

# Attachment 1:

## Kitsap County SMP Periodic Review - Ecology Required and Recommended Changes

The changes in **red are required** for consistency with the SMA (RCW 90.58) and the SMP Guidelines (WAC 173-26, Part III). Changes in **blue are recommended** and consistent with SMA (RCW 90.58) policy and the SMP Guidelines (WAC 173-26, Part III)

ITEM	SMP Submittal PROVISION	BILL FORMAT CHANGES (underline = additions; strikethrough = deletions)	RATIONALE
Rec-1	<p><b>22.150 Definitions</b></p> <p><b>22.600.175 Shoreline stabilization</b></p>	<p>22.150.570 Shoreline Stabilization.            “Hybrid” structures are a composite of both soft and hard elements and techniques along the length of the armoring. <del>If any portion of a proposed development contains a measure or measures related to those listed in Section 22.150.570(B), except hard measures necessary to protect the connection to existing hard stabilization on adjoining properties, and that measures of no more than 15 percent of the shoreline length proposed for development, the whole development must be considered a ‘hybrid’.</del> Generally, the harder the construction measure, the greater the impact on shoreline processes including sediment transport, geomorphology, and biological functions. Beach nourishment used for compensatory mitigation goes not reclassify a project as a hybrid structure.</p> <p><b>22.600.175 Shoreline stabilization.</b></p> <p>A. Environment Designations Permit Requirements. Based on the type of shoreline modification proposed, the identified permit requirements shall apply for all designations:</p> <ol style="list-style-type: none"> <li>1. SDP for soft shoreline stabilization, unless otherwise exempt.</li> <li>2. Administrative CUP for hard shoreline stabilization.</li> <li>3. Administrative CUP for hybrid shoreline stabilization, unless the applicant can demonstrate the project meets the intent of soft shore as described in Ecology’s Soft Shoreline Stabilization SMP Planning and Implementation Guidance (Ecology Publication No. 14-06-009).</li> <li><u>4. Restoration and enhancement projects, including hybrid projects requiring hard shoreline stabilization to accommodate transition to adjacent properties, that are authorized in writing by both the Shore Friendly Kitsap program and by the Washington State Department of Fish and Wildlife shall require an SDP, unless otherwise exempt.</u></li> </ol> <p><b>22.600.175(D)(1)</b></p> <p><u>e. Hybrid shoreline structural stabilization projects, with the exception of restoration and enhancement projects, composed of hard shoreline stabilization that cumulatively covers greater than 15 percent of the total shoreline length parallel to the OHWM shall comply with hard shoreline stabilization projects requirements in this section.</u></p>	<p><u>Recommended change 1: add clarification for hybrid definition</u></p> <p>A change to this definition was requested by the Suquamish Tribe in their March 2, 2021 comment letter. Ecology agrees that this change would improve implementation of the SMP. From the Suquamish letter: “This currently reads that if any portion is hard, then the project shall be considered ‘hybrid’. The ‘any portion’ could be 90%, in which case the project would not likely meet the criteria for review as a hybrid structure under the proposed language in 22.600.175.” The County provided Ecology with revisions to address this concern and to improve implementation of regulations for hybrid projects. This recommended change incorporates the County’s input.</p>

