

transients described in British Columbia waters; however, unlike other transients, that are resighted sporadically, most of the AT1 transients are resighted in Prince William Sound and Kenai Fjords every year. In addition, acoustic behavior (Saulitis 1993) and genetics (Barrett-Lennard 2000) indicate the AT1 group is a genetically distinct, socially isolated group of killer whales.

Eleven members of the AT1 group have not been seen since the 1989 Exxon Valdez oil spill; one of these individuals is known to have died and the rest are presumed dead (Matkin et al. 1999a). Sightings of the remaining individuals in the AT1 group have also declined in the years following the oil spill, and the population of one of their primary prey species, the harbor seal, has declined in recent years (Frost et al. 1999).

The AT1 Transient stock of killer whales was designated as “depleted” under the MMPA. Therefore, the AT1 Transient stock of killer whales is classified as a strategic stock. At least 11 animals were alive in 1998, but it appears that as of 2004, only 8 individuals may be alive. Therefore, the AT1 group has been reduced to at least 50% (11/22) of its 1984 level, and has likely been reduced to 36% (8/22) of its 1984 level. The AT1 Transient stock of killer whales is not listed as “threatened” or “endangered” under the Endangered Species Act.

6. ENVIRONMENTAL EFFECTS

6.1 Discussion of General Effects

Section 6 discusses the environmental effects of the alternatives for the three actions evaluated in this EIS: approving Washington’s request to incorporate WAC 173-26 (the guidelines) as an amendment to the WCZMP (Section 4.1, preferred alternative); (2) denying Washington’s request (section 4.2); and (3) the “no action” alternative (section 4.3). The effects under the “no action” alternative are the same as those for alternative one, since OCRM taking no action would result in the Washington presuming concurrence.

Washington itself has already approved and started implementing the new guidelines through the SMA update process previously described in Section 3, however the changes have not been approved by OCRM, therefore, the State cannot use federal CZMA funds to implement the changes, and the new guidelines can not be applied as enforceable policies for federal consistency purposes.

6.2 Criteria for Evaluating the Effects of Approving or Denying Amendments to the WCZMP

Under the new guidelines there are a number of new or improved program requirements that will apply to future amendments to SMPs. Implementation of these requirements will result in more informed land and water use decision making over and above the original guidelines, with fewer negative environmental consequences. However, the results associated with the new guideline implementation will only be experienced a number of years after local SMPs have been modified and adopted when future development is required to meet the new standards and procedures. In addition, many of the effects of approving or denying amendments to the WCZMP are secondary

and dependent on separate, future, discretionary actions by a variety of entities (e.g., federal, state, local entities and American Indian tribes may make permitting decisions or impose conditions on permits under the program change or other state and federal laws that could positively or negatively affect coastal resources). In the meantime, other state laws such as the GMA, the critical areas ordinance standards, and implementation of the Salmon Recovery Plan will continue to affect land and water use. Eventually, the provisions of the various laws should be fully comprehensive and integrated. Therefore, the criteria for evaluating the effects of approving or denying the amendments to the WCZMP as described in the following sections are qualitatively limited, since many of the variables are unforeseeable and based on decisions peripherally related to the guidelines themselves.

6.3 Physical Environment

6.3.1 Physiography

6.3.1.1 Beach and Dune Management

Alternatives 1 and 3—Effects of Program Change Approval or No Action

The current guidelines do not explicitly address beach and dune management. However, the SMA identifies ocean coast dune lands as shorelines of statewide significance (RCW 90.58.020), which require a higher standard of management: “the interests of all the people shall be paramount in the management of shorelines of statewide significance.” These beaches are also subject to the Seashore Conservation Act of 1970, implemented by the Washington Parks and Recreation Commission. Under Alternatives 1 and 3, the proposed provisions will standardize local government approaches to regulation of dune modification. Local governments will choose whether to allow dune modification at all, and ensure that dune modification does not adversely affect the ecological functions of those dune lands, especially as a result of the “no net loss” of ecosystem functions and mitigation requirements.

Alternative 2—Effects of Program Change Denial

OCRM’s denial of the changes to the WCZMP will result in negative effects to beaches and dunes. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new beach and dune management guidelines or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management, including beach and dune management, would be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological functions standard will be diminished. In addition, the State will lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources.

6.3.1.2 Geologically Hazardous Areas

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Unstable slopes are common along Puget Sound shorelines and on many steep slopes in general. Landslides are a statewide hazard, but are particularly a risk in western Washington where heavy winter rains saturate soil layers, encouraging landslides. In addition, development on shoreline geologically hazardous areas often leads to attempts to stabilize the base of the slope at the shoreline through the use of hard structures. Such structural stabilization has an adverse environmental effect on shoreline processes and habitats. Although the GMA requires that cities and counties “designate and protect” geologically hazardous areas through “Critical Areas Ordinances,” the existing SMA guidelines do not explicitly address geologically hazardous areas or provide specific standards of protection. The new guidelines at WAC 173-26 require that local governments restrict new development in geologically hazardous areas as defined by WAC 365-190-080[4] under the GMA and prohibit new development that would pose a hazard during its useful life or require shoreline stabilization (with certain exceptions). Under Alternatives 1 or 3, to the extent that new development on unstable slopes and other geologically hazardous areas is restricted or provided with mitigating design under the new guidelines, there should be lower rates of damage to structures and risk to people than at present. In addition, the new guidelines should result in lower rates of delivery of excessive sediment loads to streams, resulting in a net benefit to aquatic species.

Alternative 2—Effects of Program Change Denial

OCRM’s denial of the changes to the WCZMP would result in negative effects to the human environment impacted by geological hazards. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new geological hazard areas guidelines or use them as its enforceable policies for federal consistency review purposes. Without funding or the ability to apply federal consistency, there are likely to be negative effects to areas subject to geological hazards because the new guidelines improvements may not occur without increased state funding. Without the authority to implement federal consistency, federal activities or federally permitted activities may develop in geologically hazardous areas. In addition, because development in geologically hazardous areas often results in attempts to stabilize the base of the slope at the shoreline, for projects requiring federal consistency, there would continue to be negative impacts to aquatic species from sediment loads in streams.

6.3.1.3 Flood Hazard Reduction

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Flood hazard and flood damage remains a problem in most basins of western Washington and in eastern Washington, especially in the Yakima and Okanogan basins. During the 1990s, flood

damage in Washington exceeded one billion dollars. It is estimated that most counties in the State experience one to two serious events per year, with annually increasing financial impacts due to increased urbanization in vulnerable areas. Neither the original nor new guidelines explicitly address flood hazard reduction. Flood hazards are managed under the cooperative federal-state-local program based on the National Flood Insurance Program administered by the Federal Emergency Management Agency, and regulated under both the CAO provisions of the GMA and Washington's Flood Plain Management Act (Chapter 86.16 RCW). However, the provisions of Section 221 (3) require that SMPs implement certain best management practices, including integrating flood hazard reduction measures into comprehensive strategies; preventing or removing development in flood-prone areas; and maintaining or restoring the riverine system's natural hydrological and geomorphological processes. Under Alternatives 1 and 3, these principles will supplement the relevant programs under the Flood Plain Management Act and GMA, and promote the integration of local program's FPMA and GMA-adopted SMP flood management provisions. Integration will foster more comprehensive and cost-effective approaches to flood hazard management, resulting in reduced public and private property damage, better integration of habitat conservation concerns into management plans, and a lower rate of riparian habitat loss and degradation.

Alternative 2—Effects of Program Change Denial

Alternative 2 would primarily result in neutral effects to human environmental and socio-economic resources. Since there are no significant differences between the original guidelines (WAC 173-16) and the new guidelines (WAC 173-26), the State could continue to implement the old flood hazard area guidelines without experiencing an effect on coastal areas subject to floods. However, there may be negative effects for any state or local flood programs that receive funding under the CZMA since the WCZMP would no longer continue to be a federally-approved program, and therefore would not be eligible to receive federal funding to implement the flood hazard area guidelines. Nor would the State be able to use the guidelines as enforceable policies to review projects subject to federal consistency requirements.

6.3.1.4 Shoreline Stabilization

Alternatives 1 and 3—Effects of Program Change Approval and No Action

The original guidelines include provisions that: address bulkhead location and construction; minimize damage to fish and shellfish habitats; consider impacts on public access to publicly owned shorelines; and provide protection to upland areas versus creating land by filling bulkheads. The proposed WAC 173-26 takes an approach that blends both prescriptive measures and performance standards to regulate shoreline erosion control and minimize adverse environmental effects to shoreline processes and habitats. Over all, the proposed rule will foster increased use of softer approaches to shoreline stabilization, but will not eliminate all application of hard approaches, depending on the area involved. Future adverse physical, biological, and ecological effects to shorelines and beaches will be moderated in comparison with the past. In conjunction with other sections of the proposed rule which provide for greater setbacks from the shoreline, avoidance of geologically hazardous areas, and vegetation conservation, the net effect

will be to reduce the need for shoreline stabilization, especially shoreline armoring, to protect new development.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM's denial of the changes to the WCZMP would result in some negative effects to the human environment from shoreline stabilization. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new shoreline stabilization guidelines or use them as its enforceable policies for federal consistency review purposes. Without federal funding there are likely to continue to be negative effects to some areas affected by shoreline stabilization because funding for shoreline management overall would be reduced by approximately 55 percent without CZMA funding. The new guidelines would increase the use of softer approaches to shoreline stabilization overall in areas of new development, which will reduce the impacts of harder shoreline stabilization structures such as negative impacts on downstream littoral accretion or erosion and the need for beach engineering. However, this reduction in negative impacts would not be experienced for projects where the State would no longer have the ability to apply the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources.

6.3.2 Aquatic and Nearshore Terrestrial Environments

6.3.2.1 Critical Saltwater Habitats

Alternatives 1 and 3—Effects of Program Change Approval or No Action

Existing WAC 173-16 guidelines do not explicitly regulate critical saltwater habitats. Protection afforded under the original guidelines for critical saltwater habitats is considered patchy and inconsistent, based on the application of diverse local SMPs, Washington's Hydraulics Code (by the Department of Fish and Wildlife), and local watershed management and shellfish water quality programs. The new guidelines are essentially the same, however, they do include "no net loss" regulations for private development, which require SMPs to include (where applicable) protecting and restoring fish and wildlife habitats and riparian and estuarine ecosystems; establishing buffer zones; restoring lost salmonid habitat; improving water quality; and protecting fresh water and sediment inflow regiments. Additionally, the new guidelines clarify that governments must plan restoration by means other than regulation. Under Alternatives 1 or 3, future negative effects on critical saltwater habitats may be minimized; resulting in a higher level of protection than at present. Intertidal habitats would benefit the most, as these habitats are most likely to be affected by small, over-water, non-water dependent structures. The guidelines provide that docks, bulkheads, bridges, fill, floats, jetties, utility crossing, and other human-made structures shall not intrude into or over critical saltwater habitats, except under certain conditions, or when project mitigation would result in no net loss of ecological function.

Alternative 2—Effects of Program Change Denial

If OCRM denies approval of the changes to the WCZMP, the most likely result would be negative effects to critical salt water habitats. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new guidelines for critical saltwater habitats or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management would be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological functions standard will be diminished. Likewise the State would lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources.

6.3.2.2 Critical Freshwater Habitats

Alternatives 1 and 3—Effects of Program Change Approval or No Action

The original guidelines do not explicitly regulate riverine corridors. The new guidelines' critical freshwater habitat provisions address general habitat values, establish “no net loss of ecological functions” as the regulatory standard, and require coordination with flood hazard and other requirements that directly affect freshwater habitats. Under Alternatives 1 or 3, the rate of habitat degradation will slow state-wide over time, and should improve in discrete areas subject to redevelopment due to “no net loss” and mitigation requirements. This positive effect depends on the success of restoration actions and the regulation of new development, as well as coordination with other state and local programs, especially watershed management.

Alternative 2—Effects of Program Change Denial

If OCRM denies approval of the changes to the WCZMP, the most likely result would be negative effects to critical freshwater habitats. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new guidelines for critical freshwater habitats or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management may be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological functions standard would be diminished. Likewise the State would lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources.

6.3.2.3 Wetlands

Alternatives 1 and 3—Effects of Program Change Approval or No Action

Wetlands in Washington have been regulated under a variety of means and programs. None of these laws address wetlands in a comprehensive fashion. The federal Clean Water Act (implemented primarily through the USACOE's Section 404 permit program) only regulates the placement of fill in wetlands. The state GMA requires that cities and counties "designate and protect" wetlands through "Critical Areas Ordinances" but provides no specific standards of protection. Some local governments have adopted local wetlands ordinances. In 1990, DOE issued a model wetlands ordinance, use of which is voluntary. As a result the level of protection afforded to wetlands in Washington is highly variable across the State.

Under Alternatives 1 or 3, the new guidelines will bring greater consistency to the management of wetlands under the SMA and should reduce the rate of wetland loss and degradation. All local governments will have to address the same specific types of wetlands and the same set of issues in developing their SMP. The proposed rule provides statewide policy guidance, while allowing local governments' flexibility to develop regulations appropriate to the local landscape features. The new guidelines require that SMPs provide for no net loss of wetlands with respect to: certain forms of construction actions; vegetation removal; filling; or other actions which would result in a significant change of physical, chemical, or biological characteristics of wetlands. SMPs will be required to adhere to specific standards regarding: wetlands use regulations; wetland ratings or characterizations; alteration; buffers; mitigation; and compensatory mitigation.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM's denial of the changes to the WCZMP would result in negative effects to wetlands. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new wetland guidelines or use them as its enforceable policies for federal consistency review purposes. Federal funding for shoreline management may be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological functions standards will be diminished. Likewise, the State will lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources.

6.3.2.4 Water Quality

Alternatives 1 and 3—Effects of Program Change Approval or No Action

The current guidelines do not explicitly address water quality, although various sections of the rule clearly address protection of water quality (e.g. section 060 (1) agricultural practices, section 060 (8) residential development, section 060 (14) land filling, and section 060 (16) dredging). Under Alternative 1 or 3, by requiring that local SMPs "prevent impacts to water quality that would result in a net loss of shoreline ecological functions" and "ensure mutual consistency between shoreline management provisions and other regulations that address water quality," the proposed rules will help integrate the diverse group of water quality management programs in the shoreline zone. This may lead to a net improvement in water quality under Alternatives 1 or

3. However, water quality in Washington is regulated and managed primarily through the Water Pollution Control Act (Chapter 90.48 RCW), Dairy Nutrient Management Act (Chapter 90.64 RCW), Puget Sound Water Quality Protection Act (Chapter 90.71 RCW), and Shellfish Protection Districts Act (Chapter 90.72 RCW).

Alternative 2--Effects of Program Change Denial

OCRM's denial of the changes to the WCZMP may result in negative effects to water quality. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new water quality guidelines or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management, including water quality activities, would be reduced by up to 55 percent without federal CZMA, and therefore implementation of the no net loss of ecological functions standard would be diminished. Likewise, the State will lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources.

6.3.2.5 Shoreline Vegetation

Alternatives 1 and 3—Effects of Program Change Approval or No Action

WAC 173-16 of the current regulations does not explicitly address vegetation conservation. However, various sections of the rules clearly state requirements or inducements for maintenance of vegetative buffers (e.g. section 050 [6] regarding marshes, bogs, and swamps, section 050 [9] regarding floodplains, section 060 [1] regarding agricultural practices, section 060 [3] regarding forest management practices, section 060 [8] regarding residential development, and section 060 [9] regarding utilities).

The vegetation conservation provisions at section 221 [5] constitute a new approach in shoreline management. The provisions aim “to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines” and, “[protect] against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life” (RCW 90.58.020). The vegetation conservation provisions will over-lay, and therefore affect, the way all shoreline modifications and shoreline uses are designed, built, and operated. The vegetation conservation areas are not necessarily closed to use as long as the standard of “no net loss” is met. Under Alternatives 1 and 3, over a period of decades the rate of habitat degradation on shorelines should slow statewide, and redeveloped areas should see improvement due to mitigation requirements.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, if OCRM denies approval of the changes to the WCZMP, there would be negative effects to shoreline vegetation. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As

a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new shoreline vegetation conservation guidelines or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management, including shoreline vegetation conservation, would be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological function standard would be diminished. Likewise, the State would lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvement in federal activities affecting coastal resources.

6.3.3 Terrestrial and Aquatic Environment Uses

6.3.3.1 Agriculture

Alternatives 1 and 3—Effects of Program Change Approval or No Action

Existing WAC 173-16 agricultural guidelines cite standard best management practices including: (1) local governments encourage vegetation buffer practices between tilled areas and associated water bodies to reduce surface runoff and siltation; (2) establish criteria for location of confined animal feeding operations, retention and storage ponds for feed lot wastes, and stock piles of manure solids in shorelines of the state; and (3) encourage erosion control measures, such as crop rotation, mulching, strip cropping and contour cultivation in conformance with US Department of Agriculture (USDA) guidelines and standards. The new guidelines concerning agriculture were completely revised to reflect 2002 legislation on applicability [of the SMA] to agriculture. Under Alternatives 1 and 3, where agriculture exists today, master programs may not significantly limit changes in agricultural use. New agricultural uses will be required to assure no net loss of shoreline ecological functions and other applicable provisions of the SMP. Consequently, the adverse environmental effects of new agricultural development and the operations effects of newly developed agricultural land will be moderated. However, since the new guidelines do not apply to existing agriculture, the adverse impacts associated with existing activities will continue to occur so long as those existing agricultural activities continue.

Negotiations are underway between Washington's agricultural community and the state departments of Agriculture, Fish and Wildlife, and Ecology, as well as the Washington State Conservation Commission and staff from the Governor's Office, representatives from federal agencies, local government, interested legislators, environmental groups, and Tribes. The goal of these negotiations, also known as the "Agriculture, Fish and Water" process is focused on voluntary compliance.

Alternative 2—Effects of Program Change Denial

OCRM's selection of Alternative 2, to deny the proposed changes to the WCZMP, would primarily result in neutral effects to agriculture in Washington's coastal area. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the

new agriculture guidelines or use them as its enforceable policies for federal consistency review purposes. Since the revised guidelines only apply to new agricultural uses by requiring no net loss of shoreline ecological function (along with other applicable provisions of the local SMPs), the adverse environmental effects of new agricultural development would not be addressed with federal support; in other words, any impacts from new or future agricultural activities will occur unless state funding offsets loss of federal CZMA monies. Since the new guidelines do not apply to existing agriculture, the adverse impacts associated with existing activities will continue to occur, and are unlikely to be affected by OCRM's selection of Alternative 2.

6.3.3.2 Forest Practices

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Vegetation removal, road construction, and soil disturbance are the primary mechanisms by which forest practices influence riparian areas. These disturbances result in negative impacts to water flow, soil destabilization, erosion, sedimentation, stream temperature increases, loss of large woody debris, and negative fish and wildlife effects. The original guidelines for forest practices provide for replanting, prevention of debris accumulation, maintenance of scenic qualities, proper design and construction of roads and bridges, protection of public water supply quality, minimization of sedimentation, and maintenance of buffer strips. The new guidelines require local SMPs, where there is likely to be a conversion from forest to non-forest uses, to assure no net loss of shoreline ecological functions, and maintenance of the ecological quality of the watershed's hydrological system. In addition, SMPs must assure there are no significant adverse impacts to other shoreline uses, resource and values, such as navigation, recreation, and public access. The new guidelines rely on application of the Forest Practices Act in conjunction with the Forest and Fish Report⁸ and restrictions on vegetation removal associated with conversion to non-forestry uses. Based on these additions, selection of either Alternative 1 or 3 would result in incrementally fewer adverse environmental effects in riparian areas as result of implementation of forest practices.

⁸ In Washington State in the 1990's, state, county elected officials, interest groups, Indian tribes and landowners recognized the need to rewrite the rules governing forest practices on private lands to address listed threatened or endangered salmon species. In February 1999, the timber industry, government agencies and some tribes finally agreed to a proposal called the Forests and Fish Report which had been developed by the Washington Environmental Council and the National Audubon Society that included new rules that would be low-risk for salmon. Instead of following the established rule change procedure, negotiators chose to employ the legislative process to alter the current rules. The proposed SH 2091 which establishes the Forests and Fish Report as the guiding document for the new rules. The legislation passed into law in May 1999. The legislation states, "When adopting permanent rules...the Forest Practices Board is strongly encouraged to follow the recommendations of the Forests and Fish report."

Alternative 2—Effect of Program Change Denial

OCRM's selection of Alternative 2; to deny the proposed changes to the WCZMP, would result in primarily neutral effects to forests in Washington's coastal area. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new forest practices guidelines or use them as its enforceable policies for federal consistency review purposes. However, because the revised guidelines only apply to forestry uses by requiring no net loss of shoreline ecological function and maintenance of the ecological quality of the watershed's hydrological system, only the adverse environmental effects of areas converting from forest to non-forest uses would be negatively affected. Since the new guidelines do not apply to existing forest use areas, the adverse impacts associated with existing activities will continue to occur, and are unlikely to be affected by OCRM's selection of Alternative 2.

6.3.3.3 Sand and Gravel Mining

Alternatives 1 and 3—Effects of Program Change Approval or No Action

The original guidelines provide that when mining is conducted, "adequate protection against sediment and silt production should be provided;" and that it "should be done in conformance with the Washington State Surface Mining Act. In addition, "the removal of sand and gravel from marine beaches" should be "strictly control[ed] or prohibit[ed]." This section has been substantially revised under the new guidelines. The new guidelines state that an SMP accomplishes two purposes in addressing mining. First, it identifies where mining may be an appropriate use of the shoreline. Second, it ensures that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline. Under Alternatives 1 and 3, the provisions of the mining section regarding no net loss of ecological functions, in conjunction with provisions regarding vegetation conservation, should result in a lower rate of habitat loss and degradation and other forms of environmental degradation including altering habitat parameters (e.g. flow patterns, sediment transport patterns) and an increase in suspended sediment.

Alternative 2—Effects of Program Change Denial

OCRM's denial of the changes to the WCZMP would result in negative effects to lands in the coastal area impacted by mining. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new mining guidelines or use them as its enforceable policies for federal consistency review purposes. Without increased state funding or the ability to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources, there are likely to be additional negative effects from mining because the new guidelines would only site mining

where it would be an appropriate use of the shoreline, and ensure that when mining and its related activities would be properly designed, conducted and completed to result in no net loss of ecological function. Potential negative effects include habitat loss, altered water flow patterns and sediment transport patterns, and increased suspended sediment.

6.3.3.4 Residential Development

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Washington's residential development guidelines have been substantially revised. Under the original guidelines, subdivision development must: be designed for the physical and environmental capabilities of the site; provide pedestrian shoreline access; preserve shoreline vegetation and control erosion; and use public water supplies in preference to on-site groundwater. In addition, over-water residential construction is generally not allowed. Under the new guidelines, SMPs are required to include policies and regulations that assure no net loss of shoreline ecological functions from residential development, including setback and buffer areas; density, shoreline armoring vegetation conservation requirements; and where applicable, on-site sewage system standards. New requirements for multi-unit residential development include providing community and/or public access; design; configuration and development of plans and subdivision that assure no net loss of ecological functions at full build-out; and preventing the need for new shoreline stabilization of flood hazard reduction measures. Under Alternatives 1 or 3 new residential development, including land subdivision, will be held to a higher standard regarding adverse effects on shoreline habitat. The rate of habitat elimination, cumulative impacts from shoreline armoring, stormwater runoff, septic systems, introduction of pollutant and vegetation modification and removal typical of the past will be diminished.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM's denial of the changes to the WCZMP would result in negative effects to the human environment from residential development. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new residential development guidelines. Funding for shoreline management, including applying the residential development guidelines to federally permitted activities would be reduced by up to 55 percent, and therefore implementation of the no net loss of ecological functions standard would be diminished. In addition, the State would lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources. Negative effects could include not requiring setback and buffer areas; density and on-site sewage system standards; multi-unit residential development requirements, including public access and configuration; and allowing new, detrimental shoreline stabilization and flood hazard reduction structures.

6.3.3.5 Commercial and Industrial Development

Alternatives 1 and 3—Effects of Program Change Approval or No Action

For commercial development, the original guidelines provide that while

priority should be given to those commercial developments which are particularly dependent on their location and/or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state, new commercial developments on shorelines should be encouraged to locate in those areas where current commercial uses exist.

Existing industrial (defined as “ports and water-related industry”) guidelines in WAC 173-16 provide for water-dependent industry; safe and appropriate public access and public facilities; encouragement for cooperative use of docking, parking, cargo handling, and storage facilities; consideration of regional and statewide needs for port facilities; and environmental compatibility. For both categories, the new guidelines have been revised to comply with the “no net loss of shoreline ecological functions” standard, while the requirement for restoration has been removed. New commercial and industrial development will be held to this higher standard regarding effects on shoreline habitat, and will therefore result in lower levels of environmental impacts from development, including changes in basin hydrology; loss of riparian habitat; loss of woody debris and other instream structures; degradation of stream channels; reduction of water quality; habitat fragmentation; and introduction of exotic pests.

Alternative 2—Effects of Program Change Denial

OCRM’s denial of the changes to the WCZMP would result in negative effects from commercial and industrial development. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new commercial and industrial development or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management, including the application of new commercial and industrial development standards, will be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological functions standard will be diminished. In addition, the State will lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting coastal resources. Without application of these standards for federal activities, degradation is likely to continue at the current level, from changes in basin hydrology to habitat fragmentation.

6.3.3.6 Utilities

Alternatives 1 and 3—Effects of Program Change Approval and No Action

The placement of utilities typically results in the clearing of utility corridor and a moderate amount of grading (cutting and filling). Underground utilities require trenching and backfilling. Many utility corridors are easements which run across rangelands, farmlands, or timberlands, and the long term effects are associated with fundamental land use. The original guidelines address the restoration of utility corridors upon completion of construction; underground placement where feasible; and integration with public access corridors. The new guidelines at WAC 173-26 provide clarity and consistency with the overall principles; and require that SMPs have provisions that utility facilities are designed and located to assure no net loss of shoreline ecological function. In addition, they include specific provisions in shoreline areas regarding design, location, and preservation of landscape function, and no significant impacts to other shoreline resources and values. Under Alternatives 1 and 3, higher standards will be applied for siting utility corridors, which should result in fewer adverse effects from newly established corridors, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM's denial of the changes to the WCZMP would result in negative effects to the human environment impacted by utilities. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funds to implement the new utilities guidelines or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management would be reduced by up to 55 percent without federal CZMA funds, and therefore implementation of the no net loss of ecological functions standard would be diminished. In addition, the State would lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as permitted projects and to seek improvements in federal activities affecting coastal resources. Negative impacts associated with the current standard for such projects would continue, including changes to the natural landscape and conflicts between present and planned land and shoreline uses.

6.3.3.7 Transportation and Parking

Alternatives 1 and 3—Effects of Program Change Approval or No Action

Section WAC 173-16 “road and railroad design and construction,” of the original guidelines under the “Transportation and Parking” provisions, state that: (1) transportation corridors should be “located away from shore lands” except as necessary for port facilities; (2) roadways should be sited, designed and constructed so as to minimize adverse environmental effects; (3) “loops or

spurs of old highways with high aesthetic quality should be kept in service as pleasure bypass routes;” and (4) land use and transportation plans should be coordinated.

These provisions have been revised in the new guidelines for clarity and consistency with overall principles. The standard for no net loss of shoreline ecological function has been added, and the requirement for restoration has been removed. SMPs must include policies and regulations “to provide safe, reasonable, and adequate circulation systems to shorelines... consistent with the master program public access policies, public access plan, and environmental protection provision...[and]...systems for pedestrian, bicycle, and public transportation where appropriate.” In addition, parking facilities are not allowed to cause a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Under Alternatives 1 and 3, new transportation and parking facilities will be held to a higher standard than in the past regarding adverse effects on shoreline habitat. The rate of habitat elimination and degradation typical of the past should be reduced.

Alternative 2—Effects of Program Change Denial

OCRM’s denial of the changes to the WCZMP would result in negative effects from continuing with the existing transportation and parking guidelines. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new transportation and parking guidelines or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management, including implementing the transportation and parking guidelines, would be reduced by up to 55 percent without federal CZMA funding, and therefore implementation of the no net loss of ecological functions standard would be diminished. Likewise, the State will lose the ability to use the federal consistency provision to hold federally permitted activities to the same standards as state permitted projects and to seek improvements in federal activities affecting the coastal resources. Continued application of the original guidelines for federally permitted activities would maintain the current rate of habitat elimination and degradation.

6.3.3.8 Historical and Cultural Resources

Alternatives 1 and 3—Effects of Program Change Approval or No Action

There are no significant differences between the original guidelines (WAC 173-16) and the new guidelines (WAC 173-26) concerning archaeological and historic resources. Therefore, the selection of Alternative 1 or 3 should not lead to a measurably different degree of protection of cultural resources. The new guidelines require that in preparing SMPs local governments shall provide for the protection of archaeological, historical, and cultural features. Shoreline permits shall require site inspections or evaluations in areas of known cultural resources, and shall require notification and work-stoppage if cultural artifacts are found. The proposed rule essentially reiterates the intent of Washington’s RCW 27.44 (Indian Graves and Records) and RCW 27.53 (Archaeological Sites and Resources) and their implementing rules which are already applicable to development in shorelines.

Alternative 2—Effects of Program Change Denial

Alternative 2 would result in primarily neutral effects to the historic and cultural resources. Since there are no significant differences between the original guidelines (WAC 173-16) and the new guidelines (WAC 173-26), the State could continue to implement the original guidelines without experiencing an effect on historic and cultural resources. However, there may be negative effects to the socio-economic aspects of historic and cultural resources, (i.e., conduct CZM-supported studies, funds to support, improve, or provide public access to historic and cultural sites in the State's coastal area) if the State is found not to be in compliance with the CZMA through implementation of unapproved guidelines.

6.3.3.9 Recreational Development

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Washington's original guidelines (WAC 173-16) encourage a broad variety of recreational features and facilities, linked by transportation corridors (e.g., hiking, biking, vehicular), in which health and environmental effects are addressed through siting and design. The new guidelines state that SMPs should assure that shoreline recreational development is given priority, and that the facilities should be located, designed, and operated in a manner consistent with the environmental designation in which they are located. In addition, they should not result in net loss of shoreline ecological functions or ecosystem-wide processes. Under Alternatives 1 or 3, the general provisions of the "no net loss of ecological functions" requirement should reduce the impacts associated with recreational development, including human disturbance of wildlife, vegetation alteration as a result of trampling, firewood gathering, off-road-vehicle use, dispersed camp sites, landscaping, and trail development, soil erosion, and the construction of roads.

Alternative 2—Effects of Program Change Denial

OCRM's denial of the changes to the WCZMP would result in negative effects to the human environment from a potential reduction in the amount of future recreational development. While Washington could continue to apply the revised recreational development guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new recreational development guidelines or use them as its enforceable policies for federal consistency review purposes. Funding for shoreline management overall would be reduced by up to 55 percent. Without funding or the ability to apply federal consistency, there are likely to be fewer recreational developments in the future because the new guidelines require SMP's assure recreational development is given priority in the coastal area. In addition, if OCRM selects Alternative 2, future recreational areas would continue to have a higher level of negative impacts on the natural environment, since the new guidelines require "no net loss of ecological function."

6.3.3.10 Public Access

Alternatives 1 and 3—Effects of Program Change Approval and No Action

The original guidelines broadly addressed public access in the Recreation section (WAC 173-16-060 (21), stating that “[p]riority will be given to developments...which provide recreational uses and other improvements facilitating public access to shorelines.” Public access is generally addressed in other sections as well, creating a network of public access requirements and inducements. The new guidelines at WAC 173-26 require potentially ecologically degrading public access improvements be designed to minimize adverse impacts and in other sections, discuss requirements and inducements for the provisions of public access for specific kinds of shoreline development. Under Alternatives 1 and 3, the adverse environmental effects of new public access siting, development, and operation would in large part be eliminated. Incremental improvements to public access will also occur to the extent that new development approvals must require public shoreline access.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM’s denial of the changes to the WCZMP would result in continued negative effects to the environment from public access areas. While Washington could still apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new public access guidelines or use them as its enforceable policies for federal consistency review purposes. Without federal funding or the ability to apply federal consistency using the revised enforceable policies, there are likely to be continued negative effects from public access areas that may otherwise be addressed during future projects, including not practicing impact minimization techniques for public access improvements and operation.

6.3.3.11 Piers and Docks

Alternatives 1 and 3—Effects of Program Change Approval and No Action

“Piers and docks” in Washington’s guidelines refer to commercial, industrial, and public piers and docks, and small facilities associated with single family residences. Existing regulations provide general policy guidance regarding floating docks, preference for open-pile piers, priority for community docks over single-use docks, cumulative effects of single-use docks, and water quality. The new guidelines provide distinct policy guidance regarding commercial and public piers and docks, and small facilities associated with a single family residence, including performance standards. First, single family residence docks are now classified as a water-dependent use. Second, the State now allows only new piers and docks for water-dependent uses or public access. Third, where new piers or docks are allowed, local SMPs must require new residential developments of two or more dwellings to provide either joint use or community dock facilities. Finally, all piers and docks are required to be designed and constructed to avoid or

minimize and mitigate impacts to ecological functions, including critical areas resources such as eelgrass beds and fish habitats, and processes such as currents and littoral drift. Under Alternatives 1 or 3, application of the proposed rule for piers and docks will substantially reduce or mitigate the adverse effects of new pier and dock construction and operation by minimizing the number and size of new structures, applying new design techniques which reduce adverse effects, and by requiring mitigation for remaining adverse effects.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM’s denial of the changes to the WCZMP would result in negative effects to shoreline environment from commercial, industrial and public piers and docks. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new piers and docks guidelines or use them as its enforceable policies for federal consistency review purposes. Without federal CZMA funding (a reduction of up to 55 percent of the State’s shoreline management funding) or the ability to apply the new guidelines to federal activities or actions through federal consistency, there are likely to be negative effects to shoreline areas affected by new piers and docks because the new guidelines set extensive performance standard requirements for these facilities, including restrictions that limit new pier and dock development, and environmental considerations for such critical resource areas as eel grass beds and fish habitats, and processes such as currents and littoral drift.

6.3.3.12 Marinas

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Negative effects of marinas and boating facilities include accidental fuel and oil spills; boat maintenance wastes and debris; anti-fouling bottom paints, bacterial contamination from human and fish wastes, and marine debris and litter. The original guidelines address marina siting and permitting issues, reducing negative impacts to fish and shellfish, aesthetic compatibility with adjacent areas, flushing capacity of embayments for overnight and long-term moorage facilities, and operational procedures to minimize accidental fuel spillage. The revised guidelines at WAC 173-26 additionally require marinas to create with no net loss of shoreline ecological functions. Boating facilities (marinas) can be located “only at sites with suitable environmental conditions, shoreline configuration, access and neighboring uses,” and should mitigate visual and ecological impacts, including those associated with parking and live-aboard boaters. Therefore, under Alternatives 1 and 3, future boating facilities will be required to meet a somewhat higher standard and would result in lower levels of environmental impacts.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM’s denial of the changes to the WCZMP would result in negative effects to shoreline environment from commercial, industrial and public piers and docks. While Washington could continue to apply the revised state guidelines without federal approval,

OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new piers and docks guidelines or use them as its enforceable policies for federal consistency review purposes. Without funding or the ability to apply federal consistency, there may be negative effects to shoreline areas affected by new piers and docks because the new guidelines set extensive performance standard requirements for these facilities, including restrictions that limit new pier and dock development, and environmental considerations for such critical resource areas as eel grass beds and fish habitats, and processes such as currents and littoral drift.

6.3.3.13 Instream Structural Uses

Alternatives 1 and 3—Effects of Program Change Approval and No Action

The original guidelines did not explicitly address in-stream structures or dams. The new guidelines require that in-stream structures “provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources.” Protection and preservation apply to fish and fish passages, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. In addition, the proposed measures require previously lacking coordination between local SMPs and established regulatory programs. Selecting Alternatives 1 or 3 should result in a reduced rate of riparian and aquatic habitat loss; decreased alteration of sedimentation patterns, stability of stream banks and streambeds and loss of water quality; less fluctuation in stream and reservoir water temperatures and water levels above and below the dam; and a decrease in loss of spawning habitat.

Alternative 2—Effect of Program Change Denial

OCRM’s denial of the changes to the WCZMP would result in negative effects to the submerged aquatic and littoral environment affected by in-stream structural uses. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the new in-stream structural uses guidelines or use them as its enforceable policies for federal consistency review purposes. Without federal funding or the ability to apply federal consistency there are likely to be negative effects to submerged aquatic and shoreline environment because the previous guidelines did not specifically address in-stream structure or dams. Under Alternative 2, the State would continue to apply these same guidelines, and would continue experiencing higher rates of riparian and aquatic habitat loss, alteration of sedimentation patterns, decreased stability of stream banks and streambeds, loss of water quality, and loss of spawning habitat, among other impacts discussed above.

6.3.3.14 Dredging and Dredged Material Disposal

Alternatives 1 and 3—Effects of Program Change Approval or No Action

Review and approval of dredging activities in Washington is generally managed under policies and guidelines established by the DMMP, a coordinated state-federal consortium. DMMP regulations state that SMPs shall minimize damage to ecological values; provide a long-range plan for disposal; allow deposition in-water only for habitat improvement purposes or where land deposition is more detrimental; and discourage dredging for the purpose of obtaining fill material. Under Alternatives 1 and 3, the new guidelines at WAC 173-26 add the standard of compliance with no net loss of shoreline ecological functions. However, the SMA is not the principal regulatory programs affecting dredging and dredged material disposal. The proposed new guidelines will have minimum positive impacts, but should align local master programs with other state and federal regulatory programs that primarily address dredging and dredged material disposal in Washington's coastal area.

Alternative 2—Effects of Program Change Denial

Alternative 2 would result primarily in neutral effects to human environmental and socio-economic resources. Since there are no significant differences between the original guidelines (WAC 173-16) and the new guidelines (WAC 173-26), the State could continue to implement the existing dredging and dredged material disposal guidelines without experiencing an effect on areas affected by dredging or disposal of dredged material. However, there may be negative effects for any state or local dredging or dredge disposal programs that receive funding under the CZMA since the WCZMP would no longer continue to be a federally-approved program, and therefore would not be eligible to receive federal funding to implement the new guidelines. Nor would the State be able to use even the original guidelines as enforceable policies to review projects previously subject to federal consistency requirements. However, other state and federal regulatory programs will continue to be the primary authorities for regulating dredging and dredged material disposal in Washington's coastal areas, therefore any negative effects from selecting Alternative 2 would be very limited, or neutral.

6.3.3.15 Fill

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Cumulative adverse environmental effects associated with land filling may include: intertidal habitat loss through direct burial leading to stress on fish and wildlife populations dependent on shallow water habitats; disruption of long-shore drift patterns leading to beach starvation, changes in the composition of intertidal fauna, increase shoreline erosion of downdrift properties; and interference with public access and use of navigable waters. Existing WAC 173-16 provides policy guidance on landfilling, and performance standards with respect to protection of ecological values, minimization of hazards, erosion prevention, and water quality. The new guidelines are essentially the same as the original guidelines, basically providing policy guidance on landfilling, and performance standards linked to section 200 (2)(c) regarding protection of

ecological values. Under Alternatives 1 or 3, application of the proposed rule may result in further reductions in landfill, slowing the rate of shallow subtidal and intertidal habitat elimination and degradation.

Alternative 2—Effects of Program Change Denial

Alternative 2 would primarily result in neutral effects to the coastal human environment affected by landfill. Since there are no significant differences between the original guidelines (WAC 173-16) and the new guidelines (WAC 173-26), the State could continue to implement the fill guidelines without experiencing an effect on the coastal environment. However, there may be negative effects for any state or local programs that receive funding under the CZMA for fill activities (including water quality activities under the coastal nonpoint program, as well as studies or planning activities under section 306 of the CZMA) since the WCZMP would no longer continue to be a federally-approved program, and therefore would not be eligible to receive federal funding to implement the fill guidelines. In addition, the State would not be able to use even the original guidelines as enforceable policies to review projects previously subject to federal consistency requirements.

6.3.3.16 Aquaculture

Alternatives 1 and 3—Effects of Program Change Approval and No Action

Principal environmental impacts of aquaculture in Washington include water quality degradation, habitat alteration by introduced species; and land use conflicts between residential land and aquaculture. While aquaculture is a “preferred, water-dependent use” under the original guidelines, permitting of aquaculture projects is not allowed to “significantly interfere with navigation...impair the aesthetic quality of Washington shorelines...[or]...degrade water quality.” Furthermore, the original guidelines provide that since shellfish resources and other conditions suitable for aquaculture only occur in limited areas, “proposed developments and activities should be evaluated for impact on productive aquaculture areas,” and “[i]dentified impacts should be mitigated through permit conditions and performance standards.” The new guidelines repeat the former provisions, but also require that permitting of aquaculture projects “should not...significantly impair ecological functions.” Based on the addition of the “no net loss of ecological function” standard, new aquaculture facilities should, overall, have less of an impact on other species than in the past. Other provisions of the proposed rule, especially those relating directly and indirectly to water quality, will tend to alleviate the adverse effects of shoreline development and activities upon aquaculture. The land use conflicts between residential land uses and aquaculture have not been addressed under the new guidelines and will remain unaffected.

Alternative 2—Effects of Program Change Denial

Under Alternative 2, OCRM’s denial of the changes to the WCZMP would result in negative effects to the shoreline environment from aquaculture. While Washington could continue to apply the revised state guidelines without federal approval, OCRM may be required to decertify

the WCZMP. As a result, the State would not have a federally-approved coastal management plan, and would not be eligible to receive federal funding to implement the aquaculture guidelines or use them as its enforceable policies for federal consistency review purposes. Without funding or the ability to apply federal consistency there are likely to be limited negative effects to shoreline areas affected by aquaculture because the new guidelines add the “no net loss of ecological function” standard to new aquaculture facility development, and therefore should be less damaging to water quality.

6.4 Sociological Environment

6.4.1 Impacts to Local Governments

The SMA created a “cooperative program” (RCW 90.58.050) between state and local governments to specifically address managing the shorelines of the State. While local governments (i.e., county, city, and town) have primary responsibility for managing land use within their jurisdiction, the SMA places requirements upon local governments to help achieve statewide interests. Local governments with shoreline property experience an additional financial burden in meeting these statewide interests. Costs are incurred for inventories, studies and analyses, the public participation process, updates and revisions to codes. While not covering all costs of local governments associated with SMA implementation, local governments receive both financial and technical assistance grants through the Washington State Legislature and federal CZMA funds. In an effort to assist local governments and ease the financial burden through the upcoming round of SMP improvement, financial assistance is being awarded, and the WDOE has developed a phased development and approval program for local jurisdictions over a ten-year period (RCW 90.58.080). In addition, various technical assistance and guidance documents are provided to local governments.

(See: <http://www.ecy.wa.gov/programs/sea/grants/smp/index.html> and http://www.ecy.wa.gov/programs/sea/landscape-tool/home/landscape_home.html.)

Those counties that are experiencing higher growth rates than others (e.g., King, Pierce, Snohomish, etc.) may also experience greater pressure during development of the new guidelines from conflicting interests (e.g., greater pressure for conversion of rural lands for commercial or housing projects, more demand for sand, gravel and timber for construction materials, competition for space along waterfronts, additional roads and drainage problems). Counties with highly built environments may find it more difficult to achieve mitigation and restoration requirements associated with growth or achieve no net loss of ecological function to modified environments. Several counties have already demonstrated their ability to address these challenges. For example, counties implementing the provisions of the GMA have produced products that address such concepts as “best available science” and critical areas that are the same as those identified in the guidelines (see http://www.kitsapgov.com/dcd/lu_env/cao/cao.htm). Local governments that participate in the planning and regulatory process to implement the new guidelines will most likely experience administrative and financial impacts. However, these are likely to be offset by significant environmental benefits since shoreline uses will create fewer negative environmental impacts under the new guidelines.

