

ATTACHMENT A: FINDINGS AND CONCLUSIONS FOR PROPOSED COMPREHENSIVE UPDATE OF CLALLAM COUNTY SHORELINE MASTER PROGRAM

SMP Submittal accepted December 4, 2018, Resolution No. 91-2018

Prepared by Michelle McConnell, March 12, 2021

INTRODUCTION

Ecology's Findings and Conclusions (presented herein), including reference to **Attachment B** (Required Changes) and **Attachment C** (Recommended Changes), provide the factual basis for the Department of Ecology's (Ecology) decision on the Clallam County (County's) comprehensively updated Shoreline Master Program (SMP). This document is divided into three sections providing an Introduction; the Findings of Fact regarding amendment history, the submittal, and local and state review; and Conclusions.

Description of Proposed Amendment

Clallam County has submitted a comprehensive update to their Shoreline Master Program (SMP) for review and approval by Ecology. The updated master program will regulate some 620 miles of shorelines, including approximately 131 miles of marine shoreline, six (6) lakes totaling over 1,500 acres, and some 481 miles of streams and rivers located within Clallam County. The SMP applies to Lake Sutherland, Lake Pleasant, Dickey Lake, Wentworth Lake, Elk Lake, and Beaver Lake. The County has seven (7) waterbodies designated shorelines of statewide significance: the marine waters of the Strait of Juan de Fuca and Pacific Ocean, as well as the Bogachiel, Calawah, Elwha, Quillayute and Sol Duc Rivers. The updated shoreline program will replace the county's existing shoreline program first adopted in 1976, last amended in 1992. The updated program establishes new goals, policies, and regulations to encourage and manage appropriate shoreline uses, public access, and protection and restoration of natural shoreline resources.

The comprehensive amendment contains locally tailored shoreline management policies, environment designations, regulations, and administrative provisions. SMP Chapter 7 establishes shoreline specific critical areas provisions. Critical areas within the shoreline jurisdiction will be regulated solely by SMP Chapter 7, and the Critical Areas Code located in CCC Title 27.12 will not apply within shoreline jurisdiction. Additional reports, and supporting information and analyses as noted throughout this document, were considered by Ecology during its review.

Need for the Amendment

The County currently manages shorelines under an SMP originally adopted and approved in 1976, last amended in 1992. The proposed amendment is needed to comply with the statutory requirement (RCW 90.58.080) for a comprehensive update to the County's SMP, consistent with the SMP Guidelines in WAC 173-26. The update also ensures the SMP is consistent with land use management policies provided by the County's Comprehensive Plan.

This Shoreline Master Program (SMP) amendment is intended to satisfy the statutory requirements of RCW 90.58.080(2)(a)(iii) to comprehensively update the County's SMP.

The record submitted by the County to Ecology as part of the SMP update, including Resolution No. 91-2018, reports, analyses and local approval materials, provides additional details to describe the jurisdiction's specific need for the proposed amendment.

SMP provisions to be changed by the amendment as proposed

The SMP comprehensive update is intended to entirely replace the County's existing SMP, including policies, regulations, the shoreline environment designations & maps, and administrative provisions. The updated SMP establishes standard shoreline buffers based on type of development, size of the lot, and the upland shoreline designation (SMP 6.3 Table 6-1), and regulates critical areas within shoreline jurisdiction with provisions of the SMP, including critical area buffers (SMP 6.3 Table 6-2). The updated SMP regulates activities and development along the County's shorelines using six (6) new shoreline environment designations, each containing designation criteria, purpose statements, and management policies:

- Aquatic
- Natural
- Resource Conservancy
- Shoreline Residential - Conservancy
- Shoreline Residential - Intensive
- Marine Waterfront

The proposed SMP uses these designations to tailor use and development allowance, prohibition, and other provisions based on shoreline conditions, as indicated at SMP 2.9 in Table 2-1 Residential Use Table and Table 2-2 Non-Residential Use Table.

FINDINGS OF FACT

Amendment History, Local Review Process

The County initiated the local planning process in November 2009 by entering into a grant agreement with Ecology (#G1000062). The record shows that extensive public outreach and engagement began early and was continuous throughout the process. Overall, the County's efforts far exceed the minimum standard, holding some 110 open public meetings and events. The general timeline below with key highlights outlines the local process:

- **Public Participation Strategy** was adopted in 2010, revised in 2011;
- **Public Forums** – The County held six (6) multi-event series of public forums at various locations across the County (typically at Forks, Sekiu, Port Angeles, and Sequim) to inform the public, gather input, and for presentation of various draft documents, for a total of thirty-three (33) individual forum events held from 2010 – 2017;
- **Consistency Review** – The County compared the existing SMP with state requirements under the SMA (RCW 90.58) and SMP Guidelines (WAC 173-26). The *Draft Consistency Review Report* (March 2011) and a *Final Consistency Review Report* (July 2011) identified and provided recommendations to: address inconsistencies, gaps and omissions; improve clarity and administration; and achieve Ecology approval of the updated SMP.
- **Focus Groups & Visioning Reports** – Approximately 130 citizens attended a series of stakeholder focus group discussions in January 2011, held at locations across the County. Three events focused one each on east, central and west end property owners, and the other two focus group events were for water-related business owners and recreation shoreline users. A focus group summary report helped inform preparation of the SMP visioning documents. Two reports were produced, including *Clallam County Shorelines in Transition - A Vision Statement for Clallam County SMP Update* (August 2011) for WRIs 17 - 19; and *WRIA 20 Visioning Forum and Interview Report* (June 2011) specific to the rivers and lakes that drain to the Pacific Ocean.

- **Advisory Committees** – The County convened agency and technical experts as the No Net Loss Work Group that met twice in 2010 – 2011; and convened a broad array of over thirty (30) citizens and stakeholders as the SMP Update Committee that met thirteen (13) times in 2012;
- **Public outreach** methods included direct mailings to shoreline property owners, frequent messages to email distribution list of 600+ recipients, frequent project status and materials on a multi-page website, display ads in three (3) local newspapers, press releases to local papers and radio, listening sessions and guest presentations with over a dozen local entities including salmon recovery, marine resource, watershed planning, land use, trade, and civic groups/organizations.
- **Affected tribes** were on distribution lists, and involved in the committees and outreach groups. Tribal representatives were part of the No Net Loss Work Group, and natural resources/fisheries staff from the Quileute, Lower Elwha Klallam, Jamestown S’Klallam and Makah Tribes participated as representatives on the SMP Update Committee.
- **Planning Commission** – The County Planning Commission was briefed on project status, committee work, reviewed public input, and various drafts of related background documents at thirteen (13) meetings from 2011 - 2013. The group held four (4) legally noticed public hearings in February 2015 at locations across the County. They reviewed a 2014 Draft SMP and comments received at nineteen (19) meetings from March 2015 – April 2016. The Planning Commission then reviewed a 2017 Revised Draft SMP at seven (7) meetings, and recommended approval of a draft comprehensive SMP update amendment to the Board of County Commissioners (Board) on September 20, 2017.
- **Board of County Commissioners** – The Board was briefed on project status along the way, including a June 2017 overview of the Revised Draft SMP under final review by the Planning Commission. The Board held three (3) study sessions to review the September 2017 Planning Commission Recommended Draft SMP prior to holding a public hearing in December 2017. The Board deliberated on the merits of the proposal and considered public comments received at sixteen (16) work sessions from January - October 2018. The Board reviewed a September 2018 Draft SMP at two (2) work sessions in September – October 2018 that contained revisions based on their discussions and corrections identified by staff.

On December 12, 2017, the Board held a public hearing on the proposed comprehensive SMP update. Notice of the hearing was published October 15, November 5 and 26, 2017 in the *Peninsula Daily News*. The Board considered the proposed SMP and comments received at thirteen (13) meetings in January to August 2018, and then reviewed a 2018 Revised Draft SMP at three (3) further meetings. On October 30, 2018, the Board adopted Resolution No. 91-2018, approving the County’s comprehensive SMP update for submittal to Ecology for final review and approval.

Below are some highlighted features of the submittal package:

Inventory and Characterization (WAC 173-26-201)

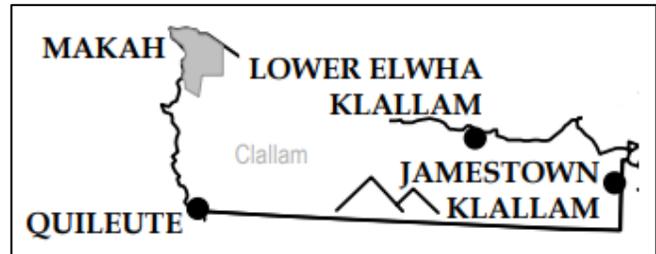
Documentation of current shoreline conditions is a key part of the SMP update process and meeting the requirement to address the no net loss standard of the SMP Guidelines (WAC 173-26-186). The County worked with two consulting groups, one focused on the shorelines of WRIAs 17 – 19 along the Strait of Juan de Fuca, and one focused on the shorelines of WRIA 20 that drain to the Pacific Ocean. Draft and final reports were prepared to document existing shoreline conditions and help inform

preparation of the County's SMP, including environment designations, policies and use regulations, thereby presenting the County's overall inventory and characterization (ICR) as a two volume set:

- *Draft Shoreline Inventory and Characterization Report for Portions of Clallam County Draining to the Strait of Juan de Fuca* (ESA; June 2011);
- *Final Shoreline Inventory and Characterization Report for Portions of Clallam County Draining to the Strait of Juan de Fuca* (ESA; March 2012);
- *Draft WRIA 20 Shoreline Inventory and Characterization Report* (UW-ONRC; June 2011)
- *Revised WRIA 20 Inventory and Characterization Report* (UW-ONRC; May 2012).

