DEPARTMENT OF
ECOLOGY
State of Washington

Concise Explanatory Statement

Chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC

Shoreline Management Rules

Summary of rulemaking and response to comments

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Shoreline Management Rules

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Introduction

The purpose of a Concise Explanatory Statement is to:

1. Meet the Administrative Procedure Act (APA) requirements for agencies to prepare a Concise Explanatory Statement (RCW 34.05.325).
2. Provide reasons for adopting the rule.
3. Describe any differences between the proposed rule and the adopted rule.
4. Provide Ecology's response to public comments.

This Concise Explanatory Statement provides information on The Washington State Department of Ecology's (Ecology) rule adoption for:

Title:	Shoreline Management rules
WAC Chapter(s):	Chapters 173-18, 173-20, 173-22, 173-26, and 173-27 WAC
Adopted date:	August 7, 2017.
Effective date:	September 7, 2017

To see more information related to this rulemaking or other Ecology rulemakings please visit our web site: http://www.ecy.wa.gov/laws-rules/index.html

Reasons for Adopting the Rule

Amendments to rules related to implementation of the Shoreline Management Act (SMA) are necessary to:

1. Clarify the process to comply with the "**periodic review**" requirement per RCW 90.58.080. The first round of Shoreline Master Program (SMP) reviews is due June 2019. Defining procedures for local governments to conduct reviews will ensure a thorough public process and reduce the likelihood of appeals on procedural grounds.

2. Provide a new optional "**joint review**" process for approving amendments to SMPs (not applicable to comprehensive updates). The optional process will speed improvements to SMPs by consolidating the local and state public comment periods.

3. Keep Ecology rules current with recent statutory amendments, and other administrative updates. These "**housekeeping**" measures ensure the rule is a relevant and dependable source of information.

Amended rules are:

- Chapter 173-18 WAC - SMA–Streams and Rivers Constituting Shorelines of the State
- Chapter 173-20 WAC - SMA–Lakes Constituting Shorelines of the State
- Chapter 173-22 WAC - Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State
- Chapter 173-26 WAC - State Master Program Approval/Amendment Procedures and Master Program Guidelines
- Chapter 173-27 WAC - Shoreline Management Permit and Enforcement Procedures

Differences Between the Proposed Rule and Adopted Rule

RCW 34.05.325(6)(a)(ii) requires Ecology to describe the differences between the text of the proposed rule as published in the *Washington State Register* and the text of the rule as adopted, stating the reasons for the differences. There are some differences between the proposed rule filed on February 28, 2017 and the adopted rule filed on August 7, 2017. Ecology made the changes below in response to comments we received; and to ensure clarity and consistency with the intent of the authorizing statute (RCW 90.58).

- WAC 173-26-090 (1) – In response to comments, deleted section (b);
- WAC 173-26-090 (2)(d)(ii) – In response to comments, clarified the description of the scope of periodic review;

- WAC 173-26-090 (2)(d)(iii) – In response to comments, clarified the description of the scope of periodic review;
- WAC 173-26-090 (3)(b)(iii) – In response to comments, clarified the distinction between the scope of the comprehensive update and the scope of the periodic review;
- WAC 173-26-104 (1)(a) – Minor correction. Deleted the reference to providing checklists for "comprehensive updates" because the rule does not allow the optional joint review process for those major updates;
- WAC 173-26-104 (3)(a)(iii) – Minor grammatical correction. Added the missing preposition "with";
- WAC 173-26-130 (1) – In response to a comment, added back a reference to RCW 90.58.190. The citation had been inadvertently omitted in the proposed version;
- WAC 173-27-030 (18) – In response to comments, Ecology will not adopt any change to this section;
- WAC 173-27-060 (1) – In response to comments, Ecology will not adopt any change to this section

All changes and Ecology's reasons for making them are also found in the comments and response in the table below. The changes are presented in the section responding to the comment, with an explanation for the changes. The table shows all the text amended and identifies additions or deletions using track changes.

List of Commenters and Response to Comments

List of commenters

The following individuals or organizations submitted comments.

#	*Commenter Name*	#	*Commenter Name*
1	Mauri Shuler	22	Carol Brown
2	Bill Wehrenberg	23	Mike Nordin, Pacific and Grays Harbor Conservation Districts
3	Chris Carrs	24	Columbia River Crab Fisherman's Association
4	D. Ryan Hixenbaugh	25	Julie Nelson, Puget Sound Energy
5	Patsy Kyllo	26	Christian Geitz, City of Kirkland
6	Mauri Shuler	27	Confederated Tribes and Bands of the Yakama Nation
7	Stephen Ringo	28	Michelle Simon
8	Aryln Kerr	29	Innes Weir, Cooke Aquaculture
9	Kevin Bagley	30	Amalia Walton, Miller Nash|Graham & Dunn LLC
10	John Chaney	31	Megan White, WSDOT
11	Sarah Haggard	32	Bruce Jensen
12	Wayne Morris	33	Tony Warfield, Port of Tacoma
13	John Chaney		Jesse DeNike, Plauche & Carr LLP
14	Willie Swanson	35	Audubon Washington, Citizens for a Healthy Bay, Friends of Grays Harbor, Friends of San Juan's, FutureWise, League of Women Voters of Washington, Surfrider Foundation, Tahoma Audubon Society, Washington Environmental Council
15	Bob Coyne	36	Karen Walter, Muckleshoot Tribe
16	Pacific County Prosecuting Attorney, Mark McClain	37	Erin George, City of Kent
17	Dale Beasley	38	Susan Neff
18	Tahoma Audubon Society	39	John Chaney
19	John Lester	40	John Chaney –Transcribed hearing testimony
20	Russell Patterson	41	Ann Aagaard – Transcribed hearing testimony
21	Suzy Whitehead	42	Carol Ehlers

How comments are organized

The table below organizes comments in the order of the citations to WAC that is being commented on. The "number" column is the organization listed in the table above. Most comments are presented verbatim, with a few exceptions:

- Where a comment included extensive recitation of facts we provide a summary to save space. The complete letters are on file.
- The majority of comments were on two subjects that were withdrawn from the rule entirely in response to comments. These comments are summarized, because the final rule removed the cause of the objections.

Comments and responses

	WAC Section	#	Comment	Ecology Response
1.	WAC 173-26-020(17) & (18)	2-6a, 8a, 9a, 11-15a, 19-22a, 28a, 32a	Support the definition of floating homes and floating on water residences.	As commenters noted, the provisions reflect statutory amendments adopted in 2011 and 2014.
2.	WAC 173-26-020(18)	38a	I support the proposed revision to WAC 173-26-020(18), but due to the slippery nature off this beast and those attempting to circumvent the intent… make it clear that these controversial structures do not qualify as vessels. I would suggest adding [the following] (or something similar): (c) The ability to float, the capability of being towed or registration as a vessel, do not qualify a "Floating on-water residence" as a vessel for the purposes of (whatever is appropriate here).	Ecology adopted these provisions as "housekeeping" amendments to reflect amended statutory provisions, with the stated intent to add no clarifications. Ecology would need to consult with local governments and interested parties extensively if we were to propose expanding the statutory definitions.
3.	WAC 173-26-090(2)(d)(ii) and (iii)	35a	The SMA requires periodic SMP updates to consider all applicable laws and guidelines, including the SMA and the Shoreline Master Program (SMP) Guidelines, and all available science. We oppose the revisions to WAC 173-26-090(2)(d)(ii) and (iii) which only require SMP updates to comply with SMA provisions and SMP Guidelines that have been added or changed since the last SMP update. WAC 173-26-090 currently requires the periodic reviews of SMPs to determine if the SMP complies with the SMA and the SMP Guidelines, not just newly added or amended provisions. WAC 173-26-090(2)(d)(ii) and (iii) weaken the existing SMP Guidelines and are inconsistent with the SMA because they do not require review of SMPs to	The comment requests deleting WAC 173-26-090(2)(d)(ii) and (iii). Ecology believes these sections are consistent with statutory intent, but could be simplified and clarified as described below. **WAC 173-26-090(2)(d)(ii**) is derived from the Department of Commerce rule which addresses the parallel statutory obligation for the GMA periodic reviews [WAC 365-196-310(1)(e)]. Just like under GMA as interpreted by the State Supreme Court, the "applicable" laws and guidelines to review refers to laws and rules or those that were not in effect during the previous approval. To interpret this provision otherwise would make the statutory periodic review indistinguishable from the comprehensive update. However, local governments may also incorporate amendments to reflect changed circumstances, new

	WAC Section	#	Comment	Ecology Response
			determine if the SMPs are achieving the no net loss requirement and the other requirements of the SMA and SMP Guidelines. It is important to recognize that these updates only occur every eight years, so conducting this review is not a significant burden but is necessary to assure the recovery of Puget Sound and to protect the ocean and rivers, streams, and lakes. While we strongly support Ecology's efforts to keep the Shoreline Master Program Guidelines up-to-date and to address the emerging issues in shoreline management, the amendments fail to do that. To comply with the SMA, Ecology should keep existing WAC 173-26-090 rather than the proposed amendments to that section. RCW 90.58.080(4)(a) provides in full that: (4)(a) Following the updates required by subsection (2) of this section, local governments shall conduct a review of their master programs at least once every eight years as required by (b) of this subsection. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is: (i) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and (ii) 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.	information, or improved data as part of the periodic review. As described in WAC 173-26-090(1) and WAC 173-26-090(3)(b), these changes may be made at any time, but can also be incorporated into periodic reviews. The final rule adds that clarification as follows: (ii) The review process provides the method for bringing shoreline master programs into compliance with the requirements of the act that have been added or changed since the last review and for responding to changes in guidelines adopted by the department, together with a review for consistency with amended comprehensive plans and regulations. Local governments should also incorporate amendments to reflect changed circumstances, new information, or improved data. The review ensures that shoreline master programs do not fall out of compliance over time through inaction. **WAC 173-26-090(2)(d)(iii)** is intended to draw a clear distinction between the one-time comprehensive update and the minimum statutory obligation of the periodic review. All interested parties will benefit from a clear statement of expectations about the minimum scope of review. The final rule includes the following revisions: (iii) The ~~minimum scope of~~ periodic review is ~~narrow compared to~~ distinct from the comprehensive updates required by RCW 90.58.080(2). The presumption in the

	WAC Section	#	Comment	Ecology Response
			Unfortunately, the proposed rules repeal this provision and propose to adopt new rules some of which are inconsistent with RCW 90.58.080(4)(a) and other provisions of the SMA. We do appreciate that the proposed amendments include these requirements in proposed WAC 173-26-090(2)(d)(i). Unfortunately, proposed WAC 173-26-090(2)(d)(ii) and (iii) are inconsistent with RCW 90.58.080(4)(a). WAC 173-26-090(2)(d)(ii) only requires compliance with SMA provisions and SMP guidelines that have been added or changed since the last update. That is very different than what RCW 90.58.080(4)(a)(i) requires which is compliance with all applicable laws and guidelines. This is important because SMPs can become noncompliant due to environmental changes or changes in our scientific understanding of the shorelines. As will be documented below, our shorelines are currently experiencing major changes due to sea level rise. Stream and river runoff patterns are changing due to climate change. Ocean acidification is adversely impacting the ocean, Grays Harbor, Willapa Bay, the Columbia estuary, and potentially Puget Sound. Other changes are likely to manifest themselves. If an SMP remains frozen in the mid-2010s it will soon become inconsistent with the SMA and the SMP Guidelines and, perhaps more importantly, reality. WAC 173-26-090(2)(d)(iii) invents presumptions that have no basis in either the SMA or the SMP Guidelines. The SMA is	comprehensive update process was that all master programs needed to be revised to comply with the full suite of Ecology guidelines. ~~The comprehensive updates were based on an inventory and analysis of shoreline characteristics and a long term assessment of shoreline protection. Everything in existing master programs was subject to review.~~ By contrast, ~~the presumption during the periodic reviews is that each master program was affirmatively approved in its entirety for consistency with the act and implementing rules that were in effect at the time of the department's review. T~~the periodic review addresses changes in requirements of the act and guidelines requirements since the comprehensive update or the last periodic review, and changes for consistency with revised comprehensive plans and regulations, together with any changes deemed necessary to reflect changed circumstances, new information or improved data. There is no minimum requirement to ~~redo~~ comprehensively revise shoreline inventory and characterization reports or restoration plans. The legislatively-defined minimum scope of the periodic review ensures SMPs cannot remain frozen in time after the comprehensive update. Each SMP will be reviewed for consistency with new laws and rules every eight years. The Legislature often amends the SMA, and Ecology

	WAC Section	#	Comment	Ecology Response
			clear; one of the purposes of the periodic reviews required every eight years is to "assure that the master program complies with applicable law and guidelines in effect at the time of the review …" [RCW 90.58.080(4)(a)(ii).] The review is not limited to changes in the SMA or the SMP Guidelines, nor can compliance with the SMA or the SMP Guidelines be "presumed." [RCW 90.58.080(4)(a).] This is particularly the case for SMPs that are trying somewhat experimental approaches such as substituting setbacks and vegetation enhancement requirements for buffers along marine or freshwater shorelines. These approaches need periodic reviews to ensure they are working to achieve no net loss or to adjust them if they are not working. Instead of presuming compliance with the SMA, counties and cities must review their SMPs to determine if they are compliance with the SMA and the SMP Guidelines including achieving the no net loss requirement. We recommend that Ecology not adopt proposed WAC 173-26-090(2)(d)(ii) and (iii) as they violate the SMA.	may amend regulations for consistency with those changes, or to address technical or procedural issues that result from review of SMPs [RCW 90.58.060(3)]. Note that as directed under WAC 173-26-171(3)(d), Ecology will compile information on the efficiency and effectiveness of master programs, and may provide additional direction through future rule amendments based on that information. Besides catching up with legislative or rule amendments, the other minimum requirement is to review the SMP for consistency with changes to comprehensive plans and development regulations. This review will trigger amendments to reflect new information to the extent that information has been integrated into comprehensive plans and regulations. These changes may often be significant: • All local governments "fully planning" under the GMA will review their GMA programs to ensure they recognize changes in GMA laws and rules, as well as changes in land use and population. • Every local government, including those "partially planning" under GMA, will review their critical areas ordinances. The minimum scope of the SMP periodic reviews will therefore include review for consistency with any resulting changes to GMA plans and regulations, including changes to critical areas ordinances based on best available science. All comprehensively updated SMPs regulate critical areas. In most SMPs this is accomplished either by adopting a CAO by reference or

	WAC Section	#	Comment	Ecology Response
				incorporating relevant provisions into the SMP. Please note that many local governments have expressed an interest in keeping critical area and shoreline programs consistent, preferably in real time. Ecology has already been approving SMP amendments well prior to the periodic review deadline to reflect critical area improvements adopted during the current GMA review cycle [under RCW 36.70A.130(5)]. Ecology expects the new "joint review" process under the new WAC 173-26-104 will encourage concurrent GMA/SMA updates, which will reduce barriers to processing unique amendments outside of required review cycles, thus incentivizing interim improvements to SMPs. Ecology and local governments share the interest expressed in this comment that SMPs remain current and relevant. Subsections (2)(d)(ii) and (iii) clarify a minimum scope of review but do not reduce the importance of the periodic review or suggest that SMPs remain static documents.
4.	WAC 173-26-090(2)(d)(ii) and (iii)	37a	The subheading of this section is "required minimum scope of review," but items (ii) and (iii) do not list any requirements. Rather they appear to be arguing the reasoning for the requirements. We suggest revising (ii) and (iii) to only include "shall" statements or deleting them if no additional requirements apply beyond (i)(a) and (b).	Subsections (2)(d)(ii) and (iii) are derived from the companion GMA "periodic update" rule at WAC 365-196-610(1)(e). The intent is to distinguish periodic review requirements from the comprehensive update. Ecology has revised these sections as described above.
5.	WAC 173-26-090(3)(b)	18a, 35b	Ecology must modify proposed WAC 173-26-090(3)(b) to comply with RCW 90.58.080(4)(a) and the other applicable provision of the SMA.	With respect to RCW 90.58.100, the obligation to use scientific information is necessarily proportional to the scope of the amendment. In the case of statutorily-defined comprehensive

	WAC Section	#	Comment	Ecology Response
			RCW 90.58.100(1)(e) provides that "[i]n preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible … "[u]tilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data …" RCW 90.58.020 identifies the state interest in the effective management of all shorelines of the state. Therefore, it is not accurate, as proposed WAC 173-26- 090(3)(b) does, to refer to the examination of whether new data shows a need for amendments as "local circumstances." Because RCW 90.58.100(1)(e) requires local governments to use all available information in preparing amendments, local governments do not have the option of not using available information. RCW 90.58.080(4)(a) also provides that "[f]ollowing the review required by this subsection (4), local governments shall, if necessary, revise their master programs." So if an SMP is found to be inconsistent with the SMA, the SMP Guidelines, or the local government's comprehensive plan or development regulations the local government shall revise the SMP. The use of "shall" creates a mandatory duty. *[Goldmark v. McKenna, 172 Wn.2d 568, 575, 259 P.3d 1095, 1099 (2011) "'shall' when used in a statute, is presumptively imperative and creates a mandatory duty unless a contrary legislative intent is shown."]* This is not consistent with saying, as proposed WAC 173-26-	updates, Ecology translated this statutory direction into a detailed requirement for a complete inventory and characterization, and a forward looking cumulative impact analysis to determine if updated SMPs will achieve no net loss as the program is implemented. The comprehensive update was accompanied by a statutory direction to provide reasonable and adequate funding. However, the legislature only defined one comprehensive update [RCW 90.58.080(2)]. It is important to clarify how the periodic "review" is different from the one-time comprehensive "redo." The changes suggested to (3)(b)(i) would blur the distinction between the comprehensive update and the legislative mandate to "review and revise, if necessary." As described above, this clarification is consistent with Washington Department of Commerce rules that are based on parallel statutory direction in the GMA. Similarly, the proposed changes to (3)(b)(ii) would suggest that each local government must review its entire comprehensive plan and development regulations, even those elements that have not changed. This too seems beyond the statutory minimum obligation. The minimum obligation is to address revisions to your comprehensive plan and regulations to ensure the SMP stays aligned as needed over time. However, Ecology agrees subsection (3)(b)(iii) should be clarified. The title and some of the language seemed to frame the considerations about new information and data solely in light of "local circumstances." The intent was not to narrow inquiries about new information and data. The decision to

	WAC Section	#	Comment	Ecology Response
			090(3)(b), does that "[t]he decision as to whether a changed local circumstance warrants a master program amendment rests with the local government." If the existing data shows there is a material inconsistency, the local government is required to revise the SMP. We recommend the following revisions to proposed WAC 173-26-090(3)(b) with our additions underlined and our deletions struck through: (b) Review and analysis to determine need for revisions. (i) Review ~~amendments to~~ the act and shoreline master program guidelines. Local governments must review ~~amendments to~~ chapter 90.58 RCW and department guidelines ~~that have occurred since the master program was last amended,~~ and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule requirements ~~amendments~~ to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable provisions ~~changes to~~ of the act and master program guidelines and available data on the effectiveness of shoreline master programs. (ii) Review relevant comprehensive plans and regulations. Local governments must review ~~changes to~~ the comprehensive plan and	incorporate new information will be made by the local government but that decision will be shaped by public and agency comments, and we do not intend to convey that local governments make those decisions without that context. We also strengthen the link to WAC 173-26-090(1). While such improvements can be made at any time, we agree it would be helpful to emphasize the periodic review is a good time to conduct that review. Ecology will adopt the following amendments: (iii) ~~Optional~~ Additional review and analysis ~~of changed local circumstances~~ Local governments ~~may~~ should consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information, or improved data as described under subsection (1) of this section. Local governments should consider whether the significance of the changed circumstances, new information or improved data warrants amendments. ~~The decision as to whether a changed local circumstance warrants a master program amendment rests with the local government. It is not necessary to update a comprehensive inventory and characterization to make that determination.~~ The comment includes a good suggestion that information on effectiveness of the SMP could be incorporated into local periodic reviews. Local governments are required to monitor actions taken to

	WAC Section	#	Comment	Ecology Response
			development regulations to determine if the shoreline master program policies and regulations remain consistent with them. WAC 173-26-191(1)(e) and 173-26-211(3) provide guidance on determining internal consistency. 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. Local governments should document the consistency analysis to support proposed changes. (iii) ~~Optional review~~Review and analysis of changed ~~local~~ circumstances and shoreline master program effectiveness. Local governments must ~~may~~ consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information, ~~or~~ improved data ~~as described under subsection (1) of this section~~ or data on the effectiveness of the shoreline master program in achieving the policy and requirements of the Act and the shoreline master program guidelines. Local governments shall ~~should~~ consider whether ~~the significance of~~ the changed circumstances, information, or data shows the master program no longer complies with the SMA and SMP	implement their SMPs [WAC 173-26-201(2)(b)], and Ecology is directed to compile information from local governments on efficiency and effectiveness of SMP provisions [WAC 173-26-171(3)]. While Ecology may use such information in future rule amendments, Ecology could also provide guidance on efficiency and effectiveness that local governments may find useful to incorporate during their periodic reviews. We consider that kind of information under the intentionally broad category of "new information or improved data."

