Mandatory elements of the San Juan County SMP update

The 1971 Shoreline Management Act (SMA) of Washington called for the creation of local Shoreline Management Programs (SMP) as a means of implementing the goals and policies of the act. In order to do so, the SMA directed the Washington Department of Ecology (DOE) to develop guidelines to assist the Counties and Cities in drafting their respective SMPs. The SMP regulates activities in the 200 feet landward of the Ordinary High Water Mark (OHWM) and seeks to balance public access, public and private interests, environmental protection and water dependent, water oriented and water enjoyment uses.

One of the central tenets of the SMA is that the protection and regulation of the State’s shorelines is a task that requires cooperation between the local jurisdiction and the DOE.

Unlike other development regulations, the County’s SMP must also be adopted by the DOE. The Shoreline Management Act states that the DOE is responsible for creating guidelines and reviewing local jurisdictions SMPs for compliance with the SMA. Updated in 2003, the guidelines that direct the development of the County’s SMP are found in Washington Administrative Code (WAC) 173-26. This WAC sets forth the methodology to be used, standards to be met and the required contents of the County’s SMP.

San Juan County’s SMP exemplifies the cooperation between the County and the state DOE. In the context of shoreline regulations, the County and DOE have different roles. The County is expected to implement the policies of the SMA through its SMP while the DOE is expected to provide oversight and assistance to the County in the execution of the SMP.

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1 Derived from the DOE’s SMP Checklist. This is a list that must be filled out as part of the final submission which details both the planning process and final documents. The checklist clearly defines the DOE expectations. Checklist available at: [www.ecy.wa.gov/programs/sea/shorelines/docs/SMPchecklist.doc](http://www.ecy.wa.gov/programs/sea/shorelines/docs/SMPchecklist.doc)
Once adopted, the County’s SMP may be appealed to the Growth Management Hearings Board (GMHB) and superior court; however, as the SMP is shared, both the DOE and County must respond to the challenges.

In its simplest form, WAC 173-26 requires the County to carry out a 6 phase process, as described in the Public Participation Plan adopted by County on March 1, 2011 in Resolution 10-201, to create a document to implement the goals of SMA. This document must include regulations that balance the goals of public access, environmental protection and personal property rights while establishing a baseline of ecological functions and values that must be protected and maintained in the future. The SMP development process includes the following elements:

1. An inventory and characterization report that divides the shoreline into management areas (or reaches), describes the pattern of current land use in those areas, projects future use demand and describes the current level of ecological functions and values.

2. A Shoreline Master Plan that includes a vision for the shorelines, specific policies, identifies the specific zones that apply to the shore, general regulations for all shoreline areas, (particularly critical areas) and administrative regulations.

3. A Cumulative Impact Analysis which shows how the proposed regulations meet the ‘no-net loss’ standard.

4. A Restoration Plan that identifies areas that are undamaged, impaired and degraded and provides options for their improvement.

The Definition section of the WAC (See WAC 173-26-020 32 and 35) defines ‘Shall’ and ‘Should.’ The first is defined as “a mandate, the action must be done,” the second is defined 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.” The WAC also specifies that the precautionary principle must be used in drafting regulations. (See WAC 173-26-211 3 (g)).

1. Documentation of the SMP Development Process

    As part of the final submission to the DOE the County has to provide the following:

   ➢ Documentation of public involvement throughout SMP development process. (See WAC 173-26-201(3)(b)(i) and WAC 173-26-090 and 100).
Shorelines of Statewide Significance (SSWS)² provide benefits to all people of the State, public involvement also needs to include applicable state agencies, affected native tribes and other statewide interest groups. (See WAC 173-26-251(3)(a)).

- Documentation of communication with state agencies and affected Indian tribes throughout SMP development. (See WAC 173-26-201(3)(b)(ii) and (iii), WAC 173-26-100(3)).

- Demonstration that critical areas regulations for shorelines are based on the SMA and the guidelines, and are at least equal to the current level of protection provided by the currently adopted critical areas ordinance. (See WAC 173-26-221(2)(b)(ii),(iii) and (c)).

- Documentation of process to assure that proposed regulatory or administrative actions do not unconstitutionally infringe upon private property rights. See “State of Washington, Attorney General’s Recommended Process for Evaluation of Proposed Regulatory or Administrative Actions to Avoid Unconstitutional Takings of Private Property.” (See WAC 173-26-186(5)).³

- The County is required to provide evidence that SMP preserves adequate shorelands and submerged lands to accommodate current and projected demand for economic resources of statewide importance (e.g., commercial shellfish beds and navigable harbors). It must show that the provisions are based on statewide or regional analyses, requirements for essential public facilities, and have considered comments from related industry associations, affected Indian tribes, and state agencies.

- The SMP must provide evidence that public access and recreation requirements are based on demand projections that take into account activities of state agencies and interests of the citizens to visit public shorelines with special scenic qualities or cultural or recreational opportunities. (See WAC 173-26-251(3)(c)(ii) and (iii)).

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² Shorelines of Statewide Significance means: “Those areas of Puget Sound and the Strait of Juan de Fuca and adjacent waters north to the Canadian line and lying seaward from the line of extreme low tide.” (RCW 90.58.030 (e) (iii))

³ Final submittal includes:
   a. evidence of local government approval (or a locally approved “statement of intent to adopt”);
   b. new and/or amendatory text,
   c. environment designation maps (with boundary descriptions and justification for changes based on existing development patterns, biophysical capabilities and limitations, and the goals and aspirations of the local citizenry);
   d. a summary of the proposal together with staff reports and supporting materials;
   e. evidence of SEPA compliance;
   f. copies of all comments received with names and addresses. See WAC 173-26-110.
The SMP is expected to show implementation directives incorporated into the Comprehensive Plan and development regulations. (See WAC 173-26-251(2) and (3)(e)).

For GMA jurisdictions, SMP recreational provisions must be consistent with growth projections and level-of-service standards contained in the comprehensive plan. (See WAC 173-26-241(3)(i)).

