Island County Planning and Community Development
Jonathan Lange, AICP, CFM
Director

Physical Address: 1 NE 6th St, Coupeville, WA 98239 Mailing Address: 1 NE 7th St, Coupeville, WA 98239
Ph: Whidbey 360-679-7339 | Camano 360-387-3443 | Fax: 360-679-7306
Email: PlanningDept@islandcountywa.gov | https://www.islandcountywa.gov/207/Planning-Community-Development

05/06/2025

~Memorandum~

As part of Island County's Shoreline Master Program (SMP) Update, the Washington State Department of Ecology (Ecology) held a 30-day public comment period on Island County's Locally Approved Draft SMP. Ecology then compiles and sends these comments to Island County Planning for response.

The following are the comments received by Island County. Please note that one comment has been significantly reduced, as it contained a 160 plus page wetland report – the maps are still included.

Next steps are Island County forwarding our response to comments to Ecology. After that, staff expects formal comments from Ecology outlining any required or optional changes.

John Lanier
Island County Planning
(360) 678-7811
j.lanier@islandcountywa.gov

From:	SeaGal
To:	Barney, Stephanie (ECY)
Subject:	Proposed SMA and Historic Beach Communities
Date:	Friday, February 28, 2025 4:23:43 PM
Attachments:	Screenshot 2025-02-28 at 4.51.29 PM.png

External Email

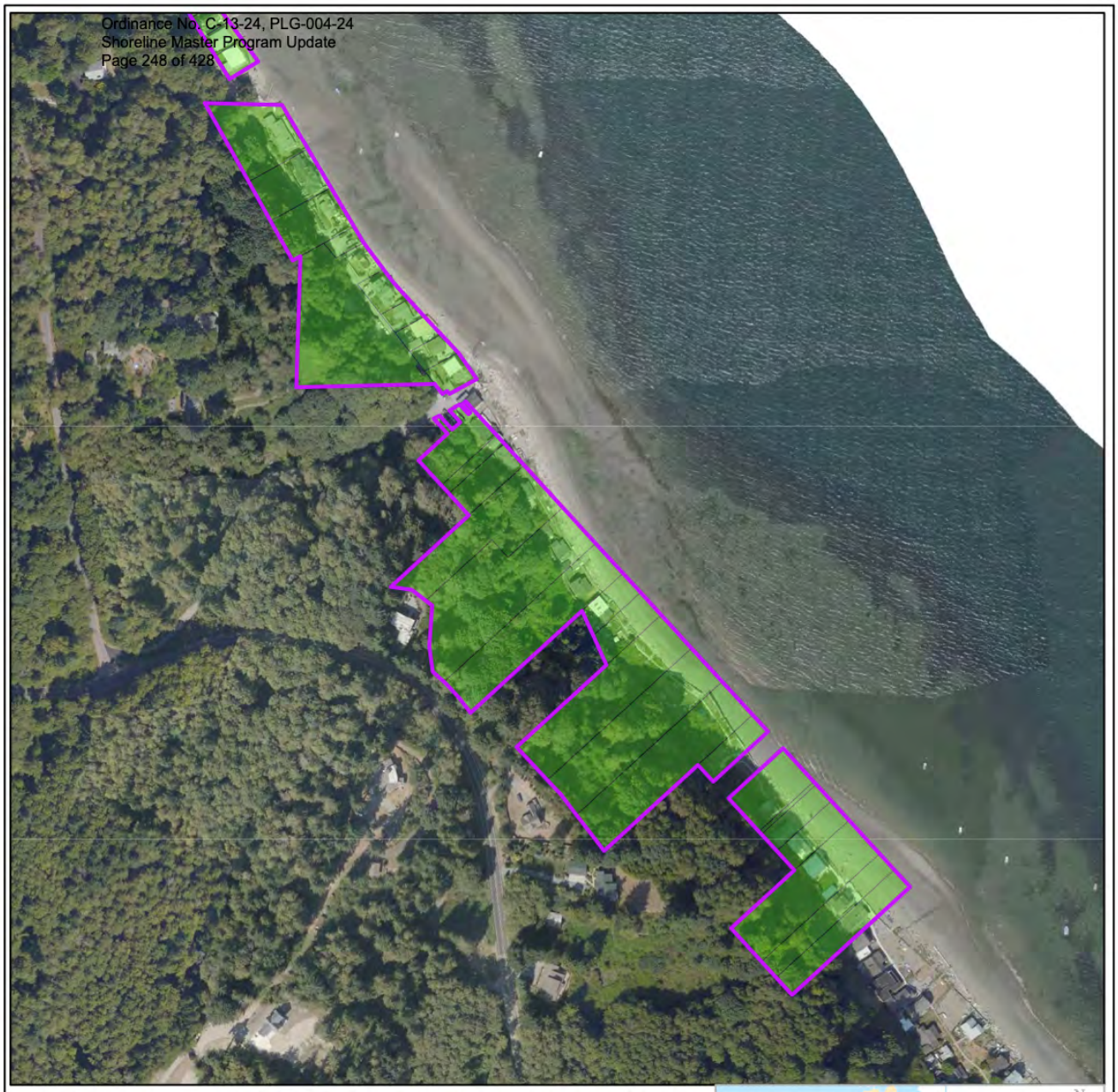
Stephanie,

I have attached a screenshot of the new designation for the Clinton Historic Beach Community and have some comments. I own a cabin on that beach and it has been there well before the 1940s, as do others on the beach, and our properties do not appear to be included in the new area. I am not sure how to proceed in order to get my property and others included in the designation for Historic Beach Community. Honestly, when I look at the photos/screenshots, it looks haphazard in terms of which lots were selected and which were left out of the Historic Beach Designation. By the way, our cabin and the others are on the old Brighton Beach Boardwalk and are not accessible by car.

Thank you,

Pam (and Bill) Burnett
6120 Brighton Boardwalk
Clinton, WA

PS I could not figure out a way to show which lots I am referring to, but they are the ones at the lower right hand corner and are not in the purple outlined area that is filled with green.

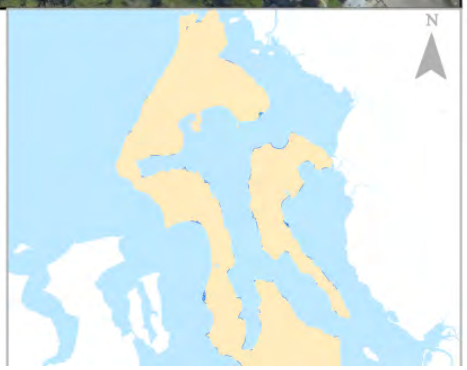


Island County Historic Beach Communities
SITE: New Location

Updated New HBC Rev

Historc Beach Community Rev

Yes



Outlook

Historic Designation

From hongstrom@aol.com <hongstrom@aol.com>
Date Mon 3/3/2025 11:21 AM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>

External Email

Stephanie,

I own a house at 6118 Brighton Beach Board Walk (property ID 137355) which has been in my family since the early 1940 as many of my fellow neighbors. It is very difficult to determine which properties are in the new resignation to Historic based on the very confusing photos provided. I would like to know what are the advantages and disadvantages of being designated "Historic" and what properties are included.

Thank You

Suzanne Hong
6118 Brighton Board Walk
Clinton, Washington 96822
Hongstrom@aol.com

Sent from the all new AOL app for iOS

From: Jody Aamold
To: Barney, Stephanie (ECY)
Subject: Clinton historical map
Date: Monday, March 3, 2025 3:17:09 PM

External Email

Hello Stephanie,
My name is Jody Aamold. I owe 6090 Brighton Beach Boardwalk in Clinton.
By what I can see on the highly map I am in the new historical area, would really like to know what that intel's for me now, limit of work or changes needed or easier to get upgrades to septic and such.
My grandparents built this cabin in 1963, so it's one of the newer ones on the sidewalk strip of houses.
Thank you for your time and best regards,
Jody Aamold

Sent from Iphone

From: Steve Knapp
To: Barney, Stephanie (ECY)
Subject: A message from Commissioner Bacon
Date: Monday, March 3, 2025 8:21:43 PM

External Email

Dear Stephanie:

Subject: Regarding Brighton Beach properties on South Whidbey Island and their new designation as “Historic Properties.”

We, as long time residents of Old Brighton Beach would greatly appreciate either you or someone on your staff taking a moment to write and tell each of us with interest in the changes that have recently taken place pertaining to our properties. For example:

1. What was the genesis of the decision to change the designation of our properties to “Historic Properties?”

2. What will be the effect of this new designation on our properties?

3. What will be our new (if any) responsibilities as a result of this change?

4. How was the decision made to select some and not all the properties with addresses along the Boardwalk?

5. I feel sure there are many questions about our new historic designation that have not been asked but that we should be asking. So, please include any discriptive material that you have that explains the significance of this new designation.

In advance of your answer I want to thank you for your service and we look forward to hearing from you soon.

Respectly,

Steve Knapp
6106 Brighton Beach Boardwalk
Clinton, WA.
email: steve98004@gmail.com
Mailing address:
10845 176th. Circle NE Apt.4915
Redmond, WA 98052

From: Roberta rice
To: Barney, Stephanie (ECY)
Subject: SMA CLINTON BEACH HISTORIC DESIGNATION
Date: Tuesday, March 4, 2025 12:54:26 PM

External Email

Regarding Clinton Beach aka Brighton Beach Boardwalk, I have owned property on the boardwalk for at least 70 years and am hearing that our beach property is being designated as historic.

Currently I am having a new septic system installed at great expense that does have the approval of the County and I am wondering is having the property designated Historic going to make any difference on the work being done now?

If the property is designated as Historical what does that entail?

My Geo Parcel is R32924-409-3860 Property Id 137435 Property type Real
Tax area 720 owner ID 253924

Thank you for your help with these issues as i am worried about what changes will be made.

Sincerely

Roberta A Rice
907 7th AVE NE
Ephrata, WA 98823

Beach address
6096 Brighton Beach Boardwalk
Clinton, WA 98236

From: Mary Thompson
To: Barney, Stephanie (ECY)
Subject: Robinson Beach Proposed Boat Ramp
Date: Thursday, March 6, 2025 2:17:00 PM

External Email

Hi Stephanie-

This document is pretty overwhelming -Island County shoreline master program: periodic review-

Does any of this impact the planned construction of the Robinson Beach Boat Ramp in Freeland, WA?
Thank you,
Mary Thompson
mary.s.thompson@comcast.net

From:	Tremblay Comcast
To:	Barney, Stephanie (ECY)
Cc:	Sheri Cloud
Subject:	Regarding Brighton Beach - Historic Properties
Date:	Friday, March 7, 2025 11:01:56 AM

External Email

Dear Stephanie,

Our neighbor on Brighton Beach sent you the following email. We are very interested in obtaining the information he has requested. Our contact information is provided at the bottom of the email.

Steve Knapp wrote:

We, as long time residents of Old Brighton Beach would greatly appreciate either you or someone on your staff taking a moment to write and tell each of us with interest in the changes that have recently taken place pertaining to our properties. For example:

1. What was the genesis of the decision to change the designation of our properties to "Historic Properties?"

2. What will be the effect of this new designation on our properties?

3. What will be our new (if any) responsibilities as a result of this change?

4. How was the decision made to select some and not all the properties with addresses along the Boardwalk?

5. I feel sure there are many questions about our new historic designation that have not been asked but that we should be asking. So, please include any discriptive material that you have that explains the significance of this new designation.

In advance of your answer I want to thank you for your service and we look forward to hearing from you soon.

Respectly,

Sheri Cloud
Christine Tremblay

6104 Brighton Beach Boardwalk

Clinton, WA.

email: scloud@eckstromind.com
tremblayjc@comcast.net

Mailing address:

PO Box 2508
Everett, Wa 98213

From: Barry Pomeroy
To: Barney, Stephanie (ECY)
Subject: Whidbey Island Shoreline comment.
Date: Saturday, March 8, 2025 11:38:51 AM

External Email

Please support or obligate Island County to comply and follow the Washington State beach access laws and repurchase tide rights when shoreline properties are sold. Many of the only general public access areas are encroached upon by neighboring properties claiming ownership or control of the use of beaches and wildland areas along Whidbey Island shores.

Thank you.

Barry Pomeroy
2684 Sunshine Lane
Clinton, WA 98236

This e-mail address may have a response within 24 hours. Please contact me via mobile phone if you need a more immediate response.

Outlook

English Holly listing

From lynn@glendaleshepherd.com <lynn@glendaleshepherd.com>
Date Sat 3/8/2025 7:15 PM
To AGR MI Noxious Weeds <NWeeds@agr.wa.gov>; Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>

External Email

To the Washington State Noxious Weed Board,

We have watched the English Holly slowly take over areas of our families woodlands on South Whidbey for the last 50 years. It started with an isolated seedling here and there. We uprooted many but more and more appeared over the years, to the point that it's increasingly difficult to keep up with. This invasive species needs to be added to the Class C noxious weed list, and then hopefully education and eradication can follow before the destruction of the native ecosystem is too great.

Sincerely,

Lynn and Stan Swanson
7616 Glendale Heights Rd
Clinton,WA 98236
360-593-9935
lynn@glendaleshepherd.com

From: SeaGal
To: Barney, Stephanie (ECY)
Subject: SMP comment re: Historic beach communities
Date: Monday, March 10, 2025 1:30:49 PM
Attachments: Screenshot 2025-03-10 at 12.30.03 PM.png

External Email

Stephanie,

I wrote a comment to you earlier, about Historic Beach Communities, specifically referring to Brighton Beach in Clinton. I noted that several of the lots, including mine at 6120 Brighton Boardwalk, were not included. I found the pertinent sections (Finally!!) that defined a HBC. I assume that our lot, and several others, were not included because our homes and or lots are more than 30' from the OHWM. I don't know if the history of the beach is important or even pertinent, but I think it is worth of comment.

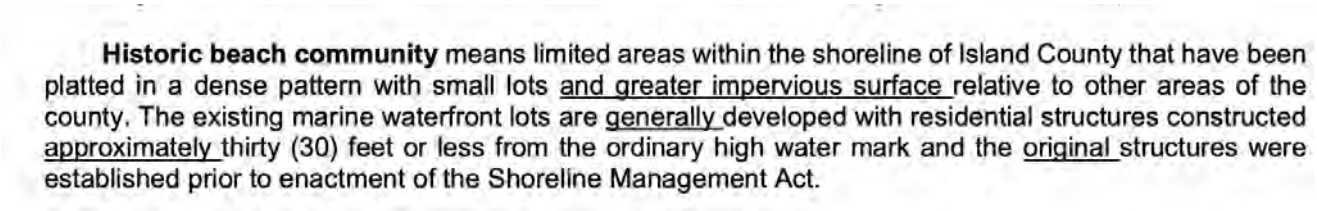
When our house, and the others that were not included, were first built, there was a bulkhead and the water came right up to it. That bulkhead still exists and it is less than 10' from our front door. Our part of Brighton Beach is listed as an accretion or accreting beach. In other words, sand is building up and adding "land" in front of our homes. Sometime, long before we owned the house, an additional bulkhead was added in front of the original one. The area behind the second bulkhead is now our "front yard".

My concern is not whether or not a home in our situation can or cannot be added on to, but how the SMP for properties such as ours could impact the possible need to upgrade, repair or replace septic systems because any of that kind of work will be, by necessity, in the OHWM and marine setback areas. There is a steep bluff behind all of the homes that have been left out of the HBC on Brighton Boardwalk, so there is no useable land behind the homes. I think this should be addressed so that in the event a property owner needs to fix, repair, add to, or replace a septic system, he or she does not have to go through a thousand hoops to get the work done. If it is not an "easy" process, people may do their own work, hire someone on the sly, or just ignore the issue.

Attached is screenshot of the definition of an HBC.

Thank you,

Pam Burnett



Historic beach community means limited areas within the shoreline of Island County that have been platted in a dense pattern with small lots and greater impervious surface relative to other areas of the county. The existing marine waterfront lots are generally developed with residential structures constructed approximately thirty (30) feet or less from the ordinary high water mark and the original structures were established prior to enactment of the Shoreline Management Act.

Outlook

Inquiry Regarding Historical Designation of Brighton Boardwalk Properties

From Bryan Blair <bryan@everettyachts.com>
Date Mon 3/10/2025 2:47 PM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>
Cc Debbie Blair <Debbieholeczblair@gmail.com>

Dear Stephanie,

I am writing to inquire about the status of the historical designation process for properties along Brighton Boardwalk in Clinton, Washington. My father, Robert Blair, is a homeowner in this area, we would like to better understand the implications of such a designation and how it may affect us.

Specifically, we have the following questions:

1. What are the primary benefits and drawbacks of owning property within a designated historic district?
2. Are there any tax incentives or financial benefits associated with historical designation?
3. How might this designation impact future building permits and renovations? Our cabin will likely need replacement in the coming years, and we would like to understand any potential restrictions or additional requirements that may arise as a result of historical status.
4. Do we have any input in this designation?

We appreciate your time and any insights you can provide regarding this matter. Please let us know if there are public meetings, additional resources, or contacts who may help us navigate this process.

Thank you for your attention to our concerns. We look forward to your response.

--
Bryan Blair
bryan66blair@gmail.com
425.238.1050

From:	Dale Pinney
To:	Barney, Stephanie (ECY)
Subject:	Island County SMP Commet
Date:	Tuesday, March 11, 2025 10:19:57 AM
Attachments:	Ecology Comment 3.11.25.pdf

External Email

Stephanie,

It is understood that you are collecting and processing public comments to Ecology on the current Island County Shoreline Master Plan Update. Attached are my comments on the current SMP process.

I would hope that after all the effort the county put into this process with the public, that Ecology would defer to the counties opinion on what works for their constituents.

Thanks

Dale Pinney
First Western Development Advisors
206-571-5629

3/11/25

Stephanie Barney
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
Northwest Region

RE: Island County Shoreline Master Program Update

Stephanie,

Dale Pinney and the rest of the South Whidbey Shoreline Group support the final minor modifications that Island County has made to their Shoreline Master Plan (SMP). The county adopted the plan on August 13, 2024. We request that Ecology show deference to Island Countries modifications and approve the SMP as submitted.

Island County conducted an extensive process in the drafting of the final SMP. They held multiple hearings, took in hundreds of pages of comments from property owners and special interest groups on the SMP language. Island County did a fairly good job of balancing some of the opposing views and creating a balanced document. The Island County process involved the individuals and groups that are directly affected by the conditions outlined in the SMP. I believe the county, being closet to the public, is the best arbiter of language in the SMP.

The South Whidbey Shoreline Group is an organization that includes 300+ shoreline property owners on Whidbey Island that are directly affected by shoreline issues. Many of our property owners participated in the SMP process. I would like to reiterate, Island County did a decent job of listening to all sides and providing modifications that were down the middle.

I am sure that I speak for all in saying; Island County, property owners, interest groups and all that participated in this process would like to see a final result to this process. It would be nice to get this one done prior to starting the next update.

Sincerely,

Member: South Whidbey Shoreline Group

Dale Pinney
Whidbey Island Property Owner
206-571-5629

John Lanier

From: jmblack1370@comcast.net
Sent: Wednesday, March 12, 2025 5:05 PM
To: Barney, Stephanie (ECY)
Subject: Comment on Island County SMP

External Email

17.05A.070 - Definitions.
The following definitions have been changed or need or need additional descriptions
Dredging
Dredging means the removal of earth, sand, gravel, silt, or debris from the bottom of a stream, river, lake, bay, or other water body for the purpose of deepening a navigational channel, or to obtain use of the bottom materials for fill. Dredging includes any harvesting of natural resources by any mechanical or hydraulic means which involves substrate displacement or disturbance. Dredging does not include removal of obstructions or sediment as part of regular maintenance and repair of infrastructure.
The definition of Dredging was changed to exclude dredging for regular maintenance and repair of infrastructure. This exclusion should be eliminated it gives the IC too much freedom to define maintenance and repair infrastructure, all dredging should include in the permitting process
Shoreline stabilization
Shoreline stabilization means structures or modifications for the purpose of retarding shore erosion from Storm, wave, tidal or current action, protecting channels and harbors from wave action, encouraging deposition of beach materials, or preventing shoreline overflow and retaining uplands. Shoreline stabilization may consist of bulkheads, seawalls, dikes, revetments, breakwaters, jetties, groins, gabions, large woody material placement, soft shore, beach nourishment, vegetation enhancement, biotechnical methods, or similar structures or modifications.
Under definitions the Draft SMP changes the definition of soft shore stabilization to Non-structural stabilization to remain consistent with Ecology documents. The following is the definition of
Soft shore stabilization. (See non-structural shoreline stabilization).
Non-structural shoreline stabilization means shoreline erosion control and restoration practices using only plantings or mostly organic materials and plantings to restore, protect, or enhance the natural shoreline environment. Focus on the use of woody plants and limited structural-mechanical systems that are integrated in a structurally and environmentally sound manner to repair and protect slopes against shallow mass wasting and surface erosion. At least eighty (80) percent of the stabilization project must be constructed of naturally-occurring materials used in ways that are consistent with current nearshore processes. Measures such as live stake, live fascine, brushlayer, live cribwall, vegetated geogrid, branchpacking, and live slope grating are examples of soft shore protection techniques. Also called bioengineering or soft shore stabilization
Note the Non-structural stabilization notes soft shore stabilization but what is it. The SMP needs a definition like the following

Table 4: Possible soft and hard stabilization measures listed in Kitsap County's SMP Locally Adopted Draft.

Soft	Hard
Vegetation enhancement	Rock revetments
Beach enhancement	Gabions
Bioengineering measures	Groins
Anchor logs and stumps	Bulkheads
Gravel placement/beach nourishment	Seawalls

Adapted from Kitsap County Shoreline Master Program Draft Chapter 2: Definitions-Shoreline Stabilization.

Does yellow highlighted text mean that an anchored log soft shore meets the definition of to Non-structural stabilization

The following table is the draft SMP uses soft shore

TABLE 5: Shoreline Stabilization Report Requirements

	Structural (Hard) Shoreline Stabilization			Soft Shoreline Stabilization		
	New[1]	Replacement[2,8]	Repair[3]	New[1]	Replacement[2,9]	Repair[3]
Biological Site Assessment[4]	Required	Required	Not Required	Required	Required	Not Required
Geocoastal Analysis[5]	Required	Required[8]	Not Required	Required	Required[9]	Not Required
Demonstration of Need[6]	Required	Required	Not Required	Required	Not Required	Not Required
Alternatives Analysis[7]	Required	Required	Not Required	Required	Not Required	Not Required

1. New shoreline stabilization shall be defined as the establishment of shoreline stabilization where legally established stabilization is not present or expansion of existing shoreline stabilization. Additionally, replacement of shoreline stabilization shall be permitted as new when:
   (a) replacement is not the common method of repair for the stabilization; or
   (b) the replacement stabilization is not comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance; or
   (c) the replacement causes substantial adverse effects to shoreline resources or environment.
2. As defined in ICC 17.05A.070.
3. As defined in ICC 17.05A.070.
4. Consistent with the requirements of ICC 17.05A.095.A.
5. Consistent with the requirements of ICC 17.05A.095.C.
6. The demonstration of need shall address the items in ICC 17.05A.095.D.
7. The alternatives analysis shall address the items in ICC 17.05A.095.E.
8. Director may waive requirement for demonstration of need if stabilization is to replaced with soft shoreline stabilization. See ICC 17.05A.110.A.3.g.
9. Geocoastal analysis not required if replacing with other soft measures. See ICC 17.05A.110.A.4.g.

Note 3 does not make sense, it points to the definition of softshore and to Non-structural stabilization

17.05A.110 - Shoreline modification regulations.

A. Shoreline stabilization

4. Non-structural or "Soft" Shoreline Stabilization.

There needs to be some criteria when a soft shore can be permitted. In the case of structural you need to a Demonstrate a significant possibility that the primary structure or appurtenance will be damaged within three (3) years. This does not work for soft shore. The criteria should be something like the following:

where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

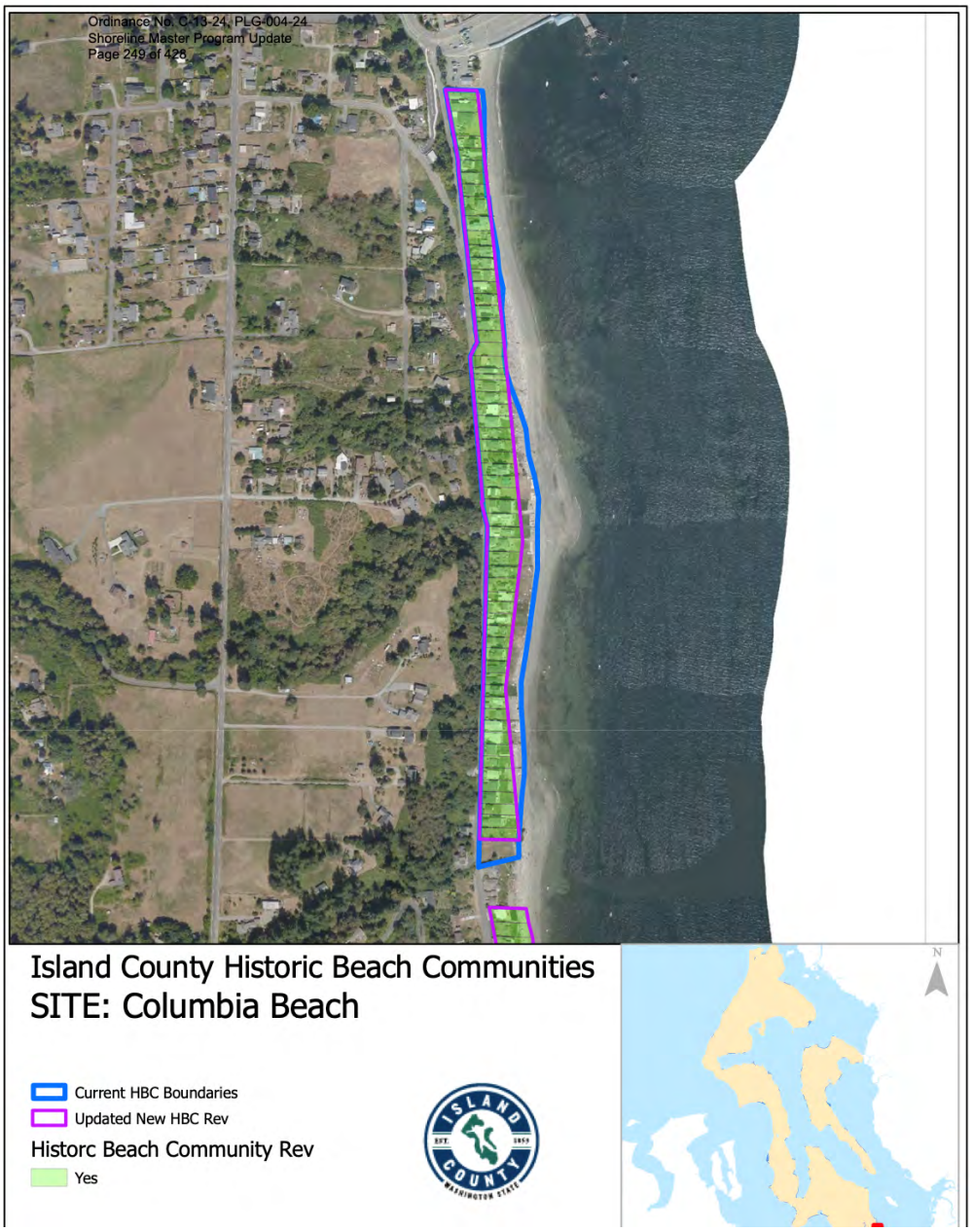
There is no criteria for repair of existing softshore. There is a paragraph for existing structural shoreline stabilization but none for non-structural

Jim Black
425 241 9092

From: SeaGal
To: Barney, Stephanie (ECY)
Subject: Re: SMP comment re: Historic beach communities
Date: Thursday, March 13, 2025 3:49:23 PM
Attachments: Screenshot 2025-03-13 at 3.35.06 PM.png

External Email

Stephanie,
I am writing again about Brighton Beach and the lots that were left out of the HBC designation. In going through the SMA document I found the pictures of the HBC communities I would point out that ALL of Columbia Beach is designated HBC. Many of the lots there are deeper than the lots left out of the HBC designation for Brighton Beach. I appeal to the SMA committee to check this out and think about the issues that affect all non conforming (ie, HBCs) waterfront lots. If 30' from OHWM is the rule, it needs to be reconsidered and all older beach communities that existed before the first SMA (1972??) need to be included, regardless of setback from OHWM.
In some ways, I am coming to the conclusion that whatever group is making these HBC designations does not actually walk these areas—they just look at aerial photos. I hope that is not the case, but discovering that all of Columbia Beach has been designated HBC makes me think the process is less than desirable, equitable and reasonable.
Please see the screenshot below (Columbia Beach).
Thank you,
Pam Burnett



On Mar 10, 2025, at 1:30 PM, SeaGal <prburnett59@gmail.com> wrote:

Stephanie,

I wrote a comment to you earlier, about Historic Beach Communities, specifically referring to Brighton Beach in Clinton. I noted that several of the lots, including mine at 6120 Brighton Boardwalk, were not included. I found the pertinent sections (Finally!!) that defined a HBC. I assume that our lot, and several others, were not included because our homes and or lots are more than 30’ from the OHWM. I don’t know if the history of the beach is important or even pertinent, but I think it is worth of comment.