WDOE completed an “Evaluation of Probable Benefits and Costs” associated with the amended guidelines in response to the Administrative Procedures Act (<http://www.ecy.wa.gov/biblio/0006043.html>). The study estimated that it would cost all 250 local governments under the SMA jurisdiction approximately \$18.8 million to update their SMPs. Ultimately, the study concluded that the benefits of achieving improved vegetation conservation and setbacks, shoreline stabilization, and improvements to fisheries habitat will offset any probable, additional regulatory costs. (Ecology Pub. 00-06-043, p. 17).

6.4.3 Benefits and Cost Impacts

The economic benefits-costs formula for the proposed program change is not how much it will cost to implement the new provisions of the SMPs on an annual basis using federal, state, or local government funds vs. how much is protected and saved (from a particular environmental account, amount of public access provided in a given particular year, how many permits are processed, etc.). This type of balance sheet would differ from year to year. The probable long-term benefits of the new guidelines will include the ability to plan and manage shoreline development more expertly based on the inputs of agreed upon science and principles; and in a more coordinated and integrated manner because of the process outlined in the guidelines. A useful baseline must be established early in the inventory and analysis stage. Future long-term benefits will include a decline in the rate of destructive habitat change from a variety of future shoreline uses managed; the increased ability to protect species in their habitats because of better information and decision making, including conditions or restrictions on permits that achieve both growth and protection achievements (the balance identified in the SMA); mitigation and restoration projects associated with future development; residents who build on sound slopes and firm foundations; clean water; and healthy fish. On a broad scale, these take into consideration both environmental and social benefits.

The types of benefits derived from good management have social and economic value as well as incurring cost of implementation and loss or change of opportunity. For some, the changes will result in an incremental increase in the cost of doing business. For example, new development and construction proposals may require the inclusion of vegetative buffers along designated shorelines, even in urban and residential areas. To lose 30, 50 or 100 feet along a river bank would represent a foregone development opportunity and value. However the potential offsetting benefits scenarios include reduced pollution loads to the waterways, greater open space and floodplains, reduced needs for stabilization benefits, and the developers’ contributions towards meeting community or statewide societal goals in protecting fish and wildlife habitats. This issue is further explored in the WDOE Benefits and Costs Assessment produced in response to the development of a version of the new guidelines and is found at (<http://www.ecy.wa.gov/biblio/0006043.html>) and incorporated by reference. All forms of guidance, regulations or restrictions, whether through Home Owners Association covenants, building codes with height limitations, or conditions on substantial development permits, produce both benefits and costs. The SMA and guidelines are designed to achieve both specific (i.e., reduce percent of impervious surface associated with development) and broad (i.e., no net loss of ecological function) goals. However, when developing SMPs, local governments must accommodate reasonable and appropriate uses while both minimizing resultant damage to the ecology and environment, and protecting private property rights.

A study recently completed by the Washington State Department of Community, Trade and Economic Development's Growth Management Services analyzed the potential economic benefits to developers who meet the requirements of the GMA and requirements of SEPA.⁹ The study found that nine out of 15 local governments integrating growth management and environmental review produced more than \$500 million in new investment in their communities. Another \$1.756 billion in investment was strongly influenced by local planning decisions through the integration process, and local agencies and developers utilizing the new planning tools avoided more than \$1.3 million in direct environmental costs. The developers liked the increased certainty on meeting the requirements. Other benefits of combining environmental review and planning included:

- Streamlined SEPA procedures;
- Ability to predict cumulative impacts;
- Efficient use of tax money in land use and infrastructure planning, in the permit process, and in providing public facilities and services;
- A more predictable future for the community;
- A reduction in time and cost to developers to obtain permits for many projects;
- Greater certainty about which developments are likely to be permitted in various locations and what conditions may be required to minimize impacts; and
- Greater environmental protection resulting from consideration of the cumulative impacts of all development in the area on the built and natural environment.

6.4.4 Small Business Impacts

In November 2003, WDOE published a “Small Business Economic Impact Statement” (SBEIS)(Ecology Publication #03-06-036) for the then new guidelines. The SBEIS can be found at <http://www.ecy.wa.gov/biblio/0306036.html> and is incorporated by reference as part of this analysis. The impact statement was developed in accordance with Washington State law (Regulatory Fairness Act (RCW 19.85)). Business are not required to comply with the guidelines. Local governments use the guidelines to produce or revise land use ordinances, comprehensive master plans, and conditions on permits that require compliance; these are the regulatory products.

The SBEIS points out that the guidelines provide both procedural and substantive directions for local governments in revising SMPs, but because they provide minimum standards for SMPs, there is an indirect regulatory effect on users and uses within the SMA jurisdiction of 200 feet inland from boundary waters. While both large and small businesses would be affected through increased compliance costs associated with such requirements as shoreline investigation,

⁹ A publication, [SEPA and the Promise of the GMA: Reducing the Cost of Development](#), that describes 15 case studies on SEPA/GMA integration is available by calling 360.725.3000

monitoring, and mitigation, the concern is whether there is a disproportionate impact on small business. The SBEIS also studies the potential impacts associated with meeting shoreline land use restrictions such as vegetative buffers and the reduction of useable land. Small businesses that deal with development and construction, shoreline stabilization contractors, agriculture, mining, and marine transportation would most likely be affected because of the work they conduct in the shorelines of the state. The study points out that there are potential actions that could be taken by local governments to minimize impacts to small businesses:

The SMA does not apply to any one group or type of business or industry but rather applies to any use made of the shorelines of the state. Taken statewide, all groups and types of businesses could probably be found to be represented somewhere in the shoreline, however since shorelines comprise only about two percent of the State's total land base, very few businesses would be found predominantly in the shoreline. Various businesses that qualify as water dependent are affected most directly. (SBEIS, p. 22).

6.5 Effects Related to Environmental Sustainability

The WDOE and local governments producing SMPs face an important task in developing instruments to assist in improving management of shoreline environments. The goal as defined by the Legislature and Washington residents is to reduce the consequences of growth to the environment and work towards improving ecological functions where and when possible. The accelerated population growth rates experienced in western Washington over the last three decades is expected to continue as well as increased demand and prices for shoreline property. Washington State's natural resources will most likely continue to decline through land conversions, increased loss of vegetative cover accompanied by an increased percentage of impermeable surfaces, and a struggle between balancing public good and protecting private property rights.

The cumulative impacts of numerous small scale projects on coastal resources must be addressed through land use planning and regulation, coordinated efforts, soundly developed information on which to base land use decision making, and learning from experience. Development over the last 30 years has led to degradation of waterways and listing once abundant species as endangered or threatened, even though efforts have been made to prevent or minimize such degradation. Washington's Legislature and governmental agencies have felt the necessity to pass new laws such as the GMA and Watershed Planning Act as well as demand new standards of existing laws such as the SMA which plays a key role in managing development along the state's shoreline. At the federal level, the WCZMP has received supplemental funds through CZM grants since 1976 to assist the State in achieving the goals expressed in the SMA. It is this type of management tool that helps achieve policy goals and objectives and addresses the direct impacts associated with actual growth and development proposals. The burden has largely been placed on local governments. However, participation in SMP development is a shared responsibility of the citizens of the community, agencies and organizations, interest groups, technical experts and others to develop master programs that look at all the facts and interests; designate environments in a way that will guide as well as regulate growth; and modify or pass new ordinances that limit what development may or may not do in those environments, while still protecting private property rights. If future SMPs achieve the intent and objectives of the

new SMA guidelines, Washington's shoreline environment residents and species will be better off.

6.6 Cumulative Effects

Chapter 5 and previous sections of Chapter 6 of this EIS have discussed in part the status and trends for Washington's shorelines as they have developed under WAC 173-16, as experiencing varying degrees of degradation. The following discussion of cumulative impacts is drawn largely from Chapter 7, Integrated Analysis, of the WDOE's Integrated Analysis. A much more detailed discussion of cumulative effects under Part 6 of the Programmatic BA that was contracted by NOAA from Herrera Environmental Consultants, dated March 15, 2005, is hereby incorporated by reference.

The new guidelines have been developed to address the cumulative impacts of intense growth and environmental degradation of the Washington's coastal zone. Washington's four million plus coastal population is expected to increase by another one million people within the next 15 years. Cumulative impacts will continue to multiply unless the tools and requirements of the new guidelines are fully implemented and improved upon in subsequent revisions. Following is a discussion of various federal, state and local programs that will help address cumulative effects under the preferred alternative.

Riparian habitats have been altered or degraded by forestry and agricultural practices, and clearing for various urban and suburban lands uses. Stream channel hydrology and ecology have been altered for the worse and degraded. Wetlands loss continues, possibly at undiminished rates.¹⁰ Estuarine water quality is variable, and in places is substandard. Overall, more commercial shellfish beds are being downgraded than are being upgraded due to on-going pollutions problems. As more and more people build larger and larger houses on and near unstable slopes, the problems associated with landsliding have become greater. Nearly two miles of Puget Sound shorelines have been armored each year, adversely affecting beach and nearshore habitats, and the creatures which depend on those habitats for all or a portion of their life cycle.

What goes undocumented, however, is what Washington's shorelines would have become without the SMA (and other resource management and environmental protection legislation). Two examples of activities ended or substantially moderated by the passage of the SMA and adoption of WAC 173-16 are over-water structures (as exemplified by multi-family residential construction in Seattle) and beach fills (as exemplified by residential beach filling on the shores of Hood Canal in Mason County).

¹⁰ Some wetland scientists are of the opinion that in certain respects wetlands loss rates have slowed, but that wetlands degradation continues unabated. Sufficient monitoring data is not available to make an unequivocal statement, and especially not a quantitative statement.

It is important to realize that from any perspective, the newly proposed and adopted WAC 173-26 is not a panacea. Development will continue to occur on Washington's shorelines, and therefore some localized habitat loss and degradation will continue to occur at specific locations even while the standard of no net loss for ecological functions is met for a broader local area. The rate of development is driven largely by population growth and the state of the economy. Population growth provides the demand, and a robust economy provides the means to meet the demand. A robust economy tends to result not only in more development, but more expansive development projects. The conditions in the Puget Sound region of Washington during the 1990s bear this statement out.

The rate and severity of shoreline habitat loss and degradation is moderated or mitigated for by land use, environmental, and pollution control laws and regulations. The SMA functions in conjunction with a number of other state laws, the most important of which includes the Seashore Conservation Act, the Hydraulics Code, SEPA, and the GMA. Reading the above impact analyses could give the impression that WAC 173-26 will be only marginally effective in reducing the rate of habitat loss and degradation, and other undesirable environmental consequences of specific shoreline development and activities. The integrated effect of WAC 173-26 as a whole, across the landscape, however, is anticipated to have a synergistic effect, producing overall environmental benefits substantially greater than the sum of the parts over a period of decades.

To the extent that WAC 173-26 is more effective than was WAC 173-16 at moderating environmental impacts—and everything else being equal—future adverse effects on the shoreline environment at specific project sites will certainly be less than under WAC 173-16, and may be nil. To the extent that WAC 173-26 is better integrated and coordinated with other land use, environmental, and pollution control laws and regulations than WAC 173-16 was, future adverse effects on the environment at specific project sites will be less.

WAC 173-26 contains a number of concepts wholly or explicitly lacking in WAC 173-16:

- Addressing cumulative impacts as a part of master program development;
- Vegetation conservation for the protection of shoreline habitats;
- Explicit management of geologically hazardous areas, and to do so in concert with requirements of the GMA;
- Explicit management of critical salt water habitats, and to do so in conjunction with shoreline management of adjacent areas;
- Explicit management of riverine corridors, and to do so especially in conjunction with protection of hydrologic and ecologic values;
- Explicit management for flood hazard reduction; and
- The mandate to allow no net loss of ecological functions as a result of development activity or operations.

Four provisions of WAC 173-26 stand out in this respect:

- The requirement for local governments to include identification of degraded shorelines in their comprehensive shoreline inventories, and to include in their amended SMP measures for

restoration for those ecologically degraded shorelines, will provide long-term guidance for not just the local jurisdiction, but any organization seeking to affect habitat restoration.

- The requirements for vegetation conservation which apply more-or-less across-the-board to most shoreline developments will likely result in lower rates of habitat loss and degradation from new development than any other element of the proposed rule.
- The requirement that new development shall result in no net loss of ecological functions will, more than any other new element of the proposed rule, result in lower rates of habitat loss and degradation from new development.
- The requirement that local governments, in preparing their amended SMPs, subject those plans to analysis of cumulative effects, and to plan and mitigate for those cumulative effects by allocating the burden of addressing those impacts.

Taken as a whole, the cumulative effects of these new provisions, plus the refined measures for implementing traditional components of the guidelines for development and implementation of local SMPs, will result in substantially reduced adverse environmental effects of shoreline development and redevelopment, and positive environmental results over time on a regional basis.

On the other hand, many of the measures new to the proposed Shoreline Management Guidelines (SMG) rule are not new practices. In some respects, the proposed changes to the SMG rule simply bring that rule into consistency with practices already required by other laws, regulations, or agreements. In these instances, the apparent environmental benefits and effect of the proposed rule will be less than it might seem by simply comparing the proposed WAC 173-26 with the previous WAC 173-16. Notably, these areas of overlap (and source of the overlap) include flood hazard reduction (GMA; Flood Plain Management Act); water quality protection (Water Pollution Control Act; Dairy Nutrient Management Act; Puget Sound Water Quality Protection Act; Shellfish Protection Districts Act); dredging and DMMP under the federal Clean Water Act); agricultural practices (Agriculture Fish Water Negotiations); forest practices (Forest Practices Act); geological hazards (GMA); and requirements for shoreline buffers (GMA, Agriculture Fish Water negotiations).

In April 2003 the Legislature adopted and the Governor signed a bill (SSB 6012) amending the SMA to set a schedule for local governments to amend their SMPs in accordance with the provisions of the proposed new SMG Rule. The update adoption schedule is spread out over a period of nine years beginning in 2005,, and in general, the schedule of SMP update adoption is consistent with SSD Activity, i.e, counties in which a high level of permitting activity occurs are among the jurisdictions required to first update and adopt new master programs.

The beneficial environmental results of the proposed new rule at a project scale will begin to be seen over the next decade in a few local jurisdictions. Substantial cumulative beneficial effects at a landscape scale will not be apparent for many decades.

7. Existing Regulatory Framework

7.1 Impacts to Endangered and Threatened Species

One of the main issues in Washington during the last decade has been the continued degradation of fresh and saltwater habitats. A number of species have been listed as endangered and threatened under both federal and state statutes. Some species listed are listed nationally (e.g., the American bald eagle (*Haliaeetus leucocephalus*), the Humpback whale (*Megaptera novaeanglia*)), but others, especially fish species are site specific to the Washington environment (e.g., the Puget Sound Bull trout (*Salvelinus confluentus*), the Puget Sound Chinook salmon (*Oncorhynchus tshawytscha*)) and rely heavily on habitats found only in Washington. Once a species is listed, special laws protect the species to avoid illegal take and the destruction of habitat.

7.1.1 Endangered Species Act Consultation

Section 7 of the Endangered Species Act (ESA) requires federal agencies to ensure that any action they authorize, fund, or carry out is not likely to jeopardize the continued existence of listed species or result in the destruction or adverse modification of its critical habitat. Federal agencies must consult with the USFWS and NMFS (collectively - the Services) regarding the effects of their actions on certain listed species. After a period of informal consultations, OCRM determined that its approval of the new state guidelines and subsequent incorporation of completed local SMPs is a reviewable action by the Services. Consequently, a programmatic BA was prepared and submitted in April of 2005. This BA, entitled *Washington State Shoreline Master Program Guidelines Programmatic Biological Assessment*, prepared by Herrera Environmental Consultants, March 2005, as mentioned above is incorporated by reference in its entirety. NMFS evaluates the effects of proposed federal actions on listed salmon by applying the standards of § 7(a)(2) of the ESA as interpreted through joint NMFS and USFWS regulations and policies. When NMFS issues a biological opinion (BO), it uses the best scientific and commercial data available to determine whether a proposed federal action is likely to either jeopardize the continued existence of a listed species or destroy or adversely modify the designated critical habitat of a listed species.

The Services' ESA implementing regulations define "jeopardize the continued existence of" as "...to engage in an action that reasonably would be expected, directly or indirectly, to reduce appreciably the likelihood of both the survival and recovery of a listed species in the wild by reducing the reproduction, numbers, or distribution of that species." Section 7(a)(2)'s requirement that federal agencies avoid jeopardizing the continued existence of listed species is often referred to as the "jeopardy standard." The ESA likewise requires that federal agencies refrain from adversely modifying designated critical habitat. With respect to endangered and threatened species, some question remains whether the guidelines are sufficient to meet standards that will ensure the protection of endangered and threatened species, and if not, whether implementing the guidelines would be considered a taking.

In the years to come, state and local implementation of the new guidelines may still result in degradation of important habitats essential to salmon recovery. For example, the allowance of

exemptions and variances, the need to protect private property rights, pressure from growth, and the inability to recognize all cumulative impacts, all may lead to the decline of critical habitats. These issues illustrate the dichotomy of land use regulations. On one hand they are necessary tools that regulate growth impacts to meet specified objectives. On the other, they may allow growth resulting in cumulative impacts that may not always be comprehensively regulated or addressed because of the incremental resource degradation associated with land and water use pattern changes. Ultimately, this issue will only be resolved through decisions made by local, state and federal agencies once the revisions to the WCZMP have been approved by OCRM and local SMPs have been adopted.

7.1.2 OCRM Biological Assessment

OCRM completed a BA and submitted it to the USFWS and the NMFS. Interested parties may review this BA at <http://coastalmanagement.noaa.gov/assessments/welcome.html>. The BA examines portions of three distinct WRIA planning areas, the available information on baseline conditions, and uses of the area. BAs require a 20-year growth scenario evaluation associated with a particular action. This BA included thousands of miles of Washington's shoreline. As mentioned in the previous section, OCRM's BA looked at the major portions of three representative WRIs along Puget Sound to determine if a baseline (based on available material) could be generated and to review the broad requirements of the guidelines and how they would potentially affect possible growth and development scenarios. An effects assessment was conducted for each listed species. In general, the programmatic BA concluded that compared to existing shoreline regulations in Washington state, shoreline regulations generated under the new guidelines would allow future development practices that are less harmful to threatened and endangered species and their habitats than are current practices. Despite these anticipated improvements, which would maintain or improve shoreline conditions in the long term, many actions would still result in unavoidable adverse impacts in the short term. Maintaining shoreline conditions rather than improving them over the 20-year planning horizon would preserve the existing environmental baseline, which in many areas is not properly functioning with regard to habitat requirements of protected species. The potential for take of protected species is also high, given the number of projects that are likely to occur over the 20-year planning horizon. As a result, even with the new guidelines in effect, future development is expected to result in significant impacts on protected species and their habitats.

Table 8, provides an effects determination on whether guideline implementation and growth along the shorelines, streams, rivers and lakes, is "likely to adversely affect" a number of the species under the assumptions of the study. It should be remembered that this assessment does not take into account numerous other simultaneously occurring laws, actions or activities that may mitigate adverse impacts to endangered or threatened species (see discussion below).

Many of the species such as the Gray wolf and, Grizzly bear, are not currently located in Washington's coastal zone (i.e., coastal counties) as far as confirmed observations can verify. Some forest areas near the Cascades are conducive to their habitation in the future and land use changes and impacts in the future could potentially have a negative effect. Some of the listed species such as the Bald eagle, Humpback and Killer whales, and Steller sea lion are dependent on coastal waters and food sources. Consequently, the health of eel grass beds and spawning

habitat for herring and capelin remain important for transient Humpback whales, and the salmon population is important to eagles and sea lions. The Marbled murrelet and Northern spotted owl require healthy forests. To the extent that forest lands along designated SMA rivers, streams, lakes or ocean shores are converted to other uses (WAC 173-26-241(3)(e)), the potential for effects to individual creatures will continue if ecological functions are not maintained under the new guidelines.

Table 7. Finding of OCRM's BA of the Potential of the Guidelines to Effect Listed Species Over a 20-Year Period					
Regulatory Jurisdiction	Species Type	Federal Status ^a	Common Name ^b	Scientific Name	Effect Determination ^a
USFWS	Mammal	E	Gray wolf	<i>Canis lupis</i>	LAA
	Plant	E	Marsh sandwort	<i>Arenaria paludicola</i>	NLAA
	Mammal	T	Canada lynx	<i>Lynx canadensis</i>	NLAA
	Mammal	T	Grizzly bear	<i>Ursus arctos horribilis</i>	LAA
	Bird	T	Bald eagle	<i>Haliaeetus leucocephalus</i>	LAA
	Bird	T	Marbled murrelet	<i>Brachyramphus marmoratus</i>	LAA
	Bird	T	Northern spotted owl	<i>Strix occidentalis caurina</i>	LAA
	Fish	T	Coastal/Puget Sound bull trout (DPS)	<i>Salvelinus confluentus</i>	LAA
	Plant	T	Water howellia	<i>Howellia aquatilis</i>	LAA
	Plant	T	Golden paintbrush	<i>Castilleja levisecta</i>	LAA
	Mammal	C	Mazama pocket gopher	<i>Thomomys mazama^c</i>	LAA ^d
	Mammal	C	Fisher	<i>Martes pennanti</i>	NLAA ^d
	Bird	C	Streaked horned lark	<i>Eremophila alpestris strigata</i>	LAA ^d
	Bird	C	Yellow-billed cuckoo	<i>Coccyzus americanus</i>	NLAA ^d
	Amphibian	C	Oregon spotted frog	<i>Rana pretiosa</i>	LAA ^d
	Insect	C	Mardon skipper	<i>Polites mardon</i>	LAA ^d
	Insect	C	Whulge (Edith's)	<i>Euphydryas</i>	LAA ^d

			checkerspot	<i>editha taylora</i>	
NMFS	Mammal	E	Humpback whale	<i>Megaptera novaeanglia</i>	LAA
	Reptile	E	Leatherback sea turtle	<i>Dermochelys coriacea</i>	NLAA
	Mammal	T	Steller sea lion	<i>Eumetopias jubatus</i>	LAA
	Fish	T	Puget Sound chinook salmon (ESU)	<i>Oncorhynchus tshawytscha</i>	LAA
	Fish	T	Hood Canal summer-run chum salmon (ESU)	<i>Oncorhynchus keta</i>	LAA
	Mammal	P	Southern Resident Killer Whale (DPS)	<i>Orcinus orca</i>	LAA
	Fish	C	Puget Sound/Strait of Georgia coho salmon (ESU)	<i>Oncorhynchus kisutch</i>	LAA ^d

a T = threatened; E = endangered; P = proposed; C = candidate; LAA = likely to adversely affect; NLAA = not like to adversely affect.

b DPS = distinct population segment; ESU = evolutionarily significant unit.

c Also includes subspecies *couchi*, *glacialis*, *louiei*, *melanops*, *pugetensis*, *tacomensis*, *tumuli*, and *yelmensis*.

d Although statements of impact are required for candidate species, for the sake of simplicity a conditional effect determination is assigned here for each candidate species (in the event that the species is listed as threatened or endangered during the 20-year planning horizon).

7.1.3 Guidelines and Species

Even though the SHB has ruled that the guidelines can not direct local governments to require specific standards (e.g., the exact distance associated with vegetative buffers as minimum requirements) in order to meet ESA standards used in recovery plans, the local governments still must develop standards that meet the intent of the guidelines (*see* WAC 173-26-221(5)). While a specific standard is not invoked (e.g., 100-foot vegetation setback from ordinary mean high water mark (OMHW)), the guidelines process (use of available scientific and technical information, information from Washington State Fish and Wildlife, protect ecological function) will come very close to ensuring a useful vegetation conservation standard even though it may vary among different jurisdictions. However, because there is no minimum reliable standard expressed up front, it remains to be seen if the final SMP product meets threshold standards that result in no take and no adverse impacts to the recovery of the species.

As described above, the new guidelines contain new provisions that will require the SMPs to address SMA goals and policies, including the protection, restoration and preservation of valuable and fragile natural resources and protection against adverse effects to the land and its vegetation and wildlife, and the water and its aquatic life. The new guidelines provide some

specific information for listed species that convey certain responsibilities to SMPs. The guidelines define "priority species" as "species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels."¹¹ Priority species are those that meet any of the criteria listed below..... (d) Criterion 4. Species listed under the federal ESA as either proposed, threatened, or endangered." WAC 173-26-020(25).

The guidelines also address the needs of "critical" saltwater and freshwater habitats; floodplains; mining; and restoration activities.

7.1.3.1 Critical Saltwater Habitats (*See* WAC 173-26-221(2)(c)(iii))

Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sandlance, Subsistence, commercial and recreational shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;
- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;
- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;
- Protecting existing and restoring degraded near-shore habitat;
- Protecting existing and restoring degraded or lost salmonid habitat;
- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian vegetation;
- Improving water quality;
- Protecting existing and restoring degraded sediment inflow and transport regimens; and
- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened,

¹¹ "Genetically viable population levels" is not defined in the Guidelines.

and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

7.1.3.2 Critical Freshwater Habitats (*See* WAC 173-26-221(2)(c)(iv))

Many ecological functions of river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of the river channel. Environmental degradation caused by development such as improper storm-water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions downstream. Likewise, gradual destruction or loss of the vegetation, alteration of runoff quality and quantity along the corridor resulting from incremental flood plain development can raise water temperatures and alter hydrographic conditions and degrade other ecological functions, thereby making the corridor inhospitable for priority species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of river and stream corridors depends on:

- (I) Planning for protection, and restoration where appropriate, along the entire length of the corridor from river headwaters to the mouth; and
- (II) Regulating uses and development within the stream channel, associated channel migration zone, wetlands, and the flood plain, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions associated with the river or stream corridors, including the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore the corridor's ecological functions and ecosystem-wide processes.

7.1.3.3 Flood Hazard Reduction (*See* WAC 173-26-221(2)(c)(iii))

Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts to ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

7.1.3.4 Shoreline habitat and natural systems enhancement projects (*See* WAC 173-26-231(3)(g))

Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

Master programs should include provisions fostering habitat and natural system enhancement projects. Such projects may include shoreline modification actions such as modification of vegetation, removal of non-native or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. Master program provisions should assure that the projects address legitimate restoration needs and priorities and facilitate implementation of the restoration plan developed pursuant to WAC 173-26-201(2)(f).

7.1.3.5 Shoreline Use: Mining (*See* WAC 173-26-241(3)(h))

(ii) Master programs shall include policies and regulations for mining, when authorized that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(D)(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

7.1.3.6 Shorelines of Statewide Significance (*See* WAC 173-26-221(3)(a))

Recognize and take into account state agencies' policies, programs, and recommendations in developing use regulations. For example, if an anadromous fish species is affected, the Washington State Departments of Fish and Wildlife and Ecology and the Governor's Salmon Recovery Office, as well as affected Indian tribes, should, at a minimum, be consulted.

These include specific references to local governments taking state or federal listed species into account when revising their SMPs. The underlying premise is the need to protect, minimize damage to, and restore where possible the critical habitats of these species. While priority species are not specifically mentioned throughout, the goal to achieve no net loss of ecological functions when regulating shoreline uses and shoreline modifications is a dominating theme throughout the guidelines. The need for consultation with affected parties is also recognized.

Taken together, these requirements along with the requirement to accommodate reasonable uses of the shoreline will challenge local governments administratively, technically, and financially. The degree to which they can meet these challenges will determine their ability to provide some assurance that the goals of the ESA can also be met.

OCRM submitted a summary programmatic conclusion to the Services in the BA that the improvements embodied in the new guidelines are expected to result in greater environmental benefits to species than continuing to function under the original guidelines and the SMPs.

7.1.4 Washington State's Salmon Recovery Effort

Washington is undertaking a comprehensive statewide strategy dealing with endangered species listing. While the jurisdiction of the SMA covers most of the important water bodies in the state, it was clear that no single piece of legislation would be totally effective in protecting or restoring in critical habitats in support of species rehabilitation. It is within this context that the impacts associated with the guidelines must also be viewed. Neither the SMA or the GMA, nor both taken together can successfully accomplish all aspects of species protection. The Forest Practices Act, National Pollution Discharge Elimination System (NPDES) discharge permits, land acquisition programs, and several other laws and regulations must be considered from a comprehensive and integrated manner. Washington instituted and developed a suite of programs including the Governor's Salmon Recovery Office. The Shared Strategy Response driven by the voter motto: "Extinction is Not an Option" has generated a complex set of activities, mostly voluntary, some funded, to address the problems associated with salmon recovery.¹² Federal, state, and tribal governments are dealing with hatchery issues, storm water drainage and non-point sources of pollution, while local governments address growth management and a host of issues not directly addressed through the SMA and its guidelines.

An example of how King County is addressing the issue along with its neighboring counties can be viewed at: http://www.metrokc.gov/exec/esa/king_county.htm. The WRIA 8 (Lake Washington/ Cedar/Sammamish Watershed) Chinook Salmon Conservation Plan released July 2005 identifies an array of opportunities for collaborative partnerships including the need to collaborate on updating SMPs.

¹² Much of the Shared Strategy Response is described on Washington State Agency web sites. WDFW has numerous articles, slide shows, and documents available for review. It is beyond the scope of this DEIS to attempt to describe this very complex and multi-faceted program for purposes of OCRM's federal action for Guideline incorporation. The point is that there are many actions and activities that have been set in motion from regulations and critical area ordinances to volunteer restoration activities and education programs.

7.1.5 Additional Opportunities for Collaborative Partnerships

In addition to the actions on the comprehensive and start lists, there are a number of opportunities for local jurisdictions to collaborate on actions and for public/private partnerships within and across WRIAs. A preliminary list of collaborative land use actions includes:

- Promote regional (cross-jurisdictional) stormwater planning and facilities construction.
- Work with WDOE to explore the feasibility of a WRIA-wide NPDES permit in the future. King County has initiated discussions on this idea. The city of Seattle is encouraging jurisdictions to work together on their stormwater and drainage code amendments to reduce costs for local agencies, resolve similar stormwater management issues, and negotiate together on similar issues with Ecology on NPDES permits.
- Promote demonstration projects of low impact development features, monitoring of such projects, and cross-jurisdiction training for planners, developers, and others on technical, financial, and marketing aspects of low impact development projects .
- Promote salmon-friendly bulkhead, shoreline, and dock demonstration projects on public property in most jurisdictions around Lake Washington and Lake Sammamish. Such projects will gather practical experience and demonstrate how these altered dock and bulkhead designs can actually work. Use findings from these projects to promote proposals for expedited permitting for local, state, federal permits related to shoreline structures.
- Collaborate on SMP updates, and other regulatory and policy revisions, using the WRIA 8 conservation strategy as part of Best Available Science. Seattle’s “Restore our Waters” strategy includes coordination among twelve city departments to establish priorities to address habitat, water quality, and flows in an urban setting, and illustrates the potential for similar priority setting and coordination across jurisdictions and between public and private partners.
- Encourage jurisdictions to cooperate on flexible development tools such as mitigation banking and transferable development rights. Such tools require cooperation between subareas and jurisdictions to benefit both developed and undeveloped areas.
- Develop consistent guidelines for landscaping certification programs.
- Share lessons learned about enforcement, and related education about laws and their purposes, to improve enforcement across jurisdictions.

- Fund and provide technical support for maintenance of public and private lands which have been set aside for protection of natural functions. As the number of protected lands increases, the need increases for sharing information and staff, based on models which work efficiently and over long time periods to steward and monitor these lands to insure that their ecological functions remain intact (e.g., Cascade Land Conservancy in Redmond Ridge).
- Research extent and impact of withdrawals, including exempt wells and illegal withdrawals. This will require collaboration among Ecology, local health and permitting agencies, water suppliers, developers, and homeowner associations.

8. Other Environmental Considerations and Requirements

8.1 Unavoidable Adverse Environmental or Socio-Economic Impacts

Like the original guidelines, the new guidelines require SMPs to cover a wide range of elements addressing various demands of growth and shoreline development, including economic development, circulation, land conservation, and public access. Designations of high intensity environment or shoreline residential environment either anticipate or encourage growth in those environments. Any designation other than ‘natural environment’ that goes beyond preserving natural areas will result in unavoidable adverse impacts. However, all impacts must be reduced or mitigated in order to achieve the new “no net loss of ecological functions” standard. Some areas will likely become more developed, but under more controlled conditions. Population and industrial growth may become denser in specific designated environments. The cost of development may be incrementally increased to meet more stringent standards and requirements associated with development in shorelines of statewide significance.

The new guidelines grandfather existing uses of the shoreline such as existing agriculture operations. These and other exemptions will not improve an already degraded baseline on which to judge future guideline accomplishments unless those existing uses of the shoreline actively include best management practices, mitigate adverse impacts from use, and participate in restoration measures. Education and outreach programs may help in this regard. For example, the web pages for salmon recovery and the WCZMP provide instructions on how individuals and organizations can help achieve environmental protection and improvement.

The guidelines stipulate that there is to be no net loss of shoreline ecological functions. As a result, the guidelines may maintain existing environmental baseline conditions or result in a long-term beneficial effect on habitat and species. Despite having a long-term beneficial effect on habitat and species, mitigation or restoration activities often entail activities that have short-term adverse impacts. For example, wetland mitigation sites often take several years before they provide an equivalent level of habitat complexity and array of ecological functions. Unless mitigation sites are constructed prior to the proposed developments they are associated with, there may be a lag period after a wetland impact occurs and before a mitigation site is established. During this time the net quantity of wetland available and the net ecological functions provided are reduced. Wetland mitigation activities also generate short-term adverse impacts that can affect sensitive species and habitats via sedimentation, reduced water quality,

destruction of existing habitat and vegetation and associated biological communities, placement of fill, soil compaction, and noise and visual disturbance.

Similarly, in order to restore a shoreline site with contaminated soils either these soils would have to be removed or they would need to be contained. This would prevent ongoing or continuing contamination and improve the quality of habitat and associated ecological functions. However, removal of these soils could temporarily result in sedimentation and re-suspension of contaminants into nearby or surrounding water bodies. Containment of the soils would require installation of a containment structure or barrier, which would require excavation and disturbance of soils, or placement of a cap over the contaminated site. This in turn would require placement of fill within the shoreline environment which could result in both short- and long-term impacts. Overall these activities will provide positive impacts and are regulated by a number of permits (such as the hydraulics code) and conditions to minimize the adverse impacts.

Impacts from existing shoreline uses will continue as they are exempt and grandfathered into the SMA. To the degree they have caused the degradation problems to the aquatic environment described in this EIS and various assessments and studies conducted by agencies and organizations, they will continue to cause degradation problems until such time as stormwater drainage problems, farming practices along the shoreline, road culverts are repaired or replaced, etc., and are addressed through means and measures other than the guidelines (i.e., Shared Strategy restoration projects, non-point source pollution requirements, change in sewer system - septic wells to waste treatment plants, etc.).

8.2 Irreversible and Irretrievable Commitment of Resources

Federal action to approve the amendment should not result in any irreversible or irretrievable commitment of resources. The guidelines are state requirements developed in accordance with state law and are currently being implemented into SMPs by local government. The federal action is not responsible for, and is unlikely to increase, the growth and development that is occurring in Washington's coastal zone.

The guidelines are a management tool to guide and help regulate certain activities and uses found along Washington's shorelines. The new guidelines represent a step forward in the State's thinking on how to best manage growth impacts to protect clearly identified statewide interests along the shoreline. It is likely that new improvements will be made to them if new circumstances and understanding arise. The SMA and the guidelines are not the only management tools available to state and local governmental agencies to use for the protection of natural resources.

Federal approval will permit the WDOE to utilize federal grant funds to help with some of the implementation costs for local government participants, to conduct future studies and assessments on the impact and effectiveness of guideline implementation, and to search for new and improved measures as needed. Denying approval of the changes to the WCZMP would not change the outcome of guideline implementation, only delay to some degree the eventual impacts associated with local government decision making under their new SMPs and remove

federal consistency requirements. Ultimately this would not be advantageous to environmental resources even with any perceived limitations embodied in the guidelines.

As the guidelines become embodied in local SMPs during the next decade, there will be further degradation of some coastal ecosystems, particularly in the urban and rural environments as growth continues and lands and water resources are modified. While future impacts should result in less degradation than under the original guidelines and SMPs, there will continue to be irreversible and irretrievable losses of coastal resources associated with the cumulative change to land and water uses.

8.3 Compliance with other Environmental and Administrative Review Requirements

OCRM's action to approve the amendment to the WCZMP as described in this EIS is subject to a number of additional authorities. OCRM is responsible for ensuring federal actions comply with these and other relevant authorities. A brief discussion on how these laws and executive orders are met through this action is described below.

8.3.1 Endangered Species Act (16 USC 1531 et seq.)

OCRM concludes that federal approval of the SMA guidelines and subsequent grant funds used for the purpose of their implementation by local governments will not jeopardize the continued existence of a listed species under the ESA or result in the destruction or adverse modification of designated critical habitat. The purpose of the new guidelines is to improve the management of shorelines of statewide significance and minimize growth and development impacts to those shorelines. The new guidelines improve SMP capabilities to protect, preserve and restore the environment. They are more specific than the original guidelines and provide more explicit guidance to meet legislative mandates, and require actions to protect ecosystem functions. The guidelines require integration with other laws such as the GMA so that actions can be viewed on a wider jurisdictional scale and coupled with the Watershed Planning Act programs allowing more comprehensive management to take place. The guidelines do not prohibit local governments from developing additional measures that are more restrictive (such as the size of a vegetative buffer) to protect critical areas that include fish and wildlife conservation areas. OCRM's BA estimates that considerable growth may be expected over the next 20 years will continue to make modifications to the land and water resources and is likely to adversely affect some of the listed species.

8.3.2 Magnuson-Stevens Fishery Conservation and Management Act

Under the Magnuson-Stevens Fishery Conservation and Management Act, federal agencies are required to consult with NMFS regarding any actions that may adversely affect designated Essential Fish Habitat (EFH). Many of the issues regarding the level of protection needed for EFH concern the effects of fishing activities on sea floor habitats (EFH FEIS). The WCZMP guidelines do not directly address fishery management plans or EFH areas in the outer continental shelf that are regulated by Fishery Management Councils. However, there are many nearshore areas that may be affected by land and water use plans and standards such as those proposed under this amendment. OCRM is consulting with NMFS regarding potential effects to

EFH. The guidelines specifically designate critical areas including critical saltwater habitats (e.g., kelp beds, eelgrass beds, spawning and holding areas for forage fish, shellfish beds), and others equivalent to EFH with the proviso that the standards of protection must be at least equivalent to the CAOs established by the GMA. The guidelines provide considerably more protection to EFH resources in the marine and freshwater environments than the original guidelines.

8.3.3 Marine Mammal Protection Act

The Marine Mammal Protection Act (MMPA) prohibits, with certain exceptions, the taking of marine mammals in United States waters and by U.S. citizens on the high seas, and the importation of marine mammals and marine mammal products into the U.S. Congress defines “take” as “harass, hunt, capture, or kill, or attempt to harass, hunt, capture or kill any marine mammal.” Under the MMPA, the Secretary of Commerce is responsible for ensuring the protection of cetaceans (whales porpoises, and dolphins) and pinnipeds (seals and sea lions; walruses excepted). The Secretary of the Interior is responsible for ensuring the protection of sea otters, polar bears, walruses, and manatees. OCRM finds that federal approval of the SMA guidelines and subsequent grant funds used for the purpose of their implementation by local governments will not result in the taking or importation of marine mammals and marine mammal products as covered under the MMPA. The purpose of the new guidelines is to improve the management of shorelines of statewide significance and minimize growth and development impacts to those shorelines. The new guidelines improve SMP capabilities to protect, preserve and restore the environment. They are more specific than the original guidelines and provide more explicit guidance to meet legislative mandates, and require actions to protect ecosystem functions. The guidelines require integration with other laws such as the GMA so that actions can be viewed on a wider jurisdictional scale and coupled with the Watershed Planning Act programs allowing more comprehensive management to take place. The guidelines do not prohibit local governments from developing additional management measures that are more restrictive (such as the size of a vegetative buffer) to protect critical areas that include fish and wildlife conservation areas. OCRM’s BA estimates that considerable growth may be expected over the next 20 years will continue to make modifications to the land and water resources and is likely to adversely affect some of the listed species, including Humpback whale, Steller sea lion, Puget Sound Chinook Salmon, Hood Canal summer-run chum salmon, Southern resident killer whale, and Puget Sound/Strait of Georgic coho salmon (ESU).

8.3.4 Environmental Justice

Under Executive Order (EO) 12898, entitled *Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations*, NOAA is required to analyze the environmental effects (health, economic and social) of proposed actions, including such effects on minority and low-income communities, when such analysis is required by NEPA. On February 11, 1994, President Clinton issued EO 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (59 FR 7629). This EO, along with its accompanying cover memo, calls on federal agencies to incorporate environmental justice considerations as part of their missions. It directs them to address, as appropriate, the disproportionately high and adverse human health or environmental effects of

their actions, programs, or policies on minority and low income populations. The cover memo specifically mentions NEPA twice, providing opportunities to incorporate environmental justice as part of the NEPA process. The fundamental objective of the EO is summarized in its first section, which states:

To the greatest extent practicable and permitted by law...each federal agency shall make achieving environmental justice a part of its mission by identifying and addressing disproportionately high adverse human health or environmental effects of its programs, policies and activities on minority and low-income populations in the United States.

In addition, Section 4-4 of EO 12898 identifies subsistence issues as a particular concern for environmental justice populations, since these populations frequently rely on food that they grow, hunt, collect, or otherwise obtain through noncommercial means. Therefore, as part of its NEPA analysis, NOAA must consider whether approval of the guidelines will have disproportionately high adverse health, economic or social impacts on minority and low-income populations in western Washington.

Generally speaking, statewide land use laws and regulations are not intended to have disproportional effects on minority or low-income populations, but the actual implementation may result in what some might consider as adverse impacts. For example, land along shorelines is usually higher priced and often considered to be a desirable place to live. As the price of land increases, it provides an opportunity for those low-income residents who currently own property to sell and make a profit, or the higher taxes may make it more difficult for them to live along the shoreline and force them out. The guidelines deal with a very small ribbon of land so it is unlikely to adversely affect large numbers of individuals or communities. With respect to positive impacts, the guidelines include new requirements for public access and recreational development that will increase opportunities for all social classes and interests to access the shoreline.

Northwest Indian tribes are concerned about the manner in which the new guidelines address the protection of threatened salmon species and their critical habitat. The tribes have well-established treaty rights to salmon for subsistence and cultural reasons. Although tribal lands are excluded from the WCZMP, Washington tribes have attempted to work with WDOE over the years to incorporate principles of sound land use management on their lands. The WCZMP, chapter 3, further describes the obligations associated with protecting treaty rights and stating that, “numerous federal courts have reaffirmed the basic principle that the tribes’ right to harvest fish carries with it the right to have protected habitat” (WDOE, Managing Washington’s Coast, Pub. #00-06-029, p. 63 – available on the DOE web site). It is uncertain if the guidelines will result in habitat protection or improvement as development and the economy in the northwest continue to grow. It is acknowledged that more intensive review of local SMPs by concerned, interested, and affected parties will be required to ensure the requirements of the guidelines (inventories, science, participation, etc.) have made every effort to produce an effective SMP with viable habitat functions important to the tribes.

