Citizens Alliance for Property Rights
P.O. Box 189
2023 E Sims Way
Port Townsend, WA 98368

Jeffree Stewart
Regional Planner
Department of Ecology
300 Desmond Drive
Lacey, WA 98503
Email: jeff.stewart@ecy.wa.gov

Via email attachment and UPS delivery

RE: COMMENTS ON JEFFERSON COUNTY'S LOCALLY APPROVED SHORELINE MASTER PROGRAM

The following are comments of the Citizens' Alliance for Property Rights, Jefferson County Chapter, concerning the Jefferson County Locally Approved Shoreline Master Program, Resolution No. 77-09, dated December 7, 2009.

ARTICLE I – INTRODUCTION

1. Purpose and Intent. The goals of the Shoreline Master Program ("SMP") update as stated in this section come from the policy objectives of the Shoreline Management Act ("SMA"), but the actual content of the 200 page document go well beyond what is required or permitted by law. RCW 90.58 and WAC 173-26 do not mandate 150 foot buffers, the designating of 41% of the shoreline as Natural, greatly expanding the requirements for conditional use permits for common shoreline uses (for example, beach access), and creating nonconforming uses out of preferred uses of the SMA. Application by Jefferson County and the Department of Ecology ("Ecology") of the policy objectives contained in RCW 90.58.020 and WAC 173-26 ignore the unique low-density, low-intensity development characteristics found in Jefferson.

The Jefferson County update process has been characterized by a clear bias by Jefferson Department of Community Development staff, ESA Adolfson consultants, and Ecology staff against the preferred use of single family residences. WAC 173-26-176(2) recognizes the potential conflict for use of shorelines. This section further addresses the resolution of that conflict with the following policy objective; "The act's policy of achieving both shoreline utilization and protection is reflected in the provision that "permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the shoreline and environment of the shoreline area and the public's use of the water." RCW 90.58.020.

Despite the fact 70% of Jefferson shoreline parcels have already been developed (Cumulative Impact Analysis, 4.3) under existing protection standards in a manner that has maintained our shorelines in excellent condition, the new proposed standards increase the protection standards five-fold. Pictures can be worth a thousand words. At the Ecology public hearing on 4/20/2010, a presentation by Jeffree Stewart was accompanied by slides that depicted the shoreline environment in a positive light and development as a clear threat. The example used to depict a home made nonconforming by the new regulations - a dilapidated cabin on stilts - was particularly prejudicial and unrepresentative of the normal home that is lovingly cared for by its owners. There are countless pictures Mr. Stewart could have used that provide a much more accurate portrayal of shoreline homes in Jefferson. Yet, the photographs he used were not only unrepresentative of typical conditions, they weren't even from Jefferson County! This conveys a very clear message from Ecology about its negative attitudes concerning human uses and thereby fundamentally betrays the SMA goal of a balanced approach to shoreline use.

2. Applicability.

A. The requirement for a statement of exemption, even for exempt uses recognized as preferred by the SMA, subjecting all proposed uses to comply with this Program, dilutes the purpose of granting exemptions. Something is either exempt or it isn't. Certainly shoreline development needs to be regulated to the extent to meet the goals of RCW 90.58, but so many conditions are placed on exempt uses they cease to be classified as exempt. In fact, many provisions (including **6.1.A.1.**) dictate that any "[u]ses and developments that may cause the future ecological to become worse than the current condition should not be allowed." Does not language like this makes exempt status moot?

C. This section states "classification of a use or development as permitted does not necessarily mean the use/development is allowed." Again, in the case of exempt uses, this negates the purpose of establishing exemptions in the first place. The language of this paragraph is vague, amounts to an improper grant of discretion to the regulators, and leaves citizens without clear guidance as to what will and will not be allowed.

6. Critical Areas Regulations Adopted by Reference. The public was not afforded the opportunity to review the critical area regulations at the time of their incorporation

into the proposed SMP. The County, if it wishes to incorporate the CAO by reference, must give the public, and Ecology, the right to specifically review – and if needed – challenge the validity of the incorporated regulations before adoption of the resolution that approved the proposed SMP.

8. Liberal Construction. This section goes well beyond the language of RCW 90.58.900, the putative authority for it, which states in its entirety: "This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted." The use of words such as "deemed" and "spirit" are an open invitation to overreach by the regulators and others opposed to the legitimate use and development of the county shorelands. .Furthermore, this section must include language stating that land-use ordinances are in derogation of the common-law right of an owner to use private property so as to realize its highest utility. Because regulations such as the SMP are in derogation of this right, the Washington Supreme Court has repeatedly held such ordinances must be *strictly construed* in favor of property owners. Due process demands that citizens be clearly informed by the law as to what is and is not permitted so that they can intelligently and with foreknowledge plan and organize their use of their property. The county itself takes an inconsistent position with respect to permit Exceptions at **Art. 9.2.A** where it states that exceptions from Shoreline Substantial Development permits are to be "construed narrowly." The fundamental requirement of due process is that the citizens be treated fairly by their government.

ARTICLE 2 – DEFINITIONS

21. Alteration, nonconforming structure. This definition goes well beyond any legitimate purpose there might be for restricting improvements for structures in the shorelands., How, for example, does changing "interior partitions," even if they are "supporting members," have any possibility of damaging the stability or ecological function of the shorelines if done in compliance with the building code? Likewise, the upgrading of doors and windows can certainly be done in such as way as to harmless to the shoreline.

5. Channel Migration Zone. This far surpasses the purpose of a definition and includes language that is not merely defining but regulatory ("includes an Erosion Setback for a 100-year period of time and a Geotechnical Setback to account for slope retreat to a stable angle of repose.").

13. Dock. This definition is confusing and, if intended as written, overly restrictive.

4. Feeder Bluff. This definition is so broad it could include virtually every bluff in Jefferson County. This is significant as some common shoreline uses are prohibited outright where feeder bluffs are present. What is not defined are the standards for identifying and classifying feeder bluffs. This is an example of arbitrary interpretation

and discretion allowed to the regulators by the SMP. In essence, this creates a new critical area out of whole cloth.

8. Liberal construction. See comment at Article 1.8 above.

22. Shorelines of statewide significance. RCW 90.58.030(2)(e) does not include "associated wetlands" in its defining language. Jefferson County is here preempting state authority.

45. Substantial development. RCW appears to be misstated.

ARTICLE 3 – MASTER PROGRAM GOALS

While acknowledging Economic Development and Shoreline Use as goals of the SMP, the economic aspects of these goals were not adequately or explicitly addressed in the creation of this Program. By way of example, CAPR is not aware of any studies having been done on the effect on insurance premiums of declaring large numbers of shoreline structures nonconforming. How will this affect replacement costs? Evidence suggests that the replacement costs will rise, which in turn will cause insurers to justifiably raise premiums.