Federal Lands - Clallam County is unique in that it includes considerable areas of federal lands in the Olympic National Forest and Olympic National Park located in the interior and along the Pacific coast. Olympic National Park is an area of exclusive federal jurisdiction thereby removing Lake Crescent, Lake Ozette, and the marine areas from ordinary high water mark (OHWM) to extreme low tide from SMA and SMP jurisdiction; areas that would otherwise be considered shorelines of statewide significance. In addition, an abundance of other public and private commercial forest lands exist across the County, an especially predominate zoning designation in the West End with 66% along marine shores and 40% of the freshwater shorelines.

Tribal Lands - The County also shares geography with four (4) federally recognized Tribal nations including the Makah, Quileute, Lower Elwha S'Klallam, and Jamestown S'Klallam that have trust land reservations located at Neah Bay, La Push, mouth of the Elwha River, and the head of Sequim Bay, respectively.



Channel Migration Zones - The Strait ICR identifies twelve (12) rivers with mapped channel migration zones (CMZs) where the natural process of gradual or sudden shifts in channel location are likely to occur. The Pacific ICR notes channel migration along the Bogachiel, Calawah, and Sol Duc Rivers. The County considered the channel migration information from the most current and accurate sources, including a detailed Dungeness River CMZ delineation prepared by the Jamestown S'Kallam Tribe and the series of channel migration assessments & maps initially prepared by Ecology in 2011 – 2013, and finalized in 2018 (corrections/clarifying edits but no additional technical analysis). The Ecology CMZ reports do not provide detailed delineations or specific locations for CMZs at the parcel scale, but rather coarse scale assessments and approximate boundaries as planning-level channel migration zones (pCMZs). These pCMZs are based on professional geomorphic assessment prepared in accordance with standard practice. The boundaries should be refined for project level development activities to more accurately reflect the risk on a site scale. The Puget Sound pCMZs assess eleven (11) streams/rivers and the Pacific pCMZs address twenty-five (25) streams/rivers. The collection of reports includes:

- Delineation of the Dungeness River Channel Migration Zone - River Mouth to Canyon Creek; by Byron Rot and Pam Edens, Jamestown S' Klallam Tribe, October 1, 2008;
- Final Washington Department of Ecology Channel Migration Assessments for Clallam County: Puget Sound WRIAs 18-19 (April 2018);
- Final Washington State Department of Ecology Channel Migration Assessments for Clallam County: Pacific WRIA 20 (April 2018); and

- Washington State Department of Ecology Revised Channel Migration Assessment and Boundaries for Lower Morse Creek, Clallam County (January 2013).

Feeder Bluffs - The Straits ICR also identifies and discusses the variety of marine shoreforms present, including marine feeder bluffs as a distinct type of geomorphic feature. Chapter 3 provides reach scale assessment and differentiation for feeder bluffs, feeder bluff exceptional, feeder bluff talus, transport zones, accretion shoreforms,

Table 3-6. Strait of Juan de Fuca shoretype mapping and criteria for Clallam County (CGS 2011)

Marine Shoretype	Percent of Shoreline
Accretion Shoreform	30.5%
Transport Zone	19.2%
No Appreciable Drift	12.7%
Feeder Bluff - exceptional	10.3%
Feeder Bluff	9.2%
Feeder Bluff-talus	8.1%
Modified	10.0%

modified areas, and areas of no appreciable drift. The Appendix A Map Folio, especially Maps 1a – 1c Physical Characteristics for East, Central, and West Regions of the Strait of Juan de Fuca (respectively), depicts the location of feeder bluffs, drift cells, and shoreform type.

The County’s two-volume ICR and companion map portfolios provide watershed and reach-level analyses of existing shoreline environmental and land use conditions for each water body organized by water resource inventory area (WRIA) and by marine or freshwater reach segments. Reaches are delineated based on significant changes in the physical and biological composition of the regulated waterbody’s shoreline and their relative intensity of land use patterns, physical landscape, and various ecosystem processes.

Finding: Ecology finds that the two Inventory & Characterization Reports for WRIAs 17 – 19 and WRIA 20 adequately inventoried and analyzed the current conditions of the shorelines located in Clallam County. The reports synthesized existing information and were used to inform the master program update as well as provide a basis for future protection and restoration opportunities in County shoreline jurisdiction (WAC 173-26-201(3)(c) and (d)(1)).

Shoreline Jurisdiction and Shoreline Environment Designations (WAC 173-26-211)

The extent of shoreline jurisdiction is defined in RCW 90.58.030(2). Clallam County has opted to establish the maximum jurisdiction allowed by statute, including the optional full extent of the 100-year floodplain and land necessary for buffers for critical areas that occur within shorelines of the state. SMP 1.8 Jurisdictional Limits provides the detailed description.

Clallam County jurisdictional shorelines of the state need to be provided in a list of shoreline waterbodies; this required change is identified in **Attachment B** for consistency with WAC 173-18-044 and WAC 173-22-044, and is anticipated to be provided as an exhibit appended to the SMP.

Local governments are required to classify shoreline areas into shoreline environment designations (SEDs) based on the existing use pattern, biological and physical character of the shoreline, and the goals and aspirations of the community as expressed in their comprehensive plan. The Inventory and Characterization Reports are used to determine the relative degree of impairment and biophysical capabilities and limitations for individual shoreline reaches. Based on this assessment, along with consideration of anticipated future development, zoning and other regulatory overlays, local jurisdictions may apply the designation criteria provided in WAC 173-26-211 or develop their own tailored designation criteria.

The updated SMP proposes to establish six (6) SEDs: Aquatic; Natural; Resource Conservancy; both Shoreline Residential-Conservancy and Shoreline Residential-Intensive; and Marine Waterfront. The County mostly relies on the designation criteria established by WAC 173-26-211 with some local tailoring to the names and applicability as follows:

- Rural Conservancy is renamed as Resource Conservancy and primarily focused on forest lands;
- Shoreline Residential has two versions for differing density and intensity of residential uses;
- High Intensity is renamed as Marine Waterfront to better reflect local character and existing development patterns.

SMP 2 Shoreline Environment Designations describes the designation criteria, a purpose statement, and a set of management policies for each as follows: SMP 2.3 Aquatic; SMP 2.4 Natural; SMP 2.5 Resource Conservancy; SMP 2.6 Shoreline Residential-Conservancy; SMP 2.7 Shoreline Residential-Intensive; and SMP 2.8 Marine Waterfront.

Consistent with WAC 173-26-211(4)(iv)(A), the County's SMP 2.9 Allowed Use Table 2-1 Residential Development and Table 2-2 Non-Residential Uses identify the different types of shoreline activities that are permitted, conditionally permitted, and prohibited in each shoreline environment.

The mapped designations, illustrated in SMP Exhibit A Shoreline Environment Designations, are based upon and implement the designation criteria provided in SMP Chapter 2.

Finding: *Ecology finds that the County SMP defines shoreline jurisdiction consistent with the Act and the record sufficiently documents the basis for assigning shoreline environment designations. The County's shorelines are adequately identified in SMP Section 1.8 Jurisdictional Limits, mapped in the Exhibit A Shoreline Environment Designations maps and, subject to a required change in **Attachment B**, a List of Shoreline Waterbodies will be appended to the SMP. Shoreline designations are adequately identified in SMP Chapter 2 and in the Exhibit A Shoreline Environment Designations maps. Ecology finds, subject to a required change in **Attachment B**, that for each environment designation the SMP includes a purpose statement, designation criteria, management policies, and regulations as required by WAC 173-26-211(4)(a).*

General Master Program Provisions (WAC 173-26-221)

The SMP Guidelines in WAC 173-26-221 list general provisions that are intended to apply broadly to all of types of shoreline development regulated by master programs, including the following subsections: (1) Archaeological and Historic Resources; (2) Critical Areas; (3) Flood Hazard Reduction; (4) Public Access; (5) Shoreline Vegetation Conservation; and (6) Water Quality, Stormwater and Nonpoint Pollution.

In addition, WAC 173-26-191 requires SMP contents to address elements including, but not limited to, economic development, public access, conservation, historical, cultural, scientific and educational values, and flood damage. WAC 173-26-201 requires SMPs to ensure ‘at minimum, no net loss of shoreline ecological functions necessary to sustain shoreline natural resources’. The County’s SMP Chapters 5 through 8 include the following general provisions:

5.2 Clearing, Grading and Filling Policies at 5.2.1 and Regulations at 5.2.2 help conserve shoreline vegetation by setting standards that limit vegetation removal and minimize adverse impacts including stormwater pollution. A required change is included in **Attachment B** to ensure consistency with the WAC requirements for fill activities.

5.3 Public Access Policies at 5.3.1 and Regulations at 5.3.2 set standards to ensure the public’s ability to reach, touch, and enjoy the water’s edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Select provisions focus on balancing access with ecological protection and property rights, maintaining, improving and expanding existing views and facilities, and providing new access opportunities, as well as encouraging collaboration with State Parks and other public land owners, future preparation of an integrated shoreline access plan, and implementation of the County’s Park & Recreation Plan. A required change is included in **Attachment B** to ensure consistency with the WAC requirements for multifamily residential development activities.

