

**CLALLAM COUNTY DEPARTMENT OF COMMUNITY DEVELOPMENT
CRITICAL AREAS CERTIFICATE OF COMPLIANCE &
SHORELINE SUBSTANTIAL DEVELOPMENT PERMIT EXEMPTION**

APPLICANT: Michael McHenry
Lower Elwha Tribe
51 Hatchery Road
Port Angeles, WA 98363

DATE ISSUED: July 12, 2016

Expiration Date: July 12, 2019

CASE NUMBER: SHR 2016-09

PROPOSAL: This project is sponsored by Lower Elwha Klallam Tribe in partnership with the Coastal Watershed Institute to implement this proposal to restore the inter-tidal area located 0.75 miles east of the mouth of the Elwha River to its original condition. This includes the removal of approximately 1,200 linear feet of rip-rap and concrete, which would equate to the removal of approximately 8,000 cubic yards of man-made material from the inter-tidal area. This proposal may occur over several years to remove this rip-rap in the summer months during low tides to avoid impacting fish. This material is a man-made barrier that restricts the use of this inter-tidal area by ESA species and their associated habitat.

This proposal qualifies for a Fish Habitat and Enhancement project by implementing a habitat restoration component of a salmon recovery plan approved by a Regional Salmon Recovery Organization, State of Washington and published in the Federal Registry by National Marine Fisheries Service (NMFS). This proposal is also funded in whole or in part by North Olympic Peninsula Lead Entity for Salmon Recovery's 3 year work plan. This proposal is also included in the Elwha Fish recovery Plan (NOAA 2008) and the 2005 Elwha-Dungeness Watershed Plan.

LEGAL DESCRIPTION: This proposal is located 1.75 miles west of the City of Port Angeles and 0.75 miles east of the mouth of the Elwha River on the Strait of Juan de Fuca at Beach Lake. In addition to the 1,200 linear feet of rip-rap and concrete to be removed as part of this proposal, the 25 acre parcel contains 5 dwellings, 5 outbuildings, a paved driveway, 6,160 sq ft asphalt tennis court, and associated appurtenances. Most of these improvements have been at this site since at least 1977 based on a review of county records and aerial photos. Many of these improvements are in disrepair and are proposed to be removed in the near future though another shoreline permit for additional shoreline restoration. This proposal is located at 2648 Lower Elwha Road within the NE ¼ of the SW ¼ of Section 26, T31N, R7W, W.M. (APN 073126-310000)

FINDINGS:

1. **SDP EXEMPTION:** The proposal is located within the Strait of Juan de Fuca, which is regulated a Shoreline of State Wide Significance per Appendix A of the Clallam County Shoreline Master Plan (SMP). This section of the Strait of Juan de Fuca is designated Rural by the SMP. The proposal (as outlined in the application and in this decision) is a watershed restoration plan that is designed to improve fish habitat and enhance the fishery resource available for use by all citizens of the state. This proposal is exempt from Substantial Development Permits, as defined by WAC 173-27-040(2)(o) (watershed restoration project). This proposal to improve fish habitat would also be exempt from a Substantial Development Permit per RCW 90.58.147. Exemptions from the substantial development permit requirements do not exempt a proposed development from compliance with the applicable policies and standards of the Shoreline Master Program or other applicable Federal, State, or local permit or license requirements.

2. **CRITICAL AREAS:** The application was reviewed by the Clallam County Department of Community Development staff for evaluation of impacts to Critical Areas under the provisions of the Clallam County Critical Areas Code, 27.12. The project is located within the 200 feet jurisdiction designated critical areas, which include wetlands, aquatic habitat conservation areas (Type 1 & 3 waters), wildlife habitat conservation areas (eagle & ESA listed fish), and seismic soils. This proposal is also located within frequently flooded areas (100 year floodplain).

This proposal would be limited to the areas within the inter-tidal area of the Strait of Juan de Fuca (Type 1 water) and the 100 year floodplain. This proposal would remove the rip-rap and concrete from these areas and the placement of this material on the developed areas of this site. The placement of the rip-rap within shorelines or critical areas would require additional review by DCD.

- A. Aquatic Habitat Conservation Areas (Type 1 water) - Critical area enhancement projects, not considered fish habitat or passage improvement projects pursuant to this section, require a certificate of compliance per Section 27.12.315(4) CCC of the Aquatic Habitat Conservation Area protection standards. This enhancement project is proposed by the Lower Elwha Tribe and is funded in whole or in part by North Olympic Peninsula Lead Entity for Salmon Recovery's 3 year work plan. This proposal is included in the Elwha Fish recovery Plan (NOAA 2008) and the 2005 Elwha-Dungeness Watershed Plan. This proposal meets the Aquatic Habitat Conservation Area protection standards for this critical area enhancement proposal.
- B. Frequently Flooded Areas. This proposal would remove approximately 8,000 cubic yards of rip-rap and concrete from the inter-tidal area of vast marine area of the Strait of Juan de Fuca. The material removed would be placed on existing development areas on the site or would require authorization from DCD if proposed in shoreline or critical areas. This enhancement proposal to remove fill from the inter-tidal area is consistent with the frequently flooded standards found in Section 27.12.515 CCC.
- C. ESA SPECIES: The National Marine Fisheries Service (NMFS) issued a Biological Opinion on September 22, 2008. The NMFS baseline conditions are based on the existing development and condition of the habitat of species covered under the Endangered Species Act (ESA) as of September 22, 2011. FEMA & jurisdictions are required to address how new development (occurring after September 22, 2011) within the floodplain would impact ESA species or their habitat.