	WAC Section	#	Comment	Ecology Response
			Guidelines and requires ~~warrants~~ amendments. ~~The decision as to whether a changed local circumstance warrants a master program amendment rests with the local government.~~ It may ~~is~~ not be necessary to update a comprehensive inventory and characterization to make that determination as long as the inventory and characterization is not out of date and includes the currently available scientific information and data.	
6.	WAC 172-26-090(3)	36	With respect to the amendment and approval procedures, there should be requirements for local governments conducting their 8-year periodic review to report on the progress they are making on their restoration plans. Local governments planning under the SMA should also be required to document any changes in cumulative impacts, particularly from additional and/or larger piers and docks and bulkhead projects.	Restoration plans identify a broad range of opportunities for voluntary actions. It would be beyond the scope of Ecology authority to require regular reporting on whether voluntary actions identified in restoration plans are being conducted. There may be significant variation in implementing restoration opportunities identified in these plans among local governments based on conditions that are outside local control. For example, restorations plans identified many possible restoration opportunities with potential grant sources, but grants may not have been available during a given 8-year period. The guidelines required local governments during the comprehensive update to conduct a forward-looking cumulative impact analysis that determined if the regulations were followed, SMP requirements including no net loss would be achieved. The key task to ensure cumulative impacts are not occurring is to build an effective feedback loop for implementation of these regulations. Ecology will be partnering with local governments and other resources agencies to help

	WAC Section	#	Comment	Ecology Response
				address the larger region-wide questions around cumulative impacts, including impacts from piers, docks and bulkheads.
7.	WAC 173-26-090(3)(a)(ii)	37c	The public participation requirements for periodic reviews should be less extensive than for comprehensive reviews. While disseminating a "public participation program" is required by RCW 36.70A.140 for Comprehensive Plan amendments, it is quite possible that periodic SMP reviews will be minor enough in nature to not necessitate a Comp Plan amendment. Per RCW 36.70A.480(1), only the goals and policies of SMPs are required to be an element of the City's Comprehensive Plan, and the rest of the SMP is considered part of the city's development regulations. Accordingly, if an SMP periodic review is proposed by a city that does not involve changes to the SMP goals or policies, but only the regulations, no Comp Plan amendment will be required and thus a public participation program should not be required.	It is true that some amendments may only result in changes to development regulations and not policies. In some cases, the review may reveal no changes are needed to either policies or regulations. However, the full scope of revisions may not be known at the beginning of the process. The public participation plan is intended to inform all interested parties of the review. The plan need not be extensive and elaborate, but it should identify how the public will know the review is occurring and how they can be involved. This will help avoid the problems some local governments had with the first periodic updates of GMA plans and regulations. Creating a plan will help ensure consistency with statutory direction in RCW 90.58.130 to "not only invite but actively encourage participation by all persons and private groups and entities showing an interest in shoreline management programs."
8.	WAC 173-26-090(3)(b)(ii)	37d	Recommend replacing "should" with "shall" in the last sentence, which reads "Local governments should document the consistency analysis to support proposed changes."	Ecology's existing rule recognizes that "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 [WAC 173-26-191(1)(e)." While there is rationale for using "shall," it seems appropriate to retain the flexibility that is found in the definition of "should" under Ecology WAC 173-26(35).
9.	WAC 173-26-090(3)(b)	40b	At what point will Ecology be identifying things that itself has identified as issues since the adopt on the local SMP so that we don't end up finding out that you as a	Ecology will use the checklist as described under WAC 173-26-090(3)(b)(i) to identify all the state laws and rules that must be amended at a minimum, consistent

	WAC Section	#	Comment	Ecology Response
			state agency with lots of interest in these things and lots of participation with our local governments and what you think are the issues are that ought to be dealt with by the local governments periodic review. So I guess at some point I would like see that on your chart. When Ecology will do that sharing with local governments and local citizens within the affected area.	with the statutory directive. Ecology also provides guidance on emerging issues, as described in WAC 173-26-090(1).
10	WAC 173-26-090(3)(b)	41a	The first comment I have is to the discretion given to local government as to whether to update their periodic updates. I totally understand why you don't want to update the comprehensive inventory and characterization. That was an enormous amount of work. I have found it to be very valuable information. We recently used this information in some of our GMA public hearings and it was very valuable and I fully support that. But I do not support this local government determination as to whether there are changed circumstances. Giving all this discretion to local government seems to make the term no net loss basically moot. And that no net loss was basically a key concept in the guideline negotiations that was the key document. The guidelines says that they are designed to ensure at a minimum that not net loss of ecological functions necessary to sustain shoreline natural resources and to plan restoration of ecological functions when they have been impaired. So when you give total discretion to local governments after 8 years or in many cases over 8 years to say if there have been any changed circumstances. I find	As described above Ecology has amended WAC 173-26-090(3)(b) to clarify that local governments should consider amendments to address new information, data and changed local circumstances. Developing new SMP guidelines and then comprehensively updating every SMP across the state has taken more than two decades and countless hours of effort by local governments, state agencies, consultants, interest groups and citizens. As the comment notes, the standards in SMPs are designed to ensure no net loss of ecological functions necessary to sustain shoreline resources. All that work was only the beginning – determining whether the standard is being achieved requires following through on permit implementation. The SMA establishes a cooperative program between local governments and the state (RCW 90.58.050). Local governments have primary responsibility under the Act to develop and implement the master programs, and Ecology is tasked with providing technical assistance and insuring compliance. This oversight and technical assistance role means local governments are never entirely on their own in determining whether "no net loss" is being achieved during permit

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			that this is really not adequate to protect this key concept of "no net loss." There needs to be some kind of stronger language included here that will enable Ecology to step if it's clear…you look the inventories that were done, you look at the cumulative impacts studies that were done and it is clear that a whole section of shoreline has been built on. It is clear that there has been a loss of ecological function. And you say it's up to local governments to decide if somethings happened. That just seems to me to be stepping back from your responsibility. I would encourage you to look at that section and make this key concept of No net loss stronger. I know the language is still in there but to me what you have proposed in this section of the WAC gives Ecology no room to do anything because you have turned it entirely over to local governments.	implementation. Ecology will continue working cooperatively with local partners and other resource agencies to ensure the benefits of updated SMPs are realized.
11	WAC 173-26-090(1)(a)	18b, 35c	RCW 90.58.100(2)(h) requires that the "master programs shall include, when appropriate," "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages …" In addition… note that RCW 90.58.100(6) specifically requires standards for nonstructural methods of projection such as setbacks. However, the proposed amendments' only mention of sea level rise and the erosion it is causing is in WAC 173-26-090(1)(a) which provides that "[l]ocal governments are encouraged to consult department guidance for applicable new information on emerging topics	Ecology agrees with the concerns and evidence that highlight the implications of sea level rise for coastal communities. It is not widely known that almost half of comprehensively updated SMPs with marine shorelines include specific policies or regulations addressing sea level rise. It is also important to recognize the extent to which comprehensive SMP updates have prepared local governments to address climate change threats, even where there is no explicit mention of the cause. The existing SMP Guidelines equip local governments to address the potential for increasingly severe coastal flooding events. New SMPs include vegetative buffers and building setbacks that serve to protect not just existing functions, but also will avoid

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			such as sea level rise." This does not give "consideration to the statewide interest in the prevention and minimization of flood damages" or the requirements of RCW 90.58.100(6). Indeed, the SMPs' failures to address increased flooding and erosion from sea level rise will increase demands on limited state and local budgets to protect new developments on top of existing developments. These flood and erosion control measures, if funds can be found, will likely harm shoreline resources. Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century and would likely rise by 24 inches on the Washington coast by 2100. NOAA has documented that sea level rise could be as high as two meters, six and half feet, by 2100. The general extent of the two to six and a half feet of sea level rise currently projected for coastal waters can be seen on the NOAA Office for Coastal Management Digital coast Sea Level Rise Viewer. Some Washington State local governments are already address sea level rise. The City of Olympia, City of Tacoma, and King County have taken measures to protect critical infrastructure at increased risk of flooding due to sea level rise. • The City of Olympia is currently developing a plan to address sea level rise. In 2007, the city's Public	authorization of new development that would be subject to future hazardous conditions. As another example, individual assessments of erosion rates prepared to implement shoreline stabilization regulations will account for future conditions as refined information becomes available. Other provisions will necessarily be implemented with consideration of future conditions based on the most current information without the need for any further revisions to local SMPs rules, let alone revised state standards. However, we fully acknowledge there are significant benefits for local, state, and federal agencies to undertake more long-range planning to address existing and future threats to the built and natural environment. That is why Ecology thoroughly explored whether to adopt revisions to address this issue during this rule update process. In addition to consultation with a local Sounding Board, Ecology consulted with regional experts from other local governments, state and federal agencies, tribes, private consultants, non-profits, Ports, and academics on potential changes to SMP rules to support local government efforts to address sea level rise. We discussed a broad range of questions, including: • Where are there gaps and opportunities to better address sea level rise in existing rules? • What specifically would Ecology establish as a set of actions to address sea level rise? • What criteria could Ecology establish in rule that would provide an objective basis to determine when a local government has done enough to address risks to shoreline property and the environment?

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			Works Department, together with the University of Washington Climate Impacts Group evaluated the city's vulnerability to sea level rise and other climate change impacts. Sea level rise maps indicate a large portion of the downtown area, including critical infrastructure, were threatened by sea level rise. The subsequent 2011 technical report by Coast and Harbor Engineering detailed engineering responses for critical infrastructure such as the wastewater treatment plant outfall and physical barriers. • The City of Tacoma commissioned a climate risk assessment and resiliency analysis in 2016 by Cascadia Consulting, the University of Washington Climate Impacts Group, Herrera and ESA to help prepare the city of the impacts of climate change.16 For the built infrastructure, the study identified the need to protect large portions of the wastewater system in the tideflats that are several feet below projected future extreme high tides. • In 2008, King County completed a vulnerability assessment of its major wastewater facilities from sea level rise. One recommendation was to include sea-level	• What are the benefits and limitations for a statewide rule establishing a number or minimum to plan for, given the range of scenarios, and the many factors that affect sea level rise at any given location (for example: uplift and subsidence)? • How would Ecology use the authority of the SMA to require a comprehensive approach that include the kinds of capital facility planning and adaptation responses that address future conditions, recognizing that all experts agree that regardless of the scenario, affected areas may in many cases extend far outside the narrow shoreline regulatory jurisdiction? Our local partners that have been most actively engaged in comprehensive planning to address sea level rise argued persuasively that the challenge of addressing sea level rise transcend the geographic limits and authority of the Shoreline Management Act. This includes representatives of the three jurisdictions cited as examples in the comment letter (Olympia, Tacoma and King County) that served on Ecology's Sounding Board. They suggested Ecology highlight sea level rise as an emerging issue and to encourage local governments to review state guidance, but not to adopt specific requirements. While they agree SMPs will be among the suite of authorities to address sea level rise, new state rules tied to periodic reviews are not the proper vehicle to drive a comprehensive response. Based on these conversations, Ecology concludes that at this time the most appropriate approach is to continue working with coastal communities to clarify how climate change will influence existing and future hazards, help identify and

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			rise "… as a factor in planning for major asset rehabilitation or conveyance planning that involves any of the facilities included in this analysis. Adaptive strategies to reduce the risk of flooding should be adopted and designed into rehabilitation or upgrades based on the outcome of a risk analysis for a site and an analysis comparing benefits and costs of adopting the adaptive strategy." The subsequent 2012 hydraulic analysis confirmed that sea level rise must be addressed through infrastructure changes. While these efforts are helpful, more comprehensive approaches are needed due to the adverse effects of sea level rise on the state's shorelines. *[Citations to further studies and documents addressing future hazards associated with sea level rise, including potential for increased bluff erosion rates…]* It is time for Ecology to update the SMP Guidelines that address flooding to require measures to mitigate the impacts of sea level rise and the related hazards. SMP periodic reviews only happen once every eight years. Each periodic SMP update that passes without addressing sea level rise is a lost opportunity that will lead to more property damage from flooding, storm surges, and erosion. Ecology owes it to local governments and state residents, property owners, and taxpayers to update the SMP Guidelines to	assist with planning for hazardous areas, and work to coordinate program improvements and leverage resources to better support community needs across levels of government. Ecology will continue to advocate for comprehensive solutions that adequately address the complexity of the problem, and seek supporting resources and adequate funding. **Additional observations** The comment mentions that the general extent of sea level rise is available on NOAAs website. Ecology is very familiar with this data set, and agree that it is a good general source of information. While the viewer is probably as accurate as any national-level data set could be, it is very general. Local governments that are currently the most engaged in sea level rise planning suggest it is far too coarse to inform defensible decisions at the local level. Ecology is working in collaboration with Sea Grant and other partners to increase our state's capacity to address sea level rise by improving locally-tailored risk projections, providing better guidance for planners and strengthening capital investment programs for coastal restoration and infrastructure. We are also working hands-on with communities that are taking action. Ecology offers Coastal Training Program classes to build skills and best practices. Lastly, Ecology manages the Coastal Hazards Resilience Network, a robust community of practice dedicated to improving regional coordination and collaboration through effective partnerships among practitioners.

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			better protect people and property from these hazards. Unless wetlands and shoreline vegetation are able to migrate landward, their area and ecological functions will decline. If SMPs are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment. Failing to address these issues violates the policy of the Shoreline Management Act to protect shoreline vegetation as the policy of the SMA requires. Merely recommending that local governments consult with Ecology on emerging issues such as sea level rise as the proposed amendment to WAC 173-26-090(1)(a) does is not sufficient to comply with RCW 90.58.100(2)(h) and RCW 90.58.020. Every new building or new lot created in harm's way and each loss of the vegetation protecting uplands is creating a problem for our children and their children. It is time to require SMPs to consider these adverse impacts on the shorelines and people and property. We recommend that Ecology address the "statewide interest in the prevention and minimization of flood damages" and update the SMP Guidelines to address sea level rise and increased coastal erosion. This update should require planning for sea level rise, measures to avoid or mitigate the	

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			adverse impacts, provisions to allow shoreline vegetation to migrate landward as sea level rises in appropriate locations, and other necessary measures.	
12	WAC 173-26-090(1)(a)	41b	Sea level rise is predictable with error margins estimated. Any piece of Washington coastline can be predicted for the next 10 years. It is realistic to make predictions for sea level rise over any piece of coastline in Washington for the next 10 years. You will know what sea levels will do in Willapa Bay, Anacortes, the Columbia River estuary, Grays Harbor, Seattle, Ocean Shores, Bellingham and Everett among others. Regarding storm surges on top of sea levels you cannot predict when they will occur but we know what the surges are like. They can be superimposed on long term sea level. There is no questions regarding the warming of the ocean, the melting of sea, snow and ice around the globe and the settling and rise of land is known. There has been enormous progress in quantifying and understanding this issue. We live in the center of expertise. From federal agencies such as NOAA, the University of Washington and to top it off Paul Johnson who teaches a class on climate change at the University of Washington had an editorial in the Seattle times where he said it is very important to consider what impact these challenges, these changes will have on us and our children. Climate change in not in the future it is here and now. So I would like to encourage you to put more than a tiny little statement about how local governments who would be	As described above in Row 11, Ecology agrees sea level rise is an important issue, and is working with diverse partners to encourage comprehensive responses.