8.3.5 Executive Order 12866

Implementation of the WCZMP guidelines is a state action and not a federal regulatory requirement. OCRM's action does not constitute a Significant guidance document as defined by EO 12866 (as amended by EO 13422 of January 18, 20007) (1) because: (a) it will not lead to an annual of \$100 million or more, or adversely affect in a material way, the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities; (b) it will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (c) it will not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (d) it will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this EO; and (2) because it does not include (a) Guidance documents on regulations issued in accordance with the formal rulemaking provisions of 5 U.S.C. 556, 557; (b) Guidance documents that pertain to a military or foreign affairs functions of the United States, other than procurement regulations and regulations involving the import or export of non-defense articles and services; (c) Guidance documents on regulations that are limited to agency, organization, management or personnel matters; or (d) any other category of guidance documents exempted by the Administrator of the Office of Information and Regulatory Affairs.

8.3.6 Executive Order 13084: Consultation and Coordination with Indian Tribal Governments

The federal government has a trust responsibility to American Indian and Native Alaskan Governments in protecting tribal self-determination, tribal autonomy, and the tribal way of life. Actions taken through the CZMA by OCRM, and through the WCZMP by Washington may impact tribal government interests. Therefore, OCRM is required to engage in government-to-government consultation with tribes as part of the review and approval of the WCZMP amendment. This requirement is set forth in EO 13084, *Consultation and Coordination with Indian Tribal Governments* (63 Fed. Reg. 27655-27657 (Tuesday, May 9, 1998)); the *Memorandum on Government-to-Government Relations With Native American Tribal Governments* (April 29, 1994)(59 Fed. Reg. 22951- 22952 (Wednesday, May 4, 1994)); and the *American Indian and Alaska Native Policy of the U.S. Department of Commerce* (March 30, 1995). Throughout much of the state amendment process beginning in 1999, representatives of OCRM and NOAA's Office of General Counsel have held meetings with the Northwest Indian Fisheries Commission representing the treaty tribes of western Washington. Tribal interests have greatly increased with the listing of salmonids as endangered or threatened species and concerned if the guidelines go far enough in providing greater certainty for the species' survival and recovery. The role of the SMA and its guidelines in providing a higher level of protection to streams and marine habitats vital to the survival and productivity of fish populations is of major concern to tribal governments. They expressed a clear preference for the state's "Path B" alternative that provided biological standards with higher levels of protection for salmon habitat. Many tribal representatives have been working through the WRIA process in their areas to accomplish Salmon Conservation Planning.

8.3.7 National Historic Preservation Act (NHPA)

Under the National Historic Preservation Act of 1966, the Secretary of Interior has compiled a national register of sites of significant importance. NOAA believes that guideline implementation will not negatively impact registered sites or eligible sites and will provide measures to protect future sites including archaeological sites. The guideline on archeological and historic resources continues the requirements of the original WAC 173-16-060(20) guideline to protect existing and known sites as well as require work stoppage if archaeological resources are uncovered. Site inspection by professional archaeologists and affected Indian tribes, as appropriate, is also a requirement.

9. Consultation and Coordination

9.1 Environmental Assessment

In preparing this analysis, OCRM worked extensively with WDOE Shorelands and Environmental Assistance staff members. WDOE staff supplied a great deal of the information on the past implementation of the SMA and WAC 173-16 guidelines as well as prepared formal assessments on state approval of the new WAC 173-26 guidelines. From 1994 through 2004, OCRM provided CZM funding to WDOE conduct extensive consultation with federal and state agencies, local governments, affected parties, public interest groups and others. Numerous meetings and public hearings were held in various parts of the state to solicit comments throughout the development process. In addition, the consulting firm, Herrera Environmental Consultants of Seattle, Washington, had numerous personal communications with representatives of state and federal agencies, tribes, and nongovernmental organizations in preparing OCRM's BA submitted for formal consultations under the ESA.

OCRM has been formally and informally consulting with representatives of the USFWS and NMFS for a number of years on endangered species. A major concern has been whether guideline implementation could directly result in detrimental effects to endangered or threatened species and their habitats. While the consultation process is conducted independently from NEPA review, the results of OCRM's BA through a biological opinion is relevant to understanding the impacts associated with guideline implementation over the long-term and the support of federal funds used in this effort.

9.2 Scoping

OCRM held scoping meetings in Seattle, Mount Vernon and WDOE Headquarters in Lacey, WA on February 22-24, 2006. Two individuals provided verbal comments and OCRM received four written comments from the Wise Use Movement, the Northwest Indian Fisheries Commission, the Olympic Environmental Council, and Protect the Peninsula's Future. All comments were appreciated and helped to identify potential areas of concern that needed to be addressed. While OCRM felt that some of the comments requested information and analyses that went beyond the scope of needs of the impact statement or agency capabilities, the comments were nonetheless excellent and reflect the types of concerns citizens and interests groups have for the environmental health of the state's coastal resources. No comment expressed opposition to the

approval of the guidelines, only a hope that they begin to make a difference in the protection and restoration of the resources that have been on the decline from the impacts of growth.

9.2.1 Aquaculture

The Olympic Environmental Council, Protect the Peninsula's Future, and Wise Use Movement expressed concern that the aquaculture guideline (WAC 173-26-241(3)(b)) does not go far enough in protecting water quality or potentially endangered and threatened species.

The aquaculture guideline recognizes that there are real and potential environmental issues associated with culturing or farming of food fish, shellfish, or other aquatic plants and animals. It also recognizes marine aquaculture as a statewide interest and that there is no outright ban on finfish farming. Comments suggested that, in an effort to minimize environmental damage, there either be a ban of fish farming in Washington's marine waters or that fish are raised in upland sites where effluent can be treated before discharge.

The principle change in the new guidelines goes significantly beyond the original guidelines in identifying potential additional siting requirements for locating new aquaculture facilities:

“Aquaculture *should not* be permitted in areas where:

- it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or
- significantly conflict with navigation and other water-dependent uses.

Aquaculture facilities *should be* designed and located so as:

- not to spread disease to native aquatic life,
- establish new nonnative species which cause significant ecological impacts, or
- significantly impact the aesthetic qualities of the shoreline.

Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.” (Emphasis added)

Other provisions of the guideline recognize that there are additional conditions the potential aquaculture operator must meet in order to successfully rear species (i.e., water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation restrictions, and salinity). Further, other laws will also apply to the siting of any future facility such as the Marine Mammals Act, ESA, Washington and Environmental Protection Agency water quality standards, and other checks and balances.

(see <http://www.leg.wa.gov/RCW/index.cfm?section=77.125.030&fuseaction=section>)

While some pre-site selection planning processes can help ensure the above requirements are met (i.e., sites to avoid navigation issues or eelgrass beds), it is often necessary to wait until there is a request for an aquaculture permit before specific decisions can be made. It is not simple or inexpensive to obtain the required permits to conduct aquaculture operations. The guideline recognizes that, as an emerging issue and in a formative stage, aquaculture operations may require some latitude in developing pilot or demonstration projects in order to more fully understand potential consequences. Such projects can be used to improve best management practices or for modification or termination of further operations.

OCRM finds that reasonable concern over potential environmental consequences associated with aquaculture operations exist in the guidelines to meet the requirements expressed by both the SMA and the federal CZMA to protect coastal resources while satisfying the demands of sound economic development. It is the responsibility of local governments through SMPs and state agencies to determine if sites that meet the guideline criteria are available in coastal waters.

9.2.2 Greater Protection for Listed Fish Species

The Northwest Indian Fisheries Commission recommended including three additional alternatives in the DEIS. First, they recommended an alternative that supplements the guidelines with additional standards or procedures that would help avoid ESA Section 7 jeopardy opinions during SMP approval or for future developments. Second, they recommended an alternative containing conservation standards to help achieve recovery of listed species of fish through preservation of existing habitat and the restoration of degraded habitat. Third, they requested an alternative to the existing mitigation standards that would strengthen the provisions, avoiding loopholes and uncertainty.

OCRM has reviewed the more protective guideline known as Part IV or Path B (*see* Section 4.4.4) that was rejected by Washington State authorities (i.e., the Shorelines Hearing Board and State Legislature). Its purpose was to provide more definitive standards that, if satisfied at the time of approval, local governments would receive a “non-jeopardy” or “incidental take” decision from USFWS and NMFS, thus allowing the continued implementation of the SMP without further objection. Since the Path B alternative was determined by the State to be a violation of State administrative law, this alternative was no longer considered a viable alternative for OCRM to review. The federal CZMA does not convey authority to OCRM to set standards for state land use policies. OCRM may only ensure that the requirements of the Clean Water Act and Clean Air Act are incorporated into the state CZM programs for participation purposes. Guideline implementation is a state mandate to local governments and not a federal mandate to the state. The federal role is a supportive role in the state administration of the WCZMP. The protection of threatened species is more fully explored in section 8.

With respect to a recovery and restoration alternative, OCRM feels that this is but one component of the approval of the guidelines and that the guidelines go a considerable way in requiring the protection and restoration of the ecological functions of shoreline natural resources. Restoration is more explicit in the requirements than the original guidelines. The guidelines require “that local governments include within their SMP, a ‘real and meaningful’ strategy to address restoration of shorelines” (WAC 173-26-186(8)). The new guidelines specify in considerable detail how the policies in a SMP must promote ‘restoration’ of impaired shoreline ecological functions (WAC 173-26-201(2)(f)). (*See* Ecology Publication #04-06-022 for further WDOE guidance on the requirements.) The new guidelines define restoration:

“Restore”, “Restoration” or “ecological restoration” means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration

does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.” (WAC 173-26-20(27)).

The original guidelines neither defined restoration nor provided any substantive guidance on this important element of upgrading SMPs. Because the new guidelines define, require, and are explicit regarding restoration, it is not considered necessary to consider any number of permutations to this provision that was developed through an extensive consultation process. While the guidelines allow local governments discretion when applying the guidelines to local circumstances as provided by the SMA and WAC 173-26, it is clear that there are certain requirements that must be met. WDOE in its State Review Checklist (Appendix C) requires a Restoration Plan that:

- identifies degraded areas, impaired ecological functions, and potential restoration sites;
- establishes restoration goals and priorities, including SMP goals and policies that provide for restoration of impaired ecological functions;
- identifies existing restoration projects and programs;
- identifies additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources;
- sets timelines and benchmarks for implementing restoration projects and programs; and
- provides mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals. WAC 173-26-186(8)(c); 201(2)(c)&(f).

For critical freshwater habitats: incentives to restore water connections impeded by previous development. WAC 173-26-221(2)(c)(iv)(C)(III).

For **SSWS**, identification of where natural resources of statewide importance are being diminished over time, and master programs provisions that contribute to the restoration of those resources. WAC 173-26-251(3)(b)

It is also recognized that restoration of habitats is the responsibility of many interests and the SMA is but one component of what is required for habitat protection and restoration to include the provisions of the GMA. In the “Statewide Strategy to Recover Salmon – Extinction is not an Option” (Sept. 1999), it states:

“Although there are many laws with mandates that either directly or indirectly attempt to protect or restore salmon and their habitats, the troubling status of these fish is an indication that our existing regulatory framework and implementing agencies have been unable to protect salmon populations and their ecosystems. Some of the failures are due to the complexity and difficulty in addressing ecosystems — interconnections are either ignored or not well understood. Decisions may have been made in the past that favor development or the status quo because of scientific uncertainty or the inability to resolve conflicts between economic development and environmental protection. Other problems arise due to lack of enforceability, coordination, comprehensiveness, resources for

implementation, data and scientific information, and public support. Fortunately, salmon are very adaptive and have incredible survival skills.

Following are some examples of current laws that affect salmon:

- Laws dealing with land and water use and development — state: Environmental Policy Act, GMA, Floodplain Management Act, Forest Practices Act, Water Pollution Control Act, Hydraulic Project Approval, Aquatic Lands Act, Water Code and Water Resources Act; federal: NEPA, Clean Water Act, Federal Reclamation Act, CZMA, Rivers and Harbors Act, Food Security Act, Federal Power Act, Wild and Scenic Rivers Act, and many more.
- Laws pertinent to fish and wildlife protection — In addition to some of the above, such as SEPA and Hydraulic Project Approval: the federal Fish and Wildlife Coordination Act, The Northwest Power Act, the Magnuson-Stevens Fishery Conservation Act, The ESA, and the Marine Mammal Protection Act.
- Recently enacted legislation — Three acts passed in the last year were designed specifically to improve conditions for salmon recovery. These key pieces of legislation recognized the need for comprehensive, scientifically based, coordinated, collaborative, incentive-based and locally implemented solutions:
 - Salmon Recovery Planning Act (ESHB 2496): Passed in 1998, the Act provides the framework for developing restoration projects. It requires a limiting factors analysis for habitat restoration be completed, and establishes a funding mechanism for local habitat restoration projects. It also creates the Governor's Salmon Recovery Office. The office's primary purpose is to coordinate and assist in the development of salmon recovery plans for Evolutionary Significant Units (ESUs) and submit those plans to NMFS, USFWS and appropriate tribal governments. The Salmon Recovery Office is obligated to prepare a *State of the Salmon* Report by December 2000. The bill also calls for the creation of an Independent Science Panel to provide scientific review of salmon recovery efforts in the state. The panel will provide independent and objective scientific advice to inform decision-making, separated as much as possible from economic, historic, cultural or political factors. This will help increase the level of credibility and public trust in Washington's salmon strategy and regional conservation/restoration responses.
 - Watershed Planning Act (ESHB 2514): This legislation, created in 1998, encourages voluntary planning by local governments, citizens, and tribes for water supply and use, water quality, and habitat at the WRIA or multi-WRIA level. Grants are available to conduct assessments of water resources and develop goals and objectives for future water resource management.
 - Salmon Recovery Funding Act (2E2SSB 5595): This legislation further developed concepts established in ESHB 2496. A Salmon Recovery Funding

Board is established to localize salmon funding in one board. This Board will make decisions about base level allocations across regions, and will deliver funds for projects and activities based on a science-driven, competitive process. The legislation further clarified what must be considered in a Statewide Strategy to Recover Salmon, and directs the Governor, with the assistance of the Salmon Recovery Office, to submit this document to NMFS and USFWS.

- Pacific Salmon Treaty — This Treaty is negotiated among Washington, Oregon, Alaska, tribes, and the federal governments of the U.S. and Canada. The outcomes of these discussions impact fish stocks and harvest in both western Washington and the Columbia Basin.

Addressing habitat protection and restoration in Washington requires more than a single program, piece of legislation, or entity. The new guidelines require better information, coordination, impact minimization, net loss of ecological functions, mitigation and restoration for improvements, and integration with other land use plans, as described in WAC 173-26. Issues must be addressed on a watershed basis with multi-party involvement. Consequently, it is felt that an alternative to specifically deal with preservation and restoration of salmon habitat is not necessary or required for consideration in the approval of WCZMP guidelines that cover a multitude of program provisions, shoreline modifications and shoreline uses.

The DEIS attempts to describe potential, mostly indirect impacts associated with overall guideline implementation, but does not seek to develop more definitive or environmentally protective standards. Under the CZMA, OCRM provides the WDOE with funds that support program enhancement and change, and technical studies to better understand certain coastal management issues to improve decision-making. The CZMA does not grant OCRM the authority to set standards or policies for any participating coastal state.

OCRM's BA, using an example of three watersheds in the Puget Sound region, attempts to provide more specific information in response to ESA consultation requirements. The broad conclusion from a programmatic BA is that "compared to existing shoreline regulations in Washington State, shoreline regulations generated under the guidelines would allow future development practices that are less harmful to threatened and endangered species and their habitats." The BA extrapolates implementation under a 20-year worst-case growth scenario and finds that growth impacts will likely continue to degrade habitats and be a threat to some species. Viewed only as a single measure to protect habitat, it is most likely that the SMA will not be able to afford all the protection needed as many species have wide-ranging habitats outside of the SMA jurisdiction. A comprehensive program to include the cooperation of federal, state, local governments, affected Indian tribes, conservation organizations and others must work together. Without the "no net loss of ecological function" provisions of the new guidelines, it is likely endangered and threatened species would be qualitatively, if not measurably, worse off.

9.2.3 Emergency Repairs

Another comment suggested that some adverse impacts to habitat occur in response to declared emergency operations such as a major flooding event. Repairs not subject to environmental

review or permitting requirements have resulted in bank hardening and changing channel profiles with negative consequences to important habitat. It was suggested that the guidelines provide for greater control over emergency repairs and be designed to limit inadvertent adverse impacts from those repairs. This point is true for many places and environments in which disasters have been declared, where emergency measures have been taken to further protect life and property, where provisions of law are sometimes held in abeyance (e.g., preparation of an EIS under NEPA or SEPA) on the emergency work to be done. The guidelines do, however, go a long way to minimize environmental harm to stream and channel beds before any emergency occurs and could help form the basis for emergency restoration planning. The guideline on flood hazard reduction (WAC 173-26-221(3)), a designated critical area, is comprehensive and a significant improvement over the original guideline. It requires that:

- New development within the channel migration zone or floodway be limited to uses and activities listed in WAC 173-26-221(3)(b) and (3)(c)(i).
- New structural flood hazard reduction measures allowed only where demonstrated to be necessary, and when non-structural methods are infeasible and mitigation is accomplished, landward of associated wetlands and buffer areas except where no alternative exists as documented in a geotechnical analysis. WAC 173-26-221(3)(c)(ii) & (iii)
- Removal of gravel for flood control allowed only if biological and geomorphological study demonstrates a long-term benefit to flood hazard reduction, no net loss of ecological functions, and extraction is part of a comprehensive flood management solution. WAC 173-26-221(3)(c)(v)
- Prohibition on new structural shoreline stabilization and flood control works except where there is documented need to protect an existing primary structure (provided mitigation is applied) or to protect ecological functions. WAC 173-26-211(5)(b)(ii)(C).

OCRM feels that alternative analysis is not required for this particular provision and that the issue is not with the scope of the guidelines but with disaster emergency powers and planning.

9.2.4 Develop Baseline Conditions

The comment was made that the DEIS should develop a baseline (i.e., conditions from 1850, 1976) characterizing shoreline conditions during pre-SMA conditions, at the time of implementation, and currently in order to help quantify preservation, protection and restoration or enhancement efforts. While OCRM feels that this request cannot adequately be fulfilled at this time and is not necessary for analysis of adoption of the guidelines, it is an excellent suggestion. In a report published by WDOE entitled: "Enforcement Report on Policy and Trends" (Pub # 04-01-009, p. 43), Ecology states that they do "not have a meaningful inventory of shoreline resources to indicate the status of the resources over time." As the State moves toward requiring sound science on which to base decisions, the need for broader data that transcends what is known by local jurisdictions will become more important. Perhaps the most meaningful activity to assist with establishing baseline conditions is the guideline that addresses the inventory and analyses of shoreline conditions (WAC 173-26-201(3)(c)-(d) with the goal to ensure that, "whenever possible, inventory methods and protocols are consistent with those of

neighboring jurisdictions and state efforts." If successful, meaningful baselines will be established on many issues of concern including shoreline uses, critical areas, and degraded areas.

More specifically, the comment asked for a 20-year analysis of SMP changes that have resulted in changed environmental designations, which in turn resulted in decreases in "environmental protection." While the WCZMP that was approved in 1976 listed four "recommended" environments (urban, rural, conservancy and natural), local governments added other environments including aquatic environments, rural residential, shoreline residential, suburban, semi-rural and urban divided into residential, commercial and industrial as they deemed appropriate to local conditions and preferences (FEIS, Appendix 5.(C)). The new guidelines (WAC 173-26-211) consider the six categories of environment designations as "basic" environments and allow parallel environments and different designation system. Local governments must go through a thorough and specific process for designating environments. Unassigned areas are automatically designated as "rural conservancy" or "urban conservancy" (i.e., most protective developed environments) until such time as they are officially designated through a SMP amendment process. Because a reasonable process for shoreline environment designation exists along with specific criteria to be met, it is not deemed necessary to make judgments as to the more protective or less protective nature of the designations. To include this in environmental analysis as future designations can only be speculative at this stage. It is clearly understood and accommodated by the SMA that the environmental protection afforded to natural resources will be greater in a natural environment than in an urban environment. However, even in the urban area the new guidelines require no net loss, mitigation and restoration as conditions for future development in the urban area.

9.2.5 Alternatives to Shoreline Uses and Modification Standards

The Wise Use Movement requested OCRM look at more stringent standards to each of the shoreline uses and modifications listed in WAC 173-26-241 and 231. For example, in identifying preferences under "shoreline uses" only preference would be given to "water dependent uses" and suggested that "water-related uses" and "water-enjoyment uses" should be prohibited, like mining, etc. While it is true that for each standard adopted by WDOE one could have an alternative that is more or less protective of the environment, OCRM can not rewrite the WCZMP under the CZMA. In many cases, there would be legal constraints to making a number of the changes suggested by the comments, that is, such changes would be contrary to state statutes and rules. OCRM feels that such alternatives do not need to be considered and are not included as valid alternatives available to OCRM.

One additional alternative was requested that suggests OCRM review an alternative that would have WDOE include additional environmental and land use controls supporting the regulations of the coastal zone such as the GMA, the Hydraulic Code, the Watershed Planning Act, the Salmon Recovery Planning Act and others. This suggestion has merit and is an alternative WDOE could consider in the future. It is an alternative option for the Washington State Legislature to decide and not OCRM to require because it may represent a lesser environmentally significant impact alternative. The concept of consistency with other land use

plans like the GMA is given considerable weight in RCW 176-26-191(1)(e) and states in relevant part:

The SMA addresses the issue of consistency in RCW 90.58.340, which states:

All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as to achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government (1971 ex.s. c 286 § 34.)

Pursuant to the statutes cited above, the intent of these guidelines is to assist local governments in preparing and amending master programs that fit within the framework of applicable comprehensive plans, facilitate consistent and efficient review of projects and permits, and effectively implement the SMA. The focus remains on the shorelines and their significant waters with secondary emphasis on the broader lands and waters adjacent to those shorelines.

In the absence of a proposal to amend the WCZMP to incorporate other laws into the program, the guidelines provide sufficient direction to integrate provisions of the Watershed Plans, the GMA and others in support of integrated and comprehensive planning and management. This does not preclude such a proposal being submitted by WDOE in the future should they find it advantageous to comprehensive management objectives.

10. List of Preparers

Helen C. P. Farr
Environmental Protection Specialist
A.B. History
M.A. Marine Affairs
Office of Ocean and Coastal Resource Management
National Ocean Service/NOAA

Matt Gove
Consultant
B.A. Biology
M.A. Environmental Management
Jardon & Howard Technologies

Richard B. "Ben" Mieremet
Senior Policy Analyst
B.S. Conservation and Resource Development
M.S. Water Resources Management

M.A. International Relations
Office of Ocean and Coastal Resource Management
National Ocean Service/NOAA

11. List of Agencies and Persons Consulted

Discussions pertinent to the formulation of the final actions involved input from the various staff within the NMFS and NOAA including the NOAA General Counsel for Ocean Services, and state staff from the Washington Department of Ecology.

12. References

Note: Much of the information used in this DEIS was taken from WDOE in its assessments of guideline impacts, and a BA prepared for OCRM by Herrera Environmental Consultants for the conduct of endangered species consultations. Their information contributions are gratefully acknowledged.

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13. List of Recipients

The following individuals and organizations that are being sent a copy of this document include:

Federal Government Agencies

Advisory Council on Historic Preservation
Army Corps of Engineers
Portland District
Seattle District
Environmental Protection Agency, Hqs
Region 10, Seattle
Federal Emergency Management Agency, Bothell
Fish and Wildlife Service,
Region 1, Portland
NOAA Marine Fisheries Service,
Northwest Regional Office, Seattle

Regional Agencies

Cowlitz-Wahkiakum Council of Governments, Kelso
Grays Harbor Council of Governments, Aberdeen
Hood Canal Coordinating Council, Quilcene
Puget Sound Regional Council, Seattle
Thurston Regional Planning Council, Olympia

Washington State Agencies

Agriculture, Department of
Commerce, Trade and Economic Development, Department of
Archaeology & Historic Preservation
Growth Management Division
Governors Salmon Recovery Office
Ecology, Department of,
Environmental Coordination Section
Library
Fish and Wildlife, Department of
Health, Department of
Library, Washington State
Natural Resources, Department of
Parks and Recreation Commission
Puget Sound Water Quality Action Team
Transportation, Department of

Tribal Governments

Chehalis Confederated Tribes
Cowlitz Tribe
Duwamish
Elwha Klallam Tribe
Hoh Tribe
Jamestown S' Klallam Tribe

Kalispel Tribe
Lummi Tribe
Makah Tribe
Muckleshoot Tribe
Nisqually Tribe

Nooksack Tribe
Port Gamble S'Klallam Tribe
Puyallup Tribe
Quileute Tribe
Quinault Tribe
Samish Tribe
Sauk-Suiattle Tribe
Shoalwater Bay Tribe
Skokomish Tribe
Spokane Tribe
Squaxin Island Tribe
Stillaguamish Tribe
Suquamish Tribe
Swinomish Tribe
Tulalip Tribes
Upper Skagit Tribe
Northwest Indian Fisheries Council

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Sequim, city of.

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Normandy Park, city of.
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South Bend, city of.

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Orting, city of.
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Roy, city of.
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South Prairie, town of.
Steilacoom, town of.
Sumner, city of.
Tacoma, city of.
University Place, city of.
Wilkeson, town of.

San Juan County.

Friday Harbor, town of.
Skagit County.
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Burlington, city of.
Concrete, town of.
Hamilton, town of.
La Conner, town of.
Lyman, town of.
Mount Vernon, city of.
Sedro Woolley, city of.

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Arlington, city of.
Bothell, city of.
Brier, city of.
Edmonds, city of.
Everett, city of.
Gold Bar, town of.
Granite Falls, town of.
Index, town of.
Lake Stevens, city of.
Lynnwood, city of.
Marysville, city of.
Monroe, city of.
Mountlake Terrace, city of.

Mukilteo, city of.
Snohomish, city of.
Stanwood, city of.
Sultan, town of.
Woodway, town of.

Thurston County.

Bucoda, town of.
Lacey, city of.
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Yelm, town of.

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Cathlamet, town of.

Whatcom County.

Bellingham, city of.
Blaine, city of.
Everson, city of.
Ferndale, city of.
Lynden, city of.
Nooksack, city of.
Sumas, city of.

Non-governmental Organizations

Association of Washington Business
Building Industry Association of Washington
Columbia-Pacific Resource Conservation &
Development
Northwest Indian Fisheries Commission
Olympic Environmental Council
Port of Grays Harbor
Protect the Peninsula's Future
Puget Sound Energy
Sierra Club
Washington Environmental Council
Washington State Farm Bureau
Wise Use Council

Individuals

Marlies Wierenga (Scoping Meeting)
Steve Hall (Scoping Meeting)

C. Attachments

- 1. Appendix A: Shoreline Management Act Guidelines Section 173-26 RCW**
- 2. Appendix B: Shoreline Management Act of 1971, Chapter 90.58 RCW**
- 3. Appendix C: WDOE Shoreline Master Program Submittal Checklist**
- 4. Appendix D: Brief History of Washington's Shoreline Management Act and Guidelines**
- 5. Appendix E: Description of Selected ESA Listed Salmonid Species**

Appendix A

Chapter 173-26 WAC

SHORELINE MASTER PROGRAM GUIDELINES

Appendix A

Chapter 173-26 WAC

SHORELINE MASTER PROGRAM GUIDELINES

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(1) Authority.

RCW 90.58.090 authorizes and directs the department to adopt “guidelines consistent with RCW 90.58.020, containing the elements specified in RCW 90.58.100” for development of local master programs for regulation of the uses of “shorelines” and “shorelines of statewide significance.” RCW 90.58.200 authorizes the department and local governments “to adopt such rules as are necessary and appropriate to carry out the provisions of” the Shoreline Management Act.

(2) Purpose.

The general purpose of the guidelines is to implement the “cooperative program of shoreline management between local government and the state.” Local government shall have the primary responsibility for initiating the planning required by the Shoreline Management Act and “administering the regulatory program consistent with the policy and provisions” of the Act. “[T]he department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and insuring compliance with the policy and provisions” of the Act. RCW 90.58.050.

In keeping with the relationship between state and local governments prescribed by the Act, the guidelines have three specific purposes: to assist local governments in developing master programs; to serve as standards for the regulation of shoreline development in the absence of a master program along with the policy and provisions of the Act and, to be used along with the policy of RCW 90.58.020, as criteria for state review of local master programs under RCW 90.58.090.

(3) Effect.

(a) The guidelines are guiding parameters, standards, and review criteria for local master programs. The guidelines allow local governments substantial discretion to adopt master programs reflecting local circumstances and other local regulatory and non-regulatory programs related to the policy goals of shoreline management as provided in the policy statements of RCW 90.58.020, WAC 173-26-176 and WAC 173-26-181. The policy of RCW 90.58.020 and these guidelines constitute standards and criteria to be used by the department in reviewing the adoption and amendment of local master programs under RCW 90.58.090 and by the growth management hearings board and shorelines hearings board adjudicating appeals of department decisions to approve, reject, or modify proposed master programs and amendments under RCW 90.58.190.

(b) Under RCW 90.58.340, the guidelines, along with the policy of the Act and the master programs, also shall be standards of review and criteria to be used by state

agencies, counties, and public and municipal corporations in determining whether the use of lands under their respective jurisdictions adjacent to the shorelines of the state are subject to planning policies consistent with the policies and regulations applicable to shorelines of the state.

(c) The guidelines do not regulate development on shorelines of the state in counties and cities where approved master programs are in effect. In local jurisdictions without approved master programs, development on the shorelines of the state must be consistent with the policy of RCW 90.58.020 and the applicable guidelines under RCW 90.58.140.

(d) As provided in RCW 90.58.060, the department is charged with periodic review and update of these guidelines to address technical and procedural issues that arise as from the review of Shoreline Master Programs (SMPs) as well as compliance of the guidelines with statutory provisions. As a part of this process Ecology will compile information concerning the effectiveness and efficiency of these guidelines and the master programs adopted pursuant thereto with regard to accomplishment of the policies of the Shoreline Management Act and the corresponding principles and specific requirements set forth in these guidelines.

WAC 173-26-176 General Policy Goals of the Act and Guidelines for Shorelines of the State.

(1) The guidelines are designed to assist local governments in developing, adopting, and amending master programs that are consistent with the policy and provisions of the Act. Thus, the policy goals of the Act are the policy goals of the guidelines. The policy goals of the Act are derived from the policy statement of RCW 90.58.020 and the description of the elements to be included in master programs under RCW 90.58.100.

(2) The policy goals for the management of shorelines harbor potential for conflict. The Act recognizes that the shorelines and the waters they encompass are “among the most valuable and fragile” of the state’s natural resources. They are valuable for economically productive industrial and commercial uses, recreation, navigation, residential amenity, scientific research and education. They are fragile because they depend upon balanced physical, biological, and chemical systems that may be adversely altered by natural forces (earthquakes, volcanic eruptions, landslides, storms, droughts, floods) and human conduct (industrial, commercial, residential, recreation, navigational). Unbridled use of shorelines ultimately could destroy their utility and value. The prohibition of all use of shorelines also could eliminate their human utility and value. Thus, the policy goals of the Act relate both to utilization and protection of the extremely valuable and vulnerable shoreline resources of the state. The Act calls for the accommodation of “all reasonable and appropriate uses” consistent with “protecting against adverse effects to the

public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life” and consistent with “public rights of navigation.” The Act’s policy of achieving both shoreline utilization and protection is reflected in the provision that “permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, in so far as practical, any resultant damage to the ecology and environment of the shoreline area and the public’s use of the water.” RCW 90.58.020.

(3) The Act’s policy of protecting ecological functions, fostering reasonable utilization and maintaining the public right of navigation and corollary uses encompasses the following general policy goals for shorelines of the state. The statement of each policy goal is followed by the statutory language from which the policy goal is derived.

(a) The utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use.

RCW 90.58.020:

“The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration and preservation.”

“It is the policy of the state to provide for the management of the shorelines by planning for and fostering all reasonable and appropriate uses.”

“[U]ses shall be preferred which are...unique to or dependent upon use of the state’s shoreline.”

“Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.”

RCW 90.58.100:

“(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;...

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shorelines use element.

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;...”

(b) The utilization of shorelines and the waters they encompass for public access and recreation.

RCW 90.58.020:

“[T]he public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally.

“Alterations of the natural conditions of the shorelines of the state, in those limited instances when authorized, shall be given priority for...development that will provide an opportunity for substantial numbers of people to enjoy the shorelines of the state.”

RCW 90.58.100:

“(2) The master programs shall include, when appropriate, the following:

(b) A public access element making provisions for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;”

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.”

(c) Protection and restoration of the ecological functions of shoreline natural resources.

RCW 90.58.020:

“The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization protection, restoration, and preservation.”

“This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life...”

“To this end uses shall be preferred which are consistent with the control of pollution and prevention of damage to the natural environment.”

“Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area....”

RCW 90.58.100:

*“(2) The master programs shall include, when appropriate, the following:
(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;
(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;”*

(d) Protection of the public right of navigation and corollary uses of waters of the state.

RCW 90.583.020:

*“This policy contemplates protecting...generally public rights of navigation and corollary rights incidental thereto.”
“Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any interference with the public’s use of the water.”*

(e) The protection and restoration of buildings and sites having historic, cultural and educational value.

RCW 90.58.100:

*“(2) The master programs shall include, when appropriate, the following:
(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;”*

(f) Planning for public facilities and utilities correlated with other shorelines uses.

RCW 90.58.100:

*“(2) The master programs shall include, when appropriate, the following:
(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element.”*

(g) Prevention and minimization of flood damages.

RCW 90.58.100:

*“(2) The master programs shall include, when appropriate, the following:
(h) An element that gives consideration to the state-wide interest in the prevention and minimization of flood damages.”*

(h) Recognizing and protecting private property rights.

RCW 90.58.020:

“The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership;...and, therefore coordinated planning is necessary...while, at the

same time, recognizing and protecting private rights consistent with the public interest.”

(i) Preferential accommodation of single family uses.

RCW 90.58.020:

“Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures....”

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 fore 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.”

(j) Coordination of shoreline management with other relevant local, state, and federal programs.

RCW 90.58.020:

*“In addition [the legislature] finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state.”
“...and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state...”
“There is, therefore, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state’s shorelines.”*

RCW 90.58.100:

*“In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:
(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;
(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;
(c) Consider all plans, studies, surveys, inventories, and systems of classification made or*

being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.”

WAC 173-26-181 Special Policy Goals of the Act and Guidelines for Shorelines of State-Wide Significance.

In accordance with RCW 90.58.020, the “department, in adopting guidelines for shorelines of state-wide significance, and local government, in developing master programs for shorelines of state-wide significance, shall give preference to uses in the following order of preference which:

(1) Recognize and protect the state-wide interest over local interest;

(2) Preserve the natural character of the shoreline;

(3) Result in long term over short term benefit;

(4) Protect the resources and ecology of the shoreline;

(5) Increase public access to publicly owned areas of the shorelines;

(6) Increase recreational opportunities for the public in the shoreline;

(7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.”

WAC 173-26-186 Governing Principles of the Guidelines.

The governing principles listed below are intended to articulate a set of foundational concepts that underpin the guidelines, guide the development of the planning policies and regulatory provisions of master programs, and provide direction to the department in reviewing and approving master programs. These governing principles, along with the policy statement of RCW 90.58.020, other relevant provisions of the Act, the regulatory reform policies and provisions of RCW 34.05.328, and the policy goals set forth in WAC 173-26-175 and WAC 173-26-180 should be used to assist in the interpretation of any ambiguous provisions and in the reconciliation of any conflicting provisions of the guidelines.

(1) The guidelines are subordinate to the Act. Any inconsistency between the guidelines and the Act must be resolved in accordance with the Act.

(2) The guidelines are intended to reflect the policy goals of the Act, as described in WAC 173-26-176 and WAC 173-26-181.

(3) All relevant policy goals must be addressed in the planning policies of master programs.

(4) The planning policies of master programs (as distinguished from the development regulations of master programs) may be achieved by a number of means, only one of which is the regulation of development. Other means, as authorized by RCW 90.58.240, include, but are not limited to: the acquisition of lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other local governments; and accepting grants, contributions, and appropriations from any public or private agency or individual. Additional other means may include, but are not limited to, public facility and park planning, watershed planning, voluntary salmon recovery projects and incentive programs.

(5) The Policy goals of the Act, implemented by the planning policies of master programs, may not be achievable by development regulation alone. Planning policies should be pursued through the regulation of development of private property only to an extent that is consistent with all relevant constitutional and other legal limitations (where applicable, statutory limitations such as those contained in Ch. 82.02 RCW and RCW 43.21C.060) on the regulation of private property. Local government should use a process designed to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. A process established for this purpose, related to the constitutional takings limitation, is set forth in a publication entitled, “State of Washington, Attorney General’s Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property,” first published in February 1992. The attorney general is required to review and update this process on at least an annual basis to maintain consistency with changes in case law by RCW 36.70A.370.

(6) The territorial jurisdictions of the master program’s planning function and regulatory function are legally distinct. The planning function may, and in some circumstances must, look beyond the territorial limits of shorelines of the state. RCW 90.58.340. The regulatory function is limited to the territorial limits of shorelines of the state, RCW 90.58.140(1), as defined in RCW 90.58.030(2).

(7) The planning policies and regulatory provisions of master programs and the comprehensive plans and development regulations, adopted under RCW 36.70A.040 shall be integrated and coordinated in accordance with RCW 90.58.340, RCW 36.70A.480, RCW 34.05.328(1)(h), and 1995 wash. laws ch. 347, §1.

(8) Through numerous references to and emphasis on the maintenance, protection, restoration, and preservation of

“fragile” shoreline “natural resources,” “public health,” “the land and its vegetation and wildlife,” “the waters and their aquatic life,” “ecology,” and “environment,” the Act makes protection of the shoreline environment an essential statewide policy goal consistent with the other policy goals of the Act. It is recognized that shoreline ecological functions may be impaired not only by shoreline development subject to the substantial development permit requirement of the Act but also by past actions, unregulated activities, and development that is exempt from the Act’s permit requirements.

The principle regarding protecting shoreline ecological systems is accomplished by these guidelines in several ways, and in the context of related principles. These include:

(a) Local government is guided in its review and amendment of local master programs so that it uses a process that identifies, inventories, and ensures meaningful understanding of current and potential ecological functions provided by affected shorelines.

(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions.

(i) Local master programs shall include regulations and mitigation standards ensuring that each permitted development will not cause a net loss of ecological functions of the shoreline; local government shall design and implement such regulations and mitigation standards in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Local master programs shall include regulations ensuring that exempt development in the aggregate will not cause a net loss of ecological functions of the shoreline.

(c) For counties and cities containing any shorelines with impaired ecological functions, master programs shall include goals and policies that provide for restoration of such impaired ecological functions. These master program provisions shall identify existing policies and programs that contribute to planned restoration goals and identify any additional policies and programs that local government will implement to achieve its goals. These master program elements regarding restoration should make real and meaningful use of established or funded non-regulatory policies and programs that contribute to restoration of ecological functions, and should appropriately consider the direct or indirect effects of other regulatory or non-regulatory programs under other local, state, and federal laws, as well as any restoration effects that may flow indirectly from shoreline development regulations and mitigation standards.

(d) Local master programs shall evaluate and consider cumulative impacts of reasonably foreseeable future development on shoreline ecological functions and other shoreline functions fostered by the policy goals of the Act.

To ensure no net loss of ecological functions and protection of other shoreline functions and/or uses, master programs shall contain policies, programs, and regulations that address adverse cumulative impacts and fairly allocate the burden of addressing cumulative impacts among development opportunities. Evaluation of such cumulative impacts should consider:

- (i) current circumstances affecting the shorelines and relevant natural processes;
- (ii) reasonably foreseeable future development and use of the shoreline; and
- (iii) beneficial effects of any established regulatory programs under other local, state, and federal laws.

It is recognized that methods of determining reasonably foreseeable future development may vary according to local circumstances, including demographic and economic characteristics and the nature and extent of local shorelines.

(e) The Guidelines are not intended to limit the use of regulatory incentives, voluntary modification of development proposals, and voluntary mitigation measures that are designed to restore as well as protect shoreline ecological functions.

(9) To the extent consistent with the policy and use preference of 90.58.020, this chapter (WAC 173-26), and these principles, local governments have reasonable discretion to balance the various policy goals of this chapter, in light of other relevant local, state, and federal regulatory and non-regulatory programs, and to modify master programs to reflect changing circumstances.

(10) Local governments, in adopting and amending master programs and the department in its review capacity shall, to the extent feasible, as required by RCW 90.58.100(1):

- (a) *Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;*
- (b) *Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;*
- (c) *Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;*
- (d) *Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;*
- (e) *Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;*
- (f) *Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.*

(11) In reviewing and approving local government actions under 90.58.090, the department shall insure that the state's interest in shorelines is protected, including compliance with the policy and provisions of 90.58.020.

WAC 173-26-191 Master program contents.

(1) Master program concepts.

The following concepts are the basis for effective shoreline master programs.

(a) Master program policies and regulations.

Shoreline master programs are both planning and regulatory tools. Master programs serve a planning function in several ways. First, they balance and integrate the objectives and interests of local citizens. Therefore, the preparation and amending of master programs shall involve active public participation, as called for in WAC 173-26-201(3). Second, they address the full variety of conditions on the shoreline. Third, they consider and, where necessary to achieve the objectives of chapter 90.58 RCW, influence planning and regulatory measures for adjacent land. For jurisdictions planning under chapter 36.70A RCW, the Growth Management Act, the requirements for consistency between shoreline and adjacent land planning are more specific and are described in WAC 173-26-191(1)(e). Fourth, master programs address conditions and opportunities of specific shoreline segments by classifying the shorelines into "environment designations" as described in WAC 173-26-211.

The results of shoreline planning are summarized in shoreline master program policies that establish broad shoreline management directives. The policies are the basis for regulations that govern use and development along the shoreline. Some master program policies may not be fully attainable by regulatory means due to the constitutional and other legal limitations on the regulation of private property. The policies may be pursued by other means as provided in RCW 90.58.240. Some development requires a shoreline permit prior to construction. A local government evaluates a permit application with respect to the shoreline master program policies and regulations and approves a permit only after determining that the development conforms to them. The regulations apply to all uses and development within shoreline jurisdiction, whether or not a shoreline permit is required, and are implemented through an administrative process established by local government pursuant to RCW 90.58.050 and 140 and enforcement pursuant to RCW 90.58.210-230.

(b) Master program elements.

RCW 90.58.100(2) states that the master programs shall, when appropriate, include the following elements:

(a) An economic development element for the location and design of industries, industrial projects of statewide significance, transportation

facilities, port facilities, tourist facilities, commerce, and other developments that are particularly dependent on their location on or use of shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including, but not limited to, parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including, but not limited to, scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

The Growth Management Act (chapter 36.70A RCW) also uses the word "element" for discrete components of a comprehensive plan. To avoid confusion, "master program element" refers to the definition in the Shoreline Management Act as cited above. Local jurisdictions are not required to address the master program elements listed in the Shoreline Management Act as discrete sections. The elements may be addressed throughout master program provisions rather than used as a means to organize the master program.

(c) Shorelines of statewide significance.

The Shoreline Management Act identifies certain shorelines as "shorelines of statewide significance" and raises their status by setting use priorities and requiring "optimum implementation" of the act's policy. WAC 173-26-251 describes methods to provide for the priorities listed in RCW 90.58.020 and to achieve "optimum implementation" as called for in RCW 90.58.090(4).