When our house, and the others that were not included, were first built, there was a bulkhead and the water came right up to it. That bulkhead still exists and it is less than 10’ from our front door. Our part of Brighton Beach is listed as an accretion or accreting beach. In other words, sand is building up and adding “land” in front of our homes. Sometime, long before we owned the house, an additional bulkhead was added in front of the original one. The area behind the second bulkhead is now our “front yard”.

My concern is not whether or not a home in our situation can or cannot be added on to, but how the SMP for properties such as ours could impact the possible need to upgrade, repair or replace septic systems because any of that kind of work will be, by necessity, in the OHWM and marine setback areas. There is a steep bluff behind all of the homes that have been left out of the HBC on Brighton Boardwalk, so there is no useable land behind the homes. I think this should be addressed so that in the event a property owner needs to fix, repair, add to, or replace a septic system, he or she does not have to go through a thousand hoops to get the work done. If it is not an “easy” process, people may do their own work, hire someone on the sly, or just ignore the issue.

Attached is screenshot of the definition of an HBC.

Thank you,

Pam Burnett

<Screenshot 2025-03-10 at 12.30.03 PM.png>

From:	Tom Opdycke
To:	Barney, Stephanie (ECY)
Cc:	Tom Opdycke; Thompson, Brad
Subject:	Island County SMP Comment - DREDGING
Date:	Sunday, March 16, 2025 10:32:24 AM
Attachments:	2025-03-16 Island County SMP - Dredging Definition.pdf

External Email

Dear Stephanie,
Please find attached my comment to reject the proposed change to the Dredging definition, which would exempt Island County Public Works from having to permit its dredging activity. Unpermitted activity has already caused significant damage to our beaches. Dredging should be subject to review and permitting process – as the existing code already provides for.

Thank you,
-Tom Opdycke

Re: Island County SMP Public Comment to Department of Ecology
Statement to Reject Proposed Change to Dredging Definition

I am a member of the South Whidbey Shoreline Group. The draft SMP proposes to exempt Island County Public Works from having to permit its dredging activity by modifying the definition of "Dredging" to exclude public works' activity.

As this comment to the Department of Ecology will show, Island County Public Works has damaged our beach by conducting large scale, unpermitted dredging operations. Per the original definition in the code, proposed dredging by Island County Public Works should have to go through the permit process to allow for appropriate oversight and standards on environment impact as any other stakeholder.

Department of Ecology should reject the proposed change to the definition of "Dredging" in the Island County Shoreline Management Plan.

Sincerely,

Tom Opdycke

Reject Proposed Change to Dredging Definition

Definition Change Would Exempt Island County Public Works Permitting Process and Threatens our Beaches Once Again.

Page 13 of the draft SMP proposes the following change to the definition of "Dredging" underlined below:

> ***Dredging*** *means the removal of earth, sand, gravel, silt, or debris from the bottom of a stream, river, lake, bay, or other water body for the purpose of deepening a navigational channel, or to obtain use of the bottom materials for fill. Dredging includes any harvesting of natural resources by any mechanical or hydraulic means which involves substrate displacement or disturbance. Dredging does not include removal of obstructions or sediment as part of regular maintenance and repair of infrastructure. (pages 13/14 of draft SMP)*

The Table of Amendments in the draft SMP provided the following Reasoning/Justification:

070	Modified existing definition of "dredging"	Additional clarification regarding maintenance dredging added per Island County Public Works suggestion to provide a more streamlined review of necessary maintenance actions of existing infrastructure.

Contrary to the justification to provide "a more streamlined review", this change would waive review and grant Island County Public Works a blanket exemption from the SMP code for anything they deem to be "maintenance or repair". ICPW would be able to Dredge without permitting, oversight, impact assessment, or public comment.

The Department of Ecology should not short-circuit the safeguards built into the SMP by exempting Island County Public Works (ICPW) from the code; the proposed change to the definition of Dredging should be removed.

Consider the Consequences from an SMP Code Point of View

Exempting "maintenance and repair" from the definition of Dredging exempts ICPW from all provisions in the code designed to safeguard our shorelines from perilous dredging.

For example:

- ICPW Dredging would no longer be a "Regulated Activity" (page 24, draft SMA)
- ICPW would be able to Dredge without permitting in all Shoreline Designations (page 38, draft SMA)
- ICPW Dredging and disposal of dredged material would be exempt from Shoreline Modification Regulations as described in part E of 17.05A.110 – Shoreline Modification Regulations (page 142 of the draft SMA)
- ICPW Dredging would be exempt from regulations pertaining to "Development" (page 13, draft SMA)
- ICPW Dredging would no longer be regulated in "Shoreline Development" (page 25, draft SMA)

In short, this change will have far-reaching consequences. ICPW would be able to dredge without taking responsibility for its actions. The impact of Dredging should be considered on a case-by-case basis through the permitting process. We know from experience the ICPW "maintenance" may sound like small scale, but we know from experience ICPW dredging includes large scale operations with devasting consequences to our beaches.

Case Study: Unpermitted Island County "Maintenance and Repair" Created Large Scale Damage

Our intention for this submittal is to show an example of how seemingly simple "maintenance and repair" can have a huge shoreline impact and therefore should not be exempt from the Dredging regulation, impact assessment, and permitting processes currently in the SMP code.

For brevity, this submittal does not present the full analysis as to why ICPW maintenance and Dredging in Mutiny Bay has caused extensive damage to our shoreline (though we stand by this conclusion and incorporate our previous public comment and reports to the ICPW and Planners by this reference).

We use Mutiny Bay boat ramp shoreline area as an example because routine maintenance create huge problems. For background, the area has a strong flow of sand across the shoreline running south to north (littoral drift) and is also subject to swirling tidal and storm surge currents. The following effects described have been well documented in geo-coastal studies prior to the works, yet they were still allowed to happen.

1. Maintenance and repairs can include large scale projects with large scale impact

In the 1960's Robinson Beach offered recreational access and limited ability to launch a small boat if a person was prepared to handle the sand accumulated over the low-profile ramp. Maintenance was limited as was the impact on the shoreline contour as shown in this 1968 photograph:

Over the years, a new boat ramp was created that was higher profile and then it began to be maintained more aggressively. The ICPW plowed sand off the ramp from the high-water mark and down to lower tide levels. While intentions were for the public good, the more ICPW "maintained" the ramp, the more the sand piled up. Because the sand piled up, shoreline to the north was eroded and starved of sand. Our beach started to disappear.

Because the sand was blocked and allowed to pile up, it also created a "groin" which created a back-eddy current in the bay, and eroded our beach to the north even more - while causing even more sand accumulation to the south. We submit the following pictures to show what "routine maintenance" can look like and the unintended large scale consequences that should be properly addressed before approving Dredging activity – maintenance, repair, or otherwise.

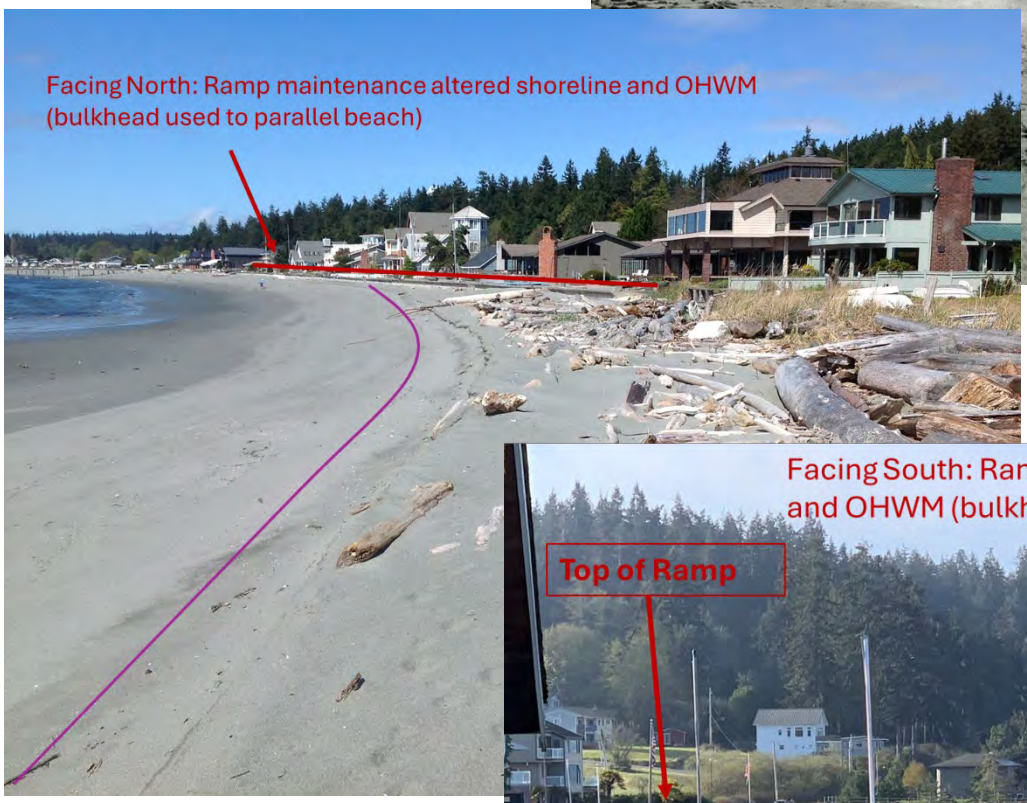
Figure A-13. Mutiny Bay 1977 oblique aerial photograph.

Modern day aerial shows how continued maintenance adversely affected our beach:

"Routine Maintenance" by ICPW can be large scale – as it has been in Mutiny Bay:


CAT

Boat ramp Dredging created towering walls of sand and logs which interfered with the shoreline drift. Which in turn eroded the shoreline to the north, and distorted the shape of the beach…



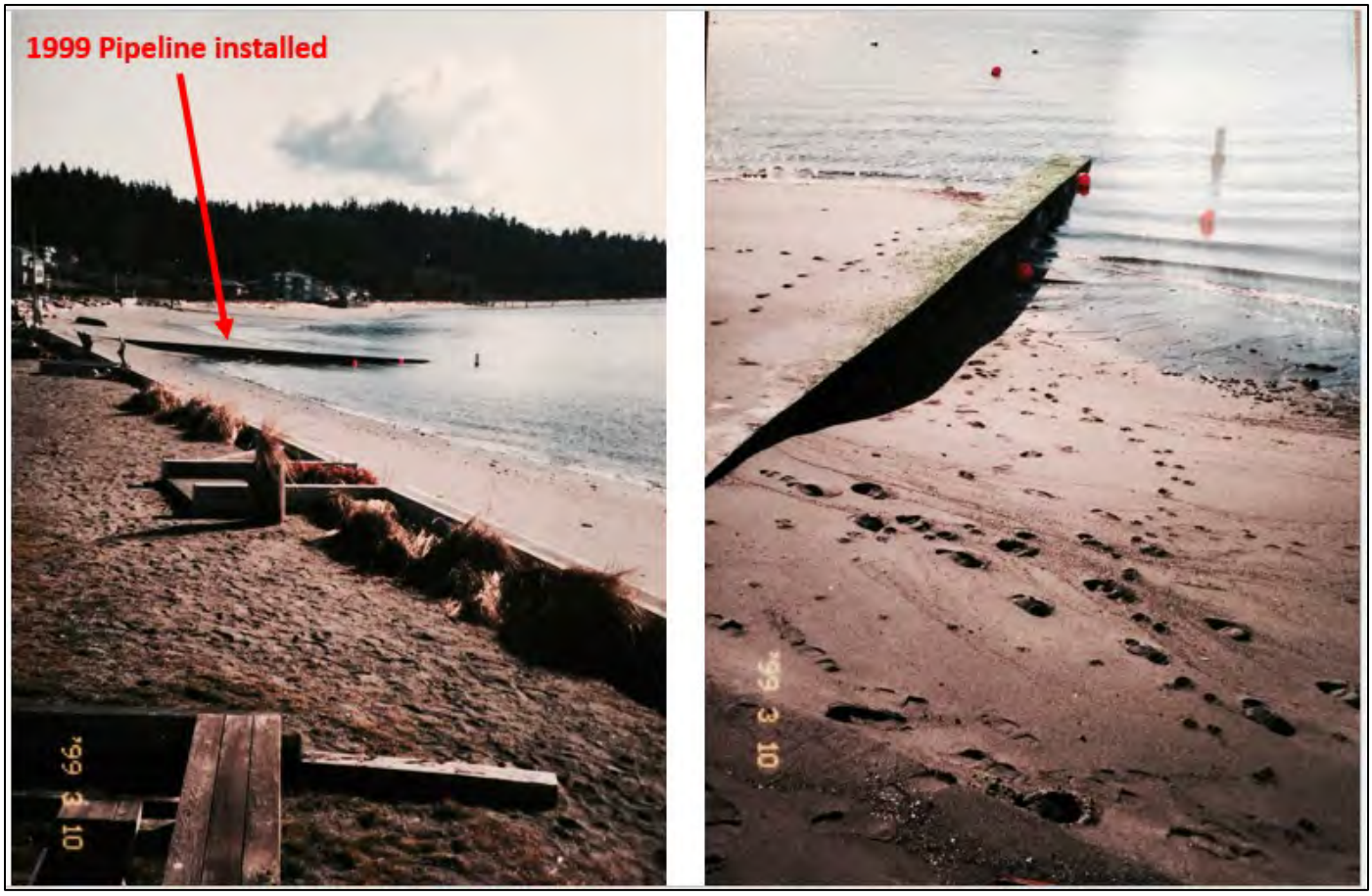
2. Cedar Street Drainpipe: smaller scale maintenance projects can have a large impact

Another example in this same location was the time in 1999 when ICPW sought to maintain street drainage by adding a small pipe from the Cedar Street drain onto the beach. The consequences were disastrous.

It only took days for the pipeline installation to transport thousands of cubic yards of sand away and to erode the shoreline to rock and undermine private shoreline and sea walls.

Before the small pipeline was installed, the beach had an ordinary high water mark well to the seaward side of the bulkheads, with a healthy amount of logs and debris creating an accretion buffer. Then the pipeline was installed which created severe erosion due to the effective groin action with the sand and tidal currents:


'99 3 10


1999 Pipeline installed
'99 3 10
'99 3 10

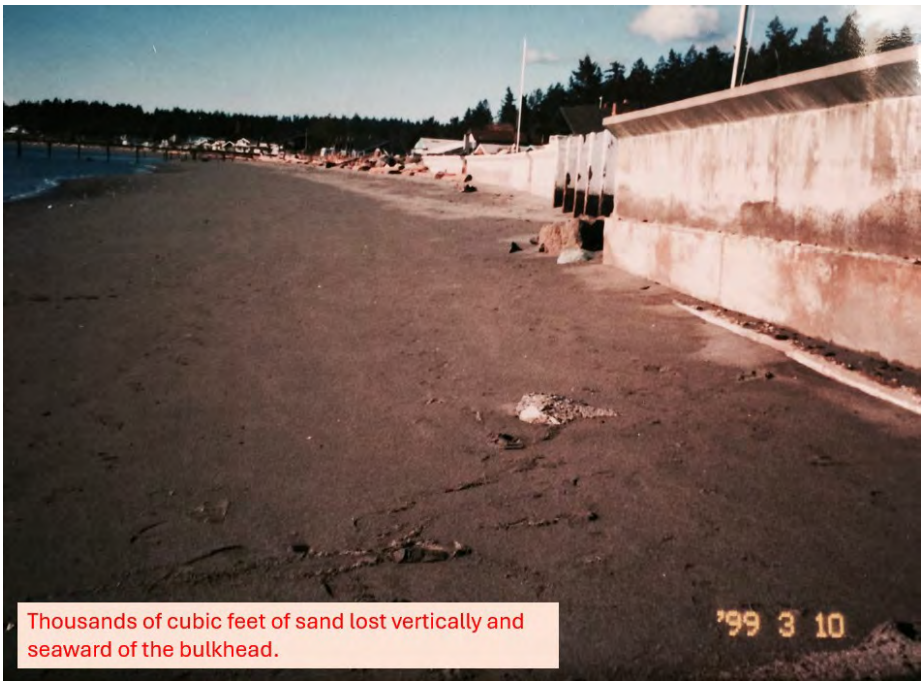


Photo taken on August 8, 1999 – five months after pipe removal and sand transport.

Note the low level of sand against the bulkheads and exposed rocks that remain from erosion.

The beach does not repair itself quickly.

The Island County Public Works did not understand the shoreline processes it was interfering in the name of drainage maintenance. This activity resulted in severe shoreline damage and permanent loss of property. A coastal engineering analysis and court proceedings found Island County Public Works to be at fault and was liable for these damages and removal of the pipeline.

Conclusion: The definition of Dredging should not be modified in the SMP

We can appreciate Island County Public Works (ICPW) trying to streamline review process for efficiency. We need to learn from past mistakes and leave in place the oversight that should prevent these types of disasters from happening anywhere in the County.

The definition of Dredging should not be modified and ICPW maintenance projects should be reviewed for merit and impact with the same standard that would be applied to others. Specifically, we propose striking the proposed change to last sentence:

> ***Dredging*** *means the removal of earth, sand, gravel, silt, or debris from the bottom of a stream, river, lake, bay, or other water body for the purpose of deepening a navigational channel, or to obtain use of the bottom materials for fill. Dredging includes any harvesting of natural resources by any mechanical or hydraulic means which involves substrate displacement or disturbance~~. Dredging does not include removal of obstructions or sediment as part of regular maintenance and repair of infrastructure~~. (pages 13/14 of the draft SMP).*

On a final note, our opposition does not come from ownership elitism, or from the point of view that we should never do anything to manage our shorelines. Rather, it comes from having lived on our shoreline for decades and gaining a deep understanding of shoreline processes by observation.

If we practically need, or want, to do a shoreline project then we advocate for thoughtfully considering the approaches and consequences before acting – so we all can continue to enjoy our beaches for years to come.

Sincerely,

Tom Opdycke

From:	sps@whidbey.net
To:	Barney, Stephanie (ECY)
Cc:	Jonathan Lange; Matt Kukuk; John Lanier; Melanie Bacon; zz district2; zz district3
Subject:	Proposed SMP
Date:	Friday, March 21, 2025 2:03:56 PM
Attachments:	Island County SMP Comments.pdf

External Email

Attached are my comments regarding the proposed Island County SMP update.

Larry Kwarsick

PO Box 581
Langley , WA 98260
360.661.1776

TO: **Stephanie Barney, Washington Department of Ecology**
Bellingham Field Office
913 Squalicum Way #101
Bellingham, WA 98225

FROM: **Larry Kwarsick, Sound Planning Services**

DATE: **March 21, 2025**

SUBJECT: **Ordinance No. C-13-24, PLG-004-24 adopting Island County SMP amendment**

The following comments on the proposed update of the Island County Shoreline regulations are submitted to DOE and Island County:

1. **Administrative Interpretations of the SMP - 17.05A.130:**

> *WAC 173-26-140 Shoreline master program administrative interpretation. As required by RCW 36.70B.110(11), each local government planning under chapter 36.70A RCW shall adopt procedures for administrative interpretation of its development regulations, which include shoreline master programs. When developing and adopting procedures for administrative interpretation of its shoreline master program, local government shall include provisions requiring consultation with the department to ensure that any formal written interpretations are consistent with the purpose and intent of chapter 90.58 RCW and the applicable guidelines.*

COMMENTS - The proposed section 17.05A.130, Shoreline Master Program procedures, states that the shoreline administrator can make interpretations, as necessary.

C. Permit review process and approving authority.

15. f. Making administrative interpretations of the SMP, as necessary:

The proposed SMP does not comply with WAC 173-26-140. However, if DOE *decides* that the above language satisfies WAC 173-26-140, then the prior joint decision in 2016 by the County Planning Director and Ecology Shoreline Planner to not require a SVAR for projects, merely located in a flood zone, was a valid joint *administrative interpretation.* Any action by a subsequent Director to require a SVAR would have required a code amendment. A code amendment was not pursued. Over many years there has been no effort to resolve this matter at the expense of waterfront landowners.

2. **WAC 173-26-140 requires " An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values.**

COMMENTS- Neither the proposed Shoreline Element of the Island County Comprehensive Plan nor the proposed SMP address *the "**protection and restoration of buildings**."* Also, neither include how the SMP regulations could promote such when faced with the conflicting SMP development standards.

There are a substantial number of historic waterfront homes/structures situated along the shoreline of Penn Cove, within the boundary of the Ebey Landing National Historic Reserve. Most of the properties are designated Rural Conservancy. A few are designated Shoreline Residential. One, the Captain Whidbey Inn, is a historic commercial, recreational site designated Rural Conservancy. In addition, many sites, both within and outside of the Reserve, while not containing a historic structure, contain some form of protected cultural resources. The purpose statement for the Rural Conservancy environment does not directly reference historic structures or cultural resources.

I recommend that:

- That ICC17.05A, include in the SMP, a specific section of alternative standards that prioritize the restoration, preservation, and protection of historic structures and cultural resources even though such may conflict with general SMP and environment standards. Doing so would support the Memorandum of Understanding between the County and the state Department of Archaeology and Historic Preservation (DAHP).Such also supports the purposes of ICC 17.04A:

  > *"The specific purpose of this chapter is to provide for the protection of historic and prehistoric resources within the incorporated and unincorporated area of the Ebey's Landing National Historical Reserve (reserve) and to encourage the protection, preservation, restoration, and rehabilitation of historic and cultural resources." within the reserve for future generations.*

- That a new shoreline environment be established for the Captain Whidbey Inn. The current Rural Conservancy environment results in the Inn being classified as a nonconforming use. The establishment of a historic conservation environment would support one of the GMA thirteen community goals. Goal 13 is to "*identify and encourage the preservation of lands, sites, and structures, that have historical or archaeological significance."*

  The Ebey Landing National Historical Reserve's distinct landscape, rural character and heritage resources are economically important within our agricultural, recreation and tourism industries and socially important within our community, and worthy of special initiative-taking preservation.

Heritage tourism, according to the National Trust for Historic Preservation, is "*traveling to experience the places, artifacts and activities that authentically represent the stories and people of the past and present. It includes cultural, historic, and natural resources*." (From the National Trust for Historic Preservation website's heritage tourism page) "*Heritage tourism has proven to be an economic shot in the arm for many regions. Incentivizing and attracting heritage tourism is key to the economic foundation of historic preservation.*"

Follow the actions of Port Townsend and Coupeville:

- *Port Townsend: Waterfront Historic District for the historic downtown commercial area.*
- *Coupeville: Historic Urban designation for its National Historic Landmark area.*

3. Shoreline Environments and Consistency with the Comprehensive Plan

COMMENTS - There are a considerable number of Shoreline environment and zoning/land use designations that are inconsistent with the following WAC requirements:

WAC 173-26-140 requires the following:

(e) Consistency with comprehensive planning and other development regulations. Shoreline management is most effective and efficient when accomplished within the context of comprehensive planning. For cities and counties planning under the Growth Management Act, chapter 36.70A RCW requires mutual and internal consistency between the comprehensive plan elements and implementing development regulations (including master programs). The requirement for consistency is amplified in WAC 365-196-500.

As noted in WAC **173-26-191** (1)(e), RCW **90.58.340** requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter **36.70A** RCW also requires development regulations to be consistent with the comprehensive plan.

WAC 173-26-191 Master program contents. (1) Master program concepts. The following concepts are the basis for effective shoreline master programs.

(e) Consistency with comprehensive planning and other development regulations. Shoreline management is most effective and efficient when accomplished within the context of comprehensive planning. For cities and counties planning under the Growth Management Act, chapter 36.70A RCW requires mutual and internal

consistency between the comprehensive plan elements and implementing development regulations (including master programs). The requirement for consistency is amplified in WAC 365-196-500.

WAC 173-26-211 - Environment designation system.

(3) **Consistency between shoreline environment designations and the local comprehensive plan.** As noted in WAC 173-26-191 (1)(e), RCW 90.58.340 requires that policies for lands adjacent to the shorelines be consistent with the Shoreline Management Act, implementing rules, and the applicable master program. Conversely, local comprehensive plans constitute the underlying framework within which master program provisions should fit. The Growth Management Act, where applicable, designates shoreline master program policies as an element of the comprehensive plan and requires that all elements be internally consistent. Chapter 36.70A RCW also requires development regulations to be consistent with the comprehensive plan.

The following criteria are intended to assist local governments in evaluating the consistency between master program environment designation provisions and the corresponding comprehensive plan elements and development regulations. In order for shoreline designation provisions, local comprehensive plan land use designations, and development regulations to be internally consistent, all three of the conditions below should be met:

(a) **Provisions not precluding one another.** The comprehensive plan provisions and shoreline environment designation provisions should not preclude one another. To meet this criteria, the provisions of both the comprehensive plan and the master program must be able to be met. Further, when considered together and applied to any one piece of property, the master program use policies and regulations and the local zoning or other use regulations should not conflict in a manner that all viable uses of the property are precluded.

(b) **Use compatibility.** Land use policies and regulations should protect preferred shoreline uses from being impacted by incompatible uses. The intent is to prevent water-oriented uses, especially water-dependent uses, from being restricted on shoreline areas because of impacts to nearby nonwater-oriented uses. To be consistent, master programs, comprehensive plans, and development regulations should prevent new uses that are not compatible with preferred uses from locating where they may restrict preferred uses or development.

(c) **Sufficient infrastructure.** Infrastructure and services provided in the comprehensive plan should be sufficient to support allowed

shoreline uses. Shoreline uses should not be allowed where the comprehensive plan does not provide sufficient roads, utilities, and other services to support them. Infrastructure plans must also be mutually consistent with shoreline designations. Where they do exist, utility services routed through shoreline areas shall not be a sole justification for more intense development.

WAC 365-196-210 Definitions of terms as used in this chapter.

(8) "Consistency" means that no feature of a plan or regulation is incompatible with any other feature of a plan or regulation. Consistency is indicative of a capacity for orderly integration or operation with other elements in a system.

WAC 365-196-800 - Relationship between development regulations and comprehensive plans.

(1) Development regulations under the act are specific controls placed on development or land use activities by a county or city. Development regulations must be consistent with and implement comprehensive plans adopted pursuant to the act.

COMMENTS - Below are but a few examples of conflicts between the proposed SMP environment designations, the comprehensive plan, and development regulations:

- **<u>Zoning does not match the shoreline environment</u>**:

  i. **Definition - Zoning 17.03 - Rural Residential Zone** means the zoning classification applied to residential areas where the predominant pattern of development existing as of July 1, 1990, is at a density greater than the base density permitted in the Rural Zone, defined by logical outer boundaries.
  ii. **Definition 17.05A - Residential development means** the development of single-family residences, including appurtenant structures and uses, multi-family development, and the creation of new residential lots through land division.

Useless Bay Beach and Country Club Division #1, along the shoreline of Useless Bay, was approved in 1963. Others division followed. The current zoning is Rural, but the Shoreline Environment is Shoreline Residential. The property should be zoned Rural Residential to match the shoreline environment designation, which I believe is correct.