5.4 Water Quality and Water Management Polices at 5.4.1 and Regulations at 5.4.2 set standards to address the physical, chemical, and biological condition of water resources for human use, drinking water and recreation, fish and shellfish. Provisions limit pollution from direct discharge, stormwater, chemical use, erosion, septic systems, industry, and building materials such as treated wood.

5.5 Archaeological, Historical, and Cultural Resources Policies at 5.5.1 and Regulations at 5.5.2 set minimum standards for site inspection at locations with known resources, and for stop work upon inadvertent discovery, and establish additional provisions to protect known sites/resources.

6 Shoreline Buffers and Vegetation Conservation Policies at 6.2 and Regulations at 6.3 General, 6.4 Shoreline Buffer Averaging, 6.5 Shoreline Buffer Clearing, 6.6 Development Allowed in the Buffer, and 6.7 View Protection Common Line Buffer set standards for vegetation conservation to protect people and property from natural hazards and to protect shoreline ecological resources from the impacts of human activities. When multiple shoreline and/or critical area buffers are contiguous or overlapping, the landward-most edge of all such buffers applies. A required change is included in **Attachment B** to ensure the Lake Sutherland reduced buffer allowance is consistent with WAC requirements for mitigation and no net loss of ecological functions.

7 Critical Areas within Shoreline Jurisdiction General Policies at 7.2 and General Regulations at 7.3 set standards for protection of shoreline critical areas, including critical freshwater and critical saltwater habitats; these provisions are separate from the County’s critical areas ordinance (CCC 27.12). Additional regulations for specific critical areas are included as follows:

7.4 – 7.6 Wetlands - Designation, Delineation, Mapping & Classification; Buffers; and Protection Standards. A required change is included in **Attachment B** to ensure

consistency with the most current technical guidance and the WAC requirements for wetland alteration activities.

- 7.7 – 7.9 Aquatic Habitat Conservation Areas** - Designation & Mapping; Buffers; and Protection Standards
- 7.10 – 7.11 Class I & II Terrestrial Habitat Conservation Areas** - Designation & Mapping; and Protection Standards. A required change is included in **Attachment B** to correct an internal reference error.
- 7.12 – 7.14 Geologically Hazardous Areas** - Designation, Classification & Mapping; Buffers; and Protection Standards, for landslide, erosion, and seismic hazards, including feeder bluff, and channel migration areas;
- 7.15 – 7.16 Frequently Flooded Areas** - Designation & Mapping; and Protection Standards
- 7.17 – 7.18 Critical Aquifer Recharge Areas** - Designation, Mapping & Classification; and Protection Standards

These provisions ensure shoreline critical areas are protected to achieve no net loss of ecological functions. The regulations include allowances to adjust the standard buffer width through various mechanisms such as buffer averaging or buffer reduction without a shoreline variance, when site-specific conditions meet certain criteria.

8 Mitigation and No Net Loss Policies at 8.2, General Mitigation Requirement Regulations at 8.3, Compensatory Mitigation Plan Content Regulations at 8.4, and critical area-specific Mitigation Plan Regulations as follows: 8.5 Wetlands; 8.6 Aquatic and Wildlife Habitat Conservation Areas; 8.7 Frequently Flooded Areas; and 8.8 Critical Aquifer Recharge Areas. Collectively these provisions establish requirements for NNL of ecological function, mitigation sequencing, and evaluation of cumulative impacts.

Finding: *Ecology finds that, subject to required changes in **Attachment B**, the general policies and regulations are consistent with WAC 173-26-221.*

Shoreline Modifications (WAC 173-26-231)

The SMP Guidelines in WAC 173-26-231 define “shoreline modifications” as: “...generally related to construction of physical elements such as a pier, floating structure, shoreline stabilization, dredged basin, or fill...” and WAC 173-26-231(2)(b) establishes a general principle that master programs should: “Reduce the adverse effects of shoreline modifications, and as much as possible, limit shoreline modifications in number and extent.” These shoreline modification principles and standards contained in WAC 173-26-231 are reinforced through associated requirements for mitigation sequencing (WAC 173-26-201(2)(e) and the no net loss of shoreline ecological function standard (WAC 173-26-186) noted above.

Clallam County’s SMP regulates shoreline modifications in SMP Chapter 4 including the policies and regulations of 4.1 Beach Access Structures; 4.2 Boating Facilities and Moorage; 4.3 Dredging and Dredge material Disposal; 4.4 Flood Hazard Management and Flood Control Structures; 4.5 In-stream and In-water Structures; and 4.6 Shoreline Stabilization. The County SMP addresses both boating facilities per WAC 173-26-241(3)(c) and piers and docks per WAC 173-26-231(3)(b) collectively as Chapter 4.2 Boating Facilities and Moorage, including non-residential and those accessory to residential development. A required change is included in **Attachment B** to ensure the non-residential docks/piers/floats standard is consistent with WAC requirements for public access.

Finding: Ecology finds that, subject to required changes in **Attachment B**, the shoreline modification policies and regulations are consistent with WAC 173-26-231.

Shoreline Use Provisions (WAC 173-26-241)

The SMP Guidelines in WAC 173-26-241 are intended to both recognize existing uses and ensure that future development will be appropriately managed consistent with the underlying policies of the SMA. Avoidance of use conflicts through coordinated planning and recognition of “preferred” shoreline uses is a primary tenant of the SMA (RCW 90.58.020). Updates to local SMPs are intended to support these goals through development of appropriate master program provisions, based on the type and scale of future shoreline development anticipated within a particular jurisdiction.

Consistent with WAC 173-26-186(5), the County SMP reflects the principle that the regulation of private property needs to be consistent with all relevant constitutional and other legal limitations. The updated SMP varies the allowed uses within each SED depending on the current level of impairment of shoreline functions. This is based on the inventory and characterization, existing land use patterns, and use preferences. No Net Loss and Mitigation Sequencing requirements are contained in SMP Chapter 8, described above.

Clallam County’s SMP provides context and regulates specific types of shoreline use with the Applicability, Policy, Regulation, and Application Requirement provisions of SMP Chapter 3, including:

- | | |
|---|---------------------|
| 3.1 Agriculture | 3.7 Recreation |
| 3.2 Aquaculture | 3.8 Residential |
| 3.3 Commercial and Industrial Development | 3.9 Restoration |
| 3.4 Forest Practices | 3.10 Signs |
| 3.5 Mining | 3.11 Transportation |
| 3.6 Parking | 3.12 Utilities |

A required change is included in **Attachment B** to ensure the allowance for accessory parking is consistent with WAC requirements for parking that supports shoreline public access.

Preferred uses, other priority uses, and property rights are explicitly addressed by these provisions:

- 3.2.1 Aquaculture Policy #1;
- 3.3.1 Commercial & Industrial Policy #2;
- 3.3.2 Commercial & Industrial Regulation #8;
- 3.7.1 Recreation Policies #1 and 2; and
- 3.7.2 Recreation Regulations #10 and 14

Finding: Ecology finds that, subject to required changes in **Attachment B**, the County has established a system of use regulations consistent with WAC 173-26-241 along with related environment designation provisions that accommodate preferred and priority uses, protect property rights while implementing the policies of the SMA, reduce use conflicts, and assure no net loss of shoreline ecological functions.

Shorelines of Statewide Significance (WAC 173-26-251)

RCW 90.58.020 specifically calls out Shorelines of Statewide Significance (SSWS) for special consideration, declaring that “the interest of all of the people shall be paramount in the management” of these shorelines. The seven (7) shorelines of statewide significance in the County include:

- Pacific Ocean;
- Strait of Juan de Fuca;
- Bogachiel River;
- Calawah River;
- Elwha River;
- Quillayute River; and
- Sol Duc River.

The Shoreline Guidelines in WAC 173-26-251 require that local master programs recognize the specific use preferences identified in the SMA and provide for “*optimum implementation*” of the statutory policy. This is done by providing SMP provisions that implement: (a) statewide interest, (b) preserve resources for future generations and (c) give preference to uses identified in RCW 90.58.020.

The SMP as a whole is consistent with the policies of RCW 90.58.020. Specifically, SMP 9 Shorelines of Statewide Significance including 9.1 Adoption of Policy and the order of preference, 9.2 Designation of SSWS for shorelines in Clallam County, and 9.3 Additional Policies for SSWS to ensure consistency with the Act and WAC 173-26-251, address these special considerations. Additionally, the provisions of SMP 3.2.5 Aquaculture Application Requirements for Cumulative Impact Analysis; 3.4.2 Forest Practices Regulation #2; 3.10.1 Signs Policy #1; and 4.5.1 In-stream & In-water Structures Policy #3 contribute to the optimum implementation of the SSWS statutory policy.

Finding: Ecology finds that the SMP has accurately identified SSWS within the County’s jurisdiction, is consistent with RCW 90.58.020 and WAC 173-26-251, and provides for optimum implementation of the statutory policy.