		[re-letter subsequent subsections]	
Req-1	22.400.115 Critical Areas	<p>A. Incorporation of Title 19. The following sections of Title 19, Critical Areas Ordinance, dated XXXX, 2021, are incorporated herein by this reference, and provided in Chapter 22.800, Appendix E, for reference purposes only, except as supplemented or modified under subsections (B) through (EF) of this section:</p> <p>...</p> <p><b>F. Wetlands</b></p> <ol style="list-style-type: none"> <li>1. Exemptions for small wetlands in Section 19.200.210.C shall not apply.</li> <li>2. A wetland buffer may not be reduced through averaging more than twenty-five percent of the standard buffer width applied per Section 19.200.220.B.1. The fifty percent averaging reduction allowed in Section 19.200.220.B.1.e shall not apply.</li> <li>3. Administrative buffer reductions in Section 19.200.220.B.2.a-d shall not apply.</li> <li>4. Additional development standards for certain uses in Sections 19.200.225.C and G shall not apply.</li> </ol>	<p><b>Required Change 1: Exclude some wetland provisions from the SMP.</b></p> <p>Changes are necessary for consistency with: the requirement to “base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available” [WAC 173-26-201(2)(a)]; the requirement that protection of critical areas “assures no net loss of shoreline ecological functions” [WAC 173-26-221(2)(a)(ii)]; and the use preferences of RCW 90.57.020. Specific issues:</p> <ol style="list-style-type: none"> <li>1. Local governments are required to achieve no net loss of ecological functions within their shoreline jurisdiction. Exemptions for small wetlands can result in a loss of wetland functions within shoreline jurisdiction. Ecology’s wetland guidance is that these type of exemptions are only appropriate outside of shoreline jurisdiction (see <a href="#">Bunten et al 2016</a>). Consistent with Ecology’s recommendations, the exemptions for small wetlands in Kitsap’s CAO may only be used if “[t]hey are not associated with shorelines of the state of their associated buffers” [19.200.210.C.3]. Because these provisions already cannot be used in shoreline jurisdiction, they should not be incorporated into the SMP.</li> <li>2. Ecology has identified recommended buffer widths based on our review of the best available science (<a href="#">Granger et al. 2005</a>, <a href="#">Hruby 2013</a>, <a href="#">Bunten et al 2016</a>). Kitsap’s CAO incorporates these buffer widths. From Ecology’s review of the best available science, buffers smaller than these widths would not provide adequate protection to wetland functions and values. Buffer averaging is a technique that can be used to site development on constrained sites while still protecting wetlands. However, protection of the wetland is only adequate if the buffer is reduced by no more than 25%. Allowing wetlands buffers to be reduced by more than 25% through buffer averaging could result in a loss of shoreline ecological function, and so is inconsistent with the requirement that critical area protections assure no net loss of ecological function in WAC 173-26-221(2)(a)(ii).</li> <li>3. Ecology has identified recommended buffer widths based on our review of the best available science (<a href="#">Granger et al. 2005</a>, <a href="#">Hruby 2013</a>, <a href="#">Bunten et al 2016</a>). From Ecology’s review of the best available science, buffers smaller than these widths would not provide adequate protection to wetland functions and values. Allowing buffer reductions without buffer averaging could result in impacts to the wetland and could result in a loss of shoreline ecological function. This is inconsistent with the requirement that critical area protections assure no net loss of ecological function in WAC 173-26-221(2)(a)(ii). Further, the CAO only allows these reductions through a CAO variance. CAO permitting provisions do not apply within shoreline jurisdiction [see RCW 90.58.610 &amp; RCW 36.70A.480(3)(d) for the relationship between CAOs and SMPs], so this reduction cannot be used in</li> </ol>