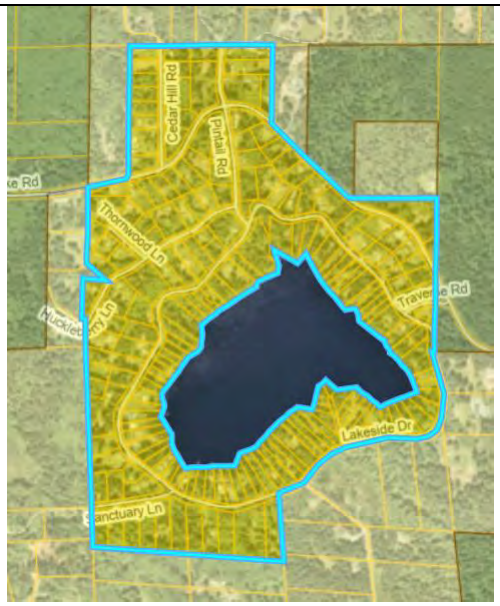
USELESS BAY BEACH and COUNTRY CLUB

The Canal Community of Lagoon Point is also zoned Rural and designated Shoreline Residential. It is a high density residential community.

- **<u>Shoreline Environment Does Not Match Zoning. Two examples</u>**
  i. Lone Lake Shores, Division 1 was approved in 1968. The development is zoned Rural Residential and is in the Lone Lake RAID, to include shoreline lots. The Shoreline designation along the waterfront of Lone Lake, within the RAID, is Rural Conservancy.

Lone Lake Shores

b. Goss Lake is another example. The historically developed area around the lake is zoned Rural Residential and is part of the Goss Lake RAID. The lots around the lake front are designated Rural Conservancy.



Rural Residential Zoning

Shoreline Rural Conservancy Environment

A RAID, by definition, means an area of **more intense rural development**. That is not the case in the Rural Conservancy environment. In both the Lone Lake and Goss Lake RAIDS duplex, triplex or fourplex units are permitted uses but they are not allowed in the Rural Conversancy environment.

Accessory dwellings in the Rural Conservancy designation require a shoreline conditional use permit. They are a permitted use per Rural Residential zoning. So are duplex, triplex, and fourplex units.

4. Historic Beach Communities

COMMENTS - The definition proposed is:

> *"Historic beach community means limited areas within the shoreline of Island County that have been platted in a dense pattern with small lots and greater impervious surface relative to other areas of the county. The existing marine waterfront lots are generally developed with residential structures constructed approximately thirty (30) feet or less from the ordinary high-water mark and the original structures were established prior to enactment of the Shoreline Management Act."*

The problem with the definition is that there are many small waterfront communities that were created, but not as recorded subdivisions, i.e., plats, such as the Plat of Barr Bungalow Addition Number 2 or the unrecorded plat of Addition to Mutiny Bay Shores. Assessor lot numbers for unrecorded plats are usually labeled R##### versus an S#####, which indicates a plat. I would suggest removal of the word "platted." Also, it is not clear that such lots have a *greater impervious surface relative to other areas of the county. They more likely have a greater impervious surface percentage because of their size.*

5. **The Shoreline Master Program Regulations and Procedures - Steep Slope Buffers and Steep Slope Setback Standards in relationship to other referenced codes.**

COMMENTS: Below are comments pertaining to code provisions of Steep Slope Buffers and Steep Slope Setback Standards.

- Chapter 17.05A includes a broad definition of geologically hazardous areas. The definition defines 3 classes of geologically hazardous areas; none of which are specifically labeled as a "steep slope". ICC 17.05A should include a definition of steep slope and clarify that the steep slope buffer and setbacks apply to all classes of geologically hazardous areas.
- Proposed 17.05A.090.E states that "*Development **within** Erosion hazard areas, landslide hazard areas, and steep slopes shall comply with Chapters 11.02 and 11.03 ICC*." The key word is "**within**." There is no definition in 17.05A of what constitutes "within" a geological hazardous area. Within means, "inside of."
- Proposed 17.05A.090.E states that "*Erosion hazard areas, including areas designated in the Department of Ecology Coastal Zone Atlas dated April 1979, as it may be amended or revised*". Erosion hazard areas are not identified on the current Coastal Zone Atlas.
- ICC 11.02 extends the area of the geological hazardous area, by definition, to include lands up to 100 feet from either the top or base of an unstable slope. Proposed 17.05A, as defined within the definition of Erosion hazard area, does extend the boundary of the hazard area.
- Proposed 17.05A includes a definition of a geotechnical analysis:

> *Geotechnical analysis means a scientific study or evaluation conducted by a qualified expert that includes a description of the ground and surface hydrology and geology, the affected land form and its susceptibility to mass wasting, erosion, and other geologic hazards or processes, conclusions and recommendations regarding the effect of the proposed development on geologic conditions, the* adequacy of the site to be developed, the impacts of the proposed *development, alternative approaches to the proposed development, and measures to mitigate potential site-specific and cumulative geological and hydrological impacts of the proposed development, including the potential adverse impacts to adjacent and down-current properties. Geotechnical reports shall conform to accepted technical standards and must be prepared by qualified professional engineers or geologists who have professional expertise about the regional and local shoreline geology and processes*.

COMMENT - The above definition clearly states that *geologists, who have professional expertise about the regional and local shoreline geology and processes, can prepare the geotechnical analysis.* ICC *11.02.140, does not include a qualified geologist as a report preparer; even those with professional expertise in the regional and local*

shoreline geology and processes. This provision conflicts with ICC 11.02. The above should be the standard and not that stated in ICC11.02.

- ICC *11.02.140,* states "*If the director or their designee determines that geologic, hydrologic, or site conditions may **present** special grading or drainage problems, he or she may require the applicant to submit a geotechnical engineering report per this chapter.*"
  COMMENT - "May require" implies flexibility based upon a finding of necessity, which should be included as a requirement in ICC17.05A. Public Works has not been issuing a determination of necessity although they are requiring the report.
- ICC 11.03.130 requires engineered grading and drainage plans for major developments activities.
  COMMENT - Public Works is requiring engineered grading and drainage plans for single family projects without a finding of necessity.
  COMMENT - Why are steep slopes buffers and setbacks different in the environment designation?

6. **Common Line. 17.05A.090.I. - Table 3**
   COMMENT - The buffer and setback standard for Shoreline Residential-Historic Beach is set in TABLE 3 but the table includes the following:

   #5 - The Shoreline Residential-Historic Beach Community Marine buffer and setback shall not be used to develop structures waterward of those on adjacent lots, based on a measurement of the common line, using the provisions of ICC 17.05A.090.J.6. Therefore, development should use the common line setback or the Shoreline Residential-Historic Beach Community buffer and setback; whichever is greater.

   By this, "almost hidden" common line modifications, the actual established buffer and setback are eliminated. Additionally, tying the setback to a common line could impact the preferred placement of a drainfields away from the OHWM.

7. **Flood hazard reduction 17.05A.090.N.**
   COMMENT - How will the least impactful area be determined?

   *All new development proposals must select the least **impactful** area for development. Where feasible, development shall be located outside of the Special Flood Hazard Area.*

   Isn't that the purpose of the established buffer and setback?

8. **Residential 17.05A.100.K.**
   COMMENT -Many issues/mistakes in this section. The three standards listed below need correction:

   *K.12. -Residential structures shall only be located upon geologically hazardous areas (as defined in **ICC 17.02B**) if in compliance with the bluff setback standards*

and conditions contained in Chapter 11.02 ICC or set back fifty (50) feet from the top of a bank greater than 100 feet in height, whichever is more restrictive.

K.13. The following shoreline setbacks shall be applied to residential development:

a. All residential development shall comply with the buffer requirements of 17.05A.090 ICC and the **critical areas buffers** established in **Chapters 17.02B**.

b. A greater setback may be required if necessary to comply with the grading, geologically hazardous area, erosion control and drainage requirements of Chapters 11.02 and chapter 11.03 ICC and the critical areas regulations contained in Chapters 17.02B ICC.

Chapter 17.02B - *Geologically hazardous area* *means areas that because of their susceptibility to erosion, sliding, or other geologic events, are generally not suited to the siting of commercial, residential, or industrial development consistent with public health or safety concerns. Areas susceptible to one (1) or more of the following types of hazards shall be classified as a geologically hazardous area: erosion hazard; landslide hazard; and seismic hazard.*

Chapter 17.02B - Critical areas *means wetlands, critical aquifer recharge areas, fish and wildlife habitat conservation areas, frequently flooded areas, and* ***geologically hazardous areas***.

Chapter 17.02B - Buffer *means the area contiguous with a critical area that maintains the functions and/or structural stability of the critical area. Critical area buffers shall be maintained in a natural state and no development shall occur in a buffer unless explicitly authorized by Island County Code.*

Chapter - 17.02B.470 - Geologically hazardous areas.

See chapters 11.02 and 11.03

COMMENTS - First off, the *geologically hazardous areas* definition referenced in K.12 is connected to the County critical area regulations. As a result, we now have three different definitions of geologically hazardous areas in 17.05A. Also, the residential structures are not actually "located upon the hazard."

There are no actual no bluff setback standards in 11.02 ICC. They are designated setbacks that trigger a geotechnical report. Pursuant to ICC 11.02, the actual, acceptable setback is determined by the findings of the geotechnical report.

If ICC 11.02 establishes the setback standard (inserted below) then what is the purpose of the buffer and setback in ICC17.05A? The following is from ICC 11.02:

The minimum setbacks that ***will generally not*** *require a geotechnical report are as follows:*

a. Fifty-foot setback or greater from a slope that is more than ten (10) feet but no more than thirty (30) feet in height; or

b. *Seventy-five-foot setback or greater from a slope that is more than thirty (30) feet but no more than fifty (50) feet in height; or*
c. *One-hundred-foot setback or greater from a slope that is more than fifty (50) feet in height.*

COMMENT - Additionally, per the 17.02B definition of *Geologically hazardous, the hazardous area does not extend outside of the hazard itself. There is no extension.*

***COMMENT** - Per 17.02B Geologic hazardous areas are critical areas. K.13 directs the determination of all critical area buffers "**as** established in **Chapters 17.02B."** Buffers for geologic hazards are not established in 17.02B and 17.02 B refers to 11.02 and 11.03 . Buffers are not established in 11.02 or 11.03.*

COMMENT - Lastly, how does the common line interact with steep slope setbacks?

K.13. starts off with "The following shoreline setbacks" but there are no setbacks actually stated. Subsection 13.a. references buffers and 13.b references the potential for a greater setback.

***COMMENT** - The above 3 subsections need to be rewritten. It would be best to consolidate all standards into ICC 17.05A rather than referring to other codes.*

K.15 states - New residential development shall be designed and built in a manner that avoids the need for structural shore armoring and flood hazard reduction over the life of the development in accordance with 17.05A.090.N, flood hazard reduction, and section 17.05A.110.A, shoreline stabilization, of this Shoreline Master Program and other applicable plans and laws.

COMMENT - The above several requirements, that all need to happen when a new residence is proposed to be constructed within the jurisdictional boundary of the SMA. I have been informed that the "life of a home" is 100 years. I, however, have not been informed how one, when building a residence along the shoreline of marine waters, can determine what will happen over a 100-year period.

Secondly this provision states that one also must avoid flood hazard reductions. I also do not see how one avoids the mandatory provisions of ICC 14.02A.050 or FEMA standards.

The insert below is only a part of WAC 173-26-231, but is relevant, in my opinion, to K.15. inserted above .

The relevant WAC standard is slightly different than the County SMP standards.

WAC - *Standard.*

In order to avoid the individual and cumulative net loss of ecological functions attributable to shoreline stabilization, master programs shall implement the above principles and apply the following standards:

(A) New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible.

The SMP used the word “shall” versus the word “should.” Also, the WAC includes the words “*to the extent feasible*.” The SMP does not. “*Avoiding flood hazard reduction over the life of the development* is not referenced in the WAC.”

WAC Definitions:

> "Shall" means a mandate; the action must be done.
>
> “Should” means a particular action is required unless there is a demonstrated, compelling reason, based on policies of the Shoreline Management Act and this Chapter, against taking the action. (Should state 173-26 WAC & not this Chapter)
>
> "Feasible" means, for the purpose of this chapter, that an action, such as a development project, mitigation, or preservation requirement, meets all of the following conditions:
>
> > (a) The action can be accomplished with technologies and methods that have been used in the past in similar circumstances, or studies or tests have demonstrated in similar circumstances that such approaches are currently available and likely to achieve the intended results;
> >
> > (b) The action provides a reasonable likelihood of achieving its intended purpose; and
> >
> > (c) The action does not physically preclude achieving the project's primary intended legal use. In cases where these guidelines require certain actions unless they are infeasible, the burden of proving infeasibility is on the applicant. In determining an action's infeasibility, the reviewing agency may weigh the action's relative public costs and public benefits, considered in the short- and long-term time frames.

Also, in WAC 173-26, there is a specific section on shoreline modification.

> WAC 173-26-231 Shoreline modifications.
>
> (1) Applicability. The provisions in this section apply to all shoreline modifications within shoreline jurisdiction.
> (2) Provisions for specific shoreline modifications.
>
> (a) Shoreline stabilization.
>
> (i) Applicability. Shoreline stabilization includes actions taken to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. These actions include structural and nonstructural methods.
>
> (ii) Standards. In order to avoid the individual and cumulative net loss of ecological functions attributable to shoreline stabilization, master programs shall implement the above principles and apply the following standards:

(A) New development should be located and designed to avoid the need for future shoreline stabilization to the extent feasible.

(B) New structural stabilization measures shall not be allowed except when necessity is demonstrated in the following manner:

(I)To protect existing primary structures:

• New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion caused by tidal action, currents, or waves. Normal sloughing, erosion of steep bluffs, or shoreline erosion itself, without a scientific or geotechnical analysis, is not demonstration of need. The geotechnical analysis should evaluate on-site drainage issues and address drainage problems away from the shoreline edge before considering structural shoreline stabilization.

• The erosion control structure will not result in a net loss of shoreline ecological functions.

(II) In support of new nonwater-dependent development, including single-family residences, when all of the conditions below apply:

• The erosion is not being caused by upland conditions, such as the loss of vegetation and drainage.

• Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.

• The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report. The damage must be caused by natural processes, such as tidal action, currents, and waves.

• The erosion control structure will not result in a net loss of shoreline ecological functions.

(D) Geotechnical reports pursuant to this section that address the need to prevent potential damage to a primary structure shall address the necessity for shoreline stabilization by estimating time frames and rates of erosion and report on the urgency associated with the specific situation. As a general matter, hard armoring solutions should not be authorized except when a report confirms that there is a significant possibility that such a structure

will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate, would foreclose the opportunity to use measures that avoid impacts on ecological functions. Thus, where the geotechnical report confirms a need to prevent potential damage to a primary structure, but the need is not as immediate as the three years, that report may still be used to justify more immediate authorization to protect against erosion using soft measures.

State Statute:

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."

The County SMP, existing and proposed, mentions January 1992, but there is not a section that includes a preference for permit issuance based upon the age of the single-family home.

9. ICC17.05A – Definitions -Geologically hazardous areas

COMMENT - In the ICC17.05A definition of **Geologically hazardous areas,** the third classification of a hazardous area is seismic areas, which includes soil liquefaction areas. Soil liquefaction is not referenced in the definition of **Geologically hazardous areas** in either ICC11.02 or 17.02B

10. Shoreline use and development regulations - 17.05A.090.J

J. Developments affecting shoreline setbacks and buffers.

1. Requirements for all development proposed in the shoreline buffer or shoreline setback.

d. The residence shall be located outside of areas subject to geologic hazards as demonstrated by a geotechnical or geocoastal analysis;

e. A geotechnical or geocoastal analysis indicates that with the reduced setback or buffer, the proposed structure will not require shoreline stabilization for the life of the single-family residence, typically 100 years;

g. Any septic drainfield shall be located landward of the single-family residence, whenever possible, in compliance with Island County Health regulations;

COMMENTS - There are waterfront buffers and setbacks and steep slope buffers and setbacks. Does paragraph e. refer to both?

Paragraph e. again speaks of the requirement for an analysis that reaches out 100 years into the future. Faced with climate change, sea level rise, king tides, and our sinking islands that will be difficult.

Paragraph g. also speaks to the issue, previously stated, regarding common line reduction of the Historic Beach properties and the potential impacts on the location of drainfields.

11. 17.05A.070 - Definitions

Normal appurtenance means a structure that is necessarily connected to the for the use and enjoyment of a single-family residence, including a garage, deck, driveway, utilities, fences, gazebo, septic tank and drainfield, and grading less than 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high water mark.

COMMENT - The above definition of residential appurtenance is flawed/misleading. The exemption for 250 cubic yards of grading is in addition to all grading and/or filling associated with the construction of a single-family residence to include all other appurtenant structures, such as a driveway or drainfield. The 250 cubic yard restriction pertains to grading that is not associated with the substantial development exemption for the construction of a single-family home.

CC: Jonathan Lange, Matt Kukuk, and the Board of Island County Commissioners

Outlook

Island County SMP Amendment - Public Comment

From Paula Spina <paulaspina.wa@gmail.com>
Date Wed 3/26/2025 9:32 AM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>

1 attachment (983 KB)
3-17-25 Canyon_Wetland_Services_Spina_03172025 Draft letter.pdf;

External Email

Dear Ms. Barney:

My name is Paula Spina. I am the owner of 5 contiguous parcels of land on the north shore of Crockett Lake in Central Whidbey, including the historic Crockett Farm (1056 Crockett Farm Road, Coupeville). All five of my parcels were originally part of the Walter Crockett, Sr. DLC.

I am currently looking to rearrange certain boundary lines on my properties to enable me to donate the historic buildings on two of my properties to charity. As part of this process we have been having a wetland study performed by Jeff Ninnemann, LHG, PWS, of Canyon Environmental Group, Bellingham, WA. Mr. Ninnemann is in the final stages of completing that study at this time. However, he has provided me with a preliminary finding that Island County's current/proposed shoreline delineations are inaccurate. I am enclosing a copy of that preliminary finding for your reference.

I am reaching out to you today to let you know that we will be submitting his findings to both you and to Island County as soon as completed, both as part of the public comments and with regard to my proposed project. I am hoping to have that study to you prior to your March 31st deadline, but it may be shortly thereafter.

Please feel free to contact me with any questions regarding this email Thank you

Paula Spina
Crockett Farm, LLC
206-265-0981

Canyon Environmental Group LLC
112 Ohio Street, Suite 115
Bellingham, WA 98225

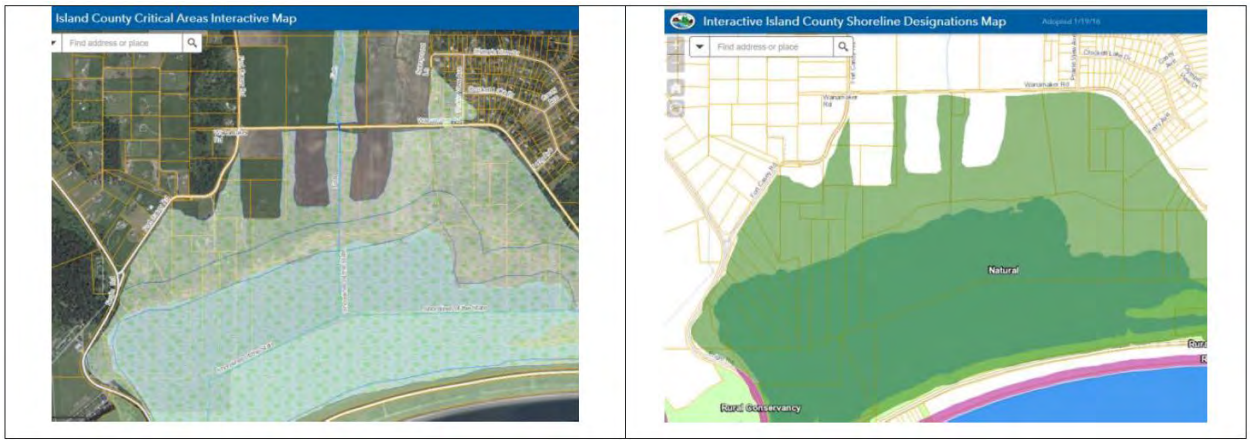
March 17, 2025

Prepared For:	Paula Spina
Subject:	Brief Wetland Verification and Site Review Memo
Project Locations:	1056, 1025, 1049, 1088 Crockett Farm Road, Coupeville, Washington; Island County Tax Parcel #R13115-220-2200, R13115-236-2960, R13115-172-2510, R13115-036-3130 and R13115-023-2250

Dear Paula Spina,

This memo is a brief overview of Canyon Environmental Group LLC (Canyon) initial findings of our wetland delineation of the subject properties. The subject properties include 1056, 1025, 1049, 1088 Crockett Farm Road, Coupeville, Washington; Island County Tax Parcel #R13115-220-2200, R13115-236-2960, R13115-172-2510, R13115-036-3130 and R13115-023-2250 (Figure 1). We are conducting this wetland delineation to verify the wetland(s) edges on the subject property and compare them to the wetland edge that is included in the currently proposed Shoreline Master Plan.

The wetland delineation is currently ongoing; however, we have visited the site three times so far and will be visiting additional times to increase our understanding of the hydric soils and hydrology of the site. Although our findings are still being refined and finalized, **the boundaries shown in the images below have been shown to be inaccurate.**



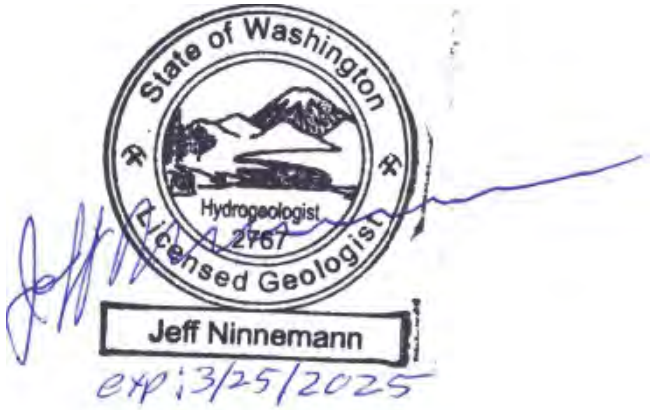
Canyon is currently developing an accurate wetland delineation map for these parcels that will show the various wetland boundaries based on the scientific methods defined in the U.S. Army Corps of Engineers (USACE) Wetland Delineation Manual (USACE, 1987), the Regional Supplement to the Corps of Engineers Wetland Delineation Manual: Western Mountains, Valleys, and Coast Region (WMVCS; USACE, 2010), and

the Washington State Wetland Rating System for Western Washington: 2023 Update (Hruby, 2014). Soil colors were classified by their numerical description, as identified on a Munsell Soil Color Chart (Munsell, 2010), and hydric indicators were evaluated using the USDA Field Indicators of Hydric Soils in the United States (USDA, 2010).

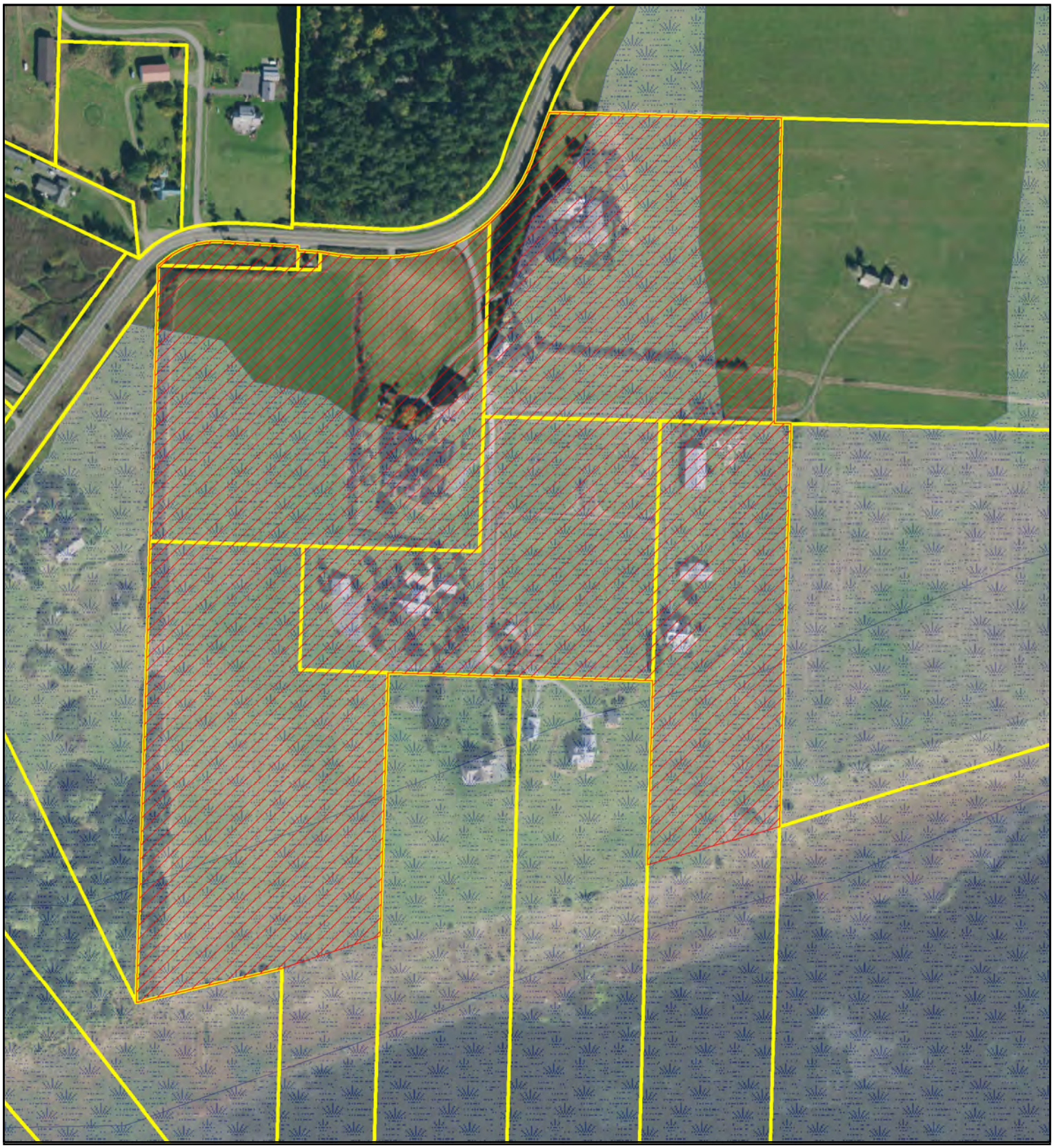
Additionally, we declare that the report author is a qualified professional wetland scientist and licensed hydrogeologist. Furthermore, our wetland professional/hydrogeologist have the specific qualifications, based on education, training, and experience, to perform wetland delineations and hydrogeologic assessments for sites similar in nature, history, and setting to that of the subject properties (see attached CV for Jeff Ninnemann).

If you have any questions concerning this memo, please contact us at (360) 389-1693 or at jeff@canyonenv.org.

Sincerely,



Jeff Ninnemann, LHG, PWS.
Wetland Ecologist/Hydrogeologist - Principal
jeff@canyonenv.org
www.canyonenv.org



Subject Properties

Parcels

Island County Wetland Overlay

N

W E

S

CANYON ENVIRONMENTAL GROUP

Figure 1 (Draft)

Spina Wetland Delineation: Subject Properties and Island County Wetland Overlay Map.

Date: 3/17/2025

C:\Users\jeff\OneDrive\CANYON\PROJECTS\C2024013_Spina_Wet\GIS\Spina.mxd

1-inch = 100-feet

0 50 100 200 300 400 500

Feet

From: Gordy Holmes
To: Barney, Stephanie (ECY)
Cc: Eva Holmes
Subject: SMP code changes, public comment
Date: Wednesday, March 26, 2025 1:28:34 PM

External Email

We have been looking at the proposed code changes in the new section 17.05A.100.K.11. This would change what currently requires a Shoreline Variance for residential structure construction within the floodplain to not require the Variance.

We strongly agree with this change! Simplifying the process is good!

Thank you!

Best regards,

Gordy Holmes
Eva Holmes
1317 Beach Drive
Camano Island, Washington 98282
425-750-1105

Outlook

Island County SED Public Comment

From Kim Comstock <kimberlycomstock@hotmail.com>
Date Fri 3/28/2025 7:34 AM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>
Cc Kim Comstock <kimberlycomstock@hotmail.com>

1 attachment (1 MB)
Island County SED 5702 Mutiny Bay Road Freeland.docx;

External Email

Dear Ms. Barney,

Please find attached our public comment regarding the Island County SMP Shoreline Environmental Designation map correction for 5702 Mutiny Bay Road, Freeland.