How will the blanket 150 foot setback affect the value of developable parcels? Such a large setback, when combined with increased restrictions on cutting shoreline trees and vegetation, will certainly render current "view lots" much less valuable. This not only takes property value from the citizens who own such parcels, it will significantly lower the accessed value of the parcels. This will have an important, and currently unevaluated effect, on the County fisc.

How will the blanket 150 foot setback affect the value of parcels with existing improvements that will not be alterable? Has the County had any study of this done?

How will businesses, and the property they own, be affected by having their structures and uses be declared nonconforming? Expansion either of the footprint or the use will be forbidden. This will surely restrict their ability to growth and add to the tax base of the County and state. Has the County had any study of this done?

Both Chapter 90.58 RCW and the guidelines at Chapter 173-26 WAC require consideration of economic issues. How have these been addressed in the proposed SMP? CAPR believes they have not been studied sufficiently and, therefore, have not been adequately addressed. A thorough, professional review of economic impacts of the proposed SMP must be done, and made available for public review, before this Program is adopted.

3.7.B.10. This goal states: “Encourage all use and development to address potential adverse effects of global climate change and sea level rise.” The potential effects of possible climate change and sea level rise are currently taxing the scientific abilities of the best minds in world. Disputes are legend. How can a private developer or property owner hope to even approach these questions? And while the goal is expressed here in aspirational language, given the wide discretion this proposed SMP grants the County regulators, it is entirely reasonable and to be expected that this goal will be applied in any consideration of application for a permit or a variance or a use. This goal is far too vague and amenable to potential abuse for it to be included in the SMP. CAPR raises the same objection with respect to **Art. 6.6.A.2**.

ARTICLE 4 – SHORELINE JURISDICTION AND ENVIRONMENTAL DESIGNATIONS

4.1. Absent in this section is a process for contesting the SED assigned to a particular parcel or reach. This must be addressed before approval.

4.2.B.1. This section bases shoreline environmental designations on a Final Shoreline Inventory and Characterization Report (“FSICR”) that is overly broad and too general from which to establish a reliable and measurable No Net Loss (“NNL”) baseline. In many instances the FSICR simply describes the general presence of existing functions. On page three of the introduction to the FSICR there is an acknowledgement that it is "not intended as a full evaluation of the effectiveness of the existing SMA shoreline policies or regulations." Yet this is the source for the NNL baseline (Cumulative Impact Analysis, 1.3). Much of the information for the FSICR was derived from studies conducted ten years ago, yet the NNL baseline begins upon adoption. Use of outdated assessment studies makes the baseline retroactive to the time when the relevant studies were conducted. The FSICR was also dependent on aerial photographs for some assessments and these photos were used extensively to assign SEDs. In at least one case in Port Ludlow, the county relied on outdated photographs to designate a reach Conservancy that had subsequently been developed into condominiums.

The FSICR lacks an inventory of existing structures as required by WAC 173-26-201(3)(c). It only describes general land-use patterns. It is therefore lacking in the information necessary to assess the relationship between ecological functions and the degree of human alteration in any meaningful manner. Absent this crucial corresponding relationship, SEDs cannot be assigned according to the designation criteria in WAC 173-26-211.

4.2.C.1. The creation of a new SED, Priority Aquatic, is an unnecessary redundancy in a county that has extensive and multi-layered environment-related growth management regulations. Creation of new SED would have been more suited to recognizing Jefferson's extensive low-density rural residential zoning designations as specifically referenced in WAC 173-26-211(5)(f)(ii)(A).

4.2.C.3.i. The purpose statement of the Natural designation excludes the language in WAC 173-26-211(5)(a)(i) that serves to protect from harm shorelines that "include intact or minimally degraded shoreline functions ***intolerant of human use.***" There has been no demonstration made by the FSICR or any other supporting studies that show Natural-designated areas are intolerant of human use.

4.2.C.3.ii.e. This designation criteria is not contained in the WAC 173-26-211 and is added solely at the discretion of the County.

Designation of 41% of Jefferson County shorelines as Natural is an abuse of the goals and policies of RCW 90.58 and WAC 173-26. This is purely a policy decision by the County, not one founded in the requirements of the law. The dramatic expansion of this designation places nearly half our shorelines under conditional permit review by Ecology for what is a preferred and exempt use in the SMA. This is in conflict with RCW 90.58.100(5) requirements to "insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020." Expansive designation of shorelines under Natural also prohibits outright common accessory uses such as beach stairs and preferred uses such as protective bulkheads (RCW 90.58.100(6) without any opportunity to mitigate perceived harm. The automatic assumption that these uses will cause harm without mitigating measures betrays the SMA, ignores modern engineering techniques, and most of all is simply prejudicial to use of the shoreline.

4.2.C.4. Conservancy. Deliberations by the Board of County Commissioners ("BOCC") focused on ecological restoration opportunities in the Conservancy designation. This was also a primary focus of the Planning Commission in reviewing proposed conservancy designations. This focus is misdirected as it is not the focus of WAC 173-26-211(5)(b). Twenty-nine percent of the shorelines are designated Conservancy (Cumulative Impact Analysis, 4.2, Figure 3). Combined with the Natural designation this constitutes 69% of our shorelines in a county dominated by rural residential zoning.

4.2.C.4.ii.e. The criterion, "The shoreline is good candidate for ecological restoration" is not included in WAC 173-211(5)(b)(iii) and should not be included here.

4.2.C.5. Shoreline Residential. Rural residential is the predominate land use in Jefferson County, yet accounts for only 17% of the entire shoreline designation. WAC 173-26-211(5)(f)(ii)(A) offers counties the opportunity to "establish two or more different 'shoreline environments' to accommodate different shoreline densities or conditions..." This provision was written for a county like Jefferson. The Planning Commission recommendation for 50 foot buffers in the Shoreline Residential designations would have at least helped to alleviate the creation of nonconforming uses, but that was rejected by the Department of Community Development ("DCD") and the BOCC and was strongly discouraged by Ecology. There is no reason to make existing homes nonconforming, especially when their presence to date has not been proven to

contribute to No Net Loss over the years it has taken to develop 70% of the shorelines under 30 foot setback standards.

4.3. Uses Allowed in Each Shoreline Designation. The allowed uses in Table 1 contain a substantial increase of conditional and prohibited uses over the existing code without any clear demonstration that this is needed to achieve No Net Loss. Requirements for Ecology review of CUPs will be costly and time consuming. Plus, throughout the process Ecology technical advice has advocated for a very strict and almost fundamentalist approach to restricting shoreline development. (Jeffree Stewart inappropriately weighted in during the Planning Commission public comment phase that Ecology would not approve the recommendations that included 50 foot buffers. This is procedural interference with the deference given local jurisdictions to develop shoreline policies that suit local conditions. WAC 173-26-171(3)(a). Permit applicants can hardly feel confident petitioning for permission from the very agency that wrote the restrictions to begin with! These conditions and prohibitions substantially interfere with constitutional private property rights referenced in RCW 90.58.020 and WAC 173-26-186(5).

