

June 5, 2017

Fawn Sharp, President  
Quinault Indian Nation  
Post Office Box 189  
Taholah, WA 98587

RE: Quinault Indian Nation Comments on Draft Shoreline Master Program

Dear President Sharp

The Board of County Commissioners again wants to thank the Quinault Indian Nation for your February 22, 2017 comment letter regarding the Draft Grays Harbor Shoreline Master Program.

The Board has worked closely with its staff and the Washington State Department of Ecology to prepare a comprehensive response to your comments. The results of our efforts are attached.

We have organized our letter by first discussing some general points that we hope will shed greater light in understanding the draft Shoreline Master Program and the planning responsibility under Washington State law. The remainder of the letter provides specific responses to comments forwarded by the Quinault Indian Nation. The Board and its staff will gladly be available to discuss any further clarifications requested on the draft Shoreline Master Program.

The Board, however, requests your patience in addressing draft Shoreline Master Program issues at the present time. Singling out the draft Shoreline Master Program at this juncture would prove detrimental to the interests of both the County and the Quinault Indian Nation. As Stated in our previous letter to you, the State of Washington's grant to the County for the draft Shoreline Master Program ends June 30<sup>th</sup> of this year. If the update process extends beyond that date, the County will lose its funding along with the consulting assistance necessary to usher it through the final adoption phase. Because the County lacks the staffing levels necessary to devote to this task, postponing the

adoption of the draft Shoreline Master Program means there likely will be a long delay in its adoption. This delay means that the current Shoreline Master Program, which affords a far lesser standard for environmental protection of shoreline resources, remains in effect replaced. Faced with this prospect, the County has determined that it is in the best interest of all interested parties to forward the draft SMP, along with the QIN comments and County's responses, to ECY for its approval as it proceeds with the process to adopt the SMP..

The Board wishes to add that it is hopeful your comment letter and our response opens the opportunity for increased dialog between the County and the Quinault Indian Nation. The Shoreline Master Program is only one of many similar issues that warrant thoughtful discussion. Reservation

To this end, the Board would like to propose that the County and the Quinault Indian Nation pursue a government-to-government consultation process that would examine a wide range of issues through a comprehensive approach. Ultimately, a memorandum of understanding between the Quinault Indian Nation and Grays Harbor County would provide both parties with the level of predictability and environmental protection they desire.

If this approach is agreeable to the Quinault Indian Nation, the Board would propose scheduling a meeting that would initiate discussions on developing a framework for how a government-to-government consultation process could move forward in a productive manner for both parties. Please let us know of your interest in this proposal.

The Board of County Commissioners again thanks the Quinault Indian Nation for its comments on the draft Shoreline Master Program. We also look forward to working with the Quinault Indian Nation on other issues in the near future.

Sincerely,

Wes Cormier, Chair

## General Responses

### 1. Interpreting the draft Shoreline Master Program

Shoreline Master Programs incorporate both policies and regulations, acting in many ways like a combined comprehensive plan and zoning ordinance. Policies in the SMP aim to achieve a general result and allow a degree of interpretive flexibility due to varying circumstances. Regulations in the SMP, on the other hand, require development and activities to respond in a specific manner.

The structure of the SMP needs to be read carefully as a whole and not as independent, unconnected provisions. Each provision within the SMA, as well as each chapter, integrates with one another. Any standalone interpretation of an individual section in the plan will result in an inaccurate understanding of the entire policies and/or regulations of the SMP.

A case in point that frequently surfaced in the comment letter was the Statement that many uses and modifications failed to cite the standard for no net loss of ecological function. All shoreline uses and modifications allowed within a shoreline environment designation must comply with Chapter 3, General Policies and Regulations.<sup>1</sup> This core element of this SMP explains the requirements for the protection of shoreline ecological function, which extends to all uses and modifications.<sup>2</sup> This section, along with the integration of the County's regulations for protection of critical areas, provides significant environmental protection for shoreline resources at a level not currently in place.<sup>3</sup>

Other layers of County, State, and federal law are acknowledged within the Shoreline Master Program. These plans and regulations also apply, and in those cases where there is a conflict, the stricter provision applies unless Stated otherwise.<sup>4</sup>

### 2. Grays Harbor County responsibilities under the Shoreline Management Act

Grays Harbor County adopted its current Shoreline Master Program (SMP) under the Shoreline Management Act (SMA), Chapter 90.58 Revised Code of Washington in June 1974. The last update to the SMP was in 1980.

The Washington State Legislature made significant amendments to the SMA in 1995 that eventually resulted in the promulgation of new administrative rules in 2003 for SMPs.<sup>5</sup>

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<sup>1</sup> Section 3.1, Applicability, reads: The provisions of this chapter establish goals, policies, and regulations that shall apply to all shoreline environments without regard to environment designation.

<sup>2</sup> See Section 3.3, Protection of Shoreline Ecological Function, draft SMP 01-30-17

<sup>3</sup> See Section 1.5, Adoption of Critical Areas Protection by Reference, draft SMP 01-30-17

<sup>4</sup> See Section 1.6.4, draft SMP 01-30-17

<sup>5</sup> Chapter 173-26, Washington Administrative Code

These amendments required Washington cities and counties to update their SMPs consistent with State standards on a set schedule. Under the SMA, Grays Harbor County had to start its update process in July 2013. The County received a grant through the Washington State Department of Ecology to complete the update. This grant expires June 30, 2017 regardless whether the County completes the update by that time.

Throughout this project, Grays Harbor County conducted a very intensive public outreach process to discern the spectrum of expectations about shoreline management from all our citizens. The County particularly would like to thank those members and staff of the Quinault Indian Nation who attended many of our meetings. The numerous comments expressed at these meetings eventually became the foundation to the draft SMP.

As any legislative body knows, blending a wide range of opinion into a single document guiding future development is a complicated task. This becomes even more difficult when State law establishes a minimum threshold that a plan must meet. This is the nature of planning under the SMA in Washington State.

Thus, the draft SMP Grays Harbor County has prepared first and foremost must meet the minimum requirements of Washington State law. The County feels it has met this threshold; a comparison of specific sections within the draft plan with Chapters 90.58 RCW and 173.26 WAC frequently reveals common, if not verbatim, language.

However, it should also be noted that the shoreline rules also require the County to tailor the SMP to local circumstances. While the County must meet certain minimum standards, the SMP reflects existing conditions in Grays Harbor County, and is integrated with other County land use plans and ordinances. In meeting the policy of the SMP to "plan for and foster all reasonable and appropriate uses" while protecting existing ecological functions, the County must achieve a delicate balance. The SMA is explicit about the County's requirement for protecting both the environment and property rights.<sup>6</sup>

### **3. Grays Harbor County jurisdiction under the Shoreline Management Act**

The SMP alone does not completely describe Grays Harbor County's authority over shoreline development within its jurisdictional boundaries. There is a plethora of other local, State, and federal laws, case law, and treaties that add to or limit that jurisdiction. The SMP focuses only on shoreline development that falls under the scope of the SMA. The following response attempts to clarify the County's jurisdiction only through this lens.

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<sup>6</sup> See "State of Washington, Attorney General's Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property." WAC 173-26-186(5)

Section 90.58.030 RCW, Definitions and concepts, describes the extent of Grays Harbor County jurisdiction over shorelines within its boundaries. A clear understanding of this section is essential for clarifying some of the jurisdictional concerns expressed in the Nation's comment letter.

Jurisdiction under the SMA includes:

"...those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology."<sup>7</sup>

Not all waterbodies, however, fall under SMA jurisdiction. The SMA applies only to those sections of rivers that have a mean annual flow of 20 cubic feet per second or greater, their associated wetlands, and lakes 20 acres or greater in area, the Pacific Ocean and the Grays Harbor Estuary.

Furthermore, the County's jurisdiction only applies to these water and upland areas within unincorporated Grays Harbor County. Eight cities in the County have their own SMP, each of which apply to areas outside the County's jurisdictional scope. The jurisdiction of cities also extends to the middle of water bodies, such as the Grays Harbor Estuary, or to the outer boundaries of State jurisdiction in the Pacific Ocean. The County's SMP has no influence on what happens within the jurisdictional boundaries of those entities.

There are further limitations to the scope of the County's SMP related to tribal and federal lands. Grays Harbor County SMP jurisdiction does *not* apply to "Lands held in trust by the United States for Indian Nations, tribal governments, or individuals."<sup>8</sup>

This includes that area of Lake Quinault waterward of the ordinary high water mark. The jurisdiction of the Quinault Indian Nation through the Treaty of Olympia has always been recognized by Grays Harbor County, which can be verified by reviewing the County's code regarding critical area protection.<sup>9</sup> The early maps designated Lake Quinault as "Aquatic;" the County has since adjusted the current set of draft maps to show no designation for water bodies within the exterior boundaries of the Quinault Indian Reservation.