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			impacted by the sea level rise that they might look at this.	
13	WAC 173-26-104	37b	WAC 173-26-104 – Part (1) of this new section duplicates the process in 173-26-100. It would be clearer and shorter to simply cite 173-26-100 under (1).	We may have been able to consolidate these sections as suggested, but note there are some differences - the optional local process includes more emphasis on coordination with Ecology up front, because of the necessary coordination on the comment period. Also, a jurisdiction that takes either the standard approach or the optional approach would just have to look to one rule to define the local process.
14	WAC 173-26-104	26a	This section establishes that the optional joint review is available when doing either a periodic or local government initiated amendment to the SMP. However, it would be helpful to understand what a comprehensive update is to be able to distinguish it from a periodic update. Although it isn't a defined term in RCW 90.58 or WAC 173.26, I think a comprehensive update is the initial adoption of a SMP, but I'm not sure. Clarification by adding a definition or explaining the difference in the text of this section would be appreciated.	The *current* SMP guidelines definitions distinguish the one-time "comprehensive update" from other amendments. • WAC 173-26-020(24)(b) defines comprehensive updates; and • WAC 173-26-020(24)(c) defines all other amendments as "Limited master program amendments" which are those "not intended to meet the complete requirements of a comprehensive master program update." Note that while Ecology is removing the word "limited" from the definition, the revisions retain the basic distinction – there are comprehensive updates, and all other amendments. Amendments prepared to address the mandatory periodic reviews are still a form of the broadly defined term "amendment."
15	WAC 173-26-104	29a, 30a	We endorse the idea of the joint public review process. The only current option for public review, consecutive local and state review periods, is extremely burdensome to parties potentially impacted by changes in local SMPs because it is lengthy and unpredictable. Having the option of folding this dual part process into one condensed period is very	The comment encourages Ecology to require use of the joint review process. While the joint review option may transform over time into the most commonly used approach, in our conversations with local governments we heard they appreciated having options. We needed to retain the traditional dual-hearing process anyway, as it seems appropriate for brand new SMPs (i.e.,

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			appealing. Fewer comment periods and fewer hearings will be less burdensome on parties that may be impacted in terms of time and cost for preparation and appearances, and having to reiterate comments made at the local level to Ecology during the Ecology review process. Further, having the state work closely with local government from the beginning will help ensure that the updates are compliant with state law, and that the state law requirements are implemented consistently across all jurisdictions. We hope that local governments will avail themselves of this new review option, and would encourage Ecology to use its authority under the SMA to require this process in updating local SMPs.	for a newly incorporated city) and for comprehensive updates.
16	WAC 173-26-104	35d	The optional joint review process for amending shoreline master programs authorized by proposed WAC 173-26-105 could save time for local governments and Ecology. We agree that this process should not be used for comprehensive periodic updates. We also think that since many agencies and members of the public will believe that there will be separate local government and Ecology public comment periods that the public and agency notices should be required to specify that this is both the local government and Ecology public comment period and that the public hearing is both the local government and Ecology public hearing.	Thank you. If the process is helpful, it will be thanks in great part to careful review by a local government sounding board. Thank you for the suggestions about public notice. Under WAC 173-26-104(2)(c)(i) and (ii), Ecology and local governments are to provide notice of the "joint local/state hearing." As Ecology develops administrative material to implement this rule, we will ensure the sample language clarifies the comment period and hearing are both a local and state comment period.
17	WAC 173-26-104	40a	At some point there needs to be a formal election process if you are going to provide the local governments with two options, follow the full process, follow the optional combined process, they need to elect that and let the	WAC 173-26-104(1)(a) stipulates that "Prior to commencing the amendment process, local governments shall notify the department of intent to develop an amendment under the optional joint review process." Note that the

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			citizens know which process they are going to follow. If I was you I would attach that as a condition to their application or acceptance of money in support of their work.	process is a consolidation of comment periods at the formal conclusion of an amendment. The substantive work of involving the public in drafting regulations at the early stages will be the same regardless of the final public comment process.
18	WAC 173-26-104	40c	I appreciate your proposal to combine the public hearing process. I think you need to approach that carefully and make sure it is done in a way does not preclude one of the first and primary issues of the SMA which is public participation. That was the only reason you have the SMA, I and perhaps others in this room voted for it and that is how it got there, but it clearly requires that you have good public participation and there are times where I believe that process has fallen short. So as you are adopting these new rules I think that you should carefully look and make sure that the public's ability to participate in an informed way is preserved throughout the processes. We found in the adoption of the full SMA for the city of Seattle that, that process fell short and we felt particularly aggrieved by the process. Because after all the public hearing had occurred, after Ecology had essentially given its draft review um…. it engaged in a process with city staff that identified and brought a number of issues to the table. As I recall some 120-130 issues were considered in the final Ecology review, some of which resulted in required changes to the Seattle SMP. That was a nonpublic process and it was one that did not allow for a public hearing input or other types of comments.	Ecology agrees public participation has been a hallmark of the SMA since its inception. The combined public hearing process under WAC 173-26-104 preserves all the direction in current rules for public involvement at the early stages. The rules add a step to improve public transparency after the consolidated local and state comment period. Before formal local adoption, the local government will send proposed amendments made in response to public comments to Ecology for an initial determination of consistency with the Act and applicable rules. Ecology will provide notification of any issues the agency believes are inconsistent. This will provide local elected officials an early alert before formal adoption. This extra step should help avoid the kinds of late changes addressed through Ecology's review late in the process the commenter raises as a concern. However, it is important to note that there is no requirement for additional public comment if the SMP changes after the close of the comment period.

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			We tried to follow it as closely as we could but I saw that as a staff driven process and the outcome of that was that we ended up with required changes to the SSMP that city either chose or the elected official chose to adopt or not, and if you didn't you start the entire process over. It was a coercive activity that was in our view abused in the process by the staff interactions. I don't want to see that happen in the periodic review process and I don't want to see it made even worse if the combined review process is not allow for a fully transparent interaction between the local agencies, the states and the public. That is the greatest fault that we saw so we have a long list of things that should be dealt with in the periodic review because of how the process ended.	
19	WAC 173-26-130(9)	37e	Why is the previous reference to RCW 90.58.190 being deleted? It spells out processes specific to SMPs, whereas 36.70A.290 speaks broadly to Comp Plans and development regulations. Suggest citing both.	Ecology agrees this WAC should maintain a reference to RCW 90.58.190. In addition, the second sentence of this subsection is not necessary to include in WAC 173-26-130 which addresses appeals. The sentence was moved to WAC 173-26-120(3) which addresses Ecology approval of SMPs. This subsection will be revised as follows: WAC 173-26-130 – Appeal procedures for master programs (1) For local governments planning under chapter 36.70A RCW, appeals shall be to the growth management hearings board as provided in RCW 36.70A.290 and RCW 90.58.190. ~~The petition must be filed pursuant to the requirements of RCW 90.58.190. The department's (ecology's) written~~

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				~~notice of final action will conspicuously and plainly state it is the department's final decision and there will be no further modifications under RCW 90.58.090(2).~~
20	WAC 173-26-160	37f	Suggest replacing “adopted” with “approved” rather than having both. Adoption is the action taken by local jurisdictions, whereas approval is the action taken by the Dept. of Ecology.	Ecology added the word “approved” to capture the normal action taken by Ecology, which is to approve the local adoption. However, Ecology retained the existing use of the word “adopted” in this section to refer to the (unlikely) circumstance where Ecology exercises authority under RCW 90.58.070(2) to adopt an SMP where a local government fails to adopt an SMP within the timeframes required by statute.
21	WAC 173-26-201(1)(c)(iv)	37g	Is demonstration of no net loss of shoreline ecological functions required for periodic reviews? If so, there should be caveats. If a city proposes minor changes to their SMP (for instance, just correcting errors) that do not change the substantive allowances of the SMP, drafting a Cumulative Impacts Analysis would be unnecessary. Suggest allowing cities to submit a statement that the proposed changes are minor in nature and do not alter the findings or conclusions of the previous Cumulative Impacts Analysis that was completed under their comprehensive SMP update.	Ecology is retaining the existing requirement under WAC 173-26-201(1)(c)(iv) that all amendments must demonstrate the amendment will not result in a net loss of ecological functions. This demonstration is proportional to the amendment, whether it is a periodic review or a locally-initiated amendment. Including a finding that amendments do not affect substantive standards would be all that it takes to demonstrate the amendment will not result in net loss of functions.
22	WAC 173-26-201(1)(c)	34	We have a concern with the near-entire deletion of WAC 173-26-201(1)(c)(i). This subsection currently provides important limits for when Ecology may approve a Shoreline Master Program ("SMP") amendment outside of statutorily-mandated timeframes. These limits should be retained or at most revised, not deleted. Local governments, Ecology, and interested parties have recently	The existing language in WAC 173-26- 201(1)(c)(i) was adopted for a distinct period of time when Ecology did not have capacity to review limited amendments while comprehensive amendments were underway. As we near the end of the comprehensive update process, this narrow set of criteria has outlived its usefulness. The revised approval criteria are explicitly intended to capture future

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			expended, and will continue to expend, extensive time and resources in developing comprehensive SMP updates required by RCW 90.58.080(2), and they will similarly spend significant time and resources during the eight-year reviews mandated by RCW 90.58.080(4). Given this, it is appropriate to ensure additional amendments outside of these processes are necessary to achieve important and legitimate objectives. We have already experienced some jurisdictions attempting to enact reactionary SMP amendments to target specific uses opposed by politically influential individuals, and we are concerned that if the limits in WAC 173-26-201(1)(c)(i) are removed it will incentivize additional inappropriate actions. Taylor Shellfish understands that there will no longer be "limited SMP amendments" as currently exist if the Rule Amendments are adopted-there will be amendments that occur as a result of the statutorily-mandated eight-year review and amendments that occur earlier at the initiation of local government. Nonetheless, for the reasons stated above, it will be important to retain limits on approving amendments outside of the statutory schedule similar to what is currently in place for limited SMP amendments. The simplest method for retaining these limits would be to revise the first sentence of WAC 173-26-241(1)(c) to refer to "Locally initiated master program amendments" instead of "Limited master program amendments." Ecology's explanatory materials indicate the revisions to WAC	locally initiated amendments as well as statutorily-mandated periodic reviews. The comment expresses concern that removing the requirement to show an amendment is "necessary" may incentivize inappropriate or reactionary amendments to target specific uses. Where a local government proposes an amendment Ecology finds inconsistent with applicable policies or standards of the act, Ecology may deny the proposed amendment. It seems the denial should most appropriately be based on findings that the proposal was inconsistent with the policy of the act or applicable guidelines. Similarly, should a local government then appeal Ecology's denial, it seems most appropriate for the appeal to be based on the substantive concerns, rather than whether the amendment is "necessary" based on broad criteria.

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			173-26-201 are also intended to simplify the SMA rules and that the criteria in subsection (1)(c)(i) are redundant with other provisions of WAC 173-26. We appreciate this explanation and hope that, even without the criteria of WAC 173-26-201(1)(c)(i) in place, Ecology would not approve a SMP amendment that is not necessary to respond to new information and improve a plan's consistency with the SMA and implementing rules. However, retaining these criteria will provide a helpful safeguard and reminder that SMP amendments must be fully justified, and retaining them does no harm, even if they are arguably redundant. If, notwithstanding the above, Ecology still feels a need to simplify WAC 173-26-201(1)(c), then we recommend replacing the current criteria with the following standard: "Locally initiated master program amendments may be approved by the department provided the department concludes the amendment is necessary to reflect changing local circumstances, new information, or improved data, and improves consistency with the act's goals, policies, and implementing rules." This standard both reflects the basis for local governments to initiate SMP amendments in WAC 173-26-090 and simplifies the current criteria in WAC 173-26-201(1)(c).	
23	WAC 173-26-221	27	The Yakama Nation recommends additional updates to Chapter 173-26 to clarify the process for compliance with SMA requirements relevant to cultural resources. Specifically, the Yakama Nation recommends updates to WAC 173-26-221 (and	Ecology is proposing "housekeeping" amendments to the guidelines section on Archaeological and historic resources simply to update the name of the department of archaeology and historic preservation.

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			possibly WAC 173-26-201) to clarify that when local governments update their shoreline master programs, they must: Consider, make use of, and incorporate information about historic, archaeological, and cultural resources; Obtain information about historic, archaeological, and cultural resources by (amongst other things) consulting with affected Indian tribes, reviewing relevant studies, and conducting additional research or surveys as necessary; and, when appropriate, Include clear policies and regulations to identify and protect historic, archaeological, and cultural resources known or reasonably predicted to be in the shoreline areas of their jurisdiction. These clarifications are consistent with the SMA requirements that shoreline master programs shall (A) when appropriate, include "[a]n historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values, and (B) to the extent feasible, consider, make use of, and incorporate information obtained by (amongst other things) (1) integrating natural and social sciences, (2) consulting with affected Indian tribes, (3) reviewing relevant studies made by federal state, local, or tribal entities, and (5) conducting additional research or surveys as deemed necessary. [RCW 90.58.100] These SMA rule clarifications are also consistent with Washington's comprehensive land use planning laws, and associated consistency requirement s for planning	Amending these regulations to develop new minimum statewide procedures beyond existing requirements would trigger modifications to all SMPs during the next periodic review cycle. Creating new substantive requirements cannot be accomplished through "housekeeping" amendments, but instead would require a much broader discussion among tribal and local governments, DAHP and other state agencies, and the interested public. Ecology's existing guidelines provide significant clarification that archaeological and cultural resources within shoreline jurisdiction must be treated consistent with state archaeological and historic preservation laws. Ecology is still in the midst of incorporating those requirements into comprehensive SMP updates. Note that Ecology co-sponsored a Shoreline and Coastal Planners Group session on addressing cultural resources developed in concert with DAHP and tribal governments in Bellingham in Spring 2017. We are exploring using the outline of that training session for a new regularly recurring Coastal Training Program class.

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			elements and regulations. [See e.g. RCW 36.70A.070, .480(1), .480(3)(a). See also, WAC 173-26-191(1)(e).] For example, the Growth Management Act and its implementing regulations strongly recommend a comprehensive plan historic element that includes goals and policies to identify and preserve historic, archaeological, and cultural resources, and specifically promote the use of predictive strategies and early identification measures… … [A]ttempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems. [RCW 36.70A.020; WAC 365-196-445, -450.]	
24	WAC 173-26-241(3)(c) And WAC 173-26-241(3)(c)(v)	4c, 15c	The homes and lifestyles of live-aboards should not be at risk from changing regulations any more than traditional homeowners. Suggested revisions: "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 public recreational, sports, living or commercial lifestyles ~~opportunities~~ on waters of the state." (v) Where applicable, shoreline master programs should~~, at a minimum~~ contain regulations to limit the impact to shoreline resources from boaters living in their vessels (live-aboards), while supporting their rights to make	Ecology proposed no changes to the boating facilities section of the rule. Expanding the definition as suggested would exceed the purpose of revisions related to floating on-water residences and floating homes to address statutory amendments. Note that the existing guidelines are not prescriptive with respect to live-aboards, and local governments have adopted a variety of approaches consistent with local circumstances.

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			this traditional use of our marine resources.	
25	WAC 173-26-241(3)(j)(iv)(A)	4d, 4e, 15d, 15e	Existing rule states: "Single-family residences are the most common form of shoreline development and are identified as a priority use.." This 'priority use' statement should include citizens that have chosen floating homes, FOWRs or vessels as their residence. Perhaps it should be recognized that a vessel residence generates less overall pollution than an onshore residence. Existing rules states: "New over-water residences, including floating homes, are not a preferred use and should be prohibited." Resident of Seattle, Washington State and the Northwest do not agree with this statement. In fact, we vehemently disagree with it and will act against it, seeking legislative support if we must. Please moderate it. Perhaps simply recognizing that "on water" is different from "over water would suffice"	Ecology's existing rule stating that *new* over-water residences are not a preferred use was adopted as part of a 2003 negotiated settlement. Ecology's purpose in opening up this section of rule was strictly to incorporate legislative direction regarding *existing* floating homes and on-water residences as part of "housekeeping" to keep Ecology rules consistent with the SMA. The Legislature has clarified that existing Floating Homes established prior to January 2011 shall be considered conforming, preferred uses, and that Floating On-Water Residences established prior to July 1, 2014 shall be considered conforming uses. The Legislature did not extend this provision to new "on [or] over water" residences established after that date. Revising the direction in the negotiated rule regarding new over-water residences would exceed the purpose of "housekeeping." Note that Ecology's rule clarifies that existing overwater communities should be accommodated, including consideration for improvements over time.
26	WAC 173-26-241(3)(j)(iv)(A)	4(f), 15(f)	Existing rule says: "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."	Ecology is not proposing to amend the existing provisions of WAC 173-26-241(3)(j)(iv)(A) developed as part of the 2003 negotiated settlement. The provisions regarding limitations on expansions of existing communities of floating and/or over-water homes are not proposed to be changed. Future regulatory changes are not retroactively applied to existing conforming development. Therefore, as with any other form of shoreline development future rule changes would be directed at future development, or substantial

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			We do not want the 'minimum necessary to assure consistency with constitutional and other legal limitations.' Floating homes, FOWRs and vessels are part of our Northwest lifestyle. People have substantial investments in these homes. Like any homeowner, these investments should be protected from costly changes or risks to their home due to regulatory changes. In addition, we citizens of Seattle want sustainability. We want a thriving and growing population of live-aboards. We know it is one solution to the high cost of housing in Seattle and we don't want that option closed or those cost structures changed. We are proud of our 'Clean Marinas'. Let's remember that clean marinas are kept that way in part by their live-aboards. We are closer to the water than any other residents in the city. Of course we want it clean.	improvements to existing structures. Further, it is worth noting that local governments have some discretion within the broad framework of the existing rules to plan for improvements associated with life safety and property rights. Please note that ensuring the guidelines maintain a focus on ensuring constitutional limitations that protect private property was a core consideration during the negotiations of the existing rule.
27	WAC 173-26-241(3)(j)(iv)(A)	1a, 9d, 13b	Several commenters addressed the existing prohibition of *new* overwater residences, with specific suggested revisions to (v): 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.	Note that Ecology had not proposed any amendments to paragraph (A). The purpose of opening up this section is simply to add paragraphs (B) and (C), which incorporate statutory amendments addressing floating homes adopted in 2011 and floating on-water residences in 2014. The comments essentially ask Ecology to extend the 2011 and 2014 legislative clarifications related to *existing* floating homes and floating over-water residences to *new* floating homes and over-water residences. Ecology's interpretation is this would require a statutory amendment to the Shoreline Management Act. The legislature was explicit in applying the preferred use status to existing floating homes as of January 2011. This is evidence that the Legislature did not intend Ecology to extend

	WAC Section	#	Comment	Ecology Response
			The WAC should fully address the remaining confusion regarding "Overwater residences" where a structure is located on land, piers or pilings. A plain reading of "overwater residence" is where a structure is located partially on land and partially or wholly on piers or pilings over the water. There is a significant difference in the implied location of "over" "in" and "on" the water. The draft Rule now incorporates the SMA changes recognizing existing "on the water" residential uses which are buoyantly floating on the water and are only indirectly connected to the land through their moorage. These limited historic "on the water" uses including Floating Homes and Floating On-water Residences are now classified as conforming uses and are separately addressed. This constitutes a changed condition from the initial adoption of the new (2003) SMA guidelines. Floating Homes and Floating on-water residences are NOT over-water residences and should not continue to be prohibited as are other over water residential uses. They are now regulated by their own sections of the SMA and should be so treated accordingly under the WAC 173-26-241 (3)(j). Floating Homes and Floating on-water residences should not continue to be lumped together with over water residential uses. Now that the legislature has clarified the status of floating homes and floating on-water residences, the guidelines on residential development should reconcile the application of the SMA preferred treatment of	preferred use status to any new floating homes or floating on-water residences. Because the 2003 prohibition on new over-water residences including floating homes does not affect the status of existing floating homes or floating on-water residences, it is not necessary to make further changes to these provisions.

	WAC Section	#	Comment	Ecology Response
			Single Family Residences and those conforming single family residences floating on the water. The same single family use preference should now be clearly extended to all legally established single family residences regardless of having a foundation of earth or water. The legislature has clarified the status of existing floating homes and floating on-water residences in the SMA. The Implementing WAC and any ECY guidance on residential development should now reflect these changed Standards in the SMA. Continuing to include this inaccurate WAC section regarding Overwater Residences is in direct conflict with the legislative directive of the RCW requiring that any floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable. This requested modification to WAC 173-26-241(3)(j) is required to clearly accommodate our use and not make its continuation impracticable.	
28	WAC 173-26-241(3)(j)(iv)(A)	1b, 39a,	Comments asking to clarify the water dependent status of Floating Homes and Floating on-water Residences. "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	Ecology's purpose in opening up this section of rule was to incorporate legislative direction regarding *existing* floating homes and floating on-water residences as part of "housekeeping" to keep Ecology rules consistent with the SMA. Ecology agrees with commenter's assertions that changing the

	WAC Section	#	Comment	Ecology Response
			which is dependent on the water by reason of the intrinsic nature of its operations. (WAC 176-26-020) On April 7, 2014, Mr. White, of your Department, wrote to members of the legislature regarding ESSB 6450 which defined and established the legal conforming status of Floating on-water Residences. He contended that the "commonalities" with Floating Homes bar the consideration of Floating on-water Residences as a water dependent use. I do not find his logic compelling. ESSB 6450 states in part: "The 2011 legislation, which clarified the legal status of floating homes, was intended to ensure the vitality and long-term survival of existing floating single-family home communities. (2) The legislature finds that further clarification of the status of other residential uses on water that meet specific requirements and share important cultural, historical, and economic commonalities with floating homes is necessary." The "commonalities" are clearly cultural, historic and economic not the water dependent status. "Floating Homes" are not vessels and have permanent utility and moorage connections. The intrinsic nature of a Floating Home is that it is not designed for navigation removes it from consideration as a water-dependent use. The Seattle Floating Homes Association in its Amicus Brief to *Lozeman v. City of Riviera Beach* clear stated that Floating Homes are <u>not</u> vessels. I concur with their assessment, Floating Homes could just as easily be located off the water	definition of "vessel" should not be done as part of housekeeping. By the same logic, Ecology believes edits to the existing negotiated rule to clarify the "water-dependent" status of floating homes or floating on-water residences should also not be as amended through a housekeeping measure.