ARTICLE 6 – GENERAL POLICIES AND REGULATIONS

1. Critical Areas, Shoreline Buffers, and Ecological Protection.

6.1.A.1. This policy states: "Uses and developments that may cause the future ecological condition to become worse than the current condition should not be allowed." Use of the standard "may cause" is totally inconsistent with the goals of the SMA and calls for unwarranted speculation.

6.1.A.2.iv. This policy asks for an assessment of the "direct effects of the project and indirect effects." What are the indirect effects of a project? Where are they defined? Not in Article 2. Though a policy, DCD staff has stated that the policies will guide code interpretation, so they carry weight. Policies need to be clear and definable. This one is not.

6.1.A.5. This policy relates to evaluating development of nonconforming lots. "Should not substantially impair the view of the adjacent residences." This is a consequential condition placed on development of nonconforming lots. It is not well defined or explained.

6.1.B.1. Compliance with this regulation is at once the most basic and elusive of the SMP. Review of inner-department correspondence and correspondence with the County reveals the concept of No Net Loss remains uncertain even to the Ecology. A draft white paper released on March 4, 2010, *Protecting Puget Sound Through Shoreline Master Programs: Opportunities to Improve Protection*, by consultants Jim Kramer, Carol MacIlroy, and Margaret Clancy, written with guidance from Ecology, acknowledges that "[e]ven though the SMP update process has been underway for several years, the path for SMPs to meet the no net loss policy objective is still emerging." This is an astounding

admission considering that NNL is the cornerstone of proposed SMP, and landowners have been told in no uncertain terms that the protection standards in the updated SMP are absolutely necessary for shoreline protection. The fact is, the concept of NNL is still very much in the prototype phase of regulatory development, yet permit applicants are being subjected to restrictive development standards nonetheless, including extensive requirements for conditional use permits and even prohibitions of common uses. Taxpaying citizens deserve fair, understandable regulations based on supporting data that clearly identify a need. This is especially so when regulations are being increased five-fold and many current uses that comply with the law will suddenly be made nonconforming, which is disfavored by the law.

The Final Shoreline Inventory and Characterization Report cannot possibly be used for establishing the NNL baseline. And even given more accurate data, how can anyone possibly measure something as difficult to quantify as no net loss over an entire ecosystem-wide jurisdiction? This invites subjective interpretation of new data, which will be meaningless in any case due to the lack of a defined starting point.

And as the white paper has clearly identified, the task of implementing has become so monumental it is beyond the scope of resources local jurisdictions can manage, and is requiring substantial infusions of money from outside sources. The Jefferson County DCD has been cut down by a third by the decline in permit revenue, and is left with a skeleton staff to administrate complex regulations like the Critical Areas Ordinance and now a 200 page SMP. The DCD has now embarked on the creation on a new department, call the Watershed Resource Stewardship Center, ostensibly to guide applicants through what DCD director Al Scalf has called the regulatory "maze." The comes at a cost of $800,000. This begs the question of why our contemporary planning schemes are resulting in a permit maze. Isn't that anathema to the purpose of planning? What it also indicates is the current environmental regulation model is not financially sustainable and local planning budgets are collapsing under its weight. RCW 90.58.100(1)(e) requires the department and local governments to the extent feasible shall "utilize all available information regarding hydrology, geography, topography, ecology, ***economics,*** and other pertinent data." This SMP should be include a cost/benefit analysis and an assessment of the local jurisdiction's ability to implement and administrate this SMP while meeting state planning goals for permit efficiency. Additionally, a general economic impact statement needs to be conducted to determine the economic consequences of this update. In light of all of these considerations, this proposed SMP is both vague and overly broad.

6.1.B.2. "Uses and developments that cause a net loss of ecological functions and processes shall be prohibited." Exactly how will it be determined whether a development results in net loss? No net loss is gauged both on a site-specific project level at the time of application and at a jurisdiction ecosystem-wide scale over time. The whole point of Shoreline Inventories, Restoration Plans and Cumulative Impact assessments is to take into account a number of variables influencing long term success of shoreline protection. RCW 90.58.020 reserves "alterations of the natural conditions of the shorelines of the State, in those limited instances when authorized, shall be given priority for single family residences..." WAC 173-26-201(2)(c) states: "Where uses or development that impact

ecological functions are necessary to achieve other objectives of RCW 90.58.020, master programs shall, *to the greatest extent feasible*, protect existing ecological functions and avoid new impact..." This seems to be a recognition that while some impacts will occur, they can be offset by mitigation or through restoration programs that offset impacts with net gain in other areas of the jurisdiction. This regulation is unnecessary except in the most extreme situations, and the language in the regulation should reflect that (for example, *"in the rare instances where mitigation and restoration fails to offset the impact of a use or development, that development shall not be allowed.").*

6.1.B.4. Inclusion of this regulation eliminates the need for excessive requirements for conditional use permits or prohibition of uses outright. If permit applications can on a case-by-case basis meet the requirements of mitigation actions then the permit should be granted, period.

6.1.C. Regulations - Cumulative Impacts.

6.1.C.1. The county intends on assessing cumulative impacts even where exempt, preferred uses are concerned, and if upon their determination they conclude net loss will occur they can deny the permit based on 6.1.B.2. Does this not strip “exempt” of all meaning?

6.1.C.2. This regulation requires the applicant to perform the duties the County either cannot or will not conduct themselves (e.g., an adequate FSICR and CIA). How can the applicant possible determine whether their proposed development will create negative cumulative adverse impacts? And from what baseline and projected impacts contained in the FSICR and Cumulative Impact Analysis does the applicant measure their proposal? The County received a $670,000 grant from Ecology, a good chunk of which went into the FSICR and CIA. This really puts an onerous and subjective burden on the applicant. Assess impacts on fish and wildlife habitat, public access/use, aesthetics, and other shoreline attributes?! What other attributes? Who decides what is aesthetically valuable?

Cumulative Impact Analysis: This document, written by ESA Adolfson and Associates, provides only a general synopsis of potential future development and impacts. It states in 2.1 that Jefferson County is sparsely populated...and that East Jefferson County has between 1 and 149 residents per square mile." It states "Jefferson County's shorelines are in relatively good shape compared to more developed areas of the Puget Sound basin." (Ecology shoreline managers have gone further, characterizing Jefferson's shorelines as excellent, making it an ideal pilot project for the model SMP update.). In section 5.4 the CIA concedes that "in and of itself, residential development probably does not have major adverse effects on shoreline resources.”