Kind regards,
Kim and Jeff Comstock
(206) 618-2648

Stephanie Barney
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
Northwest Region

RE: Island County Shoreline Master Program Update

Dear Stephanie,

My name is Steve Silverberg, and I am a homeowner on Barr Beach Road in Island County. I write in support of the final minor modifications Island County has made to its Shoreline Master Program (SMP), which was adopted on August 13, 2024. I urge Ecology to approve the SMP as submitted and to defer to the thoughtful revisions made by the County.

Island County undertook a thorough and inclusive process in updating the SMP. The County held multiple hearings, considered a wide range of stakeholder input, and carefully balanced the often-competing interests of environmental protection and private property rights. The result is a document that reflects meaningful public engagement and reasonable compromise.

At the same time, I want to emphasize a very real concern from a homeowner's perspective. My property is currently the only home in our neighborhood without shore protection, despite our efforts to follow Island County's guidance. Unfortunately, that guidance has not been sufficient to secure the necessary protections. As a result, our home is increasingly at risk from high tides, storm surges, and ongoing erosion—and because of our location, this vulnerability poses a broader risk to our neighbors as well.

I raise this not as a criticism of the SMP process, which was constructive, but to underscore the importance of ensuring that future implementation and permitting pathways provide realistic, timely, and effective options for homeowners who are actively trying to protect their properties in good faith.

Like many others in the South Whidbey Shoreline Group, I am ready to see this process move forward to completion. The County has done its part. I hope the Department of Ecology will finalize its approval so we can begin working under a clear and current plan.

Sincerely,
Steve Silverberg
Homeowner, Barr Beach Road
Member, South Whidbey Shoreline Group

5702 Mutiny Bay Road, Freeland
Shoreline Environmental Designation correction

Dear Ms. Barney,

We are writing to request that you approve the Shoreline Environmental Designation map correction for 5702 Mutiny Bay Road, Freeland from Rural Conservancy to Shoreline Residential in the Island County Shoreline Master Program.

5702 Mutiny Bay Road is currently the last parcel within Rural Conservancy designation before Shoreline Residential designation begins. Based upon Island County SMP purpose and criteria for Shoreline Environmental Designations, a correction from Rural Conservancy to Shoreline Residential would accurately reflect the present-day status of our parcel.

The SMP criteria detailed in Island County Code, Chapter 17.05A.060 - Shoreline Environment Designations and Maps, as well as the physical evidence provided by current aerial photos of the immediate Mutiny Bay neighborhood, clearly identify our parcel for Shoreline Residential designation rather than Rural Conservancy.

We respectfully request that you approve this correction in the Island County Shoreline Master Program.

Kind regards,
Kim and Jeff Comstock
(206) 618-2648
kimberlycomstock@hotmail.com

Please find 5702 Mutiny Bay Road, noting shared characteristics with properties to the right, designated as Shoreline Residential. These properties meet the same SED purpose and criteria as 5702, as opposed to the Rural Conservancy designated homes beginning three lots to the north. (Likely the two homes to the immediate north of 5702 are also incorrectly designated as Rural Conservancy.)

5702 Mutiny Bay Road aligns with Purpose and Criteria for Shoreline Residential environment designation.

Code 17.05A.060 - Shoreline environment designations and maps

C. Whenever there is a conflict between the descriptions of shoreline environment designations and the mapped boundaries of the shoreline environment designations the county will rely on criteria contained in SMP chapter III (shoreline environment designations), RCW 90.58.030(2), and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

H. Shoreline residential shoreline environment designation

1. Purpose: The primary purpose for designating an area shoreline residential is to allow for residential development and for moderate to high impact recreational uses in appropriate areas of the shoreline.

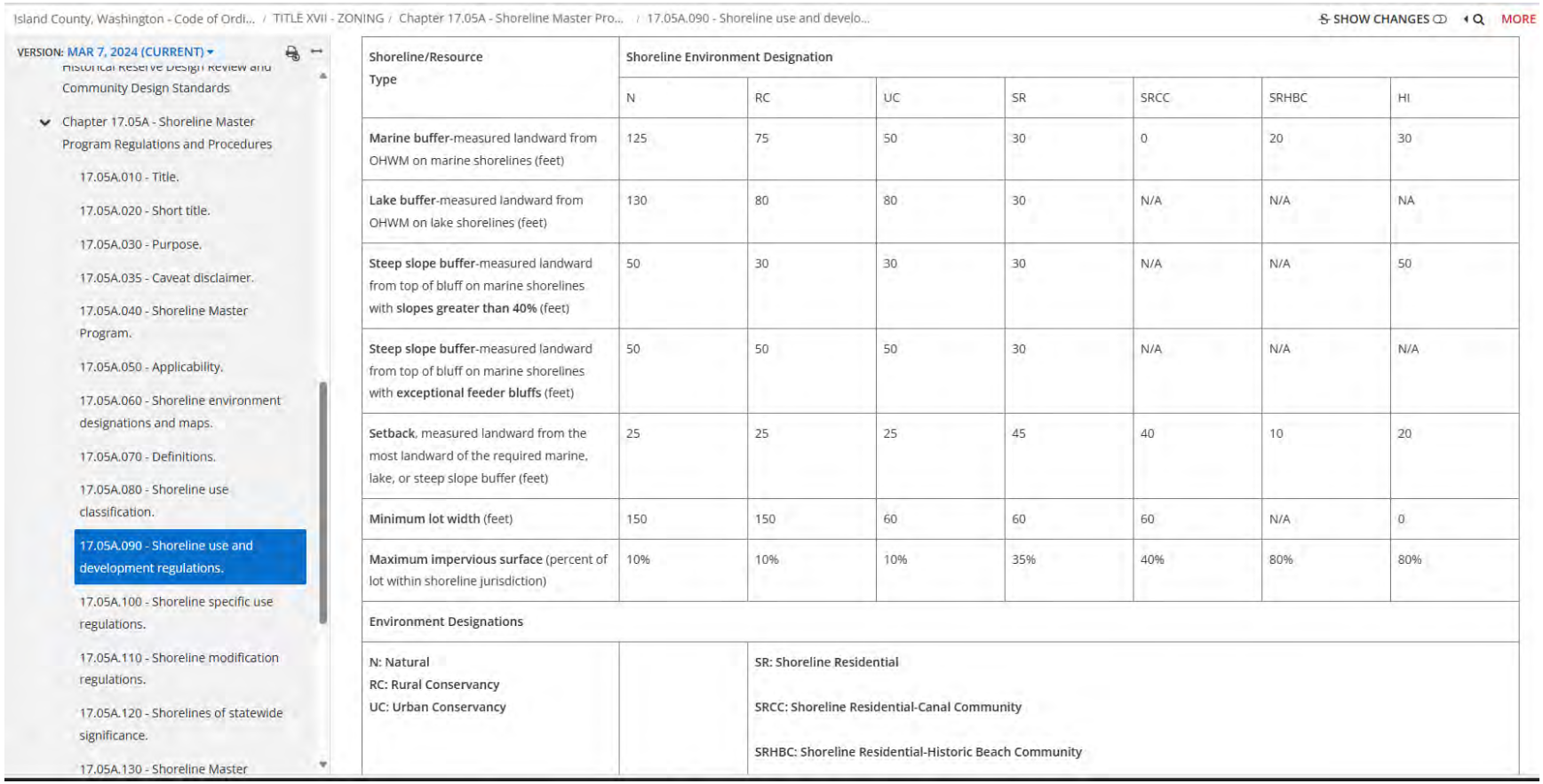
2. Criteria for designation: Areas inside county-adopted rural areas of more intense development (RAIDs), if they are characterized by predominantly single-family or multi-family residential development or are planned and platted for residential development, but are not predominantly covered by wetlands, stream corridors, or annually flooded areas shall be designated shoreline residential when any of the following characteristics apply:

    a. Areas that are legally subdivided for residential use at a density of one (1) or more units per acre and are not constrained by inadequate water supply and the inability to dispose of sewage due to soil conditions or lot sizes; or
    b. Areas developed with or planned for moderate to high impact recreational uses.

5702 Mutiny Bay Road, parcel #S7505-00-00032-0, is Lot #32 of Menlo Beach Residential Area of More Intensive Rural Development (RAID), is characterized for single-family development, is not covered by wetlands, stream corridors or annually flooded. It is subdivided for residential use with one unit per acre, is not constrained by inadequate water supply nor sewage disposal and it is developed for moderate impact recreational use.

5702 Mutiny Bay Road is 60 feet wide. This meets the Shoreline Residential minimum lot width criteria, not the 150 feet wide Rural Conservancy minimum lot width criteria.

Code 17.05A.090 (D) Table 3 Minimum Shoreline Buffers, Setbacks, Lot Widths and Maximum Impervious Surface Limits



Shoreline/Resource Type	Shoreline Environment Designation						
	N	RC	UC	SR	SRCC	SRHBC	HI
Marine buffer-measured landward from OHWM on marine shorelines (feet)	125	75	50	30	0	20	30
Lake buffer-measured landward from OHWM on lake shorelines (feet)	130	80	80	30	N/A	N/A	NA
Steep slope buffer-measured landward from top of bluff on marine shorelines with **slopes greater than 40%** (feet)	50	30	30	30	N/A	N/A	50
Steep slope buffer-measured landward from top of bluff on marine shorelines with **exceptional feeder bluffs** (feet)	50	50	50	30	N/A	N/A	N/A
Setback, measured landward from the most landward of the required marine, lake, or steep slope buffer (feet)	25	25	25	45	40	10	20
Minimum lot width (feet)	150	150	60	60	60	N/A	0
Maximum impervious surface (percent of lot within shoreline jurisdiction)	10%	10%	10%	35%	40%	80%	80%
Environment Designations							
N: Natural **RC: Rural Conservancy** **UC: Urban Conservancy**		**SR: Shoreline Residential** **SRCC: Shoreline Residential-Canal Community** **SRHBC: Shoreline Residential-Historic Beach Community**					

Outlook

Island County Shoreline Master Program Update

From lynae_icpc@whidbey.com <lynae_icpc@whidbey.com>
Date Sun 3/30/2025 2:34 PM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>
Cc Jonathan Lange <j.lange@islandcountywa.gov>; Melanie Bacon <melanie.bacon@islandcountywa.gov>

1 attachment (22 KB)
Shoreline Management Update 2025.docx;

External Email

Greetings, Stephanie Barney,

Attached please find my comments on the Island County Shoreline Master Program Update.

Please let me know if you have any questions or comments.

Thank you,

Lynae Slinden

360-632-4451 (text/cell)

Stephanie Barney, (Stephanie.Barney@ecy.wa.gov)

Washington State Department of Ecology
913 Squalicum Way #101
Bellingham, WA 98225

March 30, 2025

Re: Island County Shoreline Master Program Guidelines and Shoreline Management Act

Dear Stephanie Barney,

I have resided in Island County since 1987 and for the past 25 years in Clinton a few blocks from the shoreline, approximately one mile south of the Washington State Highways ferry terminal. My property is in the Marshall Creek Drainage District, the only such district in Island County and it is served by the Clinton Water District. My wastewater management is a septic system, and I have a backup drain field as well as on site drainage for run-off from my roof. I believe in responsibly managing the water usage on my property and being so close to the Salish Sea/Puget Sound I can enjoy beach walks, kayaking, and the beautiful vistas that surround me. The management of the "Island County Shoreline" as part of the state's shorelines is critically important to me and my community which is why I wish to comment on the proposed update to the county plan and the associated Comprehensive Plan Update, Element 3.

The "Shore Friendly Program" statement of purpose of… stewardship of private shorelines and promote alternative management strategies that maintain coastal ecosystem processes without compromising access and enjoyment resonates with my personal goals. The following are issues of concern:

Primarily, as it relates to the "Public Trust Doctrine." This abstract provides a detailed analysis of the history and applicability of the PTD and should be utilized to develop policies in Island County and Washington State in its entirety:

Mary Christina Wood & Gordon Levitt,1 The Public Trust Doctrine in Environmental Decision Making, Environmental Decision Making, Edward Elgar Publishing (forthcoming 2015). Available at http://law.uoregon.edu/faculty/mwood/publications/. Abstract The Public Trust Doctrine (PTD) is a fundamental precursor to modern environmental law and continues to be an integral principle of natural resource management. The doctrine has often been characterized as an attribute of sovereignty that carries constitutional force. As such, courts have held both legislatures and agencies accountable to fiduciary standards. As a doctrine of property law, the PTD limits privatization, exclusive use, and degradation of trust assets. It imposes a range of obligations on trustees, including the duty to exercise

uncompromised loyalty to the public beneficiaries. Courts have underscored the importance of judiciary in safeguarding trust assets from political pressures. With the emergence of modern environmental problems, courts have expanded the scope of the doctrine to protect a wide range of public resources that are crucial to public welfare. Globally, the doctrine is increasingly offered as a paradigm for protecting planetary assets such as the atmosphere.

There are several places in the proposed plan that would need to be modified to reflect this doctrine and responsibly manage development on the shorelines. There needs to be a balance between private property rights and public access which requires mutual rights and responsibilities as well as respect.

- The definition of Shorelines of Statewide Significance (Principles and Development Guidelines, Ch. 4) could be changed to…Areas of Puget Sound lying seaward from the line of extreme high tide (in lieu of extreme low tide).
- Recreation and Public Access Element, #9, add single family residential waterfront development to the list of property developments that are required to "…provide a means for safe visual and pedestrian access to shorelines where feasible.
- Shoreline General Policies, Ch. 5, C. Flood Hazard Reduction, 2. County's Flood Damage Ordinance and Stormwater & Surface Water Standards. 6.
  Do not delete either of these!
    - When reviewing projects that could be affected by Sea Level Rise, adjust development standards….
    - And in Public Access,16, G. Sea Level Rise, monitoring/reviewing sea level.

Both Whidbey and Camano Islands receive a great deal of rain which is the source of all fresh water in the county. It is imperative to look at each island for the creation of Storm Water Management Districts rather than one small district on South Whidbey, the Marshall Creek Drainage District. Recharging our underground water is not limited by property lines in just one small area of the county. Geologically it is possible to have flooding and landslides anywhere on the islands, not just on the shorelines and countywide management would distribute the costs equitably as well as provide consistent management of water quality from natural and human-caused hazards and contamination.

Thank you for considering my comments.

Lynae Slinden

P.O. Box 1, Clinton, WA, 98236/360-632-4451 (Text/Cell)

Cc Island County- Commissioner Melanie Bacon, Planning Director Johnathan Lange

From: islandcountysmp
To: Barney, Stephanie (ECY)
Subject: Comments for Island County SMP update
Date: Sunday, March 30, 2025 4:58:19 PM

External Email

ISLAND COUNTY SMP UPDATE COMMENTS

17.05A.040

Why is the list of exemptions established in 17.02B limited in the SMP to transportation, utilities and existing structures. Why remove exemptions for infrastructure installation/repair/replacement in public ROW's, stormwater infrastructure, repair/remodeling/reconstruction of existing structures, site investigation, emergency work, removal of noxious weeds, passives and recreational activities/structures? If these activities are exempt outside shoreline jurisdiction, why not inside shorelines?

The code should be revised to include all exemptions listed in 17.02B.300.

17.05A.050.D - Relationship to comp plan

A statement should be included indicating that the SMP is not intended to conflict or supersede the comp plan's goal/policies

17.05A.060.D

The county should require application of the SMPs designation criteria when there is a mapping error, not the State's SMP handbook, which would allow ignoring the County's specifically defined designation criteria. If the county finds a mapping error they should be allowed to apply the appropriate designation pursuant to the designation criteria, not go through a full SMP update, which takes at least a year and the county is typically not staffed sufficiently to take on SMP updates outside the mandated update cycle.

17.05A.060.G - RC designation

The county has applied the RC designation to nearly all platted lots (not low density residential) because they include an area of steep slopes but has not designated similar lots that have wetlands, streams and areas prone to flooding. This is an inconsistent application of the designation criteria. Any lots with more than low density residential should be designated SR, pursuant to the designation criteria. Otherwise any level of development on these lots will require a shoreline variance.

17.05A.060.I - SR designation

the county should not use the boundaries of 'platted' communities as a basis for SR designation. Small lots created prior to the establishment of the current platting process should not be disqualified from the SR or SRHB designation. Existing lot size and historic intensity of development should be contributing factors towards qualification for this designation.

The Historic Beach designation criteria should include the language from the definition section, which includes more criteria than the actual designation criteria.

17.05A.070 -definitions

Beach enhancement definition should not include the term drift sills, which are a form of shoreline modification/armoring, not enhancement. Should also include the placement of large wood and refer to beach nourishment

Boat launch does not indicate whether this includes the area upland of the high water mark or just launches that extend waterward of high water

Flood control works includes 'rock ripraps' which would seem to indicate that armoring structures may be included in flood control works. Was this intentional? Is the County going to allow armoring structures to address flood risks?

Gabions should never be allowed as shoreline armoring and should be prohibited, not defined as a potential form of shoreline armoring.

Geotechnical analysis should not include an evaluation of down-current properties, as this is something a geocoastal analysis should address.

Hazard tree definition includes 'permanent physical improvements' which seems overly broad. Should also reference the directors right to require an arborists report to confirm the tree is in fact 'susceptible to immediate failure'

Jetty includes a typo

Non structural stabilization should include better examples of projects commonly approved in the county

Normal appurtenance - the county is changing the definition of normal appurtenance to make it developments that are necessary (required) for the development of a residence but what happens to the structures that used to be normal appurtenances, like decks, accessory structure (e.g. sheds, fences, fire pits, etc)? Should there be a definition for 'necessary appurtenance' and then keep the standard definition of normal appurtenance as well? Or perhaps a hybrid definition that differentiates the two?

Normal protective bulkhead should this say 'from' erosion or 'by' erosion?

Normal maintenance and repair the language added to this definition might allow for complete bulkhead replacement as 'repair' as it is normal method for repair

Pervious pavement - pursuant to the state's stormwater manual, should be allowed to be calculated as up to 100% pervious if supported by a report from a licensed civil engineer

Primary structure should include a requirement to detach a deck from the residence if the deck is threatened by erosion, if that is feasible

Replacement does this mean that if someone proposes to replace 49% of a bulkhead and the cost of that 49% is more than 50% of the existing structure's value, it would be considered a replacement? How is the value of an existing structure established?

Setback & Shoreline buffer setbacks are defined as the distance behind a marine, lake or steep slope buffer but the definition of shoreline buffer excludes steep slope buffer.

Shoreline jurisdiction should include a statement confirming that Island County has no associated floodways and also state that Island County has specifically chosen not to include FEMA flood zones as shoreline jurisdiction

Shoreline stabilization includes 'preventing shoreline overflow' which sounds a lot like flooding. Is armoring allowed to prevent damage to primary structures from flooding and/or retaining uplands from 'shoreline overflow?

Tightlines and similar stormwater conveyances are not defined in this section

17.05A.080 Use tables

Conditional uses and developments states that a listed exemption could disqualify something from needing a conditional use permit.

Why are private piers, docks and floats a P1, which applies to shoreline access structures. Should be P13. Why is a community master permit required to allow private piers and docks in the canal community designation? These communities were specifically created for allowing each lot owner to have a private pier/dock. A canal community master permit should not be required

17.05A.090.D.8 - the standards for buffer reductions of dreams and wetlands should be consistent with the provisions of the critical areas code. Establishing different standards creates confusion and there should not be a different standard for reductions allowed in vs out of shoreline jurisdiction. Varying a critical area buffer should be reviewed through the detailed provisions of the Critical areas regulations.

17.05A.090.E.5 this provision should be used to replace the language elsewhere in the code to evaluate whether a structure can be permitted adjacent to geologic hazard areas (instead of a 100-year analysis of risk).

17.05A.090.F.5.c should require that the county establish as a condition of permit approval, compliance with applicable federal laws/regulations

17.05A.090.G why not just refer to the nomination criteria already in 17.02B?

17.05A.090.H.2 should reference the stream buffer sizes in 17.02B, in case they are amended before the next SMP update.

17.05A.090.H.2.b stream buffer modification standards should be the same as in 17.02B and reference the processes for reductions, alterations and averaging. Providing a different set of standards for streams within shoreline jurisdiction does not make sense. Why are streams within shoreline jurisdiction more important than anywhere else? The standards should be same and the review process for modifications should also be the same.

17.05A.090.H.2.d - Some allowance should be provided in this section for landowners who want to provide a small (<200-sqft) recreational structure such as a deck, shed, meditation platform or similar, provided no significant trees are removed and the applicant can demonstrate no net loss of ecological function either through avoidance, minimization or compensation (perhaps via a BSA). Landowners regularly build these structures, assuming they can claim the <200-sqft exemption in the building code. The result is a non-compliant structure that receives no environmental review and no opportunity for the county to require compensating mitigation.

17.05A.090.I.4 as discussed about it seems reasonable to allow for the placement of small, recreational structures within the steep slope buffer, provided a geotechnical engineer indicates they will not impact slope stability, there will be no net ecological loss (demonstrated through a bio-assessment) and based on an agreement from the applicant that the structure will be removed when it can no longer be safely used.

Condition #5 in Table 3 of section 17.05A.090.I.4 requires the application of the common line

methodology if a house is proposed to be further waterward than the adjacent/neighboring residences, even if that line is further upland than the combined buffer and setback. The 'common line' methodology was created to allow for reducing a setback or buffer standard, not for increasing it. As a result, applying these standards will create unintentional consequences that will likely require the need for shoreline variances for developments that would otherwise clearly meet all of the standards. It is also likely to create as situation where houses are required to be further back on small lots, thereby pushing septic systems between the house and the high water mark, which is not preferred.

17.05A.090.J.1.e this section is problematic as it is nearly impossible for a geotechnical engineer or geologist to make predictions as far out as 100-years. It is also not supported by WAC 173-26-231, which states that new development should be designed and sited to avoid the need for future shoreline stabilization to the extend feasible. Requesting an applicant to provide a report demonstrating that armoring will not be needed within 100-years in not feasible.

17.05A.090.J.1.f While the code is intending to prevent development that will need shoreline armoring at some point during its life, requiring a covenant to be recorded stating that no armoring will ever be allowed is not reasonable. The denial armoring proposals, even when a covenant has been recorded has not been demonstrated to be legally supportable, so including a code requirement for a covenant does not make sense.

17.05A.090.J.2.a - No more than 20% should be allowed unless an engineered drainage plan is provided demonstrating how a larger percentage will result in no change in pre/post runoff rates, no decrease in water quality and no net loss to ecological function.

17.05A.090.J.2.b - structures above 30-inches should be allowed provided a determination is made by the shoreline administrator that there will be no impacts to the water view corridor of the adjacent primary residence.

17.05A.090.J.2.c the same limitation should be include here, i.e. unless there is a view impact to the adjacent primary residence.

17.05A.090.J.4.b - this section includes a description of buildable area but perhaps it should be included in the decision section of the code, preferably within some clarifying language. Is the 1,100-sqft allowance in addition to the 2,200-sqft for the buildable area and does it only include areas within shoreline jurisdiction? Why is landscaping included in the definition of buildable area and how would it be calculated? Are septic tanks and transport lines included in buildable area?

17.05A.090.J.4.c - It should be clear that the County is choosing 2,200-sqft feet as the maximum allowed under this section of code, which only applies to non-conforming lots and that they are not attempting to define this amount as the max allowed for reasonable use for all development within the shoreline.

17.05A.090.J.4.h - the standard should be the common line, which does not allow for less than 50% and it should be clarified whether this a percentage of area or 50% of the buffer distance from OHW

17.05A.090.J.6 - because the footprint of residences come in a large variety of can sometimes be incredible unusual, it should be made clear that the shoreline administrator has authority over determining specifically what portion of an adjacent residence qualifies as the 'waterward corners of the facade'.

17.05A.090.J.6.a(i) this should include 'unless approved through a shoreline variance'

17.05A.090.J.6.b(i) sections 3 and 4 should be combined and it should also clarify that the setback distance of the existing adjacent structures is measured from the point of the closest 'waterward corner facades'

17.05A.090.J.6.b(ii) should be combined and include language clarifying that when no adjacent structure exists on one side, the buffer distance is averaged with the setback of the structure on the other adjacent lot.

17.05A.090.J.6.b(iii) With respect to protruding an 18-inch eave into the buffer, why is this standard different than the standard of section 6.a.(iii) above? Does an 18-inch eave projection into a buffer result in a significant ecological loss? If so, the same standard should apply in section 6.a.(iii)

17.05A.090.J6 FIGUREs 6 & 7- the illustration of how setbacks are measured is incorrect and gives a false impression.

17.05A.090.J.6.c - why is 24-ft the max? Where did this number come from? Arbitrary numbers are not helpful.

17.05A.090.L - references sections 090.L and 090.M but should probably reference 090.J

17.05A.090.L Table 4 has a line for 'replacement, different footprint' but how can something qualify as a replacement when it is not in the same location? Isn't that new or expansion?

17.05A.090.L.4 - this section requires the County to develop a 'standard shoreline buffer enhancement plan'. Is the county capable of doing that? How can a single plan be adopted for enhancement of the buffer when the various shoreline environments are so unique?

17.05A.090.M.1.a (iii) this section seems rather extreme. Wouldn't the county just take enforcement action rather than immediately revoke all permits?

17.05A.095.A.3.c a Bio-assessment can be waived for development in the buffer as long as the development is less than 1,000-sqft? How does the County determine what the environmental impact is? How is a no net less determination made? How does this align with the requirements for buffer enhancement?

17.05A.100.E.3.a - there should be a description of how to measure the 1-mile. Line of sight or via roadway?

17.05A.100.E.3 - all new private boat launches that extend watered of OHW should be required to get a geocoastal analysis and bio-assessment

17.05A.100.K.11 this section states that no residential structures shall be placed waterward of OHW but what about docks, piers, boat launches and similar residential structures?

17.05A.100.K.23 why does this section establish a 150-ft buffer for lots within the natural designation when table 3 in section 090.I.4 only requires a 125-ft marine buffer? Also why is this buffer required to be recorded on the title of the property when the buffer in other designations is not?

17.05.100.K.24 includes a set of standards for beach access structures when section 17.05A.100.C already has a set of standards for these structures?

17.05.100.K.25.e there should be some provision in this section to address existing and proposed decks when a landowner is proposing to lift their house to get above the flood elevation. It should allow the deck to expand vertical (potentially above the 30-inch limit) to accommodate the owners willingness to retreat vertically. The deck replacement/expansion should be limited to the minimum necessary to provide access to the newly lifted residence. This section requires buffer enhancement for decks placed within the shoreline setback but decks are considered pervious and the buffer enhancement requirements of the SMP only require mitigation for the placement of new impervious surfaces in the setback or buffer.

17.05A.100.N.7 there should be an entire section dedicated to standards for construction of residential stormwater outfalls as these are very common structures. Bio-assessments are being waived for their installation in a marine buffer but there are no actual design standards, which is a problem.

17.05A.110.A.2.c the requirements for armoring in canal communities should stay similar to the existing SMP, which establishes specific requirements for those communities, which are highly altered and are not subject to the natural forces of erosion and where bulkheads do not have the same deleterious affects that impact natural shorelines. See the provisions of WAC 173-26-231. It should be made clear that a geocoastal analysis is not required for armoring in these communities. If you are going to require the analysis then just make bulkheads prohibited in canal communities.

17.05A.110.D.2 it should be made clear that the placement of beach nourishment as mitigation or shoreline enhancement/restoration does not qualify as fill for the purposes of this section

From:	Kim Stephan
To:	Barney, Stephanie (ECY)
Subject:	Subject: Island County SMP Comment
Date:	Monday, March 31, 2025 12:03:23 AM
Attachments:	Ecology Comment 3.30.25.docx

External Email

Stephanie,

It is understood that you are collecting and processing public comments to Ecology on the current Island County Shoreline Master Plan Update. I have attached our comments on the current SMP process.

I would hope that after all the effort the county put into this process with the public, that Ecology would defer to the county's opinion on what works for their constituents.

Thank you.

Best regards,

Kim and Valerie Stephan

206-276-5861

3/30/25

Stephanie Barney
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
Northwest Region

RE: Island County Shoreline Master Program Update

Stephanie,

Kim and Valerie Mill-Stephan, and the rest of the South Whidbey Shoreline Group support the final minor modifications that Island County has made to their Shoreline Master Plan (SMP). The county adopted the plan on August 13, 2024. We request that Ecology show deference to Island Countries modifications and approve the SMP as submitted.

Island County conducted an extensive process in the drafting of the final SMP. They held multiple hearings, took in hundreds of pages of comments from property owners and special interest groups on the SMP language. Island County did a fairly good job of balancing some of the opposing views and creating a balanced document. The Island County process involved the individuals and groups that are directly affected by the conditions outlined in the SMP. I believe the county, being closet to the public, is the best arbiter of language in the SMP.