(d) Shoreline environment designations.

Shoreline management must address a wide range of physical conditions and development settings along shoreline areas. Effective shoreline management requires that the shoreline master program prescribe different sets of environmental protection measures, allowable use provisions, and development standards for each of these shoreline segments.

The method for local government to account for different shoreline conditions is to assign an environment designation to each distinct shoreline section in its jurisdiction. The environment designation assignments provide the framework for implementing shoreline policies and regulatory measures specific to the environment designation.

WAC 173-26-211 presents guidelines for environment designations in greater detail.

(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 365-195-500:

Each comprehensive plan shall be an internally consistent document and all elements shall be consistent with the future land use map. This means that each part of the plan should be integrated with all other parts and that all should be capable of implementation together. Internal consistency involves at least two aspects:

- (1) Ability of physical aspects of the plan to coexist on the available land.*
- (2) Ability of the plan to provide that adequate public facilities are available when the impacts of development occur (concurrency).*

Each plan should provide mechanisms for ongoing review of its implementation and adjustment of its terms whenever internal conflicts become apparent.

The Growth Management Act also calls for coordination and consistency of comprehensive plans among local jurisdictions. RCW 36.70A.100 states:

. . . The comprehensive plan of each county or city that is adopted pursuant to RCW 36.70A.040 shall be coordinated with, and consistent with, the comprehensive plans adopted pursuant to chapter 36.70A RCW of other counties or cities with which the county or city has, in part, common borders or related regional issues.

Since master program goals and policies are an element of the local comprehensive plan, the requirement for internal

and inter-governmental plan consistency may be satisfied by watershed-wide or regional planning.

Legislative findings provided in Laws of 1995, chapter 347, section 1 (See RCW 36.70A.470 Notes) state:

The legislature recognizes by this act that the Growth Management Act is a fundamental building block of regulatory reform. The state and local governments have invested considerable resources in an act that should serve as the integrating framework for all other land-use related laws. The Growth Management Act provides the means to effectively combine certainty for development decisions, reasonable environmental protection, long-range planning for cost-effective infrastructure, and orderly growth and development.

And, RCW 36.70A.480(1) (The Growth Management Act) states:

For shorelines of the state, the goals and policies of the Shoreline Management Act as set forth in RCW 90.58.020 are added as one of the goals of this chapter as set forth in RCW 36.70A.020. The goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city's comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city's development regulations.

Furthermore, RCW 36.70A.481 states:

Nothing in RCW 36.70A.480 shall be construed to authorize a county or city to adopt regulations applicable to shorelands as defined in RCW 90.58.030 that are inconsistent with the provisions of chapter 90.58 RCW.

The Shoreline Management Act addresses the issue of consistency in RCW 90.58.340, which states:

All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as to achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government (1971 ex.s. c 286 § 34.)

Pursuant to the statutes cited above, the intent of these guidelines is to assist local governments in preparing and

amending master programs that fit within the framework of applicable comprehensive plans, facilitate consistent, efficient review of projects and permits, and effectively implement the Shoreline Management Act. It should be noted the Ecology's authority under the Shoreline Management Act is limited to review of Shoreline Master Programs based solely on consistency with the SMA and these guidelines. It is the responsibility of the local government to assure consistency between the master program and other elements of the comprehensive plan and development regulations.

Several sections in these guidelines include methods to achieve the consistency required by both the Shoreline Management Act and the Growth Management Act.

First, WAC 173-26-191 (2)(b) and (c) describe optional methods to integrate master programs and other development regulations and the local comprehensive plan.

Second, WAC 173-26-221 through 173-26-251 translate the broad policy goals in the Shoreline Management Act into more specific policies. They also provide a more defined policy basis on which to frame local shoreline master program provisions and to evaluate the consistency of applicable sections of a local comprehensive plan with the Shoreline Management Act.

Finally, WAC 173-26-211(3) presents specific methods for testing consistency between shoreline environment designations and comprehensive plan land use designations.

(2) Basic requirements.

This chapter describes the basic components and content required in a master program. A master program must be sufficient and complete to implement the Shoreline Management Act and the provisions of this chapter. A master program shall contain policies and regulations as necessary for reviewers to evaluate proposed shoreline uses and developments for conformance to the Shoreline Management Act. As indicated in WAC 173-26-020, for this chapter: The terms "shall," "must," and "are required" and the imperative voice, mean a mandate; the action is required; The term "should" means that the particular action is required unless there is a demonstrated, sufficient reason, based on a policy of the Shoreline Management Act and this chapter, for not taking the action; and, The term "may" indicates that the action is within discretion and authority, provided it satisfies all other provisions in this chapter.

(a) Master program contents.

Master programs shall include the following contents:

(i) Master program policies.

Master programs shall provide clear, consistent policies that translate broad statewide policy goals set forth in WAC 173-26-176 and 181 into local directives. Policies are

statements of intent directing or authorizing a course of action or specifying criteria for regulatory and non-regulatory actions by a local government. Master program policies provide a comprehensive foundation for the shoreline master program regulations, which are more specific, standards used to evaluate shoreline development. Master program policies also are to be pursued and provide guidance for public investment and other non-regulatory initiatives to assure consistency with the overall goals of the master program.

Shoreline policies shall be developed through an open comprehensive shoreline planning process. For governments planning under the Growth Management Act, the master program policies are considered a shoreline element of the local comprehensive plan and shall be consistent with the planning goals of RCW 36.70A.020, as well as the Act's general and special policy goals set forth in WAC 173-26-176 and 181.

At a minimum, shoreline master program policies shall:

- (A) Be consistent with state shoreline management policy goals and specific policies listed in this chapter and the policies of the Shoreline Management Act;
- (B) Address the master program elements of RCW 90.58.100; and
- (C) Include policies for environment designations as described in WAC 173-26-211. The policies shall be accompanied by a map or physical description of the schematic environment designation boundaries in sufficient detail to compare with comprehensive plan land use designations.
- (D) Be designed and implemented in a manner consistent with all relevant constitutional and other legal limitations on the regulation of private property.

(ii) Master program regulations.

RCW 90.58.100 states:

The master programs provided for in this chapter, when adopted or approved by the department, shall constitute use regulations for the various shorelines of the state.

In order to implement the directives of the Shoreline Management Act, master program regulations shall:

- (A) Be sufficient in scope and detail to ensure the implementation of the Shoreline Management Act, statewide shoreline management policies of this chapter, and local master program policies;
- (B) Include environment designation regulations that apply to specific environments consistent with WAC 173-26-211; and
- (C) Include general regulations, use regulations that address issues of concern in regard to specific uses, and shoreline modification regulations; and,
- (D) Design and implement regulations and mitigation standards in a manner consistent with

all relevant constitutional and other legal limitations on the regulation of private property.

(iii) Administrative provisions.

(A) Statement of applicability.

The Shoreline Management Act's provisions are intended to provide for the management of all development and uses within its jurisdiction, whether or not a shoreline permit is required. Many activities that may not require a substantial development permit, such as clearing vegetation or construction of a residential bulkhead, can, individually or cumulatively, adversely impact adjacent properties and natural resources, including those held in public trust. Local governments have the authority and responsibility to enforce master program regulations on all uses and development in the shoreline area. There has been, historically, some public confusion regarding the Shoreline Management Act's applicability in this regard. Therefore, all master programs shall include the following statement: "All proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act, and this master program."

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

While the master program is a comprehensive use regulation applicable to all land and water areas within the jurisdiction described in the act, its effect is generally on future development and changes in land use. Local government may find it necessary to regulate existing uses to avoid severe harm to public health and safety or the environment and in doing so should be cognizant of constitutional and other legal limitations on the regulation of private property. In some circumstances existing uses and properties may become non-conforming with regard to the regulations and master programs should include provisions to address these situations in a manner consistent with achievement of the policy of the act and consistent with constitutional and other legal limitations.

(B) Conditional use and variance provisions.

RCW 90.58.100(5) states:

Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW 90.58.020. Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be

incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW 90.58.140(3).

All master programs shall include standards for reviewing conditional use permits and variances that conform to chapter 173-27 WAC.

(C) Administrative permit review and enforcement procedures.

RCW 90.58.140(3) states:

The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

Local governments may include administrative, enforcement, and permit review procedures in the master program or the procedures may be defined by a local government ordinance separate from the master program. In either case, these procedures shall conform to the Shoreline Management Act, specifically RCW 90.58.140, 143, 210 and 220 and to chapter 173-27 WAC.

Adopting review and enforcement procedures separate from the master program allows local governments to more expeditiously revise their shoreline permit review procedures and to integrate them with other permit processing activities.

(D) Documentation of project review actions and changing conditions in shoreline areas.

Master programs or other local permit review ordinances addressing shoreline project review shall include a mechanism for documenting all project review actions in shoreline areas. Local governments shall also identify a process for periodically evaluating the cumulative effects of authorized development on shoreline conditions. This process could involve a joint effort by local governments, state resource agencies, affected Indian tribes, and other parties.

(b) Including other documents in a master program by reference.

Shoreline master program provisions sometimes address similar issues as other comprehensive plan elements and development regulations, such as the zoning code and critical area ordinance. For the purposes of completeness and consistency, local governments may include other locally adopted policies and regulations within their master programs. For example, a local government may include its critical area ordinance in the master program to provide for compliance with the requirements of RCW 90.58.090(4), provided the critical area ordinance is also consistent with this chapter. This can ensure that local master programs are consistent with other regulations.

Shoreline master programs may include other policies and regulations by referencing a specific, dated edition. When including referenced regulations within a master program, local governments shall ensure that the public has an opportunity to participate in the formulation of the regulations or in their incorporation into the master program, as called for in WAC 173-26-201(3)(b)(i). In the approval process the department will review the referenced development regulation sections as part of the master program. A copy of the referenced regulations shall be submitted to the department with the proposed master program or amendment. If the development regulation is amended, the edition referenced within the master program will still be the operative regulation in the master program. Changing the referenced regulations in the master program to the new edition will require a master program amendment.

(c) Incorporating master program provisions into other plans and regulations.

Local governments may integrate master program policies and regulations into their comprehensive plan policies and implementing development regulations rather than preparing a discrete master program in a single document. Master program provisions that are integrated into such plans and development regulations shall be clearly identified so that the department can review these provisions for approval and evaluate development proposals for compliance. RCW 90.58.120 requires that all adopted regulations, designations, and master programs be available for public inspection at the department or the applicable county or city. Local governments shall identify all documents which contain master program provisions and which provisions constitute part of the master program. Clear identification of master program provisions is also necessary so that interested persons and entities may be involved in master program preparation and amendment, as called for in RCW 90.58.130.

Local governments integrating all or portions of their master program provisions into other plans and regulations shall submit to the department a listing and copies of all provisions that constitute the master program. The master program shall also be sufficiently complete and defined to provide:

- (i) Clear directions to applicants applying for shoreline permits and exemptions; and
- (ii) Clear evaluation criteria and standards to the local governments, the department, other agencies, and the public for reviewing permit applications with respect to state and local shoreline management provisions.

(d) Multi-jurisdictional master program.

Two or more adjacent local governments are encouraged to jointly prepare master programs. Jointly proposed master programs may offer opportunities to effectively and efficiently manage natural resources, such as drift cells or watersheds that cross jurisdictional boundaries. Local governments jointly preparing master programs shall provide the opportunity for public participation locally in

each jurisdiction, as called for in WAC 173-26-201(3)(b), and submit the multi-jurisdictional master program to the department for approval.

WAC 173-26-201 Comprehensive process to prepare or amend shoreline master programs.

(1) Applicability.

This section outlines a comprehensive process to prepare or amend a shoreline master program. Local governments shall incorporate the steps indicated if one or more of the following criteria apply:

(a) The master program amendments being considered represent a significant modification to shoreline management practices within the local jurisdiction, they modify more than one environment designation boundary, or significantly add, change or delete use regulations;

(b) Physical shoreline conditions have changed significantly, such as substantial changes in shoreline use or priority habitat integrity, since the last comprehensive master program amendment;

(c) The master program amendments being considered contain provisions that will affect a substantial portion of the local government's shoreline areas;

(d) There are substantive issues that must be addressed on a comprehensive basis. This may include issues such as salmon recovery, major use conflicts or public access;

(e) The current master program and the comprehensive plan are not mutually consistent;

(f) There has been no previous comprehensive master program amendment since the original master program adoption; or

(g) Monitoring and adaptive management indicate that changes are necessary to avoid loss of ecological functions. Other revisions that do not meet the above criteria may be made without undertaking this comprehensive process provided that the process conforms to the requirements of WAC 173-26-030 to 160.

All master program amendments are subject to approval by the department as provided in RCW 90.58.090(3) and (4).

(2) Basic concepts.

(a) Use of scientific and technical information.

To satisfy the requirements for the use of scientific and technical information in RCW 90.58.100(1), local governments shall incorporate the following two steps into their master program development and amendment process. First, identify and assemble the most current, accurate, and complete scientific and technical information available that is applicable to the issues of concern. The context, scope, magnitude, significance, and potential limitations of the scientific information should be considered. At a minimum, make use of and, where applicable, incorporate all available scientific information, aerial photography, inventory data, technical assistance materials, manuals and services from reliable sources of science. Local governments should also contact relevant state agencies, universities, affected Indian tribes, port districts and private parties for available

information. While adequate scientific information and methodology necessary for development of a master program should be available, if any person, including local government chooses to initiate scientific research with the expectation that it will be used as a basis for master program provisions, that research shall use accepted scientific methods, research procedures and review protocols. Local governments are encouraged to work interactively with neighboring jurisdictions, state resource agencies, affected Indian tribes, and other local government entities such as port districts to address technical issues beyond the scope of existing information resources or locally initiated research.

Local governments should consult the technical assistance materials produced by the department. When relevant information is available and unless there is more current or specific information available, those technical assistance materials shall constitute an element of scientific and technical information as defined in these guidelines and the use of which is required by the Act.

Second, base master program provisions on an analysis incorporating the most current, accurate, and complete scientific or technical information available. Local governments should be prepared to identify the following:

- (i) Scientific information and management recommendations on which the master program provisions are based;
- (ii) Assumptions made concerning, and data gaps in, the scientific information; and
- (iii) Risks to ecological functions associated with master program provisions. Address potential risks as described in WAC 173-26-201(3)(d).

The requirement to use scientific and technical information in these guidelines does not limit a local jurisdiction's authority to solicit and incorporate information, experience, and anecdotal evidence provided by interested parties as part of the master program amendment process. Such information should be solicited through the public participation process described in WAC 173-26-201(3)(b). Where information collected by or provided to local governments conflicts or is inconsistent, the local government shall base master program provisions on a reasoned, objective evaluation of the relative merits of the conflicting data.

(b) Adaptation of Policies and Regulations.

Effective shoreline management requires the evaluation of changing conditions and the modification of policies and regulations to address identified trends and new information. Local governments should monitor actions taken to implement the master program and shoreline conditions to facilitate appropriate updates of master program provisions to improve shoreline management over time. In reviewing proposals to amend master programs, the department shall evaluate whether the change promotes achievement of the policies of the master program and the Act. As provided in WAC 173-26-171(3)(d), Ecology will, periodically review these guidelines, based in part on information provided by local government, and through

that process local government will receive additional guidance on significant shoreline management issues that may require amendments to master programs.

(c) Protection of ecological functions of the shorelines.

This chapter implements the Act's policy on protection of shoreline natural resources through protection and restoration of ecological functions necessary to sustain these natural resources. The concept of ecological functions recognizes that any ecological system is composed of a wide variety of interacting physical, chemical and biological components, that are interdependent in varying degrees and scales, and that produce the landscape and habitats as they exist at any time. Ecological functions are the work performed or role played individually or collectively within ecosystems by these components.

As established in WAC 173-26-186(8) these guidelines are designed to assure, at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources and to plan for restoration of ecological functions where they have been impaired. Managing shorelines for protection of their natural resources depends on sustaining the functions provided by:

- Ecosystem-wide processes such as those associated with the flow and movement of water, sediment and organic materials; the presence and movement of fish and wildlife and the maintenance of water quality.
- Individual components and localized processes such as those associated with shoreline vegetation, soils, water movement through the soil and across the land surface and the composition and configuration of the beds and banks of water bodies.

The loss or degradation of the functions associated with ecosystem-wide processes, individual components and localized processes can significantly impact shoreline natural resources and may also adversely impact human health and safety. Shoreline master programs shall address ecological functions associated with applicable ecosystem-wide processes, individual components and localized processes identified in the ecological systems analysis described in WAC 173-26-201(3)(d)(i).

Nearly all shoreline areas, even substantially developed or degraded areas, retain important ecological functions. For example, an intensely developed harbor area may also serve as a fish migration corridor and feeding area critical to species survival. Also, ecosystems are interconnected. For example, the life cycle of anadromous fish depends upon the viability of freshwater, marine, and terrestrial shoreline ecosystems, and many wildlife species associated with the shoreline depend on the health of both terrestrial and aquatic environments. Therefore, the policies for protecting and restoring ecological functions generally apply to all shoreline areas, not just those that remain relatively unaltered.

Master programs shall contain policies and regulations that assure at minimum, no net loss of ecological functions necessary to sustain shoreline natural resources. To achieve this standard while accommodating appropriate and necessary shoreline uses and development, master programs should establish and apply:

- Environment designations with appropriate use and development standards, and
- Provisions to address the impacts of specific common shoreline uses, development activities and modification actions, and
- Provisions for the protection of critical areas within the shoreline, and
- Provisions for mitigation measures and methods to address unanticipated impacts.

When based on the inventory and analysis requirements and completed consistent with the specific provisions of these guidelines, the master program should ensure that development will be protective of ecological functions necessary to sustain existing shoreline natural resources and meet the standard. The concept of “net” as used herein, recognizes that any development has potential or actual, short term or long term impacts and that through application of appropriate development standards and employment of mitigation measures in accordance with the mitigation sequence, those impacts will be addressed in a manner necessary to assure that the end result will not diminish the shoreline resources and values as they currently exist. Where uses or development that impact ecological functions are necessary to achieve other objectives of RCW 90.58.020, master program provisions shall, to the greatest extent feasible, protect existing ecological functions and avoid new impacts to habitat and ecological functions before implementing other measures designed to achieve no net loss of ecological functions.

Master Programs shall also include policies that promote restoration of ecological functions, as provided in WAC 173-26-201(2)(f), where such functions are found to have been impaired based on analysis described in WAC 173-26-201(3)(d)(i). It is intended that local government, through the master program, along with other regulatory and non-regulatory programs contribute to restoration by planning for and fostering restoration and that such restoration occur through a combination of public and private programs and actions. Local government should identify restoration opportunities through the shoreline inventory process and authorize, coordinate and facilitate appropriate publicly and privately initiated restoration projects within their Master Programs. The goal of this effort is master programs which include planning elements that, when implemented, serve to improve the overall condition of habitat and resources within the shoreline area of each city and county.

(d) Preferred uses.

As summarized in WAC 173-26-176 the Act establishes policy that preference be given to uses that are unique to or dependent upon a shoreline location. Consistent with this policy, these guidelines use the terms “water-dependent,”

“water-related,” and “water-enjoyment,” as defined in WAC 173-26-020, when discussing appropriate uses for various shoreline areas.

Shoreline areas, being a limited ecological and economic resource, are the setting for competing uses and ecological protection and restoration activities. Consistent with RCW 90.58.020 and WAC 173-26-171 through 186 local governments shall, when determining allowable uses and resolving use conflicts on shorelines within their jurisdiction, apply the following preferences and priorities in the order listed below, starting with (i) of this subsection. For shorelines of statewide significance, also apply the preferences as indicated in WAC 173-26-251(2).

- (i) Reserve appropriate areas for protecting and restoring ecological functions to control pollution and prevent damage to the natural environment and public health.
- (ii) Reserve shoreline areas for water-dependent and associated water related uses. Harbor areas, established pursuant to Article XV of the State Constitution, and other areas that have reasonable commercial navigational accessibility and necessary support facilities such as transportation and utilities should be reserved for water-dependent and water-related uses that are associated with commercial navigation unless the local governments can demonstrate that adequate shoreline is reserved for future water-dependent and water-related uses and unless protection of the existing natural resource values of such areas preclude such uses. Local governments may prepare master program provisions to allow mixed-use developments that include and support water-dependent uses and address specific conditions that affect water-dependent uses.
- (iii) Reserve shoreline areas for other water-related and water-enjoyment uses that are compatible with ecological protection and restoration objectives.
- (iv) Locate single-family residential uses where they are appropriate and can be developed without significant impact to ecological functions or displacement of water-dependent uses.
- (v) Limit non-water-oriented uses to those locations where the above described uses are inappropriate or where non-water-oriented uses demonstrably contribute to the objectives of the Shoreline Management Act.

Evaluation pursuant to the above criteria, local economic and land use conditions, and policies and regulations that assure protection of shoreline resources, may result in determination that other uses are considered as necessary or appropriate and may be accommodated provided that the preferred uses are reasonably provided for in the jurisdiction.

(e) Environmental impact mitigation.

- (i) To assure no net loss of shoreline ecological functions, master programs shall include provisions that require

proposed individual uses and developments to analyze environmental impacts of the proposal and include measures to mitigate environmental impacts not otherwise avoided or mitigated by compliance with the master program and other applicable regulations. To the extent Washington's State Environmental Policy Act of 1971 (SEPA), chapter 43.21C RCW, is applicable, the analysis of such environmental impacts shall be conducted consistent with the rules implementing SEPA, which also address environmental impact mitigation in WAC 197-11-660 and define mitigation in WAC 197-11-768. Master programs shall indicate that, where required, mitigation measures shall be applied in the following sequence of steps listed in order of priority, with (a) of this subsection being top priority.

- (A) Avoiding the impact altogether by not taking a certain action or parts of an action;
- (B) Minimizing impacts by limiting the degree or magnitude of the action and its implementation by using appropriate technology or by taking affirmative steps to avoid or reduce impacts;
- (c) Rectifying the impact by repairing, rehabilitating, or restoring the affected environment;
- (D) Reducing or eliminating the impact over time by preservation and maintenance operations;
- (E) Compensating for the impact by replacing, enhancing, or providing substitute resources or environments; and
- (F) Monitoring the impact and the compensation projects and taking appropriate corrective measures.

(ii) In determining appropriate mitigation measures applicable to shoreline development, lower priority measures shall be applied only where higher priority measures are determined to be infeasible or inapplicable.

Consistent with the WAC 173-26-186 (5) and (8), master programs shall also provide direction with regard to mitigation for the impact of the development so that:

- A) Application of the mitigation sequence achieves no net loss of ecological functions for each new development and does not result in required mitigation in excess of that necessary to assure that development will result in no net loss of shoreline ecological functions and not have a significant adverse impact on other shoreline functions fostered by the policy of the act.
- (B) When compensatory measures are appropriate pursuant to the mitigation priority sequence above, preferential consideration shall be given to measures that replace the impacted functions directly and in the immediate vicinity of the impact. However, alternative compensatory mitigation within the watershed that address limiting factors or identified critical needs for shoreline resource conservation based on watershed or comprehensive resource management plans applicable to the area of impact may be authorized. Authorization of compensatory mitigation measures may require

appropriate safeguards, terms or conditions as necessary to ensure no net loss of ecological functions.

(f) Shoreline Restoration Planning

Consistent with principle WAC 173-26-186(8)(c), master programs shall include goals, policies and actions for restoration of impaired shoreline ecological functions. These master program provisions should be designed to achieve overall improvements in shoreline ecological functions over time, when compared to the status upon adoption of the master program. The approach to restoration planning may vary significantly among local jurisdictions, depending on:

- The size of the jurisdiction;
- The extent and condition of shorelines in the jurisdiction;
- The availability of grants, volunteer programs or other tools for restoration; and,
- The nature of the ecological functions to be addressed by restoration planning.

Master program restoration plans shall consider and address the following subjects:

- (i) Identify degraded areas, impaired ecological functions, and sites with potential for ecological restoration;
- (ii) Establish overall goals and priorities for restoration of degraded areas and impaired ecological functions;
- (iii) Identify existing and ongoing projects and programs that are currently being implemented, or are reasonably assured of being implemented (based on an evaluation of funding likely in the foreseeable future), which are designed to contribute to local restoration goals;
- (iv) Identify additional projects and programs needed to achieve local restoration goals, and implementation strategies including identifying prospective funding sources for those projects and programs;
- (v) Identify timelines and benchmarks for implementing restoration projects and programs and achieving local restoration goals;
- (vi) Provide for mechanisms or strategies to ensure that restoration projects and programs will be implemented according to plans and to appropriately review the effectiveness of the projects and programs in meeting the overall restoration goals.

(3) Steps in preparing and amending a master program.

(a) Process overview.

This section provides a generalized process to prepare or comprehensively amend a shoreline master program. Local governments may modify the timing of the various steps, integrate the process into other planning activities, add steps to the process, or work jointly with other jurisdictions

or regional efforts, provided the provisions of this chapter are met.

The department will provide a shoreline master program amendment checklist to help local governments identify issues to address. The checklist will not create new or additional requirements beyond the provisions of this chapter. The checklist is intended to aid the preparation and review of master program amendments. Local governments shall submit the completed checklist with the proposed master program amendments.

(b) Participation process.

(i) Participation Requirements

Local government shall comply with the provisions of RCW 90.58.130 that states:

To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

- (1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and*
- (2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments.*

Additionally, the provisions of WAC 173-26-100 apply and include provisions to assure proper public participation and, for local governments planning under the Growth Management Act, the provisions of RCW 36.70A.140 also apply.

At a minimum, all local governments shall be prepared to describe and document their methods to ensure that all interested parties have a meaningful opportunity to participate.

(ii) Communication with state agencies .

Before undertaking substantial work, local governments shall notify applicable state agencies to identify state interests, relevant regional and statewide efforts, available information, and methods for coordination and input. Contact the department for a list of applicable agencies to be notified.

(iii) Communication with affected Indian tribes.

Prior to undertaking substantial work, local governments shall notify affected Indian tribes to identify tribal interests, relevant tribal efforts, available information and methods

for coordination and input. Contact the individual tribes or coordinating bodies such as the Northwest Indian Fisheries Commission, for a list of affected Indian tribes to be notified.

(c) Inventory shoreline conditions.

Gather and incorporate all pertinent and available information, existing inventory data and materials from state agencies, affected Indian tribes, watershed management planning, port districts and other appropriate sources. Ensure that, whenever possible, inventory methods and protocols are consistent with those of neighboring jurisdictions and state efforts. The department will provide, to the extent possible, services and resources for inventory work. Contact the department to determine information sources and other relevant efforts. Map inventory information at an appropriate scale. Local governments shall be prepared to demonstrate how the inventory information was used in preparing their local master program amendments.

Collection of additional inventory information is encouraged and should be coordinated with other watershed, regional, or statewide inventory and planning efforts in order to ensure consistent methods and data protocol as well as effective use of fiscal and human resources. Local governments should be prepared to demonstrate that they have coordinated with applicable inter-jurisdictional shoreline inventory and planning programs where they exist. Two or more local governments are encouraged to jointly conduct an inventory in order to increase the efficiency of data gathering and comprehensiveness of inventory information. Data from inter-jurisdictional, watershed, or regional inventories may be substituted for an inventory conducted by an individual jurisdiction, provided it meets the requirements of this section.

Local government shall, at a minimum, and to the extent such information is relevant and reasonably available, collect the following information:

- (i) Shoreline and adjacent land use patterns and transportation and utility facilities, including the extent of existing structures, impervious surfaces, vegetation and shoreline modifications in shoreline jurisdiction. Special attention should be paid to identification of water-oriented uses and related navigation, transportation and utility facilities.
- (ii) Critical areas, including wetlands, aquifer recharge areas, fish and wildlife conservation areas, geologically hazardous areas, and frequently flooded areas. See also WAC 173-26-221.
- (iii) Degraded areas and sites with potential for ecological restoration.
- (iv) Areas of special interest, such as priority habitats, developing or redeveloping harbors and waterfronts, previously identified toxic or hazardous material clean-up sites, dredged material disposal sites, or eroding shorelines, to

be addressed through new master program provisions.

(v) Conditions and regulations in shoreland and adjacent areas that affect shorelines, such as surface water management and land use regulations. This information may be useful in achieving mutual consistency between the master program and other development regulations.

(vi) Existing and potential shoreline public access sites, including public rights-of-way and utility corridors.

(vii) General location of channel migration zones, and flood plains.

(viii) Gaps in existing information. During the initial inventory, local governments should identify what additional information may be necessary for more effective shoreline management.

(ix) If the shoreline is rapidly developing or subject to substantial human changes such as clearing and grading, past and current records or historical aerial photographs may be necessary to identify cumulative impacts, such as bulkhead construction, intrusive development on priority habitats, and conversion of harbor areas to non-water oriented uses.

(x) If archaeological or historic resources have been identified in shoreline jurisdiction, consult with the state historic preservation office and local affected Indian tribes regarding existing archaeological and historical information.

(d) Analyze shoreline issues of concern.

Before establishing specific master program provisions, local governments shall analyze the information gathered in (c) and as necessary to ensure effective shoreline management provisions, address the topics below, where applicable.

(i) Characterization of functions and ecosystem-wide processes.

(A) Prepare a characterization of shoreline ecosystems and their associated ecological functions. The characterization consists of three steps:

(I) Identify the ecosystem-wide processes and ecological functions based on the list in (C) below that apply to the shoreline(s) of the jurisdiction.

(II) Assess the ecosystem-wide processes to determine their relationship to ecological functions present within the jurisdiction and identify which ecological functions are healthy, which have been significantly altered and/or adversely impacted and which functions may have previously existed and are missing based on the values identified in (D) below; and

(III) Identify specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes.

(B) The characterization of shoreline ecological systems may be achieved by using one or more of the approaches below:

(I) If a regional environmental management plan, such as a watershed plan or coastal erosion study, is ongoing or has been completed, then conduct the characterization either within the framework of the regional plan or use the data provided in the regional plan. This methodology is intended to contribute to an in-depth and comprehensive assessment and characterization.

(II) If a regional environmental management plan has not been completed, use available scientific and technical information, including flood studies, habitat evaluations and studies, water quality studies, and data and information from environmental impact statements. This characterization of ecosystem-wide processes and the impact upon the functions of specific habitats and human health and safety objectives may be of a generalized nature.

(III) One or more local governments may pursue a characterization which includes a greater scope and complexity than listed in items (I) and (II) of this subsection.

(C) Shoreline ecological functions include, but are not limited to:

In rivers and streams and associated floodplains:

Hydrologic: Transport of water and sediment across the natural range of flow variability; attenuating flow energy; developing pools, riffles, gravel bars, recruitment and transport of large woody debris and other organic material and;

Shoreline Vegetation: maintaining temperature; removing excessive nutrients and toxic compound, sediment removal and, stabilization; attenuation of flow energy; and provision of large woody debris and other organic matter.

Hyporheic functions: removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for native aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include but are not limited to; space or conditions for reproduction; resting, hiding and migration; and food production and delivery.

In lakes:

Hydrologic: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruitment of large woody debris and other organic material.

Shoreline Vegetation: maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and stabilization; and providing woody debris and other organic matter.

Hyporheic functions: removing excessive nutrients and toxic compound, water storage, support of vegetation, and sediment storage and maintenance of base flows.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include but are not limited to; space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

In marine waters:

Hydrologic: Transporting and stabilizing sediment, attenuating wave and tidal energy, removing excessive nutrients and toxic compounds; recruitment, redistribution and reduction of woody debris and other organic material. Vegetation: maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, sediment removal and, stabilization; and providing woody debris and other organic matter.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include but are not limited to; space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

Wetlands:

Hydrological: Storing water and sediment, attenuating wave energy, removing excessive nutrients and toxic compounds, recruiting woody debris and other organic material.

Vegetation: maintaining temperature; removing excessive nutrients and toxic compound, attenuating wave energy, removing and stabilizing sediment; and providing woody debris and other organic matter.

Hyporheic functions: removing excessive nutrients and toxic compound, storing water and maintaining base flows, storing sediment and support of vegetation.

Habitat for aquatic and shoreline-dependent birds, invertebrates, mammals; amphibians; and anadromous and resident native fish: Habitat functions may include but are not limited to; space or conditions for reproduction, resting, hiding and migration; and food production and delivery.

(D) The overall conditions of habitat and shoreline resources are determined by the following ecosystem wide processes and ecological functions:

- The distribution, diversity, and complexity of the watersheds, marine environments, and landscape-scale features that form the aquatic systems to which species, populations, and communities are uniquely adapted.
- The spatial and temporal connectivity within and between watersheds and along marine shorelines. Drainage network connections include flood plains, wetlands, upslope areas, headwater tributaries, and naturally functioning routes to areas critical for fulfilling life history requirements of aquatic and riverine-dependent species.
- The shorelines, beaches, banks, marine near-shore habitats, and bottom configurations that provide the physical framework of the aquatic system.
- The timing, volume, and distribution of woody debris recruitment in rivers, streams and marine habitat areas.
- The water quality necessary to maintain the biological, physical, and chemical integrity of the system and support survival, growth, reproduction, and migration of individuals composing aquatic and riverine communities.
- The sediment regime under which aquatic ecosystems evolved. Elements of the sediment regime include the timing, volume, rate, and

character of sediment input, storage, and transport.

- The range of flow variability sufficient to create and sustain fluvial, aquatic, and wetland habitats, the patterns of sediment, nutrient, and wood routing. The timing, magnitude, duration, and spatial distribution of peak, high, and low flows, and duration of flood plain inundation and water table elevation in meadows and wetlands.
- The species composition and structural diversity of plant communities in river and stream areas and wetlands that provides summer and winter thermal regulation, nutrient filtering, appropriate rates of surface erosion, bank erosion, and channel migration and to supply amounts and distributions of woody debris sufficient to sustain physical complexity and stability.

(E) Local governments should use the characterization and analysis called for in this section to prepare master program policies and regulations designed to achieve no net loss of ecological functions necessary to support shoreline resources and to plan for the restoration of the ecosystem-wide processes and individual ecological functions on a comprehensive basis over time.

(ii) Shoreline use analysis and priorities.

Conduct an analysis to estimate the future demand for shoreline space and potential use conflicts. Characterize current shoreline use patterns and projected trends to ensure appropriate uses consistent with chapter 90.58 RCW and WAC 173-26-201(2)(d) and 173-26-211(5).

If the jurisdiction includes a designated harbor area or urban waterfront with intensive uses or significant development or redevelopment issues, work with the Washington State department of natural resources and port authorities to ensure consistency with harbor area statutes and regulations, and to address port plans. Identify measures and strategies to encourage appropriate use of these shoreline areas in accordance with the use priorities of chapter 90.58 RCW and WAC 173-26-201(2)(d) while pursuing opportunities for ecological restoration.

(iii) Addressing Cumulative Impacts In Developing Master Programs

The principles that regulation of development shall achieve no net loss of ecological function requires that master program policies and regulations address the cumulative impacts on shoreline ecological functions that would result from future shoreline development and uses that are reasonably foreseeable from proposed master programs. To comply with the general obligation to assure no net loss of shoreline ecological function, the process of developing the policies and regulations of a shoreline master program requires assessment of how proposed policies and regulations cause and avoid such cumulative impacts.

Evaluating and addressing cumulative impacts shall be consistent with the guiding principle in WAC 173-26-186(8)(d). An appropriate evaluation of cumulative impacts

on ecological functions will consider the factors identified in WAC 173-26-186(8)(d)(i) thru (iii) and the effect on the ecological functions of the shoreline that are caused by unregulated activities, development exempt from permitting, effects such as the incremental impact of residential bulkheads, residential piers, or runoff from newly developed properties. Accordingly, particular attention should be paid to policies and regulations that address platting or subdividing of property, laying of utilities, and mapping of streets that establish a pattern for future development that is to be regulated by the master program.

There are practical limits when evaluating impacts that are prospective and sometimes indirect. Local government should rely on the assistance of state agencies and appropriate parties using evaluation, measurement, estimation, or quantification of impact consistent with the guidance of RCW 90.58.100(1) and WAC 173-26-201(2)(a). Policies and regulations of a master program are not inconsistent with these guidelines for failing to address cumulative impacts where a purported impact is not susceptible to being addressed using an approach consistent with RCW 90.58.100(1).

Complying with the above guidelines is the way that master program policies and regulations should be developed to assure that the commonly occurring and foreseeable cumulative impacts do not cause a net loss of ecological functions of the shoreline. For such commonly occurring and planned development, policies and regulations should be designed without reliance on an individualized cumulative impacts analysis. Local government shall fairly allocate the burden of addressing cumulative impacts.

For development projects that may have un-anticipatable or uncommon impacts that cannot be reasonably identified at the time of master program development, the master program policies and regulations should use the permitting or conditional use permitting processes to ensure that all impacts are addressed and that there is no net loss of ecological function of the shoreline after mitigation. Similarly, Local government shall consider and address cumulative impacts on other functions and uses of the shoreline that are consistent with the Act. For example, a cumulative impact of allowing development of docks or piers could be interference with navigation on a water body.

(iv) Shorelines of statewide significance.

If the area contains shorelines of statewide significance, undertake the steps outlined in WAC 173-26-251.

(v) Public access.

Identify public access needs and opportunities within the jurisdiction and explore actions to enhance shoreline recreation facilities, as described in WAC 173-26-221(4).

(vi) Enforcement and coordination with other regulatory programs.

Local governments planning under the Growth Management Act shall review their comprehensive plan policies and development regulations to ensure mutual consistency. In order to effectively administer and enforce master program provisions, local governments should also review their current permit review and inspection practices to identify ways to increase efficiency and effectiveness and to ensure consistency.

(vii) Water quality and quantity.

Identify water quality and quantity issues relevant to master program provisions, including those that affect human health and safety. At a minimum, consult with appropriate federal, state, tribal, and local agencies.

(viii) Vegetation conservation.

Identify how existing shoreline vegetation provides ecological functions and determine methods to ensure protection of those functions. Identify important ecological functions that have been degraded through loss of vegetation. Consider the amount of vegetated shoreline area necessary to achieve ecological objectives. While there may be less vegetation remaining in urbanized areas than in rural areas, the importance of this vegetation, in terms of the ecological functions it provides, is often as great or even greater than in rural areas due to its scarcity. Identify measures to ensure that new development meets vegetation conservation objectives.

(ix) Special area planning.

Some shoreline sites or areas require more focused attention than is possible in the overall master program development process due to complex shoreline ecological issues, changing uses, or other unique features or issues. In these circumstances, the local government is encouraged to undertake special area planning. Special area planning also may be used to address: Public access, vegetation conservation, shoreline use compatibility, port development master planning, ecological restoration, or other issues best addressed on a comprehensive basis.

The resultant plans may serve as the basis for facilitating state and local government coordination and permit review. Special area planning shall provide for public and affected Indian tribe participation and compliance with all applicable provisions of the Act and WAC 173-26-090 to 120.

(e) Establish shoreline policies.

Address all of the elements listed in RCW 90.58.100(2) and all applicable provisions of these guidelines in policies. These policies should be reviewed for mutual consistency with the comprehensive plan policies. If there are shorelines of statewide significance, ensure that the other comprehensive plan policies affecting shoreline jurisdiction are consistent with the objectives of RCW 90.58.020 and 90.58.090(4).

(f) Establish environment designations.

Establish environment designations and identify permitted uses and development standards for each environment designation.

Based on the inventory in (c) of this subsection and the analysis in (d) of this subsection, assign each shoreline segment an environment designation.

Prepare specific environment designation policies and regulations.

Review the environment designations for mutual consistency with comprehensive plan land use designations as indicated in WAC 173-26-211(3).

In determining the boundaries and classifications of environment designations, adhere to the criteria in WAC 173-26-211(5).

(g) Prepare other shoreline regulations.

Prepare other shoreline regulations based on the policies and the analyses described in this section as necessary to assure consistency with the guidelines of this chapter. The level of detail of inventory information and planning analysis will be a consideration in setting shoreline regulations. As a general rule, the less known about existing resources, the more protective shoreline master program provisions should be to avoid unanticipated impacts to shoreline resources. If there is a question about the extent or condition of an existing ecological resource, then the master program provisions shall be sufficient to reasonably assure that the resource is protected in a manner consistent with the policies of these guidelines. Local governments may accomplish this by including master program requirements for an on-site inventory at the time of project application and performance standard that assure appropriate protection.

(h) Submit for review and approval.

Local governments are encouraged to work with department personnel during preparation of the master program and to submit draft master program provisions to the department for informal advice and guidance prior to formal submittal.

Local governments shall submit the completed checklist, as described in WAC 173-26-201(3)(a), with their master program amendments proposed for adoption. Master program review and formal adoption procedures are described in Parts I and II of this chapter.

WAC 173-26-211 Environment designation system.

(1) Applicability.

This section applies to the establishment of environment designation boundaries and provisions as described in WAC 173-26-191 (1)(d).

(2) Basic requirements for environment designation classification and provisions.

(a) Master programs shall contain a system to classify shoreline areas into specific environment designations. This classification system shall be based on the existing use pattern, the biological and physical character of the shoreline, and the goals and aspirations of the community as expressed through comprehensive plans as well as the criteria in this section. Each master program's classification system shall be consistent with that described in WAC 173-26-211 (4) and (5) unless the alternative proposed provides equal or better implementation of the act.

(b) An up-to-date and accurate map of the shoreline area delineating the environment designations and their boundaries shall be prepared and maintained in the local government office that administers shoreline permits. If it is not feasible to accurately designate individual parcels on a map, the master program text shall include a clear basis for identifying the boundaries, physical features, explicit criteria, or "common" boundary descriptions to accurately define and distinguish the environments on the ground. The master program should also make it clear that in the event of a mapping error, the jurisdiction will rely upon common boundary descriptions and the criteria contained in RCW 90.58.030(2) and chapter 173-22 WAC pertaining to determinations of shorelands, as amended, rather than the incorrect or outdated map.

(c) To facilitate consistency with land use planning, local governments planning under chapter 36.70A RCW are encouraged to illustrate shoreline designations on the comprehensive plan Future Land Use Map as described in WAC 365-195-300 (2)(d).

(d) Pursuant to RCW 90.58.040, the map should clearly illustrate what environment designations apply to all shorelines of the state as defined in RCW 90.58.030(2)(c) within the local government's jurisdiction in a manner consistent with WAC 173-26-211(4) and (5).

(e) The map and the master program should note that all areas within shoreline jurisdiction that are not mapped and/or designated are automatically assigned a "rural conservancy" designation, or "urban conservancy" designation if within a municipality or urban growth area, or the comparable environment designation of the applicable master program until the shoreline can be re-designated through a master program amendment.

(f) The following diagram summarizes the components of the environment designation provisions.

(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 non-water-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.

(4) General Environment Designation Provisions.

(a) Requirements

For each environment designation, the shoreline master program shall describe:

(i) Purpose statement.

The statement of purpose shall describe the shoreline management objectives of the designation in a manner that distinguishes it from other designations.

(ii) Classification criteria.

Clearly stated criteria shall provide the basis for classifying or reclassifying a specific shoreline area with an environment designation.

(iii) Management policies.

These policies shall be in sufficient detail to assist in the interpretation of the environment designation regulations and, for jurisdictions

planning under chapter 36.70A RCW, to evaluate consistency with the local comprehensive plan.

(iv) Regulations.

Environment-specific regulations shall address the following where necessary to account for different shoreline conditions:

(A) Types of shoreline uses permitted, conditionally permitted, and prohibited;

(B) Building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards; and

(C) Other topics not covered in general use regulations that are necessary to assure implementation of the purpose of the environment designation.

(b) The recommended classification system.