			<p>shoreline jurisdiction and so should not be incorporated into the SMP. If an applicant is experiencing an unnecessary hardship because of these standards, they may seek relief via a shoreline variance.</p> <p>4. Allowing new or expanded roads, and new or expanded utility corridors in wetlands and their buffers in inconsistent with the use preferences of the SMA in RCW 90.58.020 and WAC 173-26-201(2)(d). Protecting and restoring ecological functions is preferred over non-water oriented uses, such as transportation and utilities. Allowing new/expanded roads and utilities in wetlands and their buffers will negatively impact wetland function. Ecology has identified a limited list of activities that can occur in wetlands and their buffers with minimal impacts (Granger et al. 2005, Bunten et al 2016). This change is also necessary for consistency with the use matrix of the SMP in Table 22.600.105, which lists transportation and utilities as either conditional or prohibited in some environments. Repair and maintenance of existing structures may still occur pursuant to the SMP's non-conforming structure provisions.</p>
Rec-2	<b>22.400.120.B Buffer Widths</b>	<p>3. Additional Standards for Applying the Reduced Standard Buffer within the Rural Conservancy and Natural Designations and Shorelines of Statewide Significance. Buffers may be reduced for single-family residences and water-oriented uses in the rural conservancy designation, natural designation, and shorelines <del>on of statewide significance for</del> Hood Canal only under the following circumstances:</p>	<p><b>Recommended Change 2: Clarify which shorelines this section applies to</b></p> <p>The County made a change to this section in response to public comment requesting clarification which shorelines of statewide significance this section applies to. The County's proposed wording suggests that this section applies to only the rural conservancy and natural designations on Hood Canal, but the intent appears to be to apply this section to all rural conservancy and natural designations, and all shorelines on Hood Canal. If this is the County's intent, we recommend the County incorporate this change.</p>
Req-2 & Rec-3	<b>22.400.120.C.2</b>	<p>c. Expansion of Development below the Reduced Standard Buffer. Expansion of existing development below the reduced standard buffer <del>may only occur if approved through a shoreline variance pursuant to 22.550.100.E. may occur according to the following criteria. To reduce the procedural burden on applicants, in some cases the variance may be approved administratively as a Type II decision according to the criteria below and the variance criteria in Section 22.500.100.E:</del></p> <p>i. Expansion of development shall not occur further waterward of the existing structure, unless no other feasible option exists due to physical constraints of the property.</p> <p>ii. Any expansion below the reduced standard buffer shall require a shoreline mitigation plan (see Section 22.700.140).</p> <p>iii. Expansion within the outer twenty-five percent of the reduced standard buffer or within any portion of the buffer in the shoreline residential designation shall require a Type II administrative variance, <del>according to except under</del> the conditions of subsection (iv) below. Expansion within the waterward seventy-five percent of the reduced standard buffer shall require a Type III variance.</p> <p>iv. Expansion of a single-family residence below the reduced standard buffer may be allowed through <del>a</del> <u>Type II</u> administrative variance for limited expansions of no more than 25% of</p>	<p><b>Required Change 2: Clarify when a variance is required</b></p> <p>A change is necessary for consistency with WAC 173-27-170. Pursuant to WAC 173-27-170, "The purpose of a variance permit <u>is strictly limited</u> to granting relief from specific bulk, dimensional or performance standards set forth in the applicable master program where there are extraordinary circumstances relating to the physical character or configuration of property such that the strict implementation of the master program will impose unnecessary hardships on the applicant or thwart the policies set forth in RCW <b>90.58.020</b>." [Emphasis added] Unlike for CUPs, local governments do not have discretion as to what development requires a variance and what development does not require a variance. Only proposals that are inconsistent with a bulk, dimensional, or performance standard of the SMP are required to obtain a shoreline variance. We have proposed language that we believe retains the County's intent with this section, while also ensuring consistency with WAC 173-27-170. Note that Ecology considers an administrative variance to still be a variance that requires consistency with the variance criteria in WAC 173-27-170 and approval from Ecology in addition to the County.</p> <p><b>Recommended change 3: Add clarity to distinctions Type II procedures.</b></p>