The South Whidbey Shoreline Group is an organization that includes 300+ shoreline property owners on Whidbey Island that are directly affected by shoreline issues. Many of our property owners participated in the SMP process. I would like to reiterate, Island County did a decent job of listening to all sides and providing modifications that were down the middle.

I am sure that I speak for all in saying; Island County, property owners, interest groups and all that participated in this process would like to see a final result to this process. It would be nice to get this one done prior to starting the next update.

Sincerely,

Member: South Whidbey Shoreline Group

Kim and Valerie Mill-Stephan
Whidbey Island Property Owner
206-276-5861

From:	John Lovie
To:	Barney, Stephanie (ECY)
Cc:	John Lanier; Griffiths, Jennifer R (DFW); Koehlinger, JulieAnn (DNR)
Subject:	Comment on Island County SMP code updates
Date:	Monday, March 31, 2025 9:28:24 AM

External Email

Hi Stephanie,

My involvement in this SMP update goes back to 2021, when I was a member of the technical review committee.

Since then, Island County has been battered by storms, and in December 2022 suffered a severe coastal flooding event from a combination of a king tide and a deep low pressure center. The resulting flooding matched the 2050 sea level rise predictions in this Puget Sound Parcel-scale Sea Level Rise Vulnerability Assessment | Washington Coastal Hazards Resilience Network.

In the 10 plus years I have been involved in Puget Sound Shoreline issues, the amount of hard armoring Island County has actually increased, this despite a veritable soft shore armoring industry springing up, with grant-funded Shore Friendly programs, a design manual, consultants, and more.

In my local Historic Beachfront Community, Sunlight Beach, First Street Foundation now 117 of the 118 properties rated at 10/10 for flood risk. Despite this, duck hunting cabins have given way to occasional first homes, second homes, AirBnBs, and now, 6000 sq ft mansions built with all-cash that are occupied 4th July and Labor Day, and maybe a weekend in between. The sprinkler and the alarm systems are on, and the no trespassing sign is up, but there's nobody home. With these comes armoring, permitted or not.

While Island County has 50% of the most at-risk properties in the sound, it has no money. All the incentive programs are cancelled out by the massive incentive the county has to collect premium property taxes on these shoreline properties. As long as there are homes on the beach, there will be armoring.

Meanwhile, Ian Miller et al's study above shows that the beach will be under water at every high tide by 2050 or sooner. The SMP update kicks this can down the road.

We need to be asking these three questions:

- What do we want our shorelines to look like in 2050?
- How do we get there from here?
- Who will pay for it?

And we need to be asking those questions for all of Puget Sound together. Island County cannot tackle this alone.

Respectfully submitted,

John Lovie
732 236 9392
Mostly Water | John Lovie | Substack

From: Steve Silverberg
To: Barney, Stephanie (ECY)
Subject: Comment on SMP
Date: Monday, March 31, 2025 9:53:02 AM
Attachments: Letter to island county.docx

External Email

Hi Stephanie,

please find my comments attached

--
Thanks,

Steve

Stephanie Barney
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
Northwest Region

RE: Island County Shoreline Master Program Update

Dear Stephanie,

My name is Steve Silverberg, and I am a homeowner on Barr Beach Road in Island County. I write in support of the final minor modifications Island County has made to its Shoreline Master Program (SMP), which was adopted on August 13, 2024. I urge Ecology to approve the SMP as submitted and to defer to the thoughtful revisions made by the County.

Island County undertook a thorough and inclusive process in updating the SMP. The County held multiple hearings, considered a wide range of stakeholder input, and carefully balanced the often-competing interests of environmental protection and private property rights. The result is a document that reflects meaningful public engagement and reasonable compromise.

At the same time, I want to emphasize a very real concern from a homeowner's perspective. My property is currently the only home in our neighborhood without shore protection, despite our efforts to follow Island County's guidance. Unfortunately, that guidance has not been sufficient to secure the necessary protections. As a result, our home is increasingly at risk from high tides, storm surges, and ongoing erosion—and because of our location, this vulnerability poses a broader risk to our neighbors as well.

I raise this not as a criticism of the SMP process, which was constructive, but to underscore the importance of ensuring that future implementation and permitting pathways provide realistic, timely, and effective options for homeowners who are actively trying to protect their properties in good faith.

Like many others in the South Whidbey Shoreline Group, I am ready to see this process move forward to completion. The County has done its part. I hope the Department of Ecology will finalize its approval so we can begin working under a clear and current plan.

Sincerely,
Steve Silverberg
Homeowner, Barr Beach Road
Member, South Whidbey Shoreline Group

From:	Paula Spina
To:	Barney, Stephanie (ECY); Jonathan Lange
Cc:	zz district1; zz district2; zz district3; jeff@canyonenv.org
Subject:	Crockett Farm properties -- Shoreline Management Plan update
Date:	Monday, March 31, 2025 10:27:31 AM
Attachments:	3-31-25 Canyon_Wetland_Report-_Spina_03312025_with_All_Appendix.pdf

External Email

Dear Ms. Barney and Planning Director Lange

Canyon Environmental Group LLC conducted a wetland delineation on the Crockett Farm properties in order to evaluate the actual extent of the wetlands shown on the Island County wetland overlays maps. These maps are being used in the new proposed Shoreline Management Plan update, and we wanted to make sure they were correctly depicting the conditions on the ground.

The County maps indicate that the majority of the property is encumbered by a large wetland (Wetland E) that is contiguous with Crockett Lake and a Category B wetland (Large Ponded Wetland/Wetland Associated with a Coastal Lagoon).

Canyon confirmed the presence of Wetland E; however, the extent of the wetland is drastically different and very much an overestimate of the shoreline wetlands on the properties.

We are requesting that the Shoreline Management Plan update, as it relates to the subject Crockett Farm properties, delineate the wetlands correctly as detailed in Canyon's report (a true and correct copy of which is attached hereto).

If you have any questions, please feel free to contact me or Jeff Ninnemann. Thank you for your consideration and assistance in this regard.

Paula Spina, personally
and as the Sole Member of Crockett Farm, LLC

STAFF NOTE
The following 5 pages have been extracted from a 160 page wetland report for brevity. John Lanier

Crockett Farm Critical Area Report

Wetland Delineation:

Crockett Farm

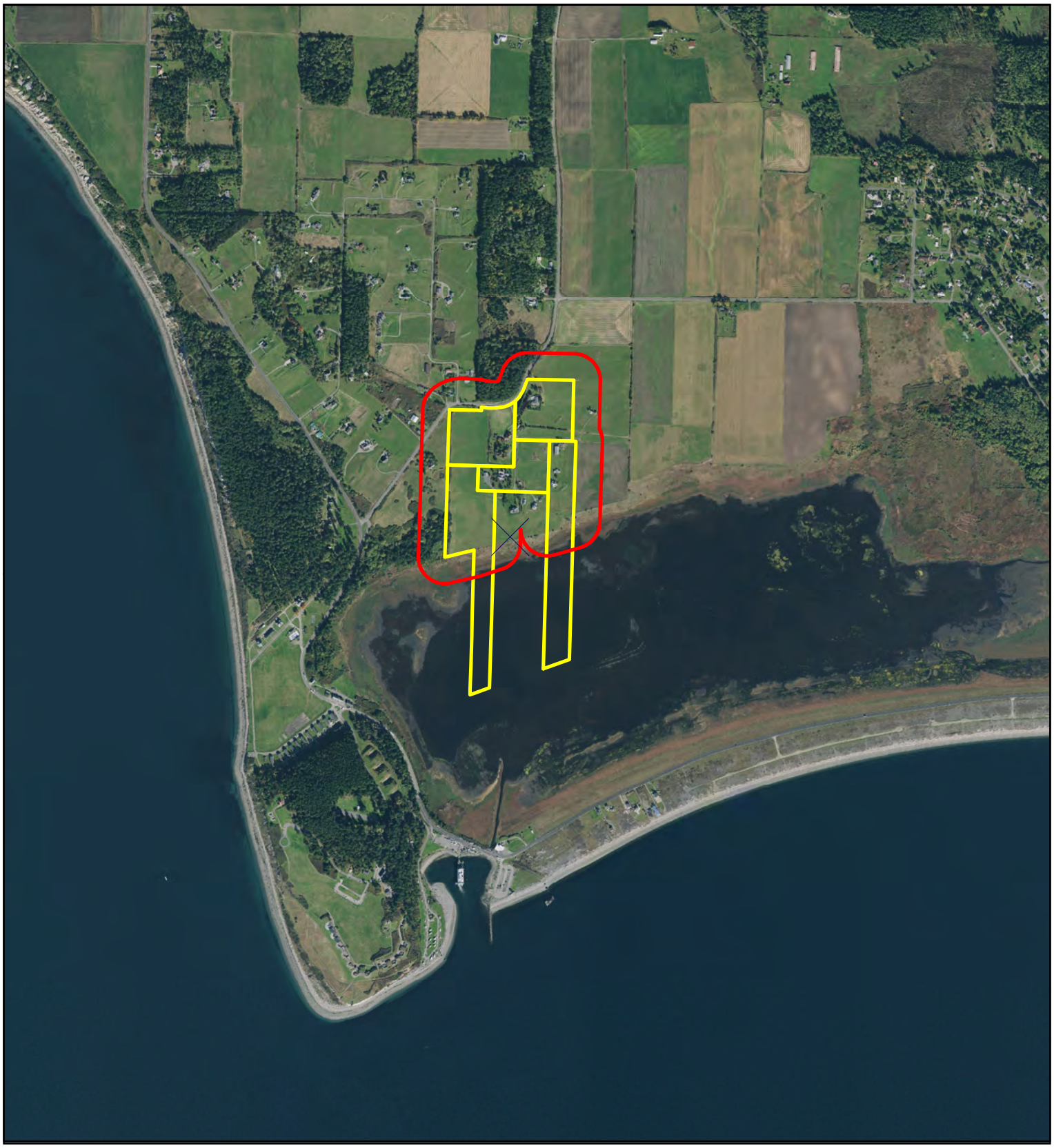
1056, 1025, 1049, 1088 Crockett Farm Road, Coupeville, WA

March 31, 2025

Prepared by:
Canyon Environmental Group LLC
112 Ohio Street Suite #115
Bellingham, Washington, 98225
360.389.1693 (Office)
jeff@Canyonenv.org
www.canyonenv.org

CANYON
ENVIRONMENTAL GROUP

Prepared for:
Crockett Farm, LLC
Attn: Paula Spina
P.O. Box 250
Coupeville, WA 98239-0250



300-ft Study Area

Subject Parcels

N
W E
S

CANYON
ENVIRONMENTAL GROUP

Figure 1

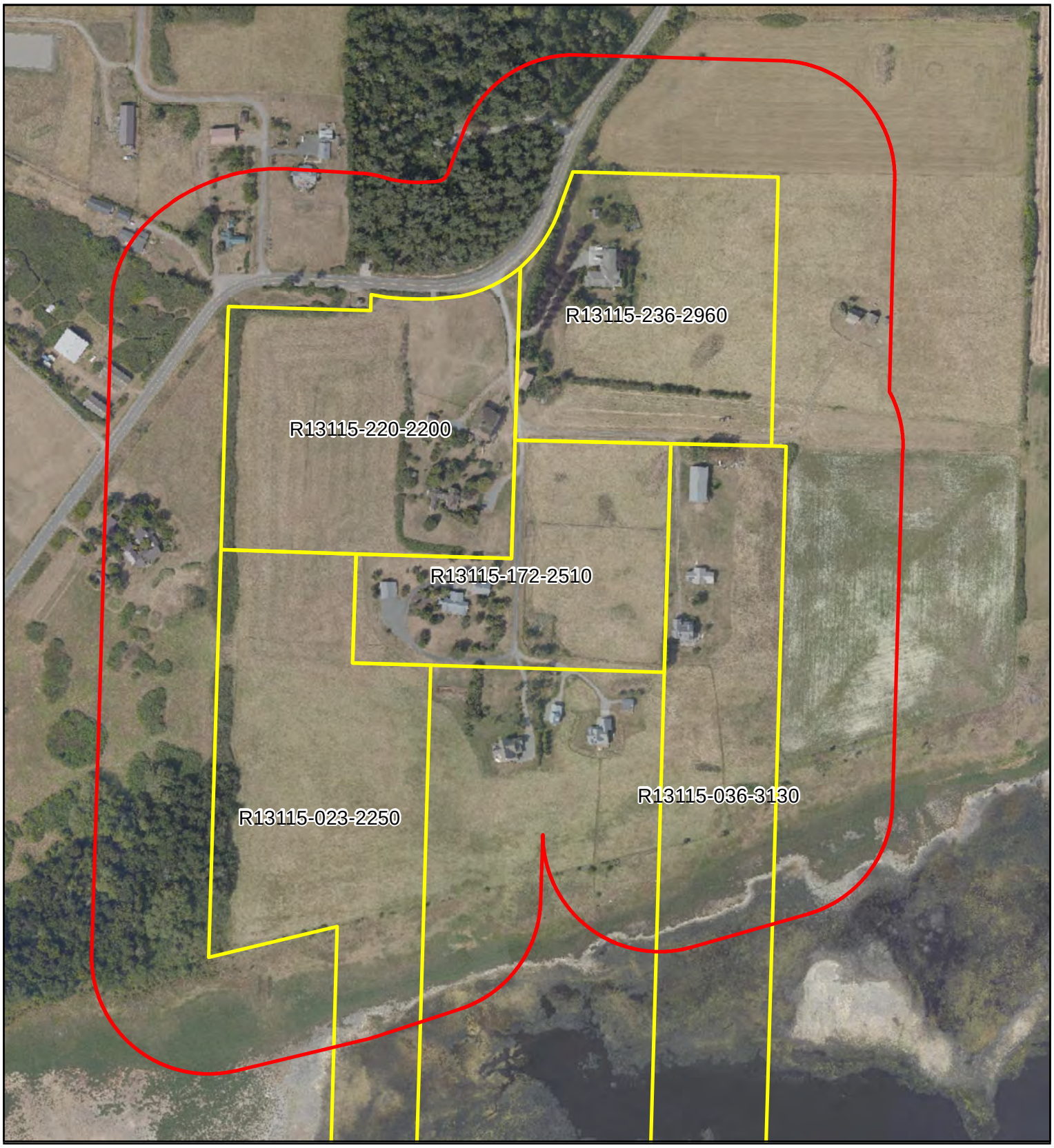
Spina Wetland Delineation: Site Vicinity Map

Date: 3/28/2025

C:\Users\jeff\OneDrive\CANYON\PROJECTS\C2024013_Spina_Wet\GIS\Spina_Figure1.mxd

1-inch = 1,500-feet

0 500 1,000 2,000 3,000 4,000 5,000 Feet



300-ft Study Area

Subject Parcels

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CANYON ENVIRONMENTAL GROUP

Figure 2

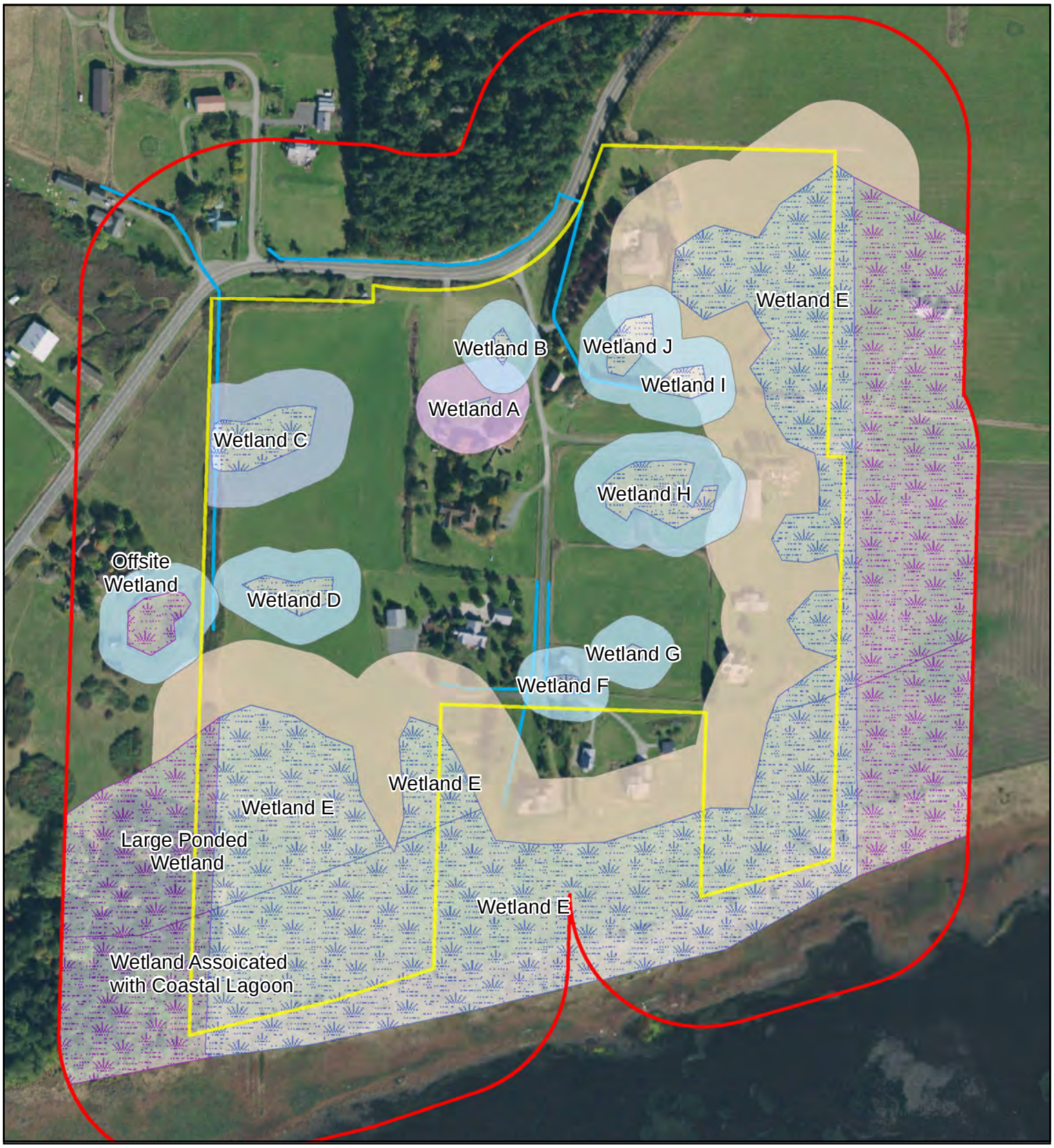
Spina Wetland Delineation: Subject Parcels and Study Area

Date: 3/28/2025

C:\Users\jeff\OneDrive\CANYON\PROJECTS\C2024013_Spina_Wet\GIS\Spina_Figure2.mxd

1-inch = 340-feet

0 50 100 200 300 400 500 Feet



Subject Properties
300-ft Study Area
Wetlands
Estimated Offsite Wetlands
65-ft Buffer
84.5-ft Buffer
90-ft Bufer
150-ft Buffer
Stormwater Ditches

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CANYON ENVIRONMENTAL GROUP

Figure 3

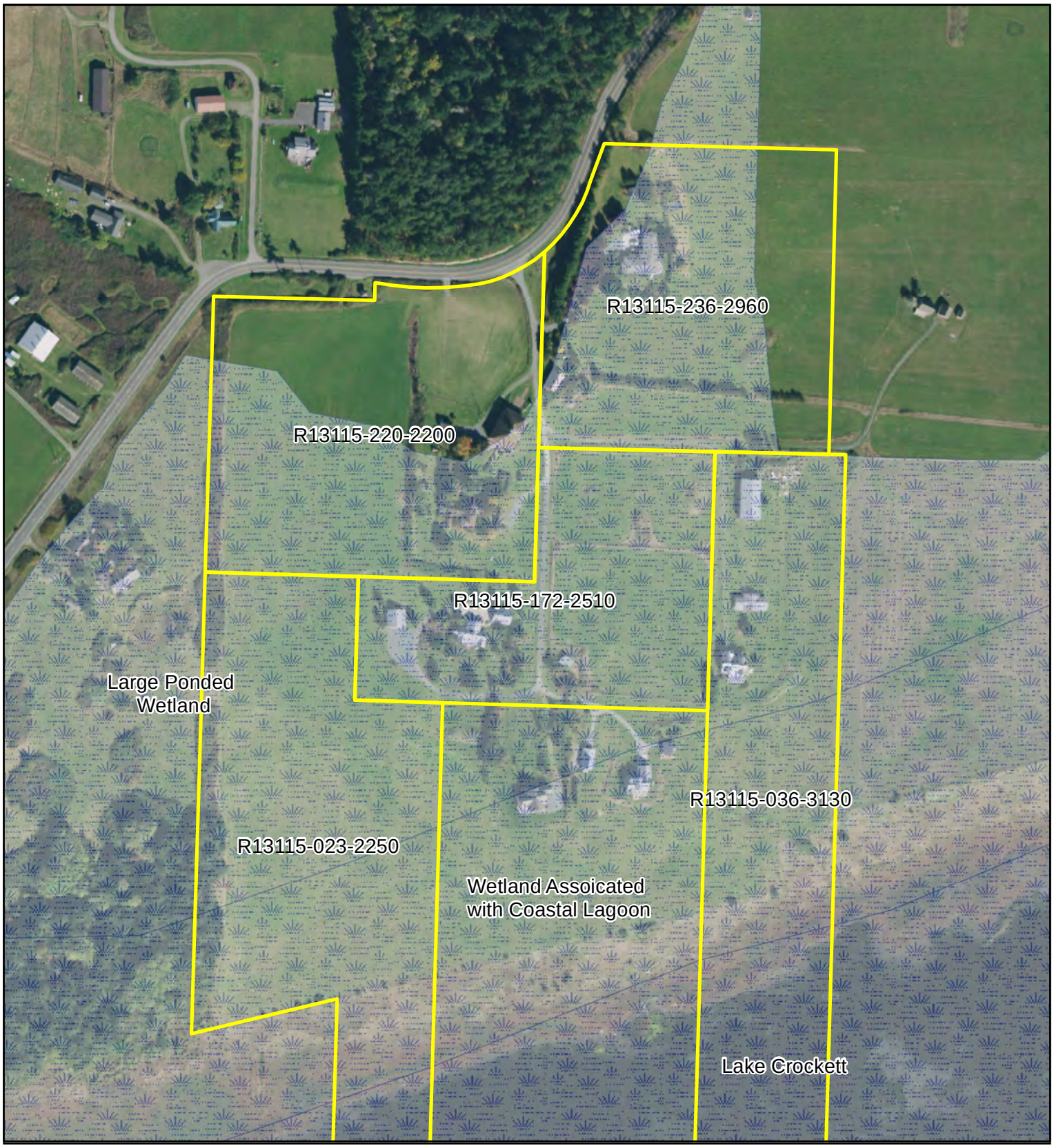
Spina Wetland Delineation: Wetland Delineation and Buffer Map

Date: 3/30/2025

C:\Users\jeff\OneDrive\CANYON\PROJECTS\C2024013_Spina_Wet\GIS\Spina_Figure3.mxd

1-inch = 300-feet

0 50 100 200 300 400 500 Feet



Subject Parcels

Island County Wetland Overlay

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CANYON ENVIRONMENTAL GROUP

Figure 4

Spina Wetland Delineation: Island County Wetland Map Overlay

Date: 3/30/2025

C:\Users\jeff\OneDrive\CANYON\PROJECTS\C2024013_Spina_Wet\GIS\Spina_Figure4.mxd

1-inch = 300-feet

0 50 100 200 300 400 500 Feet

Outlook

Island County Shoreline Master Program Update

From Scott Burell <scott.r.burell@outlook.com>
Date Mon 3/31/2025 11:22 AM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>
Cc DOR Island County Leg Authority 1 <district1@islandcountywa.gov>; DOR Island County Leg Authority 2 <district2@islandcountywa.gov>; DOR Island County Leg Authority 3 <district3@islandcountywa.gov>

1 attachment (178 KB)
Ecology Comment 3.31.25.pdf;

External Email

Please find attached to this email a letter addressed to Ms. Stephanie Barney at the Washington State Department of Ecology, with the Island County Commissioners cc'd.

Best regards,

Scott Burell
(425) 478-2340

SCOTT R. BURELL, CPA *(inactive)*
6308 Bay Road, Freeland, WA 98249 | scott.r.burell@outlook.com | 425.478.2340

March 24, 2025

Ms. Stephanie Barney
Shorelands & Environmental Assistance Program
Washington State Department of Ecology
Northwest Region

RE: Island County Shoreline Master Program Update

Stephanie,

The purpose of this letter is to provide you with written support from My wife and I to the final minor modifications that Island County has made to their Shoreline Master Plan (SMP). The county adopted the plan on August 13, 2024. We request that Ecology show deference to Island Countries modifications and approve the SMP as submitted.

Island County conducted an extensive process in the drafting of the final SMP. They held multiple hearings (I spoke publicly at two of them), took in hundreds of pages of comments from property owners and special interest groups on the SMP language. Island County did a fairly good job of balancing some of the opposing views and creating a balanced document. The Island County process involved the individuals and groups that are directly affected by the conditions outlined in the SMP. I believe the county, being closet to the public, is the best arbiter of language in the SMP.

My wife and I are property owners on south Mutiny Bay and are directly impacted by the decisions made by the Dept. of Ecology and Island County. We are also members of the South Whidbey Shoreline Group, which is an organization that includes 300+ shoreline property owners on Whidbey Island that are directly affected by shoreline issues. It goes without saying that we would like to see a final result to this process and would greatly appreciate the Department's expedited review prior to starting the next update, which likely defers any action for several more years.

Sincerely,

Member: South Whidbey Shoreline Group

Scott Burell
Whidbey Island Shoreline Property Owner
425-478-2340

John Lanier

From: Steve Erickson <wean@whidbey.net>
Sent: Monday, March 31, 2025 1:02 PM
To: Barney, Stephanie (ECY)
Cc: Jennifer Roll; planningdept; ED@whidbeyenvironment.org
Subject: WEAN Comments on Island County's SMP update
Attachments: 25-03-31 WEAN SMP Comments Final.docx

External Email

Attached please find Whidbey Environmental Action network's comments on Island County's SMP update.

Please hit "reply" to acknowledge receipt of these comments.

~Steve

Whidbey Environmental Action Network
Preservation Education Restoration
Box 293, Langley, WA 98260
(360) 404-7870
wean@whidbey.net
https://gcc02.safelinks.protection.outlook.com/?url=http%3A%2F%2Fwww.whidbeyenvironment.org%2F&data=05%7C02%7CBARS461%40ECY.WA.GOV%7C07c1c6c3354943fd42b408dd708ee0bd%7C11d0e217264e400a8ba057dcc127d72d%7C0%7C0%7C638790482832467092%7CUnknown%7CTWFpbGZsb3d8eyJFbXB0eU1hcGkiOnRydWUsIlYiOiIwLjAuMDAwMCIsIlAiOiJXaW4zMiIsIkFOIjoiTWFpbCIsIldUIjoyfQ%3D%3D%7C60000%7C%7C%7C&sdata=rRYe2E%2BXTS4USQUr4Huovjo4mmo0TZlGVt2Ahgs1OX8%3D&reserved=0
==========

Whidbey Environmental Action Network
Restoration Education Preservation
Box 293, Langley, WA USA 98260
(360) 404-7870 wean@whidbey.net

Dedicated to the preservation and restoration of the native biological diversity of Whidbey Island and the Pacific Northwest

March 31, 2025

TO: **Stephanie Barney, Washington Department of Ecology**
Stephanie.Barney@ecy.wa.gov

CC: **Clerk of the Board of Island County Commissioners**
j.roll@islandcountywa.gov
Johnathon Lang, Island County Planning Director
PlanningDept@islandcountywa.gov
Marney Jackson, WEAN Executive Director
ED@whidbeyenvironment.org

FROM: **Steve Erickson, Litigation Coordinator**

RE: **WEAN Comments on Island County's SMP update**

These comments are submitted on behalf of Whidbey Environmental Action Network.

References cited in these comments are to the Shoreline Master Program packet as transmitted to Ecology by Island County. That document is titled "Ordinance No. C-13-24, PLG-004-24 Shoreline Master Program Update." The pages in the ordinance document are numbered at the top left as "page x of 428." These page numbers are referenced in our comments.