	WAC Section	#	Comment	Ecology Response
			except that the Legislature chose in 2011 to clearly provide protections to these important cultural and historic uses. Unlike when the SMA Rulemaking regarding “over water residences” was made in 2003, “Floating Homes” are now a defined term. “"Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.” [emphasis added] Floating Homes are not vessels and lack the intrinsic nature of a water dependent use. The 2014 Legislature chose to protect the cultural, historic and economic use of other residential uses <u>on water</u> by enacting protections for certain “Floating on-water Residences.” A Floating on-water Residence and other vessels with live aboard use (an undefined term) are intrinsically designed and dependent on being on/in the water. The residential use of a Floating on-water Residence or most other vessels cannot exist without the very specific integrated design to be buoyant (Archimedes principle) <u>on the water</u>. This stands in direct contrast to Floating Homes which exist on a float which can and some have been transferred to a traditional land foundation. Floating Homes are not classified as vessels. It is not possible to take any residential structure and drop it into the water expecting it to be buoyant, only a design which actually floats has any use and can only stably exist, as designed, <u>in or on the water</u>.	

	WAC Section	#	Comment	Ecology Response
			The buoyant and integrated design of such buoyant features of Floating on-water Residences is intrinsic to the nature of its operations. They are designed for navigation and practically designed to be used for navigation including detachable shore connections and temporary moorage connections both significantly different from Floating Homes. Floating homes, on the other hand, are not designed nor used for navigation and are not vessels. The significant distinction of design for permanent (Floating Home) versus temporary location (Floating on-water Residence) should be taken as a significant intrinsic part of its design when making a determination of Water Dependent status. The residential use of a vessel does not make that vessel any less water dependent. Many vessels are designed to have a residential use. My own small Houseboat stands in stark contrast to the residential amenities of most large cruisers and sailboats. A little or a lot residential is simply a residential use that is on the water not a use that is over the water. The contention that this vessel is not a vessel or not water dependent because it "looks" to residential is a distinction that makes no difference to its intrinsic design as a vessel. These floating vessels, and their use should be classified as water dependent when legally moored and registered as required by law. The water dependent status should apply even when a locally adopted SMP would permit the legal moorage of Floating On-Water Residences and live aboard vessels, but otherwise prohibit or limit other residential uses in the same zone	

	WAC Section	#	Comment	Ecology Response
			over water or adjacent to the shorelines. My floating on water residence and those of my neighbors are vessels. They are designed as a means of transportation over the water. The Ecology "vessel" definition deviates from most definitions stating that a vessel is "designed and used for navigation." The term "navigation" is not defined and I have separately asserted that the Federal Vessel definition should be used. My vessel is registered with the State of Washington as required by federal and state law, floating homes are not vessels and are not registered as vessels. Your department recently approved the Seattle SMP which defines a House Barge as a vessel. It is time to recognize that a house or apartment built over the water is just that an over the water and I agree should be prohibited. A floating on water residence should be recognized as a on water use and dependent on that water as part of its intrinsic design and use. Live aboard vessels of any type, including Floating on water residences, should be designated as a water dependent use.	
29	WAC 173-26-241(3)(j)(iv)(A)	9c	A vessel is (of course) Water Dependent, even though many vessels can be moved across land, are stored in land-based properties, and only occasionally enter the water. Residential use of a Vessel is permitted. Many activities (uses) may occur on vessels that are NOT water dependent including residential uses, dining, dancing, gambling, weddings, parties, etc. These non-water dependent uses are permitted on water dependent vessels.	As noted above, Ecology's purpose in opening up this section of rule was to incorporate legislative direction regarding *existing* floating homes and existing floating on-water residences as part of "housekeeping" to keep Ecology rules consistent with the SMA. Ecology believes edits to the existing negotiated rule to clarify the "water-dependent" status of floating homes and floating on-water residences should not be adopted as a housekeeping measure.

	WAC Section	#	Comment	Ecology Response
			A Floating Home is Water Dependent. It is designed specifically to be in the water and could be structurally damaged if removed from the water. It is designed to be in the water and is NOT designed to be on the land. The same activities (uses) may occur on Floating Homes as occur on water dependent vessels. A Floating On-Water Residence is Water Dependent. They are designed specifically to be in the water, have MARINE utility connections, and cannot logically exist as a floating residence outside of the water (you would probably then call them tiny homes or recreational vehicles). The same activities (uses) may occur on Floating On-Water Residences as occur on water dependent vessels or water dependent Floating Homes. These uses should be classified as water dependent even where the SMA and locally adopted SMPs would prohibit or limit any other residential uses in zones over or adjacent to the shorelines.	
30	WAC 173-26-241(3)(j)(iv)(A)	4a, 15a	The rule continues stating that "floating homes, are not a preferred use and should be prohibited." Living on the water has been a valued part of Seattle since our earliest days. People around the country recognize this about Seattle. Locals tour our floating residences with out-of-towners. Movies made about it draw tourists. It is a source of local pride and part of our heritage. Living on the water has expanded to include a myriad of different ways people express their creativity. Elegant floating homes. Colorful house barges. Houseboats. Yachts. Tugs. FOWRs and so many others. Regulators have been challenged	The legislature has clarified that existing floating homes and over-water residences must be considered conforming uses and local governments must allow reasonable accommodation for continued maintenance and some expansion. However, the legislature has not extended that use preference to *new* over water residences, whether they are floating homes or floating over water residences. Otherwise, the Legislature would not have chosen to elect a certain date. This approach honors the historic uses that are indeed an important part of Washington's heritage and should be allowed to be maintained.

	WAC Section	#	Comment	Ecology Response
			coming up with descriptions of all the various ways our neighbors find to live on the water. I am shocked that our representation would dare to say it is not a priority. Let's not blame the limited number of live-aboards with pollution that we know is more attributed to storm water runoff, onshore septic systems and sewage treatment, urban pollutants and the removal or modification of trees and vegetation.	Note the overarching concern with requiring local governments to address impacts of live-aboards is not solely about potential for pollution – it is also about the cumulative impact of conversion of water areas to residential use. Concerns about that trend was one of the origins of the SMA in 1971, and such concerns continue today, as evidenced by the comment in the row below.
31	WAC 173-26-241(3)(j)(iv)(A)	38c	I remain vigorously opposed to the continued encroachment of non-water dependent uses in areas reserved for water-dependent uses and specifically oppose the increasing use of residential (i.e., a non-water dependent) use in areas reserved for water-dependent, recreational vessel use. Is it possible to include 'use' language in the appropriate WAC Chapters? For example, Residential use, except on vessels as defined elsewhere, is not a water-dependent use and does not confer water-dependent status on a non-conventional, floating structure (floating home/house barge/floating on-water residence).	As noted above, the legislature has clarified that existing floating homes and existing floating on-water residences must be considered conforming uses and local governments must allow reasonable accommodation for continued maintenance and some improvements. Ecology's amendments were intended solely as "housekeeping" measures to accommodate these legislative enactments. The suggested clarifications would extend beyond that purpose and would require more extensive discussions with interested parties.
32	WAC 173-26-241(3)(j)(iv)(B) & (C)	2-6a, 8a, 9a, 11-15a, 19-22a, 28a, 32a	Support the code regarding the legal and conforming status of floating homes and floating-on-water residences.	As commenters noted, the provisions reflect statutory amendments adopted in 2011 and 2014.
33	WAC 173-26-360(8)	35e	We support Ecology's amendments to WAC 173-26-360(8) that confirm that oil and gas leasing is prohibited by statute in Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape	Thank you. Ecology agrees, the deletion of previous text does not weaken environmental concerns related to oil and gas facilities. To affirm that the regulatory change was a confirmation of the statutory direction, note that the rule includes a citation to the legislative prohibition.

	WAC Section	#	Comment	Ecology Response
			Disappointment, and in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge. The deletion of previous regulatory text should not be interpreted as any weakening of environmental concern about oil and gas facilities, including pipelines, but instead as confirmation of the statutory prohibition already in place.	
34	WAC 173-27-030(6)(a)	25a, 33a	Revisions to the definition of "development" to exclude dismantling or removal of structures with no other associated development. That will be particularly helpful in certain mitigation/restoration projects. This change will encourage clean-up of the shoreline by removing the need for costly and time-consuming permit review.	Thank you. The revision is consistent with a State Supreme Court *Cowiche Canyon v Bosley* decision.
35	WAC 173-27-030(18)	2b, 3b, 5-9b, 10a 11b,12b, 14b, 19-22b, 32b, 40d	Numerous comments oppose the idea of including a new definition of "vessel" in WAC 173-27-030 part 18. If the definition of vessel is changed, it should be changed to the federal definition, or retain existing definition.	Ecology has retained the existing definition. The proposed amendment is withdrawn from the final rule. The proposed change had been intended to align Ecology's definition with that of the WA DNR, but commenters observed this could have consequences Ecology did not anticipate. Ecology did not intend to open up the rules to modify how residences over-water are regulated beyond incorporating new legislation. The proposed change would have unintentionally gone beyond "housekeeping" changes for consistency with new statutes.
36	WAC 173-27-030(18)	38b	I support the proposed revision but don't think it goes far enough in providing clarity. I can already envision someone presenting a 20-year old photograph of their structure underway in a previous life and claiming "self-propulsion" status, even though the structure hasn't had working propulsion for 19 years. I would	Ecology has retained the existing definition. The proposed amendment is withdrawn from the final rule. As noted above, Ecology did not intend to open up the rules to modify how residences over-water are regulated beyond incorporating legislative intent related to floating homes and floating on-water

	WAC Section	#	Comment	Ecology Response
			hope something could be included supporting propulsion testing. See my suggestion below in bold text: WAC 173-27-030 (18) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self-propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels including, but not limited to, registration as a vessel by an appropriate government agency. Propulsion tests in wind and sea conditions appropriate to the vessel design may be required; I also have some concerns that the phrase 'designed primarily for navigation' is somewhat open to interpretation. How much is 'primarily'? There are many traditional vessels 'designed' for navigation that are primarily used for other functions, including exclusively residential use. Other vessels may be used time-wise 'primarily' as a residence, but are also regularly used for transportation/navigation. And then there are other, non-conventional structures for which the features supporting navigability are not obvious but are frequently put into use. I suspect the 'designed primarily for navigation' is not needed or at least the 'primarily' should be reconsidered.	residences. Ecology did not intend the change require local governments to open up their SMPs to revisit the accommodations that have been made for live-aboards during the comprehensive SMP update.
37	WAC 173-27-040(2)(b)	26c	[Comment cites in full WAC 173-27-040(2)(b).] Kirkland Shoreline Master Program administrative codes in KZC 141 provide clarification related to bulkhead removal and replacement with soft stabilization measures:	This suggestion asks for clarifications to the WAC that addresses normal maintenance or repair of existing structures to ensure that bulkhead replacements with preferred, "soft" stabilization would be considered exempt.

	WAC Section	#	Comment	Ecology Response
			[Citation to KZC 141.40.2.] This clarification identifies that a project in Kirkland, which proposes to remove an existing bulkhead and replace with soft stabilization under KZC 83.300, is exempt. We have processed applications under the clarification note in our SMP, considering them exempt from a SDP. However, the WAC exemption language is unclear that this is possible… There could be a provision included that clarifies the removal and replacement with soft can only be considered exempt when located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003, or something similar that would ensure the local jurisdiction has put in place, codes that identify how to install and what exactly are considered soft stabilization methods.	This section of WAC was not proposed to be amended during this rule update. We appreciate the alert to potential conflicts between this existing rule and amended SMPs. Ecology has not heard of circumstances where this WAC has impeded the use of an exemption to replace hard bulkheads with soft stabilization. Should conflicts arise, Ecology could revise this rule in the future. We are concerned about amending this code as "housekeeping" measure without adequate consultation with local governments to ensure there are no unintended consequences of such a change.
38	WAC 173-27-040(2)(h)(ii)	26b	This section establishes that replacement docks in fresh water under a value of $20K may be considered exempt from a Substantial Development Permit. It would be helpful to clarify what the amendment means by "existing" dock. A strict reading would find that a dock must physically be located on the property in order to come in under this exemption with a replacement. However, there are often previously existing docks that are removed due to a number of factors, such as deterioration, storm event, etc. We are suggesting to include some clarification, whether in the form of a timeframe or legal proof of previous dock, that could be used to confirm an application is exempted by the proposed	Ecology's purpose in revising this WAC was to incorporate direct statutory amendments. Revising the WAC to incorporate additional considerations would benefit from broader discussion with local partners, which cannot be accomplished as part of this rule update. Note that if this issue arises in a given jurisdiction, clarifications about the status of existing docks could potentially be addressed through administrative interpretations adopted consistent with WAC 173-26-140 as an interim measure pending potential clarifying SMP amendments.

	WAC Section	#	Comment	Ecology Response
			amendment. We have seen some replacement docks that were replacing a dock that had been removed months or years before for various reasons.	
39	WAC 173-27-044	33b	While the Port is supportive of Ecology's efforts to streamline certain stormwater treatment improvements at facilities subject to the Boatyard permit, the Port believes that same logic should apply to port facilities. If a port facility is subject to the Industrial Stormwater General Permit (ISGP) the circumstances under which boat yards are exempt should also apply in terminal/industrial areas. One facility at the Port of Tacoma is subject to a Level 3 corrective action. There is a project under design to install the necessary treatment and make the necessary corrective actions. Applying the boatyard exemption to this effort would save approximately $50,000 and four-five months off the project schedule. That potential streamlining effort would improve the project's chances of meeting Ecology's Water Quality Program's schedule expectations and would be four-five months with improved stormwater treatment for Puget Sound in this area.	While the comment raises potential water quality benefits of expanding the provisions of WAC 173-27-044, these exceptions to the applicability of the SMA are direct from statute. Ecology does not have authority to extend this exception beyond the statutory limits.
40	WAC 173-27-044(3)	31a	WSDOT supports rules acknowledging legislative enactments of 2015 – this will help local governments be aware of this new law.	Thank you.
41	WAC 173-27-060(1)	14, 16, 17, 23, 24, 35f	Comments urge Ecology not to adopt amendments proposed for WAC 173-27-060(1). Letters provide analysis supporting the following theme: The state SMP is the individual collection of local SMP's and must not be arbitrarily eliminated from the CZM program as has	Ecology has revised the proposed amendments to retain the existing WAC 173-27-060 unchanged. Note that while the proposed change was not intended as a substantive change, Ecology understands the change could reasonably be interpreted to go beyond mere "housekeeping." We agree it would

	WAC Section	#	Comment	Ecology Response
			been the current practice of ecology. To simply "inform" the process if a permit or other actions is initiated is not appropriate and drastically changes the intent of the legislature and congress to include local authorities in the approved CZMA. This "housekeeping" is an excessive narrowing of the law and essentially an elimination of local SMP policy and regulation that is unacceptable and limits individual and local governments' ability to ensure that local authorities are actually put into practice now and in the future.	not be appropriate as part of this rulemaking effort. Ecology works in close partnership with every local government developing and administering SMPs and shares a common interest with all commenters in ensuring that when federal agencies take direct actions in Washington's Coastal Zone or adjacent waters those actions are consistent with Washington's Coastal Zone Management Program to the maximum extent practicable. Ecology will continue to work with local governments and NOAA to further evaluate the best approach to ensuring clarity on this topic.
42	WAC 173-27-080(1)	37h	Suggest adding a definition for "Nonconforming Structures." Currently, the definition for this term is wrapped into the regulations for nonconforming structures, but the definition should be separate as it is for the other terms.	Ecology elected not to add these definitions to the overall definition section intentionally, because this rule is essentially a "stand-alone" rule that is only used where a local government has not adopted their own nonconforming provisions. This section does not apply to most local governments, as most SMPs have included their own locally crafted regulations for nonconforming uses and structures.
43	WAC 173-27-080(2) & (3)	25b	PSE conducts frequent repair and maintenance to our gas and electric infrastructure across Western Washington, some of which may be located within shoreline jurisdictions. Maintenance of aging utility infrastructure often means replacement with like-kind equipment that may have slightly different dimensions due to changing equipment standards. It is important for utilities be able to perform timely repairs on critical infrastructure that pose little to no effect on the Shoreline environment. PSE recommends that the nonconforming structures/uses section be amended to include the following clarification for utilities:	Establishing reasonable thresholds for minor expansion of existing non-conforming utilities (or other structures) without need for a Variance is an acceptable approach to planning for reasonable and appropriate use of the shoreline under the SMA. Many SMPs have included such allowances during their comprehensive SMP updates. Ecology's draft rule acknowledges those thresholds exist in the proposed revisions to this "default" rule. We are concerned about adding any specific definitive threshholds in the "default" rule, which applies only if a local government has not adopted general regulations that apply to nonconforming uses or structures. The concern is that questions may arise about which takes precedent –

	WAC Section	#	Comment	Ecology Response
			2) Nonconforming structures (b) Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In absence of the other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction would not be allowed for new structures, unless a shoreline variance permit is obtained. Maintenance or replacement of existing utility poles or other structures that involve an expansion of 15% or less shall not require a shoreline variance permit. (3) Nonconforming uses (b) In the absence of other or more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit. Maintenance or replacement of existing utility poles or other structures that involve an expansion of 15% or less shall not require a conditional use permit.	the SMP that Ecology approved, or the default rule.
44	WAC 173-27-085	29b, 30b	We express our support for the new section on moratoria.	Thank you. Note the new section is direct from RCW 90.58.590.
45	WAC 173-27-125	31b	WSDOT appreciates and supports this new section. Acknowledging the recent legislative enactments adopted in 2015 will help local governments be aware of the new laws.	Thank you. As noted, the provisions of WAC 173-27-125(1) reflect a new section added to RCW 47.01 during the 2015 legislative session (ESSB 5994). The legislature adopted this requirement to further streamline regulatory processes. The bill was part of a broader effort to improve efficiency of WSDOT investments (ESSB 5994, Sec 2 - 5).
46	WAC 173-27-130(9)	37i	The order is backwards; it should say “Notify the local government	Although the comment is a reasonable suggestion, the proposed

	WAC Section	#	Comment	Ecology Response
			and applicant of the date of filing by written communication, followed by telephone or electronic means, to ensure that the applicant has received the full written decision."	change is direct from RCW 90.58.140(6)(d) which was amended in 2011 by SSB 5192. The law requires "The department shall notify in writing the local government and the applicant of the date of filing by telephone or electronic means, followed by written communication as necessary, to ensure that the applicant has received the full written decision."
47	Process	40-42	Several commenters expressed concerns about notification of the rule-making process, or concerns about hearing locations.	Ecology followed requirements of RCW 90.58.080(2) including holding 4 hearings around the state. Notice was published in newspapers in all 39 counties for 3 consecutive weeks prior to the hearing.