Submittal must include clear identification and transmittal of all provisions that make up the SMP.

1.1 Shoreline Inventory

One of the most important documents that must be submitted to the Department of Ecology is the Shoreline Inventory. As part of the update, the County is expected to set a baseline of contemporary ecological functions and values of the shoreline reaches. In order to set this standard, the County is required to develop an accurate and complete inventory of the types of areas and associated functions and values. The inventory is the foundation upon which the subsequent elements of SMP are based.

The guidelines addressing the need to create an inventory of existing data and materials can be found in WAC 173-26-201(3)(c)(i) through (x). In addition, San Juan County must inventory it’s critical saltwater habitats, see WAC 173-26-221(2)(c)(iii)(A) and (B). 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 [such as salmonids] have a primary association.’

Characterization of shoreline ecosystems and their associated ecological functions that:

- identifies ecosystem-wide processes and ecological functions;
- assesses ecosystem-wide processes to determine their relationship to ecological functions; and
- identifies specific measures necessary to protect and/or restore the ecological functions and ecosystem-wide processes. (See WAC 173-26-201(3)(d)(i)(A) (I-III)).

The report must provide a demonstration of how characterization was used to prepare master program policies and regulations that achieve no-net loss of ecological functions necessary to support shoreline resources and to plan for restoration of impaired functions. (See WAC 173-26-201(3)(d)(i)(E)).
The report must show how the policies and regulations relating to
vegetation and critical saltwater habitats achieve no-net loss of ecological
functions necessary to support shoreline resources. (See WAC 173-26-221(5) and WAC 173-26-221(2)(c)(iii)(B)) respectively.

Description of data gaps, assumptions made and risks to ecological
functions associated with SMP provisions. (See WAC 173-26-201(2)(a)).

The characterization report must include maps of inventory information at
appropriate scale. (See WAC 173-26-201(3)(c)).

The inventory and characterization report is expected to include a land
use analysis that estimates future demand for shoreline space and
potential use conflicts based on characterization of current shoreline use
patterns and projected trends. The inventory and characterization report
should include evidence that the SMP ensures adequate shoreline space
for projected shoreline preferred uses. The inventory must also identify
public access points and identify needs and opportunities for increased
access within the jurisdiction. Projections of regional economic need are,
in the absence of a compelling reason to do otherwise, expected to guide
the designation of "high-intensity" shoreline. (See WAC 173-26-201(3)(d)(ii) & (v); WAC 173-26-211(5)(d)(ii)(B)).

1.2 Restoration plan

- The County is required to provide the DOE with 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 that could be undertaken to
    achieve local restoration goals. This could include implementation
    strategies including identifying prospective funding sources and/or setting
timelines and benchmarks for implementing restoration projects and
    programs;
  - provides mechanisms or strategies to encourage the implementation of
    restoration projects and programs according to plans and to appropriately
    review the effectiveness of the projects and programs in meeting the
    overall restoration goals. (See WAC 173-26-186(8)(c); 201(2)(c) and (f)).
For critical freshwater habitats: the SMP is expected to include incentives to restore water connections impeded by previous development. (See WAC 173-26-221(2)(c)(iv)(C)(III)).

For SSWS, the SMP is expected to identify where natural resources of statewide importance are being diminished over time, and include provisions that contribute to the restoration of those resources. (See WAC 173-26-251(3)(b)).

Evidence that each environment designation is consistent with guidelines criteria (See WAC 173-26-211(5)), as well as existing use pattern, the biological and physical character of the shoreline and the goals and aspirations of the community. (See WAC 173-26-211(2)(a) and WAC 173-26-110(3)).

Lands designated as “forest lands of long-term significance” under RCW 36.70A.170 are to be designated as either natural or rural conservancy shoreline environment designations. (See WAC 173-26-241(3)(e)).

For SSWS, there must be a demonstration that the environment designation policies, boundaries, and use provisions implement SMA preferred use policies of RCW 90.58.020(1) through (7). (See WAC 173-26-251(3)(c)).

1.3 Cumulative Impact Analysis

The County must provide the DOE with a Cumulative Impact Assessment (CIA) that demonstrates how the proposed policies and regulations of the SMP cause, avoid, minimize and mitigate cumulative impacts and meet the no-net loss policy.

The CIA must address:

- current circumstances affecting the shorelines and relevant natural processes;
- reasonably foreseeable future development and use of the shoreline (including impacts from unregulated activities, exempt development, and other incremental impacts); and
- beneficial effects of any established regulatory programs under other local, state, and federal laws. (See WAC 173-26-201(3)(d)(iii) and WAC 173-26-186(8)(d)).

For critical saltwater habitats, the CIA must include the identification of methods for monitoring conditions and adapting management practices to new information. (See WAC 173-26-221(2)(c)(iii)(B)).
For SSWS, the County must provide evidence that standards ensuring protection of ecological resources of statewide importance have taken into account the cumulative impacts of permitted development. (See WAC 173-26-251(3)(d)(i)).

2. Required Contents of the SMP

- Alongside the documentation requirements outlined above, WAC 173-26 also details the required contents of the documents that make up the bulk of the SMP which consist of the Comprehensive Plan text and the regulations that become part of the County’s UDC.

- While general goal statements are not required aspects of the SMP, the SMP must be consistent with the goals of the SMA.

- The updated SMP must contain policies that:
  - are consistent with guidelines and policies of the SMA;
  - address elements of RCW 90.58.100;
  - include policies for environment designations, accompanied by a map or physical description of designation boundaries in sufficient detail to compare with comprehensive plan land use designations; and
  - are consistent with constitutional and other legal limitations on regulation of private property. (See WAC 173-26-191(2)(a)(i)).

- The adopted SMP must implement the preferred use policies which emphasize the preferred development sequence for shoreline uses identified in the SMA of water-dependent, water-related and water-enjoyment. (See WAC 173-26-201(2)(d)).