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<sup>7</sup> RCW 90.58.030 (2) (d)

<sup>8</sup> Section 1.4.7, Grays Harbor County SMP, draft dated January 30, 2017

<sup>9</sup> "The bed of Lake Quinault up to the ordinary high water mark (OHWM) is within the exterior boundaries of the Quinault Indian Reservation and owned by the Quinault Indian Nation. Any activity below the OHWM of Lake Quinault shall be approved in writing by the Quinault Indian Nation prior to the issuance of any development permit." Section 18.06.140 (B) Grays Harbor County Code.

There are other more nuanced exclusions to the County's SMA jurisdiction that need to be recognized, especially to lands under US Forest Service and Olympic National Park. These are of special interest to the Nation given their proximity to Lake Quinault.

For federal lands under US Forest Service jurisdiction, State rules require the County to assign a shoreline environment designation to those shorelines that fall under the oversight of the SMA. These designations essentially become effective only when there is a transfer of land ownership from the federal government to another entity. Such land transfers do occasionally happen, although such a transfer along the south shore of Lake Quinault is highly unlikely. The only time the County could theoretically exert SMP jurisdiction along the south shore would be for a nonfederal development action occurring on US Forest Service lands that required a County shoreline permit. The County has yet to encounter such a situation and does not anticipate one in the future.

The State of Washington ceded exclusive jurisdiction within the boundaries of the Olympic National Park under RCW 37.08.210 with limited exceptions. Building, environmental health, and land use regulations are not included within these exceptions. Therefore, the County has no authority to regulate any shoreline development within the boundaries of the park, including private inholdings. While the County may consult with the Olympic National Park on such matters, the park is under no obligation to do more than listen.

The early draft maps prepared by the County erroneously designated these upland areas within the boundaries of the Olympic National Park as "Shoreline Residential." The County has removed that designation from the maps for any lands within the park boundaries.

#### **4. Grays Harbor County jurisdiction over fee lands within the boundaries of the Quinault Indian Reservation**

Within the exterior boundaries of the Quinault Indian Reservation, there are properties under private ownership that are not held in trust by the United States for Indian Nations, tribal governments, or individuals. Those lands have been under County SMA jurisdiction since the adoption of the initial SMP in 1974. Other County ordinances equally apply to these lands at the current time.

The SMA does not provide local governments much direction as to how to manage fee lands within a Reservation beyond mailing copies of a draft SMP to federally recognized tribes before adoption or amendments.<sup>10</sup> Considering the long history of treaties and complex case law regarding land use situations within Indian Reservations, it would not be possible for the State to develop "one-size-fits-all" guidance. The County agrees with the comments by QIN that both the County and the tribe would benefit from more on this very complex issue.

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<sup>10</sup> RCW 90.58.060 (2) (a)

## **5. Comments related to sea level rise**

Grays Harbor County fully acknowledges that sea level rise is an important, long-term issue that will impact future development along coastal shorelines. However, there are still locally specific information needs that are critical to identifying vulnerabilities and evaluating risks to our community and ecological resources.

Efforts are underway to better understand sea level rise and its implications for Grays Harbor. For example, the OSU Envision project is a modeling attempt to identify specific SLR impacts in Grays Harbor, and the WA Coastal Resilience Project is gathering updated SLR projections through a probabilistic framework.

By including sea level rise policy language into the SMP, the County can evaluate and respond to information as it becomes available. The County SMP is also taking preventative measures by adopting a 200-foot buffer in Environment Designations along the Pacific Coast that restricts new development throughout the full extent of Shoreline jurisdiction.

In addition, sea level rise may impact areas outside shoreline jurisdiction. The SMP is one tool that can be used in conjunction with other planning programs to comprehensively address sea level rise impacts through mitigation, adaptation, and growth management. Other coastal communities around Washington have used local comprehensive plans, flood ordinances, stormwater management, infrastructure planning, evaluations of utility and service capacity, and other activities. Once the County can understand its vulnerability and risk the County can determine if any further changes to the SMP are warranted as part of an overall sea level rise response strategy.

## **6. Extent of historic development within County shoreline jurisdiction**

Unlike many Western Washington counties, development within the shoreline jurisdiction of Grays Harbor County has been relatively slow for many years. The County receives very few development proposals annually that require shoreline development permits. Single family residences, which do not require a shoreline permit, do occasionally locate within shoreline jurisdiction; however, shoreline residences must comply with all SMP policies and regulations. With the adoption of the updated SMP, the County anticipates further avoidance of shoreline impacts due to the requirements for higher protection standards.

## **7. Adaptive management under the SMP**

A major change under RCW 90.58.080 (4) is the requirement for the County to review, and if necessary revise, the SMP every eight years. The review must evaluate whether the policies and regulations in the SMP are meeting the requirements of the SMA, including any legislative changes, and Chapter 173-26.

To assist in this process, the County will be tracking both permits and exemptions issued under the SMP. The County is required to formally review and revise its SMP on or before June 30, 2022 and every eight years thereafter. The County anticipates undertaking amendments to the plan relating to ocean uses, contingent on acquiring grant funding, before that date.

### Specific Comments

The following responses match the numbering sequence to the specific comments in the QIN letter.

#### Lake Quinault.

The Lake is designated a "shoreline of Statewide significance" under the Washington State Shoreline Management Act (WAC 173-18-180(78)).<sup>11</sup> The QIN disputes that the Lake should be included on this list because its bed to the ordinary high water mark and waters are held in trust for the QIN by the federal government. Regardless, Section 3.7 of the County's Program includes goals and policies for "Shorelines of Statewide Significance." However, Section 3.7 makes no specific mention of Lake Quinault and there is very little mention of the Lake in other sections of the Program as well. In fact, of the four proposed "Shoreline Environment Designations" applied to the shorelines around Lake Quinault and the Lake surface, only the "Coastal Community Environment (CC)" designation mentions Lake Quinault by name (Section 2.4.1).

County Response:

- The draft SMP does not apply to lands held in trust by the United States for Indian Nations, tribal governments, or individuals, which includes Lake Quinault.<sup>12</sup> The County has no authority to regulate any action waterward of the ordinary high water mark of the lake. Grays Harbor County has very limited jurisdiction, if any, along the uplands of Lake Quinault. Concerns over future land uses should more appropriately be directed to federal agencies.

The designation of Lake Quinault as a Shoreline of Statewide Significance under State law does not affect QIN jurisdiction waterward of the ordinary high water mark. The designation, however, is necessary to assist the County in those rare circumstances where there might be management responsibilities for those uplands landward of the ordinary high water mark adjacent to Lake Quinault. The policies for Shorelines of Statewide Significance will elevate the level of permit review required of those uplands.<sup>13</sup>

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<sup>11</sup> Please see RCW 90.58.030(2)(f)

<sup>12</sup> § 1.4.7 (A)

<sup>13</sup> See § 3.7

Please note from our earlier comments that lands within the boundaries of the Olympic National Park are not within the County's jurisdiction and only in rare circumstances would County jurisdiction ever apply to a nonfederal action allowed by the US Forest Service on its lands. Any actions within the boundaries of the Olympic National Park and the Olympic National Forest must comply with federally approved land use plans and code. Ultimately, the trust responsibilities of the US Forest Service and Olympic National Park to QIN is the best avenue to protecting the lake.

- Because the County's jurisdiction is so limited around Lake Quinault, the County does not see the need to establish a specific designation for the lake. Giving the lake a special shoreline environment designation would imply a level of management responsibility that does not exist. While it would be easier for the County not to show any designation for land around the lake, County responsibility under State rules requires a designation (WAC 173-26-211(2)).
- Any mining along upland areas of Lake Quinault within shoreline jurisdiction would require federal permitting. If the action was within the Olympic National Park boundary, the County would not have jurisdiction. If a private party would be granted permission to do so on US Forest Service lands along the uplands of Lake Quinault, a shoreline conditional use permit would require meeting a set standards as well as approval from the Washington State Department of Ecology.<sup>14</sup> However, the County is not averse to noting an exception within its table of uses prohibiting mining within the shoreline jurisdiction of Lake Quinault.
- Clear-cutting forest lands is not an allowed activity along a shoreline of Statewide significance.<sup>15</sup> In addition, any forest practices along shorelines of Statewide significance require a conditional use permit.<sup>16</sup> As to Lake Quinault, forest practices would only occur if the appropriate federal agency approved such action.
- Development on fee lands in Amanda Park currently must comply with County code in addition to the provisions within the draft SMP for those lands located within 200 feet of the ordinary high water mark. The development issues cited in the comment letter generally fall under the following sections with the Grays Harbor County Code:
  - Chapter 8.16, On-site sewage systems
  - Chapter 12.02, Standard road specifications
  - Chapter 13.04, Water main, fire hydrant, and fire flow requirements

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<sup>14</sup> §7.3.2

<sup>15</sup> §4.6.3.C

<sup>16</sup> §4.6.3.D

- Chapter 13.08 Water availability program for new buildings
- Chapter 13.16 Water system cross connection control program
- Title 16, Subdivisions
- Title 17, Zoning
- Chapter 18.06 Critical Areas Protection

The number of residences in shoreline jurisdiction within Amanda Park is limited to fewer than 25 units. The SMA does not allow the County to extend jurisdiction of the plan to those properties beyond 200 feet from the ordinary high water mark.

