1.3.5.1 here. It establishes the SB, Zones 1 and 2, and refers to Table 4-2 for dimensions.

*Note: Since Table 4-2 cannot be found on the website, we assume that the table in the Herrera memo is being used.*

#. *Describe buffer zones.* Place 4.1.3.6.1.a & b here. They describe the two zones:

“Zone 1 shall extend to the limit of existing native vegetation (trees, shrubs and native groundcover, excluding invasive / noxious species) or the width indicated in Table 4-2, whichever is greater, to a maximum distance of the SB as determined through a site-specific analysis of existing vegetation conditions. This may result in islands of developed and maintained areas within Zone 1.”

“Zone 2 shall be established immediately landward of the Zone 1 and extend no further than the established SB.”

*Note: A backstop of the width in the table is needed. As written, if there is no native vegetation (the case in many SR environments), Zone 1 would equal zero, and all the compensatory enhancement of Zone 1 indicated in the regulations would have no effect. Protection of Marine Riparian Functions in Puget Sound, Washington includes recommended buffer widths to protect Puget Sound.<sup>11</sup> If islands within intact vegetation are allowed, the*

<sup>11</sup> Jim Brennan, Hilary Culverwell, Rachel Gregg, & Pete Granger, P.L., Protection of Marine Riparian Functions in Puget Sound, Washington pp. 102 – 103 (Washington Sea Grant, Seattle, WA for Washington Department of Fish and Wildlife: June 15, 2009). Accessed on Dec. 19, 2011 at: <http://wdfw.wa.gov/publications/00693/wdfw00693.pdf> and on the CAO on CD enclosed with the paper

*common situation of scattered residences within intact vegetation will be addressed by the SMP.*

- #. *Establish buffer table.* Place 4.1.3.6.3 here. It describes the use of Table 4-2.
- #. Place 4.1.3.6.2 here. It establishes area amounts for buffers based on the table widths.
- #. Place 4.1.3.5.1.a here. It describes alternative buffers using the Habitat Management Plan option. This is not the same as a buffer reduction, which is described elsewhere.
- #. *Vegetation protection in the buffer.* Place 4.1.3.5.3 here. It establishes the care and the protection of the vegetation. Also add in 4.1.3.6.4 (the first one – there are two with the same number) by deleting the intro statement and incorporating the language in subparagraph (a) & (b) into this section’s intro paragraph. This standard would include the following subparagraphs for things not applicable to the buffer requirement:
  - #. Add a new allowance for water-dependent uses here: “Water-dependent uses and associated modifications that cannot be located outside the buffer”
  - #. Add a new allowance for linear uses here: “Linear uses (such as transportation and utility) and associated modifications that meet the other standards of this SMP and cannot be located outside the buffer.”
  - #. Add a new allowance for shore stabilization here: “Shore stabilization modifications that meet the other standards of this SMP and cannot be located outside the buffer.”
  - #. Add a new allowance for hardships here: “Development for uses and modifications that have been approved for a buffer reduction or alteration through a Variance or other hardship review.”
  - #. Add a new allowance for de minimus alterations here: “The following minor vegetation alterations that meet the other standards of this SMP.”
    - #. Place 4.1.3.5.3.a here. It allows the maintenance of existing residential landscaping.
    - #. Place 4.1.3.5.3.c here. It allows weed control and replanting in the buffer.
    - #. Place 4.1.3.5.3.e here. It allows the removal of hazard trees.

*Note: Delete 4.1.3.5.3.b. It allows “maintenance trimming”, but all such instances are already covered in the three items above – especially the landscaping maintenance allowance item. By allowing “trimming” of vegetation “less with than 3 inches in diameter,” it covers all small trees, shrubs and groundcover. Allowing their removal is unacceptable as a waiver of the buffer standard as it will adversely impact shoreline functions.*

  - #. Place 4.1.3.5.3.d here. It allows the installation of a trail – however edits are needed to make it a de minimus alteration: “For single-family residential property, construction of one non-structural, pervious surface trail for non-motorized use, provided the trail is no wider than four (4) feet, no structural elements (concrete features, vertical sides, hand rails, stone steps and walls, etc.) are built, and the vegetation trimming is limited to four (4) feet one foot on either side of the trail; and further provided that no significant trees are removed and the trail is not constructed in a geologically hazard area. More substantial trails are linear facilities that must meet buffer requirements, except for water crossings and access to the water.”

*Note: Minor non-structural trails such as these may be acceptable in the buffer. But more significant trails need to meet the buffer where possible, meet other trail standards, and meet the avoidance/minimization/compensation criteria. The proposed 12-foot clearing width creates a wide corridor that cannot be considered a de minimus impact at a cumulative scale for all properties.*

- #. *Specifics about compensatory mitigation for vegetation.* Place 4.1.3.5.4 here. It describes compensatory mitigation for vegetation purposes. Several other sections dealing with mitigation should be moved to be with this section.

~~“When v~~Vegetation compensatory mitigation is required for new development pursuant to the No Net Loss and Mitigation requirement Section 4.1.2. Compensatory mitigation for development impacts shall be focused primarily, though not exclusively, on vegetation enhancement. Vegetation enhancement alone may not compensate for all impacts, given the scale of a project, or the lack of enhancement locations. In such instances, other compensatory mitigation may also be required to achieve no-net-loss of ecological functions.

#. ~~The compensatory~~ ~~the~~ mitigation ~~plan~~ shall include new plantings in proportion to the identified impact in the following order of preference and in accordance with Section 4.1.3.”

- #. Place 4.1.3.5.4a-c here. They describe the preference for areas closer to the water.
- #. Place 4.1.3.5.4.d here, but it needs edits: “Outside of the SB, planted in a manner that increases existing native vegetation areas, and promotes a contiguous vegetated corridor to the shoreline.

*Note: As we have previously commented, this section is about compensatory mitigation, not other types of mitigation, and should be described as such. As written, paragraph (d) allows any vegetation to be used. But compensatory mitigation should use native vegetation – otherwise it is just re-landscaping the yard, not compensating for impacts. Nonnative vegetation does not provide the same functions as native vegetation and also adversely affects the shoreline environment.<sup>12</sup>*

- #. Add a new section that consolidates the different compensatory mitigation standards and addresses the different vegetation situations. The system should include ratios that capture the greater importance of vegetation in proximity to the water, the failure rate of compensatory mitigation, increased human activity, and losses due to differences between mature and replacement vegetation.

“Compensatory mitigation shall be commensurate with the impacts and importance of the development, and the importance of vegetation being compensated for, as provided below:

- #. “In the Urban and Shoreline Residential environments, new development of more than 200 sq. ft. of new use area or impervious surface (measured cumulatively from DATE) shall compensate for impacts by re-establishing the vegetation in a 20-foot width from the water for 65% of the water frontage. The remaining non-vegetated areas shall be focused around access facilities and existing use areas.”

- #. Place 4.1.3.6.4 here, with edits: “To alter or reduce the SB required depth in the Urban and Shoreline Residential environments, Zone 1 must be restored in accordance with the provisions of Section 4.1.2, No Net Loss and Mitigation, and ~~the following: a. Zone 1~~ shall be planted to obtain 65% native vegetation coverage with 90% survival within 10 years; ~~consisting of a mix of native trees and shrubs or other approved native vegetation appropriate to the specific site conditions as specified in this section;~~

*Note: The above two mitigation items come from the concept developed by Issaquah for their heavily developed shorelines, and uses the 65% concept in the draft SMP. It establishes a rough proportionality for compensatory mitigation using vegetation. But the concept only works where buffers are heavily degraded, such as the Urban and Shoreline Residential environments. The mitigation items below address other areas where there is more intact vegetation.*

*Note: As written the 65% coverage can be delayed for 10 years. The survival rate makes the provision more similar to state and federal time requirements.*

<sup>12</sup> Jim Brennan, Hilary Culverwell, Rachel Gregg, & Pete Granger, P.I., Protection of Marine Riparian Functions in Puget Sound, Washington p. 94 (Washington Sea Grant, Seattle, WA for Washington Department of Fish and Wildlife: June 15, 2009).