		the existing gross floor area or 625 square feet, whichever is less, if expanding into an existing legally cleared area and located no further waterward than the existing structure.	Ecology recommends minor revisions to provide better clarity for implementing these procedures.
Req-3, Req-4, & Rec-4, Rec-5, Rec-6	<b>22.400.120.D Other Uses and Modifications in Vegetation Conservation Buffers</b>	<p>1) In order to accommodate water-oriented uses and modifications within the buffer, the following standards shall apply subject to shoreline permit review unless otherwise exempted:</p> <p>...</p> <p>c. Beach Stairs. Beach stairs may be permitted, subject to the <u>permitting requirements of exemption provisions in Section 22.500.100(C)(3)</u>. Beach stairs placed <u>belowwaterward of</u> the OHWM will normally require a <u>shoreline exemption from Kitsap County, and</u> a hydraulic project approval (HPA) from WDFW. <del>Beach stairs with stair towers shall require an SDP where exemption provisions are not met.</del></p> <p>i. Stair landings in the vegetation conservation buffer or <u>belowwaterward of the</u> OHWM must be composed of grating or other materials that allows a minimum of <del>40</del><u>60</u> percent light to transmit through.</p> <p>ii. Viewing platforms associated with beach stairs shall comply with Section 22.400.120.D.1.b.</p> <p>iii. Stair landings <del>in the vegetation conservation buffer or belowwaterward of the</del> OHWM must comply with the provisions of <del>WAC 220-660-380 in saltwater areas or WAC 220-660-140 in freshwater areas.</del><u>KCC 22.600.160.C</u></p> <p>d. Trams. Trams may be permitted, subject to the <u>permitting requirements of exemption provisions in</u> Section 22.500.100(C)(3) <del>and are considered accessory or appurtenances to the upland use. Trams are not considered appurtenances under this section. Trams utilizing towers require an SDP where exemption provisions are not met.</del> They are prohibited in the Aquatic and Natural Shoreline Environment Designations. The following development standards apply:</p>	<p><b>Required Change 3: Clarify permitting requirements for beach stairs and trams</b> A change is necessary for consistency with the permitting requirements of the SMA in RCW 90.58.140 and WAC 173-27. All development proposals in shoreline jurisdiction require an SDP unless the applicant can demonstrate that their proposal is consistent with one or more exemption in WAC 173-27-040. There are no exemptions for beach stairs or trams and so proposals for these structures will likely always need to obtain an SDP (except in the very unlikely case where the proposal does not exceed the cost threshold). The determination of whether a project requires an SDP or is exempt from an SDP is made during the permitting phase based on the facts of the proposal. Local governments cannot make this determination pre-emptively in the SMP.</p> <p><b>Required Change 4: Do not consider trams to be appurtenances</b> A change is necessary for consistency with WAC 173-27-040(2)(g) and KCC 22.150.130, which define and limit what structures may be considered appurtenances to single family residences. Within the context of the SMA, appurtenances are limited to accessory structures that are “necessarily connected to the use and enjoyment of” the primary use [WAC 173-27-040(2)(g)]. For single family residences, these are limited to a specific list of structures, which does not include trams. This change incorporates input from County staff on preferred wording.</p> <p><b>Recommended Change 4: Clarify directions with regard to OHWM</b> The OHWM is a horizontal boundary, not a vertical boundary, so structures are either waterward or landward of it. Further, stair landings should be above the elevation that corresponds to OHWM to minimize impacts to the aquatic environment. The intent of this section appears to be to require grating when stairs are proposed <i>waterward</i> of the OHWM. This change is recommended to improve implementation of this provision.</p> <p><b>Recommended Change 5: Refer to the SMP’s standards and not WDFW’s rules &amp; limit only to overwater structures</b> We understand that the addition of these references to WAC 220-660 were in response to comments from WDFW. However, WAC 220-660 contains rules directing WDFW’s review of HPAs and were developed for that purpose. If the SMP requires that projects be consistent with those rules, it will create a number of implementation challenges. Would the County be reviewing a new landing for consistency with each item in these WAC references? If an applicant cannot comply with something in the WAC, must they obtain a variance for their stair landing? The County has already identified appropriate standards for overwater structures and we recommend that this section refer to those standards instead of WDFW’s rules. We also recommend this reference (either to the WAC or the SMP overwater standards) only apply to stair landings that are overwater</p>