The recommended classification system consists of six basic environments:

“High-intensity,” “shoreline residential,” “urban conservancy,” “rural conservancy,” “natural,” and “aquatic” as described in this section and WAC 173-26-211(5). Local governments should assign all shoreline areas an environment designation consistent with the corresponding designation criteria provided for each environment. In delineating environment designations local government should assure that existing shoreline ecological functions are protected with the proposed pattern and intensity of development. Such designations should also be consistent with policies for restoration of degraded shorelines.

(c) Alternative systems

(i) Local governments may establish a different designation system or may retain their current environment designations, provided it is consistent with the purposes and policies of this section and WAC 173-26-211(5).

(ii) Local governments may use “parallel environments” where appropriate. Parallel environments divide shorelands into different sections generally running parallel to the shoreline or along a physical feature such as a bluff or railroad right of way. Such environments may be useful, for example, to accommodate resource protection near the shoreline and existing development further from the shoreline. Where parallel environments are used, developments and uses allowed in one environment should not be inconsistent with the achieving the purposes of the other.

(5) The Designations

(a) “Natural” environment.

(i) Purpose.

The purpose of the “natural” environment is to protect those shoreline areas that are relatively free of human influence or that include intact or minimally degraded shoreline functions intolerant of human use. These systems

require that only very low intensity uses be allowed in order to maintain the ecological functions and ecosystem-wide processes. Consistent with the policies of the designation local should include planning for restoration of degraded shorelines within this environment.

(ii) Management policies.

(A) Any use that would substantially degrade the ecological functions or natural character of the shoreline area should not be allowed.

(B) The following new uses should not be allowed in the “natural” environment:

- Commercial uses.
- Industrial uses.
- Nonwater-oriented recreation.
- Roads, utility corridors, and parking areas that can be located outside of “natural”-designated shorelines.

(C) Single family residential development may be allowed as a conditional use within the “natural” environment if the density and intensity of such use is limited as necessary to protect ecological functions and be consistent with the purpose of the environment.

(D) Commercial forestry may be allowed as a conditional use in the “natural” environment provided it meets the conditions of the State Forest Practices Act and its implementing rules and is conducted in a manner consistent with the purpose of this environment designation.

(E) Agricultural uses of a very low intensity nature may be consistent with the Natural Environment when such use is subject to appropriate limitations or conditions to assure that the use does not expand or alter practices in a manner inconsistent with the purpose of the designation.

(F) Scientific, historical, cultural, educational research uses, and low-intensity water-oriented recreational access uses may be allowed provided that no significant ecological impact on the area will result.

(G) New development or significant vegetation removal that would reduce the capability of vegetation to perform normal ecological functions should not be allowed. Do not allow the subdivision of property in a configuration that, to achieve its intended purpose, will require significant vegetation removal or shoreline modification that adversely impacts ecological functions. That is, each new parcel must be able to support its intended development without significant ecological impacts to the shoreline ecological functions.

(iii) Designation Criteria.

A “natural” environment designation should be assigned to shoreline areas if any of the following characteristics apply:

(A) The shoreline is ecologically intact and therefore currently performing an important,

irreplaceable function or ecosystem-wide process that would be damaged by human activity; (B) The shoreline is considered to represent ecosystems and geologic types that are of particular scientific and educational interest; or (C) The shoreline is unable to support new development or uses without significant adverse impacts to ecological functions or risk to human safety.

Such shoreline areas include largely undisturbed portions of shoreline areas such as wetlands, estuaries, unstable bluffs, coastal dunes, spits, and ecologically intact shoreline habitats. Shorelines inside or outside urban growth areas may be designated as “natural.”

Ecologically intact shorelines, as used here, means those shoreline areas that retain the majority of their natural shoreline functions, as evidenced by the shoreline configuration and the presence of native vegetation. Generally, but not necessarily, ecologically intact shorelines are free of structural shoreline modifications, structures, and intensive human uses. In forested areas, they generally include native vegetation with diverse plant communities, multiple canopy layers, and the presence of large woody debris available for recruitment to adjacent water bodies. Recognizing that there is a continuum of ecological conditions ranging from near natural conditions to totally degraded and contaminated sites, this term is intended to delineate those shoreline areas that provide valuable functions for the larger aquatic and terrestrial environments which could be lost or significantly reduced by human development. Whether or not a shoreline is ecologically intact is determined on a case-by-case basis.

The term “ecologically intact shorelines” applies to all shoreline areas meeting the above criteria ranging from larger reaches that may include multiple properties to small areas located within a single property.

Areas with significant existing agriculture lands should not be included in the “natural” designation, except where the existing agricultural operations involve low very intensity uses where there is no significant impact on natural ecological functions, and where the intensity or impacts associated with such agriculture activities is unlikely to expand in a manner inconsistent with the “natural” designation.

(b) “Rural conservancy” environment.

(i) Purpose.

The purpose of the “rural conservancy” environment is to protect ecological functions, conserve existing natural resources and valuable historic and cultural areas in order to provide for sustained resource use, achieve natural flood plain processes, and provide recreational opportunities. Examples of uses that are appropriate in a “rural conservancy” environment include low-impact outdoor recreation uses, timber harvesting on a sustained-yield basis, agricultural uses, aquaculture, low-intensity

residential development and other natural resource based low-intensity uses.

(ii) Management policies.

(A) Uses in the “rural conservancy” environment should be limited to those which sustain the shoreline area’s physical and biological resources and uses of a nonpermanent nature that do not substantially degrade ecological functions or the rural or natural character of the shoreline area. Except as noted, commercial and industrial uses should not be allowed. Agriculture, commercial forestry, and aquaculture when consistent with provisions of this chapter may be allowed. Low intensity, water-oriented commercial and industrial uses may be permitted in the limited instances where those uses have located in the past or at unique sites in rural communities that possess shoreline conditions and services to support the development.

Water-dependent and water-enjoyment recreation facilities that do not deplete the resource over time, such as boating facilities, angling, hunting, wildlife viewing trails, and swimming beaches, are preferred uses, provided significant adverse impacts to the shoreline are mitigated.

Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the rural conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-241(h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(B) Developments and uses that would substantially degrade or permanently deplete the biological resources of the area should not be allowed.

(C) Construction of new structural shoreline stabilization and flood control works should only be allowed where there is a documented need to protect an existing structure or ecological functions and mitigation is applied, consistent with WAC 173-26-231. New development should be designed and located to preclude the need for such work.

(D) Residential development standards shall ensure no net loss of shoreline ecological functions and should preserve the existing character of the shoreline consistent with the purpose of the environment. As a general matter, meeting this provision will require density, lot coverage, vegetation conservation and other provisions.

Scientific studies support density or lot coverage limitation standards that assure that development will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, will maintain the existing hydrologic character of the shoreline. However an alternative standard

developed based on scientific information that meets the provisions of this chapter and accomplishes the purpose of the environment designation may be used.

Master programs may allow greater lot coverage to allow development of lots legally created prior to the adoption of a master program prepared under these guidelines. In these instances, master programs shall include measures to assure protection of ecological functions to the extent feasible such as requiring that lot coverage is minimized and vegetation is conserved.

(E) New shoreline stabilization, flood control measures, vegetation removal, and other shoreline modifications should be designed and managed consistent with these guidelines to ensure that the natural shoreline functions are protected. Such shoreline modification should not be inconsistent with planning provisions for restoration of shoreline ecological functions.

(iii) Designation Criteria

Assign a “rural conservancy” environment designation to shoreline areas outside incorporated municipalities and outside urban growth areas, as defined by RCW

36.70A.110, if any of the following characteristics apply:

(A) The shoreline is currently supporting lesser-intensity resource-based uses, such as agriculture, forestry, or recreational uses, or is designated agricultural or forest lands pursuant to RCW 36.70A.170;

(B) The shoreline is currently accommodating residential uses outside urban growth areas and incorporated cities or towns;

(C) The shoreline is supporting human uses but subject to environmental limitations, such as properties that include or are adjacent to steep banks, feeder bluffs, or flood plains or other flood-prone areas;

(D) The shoreline is of high recreational value or with unique historic or cultural resources; or

(E) The shoreline has low-intensity water-dependent uses.

Areas designated in a local comprehensive plan as “rural areas of more intense development,” as provided for in chapter 36.70A RCW, may be designated an alternate shoreline environment, provided it is consistent with the objectives of the Growth Management Act and this chapter.

“Master planned resorts” as described in RCW 36.70A.360 may be designated an alternate shoreline environment, provided the applicable master program provisions do not allow significant ecological impacts.

Lands that may otherwise qualify for designation as rural conservancy and which are designated as “mineral resource lands” pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the “rural conservancy” environment that allows mining and

associated uses in addition to other uses consistent with the rural conservancy environment.

(c) “Aquatic” environment.

(i) Purpose.

The purpose of the “aquatic” environment is to protect, restore, and manage the unique characteristics and resources of the areas waterward of the ordinary high-water mark.

(ii) Management policies.

(A) Allow new over-water structures only for water-dependent uses, public access, or ecological restoration.

(B) The size of new over-water structures should be limited to the minimum necessary to support the structure’s intended use.

(C) In order to reduce the impacts of shoreline development and increase effective use of water resources, multiple use of over-water facilities should be encouraged.

(D) All developments and uses on navigable waters or their beds should be located and designed to minimize interference with surface navigation, to consider impacts to public views, and to allow for the safe, unobstructed passage of fish and wildlife, particularly those species dependent on migration.

(E) Uses that adversely impact the ecological functions of critical saltwater and freshwater habitats should not be allowed except where necessary to achieve the objectives of RCW 90.58.020, and then only when their impacts are mitigated according to the sequence described in WAC 173-26-201(2)(e) as necessary to assure no net loss of ecological functions.

(F) Shoreline uses and modifications should be designed and managed to prevent degradation of water quality and alteration of natural hydrographic conditions.

(iii) Designation Criteria

Assign an “aquatic” environment designation to lands waterward of the ordinary high-water mark.

Local governments may designate submerged and intertidal lands with shoreland designations (e.g., “high-intensity” or “rural conservancy”) if the management policies and objectives for aquatic areas are met. In this case, the designation system used must provide regulations for managing submerged and intertidal lands that are clear and consistent with the “aquatic” environment management policies in this chapter. Additionally, local governments may assign an “aquatic” environment designation to wetlands.

(d) “High-intensity” environment.

(i) Purpose.

The purpose of the “high-intensity” environment is to provide for high-intensity water-oriented commercial, transportation, and industrial uses while protecting existing ecological functions and restoring ecological functions in areas that have been previously degraded.

(ii) Management policies.

(A) In regulating uses in the “high-intensity” environment, first priority should be given to water-dependent uses. Second priority should be given to water-related and water-enjoyment uses. Non-water oriented uses should not be allowed except as part of mixed use developments. Non-water oriented uses may also be allowed in limited situations where they do not conflict with or limit opportunities for water oriented uses or on sites where there is no direct access to the shoreline. Such specific situations should be identified in shoreline use analysis or special area planning, as described in WAC 173-26-200(3)(d).

If an analysis of water-dependent use needs as described in WAC 173-26-201(3)(d)(ii) demonstrates the needs of existing and envisioned water-dependent uses for the planning period are met, then provisions allowing for a mix of water-dependent and non-water dependent uses may be established. If those shoreline areas also provide ecological functions, apply standards to assure no net loss of those functions.

(B) Full utilization of existing urban areas should be achieved before further expansion of intensive development is allowed. Reasonable long-range projections of regional economic need should guide the amount of shoreline designated “high-intensity.” However, consideration should be given to the potential for displacement of non-water oriented uses with water oriented uses when analyzing full utilization of urban waterfronts and before considering expansion of such areas.

(C) Policies and regulations shall assure no net loss of shoreline ecological functions as a result of new development. Where applicable, new development shall include environmental cleanup and restoration of the shoreline to comply with any relevant state and federal law.

(D) Where feasible, visual and physical public access should be required as provided for in WAC 173-26-221(4)(d).

(E) Aesthetic objectives should be implemented by means such as sign control regulations, appropriate development siting, screening and architectural standards, and maintenance of natural vegetative buffers.

(iii) Designation Criteria

Assign a “high-intensity” environment designation to shoreline areas within incorporated municipalities, urban

growth areas, and industrial or commercial “rural areas of more intense development,” as described by RCW 36.70A.070 if they currently support high-intensity uses related to commerce, transportation or navigation; or are suitable and planned for high-intensity water-oriented uses.

(e) “Urban conservancy” environment.

(i) Purpose.

The purpose of the “urban conservancy” environment is to protect and restore ecological functions of open space, floodplain and other sensitive lands where they exist in urban and developed settings, while allowing a variety of compatible uses.

(ii) Management policies.

(A) Uses that preserve the natural character of the area or promote preservation of open space, floodplain or sensitive lands either directly or over the long term should be the primary allowed uses. Uses that result in restoration of ecological functions should be allowed if the use is otherwise compatible with the purpose of the environment and the setting.

(B) Standards should be established for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications within the “urban conservancy” designation. These standards shall ensure that new development does not result in a net loss of shoreline ecological functions or further degrade other shoreline values.

(c) Public access and public recreation objectives should be implemented whenever feasible and significant ecological impacts can be mitigated.

(D) Water-oriented uses should be given priority over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses should be given highest priority.

(E) Mining is a unique use as a result of its inherent linkage to geology. Therefore, mining and related activities may be an appropriate use within the urban conservancy environment when conducted in a manner consistent with the environment policies and the provisions of WAC 173-26-240 (h) and when located consistent with mineral resource lands designation criteria pursuant to RCW 36.70A.170 and WAC 365-190-070.

(iii) Designation Criteria

Assign an “urban conservancy” environment designation to shoreline areas appropriate and planned for development that is compatible with maintaining or restoring of the ecological functions of the area, that are not generally suitable for water-dependent uses and that lie in incorporated municipalities, urban growth areas, or commercial or industrial “rural areas of more intense development” if any of the following characteristics apply:

(A) They are suitable for water-related or water-enjoyment uses;

(B) They are open space, flood plain or other sensitive areas that should not be more intensively developed;

(C) They have potential for ecological restoration;

(D) They retain important ecological functions, even though partially developed; or

(E) They have the potential for development that is compatible with ecological restoration.

Lands that may otherwise qualify for designation as urban conservancy and which are designated as “mineral resource lands” pursuant to RCW 36.70A.170 and WAC 365-190-070 may be assigned a designation within the “urban conservancy” environment that allows mining and associated uses in addition to other uses consistent with the urban conservancy environment.

(f) “Shoreline residential” environment.

(i) Purpose.

The purpose of the “shoreline residential” environment is to accommodate residential development and appurtenant structures that are consistent with this chapter. An additional purpose is to provide appropriate public access and recreational uses.

(ii) Management policies

(A) Standards for density or minimum frontage width, setbacks, lot coverage limitations, buffers, shoreline stabilization, vegetation conservation, critical area protection, and water quality shall be set to assure no net loss of shoreline ecological functions, taking into account the environmental limitations and sensitivity of the shoreline area, the level of infrastructure and services available, and other comprehensive planning considerations.

Local governments may establish two or more different “shoreline residential” environments to accommodate different shoreline densities or conditions, provided both environments adhere to the provisions in this chapter.

(B) Multifamily and multi-lot residential and recreational developments should provide public access and joint use for community recreational facilities.

(C) Access, utilities, and public services should be available and adequate to serve existing needs and/or planned future development.

(D) Commercial development should be limited to water-oriented uses.

(iii) Designation Criteria

Assign a “shoreline residential” environment designation to shoreline areas inside urban growth areas, as defined in RCW 36.70A.110, incorporated municipalities, “rural areas

of more intense development,” or “master planned resorts,” as described in RCW 36.70A.360, if they are predominantly single-family or multifamily residential development or are planned and platted for residential development.

WAC 173-26-221 General master program provisions.

The provisions of this section shall be applied either generally to all shoreline areas or to shoreline areas that meet the specified criteria of the provision without regard to environment designation. These provisions address certain elements as required by RCW 90.58.100(2) and implement the principles as established in WAC 173-26-186.

(1) Archaeological and historic resources.

(a) Applicability.

The following provisions apply to archaeological and historic resources that are either recorded at the State Historic Preservation Office and/or by local jurisdictions or have been inadvertently uncovered. Archaeological sites located both in and outside shoreline jurisdiction are subject to chapter 27.44 RCW (Indian graves and records) and chapter 27.53 RCW (Archaeological sites and records) and development or uses that may impact such sites shall comply with chapter 25-48 WAC as well as the provisions of this chapter.

(b) Principles.

Due to the limited and irreplaceable nature of the resource(s), prevent the destruction of or damage to any site having historic, cultural, scientific, or educational value as identified by the appropriate authorities, including affected Indian tribes, and the office of archaeology and historic preservation.

(c) Standards.

Local shoreline master programs shall include policies and regulations to protect historic, archaeological, and cultural features and qualities of shorelines and implement the following standards. A local government may reference historic inventories or regulations. Contact the office of archaeology and historic preservation and affected Indian tribes for additional information.

- (i) Require that developers and property owners immediately stop work and notify the local government, the office of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation.
- (ii) Require that permits issued in areas documented to contain archaeological resources require a site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes.

(2) Critical areas.

(a) Applicability.

Pursuant to the provisions of RCW 90.58.090(4) as amended by Chapter 321 Laws of 2003 (ESHB 1933), shoreline master programs must provide for management of critical areas designated as such pursuant to RCW 36.70A.170(1)(d) and required to be protected pursuant to RCW 36.70A.060(2) that are located within the shorelines of the state with policies and regulations that:

- (i) are consistent with the specific provisions of this section (2) critical areas and section (3) flood hazard reduction, and these guidelines, and
- (ii) provides a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government’s critical area regulations adopted pursuant to the Growth Management Act for comparable areas other than shorelines.

When approved by Ecology pursuant to RCW 90.58.090(4), a local government’s SMP becomes regulations for protection of critical areas in the shorelines of the state in the jurisdiction of the adopting local government except as noted in RCW 36.70A.480(3)(b) and (6).

The provisions of this section and section (3) flood hazard reduction shall be applied to critical areas: “Critical areas” include the following areas and ecosystems:

- (a) Wetlands;
- (b) Areas with a critical recharging effect on aquifers used for potable waters;
- (c) Fish and wildlife habitat conservation areas;
- (d) Frequently flooded areas; and
- (e) Geologically hazardous areas.”

The provisions of WAC 365-190-080, to the extent standards for certain types of critical areas are not provided by this section and section (3) flood hazard reduction, and to the extent consistent with these guidelines are also applicable to and provide further definition of critical area categories and management policies.

As provided in 90.58.030(2)(f)(ii) and 36.70A.480 RCW, as amended by Chapter 321 Laws of 2003 (ESHB 1933), Any city or county may also include in its master program land necessary for buffers for critical areas, as defined chapter 36.70A RCW, that occur within shoreline of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to non-forest land use, on lands subject the provision of this subsection (2)(f)(ii) are not subject to additional regulations. If a local government does not include land necessary for buffers for critical areas that occur within shorelines of the state, as authorized above, then the local jurisdiction shall continue to regulate those critical areas and required buffers pursuant to RCW 36.70A.060(2).

(b) Principles.

Local master programs, when addressing critical areas, shall implement the following principles:

- (i) Shoreline master programs shall adhere to the standards established in the following sections, unless it is demonstrated through scientific and technical information as provided in 90.58.100(1) and as described in WAC 173-26-201 (2)(a) that an alternative approach provides better resource protection.
- (ii) In addressing issues related to critical areas, use scientific and technical information, as described in WAC 173-26-201(2)(a). The role of Ecology in reviewing master program provisions for critical areas in shorelines of the state will be based on the Shoreline Management Act and these guidelines, and a comparison with requirements in currently adopted critical area ordinances for comparable areas to ensure that the provisions are at least equal to the level of protection provided by the currently adopted critical area ordinance.
- (iii) In protecting and restoring critical areas within shoreline jurisdiction, integrate the full spectrum of planning and regulatory measures, including the comprehensive plan, inter-local watershed plans, local development regulations, and state, tribal, and federal programs.
- (iv) The planning objectives of shoreline management provisions for critical areas shall be the protection of existing ecological functions and ecosystem-wide processes and restoration of degraded ecological functions and ecosystem-wide processes. The regulatory provisions for critical areas shall protect existing ecological functions and ecosystem-wide processes.
- (v) Promote human uses and values that are compatible with the other objectives of this section, such as public access and aesthetic values, provided they do not significantly adversely impact ecological functions.

(c) Standards.

When preparing master program provisions for critical areas, local governments should implement the following standards and the provisions of WAC 365-190-080 and use scientific and technical information, as provided for in WAC 173-26-201 (2)(a).

In reviewing the critical areas segment of a master program, the Department of Ecology shall first assure consistency with these standards of this section (Critical Areas, (WAC 173-26-221(2)) and with the Flood Hazard Reduction section (WAC 173-26-221(3)), and shall then assure that the master program also provides protection of comparable critical areas that is at least equal to the protection provided by the local governments adopted and valid critical area regulations in effect at the time of submittal of the SMP.

In conducting the review for equivalency with local regulations, the department shall not further evaluate the adequacy of the local critical area regulations. Incorporation of the adopted and valid critical area regulations in effect at the time of submittal by reference as provided in section 173-26-191(2)(b) shall be deemed to meet the requirement for equivalency. However, a finding of equivalency does not constitute a finding of compliance with the requirements of this section and section (3) flood hazard reduction, nor with the guidelines overall.

Note that provisions for frequently flooded areas are included in WAC 173-26-221(3).

(i) Wetlands.

(A) Wetland use regulations.

Local governments should consult the department's technical guidance documents on wetlands. Regulations shall address the following uses to achieve, at a minimum, no net loss of wetland area and functions, including lost time when the wetland does not perform the function:

- The removal, excavation, grading, or dredging of soil, sand, gravel, minerals, organic matter, or material of any kind;
- The dumping, discharging, or filling with any material, including discharges of storm water and domestic, commercial, or industrial wastewater;
- The draining, flooding, or disturbing of the water level, duration of inundation, or water table;
- The driving of pilings;
- The placing of obstructions;
- The construction, reconstruction, demolition, or expansion of any structure;
- Significant vegetation removal, provided that these activities are not part of a forest practice governed under chapter 76.09 RCW and its rules; or
- Other uses or development that results in a significant ecological impact to the physical, chemical, or biological characteristics of wetlands.
- Activities reducing the functions of buffers described in (c)(i)(D) of this subsection.

(B) Wetland rating or categorization.

Wetlands shall be categorized based on the rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions the wetland provides. Local governments should either use the Washington State Wetland Rating System, Eastern or Western Washington version as appropriate, or they should develop their own, regionally specific, scientifically based method for categorizing wetlands. Wetlands should be categorized to reflect differences in wetland quality and function in order to tailor protection standards appropriately. A wetland categorization method is not a substitute for a function assessment method, where detailed information on wetland functions is needed.

(C) Alterations to wetlands.

Master program provisions addressing alterations to wetlands shall be consistent with the policy of no net loss of wetland area and functions, wetland rating, scientific and technical information, and the mitigation priority sequence defined in WAC 173-26-201(2)(e).

(D) Buffers.

Master programs shall contain requirements for buffer zones around wetlands. Buffer requirements shall be adequate to ensure that wetland functions are protected and maintained in the long-term. Requirements for buffer zone widths and management shall take into account the ecological functions of the wetland, the characteristics and setting of the buffer, the potential impacts associated with the adjacent land use, and other relevant factors.

(E) Mitigation.

Master programs shall contain wetland mitigation requirements that are consistent with WAC 173-26-201(2)(e) and which are based on the wetland rating.

(F) Compensatory mitigation.

Compensatory mitigation shall be allowed only after mitigation sequencing is applied and higher priority means of mitigation are determined to be infeasible.

Requirements for compensatory mitigation must include provisions for:

(I) Mitigation replacement ratios or a similar method of addressing the following:

- The risk of failure of the compensatory mitigation action;
- The length of time it will take the compensatory mitigation action to adequately replace the impacted wetland functions and values;
- The gain or loss of the type, quality, and quantity of the ecological functions of the compensation wetland as compared with the impacted wetland.

(II) Establishment of performance standards for evaluating the success of compensatory mitigation actions;

(III) Establishment of long-term monitoring and reporting procedures to determine if performance standards are met; and

(IV) Establishment of long-term protection and management of compensatory mitigation sites. Credits from a certified mitigation bank may be used to compensate for unavoidable impacts.

(ii) Geologically hazardous areas.

Development in designated geologically hazardous areas shall be regulated in accordance with the following:

(A) Consult minimum guidelines for geologically hazardous areas, WAC 365-190-080(4).

(B) Do not allow new development or the creation of new lots that would cause foreseeable risk from geological conditions to people or improvements during the life of the development.

(C) Do not allow new development that would require structural shoreline stabilization over the life of the development. Exceptions may be made for the limited instances where stabilization is necessary to protect allowed uses where no alternative locations are available and no net loss of ecological functions will result. The stabilization measures shall conform to WAC 173-26-231.

(D) Where no alternatives, including relocation or reconstruction of existing structures, are found to be feasible, and less expensive than the proposed stabilization measure, stabilization structures or measures to protect existing primary residential structures may be allowed in strict conformance with WAC 173-26-231 requirements and then only if no net loss of ecological functions will result.

(iii) Critical saltwater habitats

(A) Applicability.

Critical saltwater habitats include all kelp beds, eelgrass beds, spawning and holding areas for forage fish, such as herring, smelt and sand lance, Subsistence, commercial and recreational shellfish beds, mudflats, intertidal habitats with vascular plants, and areas with which priority species have a primary association. Critical saltwater habitats require a higher level of protection due to the important ecological functions they provide. Ecological functions of marine shorelands can affect the viability of critical saltwater habitats. Therefore, effective protection and restoration of critical saltwater habitats should integrate management of shorelands as well as submerged areas.

(B) Principles.

Master programs shall include policies and regulations to protect critical saltwater habitats and should implement planning policies and programs to restore such habitats. Planning for critical saltwater habitats shall incorporate the participation of state resource agencies to assure consistency with other legislatively created programs in addition to local and regional government entities with an interest such as port districts. Affected Indian tribes shall also be consulted. Local governments should review relevant comprehensive management plan policies and development regulations for shorelands and adjacent lands to achieve consistency as directed in RCW 90.58.340. Local governments should base management planning on information provided by state resource agencies and affected Indian tribes unless they demonstrate that they possess more accurate and reliable information. The management planning should include an evaluation of current data and trends regarding the following:

- Available inventory and collection of necessary data regarding physical characteristics of the habitat, including upland conditions, and any information on species population trends;
- Terrestrial and aquatic vegetation;

- The level of human activity in such areas, including the presence of roads and level of recreational types (passive or active recreation may be appropriate for certain areas and habitats);
- Restoration potential;
- Tributaries and small streams flowing into marine waters;
- Dock and bulkhead construction, including an inventory of bulkheads serving no protective purpose;
- Conditions and ecological functions in the near-shore area;
- Uses surrounding the critical saltwater habitat areas that may negatively impact those areas, including permanent or occasional upland, beach, or over-water uses; and
- An analysis of what data gaps exist and a strategy for gaining this information.

The management planning should address the following, where applicable:

- Protecting a system of fish and wildlife habitats with connections between larger habitat blocks and open spaces and restoring such habitats and connections where they are degraded;
- Protecting existing and restoring degraded riparian and estuarine ecosystems, especially salt marsh habitats;
- Establishing adequate buffer zones around these areas to separate incompatible uses from the habitat areas;
- Protecting existing and restoring degraded near-shore habitat;
- Protecting existing and restoring degraded or lost salmonid habitat;
- Protecting existing and restoring degraded upland ecological functions important to critical saltwater habitats, including riparian vegetation;
- Improving water quality;
- Protecting existing and restoring degraded sediment inflow and transport regimens; and
- Correcting activities that cause excessive sediment input where human activity has led to mass wasting.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should classify critical saltwater habitats and protect and restore seasonal ranges and habitat elements with which federal-listed and state-listed endangered, threatened, and priority species have a primary association and which, if altered, may reduce the likelihood that a species will maintain its population and reproduce over the long term.

Local governments, in conjunction with state resource agencies and affected Indian tribes, should determine which habitats and species are of local importance.

All public and private tidelands or bedlands suitable for shellfish harvest shall be classified as critical areas. Local governments should consider both commercial and

recreational shellfish areas. Local governments should review the Washington department of health classification of commercial and recreational shellfish growing areas to determine the existing condition of these areas. Further consideration should be given to the vulnerability of these areas to contamination or potential for recovery. Shellfish protection districts established pursuant to chapter 90.72 RCW shall be included in the classification of critical shellfish areas. Local governments shall classify kelp and eelgrass beds identified by the department of natural resources' aquatic resources division, the department, and affected Indian tribes as critical saltwater habitats.

Comprehensive saltwater habitat management planning should identify methods for monitoring conditions and adapting management practices to new information.

(C) Standards.

Docks, bulkheads, bridges, fill, floats, jetties, utility crossings, and other human-made structures shall not intrude into or over critical saltwater habitats except when all of the conditions below are met:

- The public's need for such an action or structure is clearly demonstrated and the proposal is consistent with protection of the public trust, as embodied in RCW 90.58.020;
- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible or would result in unreasonable and disproportionate cost to accomplish the same general purpose;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.
- The project is consistent with the state's interest in resource protection and species recovery.

Private, non-commercial docks for individual residential or community use may be authorized provided that:

- Avoidance of impacts to critical saltwater habitats by an alternative alignment or location is not feasible;
- The project including any required mitigation, will result in no net loss of ecological functions associated with critical saltwater habitat.

Until an inventory of critical saltwater habitat has been done, shoreline master programs shall condition all over-water and near-shore developments in marine and estuarine waters with the requirement for an inventory of the site and adjacent beach sections to assess the presence of critical saltwater habitats and functions. The methods and extent of the inventory shall be consistent with accepted research methodology. At a minimum, local governments should consult with department technical assistance materials for guidance.

(iv) Critical freshwater habitats

(A) Applicability.

The following applies to master program provisions affecting critical freshwater habitats, including those portions of streams, rivers, wetlands, and lakes, their associated channel migration zones, and flood plains designated as such.

(B) Principles.

Many ecological functions of river and stream corridors depend both on continuity and connectivity along the length of the shoreline and on the conditions of the surrounding lands on either side of the river channel. Environmental degradation caused by development such as improper storm-water sewer or industrial outfalls, unmanaged clearing and grading, or runoff from buildings and parking lots within the watershed, can degrade ecological functions downstream. Likewise, gradual destruction or loss of the vegetation, alteration of runoff quality and quantity along the corridor resulting from incremental flood plain development can raise water temperatures and alter hydrographic conditions and degrade other ecological functions, thereby making the corridor inhospitable for priority species and susceptible to catastrophic flooding, droughts, landslides and channel changes. These conditions also threaten human health, safety, and property. Long stretches of river and stream shorelines have been significantly altered or degraded in this manner. Therefore, effective management of river and stream corridors depends on:

- (I) Planning for protection, and restoration where appropriate, along the entire length of the corridor from river headwaters to the mouth; and
- (II) Regulating uses and development within the stream channel, associated channel migration zone, wetlands, and the flood plain, to the extent such areas are in the shoreline jurisdictional area, as necessary to assure no net loss of ecological functions associated with the river or stream corridors, including the associated hyporheic zone, results from new development.

As part of a comprehensive approach to management of critical freshwater habitat and other river and stream values, local governments should integrate master program provisions, including those for shoreline stabilization, fill, vegetation conservation, water quality, flood hazard reduction, and specific uses, to protect human health and safety and to protect and restore the corridor's ecological functions and ecosystem-wide processes.

Applicable master programs shall contain provisions to protect hydrologic connections between water bodies, water courses, and associated wetlands. Restoration planning should include incentives and other means to restore water connections that have been impeded by previous development.

Master program provisions for river and stream corridors should, where appropriate, be based on the information from comprehensive watershed management planning where available.

(c) Standards.

Master programs shall implement the following standards within shoreline jurisdiction:

- (I) Provide for the protection of ecological functions associated with critical freshwater habitat as necessary to assure no net loss.
- (II) Where appropriate, integrate protection of critical freshwater habitat, protection with flood hazard reduction and other river and stream management provisions.
- (III) Include provisions that facilitate authorization of appropriate restoration projects.
- (IV) Provide for the implementation of the principles identified in (B) above.

(3) Flood hazard reduction.

(a) Applicability.

The following provisions apply to actions taken to reduce flood damage or hazard and to uses, development, and shoreline modifications that may increase flood hazards. Flood hazard reduction measures may consist of nonstructural measures, such as setbacks, land use controls, wetland restoration, dike removal, use relocation, biotechnical measures, and storm water management programs, and of structural measures, such as dikes, levees, revetments, floodwalls, channel realignment, and elevation of structures consistent with the National Flood Insurance Program. Additional relevant critical area provisions are in WAC 173-26-221(2).

(b) Principles.

Flooding of rivers, streams, and other shorelines is a natural process that is affected by factors and land uses occurring throughout the watershed. Past land use practices have disrupted hydrological processes and increased the rate and volume of runoff, thereby exacerbating flood hazards and reducing ecological functions. Flood hazard reduction measures are most effective when integrated into comprehensive strategies that recognize the natural hydrogeological and biological processes of water bodies. Over the long term, the most effective means of flood hazard reduction is to prevent or remove development in flood-prone areas, to manage storm water within the flood plain, and to maintain or restore river and stream system's natural hydrological and geomorphological processes.

Structural flood hazard reduction measures, such as diking, even if effective in reducing inundation in a portion of the watershed, can intensify flooding elsewhere. Moreover, structural flood hazard reduction measures can damage ecological functions crucial to fish and wildlife species, bank stability, and water quality. Therefore, structural flood hazard reduction measures shall be avoided whenever possible. When necessary, they shall be accomplished in a manner that assures no net loss of ecological functions and ecosystem-wide processes.

The dynamic physical processes of rivers, including the movement of water, sediment and wood, cause the river

channel in some areas to move laterally, or “migrate”, over time. This is a natural process in response to gravity and topography and allows the river to release energy and distribute its sediment load. The area within which a river channel is likely to move over a period of time is referred to as the channel migration zone (CMZ) or the meander belt. Scientific examination as well as experience has demonstrated that interference with this natural process often has unintended consequences for human users of the river and its valley such as increased or changed flood, sedimentation and erosion patterns. It also has adverse effects on fish and wildlife through loss of critical habitat for river and riparian dependent species. Failing to recognize the process often leads to damage to, or loss of, structures and threats to life safety.

Applicable shoreline master programs should include provisions to limit development and shoreline modifications that would result in interference with the process of channel migration that may cause significant adverse impacts to property or public improvements and or result in a net loss of ecological functions associated with the rivers and streams. (See also section 221(3)(c)).

The channel migration zone should be established to identify those areas with a high probability of being subject to channel movement based on the historic record, geologic character and evidence of past migration. It should also be recognized that past action is not a perfect predictor of the future and that human and natural changes may alter migration patterns. Consideration should be given to such changes that may have occurred and their effect on future migration patterns.

For management purposes, the extent of likely migration along a stream reach can be identified using evidence of active stream channel movement over the past one hundred years. Evidence of active movement can be provided from historic and current aerial photos and maps and may require field analysis of specific channel and valley bottom characteristics in some cases. A time frame of one hundred years was chosen because aerial photos, maps and field evidence can be used to evaluate movement in this time frame.

In some cases, river channels are prevented from normal or historic migration by human-made structures or other shoreline modifications. The definition of channel migration zone indicates that in defining the extent of a CMZ, local governments should take into account the river’s characteristics and its surroundings. Unless otherwise demonstrated through scientific and technical information, the following characteristics should be considered when establishing the extent of the CMZ for management purposes:

- Within incorporated municipalities and Urban Growth Areas, areas separated from the active river channel by legally existing artificial channel constraints that limit channel movement should not be considered within the channel migration zone.
- All areas separated from the active channel by a legally existing artificial structure(s) that is likely

to restrain channel migration, including transportation facilities, built above or constructed to remain intact through the 100 year flood, should not be considered to be in the channel migration zone.

- In areas outside incorporated municipalities and Urban Growth Areas, channel constraints and flood control structures built below the 100 year flood elevation do not necessarily restrict channel migration and should not be considered to limit the channel migration zone unless demonstrated otherwise using scientific and technical information.

Master programs shall implement the following principles:

- (i) Where feasible, give preference to nonstructural flood hazard reduction measures over structural measures.
- (ii) Base shoreline master program flood hazard reduction provisions on applicable watershed management plans, comprehensive flood hazard management plans, and other comprehensive planning efforts, provided those measures are consistent with the Shoreline Management Act and this chapter.
- (iii) Consider integrating master program flood hazard reduction provisions with other regulations and programs, including (if applicable):
 - Storm water management plans;
 - Flood plain regulations, as provided for in chapter 86.16 RCW;
 - Critical area ordinances and comprehensive plans, as provided in chapter 36.70A RCW; and the
 - National Flood Insurance Program.
- (iv) Assure that flood hazard protection measures do not result in a net loss of ecological functions associated with the rivers and streams.
- (v) Plan for and facilitate returning river and stream corridors to more natural hydrological conditions. Recognize that seasonal flooding is an essential natural process.
- (vi) When evaluating alternate flood control measures, consider the removal or relocation of structures in flood-prone areas.
- (vii) Local governments are encouraged to plan for and facilitate removal of artificial restrictions to natural channel migration, restoration of off channel hydrological connections and return river processes to a more natural state where feasible and appropriate.

(c) Standards.

Master programs shall implement the following standards within shoreline jurisdiction:

- (i) Development in floodplains should not significantly or cumulatively increase flood hazard or be inconsistent with a comprehensive flood hazard management plan adopted pursuant to chapter 86.12 RCW, provided the plan has

been adopted after 1994 and approved by the department. New development or new uses in shoreline jurisdiction, including the subdivision of land, should not be established when it would be reasonably foreseeable that the development or use would require structural flood hazard reduction measures within the channel migration zone or floodway. The following uses and activities may be appropriate and or necessary within the channel migration zone or floodway:

- Actions that protect or restore the ecosystem-wide processes or ecological functions.
- Forest practices in compliance with the Washington State Forest Practices Act and its implementing rules.
- Existing and ongoing agricultural practices, provided that no new restrictions to channel movement occur.
- Mining when conducted in a manner consistent with the environment designation and with the provisions of WAC 173-26-241(3)(h)
- Bridges, utility lines, and other public utility and transportation structures where no other feasible alternative exists or the alternative would result in unreasonable and disproportionate cost. Where such structures are allowed, mitigation shall address impacted functions and processes in the affected section of watershed or drift cell.
- Repair and maintenance of an existing legal use, provided that such actions do not cause significant ecological impacts or increase flood hazards to other uses.
- Development with a primary purpose of protecting or restoring ecological functions and ecosystem-wide processes.
- Modifications or additions to an existing non-agricultural legal use, provided that channel migration is not further limited and that the new development includes appropriate protection of ecological functions.
- Development in incorporated municipalities and designated urban growth areas, as defined in Chapter 36.70A RCW, where existing structures prevent active channel movement and flooding.
- Measures to reduce shoreline erosion, provided that it is demonstrated that the erosion rate exceeds that which would normally occur in a natural condition, that the measure does not interfere with fluvial hydrological and geomorphological processes normally acting in natural conditions, and that the measure includes appropriate

mitigation of impacts to ecological functions associated with the river or stream.

(ii) Allow new structural flood hazard reduction measures in shoreline jurisdiction only when it can be demonstrated by a scientific and engineering analysis that they are necessary to protect existing development, that nonstructural measures are not feasible, that impacts ecological functions and priority species and habitats can be successfully mitigated so as to assure no net loss, and that appropriate vegetation conservation actions are undertaken consistent with WAC 173-26-221(5).

Structural flood hazard reduction measures shall be consistent with an adopted comprehensive flood hazard management plan approved by the department that evaluates cumulative impacts to the watershed system.

(iii) Place new structural flood hazard reduction measures landward of the associated wetlands, and designated vegetation conservation areas, except for actions that increase ecological functions, such as wetland restoration, or as noted below. Provided that such flood hazard reduction projects be authorized if it is determined that no other alternative to reduce flood hazard to existing development is feasible. The need for, and analysis of feasible alternatives to, structural improvements shall be documented through a geotechnical analysis.

(v) Require that new structural public flood hazard reduction measures, such as dikes and levees, dedicate and improve public access pathways unless public access improvements would cause unavoidable health or safety hazards to the public, inherent and unavoidable security problems, unacceptable and un-mitigable significant ecological impacts, unavoidable conflict with the proposed use, or a cost that is disproportionate and unreasonable to the total long-term cost of the development.

(vi) Require that the removal of gravel for flood management purposes be consistent with an adopted flood hazard reduction plan and with this chapter and allowed only after a biological and geomorphological study shows that extraction has a long-term benefit to flood hazard reduction, does not result in a net loss of ecological functions, and is part of a comprehensive flood management solution.

(4) Public access.

(a) Applicability.

Public access includes the ability of the general public to reach, touch, and enjoy the water's edge, to travel on the waters of the state, and to view the water and the shoreline from adjacent locations. Public access provisions below apply to all shorelines of the state unless stated otherwise.

(b) Principles.

Local master programs shall:

- (i) Promote and enhance the public interest with regard to rights to access waters held in public trust by the state while protecting private property rights and public safety.
- (ii) Protect the rights of navigation and space necessary for water-dependent uses.
- (iii) To the greatest extent feasible consistent with the overall best interest of the state and the people generally, protect the public's opportunity to enjoy the physical and aesthetic qualities of shorelines of the state, including views of the water.
- (iv) Regulate the design, construction, and operation of permitted uses in the shorelines of the state to minimize, insofar as practical, interference with the public's use of the water.

(c) Planning process to address public access.

Local governments should plan for an integrated shoreline area public access system that identifies specific public needs and opportunities to provide public access. Such a system can often be more effective and economical than applying uniform public access requirements to all development. This planning should be integrated with other relevant comprehensive plan elements, especially transportation and recreation. The planning process shall also comply with all relevant constitutional and other legal limitations that protect private property rights.

Where a port district or other public entity has incorporated public access planning into its master plan through an open public process, that plan may serve as a portion of the local government's public access planning, provided it meets the provisions of this chapter. The planning may also justify more flexible off-site or special area public access provisions in the master program. Public participation requirements in WAC 173-26-201(3)(b)(i) apply to public access planning.

At a minimum, the public access planning should result in public access requirements for shoreline permits, recommended projects, port master plans, and/or actions to be taken to develop public shoreline access to shorelines on public property. The planning should identify a variety of shoreline access opportunities and circulation for pedestrians-including disabled persons-bicycles, and vehicles between shoreline access points, consistent with other comprehensive plan elements.

(d) Standards.

Shoreline master programs should implement the following standards:

- (i) Based on the public access planning described in (c) of this subsection, establish policies and regulations that protect and enhance both physical and visual public access. The master

program shall address public access on public lands. The master program should seek to increase the amount and diversity of public access to the state's shorelines consistent with the natural shoreline character, property rights, public rights under the Public Trust Doctrine, and public safety.

(ii) Require that shoreline development by public entities, including local governments, port districts, state agencies, and public utility districts, include public access measures as part of each development project, unless such access is shown to be incompatible due to reasons of safety, security, or impact to the shoreline environment. Where public access planning as described in WAC 173-26-221(4)(c) demonstrates that a more effective public access system can be achieved through alternate means, such as focusing public access at the most desirable locations, local governments may institute master program provisions for public access based on that approach in lieu of uniform site-by-site public access requirements.