Cumulative Impact Analysis (WAC 173-26-201(3)(d)(iii))

Addressing no net loss of ecological functions is a critical element in any SMP update. Ecology rules require that “Master programs shall contain policies and regulations that assure at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources.”¹ A cumulative impacts analysis (CIA) documents how an SMP update addresses no net loss of ecological functions. The *Final Cumulative Impacts Analysis and No Net Loss Report*, prepared by ESA June 2017, includes review and analysis of current circumstances and shoreline ecological functions, potential impacts, reasonably foreseeable future shoreline uses, effects on shoreline functions, applicable SMP provisions, and development tracking & response. The County created a *Shoreline Checklist & Statement of Exemption Form* as a permit application and review tool for demonstrating project consistency with the SMP policies and regulations (Appendix A to the CIA).

The CIA concludes that based on the current circumstances, reasonably foreseeable future development/use, and potential beneficial effects of established regulatory programs:

¹ WAC 173-26-201(2)(c)

- The regulatory provisions of the SMP will be effective in preventing cumulative impacts on habitat, hydrology and water quality functions, provided they are effectively implemented; and
- The County will achieve no net loss through the adoption and implementation of the SMP.

Finding: Ecology finds that the County’s Cumulative Impact Analysis (CIA) provides an adequate examination of anticipated development and potential effects to shoreline ecological functions per WAC 173-26-201(3)(d)(iii).

Shoreline Use Analysis (WAC 173-26-201(3)(d)(ii))

The County analyzed current and future potential land uses and trends to address the SMP Guidelines requirement to project future shoreline development, identify potential use conflicts and ensure preference is given to water oriented uses, particularly preferred uses that are unique to or dependent upon a shoreline location.

WRIA 17 – 19

The Straits ICR and the CIA-NNL Report present related parts of the analysis for approximately 2,700 individual parcels of land that directly adjoin shorelines of the state, including the following findings:

Marine Shores

- Much of the land is vacant or “underdeveloped” and includes both sub-dividable and non-sub dividable parcels likely to be developed in the future.
- Pertinent issues include residential use (particularly in the East End) and shoreline vegetation management.
- Commercial forestry is the second most dominant land use (particularly in the West End) however, forest practices are generally not regulated by the Shoreline Management Act.
- Unincorporated portions of Clallam County marine shorelines have little commercial, industrial, or port use.
- Key management considerations include:
 - New residential development on/near feeder bluffs, landslide hazards, and erosion hazard areas.
 - New residential development on low bank accretion shores.
 - New in-water and overwater structures such as docks, piers, marinas.

Table 2-2. Potentially Developable Lands within SMP Jurisdiction along the Marine Shoreline (excluding WRIA 20)

Planning Region	Total Area Within SMP Jurisdiction (acres)	Potentially Developable Lands (acres)	Percent (%) Developable Lands
East	2,538	760	30%
Middle	866	146	17%
West	971	264	27%

Freshwater Shores

- Future use and development of freshwater shorelines, especially in the west, will put additional pressure on freshwater ecosystems.
- Key management considerations include:
 - Conversion of forest land and removal of existing forest cover along river corridors may degrade habitat, reduce water quality, alter flow patterns, and destabilize river banks.
 - Placement of structures in floodplains, channel migration zones, and landslide hazard areas increases the risk to human health and safety, adversely alters water quality and flows, degrades habitat, and increases the risk of downstream flooding and erosion.
 - There is significant restoration potential for reforestation, placement of large woody debris, barrier removal, and other restoration projects in many watersheds as outlined in detail in the NOBLE strategy and individual watershed recovery plans.

Table 2-3. Potentially Developable Lands within SMP Jurisdiction along Freshwater Shorelines (excluding WRIA 20)

Planning Region	Total Area Within SMP Jurisdiction (acres)	Potentially Developable Lands (acres)	Percent (%) Developable Lands
East	3,601	434	12%
Middle	4,049	981	24%
West	6,814	3,073	45%

WRIA 20

For the 735,000 acre WRIA 20, the Pacific ICR and the CIA-NNL Report present related parts of the analysis. Overall, residential development is the dominant shoreline use although the pattern is light and scattered, mostly located along the side of the shoreline closest to major roads, with few bridges and very little bank armoring. The mill on Lake Pleasant is the only industrial facility in SMP jurisdiction. Agricultural use is very limited with just a few small-scale cattle operations located along the shoreline.

Countywide Analysis

The CIA-NNL Report identified twenty-four (24) Analysis Areas with the greatest potential for future development within a 20-year planning horizon: 15 in WRIsAs 17-19 and 9 in WRIA 20. This subset comprises approximately 37% of the County’s total shoreline miles, and includes all areas where future development is anticipated to be most intense. Some key findings include:

Marine Analysis Areas

- Of nearly 1,200 residential parcels, about 74% are occupied, about 26% are vacant or undeveloped, and 88% of the occupied parcels are not sub-dividable.
- Approximately 136 new shoreline lots could be created through subdivision along the Strait of Juan de Fuca, for an 11% increase in the number of residential lots. About 60 new lots (44%) would be located in a 2-mile stretch between Morse Creek and Port Angeles.

Freshwater Analysis Areas – WRIsAs 17 - 19

- Of nearly 1,025 residential parcels, about 72% are occupied, about 28% are vacant/undeveloped, and 92% of the occupied parcels are not sub-dividable.
- All of the Analysis Areas have some potential for subdivision, for approximately 140 new lots, a 13% increase in residential lots. About 46 new lots (33%) would be located along Morse Creek, with another 22 new lots (16%) along Clallam River.

Freshwater Analysis Areas – WRIA 20

- 62% of the approximate 909 residential parcels are vacant and about 38% are developed.
- Nearly all of the Analysis Areas have potential for subdivision, although it is generally limited by the wide extent of mapped floodplains associated with WRIA 20 Rivers.

Table 5-1. Shoreline Analysis Areas and Proposed Shoreline Environment Designations (SEDs) with High Potential for New Development – WRIs 17, 18, and 19

Marine Analysis Areas (Proposed SED)	River and Lake Analysis Areas (Proposed SED)
Discovery Bay bluffs (SR-C) Diamond Point (SR-I) Travis Spit (SR-C) Sequim Bay (primarily SR-C) 3 Crabs (primarily SR-I) Dungeness Harbor (primarily SR-C) Dungeness Bluffs (primarily SR-C) Morse Creek to Port Angeles (SR-C) East Angeles Point (primarily SR-C; some Natural) Freshwater Bay (SR-C and SR-I) Whiskey Creek beach (SR-C; some Marine Waterfront) Lyre River vicinity (SR-C; some RC) Clallam Bay (Marine Waterfront, SR-I, SR-C, some Natural)	Clallam River (SR-C) Dungeness River (SR-C, some Natural) Elwha Tributaries (SR-C) Lake Sutherland (SR-I) Lyre River (SR-C, some SR-I) McDonald Creek (SR-C) Morse Creek (SR-I, SR-C, and Natural) Pysht River (SR-C) Salt Creek (SR-C)
Hoko River vicinity (SR-C, SR-I, some Natural) Bullman Beach (SR-I)	
N = Natural ; RC = Resource Conservancy; SR-C = Shoreline Residential - Conservancy; SR-I = Shoreline Residential- Intensive; MW = Marine Waterfront;	

The majority of shorelines outside of these Analysis Areas have relatively low potential for new residential, commercial and/or industrial development due to remote location, lack of public infrastructure, zoning for active timber management, or other limitations.

Finding: Ecology finds that the County has adequately considered current patterns, projected trends, SMA preferred uses and the potential for use conflicts consistent with WAC 173-26-201 (2)(d) and WAC 173-26-201 (3)(d)(ii).

Restoration Plan (WAC 173-26-201(c) and (f))

Local governments are directed to identify restoration opportunities as part of the SMP update process and to include policies that promote restoration of impaired shoreline ecological functions (WAC 173-26-201 (2)(c) and (f)). It is intended that local government, through the master program, along with other regulatory and non-regulatory programs, contribute to restoration by planning for and fostering such actions. These are anticipated to occur through a combination of public and private programs and actions.

The restoration planning component of the SMP is focused on voluntary mechanisms, not regulatory provisions. Clallam County prepared a *Countywide Shoreline Restoration Plan* (ESA, Draft August

2013; Final February 2016), based on information gathered in both Inventory & Characterization Reports which identified programmatic and site specific restoration opportunities organized by WRIA and river systems. The County's restoration planning is focused on restoration goals and objectives, existing plans, opportunities to improve impaired/degraded shoreline ecological functions, and implementation strategies such as funding, technical assistance, voluntary actions, environmental indicators/benchmarks, timelines, priorities, and potential partners.

The Plan addresses restoration in relation to protection, mitigation, and no net loss. Tables 3-1 through 3-7 identify specific actions by region, basin, river system, and reach based on the type of impairment/degradation, development potential, other restoration efforts completed, potential projects and opportunities for ecosystem/shoreline function improvement. Chapter 4 recognizes key challenges for implementation, identifies voluntary actions for private property owners, and sets targets for accomplishments at 2, 5, and 7 years after adoption.

The County's SMP 3.9 Restoration includes policies and regulations that establish the Restoration Plan goals and promote integrated and cooperative restoration efforts. The SMP 2.9 Allowed Uses in Each Shoreline Environment Designation Table 2-2 allows restoration and enhancement as a permitted use in all shoreline designations, and some specific types of projects are exempted from the permit process at SMP 10.2.5 Exemptions from Shoreline Substantial Development Permit.