- The adopted SMP must also include regulations that:
  - include environment designation regulations;
  - include general regulations, use regulations that address issues of concern in regard to specific uses, and shoreline modification regulations; and
  - are consistent with constitutional and other legal limitations on the regulation of private property. (See WAC 173-26-191(2)(a)(ii)).
Integral to the regulations are the Environment Designations identified as part of the Shoreline Inventory and Analysis. The SMP must include Shoreline Environment designations however they need not mirror those below. The environment designations put forth below are to be considered templates. The County may develop environment designations that are different or are variations on the themes below.

Each environment designation must include:

- Purpose statements, classification criteria, management policies, and regulations (types of shoreline uses permitted, conditionally permitted, and prohibited; building or structure height and bulk limits, setbacks, maximum density or minimum frontage requirements, and site development standards). (See WAC 173-26-211(2)(4)).

- The environment designations and their boundaries must be identifiable on an up-to-date map that accurately depicts environment designation boundaries. If necessary, the County will include common boundary descriptions. (See WAC 173-26-211(2)(b) and WAC 173-26-110(3));

- Unless a compelling reason for addressing undesignated shorelines differently can be legitimately adduced, the environment designation section must include a statement that undesignated shorelines are automatically assigned a conservancy environment designation. (See WAC 173-26-211(2)(e)).

- The County may adopt different shoreline environmental designations (WAC 173-26-211 (4)(a)(c)) than those proposed by WAC 173-26-211(5), however, those adopted must be consistent with the purposes and policies of WAC 173-26-211 (5). This means that the shoreline designations, their purposes, their allowed and prohibited uses, building bulk, height and setbacks must not conflict with the standards set forth in the shoreline designations set forth below.

- The WAC sets forth 6 ideal zones into which all forms of future shoreline development could fit. The Department allows for local variations of the primary themes.

- WAC 173-26-211 describes the necessary characteristics of six shoreline designations, Natural, Rural Conservancy, Aquatic, High Intensity, Urban Conservancy and Shoreline Residential.

To ensure consistency the shoreline environment designations should include the following or equivalents thereof:

**2.1 Natural environment.** (See WAC 173-26-211(5)(a)).
Designation criteria: Shorelines that are ecologically intact and performing functions that could be damaged by human activity, of particular scientific or educational interest, or unable to support human development without posing a safety threat. (See WAC 173-26-211(5)(a)(iii)).

The natural environment designation (or its local counterpart) should contain a complete prohibition on:

- New uses that would substantially degrade ecological functions or the natural character of the shoreline. (See WAC 173-26-211(5)(a)(ii)(A)).
- New commercial uses, new industrial uses, non-water oriented recreation, roads, utility corridors and parking areas. (See WAC 173-26-211(5)(a)(ii)(B)).
- New development or significant vegetation removal that would reduce capability of vegetation to perform normal ecological functions. (See WAC 173-26-211(5)(a)(ii)(G)).
- New subdivision of property in a configuration that will require significant removal of vegetation or shoreline modification that adversely impacts ecological functions. (See WAC 173-26-211(5)(a)(ii)(G)).
- For single family residential development: limits on density and intensity to protect ecological functions, and should require a CUP. (See WAC 173-26-211(5)(a)(ii)(C)).
- For commercial forestry: this activity should require a CUP, along with an additional requirement to follow conditions of the State Forest Practices Act. (See WAC 173-26-211(5)(a)(ii)(D)).
- For agriculture: low intensity use allowed if subject to appropriate limits or conditions to assure that the use does not expand or practices don’t conflict with purpose of the designation. (See WAC 173-26-211(5)(a)(ii)(E)).
- Low intensity public uses such as scientific, historical, cultural, educational research and water-oriented recreational access should be allowed if ecological impacts are avoided. (See WAC 173-26-211(5)(a)(ii)(F)).

2.2 Rural conservancy. (See WAC 173-26-211(5)(b)).

- Designation Criteria: these are areas outside municipalities or UGAs with:
- low-intensity, resource-based uses,
- low-intensity residential uses,
- environmental limitations such as steep banks or floodplains,
- high recreational or cultural value, or
- low-intensity water-dependent uses. (See WAC 173-26-211(5)(b)(iii)).

In the absence of compelling reasons to do otherwise, rural conservancy designations must contain restrictions on use and development that would degrade or permanently deplete resources.

- Water-dependent and water-enjoyment recreation facilities are preferred uses.
- Low intensity, water-oriented commercial and industrial uses limited to areas where those uses have located in the past or at sites that possess conditions and services to support the development. (See WAC 173-26-211(5)(b)(ii)(A) and (B)).
- For SMPs that allow mining there are additional restrictions and directions in the Rural Conservancy district (see WAC 173-26-241(3)(h)).
- In the absence of a compelling reason to the contrary, Rural Conservancy management standards must include a 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. (See WAC 173-26-211(5)(b)(ii)(C)).
- Development standards for residential use in rural conservancy areas must preserve existing character of the shoreline. Density, lot coverage, vegetation conservation and other residential development provisions must ensure no-net loss of shoreline ecological functions. (See WAC 173-26-211 (b)(iii)(D)).
- Density or lot coverage will be limited to a maximum of ten percent total impervious surface area within the lot or parcel, or alternative standard that maintains the existing hydrologic character of the shoreline. (The designation may include provisions allowing greater lot coverage for lots legally created prior to the adoption of a master program prepared under these guidelines, if lot coverage is minimized and vegetation is conserved.) (See WAC 173-26-211(5)(b)(ii)(D)).
2.3 Aquatic.  (See WAC 173-26-211(5)(c)).

- Designation criteria: All areas waterward of the ordinary high-water mark (OHWM).  (See WAC 173-26-211(5)(c)(iii)).

- In areas with an aquatic designation new over-water structures should:
  - be allowed only for water-dependent uses, public access, or ecological restoration.  (See WAC 173-26-211(5)(c)(ii)(A)).
  - be limited to the minimum size necessary to support the structure's intended use.  (See WAC 173-26-211(5)(c)(ii)(B)).
  - encourage multiple use of over-water facilities.  (See WAC 173-26-211(5)(c)(ii)(C)).

