DATE: AUGUST 28, 2012

TO: PLANNING COMMISSION

FROM: SHIREENE HALE, PLANNING COORDINATOR AND PLANNING, COLIN MAYCOCK, AICP, PLANNER IV

SUBJECT: SHORELINE MANAGEMENT PROGRAM UPDATE PRELIMINARY REGULATION PROPOSAL #2

FOR MEETING OF: SEPTEMBER 7, 2012

ISSUES: DRAFT OF PROPOSED AMENDMENTS TO CURRENT SMP REGULATIONS FOR AGRICULTURE, AQUACULTURE, FOREST MANAGEMENT, CLEARING AND GRADING, VEGETATION MANAGEMENT, MINERAL EXTRACTION, LOG TRANSFER SITES, FILL/EXCAVATION, RESIDENTIAL DEVELOPMENT, VIEW PROTECTION, PEDESTRIAN SHORELINE ACCESS STRUCTURES.

INTERNAL CONSISTENCY:

A central theme of the SMP preliminary proposal is to make the document clearer, less ambiguous and less redundant. It is axiomatic that the current and proposed regulations implement the goals and policies of the SMP. In recognition of that premise, the directions to review allowed projects for consistency with the goals and policies of the SMP, have been removed. The process for conditional use permits is an exception to this because a review of the Comprehensive Plan policies is an appropriate part of the permitting activity.

Terminology throughout has been updated where appropriate so that where currently there is a phrase such as ‘minimizing adverse impacts to the environment’ it has been replaced with ‘ensure no net loss of ecological functions and values.’ Where the current SMP refers to the administrator, the proposal changes the title to ‘Director.’

Throughout the document references to the shoreline ‘environment’ has been changed to ‘designation’ where appropriate to match the preferred term in the revised Comprehensive Plan Goals and Policies.
As with the proposed revisions to the Goals and Policies, staff has striven to maintain the existing language and to clarify underlying intent.

POLICY CHANGES:

The preliminary draft includes proposed policy changes that would benefit from the Planning Commission attention.

1. Aquaculture: The proposal contains a new definition of aquaculture that distinguishes between commercial and non-commercial. The primary purpose is to ensure that scientific research that may, over the short term, use equipment similar to that used by commercial aquacultural operations is not constrained by all the regulations that are applicable for commercial activities whose lifespan is indeterminate.

2. Proposed are some significant changes to the regulations that apply to residential development.
   i. Provided a working definition of ‘top of bank.’ Establishing where the top of the bank is important for setting shoreline setbacks. Is the Planning Commission comfortable with this definition?
   ii. Added requirements for the provision of Geotechnical report for parcels that are or may be unstable. These standards mirror those found in the CAO.
   iii. Clarified existing provision regarding siting new residential structures on lots that are expected to need shoreline stabilization within the next 75 years. The 75 year threshold is offered as a representation of a minimum average house life expectancy. (Actual life expectancy of structures is dependent on a number of different factors including the location, nature of the foundation, building materials, i.e. wood frames rather than steel, quality of building materials, type of roofing and so on.) Houses may last considerably longer than the proposed 75 years.
   iv. Currently, a property owner splitting their property into two or more lots is required to designate a ‘common area’ that is owned jointly by owners of the parcels that have been created. The proposal entails a significant change to this requirement by eliminating public access provisions within subdivisions or lot creation processes that do not create more than 4 lots. (Proposed amendments to the Goals and Policies to support the above provision have been added.)
   v. For subdivisions creating 5 or more lots public access may be required in the form of an easement rather than a common area. Public access requirements may be waived if certain criteria, laid out in the public access section are met. (Are there safety concerns? Can access be controlled by gates and signage? etc.)
   vi. Setback averaging, when an empty parcel has developed parcels on either side, currently our regulations allow development on the middle parcel to be brought into line with neighboring development regardless of the setbacks on the neighboring parcels. So that two non-conforming structures that are setback 20 feet from the OHWM can have a new, conforming structure with a similar setback between
them. The proposal includes an option currently under consideration in the CAO that would guarantee a property owner a 90 degree view rather than the same setbacks as the property owner’s neighbors.

vii. SJCC 18.50.330 (A) (12) is the provision which states that buildings are not allowed to take up more than 50% of the lot’s width. There is a proposed amendment to the provision that specifies the measurement is to the seaward most point of the structure rather than the less precise ‘face’.

viii. SJCC 18.50.330 (A) (14) was originally conceived to address a situation in which a large lot that was covered by a permanent conservation easement could still sell small, circular shoreline parcels. To clarify the intent behind the regulation, staff has reinserted the line “are surrounded on all sides by property preserved as permanent open space” that had originally been part of this section. This section, in the past, has been used to expand the vesting rights of setbacks on plats beyond the statutorily defined 7 years. The proposed amendment curtails the inflation of setback vesting.

ix. Within the section on setback standards, staff has maintained the current setback standards for parcels not subject to CAO buffers. Currently, which properties this consideration may or may not impact is not known at this is an issue before Council and may be impossible to resolve at this moment.

x. Planning Commission may want to consider moving the non-conforming structures provisions from the residential development section to the general section, the provisions are taken directly from the CAO general section. Staff sought to clarify the expansion provisions for non-conforming structures. Staff has suggested a maximum floor area expansion for non-conforming structures of no more than 5,000 square feet.

xi. Staff redrafted the regulations applicable to accessory structures in hopes of clarifying the intent behind and the meaning of the current code.

3. Staff combined the provisions of the Clearing and Grading section with that of Vegetation management. Staff has attempted to clarify the meaning of some sections and provide greater guidance regarding the fire department’s recommended 30 foot ‘firewise’ firebreak.

4. In addition to the proposed changes included in the text, the proposal also includes a number of options for tackling specific issues, such as setback averaging and non-conformity. These options are provided to show possible directions rather than finished language.

POLICY QUESTIONS:

1. It is current policy to measure the height of a structure using one of four different methods. The Planning Commission may want to select a single method to
measure the height of a structure and recommend that method to be used consistently throughout the county?

2. SJCC 18.50.330 (A)(12) limits building width to no more than 50% of the lot’s width. This provision is primarily aesthetic. In the past, irregularly shaped lots have created difficulties with interpretation and application of the regulation. Is this a provision the Planning Commission believes implements the aesthetic directives of the Goals and Policies (3.4 (N))? Could the same effect be achieved by increased side yard setbacks with provisions for aggregating the distances, so if you have a side setback total of 100 feet, on the ground it could be set out as 70 feet on one side and 30 feet on the other?

3. SJCC 18.50.330 (A)(14) Miscellaneous Exceptions, as it is currently written authorizes local exceptions to the state’s vesting regulations regarding platted setbacks. The proposal constrains that authority to specific circumstances. Does the Planning Commission recommend constraining setback vesting to the state standard of seven years? Or, conversely, should staff either retain the existing language or pursue language that sets forth the local exception to the state standards more succinctly?

4. Would the Planning Commission prefer to see the section relating to nonconforming residences moved to the general section and expanded to include all nonconforming structures and uses?

5. SJCC 18.50.330(A)(13) sets the height limit for shoreline residences as 28 feet from average grade and offers an increase to 35 feet provided the structure has a 6:12 roof pitch and does not interfere with the neighboring views. The SMA, RCW 90.58.320 provides for a maximum height of 35 feet with provisions for increased height if a public interest will be served. The question then becomes, does the Planning Commission wish to consider raising the maximum height of structures from 28 to 35 feet regardless of roof pitch and assuming such a structure would not negatively impact neighboring views?