Finding: Ecology finds that the Restoration Plan is based on appropriate technical information available during the SMP update and meets the requirements of WAC 173-26-201(2)(c) and (f).

Consistency Review

Consistency with the Shoreline Management Act (RCW 90.58): The proposed amendments have been reviewed for consistency with the policy and procedural requirements of RCW 90.58.020 and the approval criteria of RCW 90.58.090.

Consistency with applicable guidelines (WAC 173-26): The proposed amendments have been reviewed for compliance with the requirements of the applicable Shoreline Master Program guidelines (WAC 173-26-171 through 251 and -020 definitions). This included review of a SMP Submittal Checklist, which was completed by the County.

Consistency with SEPA Requirements: The County submitted evidence of compliance with RCW 43.21C, the State Environmental Policy Act (SEPA) in the form of a SEPA checklist and issued a Determination of Non-Significance (DNS) for the proposed SMP amendment on May 17, 2017. Ecology did not comment on the DNS.

Other Studies or Analyses supporting the SMP update

Ecology reviewed the following documents prepared by the County in support of the SMP amendment:

- *March 2011 Public Participation Strategy,*
- *July 2011 Consistency Review,*
- *May 2012 WRIA 20 Inventory and Characterization Report*
- *March 2012 Final Shoreline Inventory and Characterization Report for Portions of Clallam County Draining to the Strait of Juan de Fuca,*
- *February 2016 Countywide Shoreline Restoration Plan,*

- *June 2017 Cumulative Impacts Analysis and No Net Loss Report.*
- *October 2018 SMP Submittal Checklist*
- *October 2020 Clallam County 2020 Shoreline Master Program Update – Review of Lake Sutherland Proposed Buffer Technical Memorandum*

Department of Ecology review process

The proposed SMP comprehensive update was received by Ecology for state review on November 8, 2018. Ecology is required to determine if SMP submittals are complete and in compliance with Washington Administrative Code (WAC) 173-26-100 and 110.

Pursuant to WAC 173-26-100 and -110, Clallam County has satisfied the submittal requirements for a comprehensive SMP update as indicated below:

- A signed Resolution was provided to Ecology that indicated the County's approval of the proposed SMP with the adoption of Resolution 91-2018 on October 30, 2018 (WAC 173-26-110(1) & WAC 173-26-100(7));
- This comprehensive SMP update is intended to entirely replace the County's existing SMP (WAC 173-26-110(2));
- Updated shoreline environment designation maps were submitted to Ecology (WAC 173-26-110(3));
- Materials summarizing the update process were provided to Ecology (WAC 173-26-110(4));
- Evidence of compliance with the State Environmental Policy Act (SEPA) was provided to Ecology including a Determination of Nonsignificance issued by the County on October 16, 2017, along with a completed Environmental Checklist (WAC 173-26-110(5) & WAC 173-26-100(6));
- Evidence of compliance with the public notice and consultation requirements of WAC 173-26-100 was provided to Ecology (WAC 173-26-110(6));
- The County provided numerous opportunities for public and Ecology review and comment throughout the SMP update effort between 2010 and 2018. Notice of public hearings before the Planning Commission and Board of County Commissioners were duly advertised in the *Peninsula Daily News* newspaper and the hearings held on February 4, 12 & 18, 2015, and December 12, 2017. (WAC 173-26-110(7) & WAC 173-26-100(1-3));
- The County provided evidence that the public notice clearly stated the Shoreline Master Program update was required in compliance with RCW 90.58 and WAC 173-26;
- The County solicited comments on the draft SMP from Ecology as part of the 2015-2017 local process (WAC 173-26-110(5));
- A copy of the completed SMP submittal checklist was provided to Ecology (WAC 173-26-110(8));
- Copies of the County's shoreline inventory and characterization report, shoreline restoration plan, and cumulative impacts analysis were submitted to Ecology (WAC 173-26-110(9)).

Ecology provided the County with a letter verifying the submittal was complete on December 4, 2018.

Ecology Public Comment Period

Ecology held a public comment period from January 14 to February 28, 2019, at 5 p.m. Interested parties were notified using mail and email. Notice of the state comment period was distributed to state

task force members and interested parties identified by the County on December 28, 2018 in compliance with the requirements of WAC 173-26-120. Four (4) tribal governments were individually and specifically notified and invited to comment: the Makah, Quileute, Lower Elwha Klallam, and Jamestown S'Klallam. This notice identified that the SMP amendment is intended to satisfy the state statutory requirements of RCW 90.58.080 to comprehensively update the County's SMP. Notice of the comment period, including a description of the proposed SMP and the authority under which the action is proposed along with the manner in which interested persons may obtain copies and present their views, was also provided on Ecology's website². All interested parties were invited to provide comment on the proposed update during this public comment period. No public hearing was held during the state comment period. Thirteen (13) comment letters were received from individuals, industry, tribal governments, state and federal agencies, and non-governmental organizations.

Consistent with WAC 173-26-120 Ecology provided a comment summary to the County on April 10, 2019. This comment summary matrix organizes the thirteen comment letters into 132 individual comments listed by topic based on the pertinent SMP chapter/section in numerical order. On June 4, 2019 the County submitted its responses to the issues raised during the state comment period.

Ecology review timeline

Comprehensively updated County SMPs are generally very complex and address multiple uses and activities. For a variety of reasons, Clallam County's local SMP adoption was delayed past the original due date. The County's final adoption coincided with the receipt of documents related to numerous efforts by other local governments operating under SMP periodic review grant deadlines. This left Ecology with limited staff capacity to complete the final steps in the approval process in a timely manner. Ecology's decision was further delayed in order to explore options with the County in an effort to reach resolution on proposed changes. Ecology collaborated with the county to reach mutual understanding about legally defensible alternatives to locally adopted provisions that Ecology could incorporate into final required and recommended changes.

The timeline below outlines the progress and challenges during the state review process.

Between June and December 2019, Ecology completed initial review of the locally adopted SMP and drafted preliminary required and recommended changes. In January 2020 Ecology staff requested and attended a meeting with Washington Department of Fish and Wildlife (WDFW) to discuss issues around riparian buffers, specifically on Lake Sutherland. This meeting was intended to improve Ecology's understanding and provide WDFW an opportunity to clarify the concerns outlined in their comment letter. This resulted in an additional comment letter submitted to Ecology on April 17, 2020.

Ecology believes in its partnership with local government and as part of this, is committed to avoiding surprises when proposing changes to locally adopted SMPs. In this spirit, initial changes were compiled into discussion drafts of required and recommended changes and sent to the County for their review on April 20, 2020. County and Ecology staff met to discuss these changes on June 18, 2020. Discussions identified specific issues that County and Ecology staff understood would take some time to resolve. These issues included the addition of Ocean Resources Management Act (ORMA) regulations and inclusion of companion state Marine Spatial Plan (MSP) provisions, addressing

² <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Status-of-local-Shoreline-Master-Programs-SMP/Clallam-County>

WDFW concerns with the shoreline buffers on Lake Sutherland, and the need for the County to compile a full updated list of shoreline waterbodies for inclusion in the SMP. Subsequent coordination meetings occurred with County staff July – October 2020.

These continued discussions resulted in agreed upon ORMA and MSP provisions as addressed in Attachment B items #2, 4, 17-20 and Attachment C item #4. The County also agreed to compile a list of shoreline waterbodies to be included as part of the SMP, see Attachment B item #27.

On October 26, 2020 Ecology received a technical memorandum³ from the County prepared by ESA intended to address and propose resolution to Lake Sutherland buffer standard issue identified by WDFW. Receipt of this memo was followed by further coordination with WDFW and the County through December 2020, which resulted in agreed upon required changes found in Attachment B Item #8.

One additional Ecology review consideration was related to the County’s requirement to complete their SMP Periodic Review per RCW 90.58.080(4). Ecology was under the initial understanding that the County intended to combine this effort with the already locally adopted comprehensively updated SMP during the County’s review and acceptance of this Conditional Approval action. However, the County decided they would prefer to complete the comprehensive update through this conditional approval process prior to embarking on the local public engagement and action process steps necessary to complete the SMP periodic review. Ecology completed our review and consistency determination based upon all current statutory and rule requirements, which includes all those listed on the periodic review checklist updated through June 2020. We anticipate that the County may finalize their SMP periodic review with a “finding of adequacy” determination later this year.

Summary of Issues Raised During the Ecology Public Comment Period

The Responsiveness Summary (**Attachment D**) includes a summary of the comments received and Clallam County’s responses to SMP topics raised in the comments pursuant to WAC 173-26-120(6). Ecology considered these comments during the state review process. Additional Ecology review considerations are reflected in this section, the discussion and rationale of Attachments B and C and in the section below titled “Summary of Issues Relevant to Ecology’s Decision.”

Many of the commenters provided supportive statements and acknowledged that the proposed SMP represents a significant improvement over the existing SMP. A general list of topics and concerns raised during the state comment period includes: Aquaculture; Archaeological, Cultural, and Historic Resources; Clearing, Grading & Filling; Climate Change; Critical Areas (aquifers, fish & wildlife habitat, frequently flooded areas, geological hazards, and wetlands); Flood Hazard Management; Hydroelectric Dams; Mining; Mitigation; No Net Loss; Public Access; Shoreline Buffers & Vegetation Conservation; Shoreline Environment Designations & Mapping; Shoreline Stabilization; Tribal Treaty Rights; Water Quality; and the SMP Technical Supporting Documents: Inventory & Characterization Report; Restoration Plan; and Cumulative Impacts Analysis & NNL Report.