- In the absence of compelling reasons to the contrary, the location and design of all developments and uses are required 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.  (See WAC 173-26-211(5)(c)(ii)(D)).
  - prevent water quality degradation and alteration of natural hydrographic conditions.  (See WAC 173-26-211(5)(c)(ii)(F)).

- In the absence of compelling reasons to the contrary, uses that adversely impact ecological functions of critical saltwater and freshwater habitats should be prohibited, (except where necessary for meeting other SMA objectives, and then, only when their impacts are mitigated), (See WAC 173-26-211(5)(c)(ii)(E)), thereby ensuring no-net loss of ecological functions and values.

2.4 High-intensity.  (See WAC 173-26-211(5)(d)).

- Designation criteria: Areas within incorporated municipalities, “UGAs,” and “rural areas of more intense development” (see RCW 36.70A.070) that currently support or are planned for high-intensity water-dependent uses.  (See WAC 173-26-211(5)(d)(iii)).

- In the absence of compelling reasons to do otherwise, developmental priority shall be given first to water-dependent uses, then to water-related and finally water-enjoyment uses.  Again, in the absence of compelling reasons to do otherwise, new non-water oriented uses should be prohibited except as part
of mixed use developments, or where they do not conflict with or limit opportunities for water oriented uses or where there is no direct access to the shoreline. (See WAC 173-26-211(5)(d)(ii)(A)).

- In the absence of compelling reasons to do otherwise, full development of existing urban areas is required before expansion of the high intensity designation is allowed. (See WAC 173-26-211(5)(d)(ii)(B)).

- Development regulations must ensure that new development will not cause the net loss of shoreline ecological functions. Where appropriate, new development must include environmental cleanup and restoration of the shoreline to comply with relevant state and federal laws. (See WAC 173-26-211(5)(d)(ii)(C)).

- Where feasible and in the absence of compelling reasons to do otherwise, visual and physical public access is required. In the absence of compelling reasons to do otherwise, protection and promotion of aesthetic goals should be achieved through sign control regulations, appropriate development siting, screening, architectural standards, and the maintenance of natural vegetative buffers. (See WAC 173-26-211(5)(d)(ii)(D) and (E)).

2.5 Urban conservancy. (See WAC 173-26-211(5)(e)).

- Designation criteria: Areas within incorporated municipalities, UGAs, and rural areas of more intense development that are not suitable for water-dependent uses and that are either suitable for water-related or water enjoyment uses, are flood plains, have potential for ecological restoration, retain ecological functions, or have potential for development that incorporates ecological restoration. (See WAC 173-26-211(5)(e)(iii)).

- Allowed uses are primarily those that preserve the natural character of the area, promote preservation of open space, floodplain or sensitive lands, or are appropriate for restoration. (See WAC 173-26-211(5)(e)(ii)(A)).

- Priority must be given to water-oriented uses over non-water oriented uses. For shoreline areas adjacent to commercially navigable waters, water-dependent uses given highest priority. (See WAC 173-26-211(5)(e)(ii)(D)).

- Standards for shoreline stabilization measures, vegetation conservation, water quality, and shoreline modifications that ensure new development does not result in a net loss of shoreline ecological functions or degrade other shoreline values. (See WAC 173-26-211(5)(e)(ii)(B)).

- Public access and recreation required where feasible and ecological impacts are mitigated. (See WAC 173-26-211(5)(e)(ii)(C)).
2.6 Shoreline residential. (See WAC 173-26-211(5)(f)).

- Designation criteria: Areas within incorporated municipalities, UGAs, “Limited areas of more intense development,” and “master planned resorts” (see RCW 36.70A.360) that are characterized by predominantly residential development or planned and platted for residential development. (See WAC 173-26-211(5)(f)(iii)).

- Standards for density or minimum frontage width, setbacks, buffers, shoreline stabilization, critical areas protection, and water quality protection must assure no-net loss of ecological function. (See WAC 173-26-211(5)(f)(ii)(A)).

- Multifamily and multi-lot residential and recreational developments are expected, in the absence of a compelling reason to do otherwise, to provide public access and joint use for community recreational facilities. (See WAC 173-26-211(5)(f)(ii) (B)).

- In the absence of a compelling reason to do otherwise, access, utilities, and public services are required to be available and adequate to serve existing needs and/or planned future development. (See WAC 173-26-211(5)(f)(ii)(C)).

- In the absence of a compelling reason to do otherwise, commercial development must be limited to water-oriented uses. (See WAC 173-26-211(5)(f)(ii)(D)).

3. General Policies and Regulations (See WAC 173-26-221).

- To be approved by the DOE, the County’s SMP is required to have a section laying forth regulations that apply to the entire shoreline or to areas that meet specified criteria regardless of the environment designation.

3.1 Archaeological and Historical Resources. (See WAC 173-26-221(1)).

- The SMP must contain regulations directing developers and property owners to stop work and notify the local government, state office of archaeology and historic preservation and affected Indian tribes if archaeological resources are uncovered during excavation. ( See WAC 173-26-221(1)(c)(i)).

- Permits issued in areas documented to contain archaeological resources require site inspection or evaluation by a professional archaeologist in coordination with affected Indian tribes. (See WAC 173-26-221(1)(c)(iii)).
3.2 Critical areas. (See WAC 173-26-221(2))

- The SMP “must provide for management of critical areas designated as such pursuant to RCW 36.70A.170 (1)(d).” The identified critical areas must be protected by policies and regulations that are consistent with the adopted CAO regulations.

- The SMP must contain policies and regulations for critical areas (designated under GMA) located within shorelines of the state that:
  - are consistent with SMP guidelines, and
  - provide a level of protection to critical areas within the shoreline area that is at least equal to that provided by the local government’s existing critical area regulations adopted pursuant to the GMA for comparable areas outside the shorelines. (See WAC 173-26-221(2)(a) and (c));
  - provide planning objectives for all of the critical areas in the shoreline for the protection and restoration of degraded ecological functions and ecosystem-wide processes while regulatory provisions protect existing ecological functions and ecosystem-wide processes; (See WAC 173-26-221(2)(b)(iv));
  - provide critical area provisions that promote compatible human uses and values, such as public access and aesthetics, insofar as they do not significantly adversely impact ecological functions, (See WAC 173-26-221(2)(b)(v)).