Comment -1: Sea Level Rise policies and regulations are completely inadequate

The proposed policies for SLR completely ignore the primary issues resulting from SLR that are afflicting Island County. *See* p. 208 of 428, G. Sea Level Rise.

Needed SLR policies and regulations include:

1) Requiring monitoring the coastal zone for illegally built and/or enlarged shore defense structures;
~ not issuing "after-the-fact" permits for these structures;
~ a preference for removing illegally built structures;
~ taking enforcement action against both the property owner and the operator that built the structure;
~ and recovering the costs of enforcement, structure removal, and any necessary restoration.

2) For existing shoreline residences, not permitting enlargement of existing structures and/or supporting infrastructure that will not be expected to survive for their projected or design lifespan without future shoreline structural defenses.

3) Establishing an active monitoring program to monitor coastal sewage and septic systems. This infrastructure is threatened with degradation and failure due to subsurface movement of salt water.

4) Addressing ongoing and future shoreline pollution from predictable abandonment of hundreds or thousands of structures and their supporting infrastructure (i.e. septic systems) as these become uninsurable, uninhabitable, and impossible to sell.

Similarly, the policies and proposed regulations also ignores these problems. *See* p. 127 of 428, 17.05A.110 - Shoreline modification regulations; p. 220 of 428, Chapter VII: Policies for Shoreline Modifications.

These Policies and regulations are inadequate. Adequate Policies and regulations should:

1) Explicitly clarify that armoring will not be allowed when the threat to structures is due to tidal action; this will ameliorate current confusion between what measures are allowed due to "erosion," "flooding," and normal tidal action associated with SLR. Many "buildable" coastal areas in Island County were created by "hydraulicking" (blasting coastal bluffs with high pressure hoses from barges), prior to the practice being banned in the late 1960s. These areas were barely above sea level then and they are now being flooded regularly by normal tidal action. Its time to recognize and accept that their life span is over.

2) Prohibit shoreline armoring when the structure will not be protected for the remainder of its design life.

3) Adopt an explicit policy that the costs of removal of uninhabited or abandoned structures should be borne by the property owner, not the public.

4) Require new structures to be designed and built so they can be moved, or easily dismantled and removed.

5) Establish a system (i.e., bonds, insurance) assuring adequate financial guarantees to remove structures, associated infrastructure, and shoreline armor when no longer defensible or abandoned.

Comment -2: Prohibit wetland filling for agriculture

As interpreted by Island County in a recent alleged wetland violation, its regulatory scheme for agriculture and critical areas allows filling wetlands as a "normal" farming practice. Ecology should not allow Island County a free pass on this practice. It violates the state Water Pollution Control Act and (at least for now) the federal Clean Water Act. The SMP should explicitly not allow placement of fill in wetlands by either existing or new agricultural operations. This should be added to the list of "shalls" for agricultural use. *See* p. 96-97 of 428, A. Agriculture 5. New agricultural use and development shall be managed to; p. 209 of 428, A. Agriculture 3 Agricultural use and development should be managed to. This can be accomplished by including a policy that explicitly prohibits wetland filling :

A. Agriculture

#. Placement of fill of any kind in wetlands by existing or new agricultural operations is prohibited.

Comment-3: Remove "poison pill" intended to prevent rare habitat and species protection

The County persists in carrying over older versions of its regulations for designating species and habitats or local importance that no longer occur in its standard CAO. This includes at least one "poison pill" included over 20 years ago by a previous board of county commissioners hostile to conservation and environmental protection. That provision requires that "Where restoration or [*sic*] habitat is proposed, [nominations must] include a specific plan for restoration, including a conceptual design and a means of financing of the restoration." *See p. 62 of 428.* As a practical matter it is impossible to obtain funding (or a commitment for funding) for restoration, including design, on land which does not have some form of already existing protection; funders, whether private or governmental, simply do not want to invest money in restoration and see the work destroyed later. Hence, as a practical matter this provision makes designation of new species and habitats of local importance impossible. While the County could simply include by reference its CAO, including regulations relating to designation of new habitats and species of local importance, Ecology should not approve inclusion of this increasingly ancient poison pill.

From: Brad Thompson
To: Barney, Stephanie (ECY)
Subject: Comments to Island County SMP Update --- from South Whidbey Shoreline Group (SWSG)
Date: Monday, March 31, 2025 1:40:35 PM
Attachments: apple-touch-icon.png
SWSG Island County SMP Comments to Ecology .pdf

External Email

Dear Stephanie

Our group has endeavored to review and flesh out important inconsistencies and mis-directions in this 429 page document, an almost impossible task. Our primary goal in this effort has been to make it clearer and easier for shoreline property owners to be able to protect their most valuable asset, their homes, from the impending forces of nature while at the same time being cognizant of the importance of not harming the unique ecology of our shoreline environment.

Attached please find our 5 primary comments to the Island County SMP update.

The South Whidbey Shoreline Group (SWSG) is an alliance of over 240 members who are very concerned about the ability to protect their shoreline properties from increasingly severe storms, unusually high King-tides and impending sea-level rise. These three natural forces are currently being exacerbated by the **18.6 - year lunar nodal cycle** which we are in the middle of. The impacts of this cycle will be on us very soon and we have very little time to prepare to protect our properties.

A NASA study projects a surge in coastal flooding, starting in the 2030s, due to the combination of rising sea levels and the moon's 18.6-year cycle. The bottom line is that we must have the ability to protect our homes now in advance of the impacts of the 18.6 year "lunar nodal cycle".

An excerpt from NASA's study:

"The Moon is in the tide-amplifying part of its cycle now. However, along most U.S. coastlines, sea levels have not risen so much that even with this lunar assist, high tides regularly top flooding thresholds. It will be a different story the next time the cycle comes around to amplify tides again, in the mid-2030s. Global sea level rise will have been at work for another decade. The higher seas, amplified by the lunar cycle, will cause a leap in flood numbers on almost all U.S. mainland coastlines, Hawaii, and Guam. Only far northern coastlines, including Alaska's, will be spared for another decade or longer because these land areas are rising due to long-term geological processes."

Study Projects a Surge in Coastal Flooding, Starting in 2030s
sealevel.nasa.gov

It is time for all of us including state and local governments to have a clear understanding of the time table and expected severity of "near-future of Sea-level rise" and acknowledge the gravity of our situation so we can prepare to protect our homes, properties and infrastructure before its too late.

Thank you for your serious consideration of our comments and in gaining a better understanding of the near term impacts of sea-level rise on the Northwest.

Sincerely,

Brad Thompson, Chair
South Whidbey Shoreline Group
https://www.southwhidbeyshoreline.com
425-503-7655
bradthompson314@gmail.com

March 31, 2025

South Whidbey Shoreline Group - Comments to Island County SMP update

1. The definition of Normal Appurtenance, SMP update page 28, needs to be re-defined.

The current definition reads as follows: **Normal appurtenance** means a structure that is necessary for the use and enjoyment of a single-family residence, including a garage, driveway, utilities, septic tank, drainfield, and grading less than 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high-water mark.

Deck, **gazebos** and **fences** had been removed and should have been included in the definition. On August 13, 2024 the Island County Commissioners approved the updated SMP by a vote of 2 to 1.

The definition of **Normal Appurtenance** which **they approved** reads as follows:

"Normal appurtenance means a structure that is necessarily connected to the for the use and enjoyment of a single-family residence, including a garage, **deck,** driveway, utilities, **fences**, **gazebo**, septic tank and drainfield, and grading less than 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high-water mark."

The definition of **Normal Appurtenance** which was **sent to Ecology** and is **not** the one the Commissioners approved reads as follows:

"Normal appurtenance means a structure that is necessaryily connected for the use and enjoyment of a single-family residence, including a garage, driveway, utilities, septic tank and drainfield, and grading less than 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high-water mark."

The three items; fences, deck and gazebo shown above in red above were stricken from the "Locally Adopted" version of the SMP update which was sent to Ecology.

The revised definition should read as follows*:*

Normal appurtenance means a structure that is necessary for the use and enjoyment of a single-family residence, including a garage, deck, fence, gazebo, driveway, utilities, septic tank, drain fields, and grading less than 250 cubic yards and which does not involve placement of fill in any wetland or waterward of the ordinary high-water mark

2. The **Shoreline Environment Designation** definition of **Shoreline Residential - Historic beach Community should be redefined to include single family residences developed on "historically filled lands".**

The current definition on page 26 reads as follows:

Historic beach Community means limited areas within the shoreline of Island County that have been platted in a dense pattern with small lots and greater impervious surface relative to other areas of the county. The existing marine waterfront lots are generally developed with residential structures constructed approximately thirty (30) feet or less from the ordinary high-water mark and the original structures were established prior to enactment of the Shoreline Management Act.

Historic Beach community – Should be re-defined to include single-family homes built on low-lying shorelines and on historically filled lands. This definition is much easier to administer for permitting and is adapted from the following excerpt from page 48 of Chapter 15 of the SMP Handbook which reads as follows:

Low-lying shorelines may be subject to erosion, but they are also at risk from flooding and storm damage. Damage may be caused by inundation, strong currents, wave action, or impacts from logs and debris (Figure 15-17). Short-term erosion can be a serious problem even if the site is not subject to chronic erosion. Examples of **low-lying shorelines** vulnerable to these hazards include floodways on rivers, spits on Puget Sound, and **historically filled lands** along waterways.

The revised definition **should read** as follows:

Shoreline Residential - Historic beach Community *means:*

"limited areas within the shoreline of Island County that have been developed in a dense pattern with small lots and greater impervious surface relative to other areas of the county. The existing marine waterfront lots are typically low-lying lots which have been developed on historically filled lands or are generally developed with residential structures constructed approximately thirty (30) feet or less from the ordinary high-water mark and the original structures were established prior to enactment of the Shoreline Management Act".

3. ICC 17.05A.110.A.3.a.(ii) on page 133 currently reads as follows:

The replacement performs the same stabilization function as the existing structure and **does not require additions to or increases in size**;

This requirement goes against WAC 173-26-231.3.(iii).(C). on page 4 of 6, which reads:

> (C) An existing shoreline stabilization structure may be replaced with a similar structure if there is a demonstrated need to protect principal uses or structures from erosion caused by currents, tidal action, or waves. • The replacement structure should be **designed, located, sized, and constructed** to assure no net loss of ecological functions. • Replacement walls or bulkheads shall not encroach waterward of the ordinary high-water mark or existing structure unless the residence was occupied prior to January 1,

1992, and there are overriding safety or environmental concerns. In such cases, the replacement structure shall abut the existing shoreline stabilization structure. • Where a net loss of ecological functions associated with critical saltwater habitats would occur by leaving the existing structure, remove it as part of the replacement measure. • Soft shoreline stabilization measures that provide restoration of shoreline ecological functions may be permitted waterward of the ordinary high-water mark. • For purposes of this section standards on shoreline stabilization measures, "replacement" means the construction of a new structure to perform a shoreline stabilization function of an existing structure which can no longer adequately serve its purpose. Additions to or increases in size of existing shoreline stabilization measures shall be considered new structures.

The revision should read as follows:

ICC 17.05A.110.A.3.a.(ii) The replacement performs the same stabilization function as the existing structure.

4. ICC 17.05A.110.A.2.f. on page 133 currently reads as follows:

Applications for new shoreline stabilization shall address intertidal and shoreline habitat loss which may arise due to permanent structures limiting the ability of the ordinary high-water mark and shoreline to migrate landward in response to sea level rise.

ICC 17.05A.110.A.2.f. on page 133 *should be removed*.

The concept of "may arise" is a very unusual standard to apply – not something happening now but might possibly happen sometime in the future.

The sole purpose of shoreline stabilization and armoring is to protect single family residences and appurtenances from damage due to erosion and sea-level rise.

5. ICC 17.05A.110.6.j. on page 138 currently reads as follows:

When a new or replaced hard structural shoreline stabilization measure is proposed on a site where legally established hard structural shoreline measures do not exist on adjacent properties, the proposed stabilization measure must demonstrate that impacts to adjacent properties will not occur.

This section should re-written to align with the Board of Island County Commissioners discussion and agreement on August 13, 2024 not to use the word "shall" and replace it with "should" in the SMP update. Firm words like; must, avoids, will,"will-not" and similar "hard" words should be removed from the SMP update and replaced with less impacting ones in accordance with the Commissioners directions.

The revised section should read as follows:

ICC 17.05A.110.6.j.

When a new or replaced hard structural shoreline stabilization measure is proposed on a site where legally established hard structural shoreline measures do not exist on adjacent properties, the proposed stabilization measure should demonstrate that significant adverse impacts to adjacent properties should not occur.

Outlook

Fwd: Comments to Island County SMP Update --- from South Whidbey Shoreline Group (SWSG)

From Brad Thompson <bradthompson314@gmail.com>
Date Mon 3/31/2025 1:50 PM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>

1 attachment (166 KB)
SWSG Island County SMP Comments to Ecology .pdf;

External Email

Stephanie

Please acknowledge receipt. Thanks,

Brad Thompson
425-503-7655
bradthompson314@gmail.com

Begin forwarded message:

From: Brad Thompson <bradthompson314@gmail.com>
Subject: Comments to Island County SMP Update --- from South Whidbey Shoreline Group (SWSG)
Date: March 31, 2025 at 1:39:59 PM PDT
To: Stephanie Barney <stephanie.barney@ecy.wa.gov>

Dear Stephanie

Our group has endeavored to review and flesh out important inconsistencies and mis-directions in this 429 page document, an almost impossible task. Our primary goal in this effort has been to make it clearer and easier for shoreline property owners to be able to protect their most valuable asset, their homes, from the impending forces of nature while at the same time being cognizant of the importance of not harming the unique ecology of our shoreline environment.

Attached please find our 5 primary comments to the Island County SMP update.

The South Whidbey Shoreline Group (SWSG) is an alliance of over 240 members who are very concerned about the ability to protect their shoreline properties from increasingly severe storms, unusually high King-tides and impending sea-level rise. These three natural forces are currently being exacerbated by the **18.6 - year lunar nodal cycle** which we are in the middle of. The impacts of this cycle will be on us very soon and we have very little time to prepare to protect our properties.

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Thank you for your serious consideration of our comments and in gaining a better understanding of the near term impacts of sea-level rise on the Northwest.

Sincerely,

Brad Thompson, Chair
South Whidbey Shoreline Group
https://www.southwhidbeyshoreline.com
425-503-7655
bradthompson314@gmail.com

Outlook

Island County Shoreline Management Plan Public Review Comment

From Dennis Stettler <dbgstettler1@frontier.com>

Date Mon 3/31/2025 2:55 PM

To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>

Cc Austin Hoofnagle <A.Hoofnagle@islandcountywa.gov>; Robert Guild <robert.guild@gmail.com>; Joel Skillingstead <j.skillingstead@comcast.net>; Matt Kukuk <M.Kukuk@islandcountywa.gov>; Alexander Reitz <A.Reitz@islandcountywa.gov>

External Email

Hello Stephanie,

This email is in response to the request for public review comments on proposed revisions to the Island County Shoreline Management Program.

The reorganization of this portion of the Island County Code and the inclusion of additional definitions or clarification of existing definitions are very helpful.

However, the current and proposed revisions to the Code do not acknowledge the fundamental differences between a shoreline that has a relatively flat upland area that could be subject to continuing gradual erosion as compared to a shoreline with a steep, high bluff that could be adversely impacted by shoreline erosion at the toe of the steep slope that could trigger an infrequent but major landslide.

The current and proposed code revisions with respect to shoreline stabilization with hard armoring focus exclusively on the criteria that ". . . a report confirms that there is a significant possibility that such a structure will be damaged within three years as a result of shoreline erosion in the absence of such hard armoring measures, or where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions." Island County and Department of Ecology interpretations of this provision seem to focus entirely on the three year criteria and ignore the portion of that statement that allows consideration of other factors including waiting until the need is that immediate would foreclose other opportunities.

The Ecology Shoreline Management Plan (SMP) Handbook appropriately recognizes and addresses the difference between gradual shoreline erosion and other types of shoreline erosion risks. SMP Chapter 15 – Shoreline Stabilization provides a good overview of key considerations. For example, the difficulties of addressing *Time Frame* are addressed on Chapter 15 page 44; page 45 addresses *Erosion scenarios in different settings* (see the second bullet that addresses high banks and bluffs). Page 47 addresses *Unstable banks and slopes* and includes such comments as "In this situation, there is little basis for estimating whether an upland structure is threatened within a certain amount of time, such as three years." Pages 49 and 50 address *Approaches to evaluating risk* that acknowledge the use of differing approaches to evaluating risk including consideration of the situation of a high bank or bluff.

Island County Code and the interpretation of the Code by Island County or the Department of Ecology does not contain provisions that allow for consideration of other types of risk other than predictions of erosion within 3 years. In my professional opinion, this approach is inconsistent with guidance and discussions in Chapter 15 – Shoreline Stabilization of the Ecology Shoreline Management Handbook related to high bluffs and is inconsistent with best available science. As such, the Island County Code regarding shoreline erosion and its impact on the stability of high bluff slopes is fundamentally flawed and needs revision.

Sincerely,

Dennis R. Stettler, P.E.

About the Author:

I am a Washington State Professional Engineer with degrees in civil engineering specializing in geotechnical engineering and geology. I have been a geotechnical engineering consultant practicing in the Puget Sound region for 50 years. I am considered an expert in slope stability in the Puget Sound region and have been retained as an expert regarding landslides and slope stability by local agencies, private property owners, and attorneys. I have worked as a consultant for the Geotechnical Office of the Washington State Department of Transportation on numerous projects including those involving slope stability and landslide remediation. I have been retained to help the geotechnical engineers in the Landslide Group within the City of Seattle to evaluate and provide recommendations related to historical and current landslide conditions in the City of Seattle. In a dispute between the Washington State Department of Transportation and Sound Transit related to slope movement on a Sound Transit easement on WSDOT right-of-way, I was jointly selected by WSDOT and Sound Transit to independently evaluate the likely cause of slope movement and recommended slope repairs. I have evaluated landslides and evaluated permit applications for more than 100 projects for the City of Edmonds within the Meadowdale Landslide Complex and assisted the City Building Official with revisions to the Edmonds City Code relative to landslides and slope stability. I have worked on more than 10 coastal bluff slope stability and landslide evaluations and stabilization repairs for Island County Public Works. I was co-chair of a regional technical symposium on “Landslides in the Puget Sound Region” that was co-sponsored by the University of Washington, the Seattle Section of the American Society of Civil Engineers, and the U.S. Geological Survey that was attended by more than 300 geotechnical engineers, geologists, civil engineers, and local agency engineers and building officials.

I am a resident of Island County and currently have an application under consideration with Island County for shoreline stabilization for my community.

From:	Tom Opdycke
To:	Barney, Stephanie (ECY)
Cc:	Tom Opdycke; Thompson, Brad
Subject:	Comments on Island Country Draft SMP
Date:	Monday, March 31, 2025 4:10:29 PM
Attachments:	2025-03-31 Draft SMP - Fill Final.pdf

External Email

Dear Stephanie,
Thank you for including the attached comments. While it is signed by me, there are others who shared in these comments.

Kind Regards,
-Tom Opdycke

Re: Comments on Island County Draft Shoreline Master Program (SMP) – Section 17.05A.110.D Grading and Filling

Dear Department of Ecology Review Team,

My family and I have been stewards of our shoreline property in Island County for nearly 60 years, cherishing its natural beauty while maintaining its viability as a home. I am writing to express significant concerns about the proposed Island County Shoreline Master Program (SMP), specifically **Section 17.05A.110.D, paragraphs 2, 3, and 4.a**, which regulate grading and filling. These provisions impose overly restrictive measures that fail to account for the unique status and needs of **historically filled properties** - those developed with fill prior to the Shoreline Management Act (SMA), including those filled before December 4, 1969, which are protected under state law - yet the draft SMP disregards these rights and threatens their viability:

- **Paragraph 2:** "Fill in flood hazard areas identified on the Flood Insurance Rate Maps (FIRMs) is not allowed unless the director finds that no feasible alternative exists."
- **Paragraph 3:** "Land clearing, grading, filling, and altering of wetlands, natural drainage features, and topography are limited to the minimum area necessary for driveways, buildings, and view and solar access corridors, and must conform with critical area requirements and SMP setbacks."
- **Paragraph 4.a:** "The extent of filling and excavation allowed shall only be the minimum necessary to accommodate an approved shoreline use or development and with assurance of no net loss of shoreline ecological functions and processes;"

I respectfully urge the Department of Ecology to reject these provisions in their current form and direct Island County to draft viable solutions for historically filled shoreline properties. The proposed measures conflict with the **Savings Clause (RCW 90.58.270)**, the Washington Supreme Court's ruling in *Chelan Basin Conservancy v. GBI Holding Co.* (2018), and with the balanced approach mandated by the Shoreline Management Act (SMA) under **RCW 90.58.020,** and other state and county provisions that enable the maintenance non-conforming historical development. In sum, they impose impractical standards that would lead to economic hardship, ecological degradation, and the loss of stable shoreline properties.

Below, I detail my objections and offer constructive solutions to align the SMP with state law and practical realities.

---

1. Legal Protections for Historic Fills Under the Savings Clause

The **Savings Clause (RCW 90.58.270)** explicitly protects fills placed before December 4, 1969, granting legislative consent to their retention and maintenance unless they were in trespass or violated state statutes at the time. This protection was affirmed by the Washington Supreme Court in *Chelan Basin Conservancy v. GBI Holding Co.*, which held that pre-1969 fills are shielded from

public trust challenges and new regulatory burdens aimed at their removal. Historically filled shoreline property, legally filled before this date, exemplifies this category, establishing a stable baseline condition that the SMP must respect.

In contrast, the draft SMP's restrictions - such as the prohibition of fill in flood hazard areas (paragraph 2), limits on grading and filling (paragraph 3), and the "no net loss" requirement (paragraph 4.a) - ignore this statutory safeguard. These rules effectively undermine the legislature's intent by preventing essential maintenance, risking – if not forcing - inundation of historically filled properties. The SMP must exempt such properties from restrictions that contradict RCW 90.58.270 and judicial precedent.

---

2. Violates the SMA's Balanced Approach and Legislative Intent

The **SMA (RCW 90.58.020)** seeks a balance between ecological protection and reasonable shoreline use, including a preference for protecting single-family residences and existing developments. The Savings Clause, enacted post-*Wilbour v. Gallagher* (1969), reflects this balance by protecting pre-1969 fills to avoid economic disruption and preserve settled property interests. The *Chelan Basin* court underscored this intent, noting the legislature's authority to consent to impairments of navigable waters without violating the public trust doctrine. In addition, there were shoreline fills legally permitted by Island County after 1969 which ought to be awarded grandfather status in the SMP. The draft SMP violates the mandate for a balanced approach, by tilting heavily toward prohibition. Its blanket restrictions and narrow allowances for filling fail to accommodate the maintenance needs of historically filled properties, which contradicts the SMA's goal of preserving existing uses for future generations. By blocking maintenance fill, the SMP unfairly burdens property owners by taking shoreline, and threatens property stability and economic vitality – the very outcomes the legislature sought to prevent.

---

3. Dept. of Ecology Recognizes Special Need for Historically Filled Lands

Many properties in Island County, like other parts of Puget Sound, were legally developed decades ago with fill, elevating them above the OHWM and floodplain at the time. The **SMP Handbook (Chapter 15, page 48)** recognizes these "historically filled lands along waterways" as distinct and uniquely vulnerable to flooding and erosion.

---

4. Maintenance Fill is a Protected Right

The Savings Clause explicitly safeguards the "retention and maintenance" of pre-1969 fills, a right reinforced by *Chelan Basin*. This means property owners can perform **Maintenance Fill** - fill necessary to preserve elevation functionality - without facing public trust challenges or undue regulatory hurdles. Also, state code, such as **WAC 173-27-080**, permit maintenance and repair of nonconforming developments. The draft SMP also fails by attempting to remove the flexibility given by **ICC Section 17.05A.140** - which allows repairs and limited expansions of nonconforming development. The draft SMP proposes to prohibit Maintenance Fill, and instead subjecting *all fill* to

restrictive conditions that assume new development standards rather than standards appropriate to the upkeep of existing functional conditions. With sea level rise projected at up to 3 feet by 2100 (per NOAA estimates and as recognized in ICC Section 17.05A.035.E), maintenance fill is critical to prevent historically filled properties from inundation. The SMP's failure to allow this adaptation violates RCW 90.58.270, RCW 90.58.020, WAC 173-27-080, ICC 17.05A.140 and leaves shoreline properties and owners vulnerable to natural forces and inundation by sea level rise and its effects. This undermines both legal protections and practical resilience.

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5. Overly Restrictive Prohibition on Fill in Flood Hazard Areas

Paragraph 2 prohibits fill in flood hazard areas unless "no feasible alternative exists," a standard too restrictive and not applicable for historically filled properties. Many such properties lie within FEMA flood zones due to their proximity to the shoreline and their historical pre-SMA development (when their elevations with respect to the sea level were higher) - a condition the legislature consented to under RCW 90.58.270. The *Chelan Basin* ruling supports their continued existence, yet the SMP prohibition attempts to block maintenance fill needed to preserve their relative elevations against rising waters. It conflicts with the SMA's intent to support reasonable use and adaptation of shoreline properties, especially single-family residences in historical shoreline communities (a preferred use under RCW 90.58.020). Paragraph 2 fails to consider the unique needs and rights associated with historically filled properties, treating them as new encroachments rather than legally established conditions. This restriction overrides state law and risks imposing the loss of stable properties to flooding, an outcome neither ecologically nor economically sound.

---

6. Overly-Restrictive Limits on Land Clearing, Grading, and Filling

Paragraph 3 limits filling to the "minimum area necessary" and only for specific purposes (e.g., driveways, structural foundations), ignoring the broader maintenance needs of historically filled properties. These properties often require periodic fill to counteract erosion, settling, or sea level rise - upkeep that the Savings Clause and *Chelan Basin* and other previously mentioned state and county codes affirm as a right, if not an obligation. The SMP's narrow scope provides no flexibility for such responsible maintenance and upkeep, undermining the long-term shoreline stability of these properties and contradicting the SMA's support for existing uses.

---

6. Misapplication of the "No Net Loss" Standard for Maintenance Fill

Paragraph 4.a cites a "no net loss" requirement and mandates that all fill ensures no loss of shoreline ecological functions, but this standard is misapplied to historically filled properties. The *Chelan Basin* decision implies that pre-December 1969 fills, having existed for decades, are part of the ecological baseline at the SMP's adoption. The court's concurrence further notes their integration into the current landscape, suggesting that maintenance fill sustains—rather than impairs - this status quo. Furthermore, per **WAC 173-26 and 173-27**, "no net loss" applies to new development impacts, not the maintenance of existing, legally established conditions. The code implies that the "no net loss" standard for maintenance is met by preventing existing conditions

from further deterioration. Applying the same "no net loss" standard for new development to maintenance fill imposes an unreasonable burden that conflicts with the Savings Clause and balanced approach for protecting single family residential use. The baseline for "no net loss" should be the property's functional condition and elevation relative to sea level at the time of development, including existing fill, ensuring maintenance is not penalized as an ecological impact.

---

7. Economic and Ecological Consequences

With *Chelan Basin* the court recognized the legislature's concern that without the Savings Clause, "abatement of thousands of properties" could destabilize economic activity and property values. The draft SMP's restrictions revive this risk by prohibiting maintenance fill, leading to flooding, erosion, and declining property values in Island County. This economic harm extends to shoreline communities reliant on stable properties for tax revenue and economic vitality.

Ecologically, the loss of maintained fills will destabilize shorelines, increase erosion and sediment disruption, and pollute our waters by overtaking homes, septic systems, utilities, and roads - outcomes the SMP aims to prevent. Allowing maintenance fill aligns with the SMA's balanced approach, protecting both property rights and ecological functions against sea level rise.

---

8. Summary Objections to Paragraphs 2, 3, and 4.a

A. Paragraph 2: Fill in Flood Hazard Areas

The prohibition on fill in flood hazard areas is too restrictive, failing to account for pre-1969 fills protected under RCW 90.58.270 and potentially other legally filled property after that time. It risks their inundation by blocking maintenance which contradicts legislative protection as in *Chelan Basin* and the SMA.

B. Paragraph 3: Limits on Grading and Filling

The narrow allowances for filling ignore the maintenance needs of historically filled properties, violating their protected status with *Chelan Basin* and the SMA's intent to support existing uses.