#. Development of vacant lots in the Natural, Island Conservancy, and Shoreline Residential Conservancy environments shall provide enhancement of degraded vegetation conditions within the SB, and any development within the SB shall be accompanied by additional compensatory mitigation.

*Note: Establishing new development on vacant land adds a whole suite of impacts that were not there before. Meeting a buffer width but leaving degraded vegetation degraded cannot compensate for the new impacts. The buffer must be made to function.*

#. Compensatory mitigation for expansions of existing development inside the SB within the Natural, Island Conservancy, and Shoreline Residential Conservancy environments shall compensate for impacts using a vegetation planting ratio of 2:1 for all new use areas, and areas of new impervious surface.

#. In addition to the above, compensatory mitigation for the loss of existing native vegetation shall be provided. Removal of existing native vegetation areas outside the SB shall be compensated at 2:1. Removal of existing native vegetation areas inside the SB shall be compensated at 3:1. Note: This mitigation item addresses ratios to account for differences between existing and replanted vegetation character, as described above.

#. In addition to the above, compensatory mitigation for impacts of development in the water shall either plant vegetation at a ratio of 3:1 for all new use areas (including areas occupied by boats, swim areas, and similar use areas), or by removing structures, fill, armoring, etc. at a 1:1 area ratio and revegetating the area.

#. Place 4.1.3.6.5 here. It describes the composition of vegetation plantings, but need edits: “All new plantings ~~in the SB unless provided for in zone-specific requirements, shall meet the requirements of No Net Loss and Mitigation requirements, Section 4.1.2, and for compensatory mitigation~~ shall include a native plant community approach of multi-storied, diverse species native to the Central Puget Sound.

*Note: Grammatically, plantings don’t need to meet no-net-loss requirements, the development does, which is stated elsewhere. Plant community requirements normally apply to compensatory mitigation. Several other replanting statements exist throughout the section. Some of these allow compensatory mitigation plantings to be non-native ornamentals, and should be deleted because they negate the point of compensatory mitigation and just provide new yard area. Also, insect and animal species are inter-dependent on native plants, and often can’t survive or have lower survival rates with non-native plants.*

#### 4.1.3.7 Buffer Reductions

#. *Rules and limits for reductions.* Place 4.1.3.7.2 here. It should be edited to describe the limits of buffer reductions. “No clearing, grading, or construction may be undertaken within the SB, except the following activities ~~as prescribed below when approved through a Shoreline Variance review,~~ and pursuant to Section B, Clearing and Grading. Such activities may also require a clearing permit pursuant to BIMC Chapter 15.18. All reductions shall be accompanied by compensatory mitigation.

*Note: As written the list items are allowed in the buffer simply for the asking. These reductions should be limited to Variance situations to ensure there is a hardship or real need. If a variance is not used, some other criteria needs to be added to the SMP to ensure there is a hardship or need. It needs to be clear that any reduction must be accompanied by compensatory mitigation for its inherent impacts.*

#. Place 4.1.3.8.2 here, with recommended deletions. It allows residential development.

#. Place 4.1.3.9.1 here, with recommended deletions. It allows commercial development.

#. Place parts of 4.1.3.10 here, with recommended deletions. It allows placement of park development, but needs to be rewritten to be more similar to commercial development, which is correctly focused on water-dependency. *Note: As written, the park buffer reduction*

*provisions allow buffer development in deference to the park plan. This is an abdication of the shoreline protections of the SMA and SMP Guidelines in preference to a local park plan. All development, including parks, must be subject to the preferences for (a) water-dependent uses, and (b) protection of the environment from all other uses. Park plans do not have the same issues, orientation, or requirements that the SMA requires.*

*Note: Many of the reduction items listed in the General allowances, Residential allowances, Commercial allowances, and Park allowances are items we previously discussed as not being subject to buffers. These include: maintenance activities, water-dependent uses, linear facilities, armoring, etc. With our edits, these items would already be described as not subject to the buffer requirements and are not needed in these sections. All of the remaining items would normally need to meet the buffer requirements. If they need to be in the buffer, they must be subject to a reduction review process. Specifically, non-water-dependent uses cannot be allowed to cause impacts for no good reason. All of the remaining items can be consolidated into the above buffer reduction section.*

*Note: Buffer clearing is allowed for views in two instances. One is titled “View Maintenance” but there are no standards limiting clearing to existing views, and it allows 20% clearing of the SB down to 65% of canopy coverage. The other instance is that pruning of buffer trees is allowed for view enhancement and other purposes. Both of these standards sacrifice ecological function for views of non-water-dependent uses, in contradiction to the SMA. Neither the SMA nor the SMP Guidelines provide protection of individual views – certainly not at the expense of ecological functions. We recommend that the first allowance be eliminated since existing landscaping can already be maintained. This allowance will have the most damage in the Shoreline Residential Conservancy, Island Conservancy, and Natural environments, where intact vegetation still exists.*

*Note: The Residential allowances and Park allowances both include provisions to allow non-water-dependent uses to construct structures and modifications in or near the water within percentage and square footage limits. The SMA only allows this for water-dependent uses or when there is some good reason, as we have described previously. We recommend that any application of these allowances be limited to the approval of Shoreline Variances to ensure there is a hardship situation present. They should not be granted for the asking.*

#. Place 4.1.3.6.6 here. This is the allowance for existing public roads to reduce the buffer - but it needs edits: “Buffers ~~that are not required to~~ extend beyond an existing public paved road may be reduced, if it or an area which is determined by the City ~~to be functionally isolated from the shoreline or critical area~~ that the area cut off by the road has little or no native vegetation and has no enhancement potential. In these limited instances the no net loss of shoreline ecological function and processes shall apply to properties within the shoreline jurisdiction.”

*Note: This cannot be an automatic reduction as it currently is written. The reduction process is needed, especially to ensure compensatory mitigation. This provision should certainly not be extended to non-road instances. We also believe being “functionally isolated” is not an adequate reason for eliminating buffer vegetation and its ecological function. More specific descriptions are needed to get at situations where such reductions are acceptable – specifically where development has eliminated vegetation or its future potential. Even native vegetation upland of a two or three lane road performs ecological functions and provides habitat. These are required to be protected, and less drastic approvals of vegetation removal need to be used. Our guidance document dealing with buffers provides extensive detail about the functions vegetation performs and the impacts of development. Many areas of the island have roads along the water and are otherwise completely intact within shoreline jurisdiction (including areas we recommend for Natural environments). As written, the provision allows the elimination of large areas of valuable native vegetation as an easy first option.*

- #. Place 4.1.3.6.7 here. This is the allowance for buffer reductions using the Shoreline Structure Setback Line provision.