- Wetlands. (See WAC 173-26-221(2)(c)(i)).
  - The definition of wetlands must be consistent with WAC 173-22.
  - Provisions requiring the method for wetlands delineation must be consistent with WAC 173-22-035.
  - The regulations must address all uses and activities listed in WAC 173-26-221(2)(c)(i)(A) to achieve no-net loss of wetland area and functions including lost time when the wetland does not perform the function. (See WAC 173-26-221(2)(c)(i)(A) + (C)).
  - There must be a wetlands rating or categorization system based on rarity, irreplaceability, or sensitivity to disturbance of a wetland and the functions

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4 Also see RCW 36.70A.480 (D) (3) which states “Upon department of ecology approval of a shoreline master program or critical area segment of a shoreline master program, critical areas within shorelines of the state are protected under chapter 90.58 RCW and are not subject to the procedural and substantive requirements of this chapter...”
the wetland provides. Jurisdictions may use the Ecology Rating system or a regionally specific, scientifically based method. (See WAC 173-26-221(2)(c)(i)(B)).

- Buffers are required and buffers must be adequate to ensure wetland functions are protected and maintained in the long-term, taking into account ecological functions of the wetland, characteristics of the buffer, and potential impacts associated with adjacent land uses. (See WAC 173-26-221(2)(c)(i)(B)).

- Wetland mitigation requirements are consistent with WAC 173-26-201(2)(e) and which are based on the wetland rating. (See WAC 173-26-221(2)(c)(i)(E) and (F)).

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

- Compensatory mitigation requirements must include:
  - replacement ratios;
  - performance standards for evaluating success;
  - long-term monitoring and reporting procedures; and
  - long-term protection and management of compensatory mitigation sites. (See WAC 173-26-221(2)(c)(i)(F)).

- **Geologically Hazardous Areas.** (See WAC 173-26-221(2)(c)(ii)).

- The SMP must contain regulations that prohibit new development (or creation of new lots) that:
  - cause foreseeable risk from geological conditions during the life of the prospective development; (See WAC 173-26-221(2)(c)(ii)(B)),
  - could be expected to require structural shoreline stabilization over the life of the development. (Exceptions allowed where stabilization needed to protect allowed uses where no alternative locations are available and no-net loss of ecological functions will result.) (See WAC 173-26-221(2)(c)(ii)(C)).

- New stabilization structures for existing primary residential structures are allowed only where no alternatives (including relocation or reconstruction of existing structures), are feasible, and less expensive than the proposed stabilization measure, and then only if no-net loss of ecological functions will result. (See WAC 173-26-221(2)(c)(ii)(D)).
**Critical Saltwater Habitats.** These 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 [such as salmonids] have a primary association.' (See WAC 173-26-221(2)(c)(iii)).

The SMP must contain a prohibition on new docks, bulkheads, bridges, fill, floats, jetties, utility crossings and other human-made structures that intrude into or over critical saltwater habitats, except where:

- public need is clearly demonstrated;
- avoidance of impacts is not feasible or would result in unreasonable cost;
- the project includes appropriate mitigation; and
- the project is consistent with resource protection and species recovery.

Private, non-commercial docks for individual residential or community use will be allowed only if it is infeasible to avoid impacts by alternative alignment or location and the project results in no-net loss of ecological functions. (See WAC 173-26-221(2)(c)(iii)(C)).

Where an inventory of critical saltwater habitat has not been completed, all over water and near-shore developments in waters will require a habitat assessment of site and adjacent beach sections as condition of development. (See WAC 173-26-221(2)(c)(iii)(C)).

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

- Regulations must include requirements that ensure new development within wetlands, floodplains or hyporheic zone does not cause a net loss of ecological functions. (See WAC 173-26-221(2)(c)(iv)(C)(I) and WAC 173-26-221(2)(c)(iv)(B)(II)).
- The regulations must ensure that authorization of appropriate restoration projects is facilitated. (See WAC 173-26-221(2)(c)(iv)(C)(III)).
- Regulations must protect hydrologic connections between water bodies, water courses, and associated wetlands. (See WAC 173-26-221(2)(c)(iv)(C)(IV)).
Flood Hazard Reduction. (See WAC 173-26-221(3)).

- 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. (See WAC 173-26-221(3)(c)(ii) & (iii)).

- Removal of gravel for flood control will be 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. (See WAC 173-26-221(3)(c)(v)).

3.3 Public Access. (See WAC 173-26-221(4)).

- The SMP must include policies and regulations that protect and enhance both physical and visual access to the shorelines. (See WAC 173-26-221(4)(d)(i)).

- Public entities are required to incorporate public access measures as part of each development project, unless access is incompatible with safety, security, or environmental protection. (See WAC 173-26-221(4)(d)(ii)).

- Water enjoyment, water related and non-water-dependent uses and subdivisions of land into more than four parcels, should include standards for dedication and improvement of public access. (See WAC 173-26-221(4)(d)(iii)).

- The SMP is expected to contain maximum height limits, setbacks, and view corridors that minimize impacts to existing views from public property or substantial numbers of residences. (See WAC 173-26-221(4)(d)(iv) and RCW 90.58.320).

3.4 Vegetation Conservation (Clearing and Grading). (See WAC 173-26-221(5)).

- Vegetation standards must 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. (See WAC 173-26-221(5)(c)).

- Selective pruning of trees for safety and view protection is allowed and removal of noxious weeds is authorized. (See WAC 173-26-221(5)(c)).
3.5 Water Quality. (See WAC 173-26-221(6)).

- The SMP must contain provisions to protect against adverse impacts to water quality and storm water quantity and ensure mutual consistency between SMP and other regulations addressing water quality. (See WAC 173-26-221(6)).