## **Pacific Ocean**

**Section 2.11, "Table 1: Shoreland and Shoreline Uses by Environmental Designation." This table shows only a few uses that are permitted outright for the "Pacific Ocean" environment; and those uses are mostly related to recreation or boating. Most other uses are either prohibited or require a conditional use permit. The draft Program must address the fact that the Quinault Reservation beaches are closed to use by anyone other than enrolled members of the QIN except by explicit permission of the QIN. Similarly, the draft Program must address the conflict between uses allowed and prohibited by the QIN and those identified in the Program, which would only apply to non-Indian-owned fee lands within the Reservation.**

**Section 6.10 on Ocean Disposal Development allows disposal of harmful materials in the ocean without meeting the no net loss standard. Such activities could result in impacts to crab resources.**

**In addressing Ocean Transportation Section 6.11.3 A States "An assessment should be made of the impact transportation uses will have on renewable resource activities, such as fishing, and on environmentally critical and sensitive habitat areas, environmental and scientific preserves, and sanctuaries." Section 6.11.3 B States "When feasible, hazardous materials such as oil, gas, explosives and chemicals, should not be transported through highly productive commercial, tribal, or recreational fishing areas. If no such feasible route exists, the routes used should pose the least environmental risk." These sections allow hazardous materials to be moved through tribal and State fisheries, potentially allowing damage to these current uses and unacceptably harming treaty resources. There should be a threshold where proposed activities are not allowed. In addition, the Section does not require no net loss.**

**Section 6.12.2 specifically requires no net loss for research, but this is not a requirement for damaging activities in ocean development, ocean energy development, ocean transport, mining, and others proposals. These other activities with a higher ecological impact should not be allowed to damage ecological function.**

Section 6.6.1 (V) and (W) discuss the design, construction, location and operation of oil and gas "ocean development." However, under the Ocean Resource Management Act, "There shall be no leasing of Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, nor in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge, for purposes of oil or gas exploration, development, or production." RCW 42.143.010(2). It should be clear that these activities are prohibited.

County response:

- Grays Harbor County anticipates that the upcoming results of the Marine Spatial Planning process will provide significant direction for future management of resources within the Pacific Ocean. This science-based, regional effort undertaken by regional governments and user groups will provide excellent data for developing an effective regional approach to ocean management.

Until that time, the County has chosen to rely on Chapter 43.143, the Ocean Resources Management Act, and WAC 173-26-360, Ocean Management, for managing future activities within the Pacific Ocean. The draft uses this language from State law nearly verbatim.

- As a sovereign nation, the Quinault Indian Nation may enact regulations that restrict access of non-members to any part of the Quinault Indian Reservation. However, such a law enacted by the County would likely violate the right to freedom of movement governed under the Privileges and Immunities Clause of the US Constitution. While the County acknowledges the right of the Quinault Indian Nation to restrict access to its lands, the County prefers to avoid any legal challenge on behalf of this issue.
- Any action under Section 6.10 will require thorough environmental review, a shoreline conditional use permit, and compliance with the most current Dredged Material Evaluation and Disposal Procedures User Manual. Disposal also must meet the approval of US Environmental Protection Agency and the US Army Corps of Engineers, two agencies with trust responsibilities to the Quinault Indian Nation.
- All sections of the plan require no net loss of shoreline ecological functions, including areas affected by transportation and research uses.<sup>17</sup> Please note earlier discussion about the municipal jurisdiction in the Pacific Ocean and the Grays Harbor Estuary.
- The SMP cites RCW 43.143.010(2) as it applies to those sections of the Pacific Ocean and Grays Harbor Estuary that are under County SMA jurisdiction.<sup>18</sup>

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<sup>17</sup> See §3.3, Protection of Shoreline Ecological Functions

<sup>18</sup> See §6.7, Oil and Gas Development

Overall, the draft Program allows for development of all shorelines over time. It does not acknowledge the current degraded condition of much of our shorelines. For example, in looking at the floodplains of the Chehalis River, only about 11% of the shoreline was classed as forest (QIN unpublished data) indicating a major loss of natural riparian function that is undoubtedly contributing to reductions in salmon and steelhead production. These reductions were estimated in the 2014 Governor's Workgroup report at about 50% to >80%. The basic assumption of full development of shorelines needs to be changed to take into account this reality. This reduction reflects a major loss to the QIN's treaty-reserved right to take fish from its usual and accustomed fishing areas, including the Chehalis Basin.

- The SMA requires Grays Harbor County to adopt a SMP that prevents further degradation of shoreline natural resources. The SMA rules preclude the County from using regulatory measures to require project applicants to restore shoreline ecological functions to a level that existed before the adoption of the new SMP.<sup>19</sup>

The SMA through Chapter 173-26 WAC does require the County to prepare a voluntary restoration plan that seeks to restore shoreline ecological functions.<sup>20</sup>

During the time the County was preparing an initial draft of the "Shoreline Restoration Plan for Shorelines in Grays Harbor County," the County, through its consultant The Watershed Company, contacted the Quinault Division of Natural Resources to participate in sharing restoration information for the plan, which the division declined. Although the Tribal Council eventually gave permission to participate in the County's SMP update process, it was long after the completion of the final document.

Over the last 20 years, Grays Harbor County has made, and continues to make, great strides in restoring shoreline ecological functions. Please remember that Grays Harbor County has been actively involved in establishing the Chehalis Basin Lead Entity, the Coast Salmon Foundation and Partnership, and the Marine Resources Committee. Grays Harbor County also is facilitating another effort through the Voluntary Stewardship Program that has a shoreline restoration component. Furthermore, it is important to recognize the numerous other public and private groups in the non-tribal community that are contributing to restoring County shoreline ecological functions.

Finally, the SMP supports restoration efforts by giving special preference for shoreline habitat restoration and enhancement projects regarding permitting.<sup>21</sup> Through the SMP and its associated document, restoration is a reality.

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<sup>19</sup> WAC 173-26-201 (2) (e) (ii) (A)

<sup>20</sup> WAC 173-26-201 (2) (f)

<sup>21</sup> See §5.8.3

Section 1.4.6 States: "The provisions of this Master Program do not apply to actions taken by federally recognized Indian tribes on any tribally owned lands or lands held in trust by federal agencies. No provisions in this Master Program shall affect any rights established by treaty with the United States of America." This Statement creates confusion for several reasons. First, "tribally owned lands" is ambiguous. Land can be held by the QIN, either in fee or trust. Land can also be held by individual Indian persons, either in fee or in trust. More specificity as to the different types of "tribally owned land" is recommended. Second, because lands are held in trust by the federal government for either Indian tribes or individual Indian persons, this distinction should be clarified. Third, it is not just actions taken by Indian tribes the Master Program should not apply to, but rather, to lands and persons over which Indian tribes have exclusive jurisdiction. Lastly, this is an incomplete Statement of tribal jurisdiction, which has been explained and described in this letter. Again, we would be happy to assist in drafting language that clarifies these jurisdictional issues.

- The County would appreciate assistance in drafting language acceptable to both parties that clarifies jurisdictional issues relating to the SMP.

Section 4.2 describes agriculture as a permitted activity. In the shoreline area, however, agriculture cannot be considered a benign activity. It can result in sedimentation from overland flow across non-vegetated lands, introduce fecal coliform from livestock use potentially resulting in unsafe conditions for shellfish consumption, introduce pesticides and fertilizers through runoff, reduce riparian function due to removal of riparian forest to facilitate agricultural use, and increase bank erosion due to the loss of riparian vegetation. These results are harmful to fish habitat. While agriculture is important to the GH economy, fishing and shellfish farming are also

- The SMA does not allow the County to require modifications or limitations to existing agriculture through the SMP. However, new agriculture established within shoreline jurisdiction after the adoption of the updated SMP must meet all provisions, including those that require no net loss of ecological function.<sup>22</sup>

The County has opted into Washington State's Voluntary Stewardship Program. The intent of this program is to assist existing agricultural operators in restoring and enhancing critical areas through voluntary efforts. The Board of County Commissioners invited the Quinault Indian Nation to participate in that process in a letter to President Fawn Sharp, dated August 15, 2016.