Additional discussion is provided below on a subset of topics raised during the state comment period:

³ *Clallam County 2020 Shoreline Master Program Update – Review of Lake Sutherland Proposed Buffer Technical Memorandum* dated October 23, 2021.

CRITICAL AREAS:

Commenters express concerns with the County's geologically hazardous area provisions asserting that the current provisions are not adequate for protecting people, property and ecological functions adjacent to steep slopes, landslide hazard areas, and channel migration zones (CMZ). Comments suggest the County's provisions on riparian buffers should be updated consistent with the recent information published by Washington Department of Fish and Wildlife (WDFW) on management recommendations for riparian ecosystems⁴. The comments recommend 137-foot riparian buffers based on the 200-year Site Potential Tree Height (SPTH), a minimum 200-foot buffer for all water bodies designated as critical habitat for ESA listed species, and a minimum 150-foot buffer for all other streams. Commenters further recommended that the buffer be measured from the edge of the channel, channel migration zone or active floodplain, whichever is wider.

No changes to the SMP are proposed by the County or Ecology. Ecology finds the County considered these comments and adequately responded with applicable SMP provisions. Ecology review shows the SMP 6.3 General Regulations for Shoreline Buffer and Vegetation, including Table 6-1 standard buffer widths and Table 6-2 critical area buffers, 6.4 buffer averaging, and 6.7 common line buffer, are largely consistent with the current science & technical information. Ecology has identified a required revision to Lake Sutherland Buffer to ensure adequate mitigation when locating closer than the standard buffer and to ensure NNL. See Attachment B Item #8. Consistent with the regulations noted above, Ecology finds that the County provides a 150-foot or greater buffer for the majority of the County's shorelines. A buffer of 100 to 125 feet is available for single-family residential and low intensity uses classified as minor new development within the Shoreline Residential-Conservancy SED. With the exception of approximately 4% of the County's shorelines that are designated Shoreline Residential-Intensive and Marine Waterfront, which allow for buffers between 50 and 100 feet. Ecology review shows the SMP 6.3 Table 6-1 shoreline buffers, Table 6-2 critical area buffers, and related buffer and vegetation conservation provisions reflect current science & technical information and local conditions providing appropriate, locally-tailored provisions to protect both people & property and shoreline ecological functions along freshwater shorelines.

Ecology also notes, the County opted to extend shoreline jurisdiction to the full extent of the 100-year floodplain, however, it's possible a CMZ could extend beyond that and the SMP cannot regulate outside of jurisdiction. Ecology finds the Clallam County SMP⁵ relies on the effective FEMA maps to identify the extent of the 100-year floodplain and the floodway. At such time as these maps change, there may be a need to revise the SMP mapping.

SMP 7.14 Regulations for Geological Hazard Protection Standards identify current mapping and establish a locally-tailored three-tiered approach to determining if a proposed use/development will be located in a CMZ, relying on site-specific assessment and delineation to determine any needed buffer rather than an overall prescriptive approach. Additionally, Ecology finds that the SMP established standard marine bluff buffer widths of 150-feet (exceptional feeder bluffs), 100-feet (other feeder bluffs), and 50-feet (non-feeder bluffs). Buffers may be required to be larger based on site specific conditions, findings and recommendations of a geotechnical report (see SMP Sections 7.13.7 and

⁴ These referenced documents include two volumes focused on riparian ecosystems science and management. [Volume 1](#) synthesizes the science and management implications, and [Volume 2](#) provides Management Recommendations.

⁵ The SMP utilizes the FEMA maps for determining floodplain and floodway areas and applicable protection standards under SMP Sections 7.15 and 7.16.

7.14.7). Ecology finds the County's geologically hazardous areas standards are consistent with WAC 173-26-231 (3)(c)).

CLIMATE CHANGE

A number of comments focus on the issue of climate change including related concerns around riparian buffers, geological hazards, and sea level rise and wildfire risks. Commenters express concern about existing environmental degradation and the potential for climate change to compound or amplify the impacts of shoreline uses and developments. Commenters request the County address the risks to the environment, property and human health and safety, by adding policy language, to provide more meaningful consideration of climate change. The comments suggest that this could include increased buffers and setbacks or through technical report requirements.

No additional changes were proposed by the County or Ecology. Ecology finds the County has considered the comments related to climate change, sea level rise and wildfire risk and has chosen not to include additional policies and regulations at this time. The County found that "considering standards to utilize sea level rise projections for regulating location and type of building location in addition to FEMA floodplain maps will require a comprehensive approach and public process that is beyond the scope of the current SMP update effort⁶." The County's further response indicates the County intends to continue its involvement in climate change discussions.

Ecology finds that the SMP does include the following direct and indirect policies and regulations related to climate change:

- *SMP Goals 1.5 set forth goals to inform and increase public awareness of sea level rise projections.*
- *SMP Update Vision (Section 1.4);*
- *SED Policies [Sections 2.5.3(h), 2.6.3(h), 2.7.3(f), 2.8.3.(g)];*
- *Residential Regulation 3.8.2.7;*
- *Restoration Policy 3.9.1.6;*
- *Transportation Policy 3.11.1.8;*
- *Shoreline Stabilization Regulation 4.6.2.14 projects take into account sea level rise and storm surge;*
- *Shoreline Buffer Policies 6.2.1 & 6.2.4; and*
- *Critical Area Policy 7.2.2(f).*

Ecology agrees climate change and related effects are important topics. The agency is actively engaged at the statewide level in work being done on climate change and sea level rise. The Shoreline Management Act (SMA) and the Shoreline Master Program (SMP) Guidelines contain no requirements for SMPs to address climate change or sea level rise. However, they require local jurisdictions to take into account scientific and technical information pertinent to shoreline management issues. The Guidelines require local governments use "the most current, accurate and complete scientific and technical information available" [WAC 173-26-201(2)(a)]. The Guidelines also encourage local governments to consult Ecology's guidance for applicable new information on emerging topics such as sea level rise [WAC 173-26-090(1)].⁷

Ecology finds addressing these topics within the community, and more specifically in a local SMP, is currently left to the discretion of each city and county. Nonetheless, Ecology is seeing increased

⁶ See Attachment D, item# 59 Clallam County Response and Rationale.

⁷ See SMP Handbook Appendix A <https://apps.ecology.wa.gov/publications/parts/1106010part19.pdf>

interest in discussing these issues. Some communities have chosen to address these issues through other regulatory mechanisms including their zoning code. In most cases, the addition of sea level rise policies and regulations to a master program are a result of a community-wide effort, considering the entire geography of the place, and not limited to the comparatively narrow shoreline jurisdictional area. This comprehensive approach has led to more fully integrated responses to these risks within and outside of shoreline jurisdiction in those communities. Ecology supports local communities' comprehensive planning for climate change adaptation recognizing that the SMP is not the only and may not be the best regulatory tool for such.

TRIBAL TREATY RIGHTS

Comments received from the Jamestown S'Klallam Tribe, Quileute Indian Tribe, and the Makah Tribal Council, express concerns related to the SMP impacting treaty-reserved resources and the habitats they depend on, with regard to buffers, no net loss, and mitigation. Other comments were focused on the potential for the SMP to impact Tribal culture, and treaty-reserved rights to fish, hunt, and gather in the County and adjacent waters for tribal economic, subsistence and cultural purposes.

The County proposed no changes at this time, but adds that a number of the Quileute Tribes recommendations were incorporated into the SMP during the local adoption process. In its response, the County expresses its appreciation for the Tribal interests and rights. Ecology review identified Policy 3.2.1(6) and Regulation 3.2.2 both considering treaty fisheries resources and requiring necessary mitigation for impacts to navigation, water quality, sediment quality, benthic & pelagic organisms, wild fish populations, critical saltwater & freshwater habitat, Treaty fisheries resources, water-dependent uses and normal public use of surface waters. Ecology also finds SMP Section 1.7 correctly identifies that this SMP does not apply to: lands held in trust by the U.S. for Indian Nations, Tribes, or individuals; and the exercise of treaty rights per RCW 90.58.350.

AQUACULTURE

Comments related to aquaculture were received from Friends of the Earth, Cooke Aquaculture, Taylor Shellfish, Futurewise et. al., the Quileute Tribe, the Makah Tribe, and one individual. The majority of comments were supportive of the prohibition of commercial net pen operations for non-native finfish. Some comments request retention of, or expansion of, the County's proposed prohibition on non-native finfish (including net pen) aquaculture. Cooke Aquaculture voiced opposition to this same prohibition. Taylor Shellfish requested text edits to two regulations found within Section 3.2.2.

The County response includes reference to the fact that the SMP supports and allows for marine aquaculture consistent with the policies, regulations, application, and permitting requirements applicable to the type and location of aquaculture use. In-water, marine aquaculture is supported as a permitted or conditional use in the Aquatic SED. Only in-water, non-native finfish (including net pens) is prohibited. (SMP Table 2-2 and Section 3.2). The County also acknowledges that if state laws change in regards to authorization of non-native marine finfish aquaculture in Washington State waters, the County would need to review its SMP, at that time.