*Note: This provision specifically allows “the standard shoreline buffers to be reduced or averaged.” However, almost all of the diagrams show the buffer being increased.*

*Consequently, those diagrams do not provide an accurate depiction of how the provision will work in the different situations shown in the diagrams.*

#### Table 4.2 / Herrera buffer table recommendations.

We believe the unique concept used in the buffer table and regulations has great potential, and we want to support it. But we are greatly concerned that the minimal Zone 1 area will become the default buffer for all areas. And the extensive concerns we have with the environment system, which the buffer system is tied to, encourage us to oppose the buffers rather than support them. Our support of the buffer system is contingent on the following elements being present:

- Ensure that environments are established on lands using consistent development patterns. Thus intact areas cannot be mixed with developed areas, as we have recommended above. If the intact areas in the Shoreline Residential Conservancy are not re-designated, the buffer width cannot protect them because it is only 75 feet in many areas.
- Ensure that the buffer widths are set to be consistent with the development pattern in the different environments. Environments that commonly have developed areas with structures 75-100 feet from the water should not have a 50 foot buffer. Either the environment or the buffer standard needs to be changed.
- The Shoreline Residential Conservancy is the environment most lacking in the above elements. If the intact areas are to remain in it, the buffer width must be increased to be more similar to the Natural environment to protect the intact areas.
- Add some sort of purpose statement to the Vegetation Management section (though we are not sure of the best location) that indicates that the buffer system is based primarily on the existing native vegetation patterns, and that Zone 1 is a backstop for a minimum buffer width and not intended to be the primary buffer width.

There are two columns in the table that establish buffer minimums and maximums. For each environment, there are complex and nuanced “conditions” in which the maximum buffer applies, and in which the minimum buffer applies. While we will provide our concerns with the different conditions used to determine the buffer, these concerns may have minimal effect due to a more systemic problem we see – the complex and nuanced conditions create gaps in the buffer system. There are no clear descriptions of what the different conditions are. And there is no direction provided for (a) when conditions in both columns apply, (b) when conditions in the same column apply, or most importantly (c) when the site does not meet any of the conditions listed. The conditions listed focus on special conditions, such as high bluff, 65% coverage, sand spit, etc., but other conditions are not listed. Thus for Shoreline Residential and Shoreline Residential Conservancy, the minimum buffer is given for Shallow lots or high bluffs conditions, and the maximum buffer is given for 65% coverage, low bank, marshes, lagoons, spit / barrier / backshores conditions. While there are other conditions besides the stated ones, those other conditions do not have a buffer listed.

It appears that the special situation that most concerns the city is the minimum buffer condition where there are shallow lots that cannot meet the buffer. We recommend greatly simplifying the table by focusing the minimum buffer condition on the shallow lots. Then the maximum buffer can be applied to the other conditions. Using this approach and our recommendations below, we recommend a greatly simplified table, which is provided at the end of our buffer table recommendations.

High Bluff – According to the Herrera memo, “high bluffs” are described as 5 meters or more. There is discussion of these bluffs being somehow stable without any criteria distinguishing them from unstable

bluffs – their height appears to be the only criteria. The memo then says they need narrower buffers because the bluff is more protective of the shoreline. However, our understanding of the scientific literature does not support such a position. In fact, for the very steep slopes of high bluffs, the science indicates that wider buffers are needed, not narrower ones, to protect property from damage.<sup>13</sup> High bluffs and other steep slope situations have a number of functions that are different from other situation.

- The instability of bluffs and steep slopes are highly sensitive to development – vegetation contributes to the stability, while its removal and the grading and drainage alterations from development reduce the stability.
- The extreme slopes increase the erosion potential off of the hillside, and vegetation retards that erosion.
- Organic inputs to aquatic areas are much larger on steep slopes than on shallow slope locations. Larger debris is more likely to roll, slide, or wash into the water. When leaf litter starts its journey to the ground from the height of a bluff, its odds of reaching the water from drift or wind events are much greater than from a normal tree height.
- Bluffs and cliffs themselves can form special habitats for some animals

Rather than needing narrower widths, these bluffs need wider widths – certainly wider than provided in the buffer table. Many jurisdictions in the Puget Sound region address this situation by establishing buffer systems that extend the buffer to the top of the slope. This is in addition to the geologic hazard requirements of avoidance and setbacks. Doing so protects the functions described above, and protects people from a hazardous situation. We recommend a similar strategy. In addition, many of the sites of our recommended Natural designations are high bluff situations. *We recommend one of two alternatives:* (1) that buffers for high bluffs be extended to the top of slope plus 25 feet (as many jurisdictions do), or (2) that buffers for high bluffs (including feeder bluffs) be grouped with other sensitive areas, as described below. There should be no separate buffer width for small lot situations along high bluffs, unless the sites are already developed Urban and Shoreline Residential environments, as described in detail below. Residences cannot be allowed to cause damage to the environment in these situations, and they certainly should not increase hazards to others and the shoreline environment.

High bluff, low bank, marshes, lagoons, spit / barrier / backshores. The specifics of these sensitive locations need better definition. It is unclear how the “slash” separated items in the list differ from the comma separated items as currently written in the draft SMP. All of these highly sensitive locations need a high level of protection. We recommend that these buffers be 150–200 feet, except for the already highly developed Urban and Shoreline Residential environments.<sup>14</sup> The SMP largely accomplishes this, except for Shoreline Residential Conservancy – possibly the most extensive environment. If the intact areas are moved to the Natural environment as we recommend, then the remaining areas are largely already developed with residences scattered within varying extents of intact native vegetation. In this situation, the proposed buffers of 115 feet or more can be adequate. If the intact areas are not moved, the buffer needs to be increased to 150 feet so that the standard buffer (including for developed lots) can protect intact vegetation. Lastly, small lots should not be used to reduce buffers in the Natural, Island Conservancy, and Shoreline Residential Conservancy (if the intact areas are not moved to Natural). Reductions should be limited to Variances, Conditional Use Permits, or other buffer reduction review processes. Careful reviews like these provide the “special conditions” that the SMA and SMP Guidelines require if development is allowed to cause impacts to the environment. A stand-alone Shoreline Exemption cannot do so.

<sup>13</sup> Jim Brennan, Hilary Culverwell, Rachel Gregg, & Pete Granger, P.I., Protection of Marine Riparian Functions in Puget Sound, Washington p. 27 (Washington Sea Grant, Seattle, WA for Washington Department of Fish and Wildlife: June 15, 2009).

<sup>14</sup> *Id.* pp. 102 – 103.

65%+ coverage of native forest and shrub vegetation. For reasons similar to those described above for the highly sensitive locations, well vegetated areas also need to be protected with science-based buffer widths. The buffer widths for these conditions in the highly developed Urban and Shoreline Residential environments appear adequate. However, largely vegetated areas in the Island Conservancy and Natural environments are not addressed in the table like they are in the other environments. We recommend that intact vegetation needs 150-200 foot buffers in those environments. But it is the Shoreline Residential Conservancy environments where the main problem occurs. One of the observable characteristics of the environment is that many areas are composed of extensive intact vegetation throughout shoreline jurisdiction with residences scattered within it. The larger areas of intact vegetation are the same areas we recommend designating Natural. If the intact areas are not removed from the Shoreline Residential Conservancy environment, the buffers need to be changed to protect these intact areas. Currently, the buffer is only 115' for developed lots and 75' for shallow lots, so the intact vegetation throughout the rest of shoreline jurisdiction can be eliminated. The 115' is used because it's the same as critical areas buffers. However, the science literature shows that larger buffers are needed. The proposed minimum buffer needs to be significantly increased to a size comparable to the Natural environment (150-200 feet), regardless of the presence of shallow lots.<sup>15</sup> A variance or other reduction review can be used in these situations. On the other hand, if the intact areas are removed from the environment, the remaining areas will be largely already developed sites, and the proposed buffer widths can be adequate.

Shallow lots. To reiterate, using shallow lots or deep lots should not be basis for establishing buffers in the Natural, Island Conservancy, or Shoreline Residential Conservancy environments. Reductions should be limited to Variances or other buffer reduction review processes – small buffers should not be used to avoid such review in these environments. However, shallow lot buffers may be acceptable in Shoreline Residential Conservancy if intact areas are moved to Natural.