In section 5.11, the CIA states "a relatively small percentage [less than 10%] of the County's shorelines are armored." There is no substantive data supporting that percentage will significantly increase. Just that when it happens, it's assumed to be bad. Potential impacts of future development are based simply on "demand for housing, job availability, and other factors." That's it. No mention that OFM population projections are not meeting even moderate predictions for growth. There is a mistaken concern for conversion of

resource lands to residential uses without consulting the County Comprehensive Plan, which contain goals and policies making this conversion practically impossible (NRG 1.0, NRP 1.1, NRG 4.1, NRG 4.6,NRG 10.0, NRP 10.7 and 10.9). Conversion of residential lands to commercial is near impossible by virtue of RCW 36.70A.(5)(d). The CIA speculates on how many lots could be created by subdivision, using a simplistic formula of dividing existing rural residential zoning densities into their maximum build-out potential, which ignores strict Compressive Plan criteria for down zoning rural residential lands. The CIA then concludes, "Overall, the number of existing lots eligible for subdivision based on size and land use designation is very low; less than one percent in most cases."

The CIA notes that 70% of the shorelines have already been developed. This has occurred using at most 30 foot setbacks. The assumption of the CIA is that, despite no evidence, development of the remaining 30% is going to be so exponentially greater than previous historic trends so as to warrant a five-fold increase in buffers and expansion of the Natural designation to 41%, triggering Ecology oversight and outright prohibition of preferred uses such as bulkheads.

The biggest myth perpetrated by Ecology and County officials is that Jefferson County is facing rapid development pressures.

The Cumulative Impact Analysis as written contains no meaningful insight into potential future cumulative impacts. Even when combined with the Final Shoreline Inventory and Characterization Report, there isn't enough substantive data on which to establish a NNL baseline and criteria for SEDs. Given this, how can a citizen be expected to assess the cumulative impacts of their development proposal?

Additionally, individual property owners' use of their property is being conditioned on what their neighbors do and when they do it. This will cause uncertainty in the law and will lead to violations of the doctrine of "equal protection under the law."

6.1.D - Critical Areas and Shoreline Buffers. Concerns:

- Uniform buffers are in conflict with case law.
- With passage of EHB 1653, the new protection standard is no net loss, not "at least equal to" the CAO.
- Makes a total of 917 parcels nonconforming, including 447 in Shoreline Residential. (CIA, 5.13, Table 8).
- Ignores increased controls on growth achieved through multiple layers and at an ecosystem-wide level. Housing density, limited commercial opportunities, new limits on water allocations, stormwater and clearing and grading controls, etc., all contribute to offset the potential for ecological degradation.
- RCW 90.58.100(1) calls for a systematic interdisciplinary approach which will ensure the integrated use of the natural and social sciences. The 150 foot buffers were based solely on environmental considerations. That was explicitly stated.

- No assessment of the economic impacts were considered despite much expressed concern and the impact of the recession.
- Provisions for buffer reduction or averaging are expensive and time consuming. The self-proclaimed inefficiency at DCD further calls into question the merits of these options.
- Rather than starting with large buffers and including options to reduce them, start with smaller buffers that have proven effective and increase as needed on a case-by-case basis.
- Refusal to listen to the public. In a July 17, 2008 e-mail, ESA consultant Margaret Clancy writes to Jeffree Stewart, "I believe we have some work to do if we want to avoid a repeat of the CAO battles." The CAO battles were over buffers. Short of the Planning Commission recommendation to reduce buffers to 50 feet in two SEDs, there was no effort to learn from history. Real on-the-ground environmental conservation is dependent on the acceptance of regulations as legitimate. The over 200 people who showed up to overwhelmingly protest the proposed SMP is a testament to the lack of belief people have in the SMP.

Additionally, **Art. 6.1.D.4 et seq**. are using the SMP standard buffers (150 feet for marine shorelines and streams, 100 feet for lakes) to effectively create new, blanket critical areas. For example, the 150 feet for marine shorelines is the same as JCC 18.22 (CAO) requires for Fish and Wildlife Habitat Critical Areas in Table 18.22.270(2). Similarly, by way of further example, the 150 foot buffer is that typically applied to all but the most pristine, high value critical-area wetlands.

However, Sec. 4 of the recently enacted EHB 1653, amending 90.58 RCW, states:

> RCW 36.70A.480 governs the relationship between shoreline master programs and developmental regulations to protect critical areas that are adopted under chapter 36.70A.

RCW 36.70A.480(5) in turn states:

> Shorelines of the state shall not be considered critical areas under this chapter except to the extent that specific areas located within shorelines of the state qualify for critical area designation based on the definition of critical areas provided by RCW 36.70A.030(5) and have been designated as such by a local government pursuant to RCW 36.70A.060(2).

By adopting such wide, standard buffers, comparable to those for critical areas, the County is in effect declaring the entire marine shoreline, streams, and lakes to be critical areas, in violation of RCW 36.70A.480(5). This type of thinking is further demonstrated by **Art. 6.1.D.11 and 13**, where JCC 18.22.270 critical area buffer averaging, reduction and alternative protection by stewardship plans are applied directly to the SMP standard buffer. The finding that all the shorelines of Jefferson County are “specific areas …

[that]qualify for critical area designation based on the definition of critical areas …" has not be made.

Ecology improperly and prematurely influenced the local jurisdiction's consideration of what buffer standards were locally appropriate. The Planning Commission voted to set buffers at 50 feet. The DCD then finalized the draft for submission with that 50 foot designation. Ecology then informed the County that it would not accept a draft with less than 150 foot buffers. The BOCC then changed the buffer setback to 150 feet (100 feet for lakes) and sent a proposed Program to Ecology with the 300% increase. This was not the time for Ecology to review and make categorical statements concerning approval or disapproval. At the time this happened, Ecology's role was more limited.

6.1.E Regulations - Exemptions to Critical areas and Shoreline Buffer Standards. Despite these "exemptions," which should be called allowances with conditions, development on the 917 lots made nonconforming by 150 foot buffers is subject to restrictive conditions that were not present when the land was purchased by its current owners. Growth Management laws have promised predictability in land use but the landscape of contemporary environmental planning is constantly shifting. Ten conditions are placed on this "exemption," including limits on building size and mandate to consolidate lots under common ownership if applicable. This is an impermissible over reach

6.1.E.2. Non-conforming lots - Common Line Buffer. The expansion of this provision to 300 feet (from the Planning Commission recommendation of 50 feet) is so extreme as to make it of little or no value.