3.6 Shoreline Modifications

- The adopted SMP will:
  - allow structural shoreline modifications only where 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 mitigation or enhancement;
  - limit shoreline modifications in number and extent;
  - allow only shoreline modifications that are appropriate to the specific type of shoreline and environmental conditions for which they are proposed;
  - give preference to those types of shoreline modifications that have a lesser impact on ecological functions. Policies promote "soft" over "hard" shoreline modification measures.
  - incorporate all feasible measures to protect ecological shoreline functions and ecosystem-wide processes as modifications occur;
  - require mitigation sequencing. (See WAC 173-26-231(2); WAC 173-26-231(3)(a)(ii) and (iii)).

3.7 Shoreline Stabilization. (See WAC 173-26-231(3)(a)).

- Definition: structural and nonstructural methods to address erosion impacts to property and dwellings, businesses, or structures caused by natural processes, such as current, flood, tides, wind, or wave action. (See WAC 173-26-231(3)(a)(i)).

- Definition of new stabilization measures includes the enlargement of existing structures. (See WAC 173-26-231(3)(a)(iii)(C), last bullet; WAC 173-26-231(3)(a)(iii)(B)(I), 5th bullet)).

- The SMP, in the absence of a compelling reason to do otherwise, must include standards setting forth circumstances under which shoreline alteration is permitted, and for the design and type of protective measures and devices. (See WAC 173-26-231(3)(a)(ii)).
New development (including newly created parcels) will be required to be designed and located to prevent the need for future shoreline stabilization, based upon geotechnical analysis.

New development on steep slopes and bluffs will be required to be set back to prevent need for future shoreline stabilization during life of the project, based upon geotechnical analysis.

New development that would require shoreline stabilization which causes significant impacts to adjacent or down-current properties and shoreline areas is prohibited. (See WAC 173-26-231(3)(a)(iii)(A)).

New structural stabilization measures are not allowed except when necessity is demonstrated. Specific requirements for how to demonstrate need should be established for:

- existing primary structures;
- new non-water-dependent development including Single Family Residences;
- water-dependent development; and
- ecological restoration/toxic clean-up remediation projects. (See WAC 173-26-231(3)(a)(iii)(B)).

Replacement of existing stabilization structures must be based on demonstrated need. Waterward encroachment of replacement structures is allowed only for residences occupied prior to January 1, 1992, or for soft shoreline stabilization measures that provide restoration of ecological functions. (See WAC 173-26-231(3)(a)(iii)(C)).

Geotechnical reports prepared to demonstrate need should include estimates of rate of erosion and urgency (damage within 3 years) and evaluate alternative solutions. (See WAC 173-26-231(3)(a)(iii)(D)).

Shoreline stabilization structures are limited to the minimum size necessary. (See WAC 173-26-231(3)(a)(iii)(E)).

Public access required as part of publicly financed shoreline erosion control measures. (See WAC 173-26-231(3)(a)(iii)(E)).

Impacts to sediment transport required to be avoided or minimized. (See WAC 173-26-231(3)(a)(iii)(E)).
3.8 Piers and Docks. (See WAC 173-26-231(3)(b)).

- The adopted SMP regulations for new piers and docks will be:
  - allowed only for water-dependent uses or public access and are restricted to the minimum size necessary to serve a proposed water-dependent use.
  - permitted only when specific need is demonstrated (except for docks accessory to single-family residences).

- Docks associated with single family residences are defined as water dependent uses provided they are designed and intended as a facility for access to watercraft. (See WAC 173-26-231(3)(b)).

- When permitted, new residential development of more than two dwellings is, in the absence of a compelling reason to do otherwise, required to provide joint use or community docks, rather than individual docks. (See WAC 173-26-231(3)(b)).

- The design and construction of all piers and docks is required to avoid, minimize and mitigate impacts to ecological processes and functions and be constructed of approved materials. (See WAC 173-26-231(3)(b)).

3.9 Fill. (See WAC 173-26-231(3)(c)).

- Definition of “fill” must be consistent with WAC 173-26-020(14).

- Location, design, and construction of all fills must protect ecological processes and functions, including channel migration. (See WAC 173-26-231(3)(c)).

- Fill waterward of the OHWM allowed only by shoreline conditional use permit, for the following:
  - water-dependent use;
  - public access;
  - cleanup and disposal of contaminated sediments as part of an interagency environmental clean-up plan;
  - disposal of dredged material in accordance with Department of Natural Resource Dredged Material Management Program;
- expansion or alteration of transportation facilities of statewide significance currently located on the shoreline (if alternatives to fill are shown not feasible); and

- mitigation action, environmental restoration, beach nourishment or enhancement project. (See WAC 173-26-231(3)(c)).

3.10 Breakwaters, Jetties, and Weirs. (See WAC 173-26-231(3)(d)).

- Structures waterward of the ordinary high-water mark are allowed only for water-dependent uses, public access, shoreline stabilization, or some other specific public purpose. (See WAC 173-26-231(3)(d)).

- A shoreline conditional use permit will be required for all structures except protection/restoration projects. (See WAC 173-26-231(3)(d)).

- Protection of all critical areas and appropriate mitigation will be required. (See WAC 173-26-231(3)(d)).

3.11 Dunes Management. (See WAC 173-26-231(3)(e)).

- Development setbacks from dunes will be required to prevent impacts to the natural, functional, ecological, and aesthetic qualities of the dunes. (See WAC 173-26-231(3)(e)).

- Dune modifications allowed only when consistent with state and federal flood protection standards and result in no-net loss of ecological processes and functions. (See WAC 173-26-231(3)(e)).

- 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. (See WAC 173-26-231(3)(e)).

3.12 Dredging and Dredge Material Disposal. (See WAC 173-26-231(3)(f)).

- Dredging and dredge material disposal must avoid or minimize significant ecological impacts. Impacts which cannot be avoided will, in the absence of a compelling reason to otherwise, be mitigated. (See WAC 173-26-231(3)(f)).