The table below incorporates our buffer table comments for both simplification and text changes to the buffer widths. The highlighted Shoreline Residential Conservancy environments cover both situations of whether or not the intact areas are moved to Natural, as we recommend.

Environment	RPZ – Zone 1	Standard Buffer – Zone 1 and Zone 2	
		Minimum	Maximum
Urban	Minimum 30 feet from OHWM	Minimum 30 feet from OHWM	30 feet from OHWM
Shoreline Residential	Minimum 30 feet from OHWM up to standard buffer width	Shallow lot: 50 feet	All other conditions: 75 feet
<b>Shoreline Residential Conservancy (INTACT AREAS MOVED TO NATURAL)</b>	Minimum 30 feet from OHWM up to standard buffer width	Shallow lot: 75 feet	All other conditions: - Developed lots: 115' - Undeveloped lots: 150'
<b>Shoreline Residential Conservancy (WITH INTACT AREAS)</b>	Minimum 30 feet from OHWM up to standard buffer width	150'	150'
Island Conservancy	Minimum 30 feet from OHWM up to standard buffer width	150'	150'
Natural	Minimum 100 feet from OHWM up to standard buffer width	200'	200'

<sup>15</sup> *Id.*

### Wetland Buffers need to meet SMP Guidelines

Regarding wetland buffers, the SMA and SMP Guidelines direct the city to adopt development regulations to protect the functions of wetlands, to minimize impacts to them, and ensure no-net-loss of their ecological functions. The draft SMP uses the city’s Critical Areas Ordinance (CAO) to protect wetlands. However, CAO Section 16.20.160(7) specifically states that small wetlands (under 1000 s.f.) are not protected and may be eliminated. Furthermore, wetlands under 4000 sq. ft. are also allowed to be eliminated without first using avoidance options in mitigation sequencing. These two provisions are in direct contradiction to the SMA and SMP Guidelines and need to be excluded from incorporation into the SMP.

After exhaustively reviewing the scientific literature on wetlands, Ecology has summarized the results and provided recommended buffer widths.<sup>16</sup> One of the recommended buffer systems includes use-intensity to determine the width of buffer. The City uses this system of wetland buffers in its CAO. As with Ecology’s recommendation, the wetland buffers based on low-intensity uses get the smaller widths, and high-intensity uses get the larger widths. Since almost all urban development is of high intensity, the description of the high/medium/and low intensity of use needs to be described; however, we can find no description in the CAO or SMP. We recommend that the CAO buffer provisions not be incorporated into the SMP unless the use intensities are clearly spelled out consistent with the Ecology recommendations.<sup>17</sup>

### Degraded Buffers Need to be Addressed

As described in our buffer guidance document, science shows that buffers need to be of adequate width and need to have intact native vegetation in order to actually function and buffer impacts. Our guidance document also describes in detail the impacts of development when buffers are made small, when buffers are degraded, and when development is allowed in the buffer. It also describes the different incorrect assumptions that prevent development impacts to buffers from being accurately accounted for and compensated for. The proposed buffer system includes the incorrect assumption that meeting a buffer width, regardless of whether the buffer is intact or degraded, will prevent impacts from the new development. Another incorrect assumption is that by meeting the small setback widths (again regardless of whether it is intact), unlimited new development outside that width will have no impacts. In both of these cases there are impacts that need compensatory mitigation spelled out in the regulations. The buffer system specifically allows degraded buffers to remain degraded if the SB width is met. Only if the SB is reduced is enhancement required, and then only for Zone 1, which can be non-existent without our recommended edits to provide a baseline width. Development on vacant land needs to ensure that the full buffer width is intact to compensate for its new impacts. Expansions of existing developed areas within a science based buffer width need to provide enhancement to compensate for impacts using the ratios we describe above. Our recommended edits address both these situations.

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<sup>16</sup> Sheldon, D., T. Hruby, P. Johnson, K. Harper, A. McMillan, T. Granger, S. Stanley, and E. Stockdale, *Wetlands in Washington State - Volume 1: A Synthesis of the Science* p. 5-55 (Washington State Department of Ecology Publication #05-06-006 Olympia, WA: March 2005). Enclosed on the CAO on CD included with the paper original of this letter in the “Wetlands” directory with the filename “0506006.pdf” and accessed on Dec. 19, 2011 at: <http://www.ecy.wa.gov/pubs/0506006.pdf>

<sup>17</sup> Granger, T., T. Hruby, A. McMillan, D. Peters, J. Rubey, D. Sheldon, S. Stanley, E. Stockdale, *Wetlands in Washington State - Volume 2: Guidance for Protecting and Managing Wetlands* Appendix 8-C Guidance on Widths of Buffers and Ratios for Compensatory Mitigation for Use with the Western Washington Wetland Rating System p. 5 (Washington State Department of Ecology, Publication #05-06-008, Olympia, WA: April 2005). Available on the CAO on CD included with the paper original of this letter in the “Wetlands” directory with the filename: “0506008.pdf” and accessed on Dec. 19, 2011 at: <http://www.ecy.wa.gov/pubs/0506008.pdf>

### ***SMP Needs to Implement Use Preferences in the Use and Modification Table***

The use and modification table is supposed to describe the uses allowed in each environment. However, it is not available for review. All that is available is the text in the different development regulation sections. This text is incomplete, though we will provide comments as best we can. The result is that there are problems that arise from not addressing certain uses or only partially addressing the full range of a particular use category. In these instances, the text is phrased in a way that makes it ineffective due to a quirk of the SMA and SMP Guidelines.

Because all foreseeable development is supposed to be addressed in the SMP, there is a default for those unanticipated developments in the SMA and SMP Guidelines – such uses are allowed through a conditional use permit (CUP). While this is not intended to be a substitute for thoroughly planning, the unfortunate consequence is that all uses start with the default situation of being allowed everywhere with a CUP, unless stated otherwise. This is not a problem when jurisdictions plan for all foreseeable uses and clearly indicate whether they are allowed through a substantial development permit, CUP, or are prohibited. Many of our comments recommend better clarity to cover all uses.

Monolithic treatment of use and modification categories. The biggest problem is that for most categories of use or modification (i.e., commercial, residential, fill, etc.), they are discussed as a monolithic group, even though some types of development within the category are much more intensive and damaging than others. For example, boating facilities that are a shared dock for 5 homes have far fewer impacts than a major marina, yet they are allowed equally, without any distinction in their scale of impact. Forest practices have regulations, but the use limits are not addressed, and thus allowed in all locations with a conditional use permit. They can include selective harvest, clearcut harvest, mining activities, and processing facilities – all with wildly different impacts. Aquaculture can range from simply seeding oyster fields, to extensive gear setups, to multi-level floating platforms, but they are all allowed together without distinction. Recreation uses can range from passive activities to intensely developed parks and sports complexes, but are all allowed without distinction. We recommend better distinctions within each category of development.

Use intensity in intact areas. The above issues come up mainly in the intact areas of the Natural and different conservancy environments. We have recommended many locations that should be designated with the Natural environment. Improved protection of these areas needs to be reflected in the use and modification table by limiting uses that will convert these intact areas to human use. One important aspect of the SMP Guidelines that is not included in the use limits is the preference for low intensity uses in these areas. This is a defining criterion for any use in the Natural environment (including those areas we recommend adding to the Natural environment), or indeed intact areas in general. We recommend including the use intensity preference in the use limits – especially for intact areas.