6.3. Public Access.

6.3.A.6 and 9. Any requirement for a private developer or owner to provide public access must be a direct and proportional result of that developer's or owner's causing of some restriction on existing public access by their development. Otherwise, the County is talking property for public use without paying just compensation. This is impermissible.

6.4. Vegetation Conservation. Where does the mandate for native vegetation come from? Where is the science that supports it? Studies *have* shown lawns are a very effective buffer strip for filtering pollutants.

WAC 173-26-221(5) Shoreline vegetation conservation**.** Nowhere in this section of the WAC does it mention "native" vegetation. The closest it comes is mentioning "control of invasive weeds and nonnative species." **6.4.A.** first addresses "maintaining" native shoreline vegetation but in subsequent polices morphs into "establish" native vegetation for new uses and development. It is clear from this section as a whole that the emphasis is on a shoreline characterized by native vegetation, when the WAC does not prescribe the same. These policies are important as they guide administrators during code interpretation.

6.4.B.2. WAC 173-26-221(5)(c) allows "[s]elective pruning of trees for safety and *view protection* may be allowed and the removal of noxious weeds should be authorized." Note, view protection. Not enhancement, but *protection.* This indicates recognition by the authorizing guidelines that views are an integral part of living on the shoreline and are entitled to protection.

6.4.A.3. The SMA does not mandate that "[n]ew uses and/or developments should establish native shoreline vegetation such that the composition, structure, and density of the plant community resemble a natural, unaltered shoreline as possible. **6.4.A.1** also mentions "Maintain shoreline vegetation to...resemble natural, unaltered shorelines." Is the protection standard NNL or "resemble natural, unaltered shorelines?" This goes beyond the authority granted by RCW 90.58.020.

Though these are policies, **6.4.B. Regulations** requires under **2.** that "Proponents of all new shoreline uses shall demonstrate that site designs and layouts are consistent with the policies of this section..."

Both **6.4.A.4** and **6.4.B.2.** advise landowners they are not guaranteed an unobstructed view. Can this be required across the board without a site evaluation proving nexus and just cause?

6.4.B.3.ii. All vegetation removal must comply with **6.1.D.8.** This regulation is similar to the standard buffers in that it is to be uniformly applied without specific regard to the site characteristics.

6.4.B.3.iii. These conditions, such as habitat value or health of surrounding vegetation, gives the administrator wide and poorly constrained discretion in denying or further conditioning a permit for view maintenance. This is the type of regulation that leads to evasion and self-help, thereby weakening reasonable land-use regulation.

ARTICLE 7 - SHORELINE MODIFICATION POLICIES AND REGULATIONS.

7.1. Beach Access Structures. RCW 90.58.020 states, "It is the policy of the state to provide for management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses." Waterfront property owners have a right to access their shoreline.

7.1.A.1. The WAC continually uses the qualifier “significant” when addressing adverse impacts. This policy should state beach access structures should be located “in a manner that minimizes *significant* adverse impacts.” Furthermore, the fact that the word “minimizes” is used indicates that the use should be allowed outright except in the most extraordinary circumstances. "Significant" should also be added to Policy No. 4, 5, etc.

7.1.A.2. This policy describes a balance between use and protection that is belied by further polices that attach numerous conditions that give wide latitude to administrative interpretation and discretion.

7.1.A.5. This policy completely strays from the goal of a balance of uses and lead to regulatory takings. It is clearly related to the prohibition of beach access structures in the Natural designation, which is 41% of the shoreline. **6.2.B.** describes mitigation processes that should first be employed before an outright prohibition. The standard in WAC 173-26-211 for Natural areas is "intolerant of human uses." This section reaches impermissibly beyond that.

7.1.A.5. This policy concludes that some properties "will" (doesn't say "may") have view only access to the neighboring waters. Regulations in **6.4.B.2** do not guarantee a view. There are so many policies related to preserving the "natural, unaltered" condition of the shoreline that an applicant can rightfully be concerned that their proposal will be interpreted in a negative light at the whim, i.e., discretion, of the regulators. The policy is vague and overly broad.

7.1.B. The outright prohibition on feeder bluffs ignores mitigation measures and modern engineering techniques that have been recognized by court decisions. A blanket prohibition, not sufficient tailored to individual sites overly broad and works a regulatory taking.

7.1.C. Shoreline Environment Regulations. In general, why permit public access but prohibit or severely condition private access?

7.1.D.3. The language here is too broad and again gives overly wide latitude to code interpretation, granting too much discretion to the regulators. It fails to give sufficient notice or certainty to citizens developing their property.

7.1.D.4. This regulation gives the county authority to require specific design standards. This authority should only be applied as a reasonable, feasible alternative based on site-specific needs. Engineering and architectural expertise exceeds that of DCD planners and administrators who have no background in these issues.

7.1.D.10.i. This states beach access structures shall be prohibit if "[t]he structure would adversely impact a critical area or marine feeder bluff.." But **7.1.B.** prohibits such structures outright! There is a direct conflict here. Again, the qualifier *significant* needs to added to "adverse impacts."

7.1.D.10.ii. Uses the regulatory standard of "likely to interfere." Regulations should be explicit in their meaning. The proposed SMP is full of these regulatory ambiguities and thus very poorly written. This problem is compounded by the claim of "liberal construction at **Art. 1.8**. It is no wonder DCD is creating a whole new department called the Watershed Resource Center (price tag $800,000), paying contracted private citizens

$75per hour, to explain dense environmental regulations to permit applicants. Shouldn't DCD planners be able to do that?

7.1.D.11. The responsibilities for scientific and engineering evaluations here required would tax the abilities and resources of the United States Geological Survey. These information requirements will always grant regulators an easy way to deny any permit application.

7.2 Boating Facilities

7.2.A.4. There is an over emphasis on "protect the natural character of the shoreline and prevent adverse ecological impacts..." (And again the modifier "significant" is omitted.) But these are preferred, water-dependent uses are given preference by RCW 90.58.020 and WAC 173-26-201(2)(d). The rest of the sentence is disturbingly overbroad: "caused by in-water and over water structures by *limiting the number of new docks/piers/floats and by controlling how they are designed and constructed and where they are located.*" This is a blatant violation of the RCW and WAC guidelines, and also suggests that DCD is going into the water-dependent design and construction business. What are the qualifications of DCD staff to perform this kind of work?

7.2.B. Shoreline Environment Regulations.

7.2.B.3.ii & iv. Public docks are allowed in the Natural SED as a conditional use but all other boating facilities accessory to residential development are prohibited. This in spite of the fact that single family residences are a preferred use under 90.58 RCW and the implementing regulations in WAC.

7.2.B.4. Boating facilities are allowed in the conservancy SED as a conditional use. This subjects 69% of Jefferson shorelines to either prohibition or conditional use of preferred, water-dependent uses. This is overly restrictive and not in keeping with 90.58 RCW and the implementing regulations in WAC.