Ecology review shows the aquaculture allowances are consistent with WAC 173-26-241(3)(b) and other state requirements to recognize this preferred, water-dependent use of statewide interest when appropriately sited, and with the WA Legislature's and Governor Inslee's HB2957 that phases out Atlantic salmon net pens by 2022 and prohibits new commercial aquaculture operations from raising non-native finfish in state waters.

The County supported the text edits proposed by Taylor Shellfish in its formal response to comments (Attachment D). Ecology consulted with the County and incorporated the County's proposed edits in response to the comments into Ecology's recommended changes (Attachment C Items #14&15).

NO NET LOSS:

In addition to the issues included in the above Critical Areas, Climate Change, and Aquaculture sections, commenters expressed the following concerns that buffer widths do not achieve site potential tree height (SPTH) and no net loss (NNL); all uses and developments inside and outside the established buffers shall require compensatory mitigation; and the NNL standard is not sufficient to protect species and improve degraded existing conditions. Additional comments raised questions about how voluntary restoration efforts may be used to offset unmitigated development impacts and about the effectiveness of the County's SMP implementation.

The County response correctly points to the SMP framework as its means to achieve planning level no net loss, stating in part:

The SMP in all its parts from SEDs, policies, and regulations (e.g., use regulations, buffers, etc...), mitigation and NNL requirements, and permitting provisions combined with supporting documents (e.g., shoreline inventory and characterization report, shoreline restoration plan) is designed to help achieve NNL of shoreline ecological functions over- time as new shoreline uses and development occur. (Attachment D Item #20).

The SMA requirement to use the most current, accurate science and technical info does not mean there is any single correct source. The range of information must be considered within the context of the local conditions. Ecology finds that the County considered the most current, accurate science and technical information. Our SMP Handbook Chapter 11 Vegetation Conservation, Buffers & Setbacks includes a Buffer Science Summary graphic at Figure 11-6 that shows scientific sources recommend a range of buffer distances from 15-feet to over 400-feet for specific parameters of shoreline functions and processes. This guidance also notes that "Scientific studies typically include observations of undisturbed areas" and discusses the importance of considering the range of buffer widths in the context of local shoreline conditions and the potential risk of anticipated future development and impacts. We agree that uniform buffer widths are not practical across the landscape, given the range of conditions and need to accommodate preferred uses. The SMP appears to effectively rely on the ICR to establish Shoreline Environment Designations (SEDs) that determine allowed uses (Tables 2-1 and 2-2) and establish shoreline buffer widths (Table 6-1).

These riparian buffer provisions were locally adopted after extensive public review and comment, supported by technical reviews and the Shoreline Inventory and Characterization Report. WDFW provides its recommendation through the lens of its agency mandate. For the purpose of utilizing published WDFW Riparian Management Recommendations within SMPs, local governments must weigh many considerations in balancing the policy of the SMA. To that end, the County's SMP includes appropriate use allowances and restrictions, stream buffers, vegetation management standards, and the requirement for projects to demonstrate mitigation sequencing. As a package, the SMP provides for ecological protection and requires appropriate mitigation to achieve no net loss of shoreline ecological functions, while prioritizing water-oriented uses and increasing public access in the public interest.

Ecology finds the SMP to be consistent with the requirements of the SMP Guidelines in ensuring protection of shoreline ecological resources and ensuring no net loss of ecological functions while also fostering appropriate water-oriented uses and protecting private property rights⁸. Ecology finds that the County's approach to protecting riparian buffers achieves no net loss of shoreline ecological function consistent with the SMA and Guidelines. Ecology review shows the SMP, including Chapter 6 shoreline buffers, Chapter 7 critical area buffers, and Chapter 8 Mitigation & NNL provisions, is consistent with state requirements, given the required changes to SMP 6.3 and 7.6 presented in Attachment B.

The County contends that the SMP requires mitigation sequencing be applied to new uses and development to ensure NNL and that the implementation of the Restoration Plan for voluntary restoration is a separate action that should result in ecological benefit or lift. Ecology finds that voluntary restoration efforts are not relied upon to mitigate for the impacts of new uses or development. Ecology review shows the CIA-NNL Report provides an adequate examination of anticipated development and potential effects to shoreline ecological functions consistent with WAC 173-26-201(3)(d)(iii).

Ecology finds additional regulatory language is unnecessary for ensuring avoidance and minimization. This is more properly addressed during County implementation of the SMP, ensuring applicants clearly document how impacts will be avoided and minimized, identifying appropriate permit conditions, and following through to ensure the proposed project is built consistent with the issued permits. State agencies, including Ecology and the Department of Commerce, are working with local governments to identify how to assess effectiveness in the project review and permitting process, as well as in the on-the-ground results, including mitigation monitoring. To that end, the County has a shoreline monitoring and adaptive management program that includes a mechanism for documenting all project actions necessary for a permit feedback loop and evaluation as part of a monitoring and adaptive management program⁹. Ecology finds that the County's effectiveness monitoring efforts are consistent with the requirements of WAC 173-26-191(2)(iii)(D).

CONCLUSION

Ecology appreciates the level of interest and effort put forth by all commenters in this SMP update. As noted in Attachment D and confirmed by the SMP record, the County considered comments throughout the local adoption process and in some cases made modifications to earlier drafts of the SMP to address issues identified.

Ecology has reviewed the comments received along with the County's responses. Ecology finds the County's responses are consistent with the statutory and rule obligations. Ecology finds the County considered whether to incorporate any amendments to address issues raised during the comment period. Issues raised during the state comment period resulted in one required change (Attachment B Item #8) and eight recommended changes (Attachment C Items #14, 15, 24, 26 & 35-38).

⁸ The SMP Guidelines require the SMP to address environmental protection, accommodate preferred shoreline uses, and "protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest" (RCW 90.59.020).

⁹ As explained within the CIA and noted elsewhere in this document, the County created a Shoreline Checklist & Statement of Exemption Form for use as a permit application and review tool for demonstrating project consistency with the SMP policies and regulations (Appendix A to the CIA).

The County determined, and Ecology concurs, that no additional amendments are warranted at this time based upon the significance of this information and the existing SMP provisions¹⁰.

Summary of Issues Identified by Ecology as Relevant to Its Decision

Ecology respects the County process and recognizes that development of an SMP, and implementation of the SMA is a cooperative program with our local government partners. During the course of the Clallam County effort, Ecology acted in a supportive and review capacity by providing grant funds, attending numerous meetings during development of technical documents and draft policies and regulations, and providing technical assistance throughout, including comments on numerous drafts of the SMP. The County locally adopted their comprehensively updated SMP by Resolution 91-2018 on October 30, 2018, Ecology's final review and approval process included consideration of recent statutory and rule changes (Periodic Review checklist items) as well as requirements for consistency with the state's Marine Spatial Plan (MSP), adopted in 2018.

Ecology is required to review all SMPs to ensure consistency with the SMA and implementing rules including WAC 173-26, State Master Program Approval/Amendment Procedures and Master Program Guidelines.¹¹ WAC 173-26-186(11) specifies that Ecology "shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of RCW 90.58.020."

Based on review of the locally adopted SMP for consistency with applicable SMP Guidelines requirements and the SMA, and consideration of supporting materials in the record submitted by the County, the following topics remain relevant to Ecology's final decision on the comprehensive update to the Clallam County SMP:

- Administrative Interpretations – ensure local process includes required consultation with Ecology;
- Clearing, Grading & Filling – ensure regulations are consistent with requirements for the location, design & construction of fill activities;
- Critical Areas – ensure allowed wetland activities are appropriately limited and adequately mitigated to ensure 'no net loss'; ensure internal consistency for terrestrial habitat conservation area terms & provisions;
- Definitions – ensure consistency with terms established by statute & WAC, and internal consistency with terms as used in the SMP;
- List of Jurisdictional Waterbodies – ensure a list is included consistent with WAC requirements.
- Ocean Management – include provisions to adequately manage ocean uses as required by statute and adopted plans;
- Parking – clarify the distinction between parking as a primary use and parking accessory to public access;
- Permit Revisions – ensure limitations are consistent with WAC requirements;
- Preferred & Other Priority Uses – clarify the distinction between preferred water-oriented uses and other priority uses such as residential;

¹⁰ WAC 173-26-090(3)(b)(iii)

¹¹ RCW 90.58.050

- Public Access – ensure multi-family residential use and non-residential dock & pier standards are consistent with public access requirements;
- Shoreline Buffers – ensure buffer reduction allowances are appropriately limited and adequately mitigated to ensure ‘no net loss’;
- Shoreline Environment Designations – clarify the intersect between Aquatic SED and management of ocean uses;

The specific issues, proposed changes, and Ecology’s rationale are detailed with 27 items identified in **Attachment B** and some of the key issues are briefly described below:

CRITICAL AREA REGULATIONS

As required by the Growth Management Act (RCW 36.70A.480(3)(d)), upon Ecology approval of an updated shoreline master program, “critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter...”.¹² This requirement means critical area reviews for activities in shoreline jurisdiction occur within the context of the SMP permitting procedures. The SMP addresses critical areas in Chapter 7. Ecology has identified needed changes to the provisions for Wetlands and for Class I & II Terrestrial Habitat Conservation Areas to ensure the SMP and associated critical area provisions are implemented consistent with the requirements of the Act. These changes remove conflicting language and add clarifying provisions. (**Attachment B**, Items 9 & 10):

- 7.6 Wetland Protection Standards – For consistency with WAC 173-26-221(2)(c)(i)(A) and the most current scientific & technical information, provisions allowing impacts to wetlands based on category must be deleted. Replacement provisions are proposed to identify regulated activities, ensure all wetlands in shoreline jurisdiction are protected and mitigation sequencing requirements are met.
- 7.10 Class I & II Terrestrial Habitat Conservation Areas – For internal consistency with the construct and definitions of the SMP, the inclusion of critical saltwater habitat must be deleted as a type of terrestrial habitat.