Section 4.2.1 provides a goal that promotes the development of new agriculture within the shorelines area. The section claims to protect, but converting large blocks of shoreline or creating the potential of converting the remaining undeveloped shoreline into agriculture cannot be done without loss of ecological function. The loss of the existing trees in the

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<sup>22</sup> RCW 90.58.065

riparian area will reduce shade and reduce other riparian functions such as the long term recruitment of large wood to the channel.

- New agricultural development must meet the requirements of no net loss of shoreline ecological function.

**Section 4.3.2 C States "[d]esign and locate aquacultural facilities to avoid the potential to spread disease to native aquatic life, establish new nonnative species that cause significant ecological impacts, or significantly affect the aesthetic qualities of the shoreline." Actions involving the introduction on non-native fish or shellfish that could pose a hazard to ecological function or damage the native fish and shellfish should not just avoided, they should not be an allowable activity under the SMP.**

- The County relies on the Washington Department of Fish and Wildlife for approval of the introduction of any new aquatic species within aquacultural operations. The co-manager relationship between the State of Washington and the Quinault Indian Nation on fish and shellfish ensures appropriate consultation on such issues. Aquaculture is a water-dependent activity and a preferred use under the SMA (RCW 90.58.020). The Shoreline Guidelines note this is an activity of Statewide interest.

**Section 4.3.3 B describes the construction of aquacultural structures such as finfish pens, mussel rafts, oyster rafts and docks without a shoreline substantial development permit. These structures need to be placed in a manner that does not cause interference with treaty reserved fishing. We recommend requiring consultation with the Quinault Indian Nation as a condition of any such structures in order to avoid treaty right impacts.**

- Please note this section in its entirety: *"A shoreline substantial development permit is not required for aquaculture activities that are consistent with this Master Program and do not require development or structures, except as provided in Section 4.3.3.G. Examples of aquaculture that constitute development include finfish pens, mussel rafts, oyster rafts, and accessory structures such as docks.*

Most forms of aquaculture currently in the County do not constitute "development" under the SMP.<sup>23</sup> However, a substantial development permit is required for aquacultural activities that meet the definition of "development" such as those that require structures. A substantial development permit requires environmental review

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<sup>23</sup> RCW 90.58.030(3)(a) defines "development" as "...a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any State of water level."

under the State Environmental Policy Act, which requires notification to the Quinault Indian Nation. Structures in the water will also require a Section 10 Permit from the US Army Corps of Engineers, a federal agency with trust responsibilities that ensure consultation.

**Section 4.3.3 C indicates that aquaculture mussel rafts, oyster floats, net pens, and similar development may intrude into or over critical saltwater habitats. Critical saltwater habitat needs to be defined. Even with the restrictions in the associated sub-sections, we are concerned that this provision will result in the degradation of marine habitats potentially harming salmon, steelhead, and marine species such as Dungeness crab. Also, the section needs to insure these projects do not interfere with treaty-reserved fisheries.**

- The County is currently updating its critical area regulations, including definitions, for critical saltwater habitat. As Stated previously, the SMP incorporates by reference Sections 18.02, Definitions, and 18.06, Critical Areas Protection, within Title 18, Environment, of the Grays Harbor Code.

**Section 4.3.3 E addressing commercial geoduck aquaculture needs to require that this development not interfere with treaty reserved fishing. Subsection ii allows conversion of current aquaculture operations to geoduck aquaculture without a conditional use permit, and again, this conversion must not interfere with treaty reserved fisheries. Subsection iv provides assurances that operators can harvest geoduck following planting; this needs to be evaluated for its effect on treaty reserved shellfishing and consultation with the Quinault Indian Nation should occur after potential impacts are identified by the County. Subsection v allows a single conditional use permit to cover multiple sites, and this should only be allowed when all of the sites are included in the initial application. This should not be used to add new sites without providing for a reasonable review of the proposal. Subsection vii describes conditions related to habitat modifications related to geoduck aquaculture. Any habitat modifications need to be evaluated for detrimental effects on salmon, steelhead and marine species such as Dungeness crab. These habitat modifications should not reduce the productivity of the marine habitat to produce these important resources.**

- Grays Harbor County views itself as having a minimal role in regulating aquaculture within its jurisdiction and will assert that jurisdiction only on issues required of it by State law. Because of the extensive permitting required of aquaculture by State and federal authorities, the County defers discussion on these points to the appropriate State and federal agencies. However, when permitting is required of the County through the SMP, it will consult with the Quinault Indian Nation through the previously noted procedures and will ensure that there is no net loss of ecological function as required in the SMP.

**Section 4.4.2 E addresses private and public boat launches. Boat launches often require some modification of the habitat below the OHWM to maintain access, which raises the issue of**

**damaging aquatic habitat and subsequently reducing fish production, and thus, potentially harming the treaty reserved right to fish.**

- The SMP, along with the County's critical areas regulations, requires environmental analysis using best available science for examining each development on a case-by-case basis to ensure no net loss of ecological function. If there is a loss, mitigation will be necessary. In some circumstances, the cost of mitigation will be too prohibitive and a project will not advance. However, to prejudge any form of development as having an unavoidable impact on shoreline natural resources without any accompanying environmental analysis is not an assumption held by the County.

**Section 4.4.2 G requires that boat launches minimize impacts to critical areas, raising the question of how does minimizing impacts support the Stated goal of no net loss of ecological functions at p. 20.**

- Please review the previous response.

**Section 4.4.3 H States "[a]ll non-water dependent structures associated with a boating facility shall locate landward of the ordinary high water mark." There should be a minimum distance landward. Having these structures 1 foot from the OHWM should not be allowed because of potential impacts to fish habitat, but this language would allow it.**

- This is an incomplete interpretation of the SMP. The SMP provides for shoreline buffers, which varies in accordance with the shoreline environment designation.<sup>24</sup> Non-water dependent uses must meet the shoreline buffer requirement.

**Section 4.5.2 B encourages new water-oriented commercial development within shorelines. The current degradation of aquatic habitats does not support new development. There needs to be limits to the amount and type of developments within the shoreline area in order to meet the Stated goal of no net loss of existing ecological functions.**

- Please note that this entire section reads: *Encourage new water-oriented commercial development along County shorelines that is compatible with adjacent land uses*. The requirement that any new water-oriented commercial development matches the scope of adjacent land uses provides clear direction on limitations. The type and scale of development allowed within the unincorporated area of Pacific Beach will be very different from that allowed in an undeveloped section of the County. Regulations in the remainder of this section, along with the policies and regulations in the rest of the SMP ultimately will apply appropriate limits.

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<sup>24</sup> See §3.3.3 E

**Section 4.6.3 addresses forest practices within the shoreline area and is somewhat confusing. Which rules apply? State Forest practices regulations appear to be stricter than the forest practices authorized as conditional uses in the SMP since the SMP allows harvest of 30% of the standing trees within 200' of shorelines every 10 years. This would result in very little remaining forest after 30 years in these critical shoreline areas. The approach of continual harvest within the SMP does not support developing or maintaining long term riparian function and at best retains a few trees along the shoreline. This level of riparian impact conflicts with the Stated goal of maintaining riparian ecosystem functions and is not an acceptable approach for retaining existing salmon and steelhead production, let alone supporting restoration of the salmon and steelhead populations. The long term decline in riparian conditions will unacceptably harm treaty- reserved fisheries.**

- All management of forest practices within shoreline jurisdiction, excepting conversions, fall under the Forest Practices Act (FPA) and the Forest Practice Rules. Forest practices within the 200-foot shoreline jurisdiction along shorelines of Statewide significance simultaneously require a shoreline conditional use permit that requires environmental review under SEPA, County approval, and Washington State Department of Ecology approval.

The language referencing selective cutting is directly from the SMA.<sup>25</sup> However, other provisions of the SMA and the FPA must be satisfied for this to move forward. Environmental review, the shoreline conditional use permit, approval of a Forest Practices Application/Notification may not allow this procedure. The stricter provisions would apply.

**Section 4.7 addresses industrial uses of the shoreline. Given the level of impact of industrial development and the current condition of salmon and steelhead production, the SMP should have some limitations on lands converted to industrial uses. While the current environmental classifications portray a limit on this type of development, the focus on water dependent use does not necessarily preclude industrial development on currently undeveloped shoreline.**

- The High Intensity shoreline environment designation, which allows water-dependent industrial activity, is confined to a few sites with existing industrial activities along the County's shorelines within its jurisdiction. Given the requirements for supporting infrastructure and the shallowness of the Grays Harbor Estuary outside of the existing channel, the future for any further water-dependent industrial development is highly unlikely. Such development will most likely occur within the Cities of Aberdeen, Hoquiam, Cosmopolis, or Westport, which are outside of the County's shoreline jurisdiction.