(iii) Provide standards for the dedication and improvement of public access in developments for water-enjoyment, water-related, and non-water-dependent uses and for the subdivision of land into more than four parcels. In these cases, public access should be required except:

(A) Where the local government provides more effective public access through a public access planning process described in WAC 173-26-221(4)(c).

(B) Where it is demonstrated to be infeasible due to reasons of incompatible uses, safety, security, or impact to the shoreline environment or due to constitutional or other legal limitations that may be applicable. In determining the infeasibility, undesirability, or incompatibility of public access in a given situation, local governments shall consider alternate methods of providing public access, such as off-site improvements, viewing platforms, separation of uses through site planning and design, and restricting hours of public access.

(C) For individual single-family residences not part of a development planned for more than four parcels.

(iv) Adopt provisions, such as maximum height limits, setbacks, and view corridors, to minimize the impacts to existing views from public property or substantial numbers of residences. Where there is an irreconcilable conflict between water-dependent shoreline uses or physical public access and maintenance of views from adjacent properties, the water-dependent uses and physical public access shall have priority, unless there is a compelling reason to the contrary.

(v) Assure that public access improvements do not result in a net loss of shoreline ecological functions.

(5) Shoreline vegetation conservation.

(a) Applicability.

Vegetation conservation includes activities to protect and restore vegetation along or near marine and freshwater shorelines that contribute to the ecological functions of shoreline areas. Vegetation conservation provisions include the prevention or restriction of plant clearing and earth grading, vegetation restoration, and the control of invasive weeds and nonnative species.

Unless otherwise stated, vegetation conservation does not include those activities covered under the Washington State Forest Practices Act, except for conversion to other uses and those other forest practice activities over which local governments have authority. As with all master program provisions, vegetation conservation provisions apply even to those shoreline uses and developments that are exempt from the requirement to obtain a permit. Like other master program provisions, vegetation conservation standards do not apply retroactively to existing uses and structures, such as existing agricultural practices.

(b) Principles.

The intent of vegetation conservation is to protect and restore the ecological functions and ecosystem-wide processes performed by vegetation along shorelines. Vegetation conservation should also be undertaken to protect human safety and property, to increase the stability of river banks and coastal bluffs, to reduce the need for structural shoreline stabilization measures, to improve the visual and aesthetic qualities of the shoreline, to protect plant and animal species and their habitats, and to enhance shoreline uses.

Master programs shall include; planning provisions that address vegetation conservation and restoration, and regulatory provisions that address conservation of vegetation; as necessary to assure no net loss of shoreline ecological functions and ecosystem-wide processes, to avoid adverse impacts to soil hydrology, and to reduce the hazard of slope failures or accelerated erosion.

Local governments should address ecological functions and ecosystem-wide processes provided by vegetation as described in WAC 173-26-201(3)(d)(i).

Local governments may implement these objectives through a variety of measures, where consistent with Shoreline Management Act policy, including clearing and grading regulations, setback and buffer standards, critical area regulations, conditional use requirements for specific uses or areas, mitigation requirements, incentives and non-regulatory programs.

In establishing vegetation conservation regulations, local governments must use available scientific and technical information, as described in WAC 173-26-201 (2)(a). At a minimum, local governments should consult shoreline management assistance materials provided by the department and Management Recommendations for Washington's Priority Habitats, prepared by the Washington State department of fish and wildlife where applicable.

Current scientific evidence indicates that the length, width, and species composition of a shoreline vegetation community contribute substantially to the aquatic ecological functions. Likewise, the biota within the aquatic environment is essential to ecological functions of the adjacent upland vegetation. The ability of vegetated areas to provide critical ecological functions diminishes as the length and width of the vegetated area along shorelines is reduced. When shoreline vegetation is removed, the narrower the area of remaining vegetation, the greater the risk that the functions will not be performed.

In the Pacific Northwest, aquatic environments, as well as their associated upland vegetation and wetlands, provide significant habitat for a myriad of fish and wildlife species. Healthy environments for aquatic species is inseparably linked with the ecological integrity of the surrounding terrestrial ecosystem. For example, a nearly continuous corridor of mature forest characterizes the natural riparian conditions of the Pacific Northwest. Riparian corridors along marine shorelines provide many of the same functions as their freshwater counterparts. The most commonly recognized functions of the shoreline vegetation include, but are not limited to:

- Providing shade necessary to maintain the cool temperatures required by salmonids, spawning forage fish, and other aquatic biota.
- Providing organic inputs critical for aquatic life.
- Providing food in the form of various insects and other benthic macroinvertebrates.
- Stabilizing banks, minimizing erosion, and reducing the occurrence of landslides. The roots of trees and other riparian vegetation provide the bulk of this function.
- Reducing fine sediment input into the aquatic environment through storm water retention and vegetative filtering.
- Filtering and vegetative uptake of nutrients and pollutants from ground water and surface runoff.
- Providing a source of large woody debris into the aquatic system. Large woody debris is the primary structural element that functions as a hydraulic roughness element to moderate flows. Large woody debris also serves a pool-forming function, providing critical salmonid rearing and refuge habitat. Abundant large woody debris increases aquatic diversity and stabilization.
- Regulation of microclimate in the stream-riparian and intertidal corridors.
- Providing critical wildlife habitat, including migration corridors and feeding, watering, rearing, and refugia areas.

Sustaining different individual functions requires different widths, compositions and densities of vegetation. The importance of the different functions, in turn, varies with the type of shoreline setting. For example, in forested shoreline settings, periodic recruitment of fallen trees, especially conifers, into the stream channel is an important attribute, critical to natural stream channel maintenance. Therefore, vegetated areas along streams which once supported or could in the future support mature trees should be wide enough to accomplish this periodic recruitment process.

Woody vegetation normally classed as trees may not be a natural component of plant communities in some environments, such as in arid climates and on coastal dunes. In these instances, the width of a vegetated area necessary to achieve the full suite of vegetation-related shoreline functions may not be related to vegetation height. Local governments should identify which ecological processes and functions are important to the local aquatic and terrestrial ecology and conserve sufficient vegetation to maintain them. Such vegetation conservation areas are not necessarily intended to be closed to use and development but should provide for management of vegetation in a manner adequate to assure no net loss of shoreline ecological functions.

(c) Standards.

Master programs shall implement the following requirements in shoreline jurisdiction.

- (i) Establish vegetation conservation standards that implement the principles in WAC 173-26-221(5)(b). Methods to do this may include setback or buffer requirements, clearing and grading standards, regulatory incentives, environment designation standards, or other master program provisions. Selective pruning of trees for safety and view protection may be allowed and the removal of noxious weeds should be authorized.

Additional vegetation conservation standards for specific uses are included in WAC 173-26-241(3).

(6) Water quality, storm water, and nonpoint pollution.

(a) Applicability.

The following section applies to all development and uses in shorelines of the state, as defined in WAC 173-26-020, that affect water quality.

(b) Principles.

Shoreline master programs shall, as stated in RCW 90.58.020, protect against adverse impacts to the public health, to the land and its vegetation and wildlife, and to the waters of the state and their aquatic life, through implementation of the following principles:

- (i) Prevent impacts to water quality and storm water quantity that would result in a net loss of shoreline ecological functions, or a significant impact to aesthetic qualities, or recreational opportunities.
- (ii) Ensure mutual consistency between shoreline management provisions and other regulations that address water quality and storm water quantity, including public health, storm water, and water discharge standards. The regulations that are most protective of ecological functions shall apply.

(c) Standards.

Shoreline master programs shall include provisions to implement the principles of this section.

WAC 173-26-231 Shoreline modifications.

(1) Applicability.

Local governments are encouraged to prepare master program provisions that distinguish between shoreline modifications and shoreline uses. Shoreline modifications are generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use).

The provisions in this section apply to all shoreline modifications within shoreline jurisdiction.

(2) General principles applicable to all shoreline modifications.

Master programs shall implement the following principles:

- (a) Allow structural shoreline modifications only where they are demonstrated to be necessary to support or protect an allowed primary structure or a legally existing shoreline use that is in danger of loss or substantial damage or are necessary for reconfiguration of the shoreline for mitigation or enhancement purposes.
- (b) Reduce the adverse effects of shoreline modifications and, as much as possible, limit shoreline modifications in number and extent.
- (c) Allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed.
- (d) Assure that shoreline modifications individually and cumulatively do not result in a net loss of ecological functions. This is to be achieved by giving preference to those types of shoreline modifications that have a lesser impact on ecological functions and requiring mitigation of identified impacts resulting from shoreline modifications.
- (e) Where applicable, base provisions on scientific and technical information and a comprehensive analysis of drift

cells for marine waters or reach conditions for river and stream systems. Contact the department for available drift cell characterizations.

(f) Plan for the enhancement of impaired ecological functions where feasible and appropriate while accommodating permitted uses. As shoreline modifications occur, incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes.

(g) Avoid and reduce significant ecological impacts according to the mitigation sequence in WAC 173-26-201(2)(e).

(3) 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.

Nonstructural methods include building setbacks, relocation of the structure to be protected, ground water management, planning and regulatory measures to avoid the need for structural stabilization.

(ii) Principles.

Shoreline are by nature unstable, although in varying degrees. Erosion and accretion are natural processes that provide ecological functions and thereby contribute to sustaining the natural resource and ecology of the shoreline. Human use of the shoreline has typically led to hardening of the shoreline for various reasons including reduction of erosion or providing useful space at the shore or providing access to docks and piers. The impacts of hardening any one property may be minimal but cumulatively the impact of this shoreline modification is significant.

Shoreline hardening typically results in adverse impacts to shoreline ecological functions such as:

- Beach starvation. Sediment supply to nearby beaches is cut off, leading to “starvation” of the beaches for the gravel, sand, and other fine-grained materials that typically constitute a beach.
- Habitat degradation. Vegetation that shades the upper beach or bank is eliminated, thus degrading the value of the shoreline for many ecological functions, including spawning habitat for salmonids and forage fish.
- Sediment impoundment. As a result of shoreline hardening, the sources of sediment on beaches (eroding “feeder” bluffs) are progressively lost and longshore transport is diminished. This leads to lowering of down-drift beaches, the narrowing of the high tide beach, and the coarsening of beach sediment. As beaches become more coarse, less prey for juvenile fish is produced. Sediment starvation may lead to accelerated erosion in down-drift areas.

- Exacerbation of erosion. The hard face of shoreline armoring, particularly concrete bulkheads, reflects wave energy back onto the beach, exacerbating erosion.
- Ground water impacts. Erosion control structures often raise the water table on the landward side, which leads to higher pore pressures in the beach itself. In some cases, this may lead to accelerated erosion of sand-sized material from the beach.
- Hydraulic impacts. Shoreline armoring generally increases the reflectivity of the shoreline and redirects wave energy back onto the beach. This leads to scouring and lowering of the beach, to coarsening of the beach, and to ultimate failure of the structure.
- Loss of shoreline vegetation. Vegetation provides important “softer” erosion control functions. Vegetation is also critical in maintaining ecological functions.
- Loss of large woody debris. Changed hydraulic regimes and the loss of the high tide beach, along with the prevention of natural erosion of vegetated shorelines, lead to the loss of beached organic material. This material can increase biological diversity, can serve as a stabilizing influence on natural shorelines, and is habitat for many aquatic-based organisms, which are, in turn, important prey for larger organisms.
- Restriction of channel movement and creation of side channels. Hardened shorelines along rivers slow the movement of channels, which, in turn, prevents the input of larger woody debris, gravels for spawning, and the creation of side channels important for juvenile salmon rearing, and can result in increased floods and scour.

Additionally, hard structures, especially vertical walls often create conditions that lead to failure of the structure. In time, the substrate of the beach coarsens and scours down to bedrock or a hard clay. The footings of bulkheads are exposed, leading to undermining and failure. This process is exacerbated when the original cause of the erosion and “need” for the bulkhead was from upland water drainage problems. Failed bulkheads and walls adversely impact beach aesthetics, may be a safety or navigational hazard, and may adversely impact shoreline ecological functions.

“Hard” structural stabilization measures refer to those with solid, hard surfaces, such as concrete bulkheads, while “soft” structural measures rely on less rigid materials, such as biotechnical vegetation measures or beach enhancement. There is a range of measures varying from soft to hard that include:

- Vegetation enhancement;
- Upland drainage control;
- Biotechnical measures;
- Beach enhancement;
- Anchor trees;
- Gravel placement;
- Rock revetments;
- Gabions;

- Concrete groins;
- Retaining walls and bluff walls;
- Bulkheads; and
- Seawalls.

Generally, the harder the construction measure, the greater the impact on shoreline processes, including sediment transport, geomorphology, and biological functions.

Structural shoreline stabilization often results in vegetation removal and damage to near-shore habitat and shoreline corridors. Therefore, master program shoreline stabilization provisions shall also be consistent with WAC 173-26-221(5), vegetation conservation, and where applicable, WAC 173-26-221(2), critical areas.

In order to implement RCW 90.58.100(6) and avoid or mitigate adverse impacts to shoreline ecological functions where shoreline alterations are necessary to protect single-family residences and principal primary appurtenant structures in danger from active shoreline erosion, master programs should include standards setting forth the circumstances under which alteration of the shoreline is permitted, and for the design and type of protective measures and devices.

(iii) 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. Subdivision of land must be regulated to assure that the lots created will not require shoreline stabilization in order for reasonable development to occur using geotechnical analysis of the site and shoreline characteristics. New development on steep slopes or bluffs shall be set back sufficiently to ensure that shoreline stabilization is unlikely to be necessary during the life of the structure, as demonstrated by a geotechnical analysis. New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas should not be allowed.

(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 non-water-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.

(III) In support of water-dependent development 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, 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 erosion control structure will not result in a net loss of shoreline ecological functions.

(IV) To protect projects for the restoration of ecological functions or hazardous substance remediation projects pursuant to chapter 70.105D RCW when all of the conditions below apply:

- Nonstructural measures, planting vegetation, or installing on-site drainage improvements, are not feasible or not sufficient.
- The erosion control structure will not result in a net loss of shoreline ecological functions.

(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.

(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.

(E) When any structural shoreline stabilization measures are demonstrated to be necessary, pursuant to above provisions,

- limit the size of stabilization measures to the minimum necessary. Use measures designed to assure no net loss of shoreline ecological functions. Soft approaches shall be used unless demonstrated not to be sufficient to protect primary structures, dwellings, and businesses.
- Ensure that publicly financed or subsidized shoreline erosion control measures do not restrict appropriate public access to the shoreline except where such access is determined to be infeasible because of incompatible uses, safety, security, or harm to ecological functions. See public access provisions; WAC 173-26-221(4). Where feasible, incorporate ecological restoration and public access improvements into the project.
- Mitigate new erosion control measures, including replacement structures, on feeder bluffs or other actions that affect beach sediment-producing areas to avoid and, if that is not possible, to minimize adverse impacts to sediment conveyance systems. Where sediment conveyance systems cross jurisdictional boundaries, local governments should coordinate shoreline management efforts. If beach erosion is threatening existing development, local

governments should adopt master program provisions for a beach management district or other institutional mechanism to provide comprehensive mitigation for the adverse impacts of erosion control measures.

(F) For erosion or mass wasting due to upland conditions, see WAC 173-26-221(2)(c)(ii).

(b) Piers and docks.

New piers and docks shall be allowed only for water-dependent uses or public access. As used here, a dock associated with a single family residence is a water dependent use provided that it is designed and intended as a facility for access to watercraft and otherwise complies with the provisions of this section. Pier and dock construction shall be restricted to the minimum size necessary to meet the needs of the proposed water-dependent use. Water-related and water-enjoyment uses may be allowed as part of mixed-use development on over-water structures where they are clearly auxiliary to and in support of water-dependent uses, provided the minimum size requirement needed to meet the water-dependent use is not violated.

New pier or dock construction, excluding docks accessory to single-family residences, should be permitted only when the applicant has demonstrated that a specific need exists to support the intended water-dependent uses. If a port district or other public or commercial entity involving water-dependent uses has performed a needs analysis or comprehensive master plan projecting the future needs for pier or dock space, and if the plan or analysis is approved by the local government and consistent with these guidelines, it may serve as the necessary justification for pier design, size, and construction. The intent of this provision is to allow ports and other entities the flexibility necessary to provide for existing and future water-dependent uses.

Where new piers or docks are allowed, master programs should contain provisions to require new residential development of two or more dwellings to provide joint use or community dock facilities, when feasible, rather than allow individual docks for each residence.

Piers and docks, including those accessory to single-family residences, shall be designed and constructed to avoid or, if that is not possible, to minimize and mitigate the impacts to ecological functions, critical areas resources such as eelgrass beds and fish habitats and processes such as currents and littoral drift. See WAC 173-26-221 (2)(c)(iii) and (iv). Master programs should require that structures be made of materials that have been approved by applicable state agencies.

(c) Fill.

Fills shall be located, designed, and constructed to protect shoreline ecological functions and ecosystem-wide processes, including channel migration.

Fills waterward of the ordinary high-water mark shall be allowed only when necessary to support: water-dependent use, public access, cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan, disposal of dredged material considered suitable under, and conducted in accordance with the Dredged Material Management Program of the Department of Natural Resources, expansion or alteration of transportation facilities of statewide significance currently located on the shoreline and then only upon a demonstration that alternatives to fill are not feasible, mitigation action, environmental restoration, beach nourishment or enhancement project. Fills waterward of the ordinary high-water mark for any use except ecological restoration should require a conditional use permit.

(d) Breakwaters, jetties, groins, and weirs.

Breakwaters, jetties, groins, and weirs located waterward of the ordinary high-water mark shall be allowed only where necessary to support water-dependent uses, public access, shoreline stabilization, or other specific public purpose. Breakwaters, jetties, groins, weirs, and similar structures should require a conditional use permit, except for those structures installed to protect or restore ecological functions, such as woody debris installed in streams. Breakwaters, jetties, groins, and weirs shall be designed to protect critical areas and shall provide for mitigation according to the sequence defined in WAC 173-26-201(2)(e).

(e) Beach and dunes management.

Washington's beaches and their associated dunes lie along the Pacific Ocean coast between Point Grenville and Cape Disappointment, and as shorelines of statewide significance are mandated to be managed from a statewide perspective by the Act. Beaches and dunes within shoreline jurisdiction shall be managed to conserve, protect, where appropriate develop, and where appropriate restore the resources and benefits of coastal beaches. Beaches and dunes should also be managed to reduce the hazard to human life and property from natural or human-induced actions associated with these areas.

Shoreline master programs in coastal marine areas shall provide for diverse and appropriate use of beach and dune areas consistent with their ecological, recreational, aesthetic, and economic values, and consistent with the natural limitations of beaches, dunes, and dune vegetation for development. Coastal master programs shall institute development setbacks from the shoreline to prevent impacts to the natural, functional, ecological, and aesthetic qualities of the dune.

"Dune modification" is the removal or addition of material to a dune, the reforming or reconfiguration of a dune, or the removal or addition of vegetation that will alter the dune's shape or sediment migration. Dune modification may be proposed for a number of purposes, including protection of property, flood and storm hazard reduction, erosion prevention, and ecological restoration.

Coastal dune modification shall be allowed only consistent with state and federal flood protection standards and when it will not result in a net loss of shoreline ecological functions or significant adverse impacts to other shoreline resources and values.

Dune modification to protect views of the water shall be allowed only on properties subdivided and developed prior to the adoption of the master program and where the view is completely obstructed for residences or water-enjoyment uses and where it can be demonstrated that the dunes did not obstruct views at the time of original occupancy, and then only in conformance with the above provisions.

(f) Dredging and dredge material disposal.

Dredging and dredge material disposal shall be done in a manner which avoids or minimizes significant ecological impacts and impacts which cannot be avoided should be mitigated in a manner that assures no net loss of shoreline ecological functions.

New development should be sited and designed to avoid or, if that is not possible, to minimize the need for new and maintenance dredging. Dredging for the purpose of establishing, expanding, or relocating or reconfiguring navigation channels and basins should be allowed where necessary for assuring safe and efficient accommodation of existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width.

Dredging waterward of the ordinary high-water mark for the primary purpose of obtaining fill material shall not be allowed, except when the material is necessary for the restoration of ecological functions. When allowed, the site where the fill is to be placed must be located waterward of the ordinary high-water mark. The project must be either associated with a MTCA or CERCLA habitat restoration project or, if approved through a shoreline conditional use permit, any other significant habitat enhancement project.

Master programs should include provisions for uses of suitable dredge material that benefit shoreline resources. Where applicable, master programs should provide for the implementation of adopted regional interagency dredge material management plans or watershed management planning.

Disposal of dredge material on shorelands or wetlands within a river's channel migration zones shall be discouraged. In the limited instances where it is allowed, such disposal shall require a conditional use permit. This provision is not intended to address discharge of dredge material into the flowing current of the river or in deep water within the channel where it does not substantially effect the geo-hydrologic character of the channel migration zone.

(g) Shoreline habitat and natural systems enhancement projects.

Shoreline habitat and natural systems enhancement projects include those activities proposed and conducted specifically for the purpose of establishing, restoring, or enhancing habitat for priority species in shorelines.

Master programs should include provisions fostering habitat and natural system enhancement projects. Such projects may include shoreline modification actions such as modification of vegetation, removal of non-native or invasive plants, shoreline stabilization, dredging, and filling, provided that the primary purpose of such actions is clearly restoration of the natural character and ecological functions of the shoreline. Master program provisions should assure that the projects address legitimate restoration needs and priorities and facilitate implementation of the restoration plan developed pursuant to WAC 173-26-201(2)(f).

WAC 173-26-241 Shoreline Uses.

(1) Applicability.

The provisions in this section apply to specific common uses and types of development to the extent they occur within shoreline jurisdiction. Master programs should include these, where applicable, and should include specific use provisions for other common uses and types of development in the jurisdiction. All uses and development must be consistent with the provisions of the environment designation in which they are located and the general regulations of the master program.

(2) General use provisions.

(a) Principles.

Shoreline master programs shall implement the following principles:

- (i) Establish a system of use regulations and environment designation provisions consistent with WAC 173-26-201(2)(d) and 173-26-211 that gives preference to those uses that are consistent with the control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon uses of the state's shoreline areas.
- (ii) Ensure that all shoreline master program provisions concerning proposed development of property are established, as necessary, to protect the public's health, safety, and welfare, as well as the land and its vegetation and wildlife, and to protect property rights while implementing the policies of the Shoreline Management Act.
- (iii) Reduce use conflicts by including provisions to prohibit or apply special conditions to those uses which are not consistent with the control of pollution and prevention of damage to the natural environment or are not unique to or dependent upon use of the state's shoreline. In implementing this provision, preference shall be given first to water-dependent uses, then to water-related uses and water-enjoyment uses.

(iv) Establish use regulations designed to assure no net loss of ecological functions associated with the shoreline.

(b) Conditional uses.

(i) Master programs shall define the types of uses and development that require shoreline conditional use permits pursuant to RCW 90.58.100(5). Requirements for a conditional use permit may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.
- To address cumulative impacts.
- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

(ii) If master programs permit the following types of uses and development, they should require a conditional use permit:

- (A) Uses and development that may significantly impair or alter the public's use of the water areas of the state.
- (B) Uses and development which, by their intrinsic nature, may have a significant ecological impact on shoreline ecological functions or shoreline resources depending on location, design, and site conditions.
- (C) Development in critical saltwater habitats.

(iii) The provisions of this section are minimum requirements and are not intended to limit local government's ability to identify other uses and developments within the master program as conditional uses where necessary or appropriate.

(3) Standards.

Master programs shall establish a comprehensive program of use regulations for shorelines and shall incorporate provisions for specific uses consistent with the following as necessary to assure consistency with the policy of the act and where relevant within the jurisdiction.

(a) Agriculture

(i) For the purposes of this section, the terms agricultural activities, agricultural products, agricultural equipment and facilities and

agricultural land shall have the specific meanings as provided in WAC 173-26-020.

(ii) Master programs shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and other development on agricultural land that does not meet the definition of agricultural activities.

(iii) Nothing in this section limits or changes the terms of the current exception to the definition of substantial development. A substantial development permit is required for any agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv).

(iv) Master programs shall use definitions consistent with the definitions found in WAC 173-26-020 (3).

(v) New agricultural activities are activities that meet the definition of agricultural activities but are proposed on land not currently in agricultural use. Master programs shall include provisions for new agricultural activities to assure that:

(A) Specific uses and developments in support of agricultural use are consistent the environment designation in which the land is located.

(B) Agricultural uses and development in support of agricultural uses, are located and designed to assure no net loss of ecological functions and to not have a significant adverse impact on other shoreline resources and values. Measures appropriate to meet this requirements include provisions addressing water quality protection, and vegetation conservation, as described in WAC 173-26-220(5) and (6). Requirements for buffers for agricultural development shall be based on scientific and technical information and management practices adopted by the applicable state agencies necessary to preserve the ecological functions and qualities of the shoreline environment.

(vi) Master programs shall include provisions to assure that development on agricultural land that does not meet the definition of agricultural activities, and the conversion of agricultural land to non-agricultural uses, shall be consistent the environment designation, and the general and specific use regulations applicable to the proposed use and do not result in a net loss of ecological functions associated with the shoreline.

(b) Aquaculture.

Aquaculture is the culture or farming of food fish, shellfish, or other aquatic plants and animals. This activity is of statewide interest. Properly managed, it can result in long-term over short-term benefit and can protect the resources and ecology of the shoreline.

Aquaculture is dependent on the use of the water area and, when consistent with control of pollution and prevention of damage to the environment, is a preferred use of the water area. Local government should consider local ecological conditions and provide limits and conditions to assure appropriate compatible types of aquaculture for the local conditions as necessary to assure no net loss of ecological functions.

Potential locations for aquaculture are relatively restricted due to specific requirements for water quality, temperature, flows, oxygen content, adjacent land uses, wind protection, commercial navigation, and, in marine waters, salinity. The technology associated with some forms of present-day aquaculture is still in its formative stages and experimental. Local shoreline master programs should therefore recognize the necessity for some latitude in the development of this use as well as its potential impact on existing uses and natural systems.

Aquaculture should not be permitted in areas where it would result in a net loss of ecological functions, adversely impact eelgrass and macroalgae, or significantly conflict with navigation and other water-dependent uses. Aquacultural facilities should be designed and located so as not to spread disease to native aquatic life, establish new nonnative species which cause significant ecological impacts, or significantly impact the aesthetic qualities of the shoreline. Impacts to ecological functions shall be mitigated according to the mitigation sequence described in WAC 173-26-020.

(c) Boating facilities.

For the purposes of this chapter, "boating facilities" excludes docks serving four or fewer single-family residences. Shoreline master programs shall contain provisions to assure no net loss of ecological functions as a result of development of boating facilities while providing the boating public recreational opportunities on waters of the state.

Where applicable, shoreline master programs should, at a minimum, contain:

(i) Provisions to ensure that boating facilities are located only at sites with suitable environmental conditions, shoreline configuration, access, and neighboring uses.

(ii) Provisions that assure that facilities meet health, safety, and welfare requirements. Master programs may reference other regulations to accomplish this requirement.

(iii) Regulations to avoid, or if that is not possible, to mitigate aesthetic impacts.

(iv) Provisions for public access in new marinas, particularly where water-enjoyment uses are

associated with the marina, in accordance with WAC 173-26-221(4).

(v) Regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).

(vi) Regulations that assure that the development of boating facilities, and associated and accessory uses, will not result in a net loss of shoreline ecological functions or other significant adverse impacts.

(vii) Regulations to protect the rights of navigation.

(viii) Regulations restricting vessels from extended mooring on waters of the state except as allowed by applicable state regulations and unless a lease or permission is obtained from the state and impacts to navigation and public access are mitigated.

(d) Commercial development.

Master programs shall first give preference to water-dependent commercial uses over non-water-dependent commercial uses; and second, give preference to water-related and water-enjoyment commercial uses over non-water-oriented commercial uses.

The design, layout and operation of certain commercial uses directly affects their classification with regard to whether or not they qualify as water related or water enjoyment uses. Master programs shall assure that commercial uses that may be authorized as water related or water enjoyment uses are required to incorporate appropriate design and operational elements so that they meet the definition of water related or water enjoyment uses.

Master programs should require that public access and ecological restoration be considered as potential mitigation of impacts to shoreline resources and values for all water-related or water-dependent commercial development unless such improvements are demonstrated to be infeasible or inappropriate. Where commercial use is proposed for location on land in public ownership, public access should be required. Refer to WAC 173-26-221(4) for public access provisions.

Master programs should prohibit non-water-oriented commercial uses on the shoreline unless they meet the following criteria:

- (i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or
- (ii) Navigability is severely limited at the proposed site; and the commercial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for commercial use, non-water-oriented commercial development may be allowed if the site is physically separated from the shoreline by another property or public right of way.

Non-water-dependent commercial uses should not be allowed over water except in existing structures or in the limited instances where they are auxiliary to and necessary in support of water-dependent uses.

Master Programs shall assure that commercial development will not result in a net loss of shoreline ecological functions or have significant adverse impact to other shoreline uses, resources and values provided for in 90.58.020RCW such as navigation, recreation and public access.

(e) Forest practices.

Local master programs should rely on the Forest Practices Act and rules implementing the act and the Forest and Fish Report as adequate management of commercial forest uses within shoreline jurisdiction. However, local governments shall, where applicable, apply this chapter to Class IV-General forest practices where shorelines are being converted or are expected to be converted to non-forest uses.

Forest practice conversions and other Class IV-General forest practices where there is a likelihood of conversion to non-forest uses, shall assure no net loss of shoreline ecological functions and shall maintain the ecological quality of the watershed's hydrologic system. Master programs shall establish provisions to ensure that all such practices are conducted in a manner consistent with the master program environment designation provisions and the provisions of this chapter. Applicable shoreline master programs should contain provisions to ensure that when forest lands are converted to another use, there will be no net loss of shoreline ecological functions or significant adverse impacts to other shoreline uses, resources and values provided for in 90.58.020RCW such as navigation, recreation and public access.

Master programs shall implement the provisions of RCW 90.58.150 regarding selective removal of timber harvest on shorelines of statewide significance. Exceptions to this standard shall be by conditional use permit only.

Lands designated as "forest lands" pursuant to RCW 36.70A.170 shall be designated consistent with either the "natural," "rural conservancy," environment designation. Where forest practices fall within the applicability of the Forest Practices Act, local governments should consult with the department of natural resources, other applicable agencies, and local timber owners and operators.

(f) Industry.

Master programs shall first give preference to water-dependent industrial uses over non-water-dependent

industrial uses; and second, give preference to water-related industrial uses over non-water-oriented industrial uses.

Regional and statewide needs for water-dependent and water-related industrial facilities should be carefully considered in establishing master program environment designations, use provisions, and space allocations for industrial uses and supporting facilities. Lands designated for industrial development should not include shoreline areas with severe environmental limitations, such as critical areas.

Where industrial development is allowed, master programs shall include provisions that assure that industrial development will be located, designed, or constructed in a manner that assures no net loss of shoreline ecological functions and such that it does not have significant adverse impacts to other shoreline resources and values.

Master Programs should require that industrial development consider incorporating public access as mitigation for impacts to shoreline resources and values unless public access cannot be provided in a manner that does not result in significant interference with operations or hazards to life or property, as provided in WAC 173-26-221(4). Where industrial use is proposed for location on land in public ownership, public access should be required. Industrial development and redevelopment should be encouraged to locate where environmental cleanup and restoration of the shoreline area can be incorporated.

New non-water-oriented industrial development should be prohibited on shorelines except when:

- (i) The use is part of a mixed-use project that includes water-dependent uses and provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration; or
- (ii) Navigability is severely limited at the proposed site; and the industrial use provides a significant public benefit with respect to the Shoreline Management Act's objectives such as providing public access and ecological restoration.

In areas designated for industrial use, non-water-oriented industrial uses may be allowed if the site is physically separated from the shoreline by another property or public right of way.

(g) In-stream structural uses.

"In-stream structure" means a structure placed by humans within a stream or river waterward of the ordinary high water mark that either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. In-stream structures may include those for hydroelectric generation, irrigation, water supply, flood control, transportation, utility service transmission, fish habitat enhancement, or other purpose.

In-stream structures shall provide for the protection and preservation, of ecosystem-wide processes, ecological functions, and cultural resources, including, but not limited to, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. The location and planning of in-stream structures shall give due consideration to the full range of public interests, watershed functions and processes, and environmental concerns, with special emphasis on protecting and restoring priority habitats and species.

(h) Mining.

Mining is the removal of sand, gravel, soil, minerals, and other earth materials for commercial and other uses. Historically, the most common form of mining in shoreline areas is for sand and gravel because of the geomorphic association of rivers and sand and gravel deposits. Mining in the shoreline generally alters the natural character, resources, and ecology of shorelines of the state and may impact critical shoreline resources and ecological functions of the shoreline. However, in some circumstances, mining may be designed to have benefits for shoreline resources, such as creation of off channel habitat for fish or habitat for wildlife. Activities associated with shoreline mining, such as processing and transportation, also generally have the potential to impact shoreline resources unless the impacts of those associated activities are evaluated and properly managed in accordance with applicable provisions of the master program.

A shoreline master program should accomplish two purposes in addressing mining. First, identify where mining may be an appropriate use of the shoreline, which is addressed in this section and in the environment designation sections above. Second, ensure that when mining or associated activities in the shoreline are authorized, those activities will be properly sited, designed, conducted, and completed so that it will cause no net loss of ecological functions of the shoreline.

(i) Identification of shoreline areas where mining may be designated as appropriate shall:

- (A) Be consistent with the environment designation provisions of WAC 173-26-211 and where applicable WAC 173-26-251(2) regarding shorelines of statewide significance; and
- (B) Be consistent with local government designation of mineral resource lands with long term significance as provided for RCW 36.70A.170(1)(c), RCW 36.70A.130, and RCW 36.70A.131; and
- (C) Be based on a showing that mining is dependent on a shoreline location in the city or county, or portion thereof, which requires evaluation of geologic factors such as the distribution and availability of mineral resources for that jurisdiction, as well as evaluation of need for such mineral resources, economic, transportation, and land use factors. This showing may rely on analysis or studies prepared for

purposes of GMA designations, be integrated with any relevant environmental review conducted under SEPA (RCW 43.21C), or otherwise be shown in a manner consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a).

(ii) Master programs shall include policies and regulations for mining, when authorized, that accomplish the following:

(A) New mining and associated activities shall be designed and conducted to comply with the regulations of the environment designation and the provisions applicable to critical areas where relevant. Accordingly, meeting the no net loss of ecological function standard shall include avoidance and mitigation of adverse impacts during the course of mining and reclamation. It is appropriate, however, to determine whether there will be no net loss of ecological function based on evaluation of final reclamation required for the site. Preference shall be given to mining proposals that result in the creation, restoration, or enhancement of habitat for priority species.

(B) Master program provisions and permit requirements for mining should be coordinated with the requirements of chapter 78.44 RCW.

(C) Master programs shall assure that proposed subsequent use of mined property is consistent with the provisions of the environment designation in which the property is located and that reclamation of disturbed shoreline areas provides appropriate ecological functions consistent with the setting.

(D) Mining within the active channel or channels (a location waterward of the ordinary high-water mark) of a river shall not be permitted unless:

(I) Removal of specified quantities of sand and gravel or other materials at specific locations will not adversely affect the natural processes of gravel transportation for the river system as a whole; and

(II) The mining and any associated permitted activities will not have significant adverse impacts to habitat for priority species nor cause a net loss of ecological functions of the shoreline.

(III) The determinations required by paragraphs I and II above shall be made consistent with RCW 90.58.100(1) and WAC 173-26-201(2)(a). Such evaluation of impacts should be appropriately integrated with relevant environmental review requirements of SEPA (RCW 43.21C) and the SEPA rules (WAC 197-11).

(IV) In considering renewal, extension or reauthorization of gravel bar and other in-channel mining operations in locations where they have previously been conducted local government shall require compliance with this subsection

(D) to the extent that no such review has previously been conducted. Where there has been prior review, local government shall review previous determinations comparable to the requirements of this section to assure compliance with this subsection (D) under current site conditions.

(V) The provisions of this section do not apply to dredging of authorized navigation channels when conducted in accordance with WAC 173-27-231(3)(f).

(E) Mining within any channel migration zone that is within Shoreline Management Act jurisdiction shall require a shoreline conditional use permit.

(i) Recreational development.

Recreational development includes commercial and public facilities designed and used to provide recreational opportunities to the public. Master programs should assure that shoreline recreational development is given priority and is primarily related to access to, enjoyment and use of the water and shorelines of the State.

Commercial recreational development should be consistent with the provisions for commercial development in (d) above. Provisions related to public recreational development shall assure that the facilities are located, designed and operated in a manner consistent with the purpose of the environment designation in which they are located and such that no net loss of shoreline ecological functions or ecosystem-wide processes results.

In accordance with RCW 90.58.100(4), master program provisions shall reflect that state-owned shorelines are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational uses for the public and give appropriate special consideration to the same.

For all jurisdictions planning under the Growth Management Act, master program recreation policies shall be consistent with growth projections and level-of-service standards established by the applicable comprehensive plan.

(j) Residential development.

Single-family residences are the most common form of shoreline development and are identified as a priority use when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. Without proper management, single family residential use can cause significant damage to the shoreline area through cumulative impacts from shoreline armoring, storm water runoff, septic systems, introduction of pollutants, and vegetation modification and removal. Residential development also includes multifamily

development and the creation of new residential lots through land division.

Master programs shall include policies and regulations that assure no net loss of shoreline ecological functions will result from residential development. Such provisions should include specific regulations for setbacks and buffer areas, density, shoreline armoring, vegetation conservation requirements, and, where applicable, on-site sewage system standards for all residential development and uses and applicable to divisions of land in shoreline jurisdiction.

Residential development, including appurtenant structures and uses, should be sufficiently set back from steep slopes and shorelines vulnerable to erosion so that structural improvements, including bluff walls and other stabilization structures, are not required to protect such structures and uses. (See RCW 90.58.100(6).)

New over-water residences, including floating homes, are not a preferred use and should be prohibited. It is recognized that certain existing communities of floating and/or over water homes exist and should be reasonably accommodated to allow improvements associated with life safety matters and property rights to be addressed provided that any expansion of existing communities is the minimum necessary to assure consistency with constitutional and other legal limitations that protect private property.

New multiunit residential development, including the subdivision of land for more than four parcels, should provide community and/or public access in conformance to the local government's public access planning and this chapter.

Master programs shall include standards for the creation of new residential lots through land division that accomplish the following:

- (i) Plats and subdivisions must be designed, configured and developed in a manner that assures that no net loss of ecological functions results from the plat or subdivision at full build-out of all lots.
- (ii) Prevent the need for new shoreline stabilization or flood hazard reduction measures that would cause significant impacts to other properties or public improvements or a net loss of shoreline ecological functions.
- (iii) Implement the provisions of WAC 173-26-211 and 173-26-221.

(k) Transportation and parking.

Master programs shall include policies and regulations to provide safe, reasonable, and adequate circulation systems to, and through or over shorelines where necessary and otherwise consistent these guidelines.

Transportation and parking plans and projects shall be consistent with the master program public access policies, public access plan, and environmental protection provisions.

Circulation system planning shall include systems for pedestrian, bicycle, and public transportation where appropriate. Circulation planning and projects should support existing and proposed shoreline uses that are consistent with the master program.

Plan, locate, and design proposed transportation and parking facilities where routes will have the least possible adverse effect on unique or fragile shoreline features, will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water-dependent uses. Where other options are available and feasible, new roads or road expansions should not be built within shoreline jurisdiction.

Parking facilities in shorelines are not a preferred use and shall be allowed only as necessary to support an authorized use. Shoreline master programs shall include policies and regulations to minimize the environmental and visual impacts of parking facilities.

(l) Utilities.

These provisions apply to services and facilities that produce, convey, store, or process power, gas, sewage, communications, oil, waste, and the like. On-site utility features serving a primary use, such as a water, sewer or gas line to a residence, are "accessory utilities" and shall be considered a part of the primary use.

Master programs shall include provisions to assure that:

- All utility facilities are designed and located to assure no net loss shoreline ecological functions, preserve the natural landscape, and minimize conflicts with present and planned land and shoreline uses while meeting the needs of future populations in areas planned to accommodate growth.
- Utility production and processing facilities, such as power plants and sewage treatment plants, or parts of those facilities, that are non-water-oriented shall not be allowed in shoreline areas unless it can be demonstrated that no other feasible option is available.
- Transmission facilities for the conveyance of services, such as power lines, cables, and pipelines, shall be located outside of the shoreline area where feasible and when necessarily located within the shoreline area shall assure no net loss of shoreline ecological functions.
- Utilities should be located in existing rights of way and corridors whenever possible.
- Development of pipelines and cables on tidelands, particularly those running roughly parallel to the shoreline, and development of facilities that may require periodic maintenance which disrupt shoreline ecological functions should be discouraged except where no other feasible alternative exists. When permitted, provisions shall assure that the facilities do not result in a net loss of shoreline ecological

functions or significant impacts to other shoreline resources and values.

WAC 173-26-251 Shorelines of statewide significance.

(1) Applicability.

The following section applies to local governments preparing master programs that include shorelines of statewide significance as defined in RCW 90.58.030.

(2) Principles.

Chapter 90.58 RCW raises the status of shorelines of statewide significance in two ways. First, the Shoreline Management Act sets specific preferences for uses of shorelines of statewide significance. RCW 90.58.020 states:

The legislature declares that the interest of all of the people shall be paramount in the management of shorelines of statewide significance. The department, in adopting guidelines for shorelines of statewide significance, and local government, in developing master programs for shorelines of statewide significance, shall give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;*
- (2) Preserve the natural character of the shoreline;*
- (3) Result in long term over short term benefit;*
- (4) Protect the resources and ecology of the shoreline;*
- (5) Increase public access to publicly owned areas of the shorelines;*
- (6) Increase recreational opportunities for the public in the shoreline;*
- (7) Provide for any other element as defined in RCW 90.58.100 deemed appropriate or necessary.*

Second, the Shoreline Management Act calls for a higher level of effort in implementing its objectives on shorelines of statewide significance. RCW 90.58.090(4) states:

The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest.

Optimum implementation involves special emphasis on statewide objectives and consultation with state agencies. The state's interests may vary, depending upon the geographic region, type of shoreline, and local conditions. Optimum implementation may involve ensuring that other comprehensive planning policies and regulations support Shoreline Management Act objectives.

Because shoreline ecological resources are linked to other environments, implementation of ecological objectives

requires effective management of whole ecosystems. Optimum implementation places a greater imperative on identifying, understanding, and managing ecosystem-wide processes and ecological functions that sustain resources of statewide importance.

(3) Master program provisions for shorelines of statewide significance.

Because shorelines of statewide significance are major resources from which all people of the state derive benefit, local governments that are preparing master program provisions for shorelines of statewide significance shall implement the following:

(a) Statewide interest.

To recognize and protect statewide interest over local interest, consult with applicable state agencies, affected Indian tribes, and statewide interest groups and consider their recommendations in preparing shoreline master program provisions. Recognize and take into account state agencies' policies, programs, and recommendations in developing use regulations. For example, if an anadromous fish species is affected, the Washington State departments of fish and wildlife and ecology and the governor's salmon recovery office, as well as affected Indian tribes, should, at a minimum, be consulted.

(b) Preserving resources for future generations.

Prepare master program provisions on the basis of preserving the shorelines for future generations. For example, actions that would convert resources into irreversible uses or detrimentally alter natural conditions characteristic of shorelines of statewide significance should be severely limited. Where natural resources of statewide importance are being diminished over time, master programs shall include provisions to contribute to the restoration of those resources.

(c) Priority uses.