Most use categories that can have intensive development should be prohibited in the Natural, Island Conservancy, and Aquatic Conservancy environments. In addition, these uses should be prohibited in the Shoreline Residential Conservancy environment, unless the intact areas are moved to the Natural environment.

### ***Development Standards Should be Designed Using Mitigation Sequencing***

Generally Our guidance document dealing with no-net-loss and cumulative impacts discusses the importance of addressing common impacts of development. If they are not addressed, they become cumulative impacts that must be compensated for by the local government. Like the other major components of an SMP, the development standards need to be designed to incorporate mitigation sequencing. Doing so requires an understanding of the common impacts of development, and the common methods to avoid and minimize such impacts; and then incorporating those methods into the regulations. Preferences are often found in policies and even regulations of an SMP, and are important

for mitigation sequencing. But actually implementing preferences is the difficult part of developing regulations.

While there are several preferences in the SMP Guidelines, four primary ones are:

- (1) Water-dependency – Only uses that are water-dependent should be allowed to cause damage or pollution to the environment. Thus only water-dependent uses should be allowed in the buffer as a default category. And water-dependency should be used in limiting uses in shoreline jurisdiction.
- (2) Uses that protect the environment – Non-water-dependent uses that do not protect the environment (including those that are allowed inside a science-based buffer) must be prohibited or have special criteria that prevents damage.
- (3) Protection of intact areas – Intact areas must be carefully protected in the environment system because almost any development will cause damage to the environment and is almost impossible to mitigate at the project level.
- (4) Methods that cause less damage – Mitigation sequencing requires avoiding and minimizing impacts, but each type of development (especially modifications) has specific methods to accomplish this that must be in the regulations. Vague statements of no-net-loss are inadequate.

>> In addition, the no-net-loss standard always applies. So compensatory mitigation must be spelled out in the regulations, and like different methods, doing compensatory mitigation for one type of development will be different than for another type of development (especially modifications).

The SMP only partially implements the water-dependency preference. This is the case for limits in both uses and modifications. Many of the uses have no distinction for water-dependency in the use limits for the different environments. This was also described regarding the monolithic treatment of different categories of development. Specific instances are discussed in the detailed comments below.

### Aquaculture

As previously noted, aquaculture is treated as a monolithic use category and allowed in a broad range of environments. Where allowed, all aquaculture uses are allowed without distinction of whether they are water-dependent or not. For example, processing, and storage uses are not water-dependent and should not be located in the Aquatic, Aquatic Conservancy, Natural, or Island Conservancy environments. Nor should it be allowed in Shoreline Residential Conservancy unless the intact areas are moved to Natural. Please note that the definition of “aquaculture practices” excludes associated processing, commercial, and industrial uses, but that definition is not used in the regulations, just “aquaculture,” which is not similarly limited.

Commercial aquaculture as it is practiced today is almost exclusively a highly intensive use that can involve extensive gear, structures, and/or extensive alterations to the tidal bed. We recommend that aquaculture be prohibited in the Aquatic Conservancy, and adjacent to the Natural environment. If allowed in these areas, it should be limited to only low-intensity forms, as indicated in the SMP Guidelines. These would include simple oyster field seeding operations (without excavation harvest), and perhaps simple net covered operations. Obviously structures and alterations of the tidal bed should be prohibited. Pierce County is developing well thought out aquaculture limits for these situations that might be useful to consider.

General regulation #4 states that “unavoidable impacts remaining after mitigation sequencing in Section XX shall be mitigated.” We recommend using the correct and intended term – that impacts shall be “compensated for.”

We have found that accurately identifying and accounting for impacts is a problem across the Puget Sound. An impact that is not identified or even considered, is an impact that is not mitigated. We recommend a standard that requires consideration of all impacts in the aquaculture application materials, including elimination or removal of native sea life, exclusion of native sea life from the area, controlling predators (including by lethal methods), covering the substrate with solid materials that prevent vertical migration of sea life and nutrients, covering the substrate with dense gear material that prevents vertical migration of sea life, grading of the substrate, removal of natural features (logs, rocks, etc.), placement of gravel or other artificial substrates, compaction by heavy equipment, deep liquefaction of substrate during harvest, shading from structures, pollution from feed and bodily waste of high densities of farmed organisms (including vertical and horizontal migration of pollutants), impeding public use of the water (the Public Trust Doctrine), impeding navigation, and use of non-native species.

Along with accurate accounting of impacts, comes the need to direct how compensation should happen, since it is very difficult to compensate for in-water uses. Specifics about on-site vs. off-site compensation, and out-of-kind compensation is needed. Compensation can include removal of shore armoring and fill, removal of over-water structures, aquatic vegetation planting (which is very difficult to do successfully), and upland vegetation planting.

### Boating Facilities

*Background* – Docks, piers, and boating facilities have significant adverse effects on lakes.<sup>18</sup> The *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* recommends consideration “of ‘a no new piers’ policy as the best option for protecting fish and fish habitat. Encourage the use of floats or buoys instead.”<sup>19</sup> The report recognizes that this may not be politically possible and recommends as a backup no net increase in overwater coverage. In order to build a new dock, existing docks would have to be slimmed down to compensate for the increased coverage. So docks and piers should have carefully crafted standards to protect shorelines from their significant impacts.

The SMP Guidelines for Piers and Docks<sup>20</sup> states: “New piers and docks shall be allowed **only for water-dependent uses** or public access. As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for **access to watercraft...**” So docks and piers are only allowed for water dependent uses and single-family residences, unless they meet the stricter requirements for Boating Facility uses, as described in the Guidelines.

The SMP Guidelines also require<sup>21</sup> local SMPs to deal with Boating Facilities as a specific use category. These can be public or private facilities, marina or mooring buoy field facilities, community or shared facilities, or large and small facilities. These multi-user facilities (excluding docks serving four single-family residences or less) are intensely used and need special provisions for dealing with such use. Consequently, the SMP Guidelines require that, when Boating Facilities are allowed, SMPs include regulations to deal with their extensive special issues, which are listed in detail in the Guidelines.

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<sup>18</sup> Tom Kahler, The Watershed Company, and Martin Grassley and David Beauchamp, Washington Cooperative Fish & Wildlife Research Unit, *Final Report: A Summary of the Effects of Bulkheads, Piers, and Other Artificial Structures and Shorezone Development on ESA-listed Salmonids in Lakes* pp. 47 – 49 (Prepared for the City of Bellevue: 13 July 2000).

<sup>19</sup> *Id.* at p. 51.

<sup>20</sup> WAC 173-26-231(3)(b).

<sup>21</sup> WAC 173-26-241(3)(c).

**Recommendations** – We support the specificity found in the Boating Facilities section. The standards are complete and thorough overall. Our observations and recommendations are provided below:

- The applicability statement applies it to six or more vessels. However, the SMP Guidelines only exempts docks for four or fewer single family residences from the boating facilities requirements.
- We recommend a standard to require co-location of facilities as much as possible, to reduce the total footprint of the site.
- Management and operations regulation #6 should be limited to only existing marinas. New marinas should not be allowed if they affect littoral drift. Occasional replenishment cannot compensate for loss of the continual process currently in place. It alters a continual process to one with pulses and long intervals. Such a change will cause impacts on such a larger scale than the marina, they cannot be compensated for.
- General regulation #1.b prohibits boating facilities in the protective environments. This needs to include Shoreline Residential Conservancy, unless the intact areas are moved to Natural.
- Policy #1 describes the need to “avoid and minimize adverse effects,” but there is not statement about compensating for the remaining impacts. As a water-dependent use, boating facilities are allowed to cause impacts, but they must still be compensated for. Like our comments on aquaculture, impacts must be both accurately identified and accounted for, and the regulations need to include direction for how that compensatory mitigation is accomplished for the specific use.