The improvements on this parcel including the rip-rap and concrete were in existence prior to June 17, 1977 per the WA State Department of Ecology aerial photo. The removal of these improvements does not require a habitat assessment because they were already located within the floodplain prior to the issuance of the Biological Opinion. The removal of the material from the inter-tidal area of the vast marine area, and would improve fish habitat over the present conditions. This proposal would require a Corp Engineers Section 404, Section 10, or a Nationwide Permit from the U.S. Army Corp. of Engineers. The permit from the U.S. Army Corp of Engineers would ensure that proposal would not impact ESA Species or their habitat, which would meet the requirements of the requirements of the NMFS Biological Opinion. Therefore, this activity is not subject to Habitat Management Plan to address the Biological Opinion.

3. SEPA: The project is sponsored by the Lower Elwha Tribe for the implementation of a watershed restoration plan funded in whole or in part by North Olympic Peninsula Lead Entity for Salmon Recovery's 3 year work plan. This proposal is outlined in the Elwha Fish recovery Plan (NOAA 2008) and the 2005 Elwha-Dungeness Watershed Plan. This proposal is exempt from SEPA per RCW 43.21C.0382(1) Watershed Restoration Project.

In a June 6, 2016 e-mail from the Washington State Department of Ecology SEPA Section they indicated that this proposal would be exempt from SEPA provided that the Washington State Department of Fish and Wildlife (WDFW) determine that it meets the definition of a Watershed Restoration Project. WDFW sent an e-mail dated July 7, 2016 indicating that this proposal would qualify for a streamline JARPA under RCW 77.55.181. Streamline JARPA for fish enhancement proposals are exempt from SEPA per RCW 77.55.181(2).

4. This proposal entails the removal of approximately 1,200 linear feet of rip-rap and concrete, which would equate to the removal of approximately 8,000 cubic yards of man-made material from the inter-tidal area over several years. Although this material may be placed on-site on previously disturbed areas, the placement of this material within shoreline or critical areas would require approved by DCD. Any activity related to the removal of improvements on the site or the improvements needed for to use the site as a recreational site are subject to review for consistency with applicable codes and ordinances and may require additional review and permits from Clallam County DCD.

CONDITIONS:

1. **Seek/Comply with Hydraulic Permit Approval (HPA):** Prior to commencing development activity, the proponent is responsible for informing the Washington Department of Fish and Wildlife (WDFW) to determine whether this action is subject to the Washington State Hydraulic Code (Chapter 220-10 WAC). Hydraulic Project Approval (HPA) is required for all hydraulic projects, which are defined as construction or performance of other work that will use, divert, obstruct, or change the natural flow or bed of any of the salt or fresh waters of the state. In addition to Clallam County permit conditions, if a HPA is required the project proponent shall comply with all conditions set forth by the Washington Department of Fish and Wildlife.
2. **Army Corps Check:** Prior to commencing development activity, the proponent is responsible for informing the US Army Corps of Engineers (COE) in order for COE to determine whether a Department of the Army permit or review is required. Generally, review is required for construction and dredging in or around navigable waters of the US and for work or fill in hydrologically connected wetlands. Contact the US Army Corps of Engineers, Seattle District Regulatory Branch, PO Box 3755, Seattle WA 98124, (206) 764-3495, for more information.
3. With the exception of the removal of approximately 1,200 linear feet of rip-rap and concrete, which would equate to the removal of approximately 8,000 cubic yards of man-made material from the inter-tidal area over several years outline in the application submitted for SHR 2016-09, and outline in this decision, no other work is authorized by this permit within shoreline or critical areas.
4. Spoils for this proposal may not be placed within 200 feet of Critical Areas (i.e. Shorelines, Type 2-5 streams, wetlands, floodplains, geologically hazardous areas, or habitat conservation areas per Section 27.12.025 CCC) unless prior approval or a Certificate of Compliance is obtained from the Clallam County DCD.

In consideration of the above, the proposal is found exempt from the requirement of a shoreline substantial development permit. Additionally, this proposal is found consistent with the Clallam County Critical Areas Code, and meets the requirements for a Certificate of Compliance for work within a Critical Area.



Greg Ballard, Senior Planner
Clallam County Department of Community Development

July 12, 2016
Date