C. Paragraph 4.a: "No Net Loss" Requirement

Applying "no net loss" to maintenance fill on pre-1969 properties is legally unsound, as these fills are baseline conditions and functions, not new impacts. This standard undermines the Savings Clause and imposes an impossible hurdle for compliance for all shoreline properties.

---

9. Proposed Solutions

To address these flaws, I urge the Department and Island County to revise **Section 17.05A.110.D** as follows:

- **Define Key Terms:**
    - **Historically Filled Property:** at a minimum, shoreline properties developed before December 4, 1969, protected under RCW 90.58.270, and also consider including legally filled properties in Island County for a time thereafter (such as 1972 with the SMA or further yet).
    - **Maintenance Fill:** Fill that preserves relative elevation function of a property with respect to sea level when it was developed, adjusting for the ability to protect from anticipated sea level rise, without expanding the footprint or expansion waterward of the OHWM (unless otherwise permitted).
- **Exempt Maintenance Fill:** Permit Maintenance Fill on Historically Filled Properties without the "no net loss" requirement (paragraph 4.a) or flood hazard prohibitions (paragraph 2), consistent with the Savings Clause and maintenance rights afforded other uses.
- **Broaden Grading and Filling Rules:** Amend paragraph 3 to allow reasonable filling for the upkeep of Historically Filled Properties, per **WAC 173-27-080** (maintenance of nonconforming developments).
- **Adjust the "No Net Loss" Baseline:** Define the baseline for Historically Filled Properties as their functional elevation conditions as historically filled, including existing fill, and allowing adjustment for anticipated sea level rise - so maintenance fill is not treated as new development.

These revisions would ensure the SMP honors state law, judicial precedent, and the SMA's mandate for balanced ecological, economic, and use objectives we value in Island County.

Conclusion

The draft SMP's fill restrictions jeopardize historically filled properties by disregarding the Savings Clause, *Chelan Basin Conservancy v. GBI Holding Co.*, and multiple State and County provisions. These regulations violate the SMA's intent by proposing to take shoreline property over time, instead of adopting a balanced approach. Without changes, these rules will hinder – if not preclude - adaptation to sea level rise. The SMP as drafted, will destabilize property values and cause economic and ecological harm – the very outcomes the State and County have sought to avoid.

On behalf of thousands of shoreline property owners, I respectfully request that the Department reject paragraphs 2, 3, and 4.a as drafted and direct Island County to adopt the proposed solutions. Please feel free to contact me to discuss this further.

Sincerely,
Tom Opdycke

Shoreline Property Owner & South Whidbey Shoreline Group Member
Island County, Washington

From: FLORES, HUGO (DNR)
To: Barney, Stephanie (ECY)
Cc: Stote, Alex (DNR); Harbison, Cynthia (DNR)
Subject: Island County SMP Comments
Date: Monday, March 31, 2025 4:10:32 PM
Attachments: Outlook-small snip.png
SMPLetterISCO.docx

Hello Stephanie,

I am including comments for the Island County SMP. Let me know if you have questions.

Hugo

Hugo Flores, MES
SMA-GMA-HARBOR AREAS
Aquatic Resources Division
Washington State Department of Natural Resources
360-764-9413
hugo.flores@dnr.wa.gov **www.dnr.wa.gov**

March 31, 2025

Stephanie Barney
RE: Island County Shoreline Master Program Periodic Review Comments

Dear: Stephanie,

The Department of Natural Resources (DNR) appreciates the opportunity to comment on the Island County Shoreline Master Program Periodic Review. The Washington State Legislature designated DNR as the manager of 2.6 million acres of state-owned aquatic lands (SOALs). The Department of Natural Resources' mission is to manage, sustain, and protect the health and productivity of these lands to meet the needs of present and future generations. DNR is required to provide a balance of public benefits that include encouraging direct public use and access, fostering water-dependent uses, ensuring environmental protection and utilization of renewable resources, and income generation when compatible with the above-mentioned benefits (RCW 79.105.030). State-owned aquatic lands fall under the Shoreline Management Act (SMA) jurisdiction and are regulated under local shoreline master programs.
As a steward of these lands, DNR coordinates our management goals with local jurisdictions' regulatory activities to avoid potential inconsistencies over the use of state-owned aquatic lands. I am including a table with comments from DNR's staff. If you have questions, you may contact me at hugo.flores@dnr.gov.wa

Sincerely,
Hugo Flores
SMA/GMA Coordinator

Location	Text	Comment	Suggested Language
Chapter 17.05A.090	Shoreline use and development regulations. A. General shoreline development standards	DNR would suggest adding language identifying presence and/or location of state-owned lands (SOALs). This would allow the Department to initiate consultations for potential projects on SOALs before applicant invest resources and time to finalize the project.	Consult with the Washington State Department of Natural Resources/Aquatic Resources Division for the existence and/or location of state-owned aquatic lands at the project onset.
Chapter 17.05A. 120	Shorelines of Statewide Significance	DNR is developing prioritization and monitoring plans for kelp and eelgrass conservation under RCW 79.135.440. The goal is to conserve 10,000 acres of native kelp forests and eelgrass meadows by 2040.	Consider DNR's Kelp and Eelgrass Health and Conservation Plan.

From: Tom Opdycke
To: Barney, Stephanie (ECY)
Cc: Thompson, Brad
Subject: Draft SMP Comment
Date: Monday, March 31, 2025 4:57:24 PM
Attachments: 2025-03-31 Draft SMP - Whole - Final.pdf

External Email

Dear Stephanie,
Please find another comment from me on the Island County Draft SMP attached.
Thank you!

- Tom Opdycke

Re: Island County Draft Shoreline Management Plan

To the Washington State Department of Ecology,
Shoreline and Environmental Assistance Program,
Re: Public Comments on Island County Draft Shoreline Master Program (Ordinance No. C-13-24, PLG-004-24)

Introduction

Dear Department of Ecology Review Team,

As a shoreline property owner in Island County, I am writing to express my concerns regarding the Draft Shoreline Master Program (SMP) submitted under Ordinance No. C-13-24, PLG-004-24. My family and I have been stewards of our shoreline property for nearly 60 years, valuing its natural beauty while ensuring its viability as a home. We support the ecological protection goals of the Shoreline Management Act. We, along with many other shoreline owners are troubled by how the SMP proposes a large number of provisions that exceed state law. The sum of these provisions threaten our ability to protect our property from erosion, tidal action, and sea level rise—projected by NOAA to increase approximately 3 feet by 2100. Many of these restrictions, particularly those affecting historically filled properties, conflict with legal protections under the **Savings Clause (RCW 90.58.270)** and the Washington Supreme Court's ruling in *Chelan Basin Conservancy v. GBI Holding Co.* (2018). The cumulative impact of these measures will leave shoreline owners without viable means to safeguard our homes.

We ask you to assess the Draft SMP's overall effect and ensure it aligns with Washington law's balance of ecological and property interests before approval. Furthermore, we urge you to ask Island County to demonstrate to the Department of Ecology and county shoreline owners - the upgrade path it enables for us to protect and steward shoreline properties from long-term projected sea level rise, particularly for historically filled properties. If there is such an upgrade path, is it practical and feasible?

The Shoreline Management Act, as outlined in RCW 90.58.020, establishes a cooperative framework to promote "all reasonable and appropriate uses" of shorelines—including private property development—while protecting natural systems. RCW 90.58.100(6) further mandates that SMPs prioritize "effective and timely" protection for single-family residences, especially those occupied before January 1, 1992, against shoreline erosion. However, the Draft SMP undermines this balance with overly restrictive measures. For example, Section 17.05A.110.A.5.f/e(iii) limits bulkhead heights to one foot above extreme high water, disregarding future sea level rise and increasing flood risk. Section 17.05A.110.A.3.a(ii) prohibits enlarging replacement bulkheads, even when needed to address rising seas, and Section 17.05A.110.A.3.c mandates retreat to a new ordinary high-water mark (OHWM) when structures deteriorate, reducing usable land. These

provisions conflict with state regulations like WAC 173-26-231(3)(a)(iii)(B), which permits structural stabilization with geotechnical justification, and WAC 173-27-040(2)(c), which eases permitting for "normal protective bulkheads."

A critical issue is the Draft SMP's treatment of properties historically filled before the SMA's enactment, a common situation in Island County. The **Savings Clause (RCW 90.58.270)** explicitly protects fills and structures placed in navigable waters before December 4, 1969, from new regulatory burdens, provided they were lawful at the time. The Washington Supreme Court's decision in *Chelan Basin Conservancy v. GBI Holding Co.* (2018) reinforced this safeguard, ruling that such pre-1969 fills are exempt from public trust challenges and cannot face retroactive restrictions or removal mandates. These properties, often elevated above the OHWM and floodplain decades ago, are shielded from policies that would force ecological reclamation through inundation. Yet, the Draft SMP ignores these protections. Section 17.05A.110.A.1.f bans waterward fill outright, and Section 17.05A.110.D.2 prohibits fill in flood hazard areas except for restoration or minimal public access, effectively blocking maintenance or adaptation—like FEMA-recommended elevation strategies supported by WAC 173-158-076. This overreach not only violates the Savings Clause and *Chelan Basin* precedent but also threatens the long-term viability of these properties, raising concerns about regulatory takings.

To substantiate these concerns, I've attached three exhibits following this letter:

- **Exhibit A:** Provides legal context for convenience, and which I am sure the DOE is already aware, referencing RCW 90.58 provisions, WAC 173-26-186(8), and broader takings principles to highlight state law's balanced intent and supplemented by the Savings Clause and *Chelan Basin* protections for historical fills.
- **Exhibit B:** Compares Draft SMP provisions to state regulations, showing where local rules overreach, misaligning with state flexibility and the legal safeguards – at least for pre-1969 properties, if not also properties developed at a later date.
- **Exhibit C:** Lists specific Draft SMP restrictions (e.g., fill bans, habitat requirements) and analyzes their excessiveness compared to state law, proposing solutions to respect historical property rights.

Additionally, the Draft SMP's permitting process imposes undue burdens. Section 17.05A.110 restricts proactive defenses against gradual threats like sea level rise. **Section 17.05A.095 requires a strict alternatives hierarchy and "minimum necessary" standard**, potentially ruling out effective long-term solutions. **Section 17.05A.090.B.3 demands financial surety for mitigation**—a cost not required by state law—disproportionately impacting homeowners and diverting funds from quality mitigation. These hurdles contrast with WAC 173-26-186(5) and (8), which prioritize property rights and guard against unconstitutional takings.

We seek not unchecked development but a fair opportunity to protect our homes. Shoreline properties are integral to Island County's way of life, tax base, and economy, and losing them to overregulation would harm ecology, families, and the community. The exhibits detail our concerns, but here are important revisions to align the Draft SMP with state law, including the Savings Clause and *Chelan Basin*, for example:

- **Flexible Bulkhead Heights:** Adjust Section 17.05A.110.A.5.fe(iii) to allow heights based on NOAA projections, with geotechnical oversight.
- **Reasonable Upgrades:** Amend Section 17.05A.110.A.3.a(ii) to permit enlarging replacements when justified.
- **Maintain Current Positions:** Revise Section 17.05A.110.A.3.c to allow stabilization at original locations unless ecological harm is severe.
- **Permit Fill for Protection:** Modify Sections 17.05A.110.A.1.f and 17.05A.110.D.2 to allow fill for elevation on historically filled properties.
- **Simplify Permitting:** Replace "minimum necessary" with "appropriate to the need" in Section 17.05A.095.D/E and eliminate bonding in Section 17.05A.090.B.3.

As shoreline stewards, we share your commitment to a healthy environment and ask for collaboration with Island County to refine this SMP. The Savings Clause, *Chelan Basin*, and the Attorney General's guidance in WAC 173-26-186(8) offer a path to balance nature and property rights. Please direct Island County to revise the Draft SMP accordingly before approval. We welcome further discussion to ensure a positive outcome for our shorelines and community.

Sincerely,
Tom Opdycke

Island County Shoreline Property Owner and Member SWSG

Exhibit A: Background - Washington State Law Designed to Balance Ecology and Property Rights

Washington state law, through the **Shoreline Management Act (SMA, RCW 90.58)** and related provisions in the **Washington Administrative Code (WAC 173-26 and WAC 173-27)**, is designed to prevent regulatory takings by enabling shoreline property owners to adapt to threats such as sea level rise, erosion, and flooding, while carefully balancing these rights with ecological considerations. This balance is further reinforced by the **Savings Clause (RCW 90.58.270)** and judicial precedent, notably the Washington Supreme Court's decision in *Chelan Basin Conservancy v. GBI Holding Co.* (2018), which protect historically filled properties developed prior to December 4, 1969. Below is a concise list of key provisions that safeguard owners' abilities to protect their properties, illustrating the state's intended equilibrium in contrast to certain overly restrictive elements within the **Island County Draft SMP**.

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1. RCW 90.58.100(6) - Preference for Protecting Single-Family Residences

- **Citation:** RCW 90.58.100(6)
- **Text:** "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."
- **Impact:** This provision mandates that SMPs prioritize the protection of single-family homes, particularly those occupied before 1992, against erosion. It requires "effective and timely" protection and a permit preference, countering restrictive local rules that might delay or deny such measures. This serves as a shield against regulatory takings by ensuring owners can safeguard their homes without undue burden.
    - **Savings Clause and Chelan Basin Affirmation:** The **Savings Clause (RCW 90.58.270)** enhances this protection by exempting structures and fills placed before December 4, 1969, from new SMA regulatory burdens, provided they were lawful at the time. In *Chelan Basin Conservancy v. GBI Holding Co.* (2018), the Washington Supreme Court upheld this protection, ruling that pre-1969 fills are shielded from public trust challenges. This precedent ensures that historically filled properties in Island County, often tied to single-family residences, cannot be retroactively restricted by the Draft SMP, aligning with the state's intent to balance property rights and ecological goals.

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2. RCW 90.58.020 - Balanced Use of Shorelines

- **Citation:** RCW 90.58.020
- **Text:** "The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources... This chapter represents a cooperative program... to encourage the development and implementation of local government programs which will foster and regulate the following uses of shorelines when they are consistent with the policy of this chapter: Private property development, public access, recreation, and the protection of natural systems... It is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses."
- **Impact:** This foundational policy emphasizes a balance between ecological protection and "reasonable and appropriate uses," explicitly including private property development. It prevents regulatory overreach by ensuring SMPs support adaptation measures like stabilization or fill.
    - **Savings Clause and Chelan Basin Affirmation:** The Savings Clause and *Chelan Basin* decision reinforce this balance by protecting pre-1969 developments as part of the "reasonable and appropriate uses" contemplated by the SMA. This legal framework ensures that historically filled properties remain viable, countering Draft SMP restrictions that might otherwise undermine state law.

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3. WAC 173-26-231(3)(a)(iii)(B) - Allowance for Structural Shoreline Stabilization

- **Citation:** WAC 173-26-231(3)(a)(iii)(B)
- **Text:** "New structural stabilization measures shall not be allowed except when necessity is demonstrated... To protect existing primary structures: New or enlarged structural shoreline stabilization measures for an existing primary structure, including residences, should not be allowed unless there is conclusive evidence, documented by a geotechnical analysis, that the structure is in danger from shoreline erosion... The erosion control structure will not result in a net loss of shoreline ecological functions."
- **Impact:** This provision permits structural stabilization (e.g., bulkheads) when necessary to protect existing homes, requiring only a geotechnical analysis. It balances ecological protection with property rights by allowing robust solutions when non-structural options fail.
    - **Savings Clause and Chelan Basin Affirmation:** The Savings Clause ensures that pre-1969 stabilization structures are not subject to new regulatory burdens, as affirmed in *Chelan Basin*. This protection prevents the Draft SMP from imposing restrictive measures on historically filled properties, aligning with the state's allowance for practical shoreline stabilization.

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4. WAC 173-27-040(2)(c) - Exemption for Normal Protective Bulkheads

- **Citation:** WAC 173-27-040(2)(c)
- **Text:** "Construction of the normal protective bulkhead common to single-family residences. A 'normal protective' bulkhead includes those structural and nonstructural developments installed at or near, and parallel to, the ordinary high water mark for the sole purpose of protecting an existing single-family residence and appurtenant structures from loss or damage by erosion..."
- **Impact:** This exemption streamlines protection for single-family homes by waiving substantial development permits for "normal protective bulkheads," reducing regulatory hurdles and preserving property rights.
    - **Savings Clause and Chelan Basin Affirmation:** For pre-1969 bulkheads, the Savings Clause and *Chelan Basin* provide additional protection, ensuring these structures can be maintained without interference from new regulations. This supports timely action against erosion, countering Draft SMP overreach.

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5. WAC 173-26-186(5) - Consideration of Property Rights in SMP Development

- **Citation:** WAC 173-26-186(5)
- **Text:** "Local master programs shall include policies and regulations to achieve no net loss of ecological functions while allowing for reasonable development and use of the shoreline... Local governments shall consider... the rights of private property owners to use, develop, and enjoy their property consistent with the policies of this chapter."
- **Impact:** This mandates that SMPs balance ecological goals with property rights, ensuring regulations do not unduly restrict owners' ability to protect their land.
    - **Savings Clause and Chelan Basin Addition:** The Savings Clause and *Chelan Basin* reinforce this by protecting pre-1969 developments from new restrictions, ensuring that historically filled properties in Island County are not disproportionately burdened by the Draft SMP.

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6. WAC 173-158-076 - Fill for Flood Protection in Floodways

- **Citation:** WAC 173-158-076
- **Text:** "Local governments with regulatory authority shall allow the elevation of existing residential structures located in floodways to the base flood elevation when the elevation does not result in an increase in flood levels... Any such elevation must meet requirements of the National Flood Insurance Program."
- **Impact:** This permits fill to elevate homes in floodways, ensuring protection against flooding and sea level rise without increasing flood risk elsewhere.

- **Savings Clause and Chelan Basin Addition:** The Savings Clause ensures that pre-1969 fills can be maintained or adapted without new restrictions, as affirmed in *Chelan Basin*. This counters the Draft SMP's restrictive stance on fill in flood hazard areas.

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7. WAC 173-26-186(8) - Preventing Unconstitutional Takings in SMPs

- **Citation:** WAC 173-26-186(8)
- **Text:** "Local governments should ensure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights... Shoreline master programs should address property rights while achieving ecological goals, potentially including measures like land acquisition, easements, or incentives."
- **Impact:** This mandates that SMPs prevent unconstitutional takings by allowing reasonable development alongside ecological goals.
    - **Savings Clause and Chelan Basin Addition:** The Savings Clause and *Chelan Basin* directly support this by shielding pre-1969 fills from regulatory overreach, ensuring that the Draft SMP's restrictive measures do not violate state law or property rights.

These State Laws Designed to Preserve a Path for Protecting Property

- **Mandate Protection:** RCW 90.58.100(6) and WAC 173-26-231(3)(a)(iii)(B) require SMPs to enable property protection, prioritizing single-family homes and allowing structural solutions when justified. The Savings Clause and *Chelan Basin* extend this to pre-1969 developments.
- **Ensure Flexibility:** WAC 173-27-040(2)(c) and WAC 173-158-076 reduce regulatory barriers, permitting timely measures like bulkheads and fill. The Savings Clause and *Chelan Basin* protect pre-1969 structures from new restrictions.
- **Prevent Regulatory Takings:** RCW 90.58.020, WAC 173-26-186(5), and WAC 173-26-186(8) embed property rights into shoreline management, reinforced by the Savings Clause and *Chelan Basin* protections for historical developments.
- **Support Adaptation:** These laws enable owners to address erosion, flooding, and sea level rise, aligning with FEMA standards. The Savings Clause ensures pre-1969 fills can be maintained, a right the Draft SMP must respect.

Island County Draft SMP Overreaches, Overburdens Property Owners

- **Restrictive Provisions:** Rules like the "minimum necessary" standard, rigid alternatives hierarchies, and fill bans (e.g., ICC 17.05A.110.D) hinder adaptation, clashing with state law's balanced protections and the Savings Clause's consent for pre-1969 fills.

- **Draft SMP Seeks Regulatory Taking Over Time:** State law, via WAC 173-26-186(8) and the Savings Clause, safeguards against takings, yet the Draft SMP's restrictions undermine this by limiting maintenance and adaptation options.
- **SMP Overreach:** Provisions like ICC 17.05A.110.D and ICC 17.05A.095.D/E impose excessive burdens (e.g., alternatives analyses, fill bans), exceeding the state's balanced intent and ignoring *Chelan Basin* protections.

Conclusion

The Island County Draft SMP's restrictive provisions conflict with Washington state law's balanced approach, particularly for historically filled properties protected under the Savings Clause and *Chelan Basin*. These legal safeguards ensure property owners can maintain and adapt their properties without undue regulatory burdens, preventing unconstitutional takings. The Draft SMP must align with this framework to honor both ecological goals and property rights.

Exhibit B: Comparing Analogous State & County Regulations

Draft SMP is Unbalanced - Excessively Restricts Owners Compared to Washington State Code and Shoreline Management Act

Below is a table comparing some relevant WAC provisions with analogous Draft SMP regulations, highlighting where the Draft SMP is more restrictive, and proposes changes. The Draft SMP's additional restrictions will lead to property loss over time due to erosion, sea level rise, storm impacts, and inundation. This conflicts with the Shoreline Management Act's intent to balance ecological protection with property owners' rights by failing to enable timely and effective protection as required by state law.

Regulation	WAC Reg	Draft SMP Reg	Why Problematic	Proposed Change
New development and shoreline stabilization	WAC 173-26-231 (3)(a)(iii)(A): "New development **should** be located and designed to avoid the need for future shoreline stabilization **to the extent feasible**." (WAC 173-26-231)	Section 17.05A.100 K.15: "New residential development **shall** be designed and built in a manner that avoids the need for structural shore armoring... over the life of the development." (Draft SMP, page 114)	The Draft SMP uses "**shall**" instead of "**should**," eliminating the flexibility of "**to the extent feasible**." This mandatory language seeks to prevent necessary adaptations, especially as sea level rise accelerates, reducing and/or eliminating property owner options.	Revise to use "should" and include "to the extent feasible" to **align with WAC, allowing for practical considerations in response to changing conditions**.
New development and flood hazard reduction	WAC 173-26-221 (3)(c)(i): "Development in flood plains **should** not significantly or cumulatively increase flood hazards or be	Section 17.05A.100 K.15: "New residential development **shall** be designed and built in a manner that **avoids the need for**... flood hazard reduction	The Draft SMP imposes a mandatory requirement to avoid the need for flood hazard reduction measures, which is not	**Align with WAC** by requiring that development does not increase flood hazards, **rather than mandating avoidance of**

	inconsistent with an applicable comprehensive flood hazard management plan." (WAC 173-26-221)	over the life of the development." (from attachment: Draft SMP page 114)	explicitly required by the WAC. This restricts future options for protecting properties against flooding exacerbated by sea level rise, eliminating options for adaptation.	**measures**, to allow for necessary future protections.
Preference for permit issuance for older residences	RCW 90.58.100 (6): "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." (RCW 90.58.100)	No specific provision found in Draft SMP.	Sections like 17.05A.130 (Permits and Exemptions) and 17.05A.110.A (Shoreline Stabilization) apply the same permitting requirements to all properties, without distinguishing pre-1992 residences for preferential treatment. This uniformity contrasts with the RCW's intent to facilitate protection for older homes. The absence of this preference in the Draft SMP make it harder for owners of residences occupied before	**Add a provision explicitly providing preference for permit issuance for measures protecting residences occupied prior to January 1, 1992, as required by RCW, ensuring alignment with state law**. This could be a new subsection in 17.05A.110A (Shoreline stabilization) or 17.05A.130 (Permits), stating: "A preference shall be provided for permit issuance for shoreline protection measures, including structural and non-structural methods, to

			January 1, 1992, to obtain permits for necessary shoreline protection, probably leading to property loss over time due to erosion and sea level rise.	protect single-family residences occupied prior to January 1, 1992, provided the proposed measure is designed to minimize harm to the shoreline natural environment, in accordance with RCW 90.58.100(6)." This ensures compliance with state law and facilitates adaptation for older homes."
Requirements for shoreline stabilization applications	WAC 173-26-231 (3)(a)(iii)(B)(I): "New structural shoreline stabilization measures shall not be allowed except when necessity is demonstrated in the following manner: To protect existing primary structures: When all of the conditions below apply: Erosion is not being caused by upland conditions, such as the loss of vegetation and	Section 17.05A.110.A.1: "Shoreline stabilization may be permitted only when the application demonstrates all of the following, based on a geotechnical analysis and biological site assessment: a. The erosion creating the need for shoreline stabilization is not caused by upland conditions on the project site, such as the loss of vegetation or modification of	**The Draft SMP requires both a geotechnical analysis and a biological site assessment, adding an extra layer of requirement not explicitly mandated by the WAC**, which only requires a geotechnical report. **It also specifies a priority order for alternatives**, potentially limiting flexibility. This	**Align with WAC** by requiring **only a geotechnical report** for demonstrating necessity and considering alternative methods **without prescribing a strict priority order**, to provide flexibility and reduce burden on applicants.

	drainage; Nonstructural measures, such as placing the development further from the shoreline, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient; The need to protect primary structures from damage due to erosion is demonstrated through a geotechnical report." (WAC 173-26-231)	drainage; b. The proposed shoreline stabilization is designed to minimize interruption of fish and wildlife habitats through the use of the least impacting alternative type of shoreline stabilization practicable per Alternatives Analysis in ICC 17.05A.095.D..." (Draft SMP, pages relevant to 17.05A.110)	could increase costs and complexity, restricting owners' ability to adapt to erosion and sea level rise.	

Exhibit C: Key Draft SMP Restrictions on Adaptations

Draft SMP Denies Owners Viable Protection From Sea Level Rise

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
1. Height Limit on Bulkheads and Shoreline Stabilization	ICC 17.05A.110.A.5.fe(iii) (p. 129-130)	"The maximum height of the proposed bulkhead is no more than one (1) foot above the elevation of extreme high water on tidal waters... except in areas subject to coastal flooding where the maximum height **shall** be no greater than necessary to resist tide, wave and floodwater action during a 100-year storm event."	Excessive vs. State Law: Caps bulkhead height, ignoring future sea level rise, risking overtopping and flooding by 2100. Conflicts with WAC 173-26-231(3)(a)(iii), which protects homes from erosion. Use of shall.	Allow bulkheads to rise based on NOAA projections, with analysis and implementation for minimal ecological impact, e.g., up to 2 feet above current levels by 2100. Use “should” vs. “shall”.
2. No Size Increase for Replacements	ICC 17.05A.110.A.3.a(ii) (p. 126)	"The replacement performs the same stabilization function as the existing structure and does not require additions to or increases in size."	Excessive vs. State Law: Prevents enlarging, elevating, or adjusting bulkhead designs, which limits or eliminates protection as seas rise. Conflicts with SMP Handbook's flexibility for adaptation.	Align with State Law prioritizing flexible protection and ecological function over blind prohibitions. Permit size increases and/or design changes for replacements, supported by analysis, to

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
				enhance protection against sea level rise, with ecological safeguards.
3. Retreat to New OHWM	ICC 17.05A.110.A.3.c (p. 127)	"When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead or soft shore stabilization **must** be located at or near the actual OHWM."	Excessive vs. State Law: Forces landward retreat, reducing usable land, conflicting with SMA's balanced approach. Uses “must”.	Allow shoreline stabilization to stay at original location or potentially any new location with respect to OHWM, with appropriate mitigation to minimize ecological harm. Allow discretion - “should” vs. “must”
4. Waterward Fill Prohibition	ICC 17.05A.110.A.1.f (p. 121)	"Shoreline stabilization **will not** be used for the direct or indirect purpose of creating land waterward of the OHWM."	Excessive vs. State Law: An absolute ban may block fill for an ecologically sound elevation solution, a FEMA-recommended strategy, leaving properties at flood risk. Conflicts with WAC 173-27, allowing home protection exemptions. Uses absolute of “will not”.	Permit fill for SLR adaptation with geotechnical analysis, ensuring minimal environmental damage, aligning with WAC 173-26-211(2)(c).