Establish shoreline environment designation policies, boundaries, and use provisions that give preference to those uses described in RCW 90.58.020(1) through (7). More specifically:

- (i) Identify the extent and importance of ecological resources of statewide importance and potential impacts to those resources, both inside and outside the local government's geographic jurisdiction.
- (ii) Preserve sufficient shorelands and submerged lands to accommodate current and projected demand for economic resources of statewide importance, such as commercial shellfish beds and navigable harbors. Base projections on statewide or regional analyses, requirements for essential public facilities, and comment from related industry associations, affected Indian tribes, and state agencies.
- (iii) Base public access and recreation requirements on demand projections that take into account the activities of state agencies and the interests of the citizens of the state to visit

public shorelines with special scenic qualities or cultural or recreational opportunities.

(d) Resources of statewide importance.

Establish development standards that:

- (i) Ensure the long-term protection of ecological resources of statewide importance, such as anadromous fish habitats, forage fish spawning and rearing areas, shellfish beds, and unique environments. Standards shall consider incremental and cumulative impacts of permitted development and include provisions to insure no net loss of shoreline ecosystems and ecosystem-wide processes.
- (ii) Provide for the shoreline needs of water-oriented uses and other shoreline economic resources of statewide importance.
- (iii) Provide for the right of the public to use, access, and enjoy public shoreline resources of statewide importance.

(e) Comprehensive plan consistency.

Assure that other local comprehensive plan provisions are consistent with and support as a high priority the policies for shorelines of statewide significance. Specifically, shoreline master programs should include policies that incorporate the priorities and optimum implementation directives of chapter 90.58 RCW into comprehensive plan provisions and implementing development regulations.

WAC 173-26-020 Definitions

In addition to the definitions and concepts set forth in RCW 90.58.030, as amended, and the other implementing rules for the SMA, as used herein, the following words and phrases shall have the following meanings:

- (1) "Act" means the Washington State Shoreline Management Act, chapter 90.58 RCW.
- (2) "Adoption by rule" means an official action by the department to make a local government shoreline master program effective through rule consistent with the requirements of the Administrative Procedure Act, chapter 34.05 RCW, thereby incorporating the adopted shoreline master program or amendment into the state master program.
- (3) (a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing

agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to:

- (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains;
- (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands;
- (iii) farm residences and associated equipment, lands, and facilities; and
- (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and (d)

"Agricultural land" means those specific land areas on which agriculture activities are conducted as of the date of adoption of a local master program pursuant to these guidelines as evidenced by aerial photography or other documentation. After the effective date of the master program land converted to agricultural use is subject to compliance with the requirements of the master program.

(4) "Amendment" means a revision, update, addition, deletion, and/or reenactment to an existing shoreline master program.

(5) "Approval" means an official action by a local government legislative body agreeing to submit a proposed shoreline master program or amendments to the department for review and official action pursuant to this chapter; or an official action by the department to make a local government shoreline master program effective, thereby incorporating the approved shoreline master program or amendment into the state master program.

(6) "Channel migration zone (CMZ)" means the area along a river within which the channel(s) can be reasonably predicted to migrate over time as a result of natural and normally occurring hydrological and related processes when considered with the characteristics of the river and its surroundings.

(7) "Department" means the state department of ecology.

(8) "Development regulations" means the controls placed on development or land uses by a county or city, including, but not limited to, zoning ordinances, critical areas ordinances, all portions of a shoreline master program other than goals and policies approved or adopted under chapter 90.58 RCW, planned unit development ordinances, subdivision ordinances, and binding site plan ordinances together with any amendments thereto.

(9) "Document of record" means the most current shoreline master program officially approved or adopted by rule by the department for a given local government jurisdiction, including any changes resulting from appeals filed pursuant to RCW 90.58.190.

(10) "Drift cell," "drift sector," or "littoral cell" means a particular reach of marine shore in which littoral drift may occur without significant interruption and which contains any natural sources of such drift and also accretion shore forms created by such drift.

(11) "Ecological functions" or "shoreline functions" means the work performed or role played by the physical, chemical, and biological processes that contribute to the maintenance of the aquatic and terrestrial environments that constitute the shoreline's natural ecosystem. See Section 200(2)(c).

(12) "Ecosystem-wide processes" means the suite of naturally occurring physical and geologic processes of erosion, transport, and deposition; and specific chemical processes that shape landforms within a specific shoreline ecosystem and determine both the types of habitat and the associated ecological functions.

(13) "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.

(14) "Fill" means the addition of soil, sand, rock, gravel, sediment, earth retaining structure, or other material to an area waterward of the ordinary high water mark, in

wetlands, or on shorelands in a manner that raises the elevation or creates dry land.

(15) "Flood plain" is synonymous with one hundred-year floodplain and means that land area susceptible to inundation with a one percent chance of being equaled or exceeded in any given year. The limit of this area shall be based upon flood ordinance regulation maps or a reasonable method which meets the objectives of the act.

(16) "Geotechnical report" or "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.

(17) "Grading" means the movement or redistribution of the soil, sand, rock, gravel, sediment, or other material on a site in a manner that alters the natural contour of the land.

(18) "Guidelines" means those standards adopted by the department to implement the policy of chapter 90.58 RCW for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria for local governments and the department in developing and amending master programs.

(19) "Local government" means any county, incorporated city or town which contains within its boundaries shorelines of the state subject to chapter 90.58 RCW.

(20) "Marine" means pertaining to tidally influenced waters, including oceans, sounds, straits, marine channels, and estuaries, including the Pacific Ocean, Puget Sound, Straits of Georgia and Juan de Fuca, and the bays, estuaries and inlets associated therewith.

(21) "May" means the action is acceptable, provided it conforms to the provisions of this chapter.

(22) "Must" means a mandate; the action is required.

(23) "Nonwater-oriented uses" means those uses that are not water-dependent, water-related, or water-enjoyment.

(24) "Priority habitat" means a habitat type with unique or significant value to one or more species. An area classified

and mapped as priority habitat must have one or more of the following attributes:

- Comparatively high fish or wildlife density;
- Comparatively high fish or wildlife species diversity;
- Fish spawning habitat; • Important wildlife habitat;
- Important fish or wildlife seasonal range;
- Important fish or wildlife movement corridor;
- Rearing and foraging habitat;
- Important marine mammal haul-out; • Refugia habitat;
- Limited availability;
- High vulnerability to habitat alteration;
- Unique or dependent species; or
- Shellfish bed.

A priority habitat may be described by a unique vegetation type or by a dominant plant species that is of primary importance to fish and wildlife (such as oak woodlands or eelgrass meadows).

A priority habitat may also be described by a successional stage (such as, old growth and mature forests). Alternatively, a priority habitat may consist of a specific habitat element (such as a consolidated marine/estuarine shoreline, talus slopes, caves, snags) of key value to fish and wildlife. A priority habitat may contain priority and/or non-priority fish and wildlife.

(25) “Priority species” means species requiring protective measures and/or management guidelines to ensure their persistence at genetically viable population levels. Priority species are those that meet any of the criteria listed below.

(a) Criterion 1. State-listed or state proposed species. State-listed species are those native fish and wildlife species legally designated as endangered (WAC 232-12-014), threatened (WAC 232-12-011), or sensitive (WAC 232-12-011). State proposed species are those fish and wildlife species that will be reviewed by the department of fish and wildlife (POL-M-6001) for possible listing as endangered, threatened, or sensitive according to the process and criteria defined in WAC 232-12-297.

(b) Criterion 2. Vulnerable aggregations. Vulnerable aggregations include those species or groups of animals susceptible to significant population declines, within a specific area or statewide, by virtue of their inclination to congregate. Examples include heron colonies, seabird concentrations, and marine mammal congregations.

(c) Criterion 3. Species of recreational, commercial, and/or tribal importance. Native and nonnative fish, shellfish, and wildlife species of recreational or commercial importance and recognized species used for tribal ceremonial and subsistence purposes that are vulnerable to habitat loss or degradation.

(d) Criterion 4. Species listed under the federal ESA as either proposed, threatened, or endangered.

(26) “Provisions” means policies, regulations, standards, guideline criteria or environment designations.

(27) “Restore”, “Restoration” or “ecological restoration” means the reestablishment or upgrading of impaired ecological shoreline processes or functions. This may be accomplished through measures including but not limited to re-vegetation, removal of intrusive shoreline structures and removal or treatment of toxic materials. Restoration does not imply a requirement for returning the shoreline area to aboriginal or pre-European settlement conditions.

(28) “Shall” means a mandate; the action must be done.

(29) “Shoreline areas” and “shoreline jurisdiction” means all “shoreslines of the state” and “shorelands” as defined in RCW 90.58.030.

(30) “Shoreline master program” or “master program” means the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW 90.58.020. As provided in RCW 36.70A.480, the goals and policies of a shoreline master program for a county or city approved under chapter 90.58 RCW shall be considered an element of the county or city’s comprehensive plan. All other portions of the shoreline master program for a county or city adopted under chapter 90.58 RCW, including use regulations, shall be considered a part of the county or city’s development regulations.

(31) “Shoreline modifications” means those actions that modify the physical configuration or qualities of the shoreline area, usually through the construction of a physical element such as a dike, breakwater, pier, weir, dredged basin, fill, bulkhead, or other shoreline structure. They can include other actions, such as clearing, grading, or application of chemicals.

(32) “Should” means that the particular action is required unless there is a demonstrated, compelling reason, based on policy of the Shoreline Management Act and this chapter, against taking the action.

(33) “Significant vegetation removal” means the removal or alteration of trees, shrubs, and/or ground cover by clearing, grading, cutting, burning, chemical means, or other activity that causes significant ecological impacts to functions provided by such vegetation. The removal of invasive or noxious weeds does not constitute significant vegetation removal. Tree pruning, not including tree topping, where it does not affect ecological functions, does not constitute significant vegetation removal.

(34) “State master program” means the cumulative total of all shoreline master programs and amendments thereto approved or adopted by rule by the department.

(35) “Substantially degrade” means to cause significant ecological impact.

(36) “Water-dependent use” means a use or portion of a use which cannot exist in a location that is not adjacent to the water and which is dependent on the water by reason of the intrinsic nature of its operations.

(37) “Water-enjoyment use” means a recreational use or other use that facilitates public access to the shoreline as a primary characteristic of the use; or a use that provides for recreational use or aesthetic enjoyment of the shoreline for a substantial number of people as a general characteristic of the use and which through location, design, and operation ensures the public’s ability to enjoy the physical and aesthetic qualities of the shoreline. In order to qualify as a water-enjoyment use, the use must be open to the general public and the shoreline-oriented space within the project must be devoted to the specific aspects of the use that fosters shoreline enjoyment.

(38) “Water-oriented use” means a use that is water-dependent, water-related, or water-enjoyment, or a combination of such uses.

(39) “Water quality” means the physical characteristics of water within shoreline jurisdiction, including water quantity, hydrological, physical, chemical, aesthetic, recreation-related, and biological characteristics. Where used in this chapter, the term “water quantity” refers only to development and uses regulated under this chapter and affecting water quantity, such as impermeable surfaces and storm water handling practices. Water quantity, for purposes of this chapter, does not mean the withdrawal of ground water or diversion of surface water pursuant to RCW 90.03.250 through 90.03.340.

(40) “Water-related use” means a use or portion of a use which is not intrinsically dependent on a waterfront location but whose economic viability is dependent upon a waterfront location because:

- (a) The use has a functional requirement for a waterfront location such as the arrival or shipment of materials by water or the need for large quantities of water; or
- (b) The use provides a necessary service supportive of the water-dependent uses and the proximity of the use to its customers makes its services less expensive and/or more convenient.

Appendix B

Chapter 90.58 RCW

SHORELINE MANAGEMENT ACT OF 1971

Chapter 90.58 RCW SHORELINE MANAGEMENT ACT OF 1971

RCW SECTIONS

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- [90.58.020](#) Legislative findings -- State policy enunciated -- Use preference.
- [90.58.030](#) Definitions and concepts.
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- [90.58.900](#) Liberal construction -- 1971 ex.s. c 286.
- [90.58.910](#) Severability -- 1971 ex.s. c 286.
- [90.58.911](#) Severability -- 1983 c 138.
- [90.58.920](#) Effective date -- 1971 ex.s. c 286.

RCW 90.58.010

Short title.

This chapter shall be known and may be cited as the "Shoreline Management Act of 1971".

[1971 ex.s. c 286 § 1.]

RCW 90.58.020

Legislative findings -- State policy enunciated -- Use preference.

The legislature finds that the shorelines of the state are among the most valuable and fragile of its natural resources and that there is great concern throughout the state relating to their utilization, protection, restoration, and preservation. In addition it finds that ever increasing pressures of additional uses are being placed on the shorelines necessitating increased coordination in the management and development of the shorelines of the state. The legislature further finds that much of the shorelines of the state and the uplands adjacent thereto are in private ownership; that unrestricted construction on the privately owned or publicly owned shorelines of the state is not in the best public interest; and therefore, coordinated planning is necessary in order to protect the public interest associated with the shorelines of the state while, at the same time, recognizing and protecting private property rights consistent with the public interest. There is, therefor, a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments, to prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines.

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. This policy is designed to insure the development of these shorelines in a manner which, while allowing for limited reduction of rights of the public in the navigable waters, will promote and enhance the public interest. This policy contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and the waters of the state and their aquatic life, while protecting generally public rights of navigation and corollary rights incidental thereto.

The legislature declares that the interest of all of the people shall be paramount in the management of

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;
- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline;
- (7) Provide for any other element as defined in RCW [90.58.100](#) deemed appropriate or necessary.

In the implementation of this policy the public's opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state shall be preserved to the greatest extent feasible consistent with the overall best interest of the state and the people generally. To this end uses shall be preferred which are consistent with control of pollution and prevention of damage to the natural environment, or are unique to or dependent upon use of the state's shoreline. Alterations of the natural condition of the shorelines of the state, in those limited instances when authorized, shall be given priority for single family residences and their appurtenant structures, ports, shoreline recreational uses including but not limited to parks, marinas, piers, and other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state. Alterations of the natural condition of the shorelines and shorelands of the state shall be recognized by the department. Shorelines and shorelands of the state shall be appropriately classified and these classifications shall be revised when circumstances warrant regardless of whether the change in circumstances occurs through man-made causes or natural causes. Any areas resulting from alterations of the natural condition of the shorelines and shorelands of the state no longer meeting the definition of "shorelines of the state" shall not be subject to the provisions of chapter 90.58 RCW.

Permitted uses in the shorelines of the state shall be designed and conducted in a manner to minimize, insofar as practical, any resultant damage to the ecology and environment of the shoreline area and any interference with the public's use of the water.

[1995 c 347 § 301; 1992 c 105 § 1; 1982 1st ex.s. c 13 § 1; 1971 ex.s. c 286 § 2.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.030

Definitions and concepts.

As used in this chapter, unless the context otherwise requires, the following definitions and concepts apply:

- (1) Administration:
 - (a) "Department" means the department of ecology;
 - (b) "Director" means the director of the department of ecology;
 - (c) "Local government" means any county, incorporated city, or town which contains within its boundaries

any lands or waters subject to this chapter;

(d) "Person" means an individual, partnership, corporation, association, organization, cooperative, public or municipal corporation, or agency of the state or local governmental unit however designated;

(e) "Hearing board" means the shoreline hearings board established by this chapter.

(2) Geographical:

(a) "Extreme low tide" means the lowest line on the land reached by a receding tide;

(b) "Ordinary high water mark" on all lakes, streams, and tidal water is that mark that will be found by examining the bed and banks and ascertaining where the presence and action of waters are so common and usual, and so long continued in all ordinary years, as to mark upon the soil a character distinct from that of the abutting upland, in respect to vegetation as that condition exists on June 1, 1971, as it may naturally change thereafter, or as it may change thereafter in accordance with permits issued by a local government or the department: PROVIDED, That in any area where the ordinary high water mark cannot be found, the ordinary high water mark adjoining salt water shall be the line of mean higher high tide and the ordinary high water mark adjoining fresh water shall be the line of mean high water;

(c) "Shorelines of the state" are the total of all "shorelines" and "shorelines of statewide significance" within the state;

(d) "Shorelines" means all of the water areas of the state, including reservoirs, and their associated shorelands, together with the lands underlying them; except (i) shorelines of statewide significance; (ii) shorelines on segments of streams upstream of a point where the mean annual flow is twenty cubic feet per second or less and the wetlands associated with such upstream segments; and (iii) shorelines on lakes less than twenty acres in size and wetlands associated with such small lakes;

(e) "Shorelines of statewide significance" means the following shorelines of the state:

(i) The area between the ordinary high water mark and the western boundary of the state from Cape Disappointment on the south to Cape Flattery on the north, including harbors, bays, estuaries, and inlets;

(ii) Those areas of Puget Sound and adjacent salt waters and the Strait of Juan de Fuca between the ordinary high water mark and the line of extreme low tide as follows:

(A) Nisqually Delta -- from DeWolf Bight to Tatsolo Point,

(B) Birch Bay -- from Point Whitehorn to Birch Point,

(C) Hood Canal -- from Tala Point to Foulweather Bluff,

(D) Skagit Bay and adjacent area -- from Brown Point to Yokeko Point, and

(E) Padilla Bay -- from March Point to William Point;

(iii) Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent salt waters north to the Canadian line and lying seaward from the line of extreme low tide;

(iv) Those lakes, whether natural, artificial, or a combination thereof, with a surface acreage of one thousand acres or more measured at the ordinary high water mark;

(v) Those natural rivers or segments thereof as follows:

(A) Any west of the crest of the Cascade range downstream of a point where the mean annual flow is

measured at one thousand cubic feet per second or more,

(B) Any east of the crest of the Cascade range downstream of a point where the annual flow is measured at two hundred cubic feet per second or more, or those portions of rivers east of the crest of the Cascade range downstream from the first three hundred square miles of drainage area, whichever is longer;

(vi) Those shorelands associated with (i), (ii), (iv), and (v) of this subsection (2)(e);

(f) "Shorelands" or "shoreland areas" means those lands extending landward for two hundred feet in all directions as measured on a horizontal plane from the ordinary high water mark; floodways and contiguous floodplain areas landward two hundred feet from such floodways; and all wetlands and river deltas associated with the streams, lakes, and tidal waters which are subject to the provisions of this chapter; the same to be designated as to location by the department of ecology.

(i) Any county or city may determine that portion of a one-hundred-year-flood plain to be included in its master program as long as such portion includes, as a minimum, the floodway and the adjacent land extending landward two hundred feet therefrom.

(ii) Any city or county may also include in its master program land necessary for buffers for critical areas, as defined in chapter 36.70A RCW, that occur within shorelines of the state, provided that forest practices regulated under chapter 76.09 RCW, except conversions to nonforest land use, on lands subject to the provisions of this subsection (2)(f)(ii) are not subject to additional regulations under this chapter;

(g) "Floodway" means those portions of the area of a river valley lying streamward from the outer limits of a watercourse upon which flood waters are carried during periods of flooding that occur with reasonable regularity, although not necessarily annually, said floodway being identified, under normal condition, by changes in surface soil conditions or changes in types or quality of vegetative ground cover condition. The floodway shall not include those lands that can reasonably be expected to be protected from flood waters by flood control devices maintained by or maintained under license from the federal government, the state, or a political subdivision of the state;

(h) "Wetlands" means areas that are inundated or saturated by surface water or ground water at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas. Wetlands do not include those artificial wetlands intentionally created from nonwetland sites, including, but not limited to, irrigation and drainage ditches, grass-lined swales, canals, detention facilities, wastewater treatment facilities, farm ponds, and landscape amenities, or those wetlands created after July 1, 1990, that were unintentionally created as a result of the construction of a road, street, or highway. Wetlands may include those artificial wetlands intentionally created from nonwetland areas to mitigate the conversion of wetlands.

(3) Procedural terms:

(a) "Guidelines" means those standards adopted to implement the policy of this chapter for regulation of use of the shorelines of the state prior to adoption of master programs. Such standards shall also provide criteria to local governments and the department in developing master programs;

(b) "Master program" shall mean the comprehensive use plan for a described area, and the use regulations together with maps, diagrams, charts, or other descriptive material and text, a statement of desired goals, and standards developed in accordance with the policies enunciated in RCW [90.58.020](#);

(c) "State master program" is the cumulative total of all master programs approved or adopted by the department of ecology;

(d) "Development" means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of

obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level;

(e) "Substantial development" shall mean any development of which the total cost or fair market value exceeds five thousand dollars, or any development which materially interferes with the normal public use of the water or shorelines of the state. The dollar threshold established in this subsection (3)(e) must be adjusted for inflation by the office of financial management every five years, beginning July 1, 2007, based upon changes in the consumer price index during that time period. "Consumer price index" means, for any calendar year, that year's annual average consumer price index, Seattle, Washington area, for urban wage earners and clerical workers, all items, compiled by the bureau of labor and statistics, United States department of labor. The office of financial management must calculate the new dollar threshold and transmit it to the office of the code reviser for publication in the Washington State Register at least one month before the new dollar threshold is to take effect. The following shall not be considered substantial developments for the purpose of this chapter:

(i) Normal maintenance or repair of existing structures or developments, including damage by accident, fire, or elements;

(ii) Construction of the normal protective bulkhead common to single family residences;

(iii) Emergency construction necessary to protect property from damage by the elements;

(iv) Construction and practices normal or necessary for farming, irrigation, and ranching activities, including agricultural service roads and utilities on shorelands, and the construction and maintenance of irrigation structures including but not limited to head gates, pumping facilities, and irrigation channels. A feedlot of any size, all processing plants, other activities of a commercial nature, alteration of the contour of the shorelands by leveling or filling other than that which results from normal cultivation, shall not be considered normal or necessary farming or ranching activities. A feedlot shall be an enclosure or facility used or capable of being used for feeding livestock hay, grain, silage, or other livestock feed, but shall not include land for growing crops or vegetation for livestock feeding and/or grazing, nor shall it include normal livestock wintering operations;

(v) Construction or modification of navigational aids such as channel markers and anchor buoys;

(vi) Construction on shorelands by an owner, lessee, or contract purchaser of a single family residence for his own use or for the use of his or her family, which residence does not exceed a height of thirty-five feet above average grade level and which meets all requirements of the state agency or local government having jurisdiction thereof, other than requirements imposed pursuant to this chapter;

(vii) Construction of a dock, including a community dock, designed for pleasure craft only, for the private noncommercial use of the owner, lessee, or contract purchaser of single and multiple family residences. This exception applies if either: (A) In salt waters, the fair market value of the dock does not exceed two thousand five hundred dollars; or (B) in fresh waters, the fair market value of the dock does not exceed ten thousand dollars, but if subsequent construction having a fair market value exceeding two thousand five hundred dollars occurs within five years of completion of the prior construction, the subsequent construction shall be considered a substantial development for the purpose of this chapter;

(viii) Operation, maintenance, or construction of canals, waterways, drains, reservoirs, or other facilities that now exist or are hereafter created or developed as a part of an irrigation system for the primary purpose of making use of system waters, including return flow and artificially stored ground water for the irrigation of lands;

(ix) The marking of property lines or corners on state owned lands, when such marking does not significantly interfere with normal public use of the surface of the water;

(x) Operation and maintenance of any system of dikes, ditches, drains, or other facilities existing on September 8, 1975, which were created, developed, or utilized primarily as a part of an agricultural drainage or diking system;

(xi) Site exploration and investigation activities that are prerequisite to preparation of an application for development authorization under this chapter, if:

(A) The activity does not interfere with the normal public use of the surface waters;

(B) The activity will have no significant adverse impact on the environment including, but not limited to, fish, wildlife, fish or wildlife habitat, water quality, and aesthetic values;

(C) The activity does not involve the installation of a structure, and upon completion of the activity the vegetation and land configuration of the site are restored to conditions existing before the activity;

(D) A private entity seeking development authorization under this section first posts a performance bond or provides other evidence of financial responsibility to the local jurisdiction to ensure that the site is restored to preexisting conditions; and

(E) The activity is not subject to the permit requirements of RCW [90.58.550](#);

(xii) The process of removing or controlling an aquatic noxious weed, as defined in RCW 17.26.020, through the use of an herbicide or other treatment methods applicable to weed control that are recommended by a final environmental impact statement published by the department of agriculture or the department jointly with other state agencies under chapter 43.21C RCW.

[2003 c 321 § 2; 2002 c 230 § 2; 1996 c 265 § 1. Prior: 1995 c 382 § 10; 1995 c 255 § 5; 1995 c 237 § 1; 1987 c 474 § 1; 1986 c 292 § 1; 1982 1st ex.s. c 13 § 2; 1980 c 2 § 3; 1979 ex.s. c 84 § 3; 1975 1st ex.s. c 182 § 1; 1973 1st ex.s. c 203 § 1; 1971 ex.s. c 286 § 3.]

NOTES:

Finding -- Intent -- 2003 c 321: "(1) The legislature finds that the final decision and order in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*, Case No. 02-3-0009c, issued on January 9, 2003, by the central Puget Sound growth management hearings board was a case of first impression interpreting the addition of the shoreline management act into the growth management act, and that the board considered the appeal and issued its final order and decision without the benefit of shorelines guidelines to provide guidance on the implementation of the shoreline management act and the adoption of shoreline master programs.

(2) This act is intended to affirm the legislature's intent that:

(a) The shoreline management act be read, interpreted, applied, and implemented as a whole consistent with decisions of the shoreline hearings board and Washington courts prior to the decision of the central Puget Sound growth management hearings board in *Everett Shorelines Coalition v. City of Everett and Washington State Department of Ecology*;

(b) The goals of the growth management act, including the goals and policies of the shoreline management act, set forth in RCW 36.70A.020 and included in RCW 36.70A.020 by RCW 36.70A.480, continue to be listed without an order of priority; and

(c) Shorelines of statewide significance may include critical areas as defined by RCW 36.70A.030(5), but that shorelines of statewide significance are not critical areas simply because they are shorelines of statewide significance.

(3) The legislature intends that critical areas within the jurisdiction of the shoreline management act shall be governed by the shoreline management act and that critical areas outside the jurisdiction of the shoreline management act shall be governed by the growth management act. The legislature further intends that the quality of information currently required by the shoreline management act to be applied to the protection of critical areas

within shorelines of the state shall not be limited or changed by the provisions of the growth management act." [2003 c 321 § 1.]

Finding -- Intent -- 2002 c 230: "The legislature finds that the dollar threshold for what constitutes substantial development under the shoreline management act has not been changed since 1986. The legislature recognizes that the effects of inflation have brought in many activities under the jurisdiction of chapter 90.58 RCW that would have been exempted under its original provisions. It is the intent of the legislature to modify the current dollar threshold for what constitutes substantial development under the shoreline management act, and to have this threshold readjusted on a five-year basis." [2002 c 230 § 1.]

Severability -- Effective date -- 1995 c 255: See RCW 17.26.900 and 17.26.901.

Severability -- 1986 c 292: "If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected." [1986 c 292 § 5.]

Intent -- 1980 c 2; 1979 ex.s. c 84: "The legislature finds that high tides and hurricane force winds on February 13, 1979, caused conditions resulting in the catastrophic destruction of the Hood Canal bridge on state route 104, a state highway on the federal-aid system; and, as a consequence, the state of Washington has sustained a sudden and complete failure of a major segment of highway system with a disastrous impact on transportation services between the counties of Washington's Olympic peninsula and the remainder of the state. The governor has by proclamation found that these conditions constitute an emergency. To minimize the economic loss and hardship to residents of the Puget Sound and Olympic peninsula regions, it is the intent of 1979 ex.s. c 84 to authorize the department of transportation to undertake immediately all necessary actions to restore interim transportation services across Hood Canal and Puget Sound and upon the Kitsap and Olympic peninsulas and to design and reconstruct a permanent bridge at the site of the original Hood Canal bridge. The department of transportation is directed to proceed with such actions in an environmentally responsible manner that would meet the substantive objectives of the state environmental policy act and the shorelines management act, and shall consult with the department of ecology in the planning process. The exemptions from the state environmental policy act and the shorelines management act contained in RCW 43.21C.032 and [90.58.030](#) are intended to approve and ratify the timely actions of the department of transportation taken and to be taken to restore interim transportation services and to reconstruct a permanent Hood Canal bridge without procedural delays." [1980 c 2 § 1; 1979 ex.s. c 84 § 1.]

RCW 90.58.040

Program applicable to shorelines of the state.

The shoreline management program of this chapter shall apply to the shorelines of the state as defined in this chapter.

[1971 ex.s. c 286 § 4.]

RCW 90.58.045

Environmental excellence program agreements -- Effect on chapter.

Notwithstanding any other provision of law, any legal requirement under this chapter, including any standard, limitation, rule, or order is superseded and replaced in accordance with the terms and provisions of an environmental excellence program agreement, entered into under chapter 43.21K RCW.

[1997 c 381 § 28.]

NOTES:

Purpose -- 1997 c 381: See RCW 43.21K.005.

RCW 90.58.050

Program as cooperative between local government and state -- Responsibilities differentiated.

This chapter establishes a cooperative program of shoreline management between local government and the state. Local government shall have the primary responsibility for initiating the planning required by this chapter and administering the regulatory program consistent with the policy and provisions of this chapter. The department shall act primarily in a supportive and review capacity with an emphasis on providing assistance to local government and on insuring compliance with the policy and provisions of this chapter.

[1995 c 347 § 303; 1971 ex.s. c 286 § 5.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.060

Review and adoption of guidelines -- Public hearings, notice of -- Amendments.

(1) The department shall periodically review and adopt guidelines consistent with RCW [90.58.020](#), containing the elements specified in RCW [90.58.100](#) for:

- (a) Development of master programs for regulation of the uses of shorelines; and
- (b) Development of master programs for regulation of the uses of shorelines of statewide significance.

(2) Before adopting or amending guidelines under this section, the department shall provide an opportunity for public review and comment as follows:

(a) The department shall mail copies of the proposal to all cities, counties, and federally recognized Indian tribes, and to any other person who has requested a copy, and shall publish the new guidelines in the Washington State register. Comments shall be submitted in writing to the department within sixty days from the date the proposal has been published in the register.

(b) The department shall hold at least four public hearings on the proposal in different locations throughout the state to provide a reasonable opportunity for residents in all parts of the state to present statements and views on the new guidelines. Notice of the hearings shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in each county of the state. If an amendment to the guidelines addresses an issue limited to one geographic area, the number and location of hearings may be adjusted consistent with the intent of this subsection to assure all parties a reasonable opportunity to comment on the proposed amendment. The department shall accept written comments on the proposal during the sixty-day public comment period and for seven days after the final public hearing.

(c) At the conclusion of the public comment period, the department shall review the comments received and modify the proposal consistent with the provisions of this chapter. The proposal shall then be published for adoption pursuant to the provisions of chapter 34.05 RCW.

(3) The department may adopt amendments to the guidelines not more than once each year. Such amendments

shall be limited to: (a) Addressing technical or procedural issues that result from the review and adoption of master programs under the guidelines; or (b) issues of guideline compliance with statutory provisions.

[2003 c 262 § 1; 1995 c 347 § 304; 1971 ex.s. c 286 § 6.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.065

Application of guidelines and master programs to agricultural activities.

(1) The guidelines adopted by the department and master programs developed or amended by local governments according to RCW [90.58.080](#) shall not require modification of or limit agricultural activities occurring on agricultural lands. In jurisdictions where agricultural activities occur, master programs developed or amended after June 13, 2002, shall include provisions addressing new agricultural activities on land not meeting the definition of agricultural land, conversion of agricultural lands to other uses, and development not meeting the definition of agricultural activities. Nothing in this section limits or changes the terms of the *current exception to the definition of substantial development in RCW [90.58.030](#)(3)(e)(iv). This section applies only to this chapter, and shall not affect any other authority of local governments.

(2) For the purposes of this section:

(a) "Agricultural activities" means agricultural uses and practices including, but not limited to: Producing, breeding, or increasing agricultural products; rotating and changing agricultural crops; allowing land used for agricultural activities to lie fallow in which it is plowed and tilled but left unseeded; allowing land used for agricultural activities to lie dormant as a result of adverse agricultural market conditions; allowing land used for agricultural activities to lie dormant because the land is enrolled in a local, state, or federal conservation program, or the land is subject to a conservation easement; conducting agricultural operations; maintaining, repairing, and replacing agricultural equipment; maintaining, repairing, and replacing agricultural facilities, provided that the replacement facility is no closer to the shoreline than the original facility; and maintaining agricultural lands under production or cultivation;

(b) "Agricultural products" includes but is not limited to horticultural, viticultural, floricultural, vegetable, fruit, berry, grain, hops, hay, straw, turf, sod, seed, and apiary products; feed or forage for livestock; Christmas trees; hybrid cottonwood and similar hardwood trees grown as crops and harvested within twenty years of planting; and livestock including both the animals themselves and animal products including but not limited to meat, upland finfish, poultry and poultry products, and dairy products;

(c) "Agricultural equipment" and "agricultural facilities" includes, but is not limited to: (i) The following used in agricultural operations: Equipment; machinery; constructed shelters, buildings, and ponds; fences; upland finfish rearing facilities; water diversion, withdrawal, conveyance, and use equipment and facilities including but not limited to pumps, pipes, tapes, canals, ditches, and drains; (ii) corridors and facilities for transporting personnel, livestock, and equipment to, from, and within agricultural lands; (iii) farm residences and associated equipment, lands, and facilities; and (iv) roadside stands and on-farm markets for marketing fruit or vegetables; and

(d) "Agricultural land" means those specific land areas on which agriculture activities are conducted.

(3) The department and local governments shall assure that local shoreline master programs use definitions consistent with the definitions in this section.

[2002 c 298 § 1.]

NOTES:

***Reviser's note:** "Current" first appears in chapter 298, Laws of 2002.

Implementation -- 2002 c 298: "The provisions of this act do not become effective until the earlier of either January 1, 2004, or the date the department of ecology amends or updates chapter 173-16 or 173-26 WAC."
[2002 c 298 § 2.]

RCW 90.58.070

Local governments to submit letters of intent -- Department to act upon failure of local government.

(1) Local governments are directed with regard to shorelines of the state in their various jurisdictions to submit to the director of the department, within six months from June 1, 1971, letters stating that they propose to complete an inventory and develop master programs for these shorelines as provided for in RCW [90.58.080](#).

(2) If any local government fails to submit a letter as provided in subsection (1) of this section, or fails to adopt a master program for the shorelines of the state within its jurisdiction in accordance with the time schedule provided in this chapter, the department shall carry out the requirements of RCW [90.58.080](#) and adopt a master program for the shorelines of the state within the jurisdiction of the local government.

[1971 ex.s. c 286 § 7.]

RCW 90.58.080

Timetable for local governments to develop or amend master programs -- Review of master programs -- Grants.

(1) Local governments shall develop or amend a master program for regulation of uses of the shorelines of the state consistent with the required elements of the guidelines adopted by the department in accordance with the schedule established by this section.

(2)(a) Subject to the provisions of subsections (5) and (6) of this section, each local government subject to this chapter shall develop or amend its master program for the regulation of uses of shorelines within its jurisdiction according to the following schedule:

(i) On or before December 1, 2005, for the city of Port Townsend, the city of Bellingham, the city of Everett, Snohomish county, and Whatcom county;

(ii) On or before December 1, 2009, for King county and the cities within King county greater in population than ten thousand;

(iii) Except as provided by (a)(i) and (ii) of this subsection, on or before December 1, 2011, for Clallam, Clark, Jefferson, King, Kitsap, Pierce, Snohomish, Thurston, and Whatcom counties and the cities within those counties;

(iv) On or before December 1, 2012, for Cowlitz, Island, Lewis, Mason, San Juan, Skagit, and Skamania counties and the cities within those counties;

(v) On or before December 1, 2013, for Benton, Chelan, Douglas, Grant, Kittitas, Spokane, and Yakima counties and the cities within those counties; and

and the cities within those counties.

(b) Nothing in this subsection (2) shall preclude a local government from developing or amending its master program prior to the dates established by this subsection (2).

(3)(a) Following approval by the department of a new or amended master program, local governments required to develop or amend master programs on or before December 1, 2009, as provided by subsection (2)(a)(i) and (ii) of this section, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) of this section. Any jurisdiction listed in subsection (2)(a)(i) of this section that has a new or amended master program approved by the department on or after March 1, 2002, but before July 27, 2003, shall not be required to complete master program amendments until seven years after the applicable date provided by subsection (2)(a)(iii) of this section.

(b) Following approval by the department of a new or amended master program, local governments choosing to develop or amend master programs on or before December 1, 2009, shall be deemed to have complied with the schedule established by subsection (2)(a)(iii) through (vi) of this section and shall not be required to complete master program amendments until seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section.

(4) Local governments shall conduct a review of their master programs at least once every seven years after the applicable dates established by subsection (2)(a)(iii) through (vi) of this section. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:

(a) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and

(b) To assure consistency of the master program with the local government's comprehensive plan and development regulations adopted under chapter 36.70A RCW, if applicable, and other local requirements.

(5) Local governments are encouraged to begin the process of developing or amending their master programs early and are eligible for grants from the department as provided by RCW [90.58.250](#), subject to available funding. Except for those local governments listed in subsection (2)(a)(i) and (ii) of this section, the deadline for completion of the new or amended master programs shall be two years after the date the grant is approved by the department. Subsequent master program review dates shall not be altered by the provisions of this subsection.

(6)(a) Grants to local governments for developing and amending master programs pursuant to the schedule established by this section shall be provided at least two years before the adoption dates specified in subsection (2) of this section. To the extent possible, the department shall allocate grants within the amount appropriated for such purposes to provide reasonable and adequate funding to local governments that have indicated their intent to develop or amend master programs during the biennium according to the schedule established by subsection (2) of this section. Any local government that applies for but does not receive funding to comply with the provisions of subsection (2) of this section may delay the development or amendment of its master program until the following biennium.

(b) Local governments with delayed compliance dates as provided in (a) of this subsection shall be the first priority for funding in subsequent biennia, and the development or amendment compliance deadline for those local governments shall be two years after the date of grant approval.

(c) Failure of the local government to apply in a timely manner for a master program development or amendment grant in accordance with the requirements of the department shall not be considered a delay resulting from the provisions of (a) of this subsection.

(7) Notwithstanding the provisions of this section, all local governments subject to the requirements of this chapter that have not developed or amended master programs on or after March 1, 2002, shall, no later than

December 1, 2014, develop or amend their master programs to comply with guidelines adopted by the department after January 1, 2003.

[2003 c 262 § 2; 1995 c 347 § 305; 1974 ex.s. c 61 § 1; 1971 ex.s. c 286 § 8.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.090

Approval of master program or segments or amendments -- Procedure -- Departmental alternatives when shorelines of statewide significance -- Later adoption of master program supersedes departmental program.

(1) A master program, segment of a master program, or an amendment to a master program shall become effective when approved by the department. Within the time period provided in RCW [90.58.080](#), each local government shall have submitted a master program, either totally or by segments, for all shorelines of the state within its jurisdiction to the department for review and approval.

(2) Upon receipt of a proposed master program or amendment, the department shall:

(a) Provide notice to and opportunity for written comment by all interested parties of record as a part of the local government review process for the proposal and to all persons, groups, and agencies that have requested in writing notice of proposed master programs or amendments generally or for a specific area, subject matter, or issue. The comment period shall be at least thirty days, unless the department determines that the level of complexity or controversy involved supports a shorter period;

(b) In the department's discretion, conduct a public hearing during the thirty-day comment period in the jurisdiction proposing the master program or amendment;

(c) Within fifteen days after the close of public comment, request the local government to review the issues identified by the public, interested parties, groups, and agencies and provide a written response as to how the proposal addresses the identified issues;

(d) Within thirty days after receipt of the local government response pursuant to (c) of this subsection, make written findings and conclusions regarding the consistency of the proposal with the policy of RCW [90.58.020](#) and the applicable guidelines, provide a response to the issues identified in (c) of this subsection, and either approve the proposal as submitted, recommend specific changes necessary to make the proposal approvable, or deny approval of the proposal in those instances where no alteration of the proposal appears likely to be consistent with the policy of RCW [90.58.020](#) and the applicable guidelines. The written findings and conclusions shall be provided to the local government, all interested persons, parties, groups, and agencies of record on the proposal;

(e) If the department recommends changes to the proposed master program or amendment, within thirty days after the department mails the written findings and conclusions to the local government, the local government may:

(i) Agree to the proposed changes. The receipt by the department of the written notice of agreement constitutes final action by the department approving the amendment; or

(ii) Submit an alternative proposal. If, in the opinion of the department, the alternative is consistent with the purpose and intent of the changes originally submitted by the department and with this chapter it shall approve the changes and provide written notice to all recipients of the written findings and conclusions. If the department determines the proposal is not consistent with the purpose and intent of the changes proposed by the department,

the department may resubmit the proposal for public and agency review pursuant to this section or reject the proposal.

(3) The department shall approve the segment of a master program relating to shorelines unless it determines that the submitted segments are not consistent with the policy of RCW [90.58.020](#) and the applicable guidelines.

(4) The department shall approve the segment of a master program relating to critical areas as defined by RCW 36.70A.030(5) provided the master program segment is consistent with RCW [90.58.020](#) and applicable shoreline guidelines, and if the segment provides a level of protection of critical areas at least equal to that provided by the local government's critical areas ordinances adopted and thereafter amended pursuant to RCW 36.70A.060(2).

(5) The department shall approve those segments of the master program relating to shorelines of statewide significance only after determining the program provides the optimum implementation of the policy of this chapter to satisfy the statewide interest. If the department does not approve a segment of a local government master program relating to a shoreline of statewide significance, the department may develop and by rule adopt an alternative to the local government's proposal.

(6) In the event a local government has not complied with the requirements of RCW [90.58.070](#) it may thereafter upon written notice to the department elect to adopt a master program for the shorelines within its jurisdiction, in which event it shall comply with the provisions established by this chapter for the adoption of a master program for such shorelines.

Upon approval of such master program by the department it shall supersede such master program as may have been adopted by the department for such shorelines.

(7) A master program or amendment to a master program takes effect when and in such form as approved or adopted by the department. Shoreline master programs that were adopted by the department prior to July 22, 1995, in accordance with the provisions of this section then in effect, shall be deemed approved by the department in accordance with the provisions of this section that became effective on that date. The department shall maintain a record of each master program, the action taken on any proposal for adoption or amendment of the master program, and any appeal of the department's action. The department's approved document of record constitutes the official master program.

[2003 c 321 § 3; 1997 c 429 § 50; 1995 c 347 § 306; 1971 ex.s. c 286 § 9.]

NOTES:

Finding -- Intent -- 2003 c 321: See note following RCW [90.58.030](#).

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

RCW 90.58.100

Programs as constituting use regulations -- Duties when preparing programs and amendments thereto -- Program contents.

(1) The master programs provided for in this chapter, when adopted or approved by the department shall constitute use regulations for the various shorelines of the state. In preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible:

(a) Utilize a systematic interdisciplinary approach which will insure the integrated use of the natural and social sciences and the environmental design arts;

(b) Consult with and obtain the comments of any federal, state, regional, or local agency having any special expertise with respect to any environmental impact;

(c) Consider all plans, studies, surveys, inventories, and systems of classification made or being made by federal, state, regional, or local agencies, by private individuals, or by organizations dealing with pertinent shorelines of the state;

(d) Conduct or support such further research, studies, surveys, and interviews as are deemed necessary;

(e) Utilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data;

(f) Employ, when feasible, all appropriate, modern scientific data processing and computer techniques to store, index, analyze, and manage the information gathered.