- New development siting and design should avoid the need for new and maintenance dredging. (See WAC 173-26-231(3)(f)).
- Dredging to establish, expand, relocate or reconfigure navigation channels should be allowed only where needed to accommodate existing navigational uses and then only when significant ecological impacts are minimized and when mitigation is provided. (See WAC 173-26-231(3)(f)).

- Maintenance dredging of established navigation channels and basins should be restricted to maintaining previously dredged and/or existing authorized location, depth, and width. (See WAC 173-26-231(3)(f)).

- Dredging for fill materials must be prohibited except for projects associated with MTCA or CERCLA habitat restoration, or any other significant restoration effort approved by a shoreline CUP. (See WAC 173-26-231(3)(f)).

- Uses of dredge material that benefits shoreline resources should be addressed in the SMP. If applicable, the uses of dredge material should be addressed through implementation of regional interagency dredge material management plans or watershed plan. (See WAC 173-26-231(3)(f)).

3.13 Shoreline Habitat and Natural Systems Enhancement Projects. (See WAC 173-26-231(3)(g)).

- The SMP will, in the absence of a compelling reason to do otherwise, contain provisions that foster habitat and natural system enhancement projects, provided the primary purpose is the restoration of the natural character and functions of the shoreline, and only when consistent with implementation of the restoration plan developed pursuant to WAC 173-26-201(2)(f).

3.14 Agriculture. (See WAC 173-26-241(3)(a)).

- Use of agriculture related terms will be consistent with the specific meanings provided in WAC 173-26-020. (See WAC 173-26-241(3)(a)(ii) and (iv)).

- The SMP will contain provisions that address new agricultural activities, conversion of agricultural lands to other uses, and other development not meeting the definition of agricultural activities.

- The SMP will contain provisions to assure that development in support of agricultural uses is:
  - consistent with the environment designation; and
  - located and designed to assure no-net loss of ecological functions and will not have a significant adverse impact on other shoreline resources and values. (See WAC 173-26-241(3)(a)(ii) & (v)).
A shoreline substantial development permit will be required for all agricultural development not specifically exempted by the provisions of RCW 90.58.030(3)(e)(iv).

Conversion of agricultural land to non-agricultural uses is allowed as long as the change is consistent with the environment designation and the regulations applicable to the proposed use will not result in a net loss of ecological functions. (See WAC 173-26-241(3)(a)(vi)).

3.15 Aquaculture. (See WAC 173-26-241(3)(b)).

The location and design requirements for aquaculture facilities, in the absence of a compelling reason to do otherwise, must avoid:

- loss of ecological functions;
- impacts to eelgrass and macroalgae;
- significant conflict with navigation and water-dependent uses;
- the spreading of disease;
- introduction of non-native species; and
- impacts to shoreline aesthetic qualities.

Impacts to functions must be mitigated. (See WAC 173-26-241(3)(b)).

3.16 Boating Facilities. (See WAC 173-26-241(3)(c)).

Definition: Boating facility standards do not apply to docks serving four or fewer single family residences. (See WAC 173-26-241(3)(c)).

Boating facilities should, in the absence of a compelling reason to do otherwise, be restricted to suitable locations. (See WAC 173-26-241(3)(c)(i)).

The SMP should include provisions to ensure that appropriate health, safety, and welfare requirements are met. (See WAC 173-26-241(3)(c)(ii)).

The SMP should contain provisions to avoid or mitigate aesthetic impacts of the facilities. (See WAC 173-26-241(3)(c)(iii)).

The SMP should contain provisions ensuring public access in new boating facilities. (See WAC 173-26-241(3)(c)(iv)).
The SMP should limit the impacts of live-aboard vessels. (See WAC 173-26-241(3)(c)(v)).

The SMP should contain provisions assuring no-net loss of ecological functions as a result of development of boating facilities while providing public recreational opportunities. (See WAC 173-26-241(3)(c)(vi)).

Navigation rights must be protected. (See WAC 173-26-241(3)(c)(vii)).

Extended moorage on waters of the state without a lease or permission should be restricted, and mitigation of impacts to navigation and access should be required. (See WAC 173-26-241(3)(c)(viii)).

3.17 Commercial Development. (See WAC 173-26-241(3)(d)).

Preference will be given first to water-dependent uses, then to water-oriented commercial uses. (See WAC 173-26-241(3)(d)).

Water-enjoyment and water-related commercial uses should, in the absence of a compelling reason to do otherwise, provide public access and ecological restoration where feasible and to avoid impacts to existing navigation, recreation, and public access. (See WAC 173-26-241(3)(d)).

New non-water-oriented commercial uses should be prohibited unless they are part of a mixed-use project, navigation is severely limited, or the use provides a significant public benefit with respect to SMA objectives. (See WAC 173-26-241(3)(d)).

Non-water-dependent commercial uses over water should be prohibited except in existing structures, and where necessary to support water-dependent uses. (See WAC 173-26-241(3)(d)).

3.18 Forest Practices. (See WAC 173-26-241(3)(e)).

Forest practices not covered by the Forest Practices Act, especially Class IV-General forest practices involving conversions to non-forest use must result in no-net loss of ecological functions and avoid impacts to navigation, recreation and public access. (See WAC 173-26-241(3)(e)).

The SMP must limit the removal of trees on shorelines of statewide significance (See RCW 90.58.150). Exceptions to this standard require a shoreline conditional use permit. (See WAC 173-26-241(3)(e)).
3.19 Industry. (See WAC 173-26-241(3)(f)).

- Preference given first to water-dependent uses, then to water-oriented industrial uses. (See WAC 173-26-241(3)(f)).

- Location, design, and construction of industrial uses and redevelopment will be required to assure no-net loss of ecological functions. (See WAC 173-26-241(3)(f)).

- Industrial uses and redevelopment should be encouraged to locate where environmental cleanup and restoration can be accomplished. (See WAC 173-26-241(3)(f)).

- Public access should be, in the absence of a compelling reason to do otherwise, required unless such a requirement would interfere with operations or create hazards to life or property. (See WAC 173-26-241(3)(f)).