### **Commercial**

- Restoration is required by the SMP Guidelines for water-related or water-dependent commercial development, unless there is a compelling reason to not do so. Policy #1 incorrectly only “encourages” this. In addition, the requirement is not implemented in the regulations – only non-water-oriented uses require restoration (Reg #5). We recommend a broader restoration requirement. And similar to our other comments, specifics about compensatory mitigation that results in this restoration need to be included in Regulation #3.
- The SMP Guidelines require the incorporation of the preference for water-dependent uses. However, the draft SMP doesn’t incorporate it. Water-related and water-enjoyment uses are allowed just as freely as water-dependent uses (Reg #1a). And even non-water-enjoyment uses are allowed with them (as mixed use). At a minimum we recommend that all commercial development obtain a conditional use permit, except for water-dependent uses. This would be similar to the Industrial use limits. Alternatively, the preference must be more carefully incorporated into the regulations.
- Regulation #1a allows commercial in the “Residential environment” but it doesn’t stipulate whether the Shoreline Residential or Shoreline Residential Conservancy. We recommend limiting it to the former.
- Commercial Regulation #1c allows non-water-oriented development that is not consistent with the SMP Guidelines (WAC 126-23-241(3)(d & f)) – when in conjunction with water-oriented commercial, residential, and recreation uses. The Guidelines specifically state that non-water-oriented commercial uses should be prohibited, except for limited situations. For mixed use development, they are allowed only in conjunction with water-dependent uses. As an example, a corner coffee bar designed as a water-enjoyment use should be used to justify a multi-story office structure. There must be water-dependent uses involved.
- Submittal requirement #1 states that “when required” a mitigation plan must be submitted. This vagueness must be eliminated. When new development for commercial uses is allowed by the SMP, it is so close to the water that they will always have impacts. Mitigation plans should always be required to show how avoidance and minimization are being accomplished; and just as importantly, to describe the compensatory mitigation being provided for remaining impacts.

### Industrial

- The SMP Guidelines require restoration and public access similar to commercial uses. These don't seem to be included in the SMP. We recommend similar treatment as we recommended for commercial uses.
- As we recommended for commercial uses, mitigation plans should be required, not optional. They should explain how all elements of mitigation are accomplished, including compensatory mitigation. And specifics about how to provide compensatory mitigation for industrial uses should be stated in the regulations. These uses may be more reliant on off-site compensation.

### Recreation

- Policy #1 and General regulation #1 incorrectly states that “water-oriented” recreation is both a preferred use and priority use. On a reading of paragraph 4 of the SMA Policy, uses are preferred and priority uses only if they implement the SMA Policy (most specifically protecting ecology, public health, ecology, and navigation). Furthermore, only water-dependent uses and uses that prevent damage to the environment are priority uses. Recreation uses can qualify for these instances, but recreation is not by default a preferred or priority use. The correct statement is that water-dependent recreation, and water-related or water-enjoyment recreation that prevents damage or pollution to the environment are preferred and priority uses. Please note that this is different from compensating for damage done. Preventing damage means that science-based buffers need to be applied where possible. And development on vacant land needs to fix degraded vegetation. For expansions of existing facilities near the water, they need to always include compensatory mitigation. It also means that intact areas that are incorrectly designated need to be protected by the science based buffers of the Natural environment, as we already recommended.
- The Design and Location regulations discuss many different recreation uses, and imply those uses must protect shorelines. But they do not directly address the subject of buffers, though they sometimes imply that such uses can be in the buffer. The relationship of recreation uses to buffers and vegetation management needs to be specifically stated, so that non-water-dependent uses will prevent damage. We recommend a new regulation: “New trails, lawns, structures, and all other development must meet the buffer requirements, unless the development is for water-dependent use areas, or providing direct access/service to those areas.”
- As with other uses, recreation is treated as a monolithic use category and allowed in a broad range of environments. Recreation uses are allowed without distinction of whether they are high intensity or low intensity, even though the SMP Guidelines indicate that intensity is critical to allowing uses in the Natural and different conservancy environments. Without such distinctions, recreation must be prohibited in the Natural and all conservancy environments – including Shoreline Residential Conservancy.
- While it appears to be the intent, the regulations do not state that non-water-oriented recreation is prohibited. Without such statements, those uses are allowed everywhere with a conditional use permit. We recommend making such a statement, as is done for commercial and industrial uses.
- As we described for commercial uses, the SMA preference for water-dependent uses is not included. Water-related and water-enjoyment uses are allowed just as readily as water-dependent uses. Without distinctions, the preference is rendered pointless. We recommend that the monolithic category of recreation be split into the different water-dependency categories, and that the use limits reflect the SMA preferences adequately. This how most jurisdictions deal with the issue, and industrial uses are handled this way as an example.
- As we have stated previously, mitigation plans should be required, not optional. They should explain how all elements of mitigation are accomplished, including compensatory mitigation. Compensatory mitigation needs to be included in Design and Location standard #7, which

- discuss avoidance, and minimization. And specifics about how to provide compensatory mitigation for recreation uses should be stated. These uses in intact areas will be reliant on off-site compensation, and degraded sites need to be restored.
- Design and Location standard #10 addresses lighting impacts, but does not address the impacts to habitat areas. We recommend that the standard be supplemented to screen lighting from habitat areas and buffers.
  - Golf Courses regulation #2 prohibits golf courses in the Natural environment. They should also be prohibited in the Shoreline Residential Conservancy, unless the intact areas are moved to Natural.

### Residential

- Similar to Recreation, Residential Policy #1 incorrectly states that single family residential is a priority use. The correct statement is that only single family residential uses (including their appurtenances) that prevent damage or pollution to the environment are priority uses. And again, preventing damage means that science-based buffers need to be applied where possible, development on vacant land needs to fix degraded vegetation, and expansions of existing residences near the water need to provide compensatory mitigation.
- General regulation #1 prohibits residences in the Natural environment. Note that this is not an SMP Guidelines requirement. Residences are acceptable when developed at a low density and reviewed as a conditional use. Prohibiting residences essentially serves as an excuse to not apply the Natural environment where it is supposed to be applied, in spite of the SMP Guideline requirements to designate Natural areas down to the parcel level. In addition to moving the intact areas to the Natural environment (especially for Shoreline Residential Conservancy), we recommend that residences be allowed in the Natural environment and accompanied by low-density standards.
- Multi-family/Subdivision regulation #1 correctly prohibits multi-family development in the Natural environment. However, it also needs to be prohibited in Shoreline Residential Conservancy, unless the intact areas are moved to Natural.
- We are concerned about the subdivision of intact areas. The lot width and frontage standards found in the zoning ordinance do not account for the ecologically functioning and intact areas. Consequently, additional subdivision standards are necessary in the SMP to ensure that these areas are protected from small lot subdivision. We recommend that the Shoreline Residential Conservancy, Island Conservancy, and Natural environments have a 300 foot lot width requirement to prevent the wall of houses effect (present in many areas of the island) that obstruct habitat and natural functions between uplands and the water. The Natural environment should also have a 10 acre minimum lot area, or the creation of new subdivision lot lines could be prohibited in the Natural environment so that it takes place outside shoreline jurisdiction.
- The draft SMP currently covers individual utilities and transportation facilities as accessory to the primary use. Thus they are a modification in support of the primary use. Development standards are needed to address the common impacts of these facilities. We recommend adding standards for “accessory utilities and transportation,” and recommend it reference or copy applicable regulations in the utility and transportation sections. Additional regulations may be needed as well.