(2) The master programs shall include, when appropriate, the following:

(a) An economic development element for the location and design of industries, industrial projects of statewide significance, transportation facilities, port facilities, tourist facilities, commerce and other developments that are particularly dependent on their location on or use of the shorelines of the state;

(b) A public access element making provision for public access to publicly owned areas;

(c) A recreational element for the preservation and enlargement of recreational opportunities, including but not limited to parks, tidelands, beaches, and recreational areas;

(d) A circulation element consisting of the general location and extent of existing and proposed major thoroughfares, transportation routes, terminals, and other public utilities and facilities, all correlated with the shoreline use element;

(e) A use element which considers the proposed general distribution and general location and extent of the use on shorelines and adjacent land areas for housing, business, industry, transportation, agriculture, natural resources, recreation, education, public buildings and grounds, and other categories of public and private uses of the land;

(f) A conservation element for the preservation of natural resources, including but not limited to scenic vistas, aesthetics, and vital estuarine areas for fisheries and wildlife protection;

(g) An historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values;

(h) An element that gives consideration to the statewide interest in the prevention and minimization of flood damages; and

(i) Any other element deemed appropriate or necessary to effectuate the policy of this chapter.

(3) The master programs shall include such map or maps, descriptive text, diagrams and charts, or other descriptive material as are necessary to provide for ease of understanding.

(4) Master programs will reflect that state-owned shorelines of the state are particularly adapted to providing wilderness beaches, ecological study areas, and other recreational activities for the public and will give appropriate special consideration to same.

(5) Each master program shall contain provisions to allow for the varying of the application of use regulations of the program, including provisions for permits for conditional uses and variances, to insure that strict implementation of a program will not create unnecessary hardships or thwart the policy enumerated in RCW [90.58.020](#). Any such varying shall be allowed only if extraordinary circumstances are shown and the public interest suffers no substantial detrimental effect. The concept of this subsection shall be incorporated in the rules adopted by the department relating to the establishment of a permit system as provided in RCW [90.58.140](#)(3).

(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.

[1997 c 369 § 7; 1995 c 347 § 307; 1992 c 105 § 2; 1991 c 322 § 32; 1971 ex.s. c 286 § 10.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Findings -- Intent -- 1991 c 322: See note following RCW 86.12.200.

Industrial project of statewide significance -- Defined: RCW 43.157.010.

RCW 90.58.110

Development of program within two or more adjacent local government jurisdictions -- Development of program in segments, when.

(1) Whenever it shall appear to the director that a master program should be developed for a region of the shorelines of the state which includes lands and waters located in two or more adjacent local government jurisdictions, the director shall designate such region and notify the appropriate units of local government thereof. It shall be the duty of the notified units to develop cooperatively an inventory and master program in accordance with and within the time provided in RCW [90.58.080](#).

(2) At the discretion of the department, a local government master program may be adopted in segments applicable to particular areas so that immediate attention may be given to those areas of the shorelines of the state in most need of a use regulation.

[1971 ex.s. c 286 § 11.]

RCW 90.58.120

Adoption of rules, programs, etc., subject to RCW 34.05.310 through 34.05.395 -- Public hearings, notice of -- Public inspection after approval or adoption.

All rules, regulations, designations, and guidelines, issued by the department, and master programs and amendments adopted by the department pursuant to RCW [90.58.070](#)(2) or [*90.58.090](#)(4) shall be adopted or approved in accordance with the provisions of RCW 34.05.310 through 34.05.395 insofar as such provisions are not inconsistent with the provisions of this chapter. In addition:

[90.58.070](#)(2) or *[90.58.090](#)(4), at least one public hearing shall be held in each county affected by a program or portion thereof for the purpose of obtaining the views and comments of the public. Notice of each such hearing shall be published at least once in each of the three weeks immediately preceding the hearing in one or more newspapers of general circulation in the county in which the hearing is to be held.

(2) All guidelines, regulations, designations, or master programs adopted or approved under this chapter shall be available for public inspection at the office of the department or the appropriate county and city. The terms "adopt" and "approve" for purposes of this section, shall include modifications and rescission of guidelines.

[1995 c 347 § 308; 1989 c 175 § 182; 1975 1st ex.s. c 182 § 2; 1971 ex.s. c 286 § 12.]

NOTES:

***Reviser's note:** RCW [90.58.090](#) was amended by 2003 c 321 § 3, changing subsection (4) to subsection (5).

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

RCW 90.58.130

Involvement of all persons and entities having interest, means.

To insure that all persons and entities having an interest in the guidelines and master programs developed under this chapter are provided with a full opportunity for involvement in both their development and implementation, the department and local governments shall:

(1) Make reasonable efforts to inform the people of the state about the shoreline management program of this chapter and in the performance of the responsibilities provided in this chapter, shall not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs of this chapter; and

(2) Invite and encourage participation by all agencies of federal, state, and local government, including municipal and public corporations, having interests or responsibilities relating to the shorelines of the state. State and local agencies are directed to participate fully to insure that their interests are fully considered by the department and local governments.

[1971 ex.s. c 286 § 13.]

RCW 90.58.140

Development permits -- Grounds for granting -- Administration by local government, conditions -- Applications -- Notices -- Rescission -- Approval when permit for variance or conditional use.

(1) A development shall not be undertaken on the shorelines of the state unless it is consistent with the policy of this chapter and, after adoption or approval, as appropriate, the applicable guidelines, rules, or master program.

(2) A substantial development shall not be undertaken on shorelines of the state without first obtaining a

(a) From June 1, 1971, until such time as an applicable master program has become effective, only when the development proposed is consistent with: (i) The policy of RCW [90.58.020](#); and (ii) after their adoption, the guidelines and rules of the department; and (iii) so far as can be ascertained, the master program being developed for the area;

(b) After adoption or approval, as appropriate, by the department of an applicable master program, only when the development proposed is consistent with the applicable master program and this chapter.

(3) The local government shall establish a program, consistent with rules adopted by the department, for the administration and enforcement of the permit system provided in this section. The administration of the system so established shall be performed exclusively by the local government.

(4) Except as otherwise specifically provided in subsection (11) of this section, the local government shall require notification of the public of all applications for permits governed by any permit system established pursuant to subsection (3) of this section by ensuring that notice of the application is given by at least one of the following methods:

(a) Mailing of the notice to the latest recorded real property owners as shown by the records of the county assessor within at least three hundred feet of the boundary of the property upon which the substantial development is proposed;

(b) Posting of the notice in a conspicuous manner on the property upon which the project is to be constructed; or

(c) Any other manner deemed appropriate by local authorities to accomplish the objectives of reasonable notice to adjacent landowners and the public.

The notices shall include a statement that any person desiring to submit written comments concerning an application, or desiring to receive notification of the final decision concerning an application as expeditiously as possible after the issuance of the decision, may submit the comments or requests for decisions to the local government within thirty days of the last date the notice is to be published pursuant to this subsection. The local government shall forward, in a timely manner following the issuance of a decision, a copy of the decision to each person who submits a request for the decision.

If a hearing is to be held on an application, notices of such a hearing shall include a statement that any person may submit oral or written comments on an application at the hearing.

(5) The system shall include provisions to assure that construction pursuant to a permit will not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section; or until all review proceedings are terminated if the proceedings were initiated within twenty-one days from the date of filing as defined in subsection (6) of this section except as follows:

(a) In the case of any permit issued to the state of Washington, department of transportation, for the construction and modification of SR 90 (I-90) on or adjacent to Lake Washington, the construction may begin after thirty days from the date of filing, and the permits are valid until December 31, 1995;

(b) Construction may be commenced no sooner than thirty days after the date of the appeal of the board's decision is filed if a permit is granted by the local government and (i) the granting of the permit is appealed to the shorelines hearings board within twenty-one days of the date of filing, (ii) the hearings board approves the granting of the permit by the local government or approves a portion of the substantial development for which the local government issued the permit, and (iii) an appeal for judicial review of the hearings board decision is filed pursuant to chapter 34.05 RCW. The appellant may request, within ten days of the filing of the appeal with the court, a hearing before the court to determine whether construction pursuant to the permit approved by the hearings board or to a revised permit issued pursuant to the order of the hearings board should not commence. If, at the conclusion of the hearing, the court finds that construction pursuant to such a permit would involve a

significant, irreversible damaging of the environment, the court shall prohibit the permittee from commencing the construction pursuant to the approved or revised permit until all review proceedings are final. Construction pursuant to a permit revised at the direction of the hearings board may begin only on that portion of the substantial development for which the local government had originally issued the permit, and construction pursuant to such a revised permit on other portions of the substantial development may not begin until after all review proceedings are terminated. In such a hearing before the court, the burden of proving whether the construction may involve significant irreversible damage to the environment and demonstrating whether such construction would or would not be appropriate is on the appellant;

(c) If the permit is for a substantial development meeting the requirements of subsection (11) of this section, construction pursuant to that permit may not begin or be authorized until twenty-one days from the date the permit decision was filed as provided in subsection (6) of this section.

If a permittee begins construction pursuant to subsections (a), (b), or (c) of this subsection, the construction is begun at the permittee's own risk. If, as a result of judicial review, the courts order the removal of any portion of the construction or the restoration of any portion of the environment involved or require the alteration of any portion of a substantial development constructed pursuant to a permit, the permittee is barred from recovering damages or costs involved in adhering to such requirements from the local government that granted the permit, the hearings board, or any appellant or intervener.

(6) Any decision on an application for a permit under the authority of this section, whether it is an approval or a denial, shall, concurrently with the transmittal of the ruling to the applicant, be filed with the department and the attorney general. With regard to a permit other than a permit governed by subsection (10) of this section, "date of filing" as used herein means the date of actual receipt by the department. With regard to a permit for a variance or a conditional use, "date of filing" means the date a decision of the department rendered on the permit pursuant to subsection (10) of this section is transmitted by the department to the local government. The department shall notify in writing the local government and the applicant of the date of filing.

(7) Applicants for permits under this section have the burden of proving that a proposed substantial development is consistent with the criteria that must be met before a permit is granted. In any review of the granting or denial of an application for a permit as provided in RCW [90.58.180](#) (1) and (2), the person requesting the review has the burden of proof.

(8) Any permit may, after a hearing with adequate notice to the permittee and the public, be rescinded by the issuing authority upon the finding that a permittee has not complied with conditions of a permit. If the department is of the opinion that noncompliance exists, the department shall provide written notice to the local government and the permittee. If the department is of the opinion that the noncompliance continues to exist thirty days after the date of the notice, and the local government has taken no action to rescind the permit, the department may petition the hearings board for a rescission of the permit upon written notice of the petition to the local government and the permittee if the request by the department is made to the hearings board within fifteen days of the termination of the thirty-day notice to the local government.

(9) The holder of a certification from the governor pursuant to chapter 80.50 RCW shall not be required to obtain a permit under this section.

(10) Any permit for a variance or a conditional use by local government under approved master programs must be submitted to the department for its approval or disapproval.

(11)(a) An application for a substantial development permit for a limited utility extension or for the construction of a bulkhead or other measures to protect a single family residence and its appurtenant structures from shoreline erosion shall be subject to the following procedures:

(i) The public comment period under subsection (4) of this section shall be twenty days. The notice provided under subsection (4) of this section shall state the manner in which the public may obtain a copy of the local government decision on the application no later than two days following its issuance;

(ii) The local government shall issue its decision to grant or deny the permit within twenty-one days of the last day of the comment period specified in (i) of this subsection; and

(iii) If there is an appeal of the decision to grant or deny the permit to the local government legislative authority, the appeal shall be finally determined by the legislative authority within thirty days.

(b) For purposes of this section, a limited utility extension means the extension of a utility service that:

(i) Is categorically exempt under chapter 43.21C RCW for one or more of the following: Natural gas, electricity, telephone, water, or sewer;

(ii) Will serve an existing use in compliance with this chapter; and

(iii) Will not extend more than twenty-five hundred linear feet within the shorelines of the state.

[1995 c 347 § 309; 1992 c 105 § 3; 1990 c 201 § 2; 1988 c 22 § 1; 1984 c 7 § 386; 1977 ex.s. c 358 § 1; 1975-'76 2nd ex.s. c 51 § 1; 1975 1st ex.s. c 182 § 3; 1973 2nd ex.s. c 19 § 1; 1971 ex.s. c 286 § 14.]

NOTES:

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Finding -- Intent -- 1990 c 201: "The legislature finds that delays in substantial development permit review for the extension of vital utility services to existing and lawful uses within the shorelines of the state have caused hardship upon existing residents without serving any of the purposes and policies of the shoreline management act. It is the intent of this act to provide a more expeditious permit review process for that limited category of utility extension activities only, while fully preserving safeguards of public review and appeal rights regarding permit applications and decisions." [1990 c 201 § 1.]

Severability -- 1984 c 7: See note following RCW 47.01.141.

RCW 90.58.143

Time requirements -- Substantial development permits, variances, conditional use permits.

(1) The time requirements of this section shall apply to all substantial development permits and to any development authorized pursuant to a variance or conditional use permit authorized under this chapter. Upon a finding of good cause, based on the requirements and circumstances of the project proposed and consistent with the policy and provisions of the master program and this chapter, local government may adopt different time limits from those set forth in subsections (2) and (3) of this section as a part of action on a substantial development permit.

(2) Construction activities shall be commenced or, where no construction activities are involved, the use or activity shall be commenced within two years of the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record on the substantial development permit and to the department.

(3) Authorization to conduct construction activities shall terminate five years after the effective date of a substantial development permit. However, local government may authorize a single extension for a period not to exceed one year based on reasonable factors, if a request for extension has been filed before the expiration date and notice of the proposed extension is given to parties of record and to the department.

(4) The effective date of a substantial development permit shall be the date of filing as provided in RCW [90.58.140](#)(6). The permit time periods in subsections (2) and (3) of this section do not include the time during which a use or activity was not actually pursued due to the pendency of administrative appeals or legal actions or due to the need to obtain any other government permits and approvals for the development that authorize the development to proceed, including all reasonably related administrative or legal actions on any such permits or approvals.

[1997 c 429 § 51; 1996 c 62 § 1.]

NOTES:

Severability -- 1997 c 429: See note following RCW 36.70A.3201.

RCW 90.58.147

Substantial development permit -- Exemption for projects to improve fish or wildlife habitat or fish passage.

(1) A public or private project that is designed to improve fish or wildlife habitat or fish passage shall be exempt from the substantial development permit requirements of this chapter when all of the following apply:

(a) The project has been approved by the department of fish and wildlife;

(b) The project has received hydraulic project approval by the department of fish and wildlife pursuant to chapter 77.55 RCW; and

(c) The local government has determined that the project is substantially consistent with the local shoreline master program. The local government shall make such determination in a timely manner and provide it by letter to the project proponent.

(2) Fish habitat enhancement projects that conform to the provisions of RCW 77.55.290 are determined to be consistent with local shoreline master programs.

[2003 c 39 § 49; 1998 c 249 § 4; 1995 c 333 § 1.]

NOTES:

Findings -- Purpose -- Report -- Effective date -- 1998 c 249: See notes following RCW 77.55.290.

RCW 90.58.150

Selective commercial timber cutting, when.

With respect to timber situated within two hundred feet abutting landward of the ordinary high water mark within shorelines of statewide significance, the department or local government shall allow only selective commercial timber cutting, so that no more than thirty percent of the merchantable trees may be harvested in any ten year period of time: PROVIDED, That other timber harvesting methods may be permitted in those limited instances where the topography, soil conditions or silviculture practices necessary for regeneration render selective logging ecologically detrimental: PROVIDED FURTHER, That clear cutting of timber which is solely incidental to the preparation of land for other uses authorized by this chapter may be permitted.

[1971 ex.s. c 286 § 15.]

RCW 90.58.160

Prohibition against surface drilling for oil or gas, where.

Surface drilling for oil or gas is prohibited in the waters of Puget Sound north to the Canadian boundary and the Strait of Juan de Fuca seaward from the ordinary high water mark and on all lands within one thousand feet landward from said mark.

[1971 ex.s. c 286 § 16.]

RCW 90.58.170

Shorelines hearings board -- Established -- Members -- Chairman -- Quorum for decision -- Expenses of members.

A shorelines hearings board sitting as a quasi judicial body is hereby established within the environmental hearings office under RCW 43.21B.005. The shorelines hearings board shall be made up of six members: Three members shall be members of the pollution control hearings board; two members, one appointed by the association of Washington cities and one appointed by the association of county commissioners, both to serve at the pleasure of the associations; and the commissioner of public lands or his or her designee. The chairman of the pollution control hearings board shall be the chairman of the shorelines hearings board. Except as provided in RCW [90.58.185](#), a decision must be agreed to by at least four members of the board to be final. The members of the shorelines board shall receive the compensation, travel, and subsistence expenses as provided in RCW 43.03.050 and 43.03.060.

[1994 c 253 § 1; 1988 c 128 § 76; 1979 ex.s. c 47 § 6; 1971 ex.s. c 286 § 17.]

NOTES:

Intent -- 1979 ex.s. c 47: See note following RCW 43.21B.005.

RCW 90.58.175

Rules and regulations.

The shorelines hearings board may adopt rules and regulations governing the administrative practice and procedure in and before the board.

[1973 1st ex.s. c 203 § 3.]

RCW 90.58.180

Appeals from granting, denying, or rescinding permits -- Board to act -- Local government appeals to board -- Grounds for declaring rule, regulation, or guideline invalid -- Appeals to court.

(1) Any person aggrieved by the granting, denying, or rescinding of a permit on shorelines of the state pursuant to RCW [90.58.140](#) may, except as otherwise provided in chapter 43.21L RCW, seek review from the shorelines

Within seven days of the filing of any petition for review with the board as provided in this section pertaining to a final decision of a local government, the petitioner shall serve copies of the petition on the department, the office of the attorney general, and the local government. The department and the attorney general may intervene to protect the public interest and insure that the provisions of this chapter are complied with at any time within fifteen days from the date of the receipt by the department or the attorney general of a copy of the petition for review filed pursuant to this section. The shorelines hearings board shall schedule review proceedings on the petition for review without regard as to whether the period for the department or the attorney general to intervene has or has not expired.

(2) The department or the attorney general may obtain review of any final decision granting a permit, or granting or denying an application for a permit issued by a local government by filing a written petition with the shorelines hearings board and the appropriate local government within twenty-one days from the date the final decision was filed as provided in RCW [90.58.140\(6\)](#).

(3) The review proceedings authorized in subsections (1) and (2) of this section are subject to the provisions of chapter 34.05 RCW pertaining to procedures in adjudicative proceedings. Judicial review of such proceedings of the shorelines hearings board is governed by chapter 34.05 RCW. The board shall issue its decision on the appeal authorized under subsections (1) and (2) of this section within one hundred eighty days after the date the petition is filed with the board or a petition to intervene is filed by the department or the attorney general, whichever is later. The time period may be extended by the board for a period of thirty days upon a showing of good cause or may be waived by the parties.

(4) Any person may appeal any rules, regulations, or guidelines adopted or approved by the department within thirty days of the date of the adoption or approval. The board shall make a final decision within sixty days following the hearing held thereon.

(5) The board shall find the rule, regulation, or guideline to be valid and enter a final decision to that effect unless it determines that the rule, regulation, or guideline:

(a) Is clearly erroneous in light of the policy of this chapter; or

(b) Constitutes an implementation of this chapter in violation of constitutional or statutory provisions; or

(c) Is arbitrary and capricious; or

(d) Was developed without fully considering and evaluating all material submitted to the department during public review and comment; or

(e) Was not adopted in accordance with required procedures.

(6) If the board makes a determination under subsection (5)(a) through (e) of this section, it shall enter a final decision declaring the rule, regulation, or guideline invalid, remanding the rule, regulation, or guideline to the department with a statement of the reasons in support of the determination, and directing the department to adopt, after a thorough consultation with the affected local government and any other interested party, a new rule, regulation, or guideline consistent with the board's decision.

(7) A decision of the board on the validity of a rule, regulation, or guideline shall be subject to review in superior court, if authorized pursuant to chapter 34.05 RCW. A petition for review of the decision of the shorelines hearings board on a rule, regulation, or guideline shall be filed within thirty days after the date of final decision by the shorelines hearings board.

[2003 c 393 § 22; 1997 c 199 § 1; 1995 c 347 § 310; 1994 c 253 § 3; 1989 c 175 § 183; 1986 c 292 § 2; 1975-'76 2nd ex.s. c 51 § 2; 1975 1st ex.s. c 182 § 4; 1973 1st ex.s. c 203 § 2; 1971 ex.s. c 286 § 18.]

NOTES:

Implementation -- Effective date -- 2003 c 393: See RCW 43.21L.900 and 43.21L.901.

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

Severability -- 1986 c 292: See note following RCW [90.58.030](#).

Appeal under this chapter also subject of appeal under state environmental policy act: RCW 43.21C.075.
RCW 90.58.185

Appeals involving single family residences -- Composition of board -- Rules to expedite appeals.

***** CHANGE IN 2005 *** (SEE 1838.SL) *****

(1) In the case of an appeal involving a single family residence or appurtenance to a single family residence, including a dock or pier designed to serve a single family residence, the request for review may be heard by a panel of three board members, at least one and not more than two of whom shall be members of the pollution control hearings board. Two members of the three must agree to issue a final decision of the board.

(2) The board shall define by rule alternative processes to expedite appeals. These alternatives may include: Mediation, upon agreement of all parties; submission of testimony by affidavit; or other forms that may lead to less formal and faster resolution of appeals.

[1994 c 253 § 2.]

RCW 90.58.190

Appeal of department's decision to adopt or amend a master program.

(1) The appeal of the department's decision to adopt a master program or amendment pursuant to RCW [90.58.070](#)(2) or [90.58.090](#)(5) is governed by RCW 34.05.510 through 34.05.598.

(2)(a) The department's decision to approve, reject, or modify a proposed master program or amendment adopted by a local government planning under RCW 36.70A.040 shall be appealed to the growth management hearings board with jurisdiction over the local government. The appeal shall be initiated by filing a petition as provided in RCW 36.70A.250 through 36.70A.320.

(b) If the appeal to the growth management hearings board concerns shorelines, the growth management hearings board shall review the proposed master program or amendment solely for compliance with the requirements of this chapter, the policy of RCW [90.58.020](#) and the applicable guidelines, the internal consistency provisions of RCW 36.70A.070, 36.70A.040(4), 35.63.125, and 35A.63.105, and chapter 43.21C RCW as it relates to the adoption of master programs and amendments under chapter 90.58 RCW.

(c) If the appeal to the growth management hearings board concerns a shoreline of statewide significance, the board shall uphold the decision by the department unless the board, by clear and convincing evidence, determines that the decision of the department is inconsistent with the policy of RCW [90.58.020](#) and the applicable guidelines.

(d) The appellant has the burden of proof in all appeals to the growth management hearings board under this subsection.

appeal the decision to superior court as provided in RCW 36.70A.300.

(3)(a) The department's decision to approve, reject, or modify a proposed master program or master program amendment by a local government not planning under RCW 36.70A.040 shall be appealed to the shorelines hearings board by filing a petition within thirty days of the date of the department's written notice to the local government of the department's decision to approve, reject, or modify a proposed master program or master program amendment as provided in RCW [90.58.090\(2\)](#).

(b) In an appeal relating to shorelines, the shorelines hearings board shall review the proposed master program or master program amendment and, after full consideration of the presentations of the local government and the department, shall determine the validity of the local government's master program or amendment in light of the policy of RCW [90.58.020](#) and the applicable guidelines.

(c) In an appeal relating to shorelines of statewide significance, the shorelines hearings board shall uphold the decision by the department unless the board determines, by clear and convincing evidence that the decision of the department is inconsistent with the policy of RCW [90.58.020](#) and the applicable guidelines.

(d) Review by the shorelines hearings board shall be considered an adjudicative proceeding under chapter 34.05 RCW, the Administrative Procedure Act. The aggrieved local government shall have the burden of proof in all such reviews.

(e) Whenever possible, the review by the shorelines hearings board shall be heard within the county where the land subject to the proposed master program or master program amendment is primarily located. The department and any local government aggrieved by a final decision of the hearings board may appeal the decision to superior court as provided in chapter 34.05 RCW.

(4) A master program amendment shall become effective after the approval of the department or after the decision of the shorelines hearings board to uphold the master program or master program amendment, provided that the board may remand the master program or master program adjustment to the local government or the department for modification prior to the final adoption of the master program or master program amendment.

[2003 c 321 § 4; 1995 c 347 § 311; 1989 c 175 § 184; 1986 c 292 § 3; 1971 ex.s. c 286 § 19.]

NOTES:

Finding -- Intent -- 2003 c 321: See note following RCW [90.58.030](#).

Finding -- Severability -- Part headings and table of contents not law -- 1995 c 347: See notes following RCW 36.70A.470.

Effective date -- 1989 c 175: See note following RCW 34.05.010.

Severability -- 1986 c 292: See note following RCW [90.58.030](#).

RCW 90.58.195

Shoreline master plan review -- Local governments with coastal waters or coastal shorelines.

(1) The department of ecology, in cooperation with other state agencies and coastal local governments, shall prepare and adopt ocean use guidelines and policies to be used in reviewing, and where appropriate, amending, shoreline master programs of local governments with coastal waters or coastal shorelines within their boundaries. These guidelines shall be finalized by April 1, 1990.

(2) After the department of ecology has adopted the guidelines required in subsection (1) of this section,

counties, cities, and towns with coastal waters or coastal shorelines shall review their shoreline master programs to ensure that the programs conform with RCW 43.143.010 and 43.143.030 and with the department of ecology's ocean use guidelines. Amended master programs shall be submitted to the department of ecology for its approval under RCW [90.58.090](#) by June 30, 1991.

[1989 1st ex.s. c 2 § 13.]

RCW 90.58.200

Rules and regulations.

The department and local governments are authorized to adopt such rules as are necessary and appropriate to carry out the provisions of this chapter.

[1971 ex.s. c 286 § 20.]

RCW 90.58.210

Court actions to insure against conflicting uses and to enforce -- Civil penalty -- Review.

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, the attorney general or the attorney for the local government shall bring such injunctive, declaratory, or other actions as are necessary to insure that no uses are made of the shorelines of the state in conflict with the provisions and programs of this chapter, and to otherwise enforce the provisions of this chapter.

(2) Any person who shall fail to conform to the terms of a permit issued under this chapter or who shall undertake development on the shorelines of the state without first obtaining any permit required under this chapter shall also be subject to a civil penalty not to exceed one thousand dollars for each violation. Each permit violation or each day of continued development without a required permit shall constitute a separate violation.

(3) The penalty provided for in this section shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the same from the department or local government, describing the violation with reasonable particularity and ordering the act or acts constituting the violation or violations to cease and desist or, in appropriate cases, requiring necessary corrective action to be taken within a specific and reasonable time.

(4) Within thirty days after the notice is received, the person incurring the penalty may apply in writing to the department for remission or mitigation of such penalty. Upon receipt of the application, the department or local government may remit or mitigate the penalty upon whatever terms the department or local government in its discretion deems proper. Any penalty imposed pursuant to this section by the department shall be subject to review by the shorelines hearings board. Any penalty imposed pursuant to this section by local government shall be subject to review by the local government legislative authority. Any penalty jointly imposed by the department and local government shall be appealed to the shorelines hearings board.

[1995 c 403 § 637; 1986 c 292 § 4; 1971 ex.s. c 286 § 21.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

Severability -- 1986 c 292: See note following RCW [90.58.030](#).

RCW 90.58.220
General penalty.

In addition to incurring civil liability under RCW [90.58.210](#), any person found to have wilfully engaged in activities on the shorelines of the state in violation of the provisions of this chapter or any of the master programs, rules, or regulations adopted pursuant thereto shall be guilty of a gross misdemeanor, and shall be punished by a fine of not less than twenty-five nor more than one thousand dollars or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment: PROVIDED, That the fine for the third and all subsequent violations in any five-year period shall be not less than five hundred nor more than ten thousand dollars: PROVIDED FURTHER, That fines for violations of RCW [90.58.550](#), or any rule adopted thereunder, shall be determined under RCW [90.58.560](#).

[1983 c 138 § 3; 1971 ex.s. c 286 § 22.]

RCW 90.58.230
Violators liable for damages resulting from violation -- Attorney's fees and costs.

Any person subject to the regulatory program of this chapter who violates any provision of this chapter or permit issued pursuant thereto shall be liable for all damage to public or private property arising from such violation, including the cost of restoring the affected area to its condition prior to violation. The attorney general or local government attorney shall bring suit for damages under this section on behalf of the state or local governments. Private persons shall have the right to bring suit for damages under this section on their own behalf and on the behalf of all persons similarly situated. If liability has been established for the cost of restoring an area affected by a violation the court shall make provision to assure that restoration will be accomplished within a reasonable time at the expense of the violator. In addition to such relief, including money damages, the court in its discretion may award attorney's fees and costs of the suit to the prevailing party.

[1971 ex.s. c 286 § 23.]

RCW 90.58.240
Additional authority granted department and local governments.

In addition to any other powers granted hereunder, the department and local governments may:

(1) Acquire lands and easements within shorelines of the state by purchase, lease, or gift, either alone or in concert with other governmental entities, when necessary to achieve implementation of master programs adopted hereunder;

(2) Accept grants, contributions, and appropriations from any agency, public or private, or individual for the purposes of this chapter;

(3) Appoint advisory committees to assist in carrying out the purposes of this chapter;

(4) Contract for professional or technical services required by it which cannot be performed by its employees.

[1972 ex.s. c 53 § 1; 1971 ex.s. c 286 § 24.]

RCW 90.58.250

Intent -- Department to cooperate with local governments -- Grants for development of master programs.

(1) The legislature intends to eliminate the limits on state funding of shoreline master program development and amendment costs. The legislature further intends that the state will provide funding to local governments that is reasonable and adequate to accomplish the costs of developing and amending shoreline master programs consistent with the schedule established by RCW [90.58.080](#). Except as specifically described herein, nothing in chapter 262, Laws of 2003 is intended to alter the existing obligation, duties, and benefits provided by chapter 262, Laws of 2003 to local governments and the department.

(2) The department is directed to cooperate fully with local governments in discharging their responsibilities under this chapter. Funds shall be available for distribution to local governments on the basis of applications for preparation of master programs and the provisions of RCW [90.58.080](#)(7). Such applications shall be submitted in accordance with regulations developed by the department. The department is authorized to make and administer grants within appropriations authorized by the legislature to any local government within the state for the purpose of developing a master shorelines program.

[2003 c 262 § 3; 1971 ex.s. c 286 § 25.]

RCW 90.58.260

State to represent its interest before federal agencies, interstate agencies and courts.

The state, through the department of ecology and the attorney general, shall represent its interest before water resource regulation management, development, and use agencies of the United States, including among others, the federal power commission, environmental protection agency, corps of engineers, department of the interior, department of agriculture and the atomic energy commission, before interstate agencies and the courts with regard to activities or uses of shorelines of the state and the program of this chapter. Where federal or interstate agency plans, activities, or procedures conflict with state policies, all reasonable steps available shall be taken by the state to preserve the integrity of its policies.

[1971 ex.s. c 286 § 26.]

RCW 90.58.270

Nonapplication to certain structures, docks, developments, etc., placed in navigable waters -- Nonapplication to certain rights of action, authority.

(1) Nothing in this statute shall constitute authority for requiring or ordering the removal of any structures, improvements, docks, fills, or developments placed in navigable waters prior to December 4, 1969, and the consent and authorization of the state of Washington to the impairment of public rights of navigation, and corollary rights incidental thereto, caused by the retention and maintenance of said structures, improvements, docks, fills or developments are hereby granted: PROVIDED, That the consent herein given shall not relate to any structures, improvements, docks, fills, or developments placed on tidelands, shorelands, or beds underlying said waters which are in trespass or in violation of state statutes.

(2) Nothing in this section shall be construed as altering or abridging any private right of action, other than a private right which is based upon the impairment of public rights consented to in subsection (1) hereof.

governments to suppress or abate nuisances or to abate pollution.

(4) Subsection (1) of this section shall apply to any case pending in the courts of this state on June 1, 1971 relating to the removal of structures, improvements, docks, fills, or developments based on the impairment of public navigational rights.

[1971 ex.s. c 286 § 27.]

RCW 90.58.280

Application to all state agencies, counties, public and municipal corporations.

The provisions of this chapter shall be applicable to all agencies of state government, counties, and public and municipal corporations and to all shorelines of the state owned or administered by them.

[1971 ex.s. c 286 § 28.]

RCW 90.58.290

Restrictions as affecting fair market value of property.

The restrictions imposed by this chapter shall be considered by the county assessor in establishing the fair market value of the property.

[1971 ex.s. c 286 § 29.]

RCW 90.58.300

Department as regulating state agency -- Special authority.

The department of ecology is designated the state agency responsible for the program of regulation of the shorelines of the state, including coastal shorelines and the shorelines of the inner tidal waters of the state, and is authorized to cooperate with the federal government and sister states and to receive benefits of any statutes of the United States whenever enacted which relate to the programs of this chapter.

[1971 ex.s. c 286 § 30.]

RCW 90.58.310

Designation of shorelines of statewide significance by legislature -- Recommendation by director, procedure.

Additional shorelines of the state shall be designated shorelines of statewide significance only by affirmative action of the legislature.

The director of the department may, however, from time to time, recommend to the legislature areas of the shorelines of the state which have statewide significance relating to special economic, ecological, educational, developmental, recreational, or aesthetic values to be designated as shorelines of statewide significance.

county where such a hearing is conducted to submit their views with regard to a proposed designation to the director at such date as the director determines but in no event shall the date be later than sixty days after the public hearing in the county.

[1971 ex.s. c 286 § 31.]

RCW 90.58.320

Height limitation respecting permits.

No permit shall be issued pursuant to this chapter for any new or expanded building or structure of more than thirty-five feet above average grade level on shorelines of the state that will obstruct the view of a substantial number of residences on areas adjoining such shorelines except where a master program does not prohibit the same and then only when overriding considerations of the public interest will be served.

[1971 ex.s. c 286 § 32.]

RCW 90.58.340

Use policies for land adjacent to shorelines, development of.

All state agencies, counties, and public and municipal corporations shall review administrative and management policies, regulations, plans, and ordinances relative to lands under their respective jurisdictions adjacent to the shorelines of the state so as the [to] achieve a use policy on said land consistent with the policy of this chapter, the guidelines, and the master programs for the shorelines of the state. The department may develop recommendations for land use control for such lands. Local governments shall, in developing use regulations for such areas, take into consideration any recommendations developed by the department as well as any other state agencies or units of local government.

[1971 ex.s. c 286 § 34.]

RCW 90.58.350

Nonapplication to treaty rights.

Nothing in this chapter shall affect any rights established by treaty to which the United States is a party.

[1971 ex.s. c 286 § 35.]

RCW 90.58.355

Hazardous substance remedial actions -- Procedural requirements not applicable.

The procedural requirements of this chapter shall not apply to any person conducting a remedial action at a facility pursuant to a consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or to the department of ecology when it conducts a remedial action under chapter 70.105D RCW. The department of ecology shall ensure compliance with the substantive requirements of this chapter through the consent decree, order, or agreed order issued pursuant to chapter 70.105D RCW, or during the department-conducted remedial action, through the procedures developed by the department pursuant to RCW 70.105D.090.

[1994 c 257 § 20.]

NOTES:

Severability -- 1994 c 257: See note following RCW 36.70A.270.

RCW 90.58.360

Existing requirements for permits, certificates, etc., not obviated.

Nothing in this chapter shall obviate any requirement to obtain any permit, certificate, license, or approval from any state agency or local government.

[1971 ex.s. c 286 § 36.]

RCW 90.58.370

Processing of permits or authorizations for emergency water withdrawal and facilities to be expedited.

All state and local agencies with authority under this chapter to issue permits or other authorizations in connection with emergency water withdrawals and facilities authorized under RCW 43.83B.410 shall expedite the processing of such permits or authorizations in keeping with the emergency nature of such requests and shall provide a decision to the applicant within fifteen calendar days of the date of application.

[1989 c 171 § 11; 1987 c 343 § 5.]

NOTES:

Severability -- 1989 c 171: See note following RCW 43.83B.400.

Severability -- 1987 c 343: See note following RCW 43.83B.300.

RCW 90.58.380

Adoption of wetland manual.

The department by rule shall adopt a manual for the delineation of wetlands under this chapter that implements and is consistent with the 1987 manual in use on January 1, 1995, by the United States army corps of engineers and the United States environmental protection agency. If the corps of engineers and the environmental protection agency adopt changes to or a different manual, the department shall consider those changes and may adopt rules implementing those changes.

[1995 c 382 § 11.]

RCW 90.58.390

Certain secure community transition facilities not subject to chapter. (Expires June 30, 2009.)

An emergency has been caused by the need to expeditiously site facilities to house sexually violent predators who have been committed under chapter 71.09 RCW. To meet this emergency, secure community transition facilities sited pursuant to the preemption provisions of RCW 71.09.342 and secure facilities sited pursuant to the

preemption provisions of RCW 71.09.250 are not subject to the provisions of this chapter.

This section expires June 30, 2009.

[2002 c 68 § 13.]

NOTES:

Purpose -- Severability -- Effective date -- 2002 c 68: See notes following RCW 36.70A.200.

RCW 90.58.515

Watershed restoration projects -- Exemption.

Watershed restoration projects as defined in RCW 89.08.460 are exempt from the requirement to obtain a substantial development permit. Local government shall review the projects for consistency with the locally adopted shoreline master program in an expeditious manner and shall issue its decision along with any conditions within forty-five days of receiving a complete consolidated application form from the applicant. No fee may be charged for accepting and processing applications for watershed restoration projects as used in this section.

[1995 c 378 § 16.]

RCW 90.58.550

Oil or natural gas exploration in marine waters -- Definitions -- Application for permit -- Requirements -- Review -- Enforcement.

(1) Within this section the following definitions apply:

(a) "Exploration activity" means reconnaissance or survey work related to gathering information about geologic features and formations underlying or adjacent to marine waters;

(b) "Marine waters" include the waters of Puget Sound north to the Canadian border, the waters of the Strait of Juan de Fuca, the waters between the western boundary of the state and the ordinary high water mark, and related bays and estuaries;

(c) "Vessel" includes ships, boats, barges, or any other floating craft.

(2) A person desiring to perform oil or natural gas exploration activities by vessel located on or within marine waters of the state shall first obtain a permit from the department of ecology. The department may approve an application for a permit only if it determines that the proposed activity will not:

(a) Interfere materially with the normal public uses of the marine waters of the state;

(b) Interfere with activities authorized by a permit issued under RCW [90.58.140\(2\)](#);

(c) Injure the marine biota, beds, or tidelands of the waters;

(d) Violate water quality standards established by the department; or

(e) Create a public nuisance.

control hearings board under chapter 43.21B RCW.

(4) This section does not apply to activities conducted by an agency of the United States or the state of Washington.

(5) This section does not lessen, reduce, or modify RCW [90.58.160](#).

(6) The department may adopt rules necessary to implement this section.

(7) The attorney general shall enforce this section.

[1983 c 138 § 1.]

NOTES:

Ocean resources management act: Chapter 43.143 RCW.

Transport of petroleum products or hazardous substances: Chapter 88.40 RCW.

RCW 90.58.560

Oil or natural gas exploration -- Violations of RCW [90.58.550](#) -- Penalty -- Appeal.

(1) Except as provided in RCW 43.05.060 through 43.05.080 and 43.05.150, a person who violates RCW [90.58.550](#), or any rule adopted thereunder, is subject to a penalty in an amount of up to five thousand dollars a day for every such violation. Each and every such violation shall be a separate and distinct offense, and in case of a continuing violation, every day's continuance shall be and be deemed to be a separate and distinct violation. Every act of commission or omission which procures, aids or abets in the violation shall be considered a violation under the provisions of this section and subject to the penalty provided for in this section.

(2) The penalty shall be imposed by a notice in writing, either by certified mail with return receipt requested or by personal service, to the person incurring the penalty from the director or the director's representative describing such violation with reasonable particularity. The director or the director's representative may, upon written application therefor received within fifteen days after notice imposing any penalty is received by the person incurring the penalty, and when deemed to carry out the purposes of this chapter, remit or mitigate any penalty provided for in this section upon such terms as he or she deems proper, and shall have authority to ascertain the facts upon all such applications in such manner and under such regulations as he or she may deem proper.

(3) Any person incurring any penalty under this section may appeal the penalty to the hearings board as provided for in chapter 43.21B RCW. Such appeals shall be filed within thirty days of receipt of notice imposing any penalty unless an application for remission or mitigation is made to the department. When an application for remission or mitigation is made, such appeals shall be filed within thirty days of receipt of notice from the director or the director's representative setting forth the disposition of the application. Any penalty imposed under this section shall become due and payable thirty days after receipt of a notice imposing the same unless application for remission or mitigation is made or an appeal is filed. When an application for remission or mitigation is made, any penalty incurred hereunder shall become due and payable thirty days after receipt of notice setting forth the disposition of the application unless an appeal is filed from such disposition. Whenever an appeal of any penalty incurred under this section is filed, the penalty shall become due and payable only upon completion of all review proceedings and the issuance of a final order confirming the penalty in whole or in part.

(4) If the amount of any penalty is not paid to the department within thirty days after it becomes due and payable, the attorney general, upon the request of the director, shall bring an action in the name of the state of Washington in the superior court of Thurston county or of any county in which such violator may do business, to recover such penalty. In all such actions the procedure and rules of evidence shall be the same as an ordinary civil action except as otherwise in this chapter provided. All penalties recovered under this section shall be paid into the state treasury and credited to the general fund.

[1995 c 403 § 638; 1983 c 138 § 2.]

NOTES:

Findings -- Short title -- Intent -- 1995 c 403: See note following RCW 34.05.328.

Part headings not law -- Severability -- 1995 c 403: See RCW 43.05.903 and 43.05.904.

RCW 90.58.570

Consultation before responding to federal coastal zone management certificates.

The department of ecology shall consult with affected state agencies, local governments, Indian tribes, and the public prior to responding to federal coastal zone management consistency certifications for uses and activities occurring on the federal outer continental shelf.

[1989 1st ex.s. c 2 § 15.]

NOTES:

Severability -- 1989 1st ex.s. c 2: See RCW 43.143.902.

RCW 90.58.600

Conformance with chapter 43.97 RCW required.

With respect to the National Scenic Area, as defined in the Columbia [River] Gorge National Scenic Area Act, P.L. 99-663, the exercise of any power or authority by a local government or the department of ecology pursuant to this chapter shall be subject to and in conformity with the requirements of chapter 43.97 RCW, including the management plan regulations and ordinances adopted by the Columbia River Gorge commission pursuant to the Compact.

[1987 c 499 § 10.]

RCW 90.58.900

Liberal construction -- 1971 ex.s. c 286.

This chapter is exempted from the rule of strict construction, and it shall be liberally construed to give full effect to the objectives and purposes for which it was enacted.

[1971 ex.s. c 286 § 37.]

RCW 90.58.910

Severability -- 1971 ex.s. c 286.

If any provision of this chapter, or its application to any person or legal entity or circumstances, is held invalid, the remainder of the act, or the application of the provision to other persons or legal entities or circumstances, shall not be affected.

[1971 ex.s. c 286 § 40.]

RCW 90.58.911

Severability -- 1983 c 138.

If any provision of this act or its application to any person or circumstance is held invalid, the remainder of the act or the application of the provision to other persons or circumstances is not affected.

[1983 c 138 § 4.]

RCW 90.58.920

Effective date -- 1971 ex.s. c 286.

This chapter is necessary for the immediate preservation of the public peace, health and safety, the support of the state government, and its existing institutions. This 1971 act shall take effect on June 1, 1971. The director of ecology is authorized to immediately take such steps as are necessary to insure that this 1971 act is implemented on its effective date.

[1971 ex.s. c 286 § 41.]