7.2.D.1. The requirement of no public facilities "within a reasonable distance" before a private facility will be permitted vests too much discretion in the regulators and creates uncertainty for property owners.

7.2.F. Regulations - Docks, Piers, Floats, and Lifts - Accessory to Residential Development.

7.2.F.1.iii. Individual property owners' use of their property is being conditioned on what their neighbors do and when they do it. This will cause uncertainty in the law and will lead to violations of the doctrine of "equal protection under the law."

7.5. Flood Control and Structures: 7.5.A.1. "The County should prevent the need for flood control works by limiting new development in flood-prone areas." WAC 173-26-221(3)(c)(i) states "Development in flood plains should not significantly increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has been adopted after 1994 and approved by the department." Upon information and belief, portions of Jefferson County are under flood control plans. In any case, WAC 173-26-221 sets forth a more reasonable standard of not significantly increasing flood hazard, not "limiting new development."

7.8. Structural Shoreline Armoring and Shoreline Stabilization. There can be no ownership of property without protection of property. Art.7.8, as written, is overly broad, unnecessarily restrictive, not supported by sound science based on local studies, and therefore insufficiently parcel specific to pass constitutional muster.

Further, there is an assumption that shoreline armoring will proliferate without near prohibition. There is no historical justification for this assumption.

7.8.A.1. If this policy is to prevent the "proliferation" of bulkheads and armoring then it doesn't recognize historic trends. Shoreline stabilization is massively expensive. Nobody wants to do it except as a absolute necessity. Furthermore, it is a primary preferred use under RCW 90.58.100(6).

7.8.A.4. Is it required that beach erosion proposals evaluate a range of options and designs? Why is "should" used in a policy? Where in the WAC is this mandate grounded?

7.8.A.10. The requirement to provide public access when a private property owner needs to obtain a permit to protect their property is extortionate. If the protection is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner. While only articulated as "policy," given the overly broad and ill-defined discretion granted the regulators, this will surely become a price to be extracted from the private owner.

7.8.A.12. This policy requires proponents to "coordinate with other affected property owners *and public agencies* to address ecological and geohydraulic processes, etc." This finds no support in either the RCW or the WAC.

7.8.C Regulations - Existing Structural Shoreline Armoring.

7.8.C.1.ii. Restrictions on increase in size fail to meet requirements in RCW 90.58.100(6) and in essence establish bulkheads and armoring as a nonconforming use. Erosion by its very nature will increase in size, requiring additional protection.

7.8.E. New or Expanded Shoreline Armoring, When Allowed. This section goes entirely too far in forbidding private owners from protecting there property, even when those uses are preferred uses or water-dependent uses.

7.8.E.1. Contains the language " strongly encouraged to remove it." These are regulations, not a philosophical treatise. Given the SMP claim to "liberal construction," it is doubly important that it be exact in its meaning.

7.8.E.2.i. New structural armoring is allowed for ecological restoration heavily conditioned on undeveloped lots.

7.8.E.4. This evaluation of the need for new or expanded structural armoring includes "No action (allow the shoreline to retreat naturally)." Second is increased building setbacks and/or *relocated structures.* Lastly, it appears proponents are restricted in what materials they can use for new or expanded armoring. This is overly restrictive and will in the long run stifle creative solutions.

7.8.E.5. This section is inconsistent with any reasonable reading of RCW 90.58.100(6):

> Each master program shall contain standards governing the protection of single family residences and appurtenant structures against damage or loss due to shoreline erosion. The standards shall govern the issuance of substantial development permits for shoreline protection, including structural methods such as construction of bulkheads, and nonstructural methods of protection. The standards shall provide for methods which achieve effective and timely protection against loss or damage to single family residences and appurtenant structures due to shoreline erosion. The standards shall provide a preference for permit issuance for measures to protect single family residences occupied prior to January 1, 1992, where the proposed measure is designed to minimize harm to the shoreline natural environment.

7.7. Restoration. The data upon which the Restoration Plan is based is inadequate.

ARTICLE 8 - USE-SPECIFIC POLICES AND REGULATIONS.

8.3.A.5. The requirement to provide public access when a private property owner needs to obtain a permit to do business is, again, extortionate. If the business is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner. While only articulated as "policy,"

given the overly broad and ill-defined discretion granted the regulators, this will surely become a price to be extracted from the private owner.

8.3.F.2. Again**,** the requirement to provide public access when a private property owner needs to obtain a permit to protect their property is extortionate. If the protection is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner.

Likewise, the requirement to restore buffers that have been damaged by the owner and is not related to the development at issue is imposing an unlawful tax and working an improper exaction on the private owner.

8.5.A.4. Again, the requirement to provide public access when a private property owner needs to obtain a permit to develop their property is extortionate. If the protection is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner. While only articulated as "policy," given the overly broad and ill-defined discretion granted the regulators, this will surely become a price to be extracted from the private owner.

8.8. Residential. WAC 173-26-241(2)(j) mandates polices and regulations that assure no net loss of ecological functions will result from residential development. Provisions include "setbacks and buffer areas...and should be sufficiently set back from steep slopes...including bluff walls." WAC 173-26-221(2)(c)(iii) Critical Saltwater Habitats**,** lists management planning including "[e]stablishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas." Nowhere does it remotely reference the need for buffers the width of which consume nearly 3/4 of the shoreline jurisdiction. Our previous SMP included provisions that increased buffers one foot for every vertical foot of bluff.

8.8A.2. Add "*significant"* to adverse impacts.

8.8.A.4. The density per acre has already been determined through GMA comprehensive planning processes. The criteria for designating rural residential lands is contained in Land Use Policy 3.3. Out of 16 total criteria for densities 1:5, 1:10, and 1:20, natural and cultural are not mentioned once.

8.8.A.6. Should be rewritten as**:** "New residential development should be planned and built in a manner that ~~avoids~~ <u>minimizes</u> the need for structural armoring …"

8.8.A.7. The fact that residential development might "improve" ecological functions betrays the need for conditional use oversight in 41% of the shoreline. There is no legal mandate to preserve "native" vegetation. Preserving aesthetic characteristics is in the eye

of the beholder. The only development limitation on view obstructions are height restrictions. Even a policy that seeks to "minimize structural obstructions to public views" is unconstitutional. This ignores directives in RCW 90.58.020 to protect private property rights and WAC 173-26-191(2)(a)(iii)(A) that further elaborates:

> In addition to the SMA, permit review, implementation, and enforcement procedures affecting private property must be conducted in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property. Administrative procedures should include provisions insuring that these requirements and limitations are considered and followed in such decisions.