### Transportation

- Prohibited Uses regulation #1c allows trails in the water-based Aquatic Conservancy environment. These are some of the most sensitive areas, but apparently the SMP allows over-water trails and boardwalks in them. This is contrary to the Natural (and similar) environments. We recommend that trails be prohibited, like the other transportation facilities.

- Like other subjects, the transportation section does not include references to compensatory mitigation. A statewide problem is the allowance of transportation facilities (including in the water and buffers) without compensation for their impacts. Specific statements for compensatory mitigation are needed, and a mitigation plan should be included with all transportation projects.

### Utilities

- Like other subjects, General regulation #7 needs to include compensatory mitigation, in addition to the minimization statements. It has some specifics about replanting vegetation, but it doesn't account for the fact that utility corridors must be maintained with limited vegetation. These impacts must be compensated for beyond simple revegetation requirements.
- Submittal Requirements regulation #6 needs to include the preparation of a mitigation plan that also discusses the compensatory mitigation.

### Nonconforming Development

- The SMP needs to distinguish between nonconforming uses (normally “prohibited”) and nonconforming structures (not meeting the setback or other standard). Note that residences would not usually be prohibited in most environments (and we recommend NOT prohibiting them in the Natural environment). When dealing with an existing use that is prohibited, there will be no review process (substantial development, conditional use, etc.) indicated, because the SMP says they are prohibited and does not provide a review process. Consequently, we recommend stating that Nonconforming Uses be reviewed through a Conditional Use Permit.
- Nonconforming Structures regulation #4.b.ii allows residences to be reconstructed, but also expanded without a reference to any normally required permits. We recommend that they only be allowed to be reconstructed. If they are expanded, they need to meet normal review processes, including standard development permits, variances, or conditional use permits, as appropriate.

### General Modification Regulations

- The Applicability section lists a number of examples of modifications that “are generally related to construction of a physical element.” Most of the list items are in-water facilities; however, the much more common land-based modifications are not in the list. We recommend that list include the term “structures” to cover upland development such as sheds, retaining walls, decks, patios, etc.
- Policy #3 accurately captures the SMP Guideline requirement for modifications to be consistent with the environment of the project. However, this policy is not implemented. There are several instances where specific structural modifications are allowed in the Natural and Aquatic Conservancy environments. We recommend a new Prohibited Uses regulation stating that “Structural and highly altering modifications are prohibited in the Natural and Aquatic Conservancy. When necessary and otherwise allowed, nonstructural modifications may be allowed through a Conditional Use Permit.” Shoreline Residential Conservancy should also be included, unless the intact areas are moved to Natural.
- Policies #7 & 8 do not appear to be implemented. #7 addresses providing multiple use and public access, and #8 discusses leaving natural features that support habitat undisturbed.
- General regulation #2 needs to be clarified to distinguish the two purposes of modifications: (1) support of a primary use, and (2) protection of a primary use. We recommend that the first sentence be edited with the following underlined addition: “All shoreline modification activities must be necessary to support a primary use, or protect an allowed primary structure ...” Similarly, General regulation #5 requires minimizing the footprint to protect a use, but doesn't address modifications for the purpose of supporting a primary use. It should apply to both situations.

- General regulation #5 requires all modification applications to implement alternatives in the specific modification sections. But not all modifications have sections. The SMP Guidelines address the 7 types of modifications that mainly impact in-water areas. But the draft SMP does not include all of the 7 types. Breakwaters, jetties, and weirs is missing, and beach and dune management is included under Restoration and Enhancement, even though such activity is often undertaken for reasons that have nothing to do with restoration of ecological functions. We recommend that all modifications be addressed in the SMP, and that beach management be separated from restoration and edited to meet the SMP Guidelines.
- Previously General regulation #5 also included specific guidance for accomplishing the alternatives requirement, but that was deleted. At the same time the SMP Guidelines include requirements to “reduce the number and extent” of modifications. We recommend that the deleted text be replaced by adding a sentence to the regulation: “Proposals shall reduce the number and extent of modifications by sharing facilities between adjacent property owners where possible, combining multiple facilities into one when possible, and using paths or locations that do not require impacting the shoreline.”
- General regulation #7 discusses meeting no net loss requirements, but lacks any detail. We recommend that details be added to the standard: “Compensation for the impacts of new, replacement, and repaired modifications shall be focused on enhancement of degraded conditions, such as: removal of redundant or unnecessary structures, fill, or other facilities; vegetation enhancement of aquatic or upland areas; or other enhancement measures.”
- General regulation #8 specifically addresses shore stabilization, and should be moved there.

### Dredging

- General regulation #1 states that dredging is prohibited in the Aquatic Conservancy environment. We also recommend it be prohibited in and adjacent to the Natural environment, and in and adjacent to Shoreline Residential Conservancy (unless the intact areas are moved to Natural).
- Dredging regulation #1 and dredge material disposal regulation #2 provide lists of situations where dredging is intended to be limited. However both are phrased in a way that makes them ineffective. The problem is that the aforementioned regulations appear to be intended to prohibit a broad range of dredging activity, but are not worded in a way to prohibit them. Rather they are restating the default condition that they are allowed. We recommend that the approach of saying that the development “shall only be allowed for the following uses” be replaced by “are prohibited, except for the following uses,” or similar language.

### Shore Stabilization

- The use table for stabilization describes the review processes for different stabilization situations. We see that Shoreline Exemptions are indicated for some instances regardless of whether it actually meets the state criteria for exemptions. Jurisdictions are not allowed to alter the state exemptions or create new ones. These instances should be changed to substantial development permits, but projects might still qualify for an exemption.
- We support the prohibition of stabilization in the Natural environment. However, it also needs to be prohibited in the Shoreline Residential Conservancy environment, unless the intact areas are moved to Natural. This again illustrates the problem with the way in which the environments are applied in the draft SMP.
- We support the preference for hybrid structures over standard structures, but they are still structural. We recommend that new ones still be conditional uses, like standard structures. But agree that changing a standard structure to be hybrid should be a Substantial Development Permit. Non-structural stabilization cannot be an exemption by default. It needs to be a substantial development, though specific projects may qualify for the exemption.

- A common misconception we see in other SMPs we have reviewed is that soft or non-structural stabilization is considered to be enhancement and is allowed without compensatory mitigation. This is typically not true. Using only vegetation planting is really enhancement and does not need compensatory mitigation, and replacing a standard structure with softer stabilization has built in compensatory mitigation. But otherwise, both structural and non-structural methods still have impacts that need to be compensated for. Compensatory mitigation needs to be specifically required with each project, and described in a mitigation plan, as we have described for other types of development.