The County did not designate any undeveloped lands for High Intensity shoreline use. Any future re-designation of a shoreline to High Intensity to allow a water-

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<sup>25</sup> See RCW 90.58.150

dependent industrial use would require a master program amendment, which triggers extensive study, environmental review, and approval by the State of Washington. This is an extremely high threshold to overcome.

**Section 4.7.3 A ii indicates a preference for water-related industrial development over non-water-related development. This allows non-water-related development within the shoreline area in contradiction to the three broad policies from the Shorelines Act described in the Preface of the SMP. Non-water-related development should not be allowed in the shoreline area.**

- Please see the previous response. If existing industrial activities along shorelines cease, this provision potentially could allow reuse of those facilities to a non-water dependent use, provided that the new use meets all other provisions of the SMP.

**Section 4.7.3 C ii provides for non-water-related industrial development in areas where navigability is severely limited. These non-navigable sites often provide essential ecological function and essential salmon and shellfish habitat. Allowing industrial development just because the site has limited navigability does not properly protect ecological processes or fish and shellfish habitat. It also does not comply with the three broad policies from the Shorelines Act provided in the Preface.**

- This is a provision allowed under WAC 173-26-241(3) (f). However, currently there are no other High Intensity designations that would allow such an activity. Please see the previous response regarding the expansion of this designation.

**Section 4.7.3 D indicates some areas of potential conflict with critical areas related to industrial development. Section 1.5.1 generally describes that the SMP prevails in areas where it is in conflict with critical areas ordinances. This issue needs to be clarified and in order to meet the Stated goal of maintaining ecological functions, the more stringent limitations should prevail when in conflict.**

- The County holds that the designation criteria for High Intensity lands, the remainder of the SMP<sup>26</sup>, and Chapter 18.06 of the Grays Harbor County Code, critical areas protection, provide sufficient clarity for limiting industrial development in areas with severe environmental limitations.

**Section 4.7.3 E contains a requirement of locating accessory development "away from the shoreline to the greatest extent feasible" is vague and unenforceable, and does not really address the issue. If the parcel is small, one can place this development near the water resulting in potential damage to the aquatic ecosystem. There should be a minimum distance from water for accessory development that ensures protection of ecosystem**

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<sup>26</sup> See Section 2.3

**functions, and if the parcel is not large enough to meet this standard then the development should be denied as the site is not suitable for the proposed development.**

- There is a required shoreline buffer within the High Intensity shoreline designation.<sup>27</sup> This provision allows project review discretion to require location of accessory uses further upland to ensure all provisions of the SMP are met.

**The goal in Section 4.8.1 should include avoiding the need for instream structures. To properly protect ecological functions, the County should not be permitting structures that force the river to remain artificially in a single channel-- continuing to channelize the rivers and streams does not maintain ecological functions.**

- The comment related to channelization of rivers and streams apparently is more in context with the chapter on Shoreline Modifications, specifically Section 5.9, Shoreline Stabilization. Instream structural developments within Section 4.8 focuses on the establishment and location of instream structures as a use within a shoreline environment designation, not how they are constructed. Section 5.9 provides more detail about the physical construction of how these uses may occur within shoreline environment.

**Section 4.8.2 A allows instream structural development proposals that will harm fish habitat based on a judgment call that the proposal has a higher public benefit. The entire Section 4.8 does not mention the requirement of no-net-loss of ecological functions, and thus, instream structures that damage fish and shellfish habitats are allowed under this SMP in conflict with this goal. Measures approved under this section of the SMP are likely to substantially harm the reserved treaty right to fish through sequential and cumulative effects on fish habitat.**

- Please note previous responses regarding the interpretation of the SMP and the application of the no net loss standard to all provisions within the SMP.

**While Section 4.8.2 B States that instream structures "should not be required" for newly approved shorelines development, it does not preclude this action in the future. It is clear in our experience that the State is likely to authorize the installation of instream structures to protect any development regardless of any good intentions in this SMP. The continued installation of instream structures will degrade fish habitat and harm the reserved treaty fishing right.**

- The County disagrees with the presumption regarding the State of Washington's willingness to authorize instream structural development. Please note that this comment again apparently relates to Section 5.9, Shoreline Modifications and not this section.

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<sup>27</sup> See Section 3.3.3.E.i

**4.8.2 D encourages "instream structures that allow for ecological restoration and improving fish and wildlife resources and habitat." The QIN disputes the implied viability of such structures. In fact, instream structures and other actions that stabilize rivers and confine them to their current channels will harm fish habitat and to a large extent preclude habitat restoration, resulting in unacceptable treaty right impacts.**

- This is a misinterpretation of this section. Instream structures that allow for ecological restoration and improving fish and wildlife resources and habitat are uses that may include introduction of woody material, engineered log jams, intakes for fish hatcheries, or fish ladders on existing weirs or dams. These structures protect salmonids and enhance their habitat.

**Section 4.8.2 E encourages acquisition and we do support this option. In fact, this activity should be prioritized over any instream structures.**

- The Shoreline Restoration Plan identifies criteria and areas within the shoreline environment for acquisition.

**Section 4.8.2 F encourages consistency between instream structures and other applicable plans including restoration plans. Generally, instream structures are in conflict with fish habitat restoration plans.**

- All instream structural development projects require meeting the provisions of Section 3.3, including appropriate mitigation if necessary. Consideration of fish habitat restoration plans are required in the environmental review and permitting process.

**Section 4.9 addresses mining within the shoreline area. As mentioned above, mining is not a suitable use of the shoreline area. It violates the three policies in the Shorelines Act as mentioned above. Mining is not water related or dependent, and is generally harmful to ecological function as it requires removal of riparian forest and other vegetation and often requires levees and other hard bank installations that are harmful to ecological function and fish habitat. This section does not include a requirement to meet the no net loss standard thus is likely to damage ecological function and harm treaty- reserved fishing rights.**

- Mining is a use provided for within the SMA and the shoreline environment. The County is also required to designate mineral lands of long-term commercial significance under the State of Washington's Growth Management Act.<sup>28</sup> In Grays Harbor County, alluvial gravel, our most valuable mineral deposits, occur within shoreline areas. Gravel mining contributes to the economy to of all communities within the boundaries of Grays Harbor County, including the Quinault Indian Reservation.

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<sup>28</sup> See RCW 36.70A.050 and WAC 365-190-070

Mining can occur in the shoreline jurisdiction and protect shoreline natural resources. Gravel mining is highly regulated, both as a conditional use through the draft SMP and through the Surface Mining Act, which requires environmental review and a State-issued Surface Mine Reclamation permit.<sup>29</sup>

Mines, like all uses and modifications within SMP, must meet the no net loss standards. The permitting requirements for a mine within shoreline jurisdiction is steep and costly; only well-funded and well-designed proposals will make it through this process.

**The Policies in section 4.9.3 simply require the "least disruption to the natural character of the shoreline adjacent land uses and critical areas" and does not address loss of ecological function or loss of fish habitat.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 4.9.3 C provides some restrictions on where mining can occur and among these is a requirement that it cannot weaken the integrity of the shoreline. This Statement begs the question of whether instream structures are allowed to obtain this result. The earlier section on instream structures would not preclude this option. The section also addresses potential changes in the ground water and surface water flows and it is not clear how these issues would be addressed or how compliance would be determined.**

- The environmental review process for both County shoreline and State mining permits will evaluate the environmental issues related to any future proposal. Because the County shares concerns related to mining in the shoreline environment, mining is a shoreline conditional use that triggers significant study, including State review and approval.

**Section 4.9.3 D specifically allows mining in the channel migration zone. The State forest practice regulations do not allow most timber management in CMZs, but this SMP allows complete timber removal and the installation of a deep mining pit. The CMZ is often within the floodplain, thus the mine would be within the floodplain and every flood would result in entrapment of fish in the pit potentially reducing salmon production. Often to allow mine operations, these mines are protected with an extensive levee further damaging ecological function. Given the nature of the CMZ we can anticipate that normally the river would occupy the mine site as some point, and the presence of the mine pit will preclude the development of natural fish habitats as would normally occur with channel movement. Mining should not be allowed in the CMZ.**

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<sup>29</sup> See Chapter 78.44 RCW

- Grays Harbor County currently has only very general information regarding the location of channel migration zones. However, a proposal for mining will be required to prepare a critical area report that analyzes any potential location of a mining operation within a channel migration zone under the geologically hazardous areas section of the County's critical area protection ordinance. Other County and State laws may apply to the proposal as well. The County, as well as the State, has authority to not approve a mining permit that would impact a channel migration zone and shoreline natural resources.