Appendix A: Citation list

AO # [15] – [06]

- **Chapter 173-15 WAC**- Permits for Oil or Natural Gas Exploration Activities Conducted from State Marine Waters
- **Chapter 173-18 WAC** – Shoreline Management Act–Streams and Rivers Constituting Shorelines of the State
- **Chapter 173-20 WAC** - Shoreline Management Act –Lakes Constituting Shorelines of the State
- **Chapter 173-22 WAC** - Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State
- **Chapter 173-26 WAC-** State Master Program Approval/Amendment Procedures and Master Program Guidelines
- **Chapter 173-27 WAC** - Shoreline Management Permit and Enforcement Procedures

This citation list contains references for data, factual information, studies, or reports on which the agency relied in the adoption for this rule making (RCW 34.05.370(f)).

At the end of each citation is a number in brackets identifying which of the citation categories below the sources of information belongs. (RCW 34.05.272).

Citation Categories	
1	Peer review is overseen by an independent third party.
2	Review is by staff internal to Department of Ecology.
3	Review is by persons that are external to and selected by the Department of Ecology.
4	Documented open public review process that is not limited to invited organizations or individuals.
5	Federal and state statutes.
6	Court and hearings board decisions.
7	Federal and state administrative rules and regulations.
8	Policy and regulatory documents adopted by local governments.
9	Data from primary research, monitoring activities, or other sources, but that has not been incorporated as part of documents reviewed under other processes.
10	Records of best professional judgment of Department of Ecology employees or other individuals.
11	Sources of information that do not fit into one of the other categories listed.

1. Revised Code of Washington (RCW) 90.58 Shoreline Management Act of 1971. [5]

2. RCW 36.70A – Growth Management Act – planning by selected counties and cities. [5]

3. RCW 43.143- Ocean Resource Management Act [5]

4. WAC 365-196-610 Periodic review and update of comprehensive plans and development regulations [7]

5. Cowiche Canyon Conservancy v Bosley Supreme Court decision (118 Wn.2d 801, 1992) [6]

6. Aquatic Land Management definitions WAC 332-30-106(74) [7]

Appendix B: Transcripts from public hearings

Audio transcript for: **SMA Rulemaking hearing on 4-5-2017 at Ecology, HQ in Lacey:**

I'm Laura Ballard hearing's officer for this hearing. This afternoon we are to conduct a hearing on the proposed amendments for the following 5 Chapters:

- Chapter 173-18 WAC – Shoreline Management Act- Streams and Rivers Constituting Shorelines of the State
- Chapter 173-20 WAC – Shoreline Management Act –Lakes Constituting Shorelines of the State
- Chapter 173-22 WAC - Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State
- Chapter 173-26 WAC- State Master Program Approval/Amendment Procedures and Master Program Guidelines
- Chapter 173-27 WAC - Shoreline Management Permit and Enforcement Procedures

Let the record show it is 2:10 on APRIL 5TH 2017 and this hearing is being held at the Department of Ecology Headquarters Building, located at 300 Desmond Drive SE, in Lacey WA 98503. Legal notices of this hearing were published in the ***Washington State Register***: Issue # 17-06-067 March 15, 2017.

In addition notices of this hearing were provided as email notices sent to approximately 2700 interested people. Notices of this hearing also published in newspapers of general circulation in all 39 Washington state counties. Ads were run statewide for three weeks during the weeks of: March 19, 2017, March 26, 2017 and April 2, 2017

I will be calling people up to provide testimony based on the order your name appears on the sign-in sheet. Once everyone who has indicated that they would like to testify has had the opportunity, I will open it up for others.

When I call your name, please step up to the front, state your name and if you haven't given us contact information please do so. You can also provide this after the hearing.

Speak clearly, so that we can get a good recording of your testimony. Is there anyone else who wishes to provide testimony? Please remember to tell us your name and contact information.

Let the record show that about 4 people attended this public hearing. No one wanted to provide oral testimony.

If you would like to send Ecology written comments, please remember they are due **May 15, 2017**

You can Email your comments to: (one word) smarulemaking@ecy.wa.gov Or Mail your

comments to:

Department of Ecology

Attn: Fran Sant

PO Box 47600

Olympia, Washington 98504-7600

Or use fax at: 360-407-6902

All testimony received at this hearing (as well as at other hearings to be held in the following locations and dates will be recorded:

- April 6, 2017 – at the Bellevue location
- April 11, 2017 – at the Spokane location
- April 13, 2017 – at the Union Gap location

Along with all written comments received no later than **May 15, 2017** will be part of the official hearing record for this proposal.

Ecology will send notice about the **Concise Explanatory Statement or CES** publication to:

- Everyone that provided written comments or oral testimony on this rule proposal and submitted contact information.
- Everyone that signed in for today's hearing that provided an email address
- AND other interested parties on the agencies mailing lists for this rule.

The CES will among other things, contain the agency's response to questions and issues of concern that were submitted during the public comment period. If you would like to receive a copy but did not give us your contact information, please let one of the staff at this hearing know, or contact Fran Sant at the contact information provided for submitting comments – (one word) smarulemaking@ecy.wa.gov

The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director MAIA BELLON will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal.

Adoption is currently scheduled for early July 2017. If the proposed rule should be adopted at that time and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further help to you, please do not hesitate to ask or you can contact Tim Gates if you have other questions. On behalf of the Department of Ecology, thank you for coming. I appreciate your cooperation and courtesy. Let the record show that this hearing is adjourned at 2:14pm

Audio transcript for: **SMA Rulemaking hearing on 4-6-2017 at Ecology NWRO in Bellevue:**

I'm Hideo Fujita your hearing's officer for this hearing. This morning we are conducting a hearing on rule proposals chapters:

- Chapter 173-18 WAC – Shoreline Management Act- Streams and Rivers Constituting Shorelines of the State
- Chapter 173-20 WAC – Shoreline Management Act –Lakes Constituting Shorelines of the State
- Chapter 173-22 WAC - Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State
- Chapter 173-26 WAC- State Master Program Approval/Amendment Procedures and Master Program Guidelines
- Chapter 173-27 WAC - Shoreline Management Permit and Enforcement Procedures

Let the record show it is 11:02 am on APRIL 6TH 2017 and this hearing is being held at the Northwest Regional Office Building of the Washington State Department of Ecology, Bellevue Washington.

Legal notices of this hearing were published in the ***Washington State Register*** March 15, 2017, Washington State Register number 17-06-067

In addition notices of this hearing were emailed and sent to approximately 2700 interested people.

Notices of this hearing also published in newspapers of general circulation in all 39 Washington state counties. Ads were run statewide for three weeks during the weeks of:

March 19, 2017, March 26, 2017 and April 2, 2017

We have two people here today to provide comments. I will call the people to the front of the room to provide testimony. After we go through this list of two people of those who have signed in , we will get testimony of those who may have changed their minds and would like to give a comment.

Please speak up and speak clearly and stand behind this lectern near this recorder. Ecology is using these digital recorders to capture your testimony.

We will begin with John Chaney to be followed by Ann Aagaard

John Chaney:

Actually, if you don't mind I would rather sit that stand, unless you are going to force me to stand and I would rather not sit behind the podium.

As is turns out after the question and answer period I have five things to talk about.

My name is John Chaney, I am board member of the Lake Union Live Aboard Association

We participated extensively in the Seattle Shoreline Master Program process and have since followed the issue. The first thing is…un I guess I am hopeful you can eventually let us know is whether or not we are on the state interest list regarding the issues of living on the water.

We don't seem to have gotten very much notice about the things you Department has done since the adoption of the SMP related to those issue. I think it is pretty egregious.

The second thing following Ann's comment is that I think at some point there needs to be a formal election process if you are going to provide the local governments with two options, follow the full process, follow the optional combined process, they need to elect that and let the citizens know which process they are going to follow.

If I was you I would attach that as a condition to their application or acceptance of money in support of their work. But that is just my suggestion. I guess the third thing is that is at what point will Ecology be identifying things that itself has identified as issues since the adopt on the local SMP so that we don't end up finding out that you as a state agency with lots of interest in these things and lots of participation with our local governments and um what you think are the issues are that ought to be dealt with by the local governments periodic review. So I guess at some point I would like see that on your chart. When Ecology will do that sharing with local governments and local citizens within the affected area.

The fourth thing is that I am a trained land use planner so I appreciate your proposal to combine the public hearing process um I think you need to approach that carefully and make sure it is done in a way does not preclude one of the first and primary issues of the SMA which is public participation. That was the only reason you have the SMA, I and perhaps others in this room voted for the it and that is how it got there, but it clearly requires that you have good public participation and there are times where I believe that process has fallen short. So as you are adopting these new rules I think that you should carefully look and make sure that the public's ability to participate in an informed way is preserved thought-out the processes.

We found in the adoption of the full SMA for the city of Seattle that, that process fell short and we felt particularly aggrieved by the process. Because after all the public hearing had occurred, after Ecology had essentially given its draft review um…. it engaged in a process with city staff that identified and brought a number of issues to the table. As I recall some 120-130 issues were considered in the final Ecology review, some of which resulted in required changes to the Seattle SMP. That was a nonpublic process and it was one that did not allow for a public hearing input or other types of comments.

We tried to follow it as closely as we could but I saw that as a staff driven process and the outcome of that was that we ended up with required changes to the SSMP that city either chose or the elected official chose to adopt or not, and if you didn't you start the entire process over.

So it was, so it was…At the very least I think a coercive activity that was in our view abused in the process by the staff interactions,

I don't want to see that happen in the periodic review process and I don't want to see it made even worse if the combined review process is not allow for a fully transparent interaction between the local agencies, the states and the public. That is the greatest fault that we saw so we have a long list of things that should be dealt with in the periodic review because of how the process ended.

The fifth item has to do with the catch all sort of dustbin housekeeping portion of that. Well I really appreciate housekeeping I wish I had more time for that in my home and in my life. And it clears that somethings, the legislature adopted new definitions you need to deal with those and that is a housekeeping thing.

However as perhaps the major stakeholder group dealing with living on the water we do not believe that altering the definition of "vessel" is at all reasonable. If you feel a new definition is needed I can point to the one single source you should use which is the federal vessel definition. If

you are unwilling to adopt that and there are twenty different definitions of vessels in the revised code of Washington adopted by different agencies for different purposes apparently but all adopted though the legislative process or a few of them through the WAC process.

So your adoption of a vessel definition to somehow bring it into conformance with DNR is our view is bogus. There is no..that is a illegitimate reason for dealing with this. If you wish to deal with the vessel definition we offer our availability just as we did in the stakeholder group dealing with living on the water prior to the completion of the Seattle Shoreline Master program. That and we believe that is the only place, the only place where that is a legitimate process is if we go to the legislature. This needs to be a change to the SMA not something that gets scooted in as housekeeping part of the rules changes. So we are adamant, adamantly opposed to a, inclusion of a change in the vessel definition as a part of the housekeeping portion of this rule. Thank you

Our second individual giving public comment is Ann Aagaard. Ann would you like to sit or stand? I would like to sit also.

My name is **Ann Aagaard,** I am representing the League of Women Voters of Washington. I am the shorelines, wetland and interim land use chair.

First I would echo the first speaker's comment regarding the notification of this I was the league representative on the negation team and have been involved with every one of the groups that had looked at the shoreline guidelines until the negotiation team was pulled together and I have been actively involved in shoreline issues for all of these some 30 some, close to 40 years.

Ant the way I found about this hearing was that our son happens to take the Methow Valley News and there a notice in the Methow Valley News and I just happened to seen it but certainly not notice was given to anyway shape or form to those 2700 people that were notified. So I curious as to how you selected them and whom it went to.

So but I am here, and I thank you for having it in this convenient location. The first question I have, or the first comment I have is to the discretion given to local government as to whether to update their periodic updates and this is in page 16 of your WAC 173-26-090(b) (3) and it says "during the periodic review discretion is given to local governments as to what is analyzed as what is reflecting changed circumstances and whether the changed circumstances warrant amendments and it is not necessary to update a comprehensive inventory and characterization to make that determination."

So I totally understand why you don't want to update the comprehensive inventory and characterization. That was an enormous amount of work. Any I have found it to be very valuable information. We recently used this information in some of our GMA public hearings and it was very valuable and I realty fully support that. But I do not support this local government determination as to whether there are changed circumstances.

Giving all this discretion to local government seems to make the term no net loss basically mute. And that no net loss was basically a key concept in the guideline negotiations that was the key document. And, you find that on Page 26 of the guidelines where is says that the guidelines are designed ensure at a minimum that not net loss of ecological functions necessary to sustain shoreline natural resources and to plan restoration of ecological functions when they have been impaired.

So when you give total discretion to local governments after 8 years or in many cases over 8 years to say if there have been any changed circumstances. I find that this is really not adequate to protect this key concept of "no net loss". There needs to be some kind of stronger language included here that will enable Ecology to step if it's clear…you look the inventories that were done, you look at the cumulative impacts studies that were done and it is clear that a whole section of shoreline has been built on. It is clear that there has been a loss of ecological function. And you say it's up to you local governments to decide if somethings happened.

That just seems to me to be setting back from your responsibility. I would encourage you to look at that section and make this key concept of No net loss stronger. I know the language is still in there but to me what you have proposed in this section of the WAC gives Ecology no room to do anything because you have turned it entirely over to local governments.

So um...My second comment has to do with sea level rise. Several, I am fortunately married to an Oceanographer of some national standing so we had a good discussion this morning on this subject.

This is his comment. Sea level rise is well studied it is predictable with error margins estimated. Any piece of Washington coastline can be predicted for the next 10 years. It is realistic to make predictions for sea level rise over any piece of coastline in Washington for the next 10 years. You will know what sea levels will do in Willipa Bay, Anacortes, the Columbia River estuary, Grays Harbor, Seattle, Ocean Shores, Bellingham and Everett among others. Regarding storm surges on top of sea levels you cannot predict when they will occur but we know what the surges are like. They can be super imposed on long term sea level. There is no questions regarding the warming of the ocean, the melting of sea, snow and ice around the globe and the settling and rise of land is known.

There has been enormous progress in quantifying and understanding this issue. We live in the center of expertise. From federal agencies such as NOAA, the University of Washington and to top it off Paul Johnson who teaches a class on climate change at the University of Washington had an editorial in the Seattle times where he said it is very important to consider what impact these challenges, these changes will have on us and our children. He is talking about climate change is particular but he specifically lists sea level as one of these issue and he goes onto to say rising the levels from melting Greenland and Iceland ice sheets will continue to accelerate and currently produce coastal flooding during storm surges. And then at the end he says one of his exercises for homework to his students was to use polar ice sheet melting rates to predict when a well know golf course in coastal Florida will be flooded for most of the year. The correct homework year so was the year 2050. Depressingly soon for Atlantic coastal communities to adapt but perhaps far to in the future to capture the attention of the present administration. And then finds to say climate change in not in the future it is here and now. So I would like to encourage you to put more than a tiny little statement about how local governments who would be impacted by the sea level rise that they might look at this.

Um, I am delighted to hear that they are looking at this in their comprehensive plan changes. But if this is true then they should be looking in their SMA as well. So please consider strengthening the statement in the regulations

Thank you Ann,

Is there anyone else wishing to give a public comment? Let the record show that no one else wishes to give a public comment from those who are present.

Submitting written comments. If you would like to send Ecology written comments, please remember they are due May 15, 2017 deadline.

You can Email your comments to: (one word) smarulemaking@ecy.wa.gov and I have written this email address up here is you need those.

Or Mail your comments to:

Department of Ecology

care of Fran Sant

PO Box 47600

Olympia, Washington 98504-7600

Or fax 360-407-6902

All testimony received at this hearing (as well as at other hearings to be held yesterday in Lacey and those to take place in Eastern Washington April 11, 2017 – at Spokane and April 13, 2017 – at Union Gap

Along with all written comments received no later than Monday, May 15, 2017 will be part of the official hearing record for this proposal.

Ecology will send a notice about the Concise Explanatory Statement the CES publication to three groups, the first one:

- Everyone that provided written comments or oral testimony on this rule proposal and submitted contact information.
- 2: Everyone that signed in for today's hearing that provided an email address
- AND 3: Other interested parties on the agencies mailing lists for this rule.

Everyone here attending today I have your contact information. Ecology will send a notice about the Concise Explanatory Statement or CES. The next step is to review the comments and make a determination whether to adopt the rule.

After the public comment period close Ecology will review and make a determination whether to adopt the rule. Ecology Director MAIA BELLON will consider the rule documentation and staff recommendations and she will make a decision about adopting the proposal.

Adoption is currently scheduled for early July 2017. If the proposed rule should be adopted at that time and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further assistance to you, please do not hesitate to ask or you can contact Tim Gates if you have other questions.

On behalf of the Washington State Department of Ecology, thank you for attending this public hearing. Ecology appreciates your cooperation and courtesy. Let the record show that this hearing is adjourned Thursday morning, April 26 um no it is Thursday morning April 6th, 2017 at 11:25 am

Audio transcript for: **SMA Rulemaking hearing on 4-11-2017 in Spokane, WA**

I'm Cynthia Wall hearing's officer for this hearing. This afternoon we are to conduct a hearing on the proposed amendments for the Shorelines Management Act Rulemaking.

Let the record show it is 2:14 on APRIL 11 2017 and this hearing is being held at the Spokane Public Library Shadle Branch in Spokane in Washington

Legal notices of this hearing were published in the ***Washington State Register*** on March 15, 2017, Washington State Register # 17-06-067

In addition notices of this hearing were provided as email notices sent to approximately 2700 interested people. Notices of this hearing also published in newspapers of general circulation in all 39 Washington state counties. Ads were run statewide for three weeks during the weeks of: March 19, 2017, March 26, 2017 and April 2,, 2017

Does anyone want to provide testimony? Let the record show that about 4 people attended this public hearing. No one wanted to provide oral testimony.

If you would like to send Ecology written comments, they are due **May 15, 2017**

All testimony received at this hearing (as well as at other hearings to be held in Lacey and Bellevue along with the hearing held tomorrow in Union Gap.

Along with all written comments received no later than **May 15, 2017** will be part of the official hearing record for this proposal.

Ecology will send notice about the **Concise Explanatory Statement or CES** publication to:

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The next step is to review the comments and make a determination whether to adopt the rule. Ecology Director MAIA BELLON will consider the rule documentation and staff recommendations and will make a decision about adopting the proposal.