- New non-water-oriented industrial uses should, in the absence of a compelling reason to do otherwise, be prohibited unless they are part of a mixed-use project, navigation is severely limited, and the use provides a significant public benefit with respect to other SMA objectives. (See WAC 173-26-241(3)(f)).

3.20 In-Stream Structures. (See WAC 173-26-241(3)(g)).

- Definition: structure is waterward of the ordinary high water mark and either causes or has the potential to cause water impoundment or the diversion, obstruction, or modification of water flow. (See WAC 173-26-241(3)(g)).

- In-stream structures must protect and preserve ecosystem-wide processes, ecological functions, and cultural resources, including, fish and fish passage, wildlife and water resources, shoreline critical areas, hydrogeological processes, and natural scenic vistas. (See WAC 173-26-241(3)(g)).

3.21 Mining. (See WAC 173-26-241(3)(h)).

- Policies and regulations for new mining projects shall:
  
  - require design and operation to avoid and mitigate for adverse impacts during the course of mining and reclamation;
  
  - achieve no-net loss of ecological functions based on required final reclamation;
  
  - give preference to proposals that create, restore or enhance habitat for priority species;
- are coordinated with state Surface Mining Reclamation Act requirements;
- assure subsequent use of reclaimed sites is consistent with environment designation and SMP standards. (See WAC 173-26-241(3)(h)(ii)(A) – (C)).

- Mining waterward of OHWM is prohibited unless:
  - removal of specified quantities of materials in specified locations will not adversely impact natural gravel transport;
  - the mining will not significantly impact priority species and the ecological functions upon which they depend; and
  - these determinations are integrated with relevant SEPA requirements. (See WAC 173-26-241(3)(h)(ii)(D)).

- Renewal, extension, or reauthorization of in-stream and gravel bar mining activities require review for compliance with these new guidelines. (See WAC 173-26-241(3)(h)(ii)(D)(IV)).

3.22 Recreational Development. (See WAC 173-26-241(3)(i)).

- The definition includes commercial and public facilities designed and used to provide recreational opportunities to the public.

- The SMP should give priority to recreational shoreline development that is related to access to, enjoyment and use of the water and shorelines of the state.

- Provisions for public recreational development must ensure the facilities are located, designed and operated in manner consistent with the purpose of environment designation in which they are located and ensure that no-net loss of shoreline ecological functions or ecosystem wide processes result.

3.23 Residential Development

- Definition includes single-family residences, multifamily development, and the creation of new residential lots through land division. (See WAC 173-26-241(3)(j)).

- Single-family residences identified as a priority use only when developed in a manner consistent with control of pollution and prevention of damage to the natural environment. (See WAC 173-26-241(3)(j)).
The SMP must include regulations to ensure No-net loss of ecological functions. To do so the SMP is likely to include specific standards and regulations for:

- the setback of structures sufficient to avoid the need for future stabilization;
- vegetation conservation;
- buffers;
- density;
- shoreline stabilization measures, and;
- on-site sewage disposal. (See WAC 173-26-241(3)(j)).

New over-water residences and floating homes will be prohibited. The plan must include appropriate accommodation for existing floating or over-water homes. (See WAC 173-26-241(3)(j)).

New multiunit residential development (including subdivision of land for more than four parcels) should provide community and/or public access in conformance to local public access plans. (See WAC 173-26-241(3)(j)).

New (subdivided) lots are required to be designed, configured and developed to:

- prevent the loss of ecological functions at full build-out;
- prevent the need for new shoreline stabilization or flood hazard reduction measures; and

- be consistent with applicable SMP environment designations and standards. (See WAC 173-26-241(3)(j)).

3.24 Transportation Facilities. (See WAC 173-26-241(3)(k)).

Proposed transportation and parking facilities are required to plan, locate, and design where routes will have the least possible adverse effect on unique or fragile shoreline features and will not result in a net loss of shoreline ecological functions or adversely impact existing or planned water dependent uses. (See WAC 173-26-241(3)(k)).

Circulation system plans should include systems for pedestrian, bicycle, and public transportation where appropriate. (See WAC 173-26-241(3)(k)).
Parking shall only be allowed as necessary to support an authorized shoreline use and must be designed to minimize environmental and visual impacts of parking facilities. (See WAC 173-26-241(3)(k)).

3.25 Utilities. (See WAC 173-26-241(3)(l)).

- The regulations must ensure that the design, location and maintenance of utilities assure no-net loss of ecological functions. (See WAC 173-26-241(3)(l)).

- Utilities, in the absence of a compelling reason to do otherwise, are to be located in existing rights-of-ways whenever possible. (See WAC 173-26-241(3)(l)).

- Utility production and processing facilities and transmission facilities are required to be located outside of SMA jurisdiction, unless no other feasible option exists. (See WAC 173-26-241(3)(l)).

4. SMP Administrative Provisions

- The following statement must be included: “All proposed uses and development occurring within shoreline jurisdiction must conform to chapter 90.58 RCW, the Shoreline Management Act and this master program” whether or not a permit is required. (See WAC 173-26-191(2)(a)(iii)(A)).

- Administrative provisions must ensure permit procedures and enforcement are conducted in a manner consistent with relevant constitutional limitations on regulation of private property. (See WAC 173-26-186(5) and WAC 173-26-191(2)(a)(iii)(A)).

- Identification of specific uses and development that require a shoreline conditional use permit (CUP). Standards for reviewing CUPs and variances must conform to WAC 173-27. WAC 173-26-191(2)(a)(iii)(B) and WAC 173-26-241(2)(b)).

- Administrative, enforcement, and permit review procedures must conform to the SMA and state rules (see RCW 90.58.140, 143, 210 and 220 and WAC 173-27). (See WAC 173-26-191(2)(a)(iii)(C) and WAC 173-26-201(3)(d)(vi)).

- Provisions must include mechanisms for tracking, and periodically evaluating the cumulative effects of all project review actions in shoreline areas. (See WAC 173-26-191(2)(a)(iii)(D)).

- SMP definitions must be consistent with all definitions in WAC 173-26-020, and other relevant WACs.