**Section 4.9.3 F authorizes sand removal from the beach under RCW 79A.05.630. We note Grays Harbor provides critical habitat to ESA-listed western snowy plover (threatened under federal ESA, endangered by Washington Department of Fish and Wildlife), which should be referenced.**

- This is referenced in the County's critical areas protection ordinance that is adopted by reference into the SMP.<sup>30</sup>

**Section 4.10.1 provides encouragement to "develop a wide range of publicly- and privately-owned recreational opportunities for residents and tourists that facilitates their ability to reach, touch, and enjoy the water's edge as well as view and travel on shorelines of the State, all in a manner that protects shoreline ecological functions."**

**Given the amount of damage to salmon habitat and ecological function new development should not be encouraged. Removal of the riparian vegetation for roads and recreational facilities bans ecological functions, and creates an incentive to install more bank protection measures. The basic idea of building something on water's edge is that the water will never move and this is an incorrect assumption. The river will move unless something is done to artificially keep in in one place, and these actions harm ecological function, fish habitat and the treaty reserved right to fish.**

- Recreational development, like all shoreline uses and modifications, must meet the requirements of the no net loss provisions.<sup>31</sup> That section of the SMP also establishes required shoreline buffers. Water-dependent recreational uses may locate within that buffer, but mitigation is necessary for any loss of shoreline natural resources.

Section 5.9, Shoreline Stabilization, limits shoreline protection actions.

**Section 4.10.2 B promotes the development of "a diverse range of recreational developments in appropriate locations that provide the public with a varied choice in recreational experiences." Developing available shorelines irretrievably destroys their natural ecological functions and impacts treaty-reserved rights.**

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<sup>30</sup> See Section 1.5

<sup>31</sup> See Section 3.3

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 4.10.2 C: The policies related to recreation development States that "...facilities should minimize impacts to ecological function and neighboring private properties." This section supports development to the detriment of the ecological functions and fish habitat protections necessary to avoid treaty right impacts.**

- Please note previous responses regarding how no net loss applies to all shoreline uses and modifications.

**Section 4.10.2 E encourages the County to "forge cooperative agreements with private forestland owners to improve and facilitate recreational access to rivers and streams." This appears to allow recreational access facilities in CMZs and no restrictions are Stated. The section needs to address and prevent detrimental effects on riparian vegetation.**

- Access to private forest lands is important to County residents. A "cooperative agreement" is not development under the construct of the SMA. The comment assumes that all access requires development; it does not. If a physical development is an outcome to an agreement, then that development is subject to all provisions of the SMP, including no net loss.

**Section 10.2 F encourages acquisition of lands, but for recreation not for protection. This section should include acquisition for restoration purposes.**

- Restoration and acquisition are addressed in detail through the Shoreline Restoration Plan.

**The regulations in Section 4.10.3 do not restrict recreational access development in the CMZ and do not provide for protection of riparian vegetation and function, or mention the no-net-loss of ecological function goal or require mitigation. Overall, development under this section is likely to harm ecological function and fish habitat, which will result in treaty right impacts.**

- The comment assumes that all access is development related; it is not. Access can take many forms, including simply walking to the shoreline. A review of Section 3.5, public access, will aid in clarifying what access can encompass under the SMP. If a physical development is associated with access within a channel migration zone, then it will be subject to all provisions of the SMP, including no net loss.

**The goal for Residential Development in Section 4.11.1 is limited to the "compatibility of residential development with shoreline environment and avoid areas that present a risk to people and property." There is no mention of protecting ecological function and this should**

**be added to be consistent with the Shoreline Management Act and Stated goals of this Program.**

- Please note previous responses regarding how no net loss applies to all shoreline uses and modifications.

**The Policies in 4.11.2 do not actually forbid any form of development; only guidelines and recommendations. It is recommended that landowners use available data related to sea level rise and climate change, but includes no requirements that the proposed development be compatible with or responsive to the expected changes due to these and other ongoing processes. The section does not require no-net-loss of ecological functions.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

Section 4.11.2.F does establish a policy for the County “to consider and use available data to coastal storms and sea level rise and monitor their potential influence on construction of future residential development along susceptible shorelines.” The impacts of coastal storms and sea level rise are a concern to the County and it will continue to strive to incorporate peer-reviewed science into its regulatory programs. As peer-reviewed data becomes more site specific on a Countywide level, the County anticipates applying that information.

**Section 4.11.3 C allows development in floodplains and channel migration zones. While this section has language that these developments will not require structural shoreline stabilization it is difficult to foresee that these developments will not eventually need stabilization in the CMZ. Channel migration puts structures at risk and once the structure, and harm to fish habitat, is built, bank stabilization structures become necessary to protect against channel changes. The language States that the County "may" require a geotechnical report related to the need of structural stabilization but we recommend geotechnical reports be mandatory in these areas- particularly in light of the findings in the Chehalis Basin Programmatic EIS related to climate change and resultant increased flooding. Construction in the CMZ puts human at risk: the channel can move quickly and unpredictably and can destroy homes quickly and at night putting the lives of any people living in the home at risk. This building of infrastructure within the CMZ is occurring while there is an ongoing process under the Chehalis Basin Strategy by Washington State to reduce flood damage. The obvious first step would be to not allow additional infrastructure to be constructed in the floodplain and the CMZ. The construction of infrastructure in the CMZ and the floodplain will harm ecological function. Once infrastructure is in place, further damage is likely as bank protection measures are implemented as allowed under this SMP. The ultimate results will further damage ecosystem function and fish production.**

- The County equally shares concerns regarding development in known channel migration zones although it respectfully disagrees with the presumption that all development should be disallowed on its face without any analysis. The County believes it has an adequate regulatory framework through the environmental review process, the SMP, and other County ordinances to ensure safe development for people and the protection of shoreline natural resources.

**Section 4.11.3 E prohibits overwater residences including floating homes and floating on-water residences. We support this provision.**

**Section 4.12 covering transportation does not require that this development meet the no-net-loss of ecological function.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 4.12.1 the goal Statement for this type of development does not require protection of ecological function and only requires that they minimize damage. Overall, this approach will sequentially and cumulatively damage ecological function, fish habitat, and reduce fish production, thereby harming the reserved treaty right to fish.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 4.12.2 A indicates that new transportation development avoid shoreline areas when feasible. This is a provision that we support.**

- The SMP seeks to avoid the unnecessary location of shoreline uses that potentially create an impact to shoreline ecological functions.

**Section 4.12.2.C States that transportation infrastructure within shorelines should be "consistent with the character of the environmental designation." It is not clear what this means.**

- This refers to the designation and management policies for the seven environment designations described in Sections 2.3 through 2.9.

**Section 4.12.2 D States "[t]he design and location of new transportation development should minimize the need for structural shoreline stabilization improvements, modification of natural drainage systems, and waterway crossings." This language allows construction of a road or other transportation infrastructure along the river, or marine shoreline that will require bank protection from day one. Section 4.12.2 J also addresses this issue stating "[a]void locating transportation developments in floodplains and channel migration zones where structural shoreline stabilization improvements will be necessary in the future." Unless**

**such development is eliminated, it will result in harming ecological function, fish habitat and subsequently the treaty right to fish.**

- While it is a preferred policy in the SMP to locate transportation developments away from waterways, this may not always be avoidable. If shoreline structural stabilization becomes necessary for a future transportation development, mitigation will be required for any loss of shoreline ecological function.

**Section 4.12.2 G encourages "the removal of fish barriers along transportation corridors." We recommend more than "encouragement" that these barriers be removed to allow fish passage. These fish passage barriers clearly damages (sic) fish production and should be corrected under this SMP before additional development is allowed on a parcel-by-parcel basis, and in order to be consistent with the Culverts decision.**

- Section 4.12.2.G is a policy Statement consistent with County and tribal interests in encouraging fish barrier removals. Fish barrier removals are highlighted extensively in the Shoreline Restoration Plan.

**Section 4.12.3 A requires major street and highway improvements within shoreline jurisdiction to include low-impact development techniques. It is not clear what constitutes a "major" street and highway improvement.**

- If a street or highway improvement project within shoreline jurisdiction is not exempt under Section 7.2.3 B and S, the improvements will require no net loss of shoreline ecological function, triggering the need for low-development techniques to protect water quality. As required under WAC 173-27-040 (10 (a)), "Exemptions shall be construed narrowly."

**Section 4.12.3 D allows parking as an accessory to an authorized use with a requirement of locating the parking as far from the shoreline as possible without any criteria or enforcement mechanism. If the parcel is small this restriction will have no effect. It encourages using as small of a parcel as possible and is likely to harm ecological function.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**The Policies in Section 4.13.2 do not require no-net-loss. The section simply States that damage should be minimized if avoiding damage is not possible. This approach will reduce ecological function, diminish or destroy fish habitat, and likely, through cumulative effects, harm the treaty reserved right to fish.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 4.13.2 E only requires that the proponent "[c]onsider and use readily available data relating to sea level rise and monitor its potential influence on managing utility development and uses along susceptible shorelines." Given the finding in the Chehalis Basin Strategy Programmatic EIS, the County should take a comprehensive look at likely future climate impacts and more strictly and stringently address development to avoid authorizing development that puts people and structures in harm's way.**

- Section 4.13.2.E does establish a policy for the County to "Consider and use available data relating to sea level rise and monitor its potential influence on managing utility development and uses along susceptible shorelines." The impacts of sea level rise are a concern to the County and it will continue to strive to incorporate peer-reviewed science into its utility planning and regulatory programs. As peer-reviewed data becomes more site specific on a Countywide level, the County anticipates applying that information.