### Overwater Structures

- The Overwater Structures Goal describes limiting the number of facilities, but it is not implemented with actual regulations that have such limits. We recommend adding measures to reduce the number of docks by requiring new docks to be shared in the future with adjacent properties that do not have a dock. We recommend that subdivisions be allowed only one joint use dock, and that it be reviewed as a boating facility use if it's for more than 4 lots, or for non-waterfront lots. We recommend that accessory docks for multi-family development be prohibited, and that shared docks be reviewed as boating facility uses, rather than accessory uses (multi-family is a non-water-dependent use).
- In our Boating Facilities comments, we state a basic SMP Guidelines requirement that is missing from Overwater Structures. We recommend adding a standard to the Prohibited regulations to address this requirement: "Piers and docks are prohibited unless they support a water-dependent use, provide public access, or are for boating purposes associated with a single family residence." This is a fundamental provision of the Guidelines and cannot be left out. General regulation #1 currently provides a default allowance for docks in most environments regardless of their purpose. Furthermore Joint Use regulation #1 specifically contemplates that some non-water-dependent uses be allowed a dock – namely hotels, motels, multi-family residential are allowed docks. As described above, these can only be allowed if they are reviewed as a Boating Facility use, including all the associated requirements for boating facilities. The standard should state as much. The same applies to Residential Dock regulation #2 – docks proposed for subdivisions should be required to be a community dock "or boating facility."
- General regulation #1 needs to be combined into Prohibited regulation #1 to match the format used throughout the SMP of establishing prohibited uses and the permit review levels in the same section. Furthermore, in the references to upland environments, the text should use the format of "... docks in or adjacent to XXX environment..." to clearly describe that the upland environment affects development in the adjacent water environments.
- Prohibited regulation #1 prohibits overwater structures in the Natural and Aquatic Conservancy environments, which we support. But Shoreline Residential Conservancy needs to be included as well, unless the intact areas are moved to Natural.
- Residential Dock regulation #3 allows dock length to be determined by adjacent dock lengths, even though they are far away. This should only apply to adjacent docks within 75 feet. There is no need to waive the standard dock length rule when there are no docks in close proximity that would reduce the function of the new dock. 75 feet provides plenty of spacing for docks to function normally regardless of their length.
- Similar to other subjects, all docks will have impacts. The draft regulations only provide avoidance and minimization standards. Compensatory mitigation must be specifically required, and details particular to dock development need to be included. This might best go in the Submittal Requirements regulations.
- Mooring Buoy regulation #1 describes where mooring buoys are "allowed." Similar to our previous comments, the intent appears to prohibit them elsewhere. A statement that "Mooring buoys and floats are prohibited in all other instances" needs to be added. We also recommend

that, in the Natural environment, individual use buoys be a conditional use, and that the intensive nature of public use buoys (often coming in multi-buoy fields) means they should be prohibited offshore from the Natural or in the Aquatic Conservancy environments. Intensive uses are not supposed to be allowed in these areas, especially since they are often Boating Facilities.

### Landfill

- General regulations #2 & 3 both have the same wording problem as described for other subjects. They state what is allowed, when the intent appears to be that other instances are prohibited. Again, we recommend that the phrasing of “fill is permitted only for ...” be replaced with “fill is prohibited, except for ...” Alternatively, an addition statement could be added that “all other instances are prohibited.”

### Flood Hazards

- Flood control projects are some of the most destructive to ecological functions, even with minimization standards. The impacts are often region-wide, rather than just on-site. Yet the regulations do not include discussion of these potential impacts, nor discuss compensatory mitigation for them. The policies discuss “protecting” functions, but the nature of flood hazard projects is almost exclusively intended to alter or obstruct natural flooding functions. These inherent impacts need to be pointed out, and compensatory mitigation required in order to ensure no-net-loss.
- Many flood hazard projects include shore stabilization. Such components need to meet the standards for stabilization projects, in addition to flood hazard standards. There are important documentation and alternative analysis requirements that should not be avoided by calling the project a flood hazard project. A standard is needed stating this relationship.

### Parking

- The parking regulations discuss lighting in General regulation #3, but does not address impacts of lighting on habitat and buffer areas. We recommend that standard be expanded in scope to prevent light from shining into aquatic and upland habitat areas, including buffer vegetation.

### Public Access

- Our observation in reading these regulations is that they were written to be a burden for the city to apply standards or require public access. It uses phrasings and requirements that are not found in the SMP Guidelines. Public access requirements that meet the requirements in WAC 173-26-221(4) should be substituted for these provisions.
- General regulation #1 only requires public access when the development “increases demand for public access.” How this is determined is difficult or impossible to understand; but more importantly, it is contrary to the specifics of public access in the SMP Guidelines. The list in the regulation comes from the Guidelines, but the caveat for when it’s implemented limits where public access will happen.
- General regulation #2 requires the administrator to prepare a report that public access is needed.
- General regulation #3 prevents the administrator from applying public access without the report.
- Given that public access often includes in-water and in-buffer development, the submittal requirements need to address compensatory mitigation, as we have described for other subjects.

### Restoration and Enhancement Projects

- The purpose of this section is somewhat contradictory. The Goal’s introductory statement implies it is only for stand-alone restoration projects. But sub-item 5 discusses project

mitigation. This distinction is important because the two types of projects are treated differently under the SMP Guidelines. Restoration has special status and is exempt from many of the SMP Guideline requirements, including most permit requirements. Project mitigation does not receive such treatment. Furthermore, regulations or standards that might apply to one type should not be applied to the other. We recommend that standards applying to one or the other be clearly separated.

- This section includes Beach Enhancement. The SMP Guidelines clearly describe beach and dune management as a modification separate from restoration and enhancement. But the draft SMP combines them as if they are the same. Many beach enhancement projects are performed for reasons having to do with property development, shore stabilization, altering or obstructing natural processes, or simply recreation and aesthetics. Such actions are not restoration. The beach enhancement standards need to be moved to their own section, and need to fully address the SMP Guidelines.
- Just as troubling is that Prohibitions regulation #1 allows dikes, levees, jetties, groins, and gabions to be included as restoration and enhancement. Such structures are the antithesis of enhancement; because they are designed to obstruct or alter natural functions, not restore them. These structures need to be reviewed and approved separate from the restoration project, and this regulation needs to state that they are not considered as normal for restoration projects. Furthermore, these structures should be prohibited in or adjacent to the Natural, Aquatic Conservancy, and Shoreline Residential Conservancy environments. (unless intact areas are moved to Natural).
- It is unclear how Prohibition regulation #2 is intended to be a prohibition, since it is written as an exception for something.

### Critical Areas

- The General regulation states that the Critical Areas Regulations (CAR) are used to protect critical areas. The CAR is further described as a shoreline-specific version, referenced as Appendix A. But Appendix A is not provided on the website, and it is unclear whether there are edits to make it “shoreline-specific.”
- In reviewing the current CAR, it covers “marine critical areas,” but then excludes them from the development standards in the CAR, and references the use of the SMP instead. The SMP definitions do not include Critical Saltwater Habitats. The current CAR includes all marine waters of the state, which is appropriate; but that needs to be carried over to the SMP.
- There do not appear to be standards that deal with different types of critical saltwater habitat. Pierce County has done extensive review of the science covering these, and developed draft standards for them, including setbacks. We recommend that you contact Pierce County to discuss their findings.

### ***Administrative Provisions Need to Clearly Cover Exemptions***

We are pleased to see that the Administration provisions thoroughly and accurately describe how development review will happen, with only one exception. Many jurisdictions struggle with this subject greatly. Our two recommended changes (in **strikeout** and **underline** format) are needed to clearly describe the administrator’s responsibilities regarding exemption review, because these will be the most common form of development review.

Statement 7.2.2 – Duties and responsibilities of the Director shall include:

“d: Determining **if a proposal qualifies for a Shoreline Exemption, and** whether a Shoreline Substantial Development Permit, shoreline conditional use permit, or shoreline variance permit is required.”

Regulation 7.5.2 – Statements of Exemption. The need for exemptions to provide adequate information is a systemic problem across jurisdictions. The draft SMP includes application and information requirements for permits, but not for exemptions.

“b. The request for the statement of exemption shall be in writing, on forms required by the Director, and shall include the information required by the Director to make a determination that the proposal qualifies for the exemption and complies with SMP standards. In the case of an emergency, the Director may waive this requirement and authorize the use or activity orally or in writing. If authorized orally, it shall be put in writing as soon as possible.”

Thanks again for the opportunity to provide comments. We strongly support the updated shoreline master program. Please contact us if you require additional information.

Sincerely,



Dean Patterson, Shoreline Planner  
Futurewise



Heather Trim, Director of Policy  
People For Puget Sound