Adoption is currently scheduled for early July 2017. If the proposed rule should be adopted at that time and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further help to you, please ask us or you can contact Tim Gates if you have other questions. On behalf of the Department of Ecology, thank you for coming. Let the record show that this hearing is adjourned at 2:17pm

Audio transcript for: **SMA Rulemaking hearing on 4-13-2017 at Ecology CRO Offices in Union Gap:**

I'm Zach Meyer hearing's officer for this hearing. This morning we are to conduct a hearing on the proposed amendments for:

- Chapter 173-18 WAC – Shoreline Management Act- Streams and Rivers Constituting Shorelines of the State
- Chapter 173-20 WAC – Shoreline Management Act –Lakes Constituting Shorelines of the State
- Chapter 173-22 WAC - Adoption of Designations of Shorelands and Wetlands Associated with Shorelines of the State
- Chapter 173-26 WAC- State Master Program Approval/Amendment Procedures and Master Program Guidelines
- Chapter 173-27 WAC - Shoreline Management Permit and Enforcement Procedures

Let the record show it is 10:51 on APRIL 13th, 2017 and this hearing is being held at the Department of Ecology Central Regional Office, located at 1250 West Alder Street, Union Gap, WA 98903. Legal notices of this hearing were published in the ***Washington State Register*** March 15, 2017, Washington State Register # 17-06-067

In addition notices of this hearing were provided as email notices sent to approximately 2700 interested people. Notices of this hearing also published in newspapers of general circulation in all 39 Washington state counties. Ads were run statewide for three weeks during the weeks of: March 19, 2017, March 26, 2017 and April 2, 2017

Today no one has signed up to provide testimony. So is there anyone who wishes to provide testimony? Alright let the record show that about 1 person attended this public hearing. No one wanted to provide oral testimony.

If you would like to send Ecology written comments, please remember they are due **May 15, 2017**

You can Email your comments to: (one word) smarulemaking@ecy.wa.gov or Mail your

comments to:

Department of Ecology

Attn: Fran Sant

PO Box 47600

Olympia, Washington 98504-7600

Or use could fax them to: 360-407-6902

All testimony received at this hearing (as well as at other hearings which were held in Lacey, Bellevue and Spokane.

Along with all written comments received no later than **May 15, 2017** will be part of the official hearing record for this proposal.

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Adoption is currently scheduled for early July 2017. If the proposed rule should be adopted at that time and filed with the Code Reviser, it will go into effect 31 days later.

If we can be of further help to you, please don't hesitate to ask or you can contact Tim Gates if you have other questions. On behalf of the Department of Ecology, thank you for coming. I appreciate your cooperation and courtesy. Let the record show that this hearing is adjourned at 10:55 am

Appendix C: Copies of all written comments received

Sant, Fran (ECY)

1

From: Mauri Shuler <maurishuler@me.com>
Sent: Tuesday, April 25, 2017 8:47 PM
To: ECY RE Shoreline Rulemaking
Subject: another comment

Categories: CR102 Comment

Mr Gates,
I would like to add to my previous comment by supporting Mr. Chaney's comments, which I copy below:

Prohibition of Overwater Residences

A The WAC should fully address the remaining confusion regarding "Overwater residences" where a structure is located on land, piers or pilings. The draft Rule now incorporates the SMA changes recognizing existing "on the water" residential uses which are buoyantly floating on the water and are only indirectly connected to the land. These limited historic "on the water" uses including Floating Homes and Floating On-water Residences are now classified as conforming uses and are separately addressed. This constitutes a changed condition from the initial adoption of the new SMA guidelines. Floating Homes and Floating on-water residences should not continue to be lumped together with over water residential uses. I suggest the following revision removing unnecessary words:

> **Overwater residences**
> 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.

Now that the legislature has clarified the status of floating homes and floating on-water residences, the guidelines on residential development should reconcile the application of the SMA preferred treatment of Single Family Residences and those conforming single family residences floating on the water. The same single family use preference should now be clearly extended to all legally established single family residences regardless of having a foundation of earth or water.

B Water-dependent Use

Clarify the water dependent status of Floating Homes and Floating on-water Residences.

> "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. (WAC 176-26-020)

The residential use on the water of a Floating Home, Floating on-water Residence or any vessel cannot exist without very specific integrated design to be buoyant (Archimedes principle) on the water. You cannot take any residential structure and drop it into the water expecting it to float, only a design which actually floats has any rational use and can only stably exist, as designed, in or on the water. The buoyant or "floating" nature of Floating Homes or Floating on-water Residences is intrinsic to the nature of its operations. These uses should be classified as water dependent even where the SMA and locally adopted SMPs would prohibit or limit any other residential uses in zones over or adjacent to the shorelines.

Mauri Moore Shuler
206-819-3819

2

Sant, Fran (ECY)

From: Bill Wehrenberg <bill@acadiaconsulting.com>
Sent: Tuesday, April 25, 2017 9:05 AM
To: ECY RE Shoreline Rulemaking
Subject: Department of Ecology recent legislative actions

Categories: CR102 Comment

I live on a FOWR on Seattle waters.

I support the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code (WAC) 173-26-020 and WAC 173-26-241. Specifically, the additional of the definitions and legislations intent regarding the legal and conforming status of floating on the water residences.

A

I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item.
The only acceptable housekeeping action would be to adopt the Federal "vessel" definition **1 U.S. CODE sec. 3** which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemptions.

B

Thank you,

Bill Wehrenberg
206-200-8636

Sant, Fran (ECY)

3

From: Chris Carrs <ccarrs52@gmail.com>
Sent: Tuesday, April 25, 2017 8:58 AM
To: ECY RE Shoreline Rulemaking
Subject: Shoreline Mgmt Act proposed changes

Categories: CR102 Comment

Good Morning.
I am a live-aboard owner, having a Floating-On-Water-Residence tag issued by the City of Seattle.
Two comments regarding the proposed changes to the Shoreline Management Act:
A I support the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.
I am NOT in favor of the proposed change to the "vessel" definition at WAC 173-27-030. This was not
B mandated, and the new definition could lead to conflicts re jurisdiction. Please do not make a housekeeping change without more consideration.
Thank you.
Christine Carrs

4

D. RYAN HIXENBAUGH
5320 28TH AVE. NW
SEATTLE, WA 98107-4147

To	Tim Gates, Washington Department of Ecology
	SMA Rule Making
From	D. Ryan Hixenbaugh
RE:	WAC 173-26-241 Public Comment
Date	4/24/2016

I understand that WAC 173-26-241 (Shoreline uses) is under review and seeking public input. Having spent considerable time reviewing the language, I feel there are some considerations and revisions I should share as a long time citizen of Washington State and Seattle.

A First, I support the recent legislative changes regarding the legal and conforming status of floating on water residences. These protections are an important step in recognizing how much our city and state values our vibrant live-aboard community. Thank you for hearing the concerns of your constituency and supporting those changes.

The rest of my comments on WAC 173-26-241 reflect those same opinions. The language in this law still does not reflect values long held by Seattle. Of course we value clean water and a protected shoreline. But I have never heard support within this community of some of the guiding statements made in these proposed regulations.

An example, under **Residential Uses** it states, "single-family residences are the most common form of shoreline development and are identified as a priority use..." Seattleites agree with this statement. Living on the water is one of the most coveted lifestyles we have.

However the rule continues stating that "floating homes, are not a preferred use and should be prohibited." Living on the water has been a valued part of Seattle since our earliest days. People around the country recognize this about Seattle. Locals tour our floating residences with out-of-
B towners. Movies made about it draw tourists. It is a source of local pride and part of our heritage. Living on the water has expanded to include a myriad of different ways people express their creativity. Elegant floating homes. Colorful house barges. Houseboats. Yachts. Tugs. FOWRs and so many others. Regulators have been challenged coming up with descriptions of all the various ways our neighbors find to live on the water. I am shocked that our representation would dare to say it is not a priority.

Let's not blame the limited number of live-aboards with pollution that we know is more attributed to storm water runoff, onshore septic systems and sewage treatment, urban pollutants and the removal or modification of trees and vegetation. The argument is suspect and harkens 'alternative facts and fake news'.

Recommendations to WAC 173-26-241

I do not have the skills to write regulations. I offer the following recommendations in the spirit of constructive criticism.

C – Boating Facilities

Your rules states: *"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."*

This statement should recognize and offer support to the numerous ways the public currently uses our waters.

"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 public recreational, sports, living or commercial lifestyles on waters of the state"

Your Rule states: *"Where applicable, shoreline master programs should, at a minimum, contain regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).*

This statement should balance the need for regulations with the need to protect homeowner's rights.

"Where applicable, shoreline master programs should contain regulations to limit the impact to shoreline resources from boaters living in their vessels, while simultaneously supporting their rights to make this traditional use of our marine resources.

The homes and lifestyles of live-aboards should not be at risk from changing regulations any more than traditional homeowners.

J. Residential Development.

Your rule: *"Single-family residences are the most common form of shoreline development and are identified as a priority use.."*

This 'priority use' statement should include citizens that have chosen floating homes, FOWRs or vessels as their residence. Perhaps it should be recognized that a vessel residence generates less overall pollution than an onshore residence.

Your Rule: *New over-water residences, including floating homes, are not a preferred use and should be prohibited.*

Resident of Seattle, Washington State and the Northwest do not agree with this statement. In fact, we vehemently disagree with it and will act against it, seeking legislative support if we must. Please moderate it.

Your Rule: *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.*

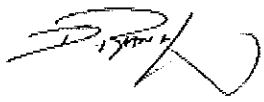
We do not want the '*minimum necessary to assure consistency with constitutional and other legal limitations.*' Floating homes, FOWRs and vessels are part of our Northwest lifestyle. People have substantial investments in these homes. Like any homeowner, these investments should be protected from costly changes or risks to their home due to regulatory changes.

In addition, we citizens of Seattle want sustainability. We want a thriving and growing population of live-aboards. We know it is one solution to the high cost of housing in Seattle and we don't want that option closed or those cost structures changed.

We are proud of our 'Clean Marinas'. Let's remember that clean marinas are kept that way in part by their live-aboards. We are closer to the water than any other residents in the city. Of course we want it clean.

I look forward to seeing how these statements are changed to reflect the values of our city.

Warm regards,



D. Ryan Hixenbaugh
206-310-5144
Ryan@RyanHixenbaugh.com

5

Sant, Fran (ECY)

From: patsy kyllo <outlook_A31319C761D6F460@outlook.com>
Sent: Monday, April 24, 2017 4:56 PM
To: ECY RE Shoreline Rulemaking
Subject: WAC 173-26-020, WAC 173-26-241, and 1 U.S. Code (...) 3

Categories: CR102 Comment

Dear Tim Gates

A I support the adoption of the Dept. of Ecology of the recent legislative changes to the Shoreline Management Act.....Specifically the addition of the definition and legislative intent regarding the legal and conforming status of floating on the water residences.

B I do not support the proposed change to the vessel definition at WAC 173-27-030.... This is NOT a 'housekeeping' item. The only acceptable housekeeping action would be to adopt the Federal 'vessel' definition 1 U.S. Code (...) 3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

Thank you for your hard work on this regard,

Patsy A Kyllo

6

Sant, Fran (ECY)

From: Mauri Shuler <maurishuler@me.com>
Sent: Monday, April 24, 2017 1:14 PM
To: ECY RE Shoreline Rulemaking
Subject: no new vessel definition

Categories: CR102 Comment

I am a boat owner, a resident of a houseboat, and many of my family are captains, mates, marine engineers, and one naval architect.
A I do support the ECY'S adoption of defining the legal and conforming status of "floating on water residences."

But please DO NOT adopt the proposed change to WAC 173-27-030 that would redefine vessel. There are already 24 different versions of such a definition across the state's agencies… we do not need another, especially one as badly written as the one proposed. This is certainly not a "housekeeping" item. It is a major
B major change.

I will only accept adoption of the federal "vessel"definition in U.S. Code with would pull all those disparate definitions under the same umbrella and avoid potential conflicts with long established federal law.

Mauri Shuler
1301 N. Northlake Way
Seattle, WA 98103
206-819-3819

7

Sant, Fran (ECY)

From: stephen ringo <stephenringo55@gmail.com>
Sent: Monday, April 24, 2017 9:30 AM
To: ECY RE Shoreline Rulemaking
Subject: Shoreline Management Act & Definition of "Vessel"

Categories: CR102 Comment

Dear Department Officials,

A I support the adoption by the Dept of Ecology of recent legislative changes to the Shoreline Management Act into WAC, especially the addition of the definition and legislative intent per the legal and conforming status of floating on water residences.

My wife and I live on a floating residence, a barge-style houseboat and we treasure this way of life and all the responsibilities that go with the lifestyle.

B I do NOT support the proposed change to the definition of the word "vessel" in WAC 173-27-030. This change is NOT mandated by legislative changes to the Revised Code of Washington and is NOT a "housekeeping" item. The acceptable and rational action, if any action were to be taken, would be to adopt the Federal definition of "vessel" 1 US Code 3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and Federal preemption.

Thank you for listening and thinking on these matters.

Sincerely,

Stephen C. Ringo

8

Sant, Fran (ECY)

From: Arlyn Kerr <arlyn@morsekob.org>
Sent: Monday, April 24, 2017 7:27 AM
To: ECY RE Shoreline Rulemaking
Subject: Changes to Shoreline Management Act

Categories: CR102 Comment

Hello,

A My husband and I own a housebarge on Lake Union. We've been following the proposals for changes to the Shoreline Management Act.

B We support the code regarding the legal and conforming status of floating-on-water residences in WAC-173-26-241. However, we oppose the idea of including a new definition of "vessel" in WAC 173-27-030 part 18. If you want to define a vessel, then you should adopt the federal definition. Or else don't attempt to define it at all. I'm afraid your proposed definition could lead to future problems for boats such as ours, which are currently legal.

Thank you.

Arlyn Kerr, Seattle

Sant, Fran (ECY)

9

From: bagemup4u@gmail.com on behalf of Kevin Bagley <Kevin@thekevlin.com>
Sent: Wednesday, April 26, 2017 3:42 PM
To: ECY RE Shoreline Rulemaking
Subject: Comments on Rules relating to implementing SMA RCW 90.58

Categories: CR102 Comment

Dear Mr. Gates,

I am writing to provide my formal comments on Rules relating to implementing the Shoreline Management Act (SMA) RCW 90.58. These rules are important to me in several capacities.

1. I am co-owner of the FIRST Floating On-Water Residence (The KevLin) verified by the Department of Construction and Inspections and this is our home.
2. I am the co-founder of Lake Union Liveaboard Association and have been actively involved in the Floating On-Water Residence community and deeply involved in the legislative activity to protect and preserve the Floating On-Water Residence community.
3. I am an active Board Member of the Lake Union Liveaboard Association and continue to work to support the Liveaboard community.
4. I am co-owner of Special Agents Realty and Special Agents Houseboats, which specializes in Floating On-Water Residences and we were instrumental in getting legislation passed to allow Real Estate Brokers to sell Floating On-Water Residences, without having a Vessel dealer's license.

I would like to **express my support** for the adoption by the Department of Ecology of the addition of the following definitions and legislative intent regarding the legal and conforming status of floating homes and floating on-water residences into the Washington Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241.

A

"Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.

"Floating on-water residence" means any floating structure other than a floating home, as defined by this chapter:

(a)That is designed or used primarily as a residence on the water and has detachable utilities; and

(b)Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.

A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use. For the purposes of this subsection, "conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.

A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition **1 U.S. Code § 3** which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

B

> **1 U.S. Code § 3** The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

I strongly recommend the following for inclusion in the Draft Rule consideration:

Water-dependent Use

Clarify the water dependent status of Floating Homes and Floating On-Water Residences.

> "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. (WAC 176-26-020)

A vessel is (of course) Water Dependent, even though many vessels can be moved across land, are stored in land-based properties, and only occasionally enter the water. Residential use of a Vessel is permitted. Many activities (uses) may occur on vessels that are NOT water dependent including residential uses, dining, dancing, gambling, weddings, parties, etc. These non-water dependent uses are permitted on water dependent vessels.

C

A Floating Home is Water Dependent. It is designed specifically to be in the water and could be structurally damaged if removed from the water. It is designed to be in the water and is NOT designed to be on the land. The same activities (uses) may occur on Floating Homes as occur on water dependent vessels.

A Floating On-Water Residence is Water Dependent. They are designed specifically to be in the water, have MARINE utility connections, and cannot logically exist as a floating residence outside of the water (you would probably then call them tiny homes or recreational vehicles). The same activities (uses) may occur on Floating On-Water Residences as occur on water dependent vessels or water dependent Floating Homes. These uses should be classified as water dependent even where the SMA and locally adopted SMPs would prohibit or limit any other residential uses in zones over or adjacent to the shorelines.

D

Prohibition of Overwater Residences

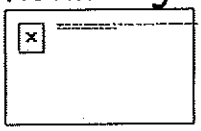
The WAC should fully address the remaining confusion regarding "Overwater residences" where a structure is located on land, piers or pilings. The draft Rule now incorporates the SMA changes recognizing existing "on the water" residential uses which are buoyantly floating on the water and are only indirectly connected to the land. These limited historic "on the water" uses including Floating Homes and Floating On-water Residences are now classified as conforming uses and are separately addressed. This constitutes a changed condition from the initial adoption of the new SMA guidelines. Floating Homes and Floating On-Water residences should not continue to be lumped together with over water residential uses.

Please provide me with any updates or decisions regarding these changes and rulemaking.

Thank you,

--

Kevin Bagley



The **"KevLin"**

Sant, Fran (ECY)

10

From: John Chaney <jchaney@nwlink.com>
Sent: Thursday, April 27, 2017 10:32 AM
To: ECY RE Shoreline Rulemaking
Subject: Proposed Vessel Definition - SMA Rule

Categories: CR102 Comment

Dear Mr. Gates,

I am a member of the Board of the Lake Union Liveaboard Association (LULA) and an On-water Resident in Seattle. I was engaged in the legislative changes to the Shoreline Management Act (SMA) regarding Floating On Water Residences and the Seattle Shoreline Management Program (SSMP). Neither LULA nor any LULA member I have found was notified of these proposed Rule changes therefore we did not comment on the draft. We simply did not know it existed.

I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition **1 U.S. Code § 3** which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

A

> **1 U.S. Code § 3** The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Please advise me of all progress and decisions regarding these proposed changes to the WAC implementing the SMA.

Best Regards, John Chaney
Vessel *Suttree*, Seattle
jchaney@nwlink.com

Sant, Fran (ECY)

11

From: Sarah Haggard <sarahag@microsoft.com>
Sent: Friday, April 28, 2017 1:46 PM
To: ECY RE Shoreline Rulemaking
Subject: Department of Ecology Proposals

Categories: CR102 Comment

Hello –

I live on a Houseboat (FOWR 718), am a member of the Lake Union Liveaboard Association and would like to share my thoughts on a few recent proposals:

- A I support the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code (WAC) 173-26- 020 and WAC 173-26- 241. Specifically, the addition of the definitions and legislation's intent regarding the legal and conforming status of floating on the water residences.
- B I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition 1 U.S. CODE sec. 3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemptions.

I'd also like to offer to participate in discussions with this department as a member of the Houseboat community. We care deeply about the environment, and in many cases – make better decisions about water conservation, pollutants, and recycling than our friends on land.

Thank you for your consideration -

Sarah Haggard

12

Sant, Fran (ECY)

From: Wayne Morris <wmorrisoz@yahoo.com>
Sent: Sunday, April 30, 2017 4:10 PM
To: ECY RE Shoreline Rulemaking
Subject: Shoreline Management Act

Categories: CR102 Comment

Dear Tim Gates

Department of Ecology

My name is Wayne Morris and I live on a floating on water residence on Lake Union in Seattle. Seattle is a very special place due to our access to the water and I feel very lucky to have such a unique lifestyle.

A I support the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241. Specifically, the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.