**Section 4.13.3 E States "[t]he location and design of utilities shall avoid the need for structural shoreline modifications to the greatest extent feasible." This allows potentially harmful infrastructure to be located within the shoreline, and then be protected by bank stabilization. This section on transportation does not require no-net-loss of ecological function, thus projects are permitted that harm ecological function. The loss of ecological function will harm fish habitat and reduce the treaty reserved right.**

- While it is a preferred policy in the SMP to locate utility developments away from waterways, this may not always be avoidable. If shoreline structural stabilization becomes necessary for a future utility development, mitigation will be required for any loss of shoreline ecological function.

**Section 5.3.2 F States "(c]onsider and utilize readily available data relating to coastal storms and sea level rise and monitor their potential influence on managing development and uses within the beach and dune environment." See comment above related to a comprehensive climate impacts strategy. Only shortsightedly "considering" rising sea level etc. and coastal storms guarantees that structures will be built that need structural protection. The eventual use of hard banks will likely degrade the sandy beaches required for razor clam habitat and harm the treaty reserved right to fish.**

- Section 5.3.2.F does establish a policy for the County to "Consider and utilize available data relating to coastal storms and sea level rise and monitor their potential influence on managing development and uses within the beach and dune environment." The impacts of sea level rise are a concern to the County and it will continue to strive to incorporate peer-reviewed science into its beach and dune management efforts. As peer-reviewed data becomes more site specific on a Countywide level, the County anticipates applying that information.

**Section 5.3.3 A ii only requires projects be designed "to minimize adverse environmental effects." Shoreline modifications are not held to the Stated goal of no-net- loss of ecological function and development is allowed where it is likely to need structural protection. These actions degrade beach habitats and will result in treaty right impacts.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 5.3.3 D allows dune modification for views that includes lowering dunes, removing vegetation, and other actions. Given the potential for ocean erosion we disagree with removing aggraded beach sand.**

- This section is verbatim from WAC 176-26-231 (3)(e); however, upon review of this section it should be noted that property owners have a very high threshold to prove before dune or vegetation modification is feasible.

**Section 5.4 does not indicate the no-net-loss standard is required. This standard seems to apply intermittently within the SMP rather than universally. If the SMP is expected to result in no-net-loss of shoreline ecological function, this requirement needs to be more consistently applied.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

**Section 5.4.3 A allows these structures without a conditional use permit for restoration structures. We support this condition as it could facilitate the necessary restoration actions to recover salmon.**

- The County strongly supports projects that protect and restore shoreline ecological functions consistent with the SMP by facilitating easing permitting requirements to the greatest extent possible.

**The Policies in Section 5.6.2 allows fill to support development within shoreline area including the floodplain. While the Policy States that fill for development should be minimized and that cumulative impacts from fill should be considered, it does not preclude filling within the floodplain or the CMZ. The Policies also State that changes due to climate change and sea level rise should be considered. There is no required action if the expected effects of climate change and sea level rise would put the development at risk. There should be a policy that the fill shall not increase flooding and those developments that will need structural protection measures are not allowed. Again, without requiring no net loss of ecosystem functions, these policies violate Stated goals of the Program.**

- Please note previous responses regarding how the no net loss standard applies to all shoreline uses and modifications.

The implementation of the County's floodplain provisions in the critical areas protection ordinance will address impacts in flood-prone areas.

In addition, the SMP in various sections clearly establishes requirements for shoreline uses that will rely on fill for development purposes. For example, Section 4.11.3.C States:

“Residential development in floodplains and channel migration zones shall not locate where structural shoreline stabilization improvements will be necessary in the future. The County may require new residential development to prepare a geotechnical report to verify that future structural stabilization improvements will not be necessary.”

Similar restrictions are in place for recreational development (Section 4.10.3.D), transportation (Section 4.12.2.J), and utilities (Section 4.13.3.E).

**Section 5.6.3 F describes how floodplain and CMZ fill and excavation are allowed provided a geohydraulic analysis demonstrates it will not increase flood velocity, increase potential channel migration, create risks to life or property, or decrease flood storage capacity. This approach will lead to cumulative effects detrimental to the shoreline ecological function. Accordingly, we recommend no fill or excavation in these areas. If fill is allowed in the floodplain and CMZ, the County should monitor cumulative effects to evaluate the overall effects of the program.**

- Consistent with Ecology rules, the County has prepared a Cumulative Impact Analysis to ensure the requirements within the SMP, along with the requirements within the critical areas protection ordinance, provide sufficient safeguards to address the long-term cumulative effects of the program.<sup>32</sup> The County includes numerous policies to monitor the implementation of the SMP over time. With respect to fill specifically, the County has adopted an SMP policy to “monitor and consider cumulative impact of fill to properties, public facilities and services, and shoreline ecological functions in areas susceptible to flooding or potential sea level rise. (5.6.2.B)” Note also that for projects involving unusual circumstances or uncertain effect the County may impose monitoring conditions to allow future reviews of projects. (7.5.10.B).

**The goal in 5.7.1 States "develop docks, piers, floats, and boat launches to serve residential, commercial, and recreational uses effectively while ensuring the protection of shoreline ecological functions and values." This goal of developing docks is without limits and we know that these structures damage fish habitat. Under this goal, every single-family residence can have a dock or pier and boat launch, which would result in a loss of ecological function, damage to fish habitat and harm the treaty reserved fishing right. This section**

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<sup>32</sup> WAC 173-26-186(8)(d); WAC 173-26-201(3)(d)(iii)

**should at least incorporate the limits in WAC 173-26-231(b), such as size limits and requiring joint use of docks when feasible.**

- The regulatory provisions under Section 5.7.3 provides limitations to for residential uses. Additional limitations may be required of residential property owners if permitting is necessary under the Washington Department of Natural Resources, the Washington Department of Fish and Wildlife, and the US Army Corps of Engineers.

It should be noted that permit applications for residential docks, piers, floats, and boat launches within Grays Harbor County jurisdiction are extremely rare and new residential docks have not been constructed in many years. Docks, piers, floats, and boat launches in Lake Quinault do not fall within the County's shoreline jurisdiction.

**The Policies in Section 5.7.2 do not include avoiding interference with treaty reserved fisheries. They have the potential to interfere with the fisheries if they intrude into the area the QIN is fishing, and they potentially can reduce salmon and steelhead survival, thus reducing treaty-reserved fisheries. These structures should not interfere with treaty reserved fisheries. Accordingly, we recommend requiring consultation with QIN when proposed structures may impact treaty fisheries.**

- Any required permits for docks, piers, floats, and boat launches will require environmental review. Consultation with the Quinault Indian Nation already occurs through notification under the State Environmental Policy Act.

**Section 5.7.2 D discourages piers and docks that require frequent dredging or require "excessive overwater lengths" but provides no definition of what constitutes frequent dredging or what an excessive overwater length would be. Docks and piers that require dredging should not be permitted so as to minimize damage to ecological function.**

- Applications for docks and piers need to meet the no net loss of ecological function standard.

**Section 5.7.2 G allows commercial and public piers to enlarge "if a needs analysis demonstrates there will be a need to expand facilities in the future." This provides for essentially unlimited enlargement of piers which will result in harm to the ecological function.**

- Commercial and public piers may expand if there is no net loss of shoreline ecological function.

**Section 5.7.3 A States "[n]ew docks, piers, and floats shall be allowed only for water-dependent uses or public access. A dock associated with a single-family residence is a water dependent use if it is designed and intended as a facility for access to watercraft and complies with the provisions of this Master Program." Unlimited development of docks and piers will damage the ecological function.**

- Section 5.7.3 in its entirety limits residential docks.

**Section 5.7.3 E grandfathers in non-compliant existing structures and does not require that they be brought into compliance if they need repair. Also includes the language "However, a modification to a non-compliant dock may not exceed its nonconformity." This Statement is not clear and needs to be clarified. Non-compliant docks and piers should be brought up to compliance during repairs or modifications.**

- The size of an existing dock, or the degree of its impact on shoreline natural resources, cannot be increased when repairs become necessary.