8.8.A.9. To even have a policy that "encourages" this practice is overstepping and should be stricken. DCD staff has clearly stated the policy language carries weight as direct guidance for code interpretation. Given the broad and amorphous discretion grant the regulators, this agreement with this "encouragement" will become mandatory, even if only indirectly. The requirement to provide public access when a private property owner needs to obtain a permit to develop their property is extortionate. If the protection is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner. While only articulated as "policy," given the overly broad and ill-defined discretion granted the regulators, this will surely become a price to be extracted from the private owner.

8.8.B. Uses and Activities Prohibited Outright. Why even have a specific section titled this? If developments cannot meet legal thresholds they should be denied. But this is something that should only occur under rare circumstances. Limit this section to uses that are outright prohibited by law.

8.8.B.2. is not an outright prohibition, it is a prohibition based on circumstances and conditions. A standard of "reasonably expected to require" with respect to structural shore armoring is arbitrary.

8.8.B.3. Same arbitrary standard as **8.8.B.3**. The science and mapping of CMZs is incomplete and is being challenged in the Court of Appeals. The time-frame of the useful life of the house or within 100 years, whichever is greater, is meaningless. Why not just say 100 years? and why 100 years. Who picked that number as a standard? What is the connection between 100 years and the prohibition on shoreline armoring?! How many houses built in 1910 are still standing in Jefferson County or Washington state? Where are the studies that support this regulation?

8.8.D. Regulations - Primary Residences and Property Subdivision.

8.8.D.1. Add *significant* to adverse impacts.

8.8.D.3. Requirement for low impact development practices for development sites constrained by critical areas and/or shoreline buffers exceeds that in **6.1.E.1.iv.** This would appear to be either a lack of internal consistency or another example of the confusing code structure.

8.8.D.5. This is just a blatant disregard for legal precedent. The requirement to provide public access when a private property owner needs to obtain a permit to develop their property is extortionate. If the development is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner.

8.8.D.6. The requirement to provide public access when a private property owner needs to obtain a permit to develop their property is extortionate. If the development is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner.

8.8.D.8. The requirement to provide public access when a private property owner needs to obtain a permit to develop their property is extortionate. If the development is not limiting existing public access, there can be no requirement to provide public access as the price of obtaining a permit. This is a taking where the requirement for public access has no essential nexus to the development itself and thus is imposing an unlawful tax and working an improper exaction on the private owner.

ARTICLE 9 - PERMIT CRITERIA AND EXEMPTIONS.

9.2.A. See comment at Art. 1.8 above.

9.3.A.2. The restrictions on repair and replacement when they might cause substantial adverse effects creates a vague standard clearly subject to abuse and overreaching by the regulators. These conditions need to be stricken.

9.4.A. Why call exempt uses exempt when they are subject to the discretion of and potentially numerous conditions set by the regulators? This section needs to be rewritten to lessen the discretion of the regulators.

9.6.A. Under circumstances where appropriate CUPs may allow greater permitting flexibility, but when used as indiscriminately as they are throughout this program they become an inflexible and unnecessary burden on citizens exercising their constitutionally right to own private property.

9.6.B.4. This needs to be changed to read *significant* adverse impacts.

ARTICLE 10 - ADMINISTRATION AND ENFORCEMENT

In 2005 a DCD performance audit was conducted by Latimore. The results revealed the predictable assessment that contemporary permitting processes have become so complex that "feedback loop disruptions" substantially interfered with permit efficiency, and permit efficiency is after all one of the three cornerstone promises of the GMA. The extended and contentious CAO and SMP processes have overwhelmed the limited resources a small rural county like Jefferson is able to manage and is even taxing the larger counties to the breaking point. As a result of the regulatory "maze" (DCD Director Al Scalf's word) the newly adopted CAO put applicants through, the DCD is adding a new Watershed Resource and Stewardship Center ($800,000, $500,000 from an EPA grant) solely for the purpose of assisting citizens through the maze of environmental regulation and to help in the administration and implementation of this confusing, conflicting SMA-on-steroids SMP - and the CAO. All this without any clearly identified problem with the condition of Jefferson's environment. This is simply not sustainable from an economic or financial standpoint. The current regulatory scheme is entirely dependent on the steady flow of taxpayer-funded grant money that appears endless, even in the face of a $12 trillion federal budget deficit. Meanwhile, citizens expected to comply with these complex regulations, and in fact whose acceptance is essential to long-term stewardship of our environment, are ever more alienated by what are perceived to be illegitimate processes and intrusions placed upon the most important element of their lives - their homes.

The lack of enforcement of existing regulations is a common complaint in the public forum. Who is going to enforce this 200 page behemoth? And who is going to ask for permission when they have to jump through so many hoops?

10.6. Non-conforming Development. There is no reason to make even one single existing structure non-conforming. Buffer standards do not have to uniformly apply to every parcel. Exemptions - true exemptions - can easily accommodate the lawful status of existing structures so they can remained vested under the standards they were permitted under. The County has already exercised wide policy discretion that greatly exceeds the requirements of the SMA in approving the proposed SMP. (When asked by a Planning Commissioner why so much of the shoreline was designated Natural, lead DCD planner Michelle McConnell responded, "We saw an opportunity and we took it."). Relief from non-conforming status would similarly be a policy option that wouldn't conflict with the law and would be an opportunity for some equity of treatment toward rural property owners. The argument that this would result in net loss is without any proven merit as nobody has really quantify what the NNL baseline really is. *(In an e-mail from Jeffree Stewart to David Pater of DOE, sent on 12/6/08, Stewart states, "My assumption is Jefferson County, based as it is on the Whatcom Program, will prove an important precedent for other areas with similar issues...and it is a no-net-loss case study.")*. Nor has it been shown that the existing standards have failed to maintain what DOE has characterized as a shoreline in excellent condition.

The evolution of the impact of the non-conforming use issue has been interesting. As the controversy grew, the number of affected structures magically began to shrink. Initially, it was thought a substantial number of structures would be made nonconforming. The Cumulative Impact Analysis, dated February 2009, indicates 917 parcels would be rendered nonconforming. On 7/15/09, DCD a "Correction & Data Supplement to February 2009 Draft Cumulative Impact Analysis, claiming there were errors in the calculations. The revised figures greatly reduced the impact of non-conforming uses and parcels. the revised numbers state 756 parcels would be made nonconforming by 150 foot buffers and 237 vacant parcels would be made non-conforming by 150 foot buffers. (By comparison, only 26 vacant parcels would be made nonconforming with 50 foot buffers). When asked how DCD arrived at the revised numbers, particularly for the 50 foot buffers, McConnell replied that "he (the county GIS specialist) drew a 50 foot line around everything," indicating this had all been done by transposing a line on a map and not by ground truthing. That the County doesn't have accurate data on the number of nonconforming structures and lots indicates the absence of a meaningful inventory of development characteristics. This is telling, especially since they were able to give *names* to underwater ecological functions (drift cell JE-6, for example).