B I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition 1 U.S. Code #3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

Yours sincerely

Wayne Morris

13

Sant, Fran (ECY)

From: John Chaney <jchaney@nwlink.com>
Sent: Monday, May 01, 2017 10:27 AM
To: ECY RE Shoreline Rulemaking
Subject: Over, In and On Water Residences - Comments on Rules related to implementing the Shoreline Management Act (SMA) (RCW 90.58)

Categories: CR102 Comment

Dear Mr. Gates,

I am a member of the Board of the Lake Union Liveaboard Association (LULA) and an On-water Resident in Seattle. I was engaged in the legislative changes to the Shoreline Management Act (SMA) regarding Floating On Water Residences and the Seattle Shoreline Management Program (SSMP). I was also a member of the Seattle Living on the Water Stakeholder Group funded by Ecology. Neither I, LULA, nor any LULA member that I have found was notified of these proposed Rule changes therefore we did not comment on the draft. We simply did not know it existed, therefore please accept and consider these comments including those related to WAC 173-26-241(3)(j).

A **I strongly support** the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241 as proposed in the draft rules. Specifically the addition of the definitions and legislative intent regarding the legal and conforming status of Floating Homes and Floating On-water Residences..

> "Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is not a vessel, even though it may be capable of being towed.
>
> "Floating on-water residence" means any floating structure other than a floating home, as defined by this chapter:
> (a)That is designed or used primarily as a residence on the water and has detachable utilities; and
> (b)Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014.
>
> A floating home permitted or legally established prior to January 1, 2011, must be classified as a conforming preferred use. For the purposes of this subsection, "conforming preferred use" means that applicable development and shoreline master program regulations may only impose reasonable conditions and mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating homes and floating home moorages by rendering these actions impracticable.
>
> A floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable.

I also propose the following WAC change fully implementing the sections noted above.

<u>Prohibition of Overwater Residences</u>

b The WAC interpreting the SMA should fully address the remaining confusion in WAC 173-26-241(3)(j) regarding "Overwater residences." A plain reading of "overwater residence" is where a structure is located partially on land and partially or wholly on piers or pilings <u>over</u> the water. There is a significant difference in the implied location of "over" "in" and "on" the water. The draft Rule now proposes to incorporate the recent SMA changes recognizing existing "<u>on</u> the water" residential uses. These are designed to be buoyantly floating on the water and are only indirectly connected

to the land through their moorage. These limited, historic "on the water" uses including Floating Homes and Floating On-water Residences that are now classified as conforming uses in the SMA. I propose that this legislative change also be fully clarified in the implementing WAC. This constitutes a changed legislative action from the initial adoption of the new SMA guidelines implementing the 2003 Settlement Agreement. Floating Homes and Floating on-water residences are NOT over-water residences and should not continue to be prohibited as are other over water residential uses. They are now regulated by their own sections of the SMA and should be so treated accordingly under the WAC 173-26-241 (3)(j). I suggest the following revision removing confusing and now inaccurate words:

(j) Residential development
[Overwater residences]
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. (WAC 173-26-241 Shoreline uses (3) Standards (j) Residential development) **[emphasis and ~~strickthrough~~ added]**

The revised WAC should read:

[Overwater residences]
New over-water residences are not a preferred use and should be prohibited. It is recognized that certain existing communities of 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.

The legislature has clarified the status of existing floating homes and floating on-water residences in the SMA. The Implementing WAC and any ECY guidance on residential development should now reflect these changed Standards in the SMA. Continuing to include this inaccurate WAC section regarding Overwater Residences is in direct conflict with the legislative directive of the RCW requiring that any floating on-water residence legally established prior to July 1, 2014, must be considered a conforming use and accommodated through reasonable shoreline master program regulations, permit conditions, or mitigation that will not effectively preclude maintenance, repair, replacement, and remodeling of existing floating on-water residences and their moorages by rendering these actions impracticable. This requested modification to WAC 173-26-241 (3) (j) is required to clearly accommodate our use and not make its continuation impracticable.

I urge you to consider these propose changes to WAC 173-26-241. Please advise me of all progress and decisions regarding any changes to the WAC implementing the SMA.

Best Regards, John Chaney
Vessel *Suttree*, Seattle
jchaney@nwlink.com

Sant, Fran (ECY)

14

From: Willie Swanson <wjs18@uw.edu>
Sent: Monday, May 01, 2017 9:40 AM
To: ECY RE Shoreline Rulemaking
Subject: Shoreline Management Act -

Categories: CR102 Comment

Dear Tim Gates, Department of Ecology

My name is Willie Swanson. Along with my 13 year old daughter and 15 year old son, I live on a floating on water residence on Lake Union in Seattle. I love aquatic environments and activities. I have a PhD in Marine Biology from Scripps Institution of Oceanography and have spent a lot of time of vessels studying the oceans. I feel fortunate to live a wonderful lifestyle on the water. I fully appreciate understand the need for shoreline management from the perspective of both environmental protection and public access.

A I support the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241. Specifically, the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.

B I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition 1 U.S. Code #3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

thanks,

Willie

Willie J. Swanson
Professor
University of Washington
Genome Sciences, Box 355065
Foege Building, room S143B
1705 NE Pacific Street
Seattle 98195-5065

E-mail: wswanson@gs.washington.edu
Phone: (206) 616-9702
http://www.gs.washington.edu/

16

BOB COYNE
2442 NW MARKET ST
UNIT 329
SEATTLE, WA 98107

To	Tim Gates, Washington Department of Ecology SMA Rule Making
From	Bob Coyne
RE:	WAC 173-26-241 Public Comment
Date	4/25/2017

I understand that WAC 173-26-241 (Shoreline uses) is under review and seeking public input. Having spent considerable time reviewing the language, I feel there are some considerations and revisions to share as a long time citizen of Washington State and Seattle.

A First, I support the recent legislative changes regarding the legal and conforming status of floating on water residences. These protections are an important step in recognizing how much our city and state values our vibrant live-aboard community. Thank you for hearing the concerns of your constituency and supporting those changes.

The rest of my comments on WAC 173-26-241 reflect those same opinions. The language in this law still does not reflect values long held by Seattle. Of course we value clean water and a protected shoreline. But I have never heard support within this community of some of the guiding statements made in these proposed regulations.

An example, under **Residential Uses** it states, "single-family residences are the most common form of shoreline development and are identified as a priority use..." Seattleites agree with this statement. Living on the water is one of the most coveted lifestyles we have.

B However the rule continues stating that "floating homes, are not a preferred use and should be prohibited." Living on the water has been a valued part of Seattle since our earliest days. People around the country recognize this about Seattle. Locals tour our floating residences with out-of-towners. Movies made about it draw tourists. It is a source of local pride and part of our heritage. Living on the water has expanded to include a myriad of different ways people express their creativity. Elegant floating homes. Colorful house barges. Houseboats. Yachts. Tugs. FOWRs and so many others. Regulators have been challenged coming up with descriptions of all the various ways our neighbors find to live on the water. I am shocked that our representation would dare to say it is not a priority.

Let's not blame the limited number of live-aboards with pollution that we know is more attributed to storm water runoff, onshore septic systems and sewage treatment, urban pollutants and the removal or modification of trees and vegetation. The argument is suspect and harkens 'alternative facts and fake news'.

Recommendations to WAC 173-26-241

I do not have the skills to write regulations. I offer the following recommendations in the spirit of constructive criticism.

C

C – Boating Facilities

Your rules states: *"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."*

This statement should recognize and offer support to the numerous ways the public currently uses our waters.

"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 public recreational, sports, living or commercial lifestyles on waters of the state"

Your Rule states: *"Where applicable, shoreline master programs should, at a minimum, contain regulations to limit the impacts to shoreline resources from boaters living in their vessels (live-aboard).*

This statement should balance the need for regulations with the need to protect homeowner's rights.

"Where applicable, shoreline master programs should contain regulations to limit the impact to shoreline resources from boaters living in their vessels, while supporting their rights to make this traditional use of our marine resources.

The homes and lifestyles of live-aboards should not be at risk from changing regulations any more than traditional homeowners.

D

J. Residential Development.

Your rule: *"Single-family residences are the most common form of shoreline development and are identified as a priority use.."*

This 'priority use' statement should include citizens that have chosen floating homes, FOWRs or vessels as their residence. Perhaps it should be recognized that a vessel residence generates less overall pollution than an onshore residence.

Your Rule: *New over-water residences, including floating homes, are not a preferred use and should be prohibited.*

E

Resident of Seattle, Washington State and the Northwest do not agree with this statement. In fact, we vehemently disagree with it and will act against it, seeking legislative support if we must. Please moderate it. Perhaps simply recognizing that "on water" is different from "over water would suffice"

Your Rule: *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.*

We do not want the '*minimum necessary to assure consistency with constitutional and other legal limitations.*' Floating homes, FOWRs and vessels are part of our Northwest lifestyle. People have substantial investments in these homes. Like any homeowner, these investments should be protected from costly changes or risks to their home due to regulatory changes.

f In addition, we citizens of Seattle want sustainability. We want a thriving and growing population of live-aboards. We know it is one solution to the high cost of housing in Seattle and we don't want that option closed or those cost structures changed.

We are proud of our 'Clean Marinas'. Let's remember that clean marinas are kept that way in part by their live-aboards. We are closer to the water than any other residents in the city. Of course we want it clean.

I look forward to seeing how these statements are changed to reflect the values of our city.

Warm regards,

B Coyne

Bob Coyne
206-295-4459
bcoyne12000@yahoo.com

Pacific County
PROSECUTING ATTORNEY
Mark McClain, Prosecutor

April 27, 2017

RECEIVED
MAY 01 2017
DEPARTMENT OF ECOLOGY
OFFICE OF DIRECTOR

Fran Sant
Washington State Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

RE: Shoreline Management Act Rules

Dear Ms. Sant,

I write on behalf of the Pacific County Board of County Commissioners, and the community members who have painstakingly participated in the development of Pacific County's Shoreline Master Program (SMP) and, together, ask that the Department not amend WAC 173-27-060.

Pacific County spent a good deal of its very limited resources on the latest version of its SMP, now being reviewed by the Department of Ecology. We were proud of the amount of citizen participation in the process. We invest this effort because of our understanding of the statutory duties of the County and the Department. We understand Chapter 90.58 RCW as building the State's shoreline management atop the foundation of the individual counties' SMPs. We particularly appreciate being that foundation when state and federal shoreline management interests intersect.

Thus, the Commissioners were surprised to learn in recent meetings with constituent groups and stakeholders who actively engaged in the development of our SMP that the Department views the SMA and the SMP Guidelines as being the core enforceable policy and the County's SMP as merely its local expression. We find no legal authority for that interpretation. In fact, RCW 90.58.030(3)(b) states that "'[g]uidelines' 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." *Emphasis added.* (3)(d) states that the "'[s]tate master program' is the cumulative total of all master programs approved or adopted by the department of ecology." On its face, the statute

PO Box 45, 300 Memorial Dr., South Bend, WA 98586 Ph 360.875.9361, Fax 360.875.9362
E-mail: mmcclain@co.pacific.wa.us

says that the counties' SMPs are the enforceable polices. This is particularly important to our County when federal agencies look to act, regulate, or de-regulate in our coastal waters. 16 U.S. C. 1456(c)(1)(A) requires federal agencies to act "in a manner that is consistent to the maximum extent practicable with the enforceable policies of approved State management programs." Pacific County depends on a healthy, well-regulated coastline. The fishing, shellfish, and tourist industries here are local, individual, and our continued interest and priorities are reflected in our SMP. We are the only county that currently devotes an entire section of policy and regulations to our ocean shorelines as a piece of our SMP, which, as a result, requires federal action in the Coastal Zone Management Act to be consistent with our local SMP. We believe this to be of critical importance to protect our community and we appreciate having State support protecting our citizens and their jobs.

Please do not change that by lessening our locally adopted SMP or the Act generally. And please let us know if the Department believes that our SMP is not itself an enforceable policy as contemplated by the Coastal Zone Management Act or the Shoreline Management Act.

Respectfully,

Mark McClain

CC: Maia Bellon
Senator Dean Takko
Representative Brian Blake
Representative James Walsh
Pacific County Board of Commissioners

17

Sant, Fran (ECY)

From: Dale Beasley <crabbytoo@centurylink.net>
Sent: Thursday, May 04, 2017 8:18 AM
To: ECY RE Shoreline Rulemaking
Cc: Lynn, Brian (ECY)
Subject: SMP amendments COMMENTS due 15 May 2017
Attachments: CCF comments - SMP housekeeping Washington-NOAA approved CZM program 15 May 2017 final (002).docx

Categories: CR102 Comment

Tim Gates

Please include the CCF comments in the public record opposing the elimination of direct local policy and regulation from inclusion in the Washington state/NOAA CZMA approved program. Corrective Action Necessary.

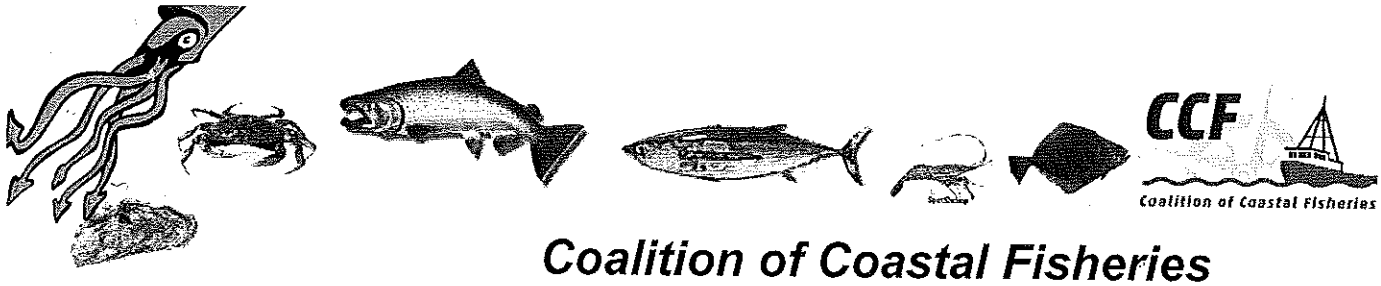
The state Shoreline Master Program is the individual collection of local SMP's and must not be arbitrarily eliminated from the CZM program as has been the current practice of ecology. CORRECTIVE ACTION NECESSARY. This MUST be corrected and the local SMP's MUST become approved and significant part of the approved NOAA CZMA program to fulfil Washington legislative and congressional intent. To simply "inform" the process if a permit or other actions is initiated is not appropriate and drastically changes the intent of the legislature and congress to include local authorities in the approved CZMA.

This notice and public comment letter represents all of the CCF members and associates individually and collectively and is intended to preserve our legal rights in court if that should ever become necessary.

This "housekeeping" is an excessive narrowing of the law and essentially an elimination of local SMP policy and regulation that is unacceptable and limits individual and local governments' ability to ensure that local authorities are actually put into practice now and in the future.

Concerned,

Dale Beasley, president of CCF and CRCFA



Coalition of Coastal Fisheries

Coastal Office: PO Box 2472, Westport, WA 98595 – 360 642 3942, Cell 360 244 0096
Administrative Office: 806 Puget St. NE, Olympia, WA 98506 – ofc: 360 705 0551, Fax 360 705 415410

On watch serving the needs of the coastal fishing industry and coastal fishing communities
Fishermen Working Together since 1979

Washington Department of Ecology: 4 May 2017

RE: "**Housekeeping**" amendments to the Shoreline Management Act due 15 May 2017

Email comments to: smarulemaking@ecy.wa.gov

Coalition comment: retain original language, add "regulations" page 16 & 17
http://www.ecy.wa.gov/programs/sea/rules/1506pdf/IssuePaperHousekeeping.pdf

This change in the Washington State CMZA agreement is much more than housekeeping, it is a comprehensive alteration of the state and congressional intent of the legislation of the CZMA, ORMA, and SMP statutes that clearly identifies that federal actions MUST be consistent with both state and **"local" authorities**:

16 U.S.C. 1456 (c)(1)(A) "Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs". This proposed change strips local people of their rights to challenge a federal action directly in the EEZ applying local regulations - Not Acceptable.

The Washington Shoreline Management Act is the foundation of the NOAA approved Washington Coastal Zone Management and also includes a network of regulations of the six state laws **and local shoreline master programs** developed pursuant to the SMA are also incorporated into the CZMP and thus are part of the network of laws comprising Washington's CZM program and must not be arbitrarily truncated by simple exclusion.

The **legislative intent** of the SMP was to promote local variation and provided multiple local SMP authorities to be a basic part of the Washington state NOAA approved CZM Program. Neah Bay and Willapa Bay including but not limited to as an example are different, have different local drives and environmental conditions that need to be represented accordingly, similarly other local communities have individual differences that MATTER and reflected in local authorities as intended. Eliminating "local authorities" as done on top of page 17 of the housekeeping from the State CZM is an excessive narrowing of the legislative intent and construes the statute too narrowly to be legally acceptable. Ecology does not have the authority to rewrite or eliminate statute that applies to the CZMA which requires states to identify "Enforceable Policies:" state policies which are legally binding through constitutional provisions, laws, regulations, land use plans, ordinances, or judicial or other legally binding administrative decisions, by which a state exerts control over private and public land and water uses and natural resources in the coastal zone must be included.

Currently, Pacific County is the only coastal county with an approved "ocean section" in its SMP which has been in effect since 1997. Grays Harbor County is in the process of initiating an ocean section to their SMP update and will also become an integral legal instrument that needs to be included in the NOAA approved CZMA program. Others local jurisdiction may also apply now and in the future and must not be eliminated from CZM approval.

ORMA legislative explicit direction as written in statue is to articulate policies and establish guidelines for the exercise of state and "**local**" management authority over Washington's coastal waters, seabed, and shorelines to preemptively combat environmental dangers, protect and preserve existing coastal uses including fishing articulated in the plain language of the statutes. Ecology has a fundamental duty to ascertain and carry out the intent of the legislature, not short-circuit local law by eliminating it for CZM NOAA approved program by lining it out "~~enforceable policies~~ of the local master program" as done on the top of page 17 in the "housekeeping" SMP changes.

ORMA's and its incorporation into local SMA plain language clearly intended to "exercise state and **local** management authority of Washington's coastal waters, seabed, and shorelines as articulated in **RCW 43.143.010 (1)** and recently upheld in by the Washington Supreme Court Decision. https://www.courts.wa.gov/opinions/pdf/925526.pdf

Recently the Washington Supreme Court issued its first and only decision relative to implementing ORMA and unequivocally interpreted the statute that the **fundamental purpose of agencies was to ascertain and carry out the intent of the legislature** and apply the plain language of the statute that clearly gives explicit direction to include local management authority and this legal foundation MUST not err by elimination local authority that is written into the law and upheld by the Washington Supreme Court and afford the protections in state and federal waters as intended by both the Washington legislature and congress. It is obvious even to the casual reader that this elimination of local authority as a part of the state CZM program is not an appropriate action and MUST not occur.

CCF would urge ecology to rewrite sections on page 16 & 17 to conform with legislation and maintain local authorities as a prominent part of the Washington state CZM NOAA approved program:

Ecology "Housekeeping" radical departure from legislative intent

WAC 173-27-060 – Applicability of chapter 90.58 RCW to federal lands and agencies

Summary of changes: The proposed amendment clarifies that Ecology will consult local Shoreline Master Programs when making federal consistency determinations to inform decision-making as to whether a proposed project is consistent with state enforceable shoreline management authorities (i.e. the SMA and its regulations).