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
5. Minimum Necessary Fill	ICC 17.05A.090.A.5 (p. 40)	"Land clearing, grading, filling, or alteration of natural drainage features and landforms **shall** be limited to the minimum necessary for development."	Excessive vs. State Law: Limits fill to essentials, does not explicitly allow elevation for SLR adaptation, conflicting with FEMA guidelines and WAC 173-26-211(2)(c)'s balance. Uses “shall”	Allow increased fill for SLR adaptation, with geotechnical analysis, for minimal ecological impact. Use “should” language to enable flexible solutions
6. Flood Hazard Reduction	ICC 17.05A.090.N	No provision to use fill for qualifying areas (such as historically filled residential) as part of non-structural method solution.	Blocks fill for land elevation, a FEMA-recommended strategy, leaving properties at flood risk. Conflicts with WAC 173-27, allowing home protection exemptions.	Permit fill for SLR adaptation with geotechnical analysis, ensuring minimal environmental damage, aligning with WAC 173-26-211(2)(c).
7. Fill or Excavation in Flood Hazard Areas	ICC 17.05A.110.D.2 (p. 139)	Fill or excavation **shall** be prohibited in flood hazard areas identified in ICC 17.05A.090.N, except when: a. Done in conjunction with an ecological restoration project; or b. Necessary to provide public access or support a water-dependent use where the amount of fill is the minimum	The Draft SMP’s near-total ban on fill in flood hazard areas, except for restoration or minimal public access/water-dependent uses, exceeds state law. WAC 173-26-221(3)(c) and WAC 173-158-076 permit fill for flood protection (e.g., elevating homes) if it complies with NFIP and doesn’t	Align with State Law and FEMA by expanding use cases to include fill for residential protection and balanced adaptation.

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
		necessary to provide the public access or support the water-dependent use and where adverse impacts to ecological functions can be mitigated to ensure no net loss.	worsen flooding, while WAC 173-26-231(3)(c) allows broader uses with mitigation. The Draft SMP's restriction to only two exceptions excludes fill for residential protection, a FEMA-supported strategy, going beyond state law's allowance for balanced adaptation. Many shoreline properties and homes are built on historically filled lots, and prohibition of fill in these areas seeks to reclaim ecological function that was present long before these properties and homes were established.	
8. No Stabilization on Unoccupied Lots	ICC 17.05A.110.A.2.e (p. 126)	"Construction of shoreline stabilization to protect a platted lot where no primary use or structure presently exists shall be prohibited except as provided in	Excessive vs. State Law. Prohibition seeks to take land not already developed. Delays protection until damage is imminent, increasing risk for undeveloped and neighboring	Eliminate this rule and treat like other platted property. Allow new stabilization on high-risk unoccupied lots, based on geocoastal analysis, with minimal

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
		section 17.05A 110.A.3.G.(vi)."	developed lots as seas rise. Conflicts with SMP Handbook's guidance for proactive measures.	ecological impact, supporting long-term adaptation.
9. Habitat Loss Requirement	ICC 17.05A.110.A.3.f (p. 123-124)	"Applications for new shoreline stabilization shall address intertidal and shoreline habitat loss which may arise due to permanent structures limiting the ability of the ordinary high-water mark and shoreline to migrate landward in response to sea level rise."	Excessive vs. State Law. In some cases, this could presume to try to gain mitigation of a loss of future gains in habitat that might occur via regulations that forced inundation of property. Adds cost and complexity, deterring adaptations by prioritizing habitat over property, conflicting with WAC 173-26-211(2)(c)'s balance.	Simplify habitat assessments, allowing for current use of property and opportunity for stabilization with concurrent mitigation, like habitat enhancement, to balance ecology and protection. Do not mandate potential gains in ecological function through sea level rise.
10. Imminence for Stabilization	ICC 17.05A.110.A.3.c(v) (p. 123-124)	" Demonstrate a significant possibility that the primary structure or appurtenance will be damaged <u>within three (3) years</u> as a result of shoreline erosion in the absence of such hard armoring measures, or	Delays action until damage is near, too late for gradual SLR, increasing costs and risks. May preclude good and proactive long-term solutions that have long timelines to plan, approve, and implement.	Add provision that allows permitting for stabilization based on long-term risk using NOAA projections; giving allowing more time to plan and implement long-term and shore-

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
		where waiting until the need is that immediate would foreclose the opportunity to use measures that avoid impacts on ecological functions."		friendly preemptive measures before damage occurs.
11. Demonstration of Need **Alternatives Analysis**	ICC 17.05A.095.D (p. 88-89) ICC 17.05A.095.E (p. 89)	When required, a demonstration of need shall address the following items... ... 5. The proposal is the **minimum necessary** to protect the primary structure or appurtenance consistent with the requirements of ICC 17.05A.110.A.1.b and 17.05A.095.E. 1. In order of priority from least to greatest impact, subject to site-specific conditions, alternatives include but are not limited to...	These regulations presume a strict hierarchy and impose a "minimum necessary" limit or standard, which exceed WAC and could exclude viable solutions like bulkheads or fill needed for long-term resilience against sea level rise. This rigidity exceeds WAC's intent, potentially threatening property by delaying or denying robust protections.	For 095.D: Replace "minimum necessary" with "appropriate to the need," and allow alternatives to be evaluated without a strict order, focusing on site-specific feasibility per WAC 173-26-231(3)(a)(iii)(B). For 095.E: Remove the mandatory tie to 095.D's "minimum necessary" standard, requiring only that alternatives be considered and justified, and make sea level rise analysis optional unless site-specific conditions

Regulation	Citation	Exact Quote	Why Problematic	Proposed Change
				warrant it, aligning with WAC's flexibility.
12. Requirement for Owner to Provide Financial Surety or Bond for Mitigation	ICC 17.05A.090.B.3 (p. 42)	"The county shall require the applicant or owner to post a bond or provide other financial surety equal to the estimated cost of the mitigation or restoration in order to ensure the mitigation or restoration is carried out successfully. The bond or surety shall be released to the applicant upon completion of the mitigation or restoration activity and any required monitoring."	The bonding requirement exceeds State Law's requirements. It adds significant financial burden and disproportionately impacts smaller projects or homeowners, even if their projects have minimal impact. Potentially discouraging necessary adaptation projects, and robs capital for mitigation, especially for smaller property owners.	Exempt for small projects and/or allow alternative forms of financial assurance. Use the county assessor existing enforcement tools, such as liens, to ensure mitigation is completed without upfront bonds.

Specific Draft SMP Regulation vs. Washington State Law

Below, we analyze each regulation in this exhibit to determine whether it is mandated by Washington state law (specifically the Shoreline Management Act, RCW 90.58, and related WAC provisions, such as WAC 173-26 and WAC 173-27) or if each regulation goes beyond state requirements. The analysis considers whether the Draft SMP's provisions exceed the minimum standards set by state law, potentially creating existential threats to property due to sea level rise by limiting adaptation options through regulation. We'll address each Draft regulation, comparing it to state mandates.

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1. Height Limit on Bulkheads and Shoreline Stabilization

- **Draft SMP Citation**: ICC 17.05A.110.A.5.fe(iii) (p. 129-130)
- **Exact Quote**: "The maximum height of the proposed bulkhead is no more than one (1) foot above the elevation of extreme high water on tidal waters… except in areas subject to coastal flooding where the maximum height shall be no greater than necessary to resist tide, wave and floodwater action during a 100-year storm event."
- **State Law**:
    - **RCW 90.58**: The Shoreline Management Act does not specify exact height limits for bulkheads or shoreline stabilization structures. RCW 90.58.100(6) requires standards to protect single-family residences from shoreline erosion, emphasizing "effective and timely protection" with minimal environmental harm, but leaves specifics to local SMPs.
    - **WAC 173-26-231(3)(a)(iii)**: This section governs shoreline stabilization and states that new structural measures must avoid net loss of ecological functions and be necessary to protect primary structures, but it does not mandate a specific height limit like one foot above extreme high water. It requires geotechnical analysis to demonstrate need (WAC 173-26-231(3)(a)(iii)(B)(I)), but height is a design detail left to local discretion.
- **Analysis**: The specific height restriction of "no more than one (1) foot above the elevation of extreme high water" (with an exception for 100-year storm events) is not mandated by state law. The WAC focuses on necessity and ecological impact rather than prescribing precise dimensions. The exception for coastal flooding tied to a 100-year storm event aligns with FEMA's NFIP standards (44 CFR 60.3), which local governments often incorporate for flood protection, **but the one-foot cap outside this context is a local choice. This restriction goes beyond state law by imposing a rigid limit that doesn't account for future sea level rise projections (e.g., NOAA estimates of 1-3 feet by 2100), which undermines long-term adaptations.**
- **Conclusion**: **Not mandated by state law; excessive vs. state requirements.** The height limit is a local specification that hinder property protection as sea levels rise, beyond what the SMA or WAC requires.

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2. No Size Increase for Replacements

- **Draft SMP Citation**: ICC 17.05A.110.A.3.a(ii) (p. 126)
- **Exact Quote**: "The replacement performs the same stabilization function as the existing structure and does not require additions to or increases in size."
- **State Law**:
    - **RCW 90.58**: No specific prohibition on size increases for replacement stabilization structures. RCW 90.58.100(6) emphasizes protection of existing residences, implying flexibility for effective measures.

- **WAC 173-26-231(3)(a)(iii)(E)**: When stabilization is necessary, it must minimize ecological impacts, but there's no explicit ban on size increases for replacements. WAC 173-27-040(2)(c) exempts "normal protective bulkheads" for single-family residences from substantial development permits if they meet certain conditions (e.g., no more than 1 cubic yard of fill per foot), but this applies to exemptions, not replacements generally. Replacement is addressed under "normal repair" (WAC 173-27-040(2)(b)), allowing restoration to original configuration without mandating no size increase.

- **Analysis**: The Draft SMP's restriction that replacements "do not require additions to or increases in size" is stricter than state law. The WAC allows replacements to restore original function and doesn't prohibit size increases if justified (e.g., via geotechnical analysis showing need due to sea level rise). The SMA prioritizes protection, suggesting flexibility for adaptation. By banning size increases, the Draft SMP limits owners' ability to enhance protection against worsening conditions, exceeding the WAC's focus on ecological function over rigid dimensional constraints.

- **Conclusion**: **Not mandated by state law; excessive vs. state requirements.** This provision imposes a local limitation not required by the SMA or WAC, which threatens property resilience and viable solutions of different proportions.

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3. Retreat to New OHWM

- **Draft SMP Citation**: ICC 17.05A.110.A.3.c (p. 127)

- **Exact Quote**: "When a bulkhead has deteriorated such that an OHWM has been established by the presence and action of water landward of the bulkhead then the replacement bulkhead or soft shore stabilization must be located at or near the actual OHWM."

- **State Law**:

  - **RCW 90.58**: No requirement to relocate stabilization to a new OHWM upon deterioration. RCW 90.58.030(2)(b) defines shorelines relative to the OHWM but doesn't mandate retreat for replacements.

  - **WAC 173-26-231(3)(a)(iii)**: Does not specify relocating replacements to a new OHWM. It allows stabilization to protect existing structures if need is demonstrated (WAC 173-26-231(3)(a)(iii)(B)), focusing on ecological function rather than mandating retreat. WAC 173-27-040(2)(c) notes that replacement bulkheads should not extend waterward of the existing structure unless necessary for new footings, but this is an exemption condition, not a general rule for all replacements.

- **Analysis**: The requirement to retreat to the "actual OHWM" when a bulkhead deteriorates is a local rule not found in state law. The WAC allows replacements to maintain protection without forcing landward relocation unless ecological impacts dictate otherwise. This Draft

SMP provision seeks to reduce usable land and limit adaptation options as sea levels rise, going beyond state mandates by prioritizing shoreline migration over property protection.

- **Conclusion**: **Not mandated by state law; excessive vs. state requirements.** This forces retreat not required by the SMA or WAC, threatening property viability over time.

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4. Waterward Fill Prohibition

- **Draft SMP Citation**: ICC 17.05A.110.A.1.f (p. 121)
- **Exact Quote**: "Shoreline stabilization will not be used for the direct or indirect purpose of creating land waterward of the OHWM."
- **State Law**:
    - **RCW 90.58**: No absolute prohibition on waterward fill for stabilization. RCW 90.58.100(6) supports protection measures without banning fill.
    - **WAC 173-26-231(3)(c)**: Permits fill waterward of the OHWM for water-dependent uses, public access, cleanup, or ecological restoration, provided it minimizes ecological impacts and includes mitigation. WAC 173-27-040(2)(c) allows up to 1 cubic yard of fill per foot for "normal protective bulkheads" as an exemption, indicating fill is permissible for protection, not just land creation.
- **Analysis**: The Draft SMP's blanket prohibition on using stabilization to create land waterward of the OHWM is stricter than state law. The WAC allows fill for specific purposes, including protection, if impacts are mitigated. By banning all waterward fill (direct or indirect), the Draft SMP precludes FEMA-recommended elevation strategies (e.g., elevating land with fill), exceeding state requirements and limiting sea level rise adaptation.
- **Conclusion**: **Not mandated by state law; excessive vs. state requirements.** The absolute ban goes beyond WAC's conditional allowance, threatening property protection without regard to ecological function.

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5. Minimum Necessary Fill

- **Draft SMP Citation**: ICC 17.05A.090.A.5 (p. 40)
- **Exact Quote**: "Land clearing, grading, filling, or alteration of natural drainage features and landforms **shall** be limited to the minimum necessary for development."
- **State Law**:
    - **RCW 90.58**: No specific mandate to limit fill to the "minimum necessary." RCW 90.58.020 encourages wise use and protection but leaves details to local SMPs.
    - **WAC 173-26-231(3)(c)**: Requires fill to minimize ecological impacts and include mitigation, but doesn't mandate it be "minimum necessary" for all development.

WAC 173-26-221(3)(c)(i) advises against increasing flood hazards, implying moderation, but not a strict minimum.

- **Analysis**: The "minimum necessary" standard is a local interpretation not explicitly required by state law. The WAC focuses on ecological outcomes rather than absolute minimization, allowing flexibility for protection (e.g., FEMA's NFIP elevation standards). This Draft SMP rule could restrict fill needed for sea level rise adaptation, going beyond state mandates by prioritizing minimalism over resilience.
- **Conclusion**: **Not mandated by state law; exceeds state requirements.** The strict limitation exceeds WAC's focus on impact mitigation.

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6. Flood Hazard Reduction

- **Draft SMP Citation**: ICC 17.05A.090.N (No specific provision for fill cited in Exhibit A)
- **Exact Quote**: "No provision to use fill for qualifying areas (such as historically filled residential) as part of non-structural method solution."
- **State Law**:
    - **RCW 90.58**: No specific requirement to prohibit fill for flood hazard reduction. RCW 90.58.100(6) supports non-structural methods but doesn't exclude fill.
    - **WAC 173-26-221(3)(c)**: Encourages non-structural flood hazard reduction but allows structural measures (e.g., fill for elevation) if compliant with NFIP (WAC 173-158-076). Fill is permitted under WAC 173-26-231(3)(c) for specific purposes with mitigation.
- **Analysis**: The lack of a provision allowing fill for flood hazard reduction in historically filled areas isn't explicitly mandated by state law to be excluded. The WAC supports fill for protection if impacts are managed, aligning with FEMA standards. The Draft SMP's omission could limit adaptation options, exceeding state flexibility by not affirmatively allowing fill where appropriate.
- **Conclusion**: **Not mandated by state law; conspicuous omission vs state requirements.** State law permits fill, so the absence of provision goes beyond by restricting options.

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7. Fill or Excavation in Flood Hazard Areas

- **Draft SMP Citation**: ICC 17.05A.110.D.2 (p. 139)
- **Exact Quote**: "Fill or excavation shall be prohibited in flood hazard areas identified in ICC 17.05A.090.N, except when: a. Done in conjunction with an ecological restoration project; or b. Necessary to provide public access or support a water-dependent use where the amount of fill is the minimum necessary to provide the public access or support the water-

dependent use and where adverse impacts to ecological functions can be mitigated to ensure no net loss."

- **State Law**:
    - **RCW 90.58:** RCW 90.58.020 emphasizes flood hazard management but doesn't prohibit fill. RCW 90.58.100(6) supports protection measures for residences, implying flexibility.
    - **WAC 173-26-221(3)(c)(i):** Advises that development in flood plains should not increase flood hazards and prefers non-structural measures, but allows structural solutions (e.g., fill for elevation) if consistent with NFIP (WAC 173-158-076) and comprehensive flood plans.
    - **WAC 173-158-076:** Permits fill to elevate structures in floodways to meet NFIP base flood elevation, if it doesn't raise flood levels.
    - **WAC 173-26-231(3)(c):** Allows fill for restoration, public access, and other uses with mitigation, applicable in flood areas**.**
- **Analysis**: The Draft SMP's near-total ban on fill in flood hazard areas, except for restoration or minimal public access/water-dependent uses, exceeds state law and makes no allowance for the many properties and homes that are built on historically filled lots dating back many decades. WAC 173-26-221(3)(c) and WAC 173-158-076 permit fill for flood protection (e.g., elevating homes) if it complies with NFIP and doesn't worsen flooding, while WAC 173-26-231(3)(c) allows broader uses with mitigation. The Draft SMP's restriction to only two exceptions excludes fill for residential protection, a FEMA-supported strategy, going beyond state law's allowance for balanced adaptation.
- **Conclusion**: **Not Mandated by state law; excessive vs. state requirements.** The broad prohibition limits fill options permitted by WAC for flood protection, threatening property resilience against sea level rise and seeks to re-claim historically filled properties through forced inundation, and eliminates flexibility and excludes adaptation strategies that might otherwise be ecologically sound and preferable to other sea level rise strategies.

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8. No Stabilization on Unoccupied Lots

- **Draft SMP Citation**: ICC 17.05A.110.A.2.e (p. 126)
- **Exact Quote**: "Construction of shoreline stabilization to protect a platted lot where no primary use or structure presently exists shall be prohibited except as provided in section 17.05A 110.A.3.G.(vi)."
- **State Law Mandate**:
    - **RCW 90.58**: No prohibition on stabilization for unoccupied lots. RCW 90.58.100(6) focuses on protecting existing residences.

    - **WAC 173-26-231(3)(a)(iii)(B)**: Allows stabilization only when necessary to protect existing primary structures and no outright ban unless local conditions justify it.

- **Analysis**: The prohibition on stabilizing unoccupied lots unless specified is not required by state law. The WAC doesn't prohibit proactive measures on vacant lots. This restriction exceeds state law by limiting preemptive adaptation, and taking future property use by prohibiting any form of stabilization. It also may threaten neighboring properties through forced inundation and tidal action.
- **Conclusion**: **Exceeds state law; threatens neighboring property and seeks to take undeveloped property use by prohibiting shoreline stabilization**.

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9. Habitat Loss Requirement

- **Draft SMP Citation**: ICC 17.05A.110.A.3.f (p. 123-124)
- **Exact Quote**: "Applications for new shoreline stabilization shall address intertidal and shoreline habitat loss which may arise due to permanent structures limiting the ability of the ordinary high-water mark and shoreline to migrate landward in response to sea level rise."
- **State Law Mandate**:
    - **RCW 90.58**: Requires no net loss of ecological functions (RCW 90.58.020), but doesn't specifically mandate addressing future habitat loss from sea level rise.
    - **WAC 173-26-201(2)(c)**: Requires SMPs to ensure no net loss, including considering cumulative impacts. WAC 173-26-231(3)(a)(iii)(E) mandates minimizing ecological impacts but doesn't explicitly require assessing future habitat loss due to shoreline migration.
- **Analysis**: The requirement to address future habitat loss from sea level rise goes beyond state law's general no net loss standard. While aligned with WAC's ecological focus, the specific mandate to assess sea level rise impacts is a local addition, reflecting RCW 90.58.630 (2023 amendment requiring sea level rise consideration), but its application to all new stabilization exceeds WAC requirements. This adds complexity, potentially deterring adaptation and seems to seek mitigation through projecting ecological gains if property was otherwise unprotected from sea level rise.
- **Conclusion**: **While no net loss is in state law; Draft SMP exceeds WAC by going further to seek anticipated gains in shoreline property, ecological function, and mitigation because of prohibiting adaptations.** The sea level rise focus exceeds WAC's general standards and seeks a taking of property and ecological function through regulation.

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10. Imminence for Stabilization

- **Draft SMP Citation**: ICC 17.05A.110.A.3.c(v) (p. 123-124)

- **Exact Quote**: "Demonstrate a significant possibility that the primary structure or appurtenance will be damaged within three (3) years as a result of shoreline erosion in the absence of such hard armoring measures..."
- **State Law Mandate**:
    - **RCW 90.58**: No specific time frame for damage risk.
    - **WAC 173-26-231(3)(a)(iii)(D)**: Suggests a three-year threshold for hard armoring urgency, stating that geotechnical reports may justify immediate action if damage is likely within three years, or soft measures if less immediate.
- **Analysis**: The three-year imminence requirement mirrors WAC 173-26-231(3)(a)(iii)(D), so it's referenced in state law. There is no provision that enables proactive permitting based on NOAA predictions for sea level rise.
- **Conclusion**: **Referenced in state law; but lacks provision for more long-term proactive solutions for anticipated sea level rise.** Poses adaptation challenges since no provision for sea level rise as projected by NOAA (e.g. 2 feet by 2100).

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11. Demonstration of Need & Alternatives Analysis

Draft SMP Citation: ICC 17.05A.095.D (p. 88-89) and ICC17.05A.095.E (p. 89)

- **Exact Quote**: " Demonstration of Need. When required, a demonstration of need shall address the following items:

  ... 5. The proposal is the minimum necessary to protect the primary structure or appurtenance consistent with the requirements...

  ... In order of priority from least to greatest impact, subject to site-specific conditions, alternatives include but are not limited to:

  a. Taking no action (allow the shoreline to retreat naturally);..."
- **State Law**:
    - **RCW 90.58**: RCW 90.58.100(6) requires standards to protect residences from erosion, emphasizing "effective and timely protection" with minimal harm, but doesn't specify a "minimum necessary" standard or strict alternatives hierarchy.
    - **WAC 173-26-231(3)(a)(iii)(B):** Requires new structural stabilization to demonstrate necessity and prioritizing non-structural over structural if feasible. It does not impose a strict hierarchy.
- **Analysis**: The Draft SMP's requirement that stabilization be the "minimum necessary" and follow a strict order of alternatives from vegetation to bulkheads is more restrictive than WAC's flexibility. The Draft SMP "minimum necessary" standard, prioritized list could

exclude effective solutions by forcing the least impacting option in the short term, while precluding more substantial long-term solutions for sea level rise.

- **Conclusion**: **Imposes minimum necessary standard.** For 095.D - Replace "minimum necessary" with "appropriate to the need," and allow alternatives to be evaluated without a strict order, focusing on site-specific feasibility per WAC 173-26-231(3)(a)(iii)(B). For 095.E: Remove the mandatory tie to 095.D's "minimum necessary" standard, requiring only that alternatives be considered and justified as to impact.

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12. Requirement for Owner to Provide Financial Surety or Bond for Mitigation

- **Draft SMP Citation**: ICC 17.05A.090.B.3 (p. 42)
- **Exact Quote**: "The county shall require the applicant or owner to post a bond or provide other financial surety equal to the estimated cost of the mitigation or restoration in order to ensure the mitigation or restoration is carried out successfully…"
- **State Law Mandate**:
    - **RCW 90.58**: No specific requirement for bonds.
    - **WAC 173-26-201(2)(c)**: Requires mitigation but doesn't mandate financial surety. WAC 173-27-040(2)(m) requires bonds for site exploration to ensure restoration, suggesting bonds are permissible but not required for all mitigation.
- **Analysis**: The bonding requirement exceeds state law's minimum standards. While WAC allows bonds in specific contexts, it's not a general mandate for mitigation, making this a local rule that increases adaptation costs and complexity which rob resources from the mitigation itself. It unfairly and disproportionately burdens smaller, non-commercial applicants. The County has other means to enforce mitigation compliance.
- **Conclusion**: **Not mandated by state law; unfairly burdens homeowners.** The bond requirement goes beyond WAC's mitigation standards, rely on other methods for enforcement.

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16. Buffer and Setback Constraints

- **Draft SMP Citation**: Various Including 17.05A.140 sections A, B, and C
- **Exact Quote**: "Many pertaining to new and replacement building."
- **State Law Mandate**:
    - **RCW 90.58**: Requires buffers to protect ecological functions (RCW 90.58.020).
    - **WAC 173-26-221(5)**: Mandates buffers for critical areas but allows flexibility for reasonable use (e.g., variances under WAC 173-27-170).

- **Analysis**: Buffers and setbacks are mandated, but the Draft SMP's specifics (e.g., rigid limits on nonconforming structures in 17.05A.140) may exceed WAC's flexibility. Without detailed quotes, it's assumed they limit relocation options, potentially trapping properties as seas rise, beyond WAC's balanced approach.
- **Conclusion**: **Mandated by state law in principle; may exceed in rigidity.** Specific constraints likely go beyond WAC's flexibility.

Outlook

Island County Shoreline Review

From Jesse Brighten <jessebrighten@gmail.com>
Date Wed 4/9/2025 2:49 PM
To Barney, Stephanie (ECY) <BARS461@ECY.WA.GOV>

External Email

Hi Stephanie,
I am very concerned with the lack of oversight within Island County's critical areas including its shorelines. I just found the public comment period ended on March 31, I was unaware of this. Please consider this a reasonable accommodation request to have my comments reviewed. Also please feel free to reach out with any questions as I am a Tree Care professional working within Island County which is in desperate need of help coming into ecological compliance.
I am skimming the review of the shoreline master plan, and I would like to make the suggestion that elements that relate to Tree Management should follow industry standards and best management practices. Many jurisdictions require trees to be evaluated by ISA professionals such as Certified Arborists and Qualified Tree risk assessors. Additionally some have risk threshold requirements that a tree must meet a minimum risk rating before mitigation work is allowed. For an example a professional tree risk assessment will classify a tree as; low risk, moderate risk, high risk, or extreme risk. A good assessment will have a list of militating options coupled with 'residual risk levels'. If allowed I feel that moderate mitigation could be done on 'Moderate Risk' trees and removal should be limited to 'High Risk' and 'Extreme'
Additionally, it's becoming very common to require any tree related work to be done by a ISA Certified Arborist (or greater), minimally the work is supervised ISA Certifed Arborist or done to the written specifications of one.
Wording can be worked in to the definition pages (page 25) under the definition of 'Hazard tree'. Suggested verbiage such as "'Hazard Tree; is a tree that has a ISA Tree Risk rating of Moderate or higher, and shall not be considered for removal unless classified as High Risk and mitigation efforts cannot reduce risk levels to Moderate or Low."
Tree should have a definition, such as "Tree; is defined as a perennial woody plant of a species of plant that typically grows as a single stem and in excess of 10' in height"

Page 49, mitigation
Any mitigation relating to trees shall be reviewed by a ISA Certified Arborist or other equally qualified professional.

Page 61 (A)
'Trimming' (replace with Pruning) of any tree should be conducted by an ISA Certified Arborist, and conform to ISA Best Management Practices. Use of Climbing spikes shall not be permitted, Tree

(re)Topping shall not be permitted, no more than 20% of live crowns removed within 3-5 year pruning cycles, primary limb removal should be avoided, and pruning limited to secondary laterals. Pruning should avoid exposure of heart wood or ripe wood unless done to enhance ecological function.

Page 69 (8)
Non native existing vegetation. I understand where this is going, but it should specify a limit or 20% of live foliage removed within 3-5 years, and ban re-topping or topping. Yes the tree may become hazardous if not re-topped, but that would be an opportunity for removal/replacement with an appropriate plant.

'Native' should be defined to include 'near native' species, for instance shore pine and vine maple are not within the natural ecology of Whidbey Island (maybe a tiny bit of shore pine near Oak Harbor). With climate change, we are loosing ground with species such as Hemlock and Western Red Cedar. Any costal 'native' from as far south as San Francisco CA should be considered as a viable option.

Elsewhere where new constriction applications are proposed, Tree Protection Zones, and Critical Root Zones shall be required and ISA Best Management Practices, 'Trees and Construction' followed for any tree greater than 12" DBH. Critical Root Zones shall be protected with installed temporary chain link fencing. Critical Root Zone shall be defined as 12" radial for every 1" of Trunk Diameter. An ISA Certified Arborist shall conduct a Tree Protection Management Plan for any tree deemed to be 'potentially impacted' by construction or site development activities. Consider an increased 'buffer' for such TPZ's such as x2 state water ways and x1.5 for all others.

I beg you not to allow the strike through of section K on page 85, limited 'tree topping' and pruning 20%'s.

Jesse Brighten

(he,/they)

ISA Board Certified Master Arborist PN-7584B

ISA Qualified Tree Risk Assessor

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