DCD began a concerted effort to downplay the impact of non-conforming uses. This is a reversal from the beginning of the process when their significant numbers were emphasized to impress the need to regulate future impacts. At the public hearing on 4/20/2010, for the first time we heard the number 247 in relation to non-conforming. Who knows where this came from.

Throughout the process DCD has stressed that the SMP is largely about regulating new development and existing uses wouldn't be much affected. In fact, a power point presentation made prior to the release of the preliminary draft on 12/3/08 states "SMP generally Does Not Regulate EXISTING Uses/Developments." (Emphasis in original.) The County and Ecology have completely misrepresented the impact of this SMP on existing uses. Ecology can live up to its initial promise and guarantee through written provisions that existing uses will be maintained in their current legally vested state.

The real insidious consequences of making existing uses nonconforming is that it is disfavored by the law. In 2007, Betty Renkor of Ecology gave a power point presentation titled "Nonconforming basics and SMPs."

On page four are the bullet points:

- Can continue to exist
- Long term goal: eliminate
- Abandoned: NC status expires
- Reality: many exist for a long time.

Ecology made a big deal about the "hysterical over-reaction" to the second bullet – “eliminate” - accompanied by the usual assurances. But Ecology has a poor track record of keeping promises. We remember in the 1990s when 25 foot buffers weren't going to increase.

During the Planning Commission review we received a hand-out of a message from Commissioner John Austin to Sue Enger of MRSC, asking for clarification on nonconforming provisions for SMPs. Ms. Enger provided some links to web-sites that were relevant and further related a phone call she had with Betty Renkor from Ecology. Renkor "confirmed that DOE's position is that local jurisdictions may adopt a different nonconforming use provision, but whatever is adopted should be consistent with achievement of the policy of the act. She also pointed to Washington court decisions such as *Jefferson County v. Seattle Yacht Club* that note that nonconforming uses are to be restricted and eventually phased out."

So despite all assurances, why do words like *eliminate* and *phase out* keep popping up? If Ecology really wants to reassure landowners that their existing home is protected for themselves and their heirs, then don't make then nonconforming. It's simple. We are living in a modern world where stewardship and environmental protection are becoming part of mainstream life.

10.6.A.4.iii. More protection needs be afforded leased premises. How are renewals, etc. to be handled?

10.6.F.1. This section is vague and overly broad, vesting too much discretion in the regulators within giving specific guidance.

CONCLUDING COMMENTS

In addition to the specific comments above, CAPR makes the following and additional criticisms of the Locally Approved SMP.

The LA-SMP was improperly adopted. Jefferson County held its public hearing with two proposals before it, without a specific proposed action and without a recommendation on a single proposal as required by Jefferson County Code. The public was not timely made aware of which proposal would be under consideration by the BOCC. (WAC 173-26-100.) Additionally, the BOCC considered five separate “pick lists” which identified numerous issues and made significant changes to the proposal. A public hearing on the BOCC final proposed SMP – essentially a new proposal by the BOCC – was never held by the County nor was a recommendation from the planning agency issued, in violation of RCW 36.70.030 and WAC 173-26-100.

The supporting documents for the LA-SMP were either incomplete or out of date. The Integration and Consistency components of 2006 are based on incomplete and obsolete information. A complete and final Cumulative Impact Analysis was not

available for public review when the SMP was locally approved. The County has not complied with the requirements of RCW 36.70A.040 which requires internal consistency between the SMP and the Jefferson County Comprehensive Plan, or, as been repeatedly pointed out above, with the requirements of WAC 173-26-201(2) (a) for adequate scientific/technical foundation of amended SMP provisions.

Meaningful public participation was denied by these actions of the County.

Related to both **6.1.B.2** and **ARTICLE 10:** both the determination and enforcement of whether each permitted use achieves no net loss is nebulous. Exactly how will the NNL objective be monitored and enforced? WAC 186-26-186(2)(8)(b)(i) describes how local programs *shall* contain regulations and mitigation standards to ensure that each permitted development will not cause net loss of ecological functions.

WAC 173-26-191(2)(C) describes administrative and enforcement procedures. The only procedures CAPR finds in a 200 page Program related to enforcement are **10.19** and **10.20. 10.19** describes possible monitoring plans to accompany approval. That was never adequately brought up during the SMP process. WAC 173-26-201(2)(b) addresses monitoring over time to facilitate updates. But there are really no meaningful procedures to measure whether each permitted use and the overall condition of the shoreline are achieving NNL. The newly forming Watershed Resource Stewardship Center is proposing using targeted proposals on a volunteer basis as pilot projects to measure effectiveness of mitigation actions but these models will be highly selective and with a pre-determined outcome in mind, i.e., implement the most strict design standards.

The County and Ecology are relying on 150 foot buffers and vegetation management standards to comply with NNL. The 150 foot buffers are based on a synthesis of various – but limited – studies and have no confirmed success in practical application. Supporters of both this proposed SMP, among which is *not* CAPR, and the Watershed Resource Stewardship Center recently said in public that the 150 foot buffers were a "politically feasible" compromise. So this has nothing to do with science. We do not see any meaningful monitoring regimes or enforcement mechanisms in this code, just blanket prohibitions that ignore the rights of shoreline property owners without any adequate relationship between the County's (and State's) legitimate interests and the draconian prohibitions imposed by this Program. Individualized determinations are eschewed in favor of a misguided policy of forcing property owners to surrender huge pieces of what they have worked for and what they own. The owners' distinct investment backed expectations are being unreasonably interfered with. The County is capriciously and arbitrarily relying on a massively overreaching precautionary principle to achieve NNL – and in the process turned almost a 1000 perfectly acceptable properties into problematic and severely restricted "nonconforming" uses and structures. All this done without adequate scientific study of the environmental, economic and social effects. Beyond the obvious constitutional issues this approach raises, the Revised Code of Washington forbids local jurisdictions from imposing taxes, fees, charges or other exactions as the price to obtain needed permits.

The same is true of the repeated requirements and "encouragements" for dedication of private property to "public access' as a condition for obtaining needed permits. Everyone uses and enjoys "public access" to our magnificent shorelines. If the County feels that the many parks and other existing shoreline amenities in the county are insufficient, the County needs to find the funds to purchase more, not extract them from private owners whose developments are in no way limiting preexisting public access.

The proposed SMP is required to consider these constitutional and statutory issues.

Respectfully submitted by the Officers, Board of Directors, and Members,

CAPR Jefferson County
Citizens Alliance for Property Rights
P.O. Box 189
2023 E Sims Way
Port Townsend, WA 98368