**Section 5.8.1 States "[e]ncourage shoreline restoration and enhancement projects that improve shoreline ecological functions that contribute to public health and safety, the County's economy, and healthy fish and wildlife populations." We support the recognition of the value of improved ecological function to public health and safety, and the economy.**

- Shoreline habitat restoration and enhancement is a prominent theme in the draft SMP and the documents used to develop it.

**Section 5.8.3 B i limits fish habitat projects to: a) barrier correction, b) restoration of eroded or unstable streambank using bioengineering with limited use of rock for stabilization, and c) placement of wood or other instream structures to benefit naturally reproducing fish stocks. It does not appear to allow riparian planting, and if not, we recommend adding this as well as allowing other fish habitat projects with demonstrated benefits. Restoration of riparian vegetation is extremely important to restore salmon habitats.**

- This section focuses on shoreline modifications; riparian plantings for restoration purposes do not constitute a structure or development with the shoreline environment.

**Section 5.8.3 B ii implicitly prohibits habitat restoration projects initiated by tribes using funds other than those appropriated by the legislature. This section inappropriately restricts tribal projects and should be changed to allow tribal restoration projects using other funds.**

- The language in this section is direct from Chapter 77.55.181(1)(c) RCW and references exemptions from substantial development permits. The County will consult with the State of Washington to clarify this provision. The County supports extending the same exemption to habitat restoration and enhancement projects proposed by treaty and non-treaty federally recognized tribal governments.

**Section 5.8.3 D vi States "[t]he project will not interfere with the normal public use of the navigable waters of the State." This restriction could eliminate in-channel wood structures, which is an essential component of any salmon recovery strategy. This should be addressed.**

- The County's SMP seeks to find a balance for a wide range of shoreline uses, including habitat restoration and navigation. The project development and review process is an appropriate tool for achieving this balance in a fair manner. All uses and activities must meet provisions ensuring "no net loss of ecological functions."

**In Section 5.9 the goal of minimizing or avoiding stabilization may be a start, but we recommend additional text documenting that bank erosion and stream movement are natural processes within floodplains, such as: "it is recognized that bank erosion and stream movement should not be completely stopped in order to provide for natural habitat forming processes. Shoreline erosion and stream movement are natural processes in streams, and the intent is to maintain natural geomorphic processes to the extent possible."**

- The draft SMP closely follows the provisions in WAC 173-26-231 (3) (a) for shoreline stabilization. These provisions set a high threshold that must be met before shoreline modification is possible to protect existing structures from erosion. In addition, there are established priorities for the types of shoreline stabilization allowed; e.g., use of nonstructural modifications before structural ones.

The draft SMP, as well as the critical areas protection ordinance, requires extensive project review for new development in areas prone to erosion. Critical area reports will be required to evaluate the future potential for shoreline erosion. The County will have the authority to withhold approval of a project proposal if it cannot reasonably demonstrate it will be safe from future shoreline erosion.

**Section 5.9.2 A needs a Statement that we will not provide shoreline stabilization in all instances. If the use cannot be maintained without shoreline stabilization we need to remove the use rather than continue to damage fish habitat.**

- Development that existed before the adoption of this SMP has the right under State law and rules to take reasonable measures to protect itself from shoreline erosion in a manner conforming with the SMP. This may include private residences and public infrastructure. If such measures are taken, the SMP will require mitigation to compensate for any loss of shoreline ecological function.

**Section 5.9.2 B Statement is not clear. It appears that it allows bank stabilization to protect long-term commercial enterprises. If so, it does not acknowledge that fishing is a long term commercial activity that is often sacrificed for another commercial activity, and often one that benefits fewer people.**

- The citation of this single subsection without consideration of the remaining section misconstrues the intent of the provision. Please note earlier comments.

**Section 5.9.2 C allows development that can be predicted to require bank stabilization. Bank stabilization results in a loss of ecological function and damages fish habitat. If a proposal can reasonably be expected to require bank stabilization it should be denied.**

- No individual situation is totally predictable. This policy sets a reasonable threshold for determining whether development should or should not be within proximity to a location prone to shoreline erosion.

**The Policy in Section 5.9.2 G should require that shoreline modifications not create damage elsewhere.**

- Policies F and G within this subsection addresses this concern.

**Section 5.9.3 A ii provides an approach to install bank stabilization to protect new non-water dependent uses. This is not consistent with the intent of supporting water dependent uses as it allows any use as long a bank protection measures can maintain this use. This approach will result in harm to ecological function and fish habitat.**

- There are non-conforming properties that will have limited development rights. However, subsection (d) addresses this concern and will require mitigation to compensate for any loss to shoreline ecological functions.<sup>33</sup>

**Section 5.9.3 A iii provides for bank protection for water dependent development and it notes that the reason for the bank protection is from "natural aquatic processes such as tidal action, currents, waves, and sea level rise." If the proposal cannot be done without bank protection from natural aquatic processes it should not be done. This approach cannot maintain ecological function.**

- By their very nature, water-dependent uses may be prone to natural processes that could require protection that are unavoidable. However, if proven necessary, the no net loss standard applies and mitigation will be necessary to compensate for any loss of function.

**In Section 5.9.3 A v a where the SMP describes where new shoreline stabilization measures will be allowed States "[t]here is conclusive evidence documented by geotechnical analysis that shows excessive shoreline erosion is" impacting fish and wildlife habitat and/or contributing to a significant loss of shoreland that is impacting use. It does not define excessive erosion.**

- "Excessive erosion" is determined through analysis by a qualified professional who evaluates the circumstances using subsections 1) and 2) in that section. The

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<sup>33</sup> Section 5.9.3 A ii d) States: "The erosion control structure will not result in a net loss of shoreline ecological functions."

credentials of a qualified professional are described in the critical areas protection ordinance. This analysis also must undergo scrutiny by the County and other agencies with jurisdiction before a permit is ever issued. The permitting process allows for sufficient safeguards for ensuring unreasonable measures are not taken.

**Section 5.9.3 B allows replacement of existing instream structure for protection against bank erosion from caused by currents, tidal action, waves, or sea level rise. Overall, this approach to retain existing damaging structures and allow their replacement when are damaged through natural processes is not consistent with the policy of no net loss of shoreline ecological function.**

- The subsection addressing replacement stabilization is from Ecology WAC 173-26-231(3)(a)(ii)(C) and requires that "a) The design, location, size, and construction of the replacement structure results in no net loss of shoreline ecological functions". Replacement may require a variety of measures that will result in a net gain of shoreline function, such as moving the structure further landward, reducing the size of the structure, or even the replacement of structural modifications with nonstructural ones.

**Section 5.9.3 D States "Construction of a normal protective bulkhead common to a single-family residence shall meet the following requirements." From this language it appears that there is an assumption that single family development will require bulkheads. Fully developing the shoreline area into single family residences as allowed and encouraged by this SMP, and then protecting them with bulkheads cannot be done without cumulative effects, and cannot be done without loss of ecological function.**

- The County takes this language verbatim from State laws and rules (WAC 173-27-040(2)(c)). The comment is an incorrect interpretation of this provision by separating it from the context of the SMP in its entirety.

**Section 5.9.3 D iii allows new bulkhead construction waterward of existing bulkhead. This approach will result in a continued reduction in the area available for the river/lake/estuary habitat, as well as fishing area, through cumulative effects. Over time, this approach will degrade ecological function.**

- This is an incorrect interpretation of this section 5.9.3 D iii, which references "existing bulkheads," not new ones. The SMP is required to maintain the level of shoreline function at the time of its adoption.

**Section 6.5.1 D in the criteria for permitting ocean resources development considers adverse social and economic impacts to uses that includes treaty fisheries. We support this inclusion.**

- As noted previously, this is verbatim from the State guidelines (WAC 173-26-360).

In considering Ocean Resource Development Section 6.6.1 F States "[i]mpacts on commercial resources, such as commercial and recreational fisheries, on noncommercial resources, such as environmentally critical and sensitive habitats, and on coastal uses, such as loss of equipment or loss of a fishing season, should be considered in determining compensation to mitigate adverse environmental, social, and economic impacts to coastal resources and uses." This allows detrimental development even if it damages fisheries and assumes mitigation is appropriate. Mitigation is not an acceptable approach to destruction of treaty fisheries or habitat. We recommend requiring consultation with QIN for such proposed uses in order to ensure there are no impacts to treaty resources.

- Existing permitting practices ensure consultation with QIN on any such development.

**Section 6.8 on Ocean Mining Development requires that the mining development minimize detrimental effects on natural resources. It does not require meeting a no net loss standard. Such activities could result in devastating impacts to the crab resources in the Harbor.**

- As noted previously, the no net loss of shoreline ecological function standard applies to all uses and modification.

**Section 6.9.2 prohibits actions that create detrimental effects on beach accretion, erosion, and wave processes. We support this approach.**

- The County strongly supports the protection of ocean resources from the potential impacts of development along the Pacific Ocean coastline.