OCEAN MANAGEMENT

As required by the SMP Guidelines at WAC 173-26-360, local SMPs for affected coastal communities must include ocean uses policies, regulations, and approval criteria consistent with the Ocean Resources Management Act (‘ORMA’; RCW 43.143). And as separate but related, the Marine Waters Planning & Management law (RCW 43.372) requires SMPs to be consistent with the state’s Marine Spatial Plan (MSP), adopted in 2018. While the County’s locally-adopted SMP included some placeholder provisions regarding ORMA and the MSP at 1.4 SMP Update Vision and 2.3 Aquatic SED Management Policy #3.i, the SMP needs a more robust and complete approach to meeting the ORMA and MSP requirements for consistency with statute and rule. Ecology has identified needed changes to the provisions at SMP 1.4 and 2.3, and provides recently prepared draft ORMA & MSP checklist and guidance materials intended to aid local governments, and extensive example language, including definitions. (**Attachment B**, Items 2, 4, 17-20 and Exhibit 1)

Because ORMA was enacted in 1989 the County must meet those requirements as part of the SMP comprehensive update, however the MSP was adopted almost concurrently with the

¹² See also RCW 90.58.610

County's SMP local approval so those requirements would need to be met, at minimum, as part of the required SMP periodic review. While the County is opting to first complete its comprehensive update prior to conducting a separate, subsequent periodic review, consultation with County staff guides our proposed approach to add both ORMA and MSP provisions now as part of the comprehensive update. The intent is that this approach should leave no further ORMA/MSP changes needed at the periodic review phase.

SHORELINE BUFFERS

The SMP Guidelines require local SMPs to protect and ensure no net loss of shoreline ecological functions (WAC 173-26-186(8)(b) and -201(2)(c)), to provide regulations that are of sufficient scope and detail to implement the SMA and SMP policies (WAC 173-26-191(2)(a)(ii)(A)), and establish a system of shoreline environment designations based on current conditions and other factors (WAC 173-26- 211).

SMP Chapter 6 establishes general shoreline buffer and vegetation conservation policies and regulations based on the type of development (minor or major), size of the lot, and the shoreline environment designation (SED), including minimum standards for retaining or enhancing buffer vegetation. The overall strategy reflects the findings of the Inventory & Characterization, meets the WAC requirements, and allows minor buffer reduction in limited situations based on site-specific criteria. Table 6-1 identifies standard shoreline buffers widths ranging from 50-feet to 175-feet, SMP 6.4 allows a reduced width by buffer averaging not to exceed 25% reduction, and SMP 6.7 allows a reduced width by the common line buffer approach for single family residential view protection.

SMP 6.3 Regulation #6 establishes a reduced 35-foot buffer for residential structures at Lake Sutherland and Table 6-1 notes a reduced 35-foot buffer width for all new use & development at Lake Sutherland regardless of lot size or SED; no additional mitigation requirements are described for this buffer width reduction to offset the impacts of locating development within the standard shoreline buffer. As proposed, these provisions are internally inconsistent as to which structures and locations are eligible, and the allowed buffer reduction without additional mitigation is inconsistent with the no net loss standard. Concerns expressed by WDFW noted the importance of ensuring adequate protection for in-water and riparian habitat that supports anadromous fish species, anticipated to soon have greater access to the lake upon the pending removal/replacement of a barrier culvert at the downstream outflow of the lake.

As part of our review & consideration of this issue, Ecology met with WDFW staff in January 2020 to better understand their concerns and to share information on SMA and WAC requirements. In April 2020 WDFW staff provided some follow-up clarifications & technical details to assist our review. In November 2020 Ecology shared a draft of the proposed revisions with WDFW and followed-up with email and virtual check-ins as we collaborated with the County to refine the draft language.

Ecology has identified needed changes to the provisions at SMP 6.3 and Table 6-1 to ensure consistency with WAC 173-26, to clarify the limitations and criteria for a reduced buffer width at Lake Sutherland, and for internal consistency. (**Attachment B**, Item #8)

ADDITIONAL RECOMMENDED CHANGES

In addition to the required changes noted above, we have also identified a number of recommended changes intended to improve document clarity and aid implementation. A general list of the variety of minor issues addressed includes: minimize duplicative text; correction of typos/clerical errors; clarifications for accuracy & internal consistency; accurate phrasing to reflect the final status of an adopted SMP; use of the SMA phrase for current science and technical information rather than the GMA term for best available science; clarification of language regarding ORMA and the MSP; accurate use of the separate terms for various water-oriented use and development; clarification of activities not required for local review & permits or excepted from SMA authority; accurate description of the three periodic review categories; clarification of SED criteria for improved WAC consistency; added language to provide better context for allowing experimental aquaculture; correction/clarification for the definitions and use of separate but related terms ‘appurtenant’ and ‘accessory’; clarification of permit tracking and compliance monitoring; added language that recognizes/defers to definitions established by statute and rule.

These recommended changes were prepared in collaboration with County staff, and are further described as 39 items identified within **Attachment C**.

CONCLUSIONS OF LAW

After review by Ecology of the complete record submitted and all comments received, Ecology concludes that the County’s comprehensive SMP update proposal, subject to and including Ecology’s required changes (itemized in **Attachment B**), is consistent with the policy and standards of RCW 90.58.020, RCW 90.58.090, RCW 36.70A.480 and the applicable SMP guidelines (WAC 173-26-171 through 251) as well as the definitions in WAC 173-26-020 and WAC 173-27. This includes a conclusion that the proposed SMP, subject to required changes, contains sufficient policies and regulations to assure that no net loss of shoreline ecological functions will result from implementation of the new updated master program, per the standards of WAC 173-26-201(2)(c).

Ecology also concludes that a separate set of recommended changes to the submittal (identified during the review process and itemized in **Attachment C**) would be consistent with SMA policy and the guidelines and would be beneficial to SMP implementation. These changes are not required but can, if accepted by the County, be included in Ecology’s approved SMP amendment.

As stipulated in RCW 90.58.610, RCW 36.70A.480 governs the relationship between shoreline master programs and development regulations to protect critical areas that are adopted under chapter 36.70A RCW. Consistent with RCW 36.70A.480(4), Ecology concludes that, subject to and including Ecology’s required changes, the SMP provides a level of protection to critical areas located within shorelines of the state that assures no net loss of shoreline ecological functions necessary to sustain shoreline natural resources.

Ecology concludes that the County has chosen to exercise its option pursuant to RCW 90.58.030(2)(d)(i) or (ii) to increase shoreline jurisdiction to include both i) the full extent of the 100-year floodplain; and ii) buffers for critical areas located within shorelines of the state. Therefore, as required by RCW 36.70A.480(6), for those designated critical areas with buffers that extend beyond minimum SMA jurisdiction the buffer shall be regulated by the SMP.

Ecology concludes those SMP segments relating to shorelines of statewide significance provide for the optimum implementation of Shoreline Management Act policy - RCW 90.58.090(5).

Ecology concludes that the County complied with the requirements of RCW 90.58.100 regarding the SMP amendment process and contents.

Ecology concludes that the County has complied with the requirements of RCW 90.58.130 and WAC 173-26-090 regarding public and agency involvement in the SMP update process.

Ecology concludes that the County has complied with the purpose and intent of the local update process requirements contained in WAC 173-26-100, including conducting open houses and public hearings, notice, consultation with parties of interest and solicitation of comments from tribes, government agencies and Ecology.

Ecology concludes that the County has complied with requirements of Chapter 43.21C RCW, the State Environmental Policy Act.

Ecology concludes that the County's comprehensive SMP update submittal to Ecology was complete pursuant to the requirements of WAC 173-26-110 and WAC 173-26-201(3)(a) and (h) requiring an SMP Submittal Checklist.

Ecology concludes that it has complied with the procedural requirements for state review and approval of shoreline master program amendments as set forth in RCW 90.58.090 and WAC 173-26-120.

Ecology concludes the County's final legislative action will serve to complete the comprehensive SMP update required by RCW 90.58.080(2).

DECISION AND EFFECTIVE DATE

Based on the preceding, Ecology has determined the proposed amendments comprehensively updating the SMP are consistent with the policy of the Shoreline Management Act, the applicable Guidelines and implementing rules, once the required changes set forth in **Attachment B** are accepted by the County. The County may choose to adopt the recommended changes in **Attachment C**. Pursuant to RCW 90.58.090(2)(e), the County must notify Ecology of the approval or denial of the recommended changes. Ecology approval of the proposed amendment with required changes is effective 14 days from Ecology's final action approving the amendment.

As provided in RCW 90.58.090(2)(e)(ii) the County may choose to submit an alternative to all or part of the changes required by Ecology. If Ecology determines that the alternative proposal is consistent with the purpose and intent of Ecology's original changes and with RCW 90.58, then the department shall approve the alternative proposal and that action shall be the final action.