			<p><a href="#">Recommended Change 6: Revise minimum light transmittance to 60%</a> This change was requested by WDFW. We agree that this will improve implementation. Structures that must obtain an HPA will need to achieve this level of light transmittance anyway, so consistency with HPA requirements will likely reduce the number of design iterations applicants must go through.</p>														
Rec-7	<p><b>Table 22.600.105 Shoreline Use and Modifications Matrix</b></p>	<table border="1"> <tr> <th colspan="7">Shoreline Stabilization <del>(New/Repair and Maintenance)</del></th> </tr> <tr> <td>Hard</td> <td>C(A)</td> <td>C(A)</td> <td>C(A)</td> <td>C(A)</td> <td>C(A)</td> <td>18</td> </tr> </table>	Shoreline Stabilization <del>(New/Repair and Maintenance)</del>							Hard	C(A)	C(A)	C(A)	C(A)	C(A)	18	<p><a href="#">Recommended Change 7: Remove language</a> This recommended change is for existing language in the SMP. This wording requires that repair and maintenance of hard shoreline stabilization obtain a shoreline conditional use permit. However, 22.600.175.A does not require this, and our understanding is that the County has not been requiring CUPs for repair and maintenance of hard stabilization. If the County's intent is not to require CUPs for repair/maintenance of hard stabilization, then we recommend the County strike this language to reduce confusion.</p>
Shoreline Stabilization <del>(New/Repair and Maintenance)</del>																	
Hard	C(A)	C(A)	C(A)	C(A)	C(A)	18											
Rec-8	<p><b>22.600.115.C.3 Additional standards for net pens.</b></p>	<p>h. <del>All marine finfish aquaculture programs shall comply with RCW 77.125 as amended.</del> New or expanded <del>leases of</del> nonnative marine finfish aquaculture <del>are</del>is prohibited.</p>	<p><a href="#">Recommended Change 8: Remove reference to RCW 77.125 and aquatic leases</a> RCW 77.125 is direction for WDFW and does not apply to the County. We recommend the County not refer to it as this reference could be confusing when reviewing shoreline permits. Additionally, the County does not lease aquatic lands. If the County's intent is to prohibit nonnative marine finfish, then we recommend re-writing as proposed. Note that the SMP is not required to have such a prohibition.</p>														
Req-5 & Rec-9	<p><b>22.600.170.A Residential development – Environmental Designation Permit Requirements</b></p>	<p>3. Shoreline residential and high intensity: a. Primary single-family residences are exempt pursuant to criteria in Section 22.500.100(C); b. SDP if exemption criteria not met. c. SDP for multifamily units, accessory dwelling units, and d. <a href="#">SDP for land segregation where complete application includes development within the shoreline jurisdiction.</a> <del>Where a subdivision per KCC Title 16 is within shoreline jurisdiction and does not meet the SDP exemption criteria, an SDP shall be required. If lot creation is entirely outside of shoreline jurisdiction per KCC Chapter 22.200, then no shoreline permit shall be required.</del></p>	<p><a href="#">Required Change 5: Do not require an SDP for subdivision by itself</a> A change is necessary for consistency with the permitting requirements of the SMA in RCW 90.58.140 and WAC 173-27. Because subdivision by itself does not meet the definition of development, the County cannot require an SDP or an exemption. If an applicant proposes something that <i>does</i> meet the definition of development, then an SDP is required (unless it's exempt). <a href="#">Recommended change 9: Add clarity to subdivision provision</a> The County provided language to replace the proposed language for sub-section d. Ecology agrees this will help with implementation and is consistent with the SMA and SMP Guidelines.</p>														
Rec-10	<p><b>22.600.180.A Transportation Environmental Designations Permit Requirements</b></p>	<p>2. Rural conservancy and urban conservancy: <del>a CUP is required, except an SDP shall be required for development unless the proposal is</del> necessary to protect existing public roads within existing rights-of way.</p>	<p><a href="#">Recommended change 10: Re-word for clarity</a> The intent with this text amendment appears to be to allow certain transportation projects without a CUP if they are necessary for protecting existing public roads. However, the proposed text changes do not actually exclude those projects from needing a CUP. Further, all development proposals in shoreline jurisdiction require an SDP unless the applicant can demonstrate that the proposal meets one or more exemptions in WAC 173-27-040. Most projects getting a CUP here will also need to get an SDP anyway. Adding that an SDP shall be required is unnecessary and could be confusing. If the County's intent is to exclude proposals for protecting existing roads, then we recommend the County make this change.</p>														

Req-6	Title 21 21.04.100 Review Authority Table		Permit/Activity/Decision	Review Authority	Type I	Type II	Type III	Type IV	<p><b>Required Change 6: Clarify variance types</b></p> <p>A change is necessary for consistency with the permitting requirements of the SMA in RCW 90.58.100(5) and WAC 173-27-170. An applicant may obtain a variance to <u>any</u> bulk, dimensional, or performance standard in the SMP provided the request is consistent with the variance criteria in WAC 173-27-170. The County's amendment to this section implies that only shoreline variances to buffer standards are possible. This change is necessary to ensure shoreline variances are implemented consistent with WAC 173-27.</p> <p>We understand the County wishes to reduce the process burden for applicants of some types of shoreline variances by creating an administrative shoreline variance. Note that from Ecology's perspective, there is no difference between these two types of shoreline variances. Both still require approval from Ecology and both may only be granted if the request is consistent with the shoreline variance criteria in WAC 173-27-170. Both may be appealed to the Shoreline Hearings Board after Ecology's decision.</p>
13			Shoreline Variance ( <del>&lt; 25%</del> ) ( <u>any variance for which an Administrative variance is not applicable</u> )	HE			X		
14			<del>Administrative Shoreline Variance (&lt; 25% or within any portion of the reduced buffer in shoreline residential designation) (development or expansion requiring &lt;25% reduction of the reduced standard buffer or any amount of buffer reduction within the shoreline residential designation per 22.400.120(C))</del>	D		X			

# Initial Determination