(1) ...The Shoreline Management Act is incorporated into the Washington state coastal zone management program and, thereby, those direct federal agency activities affecting the uses or resources subject to the act must be consistent to the maximum extent practicable with the enforceable provisions of the act, and regulations adopted pursuant to the act. ~~and~~ tThe applicable state-approved local master program will inform the department's consistency determinations. (a) When the department receives a consistency determination for an activity proposed by the federal government, it shall request that local government review the proposal and provide the department with its views regarding the consistency of the activity or development project with the ~~enforceable policies~~ of the local master program.

Retain Existing language and SMP local enforceable policies and regulation

RCW 90.58.020 ..... a clear and urgent demand for a planned, rational, and concerted effort, jointly performed by federal, state, and local governments..... Delete the underlined added language and

eliminate the cross outs of "and" and "enforceable policies" – retain the original language as representative of the legislative intent to include local enforceable policies and add "regulations" to read "enforceable policies and regulations" in the Washington approved NOAA CZM program. There is no reason for counties to go through the recent massive SMP update process ecology is going through currently to eliminate the state legislatively mandated local authorities. The congressional CZMA language also includes both state and local authorities as intended by congress as well. Status quo plus add the word "regulation". CCF is fighting for coastal people's rights and accountability of agencies to protect and preserve those rights assigned by congress and the legislature for, of, and by the people. The Pacific County and other SMP's required 1000's of hours of local citizen involvement, millions of taxpayer dollars for SMP updates and must be retained as effective protections throughout their legislated range out to 200 miles from shore. Agencies cannot change the laws by simply agreeing to truncate legislations' broad reach – the Washington Supreme Court Decision applies here as well - https://www.courts.wa.gov/opinions/pdf/925526.pdf which clearly defines a multiplicity of the factual basis of the Decision relative to agency action:

Washington Supreme Court 9 – 0 Decision – what does it mean for Washington Coastal Uses and Protections under ORMA and its broad application as inserted in to the LOCAL coastal SMP's to guide other agency & government activities applying legislation to practical situations rapidly approaching including but not limited to, the Washington Coastal Marine Spatial Plan and associated EIS including this "housekeeping" currently under public comment until 15 May 2017?

Washington Supreme Court Decision clearly articulated, including but not limited to:

https://www.courts.wa.gov/opinions/pdf/925526.pdf

1. **Fundamental purpose** - ascertain and carry out the intent of the legislature according to the "plain language" in the RCW's
2. Carry out the legislature's explicit directions as written in the ORMA statute
3. ORMA is designed to preemptively address and prevent threats to coastal waters and existing "coastal" uses
4. ORMA articulates policies and guidelines for state and "LOCAL" management authorities
5. ORMA covers coastal waters, seabed, shorelines, and coastal uses in and adjacent to the 4 coastal counties
6. New uses that are potentially adverse to existing COASTAL uses and ecological function can be outright PROHIBITED
7. ORMA MUST be used to preemptively protect and preserve coastal uses from future RISKS
8. ORMA did not define "uses or activities"
    a. ORMA missing definitions can be drawn from standard English dictionaries and were broadly interpreted referencing "coastal uses"
9. ORMA protections have very broad application and must be construed liberally
10. ORMA reaches not only new use but expansion of existing use that may have adverse impacts on other coastal uses or coastal environment
11. ORMA considers energy development as a NON renewable resource (including ocean energy)
12. ORMA considers use priorities to renewable resource activities like fishing over non-renewable activities
13. **Court Decision states clearly agencies cannot amend statute by narrowing its reach**

CCF
Coalition of Coastal Fisheries

This Washington Supreme Court decision is far reaching and applies a broad range of legislative protections touched by ORMA including the local SMP's coastal waters, seabed, shorelines, and coastal uses out to 200 miles from shore to preemptively address and prevent potential adverse impacts and Risks found throughout the entire range of the legislation as clearly articulated in the Decision. Supreme Court Precedent with a 9 – 0 decision supporting ORMA's long reach of the law, we MUST ascertain and uphold the intent of the legislature to obtain the **- BEST ACHIEVABLE PROTECTION for Coastal Communities** under ORMA's broad reach as incorporated into the LOCAL policy and regulations of the recent Pacific County SMP update and other SMP updates currently in progress and or recently completed that could be affected by this "housekeeping".

The Coalition of Coastal Fisheries is very concerned that this "housekeeping" will strip coastal citizens of their RIGHTS to court redress within and beyond 3 miles from shore applying but not limited to the Pacific County Shoreline Master Program as intended in the recent SMP update and truncated by unelected agency officials' inappropriate actions to arbitrarily strip local authority from the NOAA approved state CZM federal consistency agreement which is inconsistent with local, state, and national legislation.

The Coalition of Coastal Fisheries represents over 2000 fishing families directly and thousands more that rely heavily on getting fish from vessel to the consumer's plate including the support industries which include over 60,000 seafood/maritime related JOBS in Washington state totaling over $8 billion of business gains annually that this "housekeeping" action affects. Commercial and Recreational Fisheries in the United States are vital economic drivers supporting water dependent communities' stability and vitality across the nation. Pacific County Washington at the mouth of the Columbia River is the 4th most seafood dependent community in the nation and highly vulnerable to effects that may cause loss of access to fish from major and cumulative federal actions that may take place in state or federal EEZ zone and fishing is the entity most at RISK of HARM. It MATTERS GREATLY to the health and prosperity of the coast, state, and nation including but not limited to, the fact that oil, other caustic spills, and numerous fixed structures placed in fishing grounds are curbed appropriately, that human health and safety is not jeopardized, and that our goal is to avoid environmental and social damages in the Northwest. Commensurate with CCF primary goal to protect, preserve, and enhance fishing communities from deleterious effects of federal action it is essential that local policy and regulation become an integral part of the approved Washington State/NOAA CZMA program to maximize avoidance of adverse impacts that affect coastal communities exercising the full extent of the law as intended by the Washington state legislature and congress.

This letter represents all the Coalitions members individually and collectively including the associate memberships not individually listed and is intended to preserve all our legal rights now and in the future if individual court action should ever become necessary to challenge a future action that could be affected by this "housekeeping".

Respectfully submitted,

Dale Beasley President Coalition of Coastal Fisheries

tahoma audubon society

2917 Morrison Road, W. University Place Wa. 98466 (253) 565 9278

May 5,, 2017

To: fran.sant@ecy.wa.gov

State of Washington Department of Ecology
c/o Ms. Fran Sant, Rule Coordinator
PO Box 47600
Olympia, Washington 98504-7600

Dear Ms. Sant:

Subject: Comments on proposed Amendments to Chapter 173-18, 173-20, 173-22, 173-26, 173-27 WAC part of the Shoreline Management Act (SMA) Rules

Summary:

Thank you for the opportunity to comment on the proposed amendments to the Shoreline Master Program (SMP) Guidelines and SMA rules. Tahoma Audubon Society finds that several of the proposed changes in the WAC are inconsistent with the RCW for the Shoreline Management Act and its requirement for no net loss. In addition we find that SMP guidelines do not adequately address sea level rise and increased coastal erosion due to global warming.

RCW takes precedent.

A We oppose the revisions to WAC 173-26-090(2)(d)(ii) and (iii) which only require SMP updates to comply with SMA that have been added or changed since the last SMP update. Currently WAC 173-26-090 requires the periodic reviews of shoreline master programs. This is very different from what RCW 90.58.080(4)(a)(i) which requires compliance with <u>all</u> applicable laws and guidelines.

In addition proposed WAC 173-26-090(2)(d)(ii) and (iii) weakens the existing SMP Guidelines and are inconsistent with the SMA because they do not require review of SMPs to determine if the SMPs are achieving the no net loss requirement and the other requirements of the SMA and SMP Guidelines.

B And finally Ecology's proposed amendments fail to keep the Shoreline Master Program Guidelines up-to-date and fail to address the emerging issues in shoreline management. In particular the provisions for sea level rise need to be improved. Flooding and erosion from sea level rise will damage the state's marine shorelines. The updated SMP Guidelines should require SMPs to address flood damages from sea level rise and the other adverse impacts of global warming.

State Shorelines and seal level rise:

Our shorelines are currently experiencing major changes due to sea level rise. Stream and river runoff patterns are changing due to global warming. Ocean acidification is adversely impacting the ocean, state estuaries on the Pacific Ocean and Puget Sound. If an SMP remains frozen in the mid-2010s it will soon become inconsistent with the SMA and the SMP Guidelines and, perhaps more importantly, reality.

RCW 90.58.100(2)(h) requires that the "master programs shall include, when appropriate," "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages …" Please note that RCW 90.58.100(6) specifically requires standards for nonstructural methods of projection such as setbacks.

The proposed rule changes and amendments, however, only mention of sea level rise and the erosion it is causing is in WAC 173-26-090(1)(a) which provides that "[l]ocal governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise." Unfortunately, this does not give "consideration to the statewide interest in the prevention and minimization of flood damages" or the requirements of RCW 90.58.100(6).

- Sea level rise is a real problem that is happening now. Sea level rise results in increase of floods and erosion. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century and would likely rise an additional by 24 inches on the Washington coast by 2100.

- Homes built today are likely to be in use in 2100. And new lots created today will be in use in 2100. This is why the Washington State Department of Ecology recommends "[l]imiting new development in highly vulnerable areas."

It is time for Ecology to update the SMP Guidelines that address flooding and to require measures to mitigate the impacts of sea level rise and the related hazards. Ecology owes it to local governments and state residents, property owners, and taxpayers to update the SMP Guidelines to better protect people and property from these hazards.

Unless wetlands and shoreline vegetation are able to migrate landward, their area and ecological functions will decline. If SMPs are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. Failing to address these issues violates the policy of the Shoreline Management Act to protect shoreline vegetation.

Merely recommending that local governments consult with Ecology on emerging issues such as sea level rise as the proposed amendment to WAC 173-26-090(1)(a) is not sufficient to comply with RCW 90.58.100(2)(h) and RCW 90.58.020. Every new building or new lot created in harm's way and each loss of the vegetation protecting uplands is creating a problem for our children and their children. It is time to require SMPs to consider these adverse impacts on the shorelines and people and property.

We urge Ecology to update the SMP Guidelines to address sea level rise and the effects of coastal erosion. This update should require planning for sea level rise and measures to avoid or mitigate the adverse the impacts. And the Guidelines should provide provisions to allow shoreline vegetation to migrate landward as sea level rises in appropriate locations.

In Summary, we encourage you to address the inconsistencies between the proposed WAC changes and the intent of the RCW for Shoreline Management Act which provides for no net loss of shoreline functions and values. Our shorelines are facing major changes in stream and river runoff patterns, ocean acidification and loss of fish and wildlife on Puget Sound.

There is no justification for new rules that repeal provisions in the current WAC and propose weaker new rules. This is truly appalling set of rule changes.

Sincerely,

Kirk Kirkland

Kirk Kirkland

Sant, Fran (ECY)

From:	drumskills4u@gmail.com on behalf of John Lester <drumchops4u@hotmail.com>
Sent:	Sunday, April 23, 2017 6:45 PM
To:	ECY RE Shoreline Rulemaking
Subject:	Shoreline management rule proposals
Categories:	CR102 Comment

Mr Gates.

I live on a House Boat (FOWR) on the Ship Canal in Seattle. We have lived aboard our houseboat since it was built in 1986. As you can imagine I have a vital interest in regulations concerning residential uses on the water.

A I am writing to support the adoption by the Department of Ecology of the recent legislative changes to the Shoreline Management Act into the WAC at WAC 173-26-020 and WAC 173-26-241. Specifically concerning the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.

B I do not support the proposed change to the definition of a "Vessel" at WAC 173-27-030. This change has not been mandated by legislative changes to the RCW, and it is not a "housekeeping" item.

I would support the adoption of the "Federal" definition (U.S. code -3.)

It seems to me that this is a perfectly acceptable and clear definition that conforms to the majority of the RCW and WAC vessel definitions. this would also go a long way towards reducing potential conflicts of jurisdiction and federal preemption.

Thank you for your attention.

John Lester
360 W Ewing St
Seattle WA, 98119

Drum Lessons
206-399-4180
DrumChops4u@hotmail.com
DrumChops4u.com

 "All the problems we face in the United States today can be traced to an unenlightened immigration policy on the part of the American Indian." Pat Paulsen

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Sant, Fran (ECY)

From: Russell Patterson <ascsvets@msn.com>
Sent: Sunday, April 23, 2017 7:06 PM
To: ECY RE Shoreline Rulemaking
Subject: Shoreline Management Act changes

Categories: CR102 Comment

Hello,

I am an owner of a Floating On Water Residence moored at Gas Works Park Marina and I'm writing to **support** the adoption of the recent legislative changes to the Shoreline Management Act into the WA Administrative Code at WAC 173-26-020 and WAC 173-26-241. Specifically the addition of the A definition and legislative intent regarding the legal and conforming status of floating on water residences.

I would also like to say that I **do not support** the proposed change to the "vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to Revised Code of WA (RCW) B and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition **1 U.S. Code 3** which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

Thank you,
Russ Patterson

Russell H Patterson, VMD, DACVS
Animal Surgical Clinic of Seattle
14810 15th Ave NE
Shoreline, WA 98155
ascsvets@msn.com
ascs@animalsurgical.com
C: 206-550-5850

Sant, Fran (ECY)

21

From: Suzy Whitehead <suzywhitehead@icloud.com>
Sent: Sunday, April 23, 2017 7:12 PM
To: ECY RE Shoreline Rulemaking
Subject: re Floating on Water residences

Categories: CR102 Comment

Hello,

I am the owner of a floating on water residence on Lake Union. I want to say that I support the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code. Specifically the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.

A

I do not support the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington and is not a "housekeeping" item! The only acceptable housekeeping action would be to adopt the Federal "vessel" definition 1 U.S. Code 3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

B

Sincerely, Suzanne Whitehead

22

Sant, Fran (ECY)

From: Carol Brown <brownie@w-link.net>
Sent: Wednesday, May 10, 2017 9:44 AM
To: ECY RE Shoreline Rulemaking
Subject: Comments about WAC 173-26-020, 241, and 173-27,030

Categories: CR102 Comment

Dear Mr. Gates,
I am the owner of a houseboat vessel in the Gas Works Park Marina on Lake Union in Seattle.

I am also a member of the Lake Union Liveaboard Association (LULA). Although LULA was engaged in the legislative changes to the Shoreline Management Act (SMA) regarding Floating On Water Residences, we were not notified of these proposed rule changes and, therefore, LULA did not comment. I'm hoping that you will accept these comments from a LULA member on on-water resident now.

WAC 173-26-020 and WAC 173-26-241

A I strongly support the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act in the Washington Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241—specifically, I support the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.

WAC 173-27-03

B I do not support the proposed change to the "Vessel" definition in the WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition 1 U.S. Code § 3, which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

1 U.S. Code § 3 The word "vessel" includes every description of watercraft or other artificial contrivance used, or capable of being used, as a means of transportation on water.

Regards,
Carol Brown
2143 N. Northlake Way, Slip 69
Seattle, WA 98103

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Sant, Fran (ECY)

From: Gates, Tim (ECY)
Sent: Tuesday, May 09, 2017 3:34 PM
To: ECY RE Shoreline Rulemaking
Subject: Comment from Pacific and Grays Harbor Conservation Districts

Categories: CR102 Comment

Mike Nordin representing the Boards of both the Pacific and Grays Harbor Conservation Districts called to offer support for the comment supplied by comments provided by the Pacific County Prosecuting Attorney. His name and these districts should be added to the list of commenters writing in support of retaining existing WAC 173-27-060.

Tim Gates, AICP
Shoreline Policy Lead | Department of Ecology | Shorelands & Environmental Assistance Program
tim.gates@ecy.wa.gov | Office: (360) 407-6522 | Cell: (360) 701-5847

CRCFA
COLUMBIA RIVER
CRAB FISHERMAN'S ASSOC.

Columbia River Crab Fisherman's Association
P.O. Box 461 Ilwaco, WA 98624 – 360-642-3942

...Serving the needs of the coastal crab fishing industry and coastal fishing communities...
Fishermen and Communities Working Together to achieve common goals

Greetings Washington Department of Ecology 11 May 2017

RE: "**Housekeeping**" amendments to the Shoreline Management Act 2017

Email comments to: smarulemaking@ecy.wa.gov

CRCFA comment: retain original language, add "regulations" to policy page 17
http://www.ecy.wa.gov/programs/sea/rules/1506pdf/IssuePaperHousekeeping.pdf

Promptly discontinue the decade long illegitimate practice of ignoring the Pacific County Shoreline Management Program and reinstate the "local" SMP management authorities into the Washington state/NOAA CZMA approved program as intended by both the Washington state legislature and congress.

This change in the Washington State CMZA agreement is much more than housekeeping, it is a comprehensive alteration of the state and congressional intent of the legislation of the CZMA, ORMA, and SMA statutes that clearly identifies that federal actions MUST be consistent with both state and "local" authorities.

Pacific County has painstakingly incorporated Washington ORMA into their Shoreline Master Program with the full intent that the local SMP authorities be included into the Washington state/NOAA approved program. The county commissioners recently sent a letter strongly opposing ecologies practice of arbitrarily excluding the Pacific County "local" SMP from incorporation the approved CZM process.

The recent Washington State Supreme Court Decision No. 92552-6 clearly defined ecology's **Fundamental responsibility** is to ascertain and carry out the intent of legislation. Ecology is not to corrode the original legislative intent by an unacceptable and arbitrary narrowing of the law excluding local authorities from the state/NOAA approved CZMA program just because it is convenient or that California has that wayward provision in their CZM program. There is NO reasonable justification for altering the RCW's of this state through a 10 year practice of ignoring the law and capriciously eliminating local management authority from the CZM process.

RCW 43.143.010 (1) ... Participation in federal ocean and marine resource decisions. The purpose of this chapter is to articulate policies and establish guidelines for the exercise of state and local management authority over Washington's coastal waters, seabed, and shorelines.

There is no evolution of that original legislative intent to exclude local government management authority in the CZM state/NOAA approved program. The Washington state legislature authorized "local" management authority with the full realization that communities are different and the legislation intended to capture those different community needs within individualized SMP's within statewide guidelines that ecology has defined in a 1 ¼ inch thick Shoreline Master Program (SMP) Handbook updated 2 February 2011. Pacific County has ardently adhered to those guidelines in their recent SMP update and collaborated with ecology every step of the way to ensure that the SMP guidelines were met or exceeded.

RCW 43.143.010 (6) The state shall participate in federal ocean and marine resource decisions to the fullest extent possible to ensure that the decisions are consistent with the state's policy concerning the use of those resources.

RCW 43.143.020 (2) Definitions. "Coastal waters" means the waters of the Pacific Ocean seaward from Cape Flattery south to Cape Disappointment, from mean high tide seaward two hundred miles.

Please note that there are only 4 counties that have the possibility to extend their SMP's seaward in the Pacific Ocean to 200 miles, not 131 through the inclusion of ORMA into their SMP's and only one county, Pacific which currently has fully included ORMA into an ocean section of their SMP since 1997. The legislature repeated the clear intent to fully include local authorities into the CZM process, not merely inform. The legislative intent is that:

RCW 43.143.030 (1) Planning and project review criteria. When the state of Washington and local governments develop plans for the management, conservation, use, or development of natural resources in Washington's coastal waters, the policies in RCW 43.143.010 shall guide the decision-making process.

Congress also fully and unmistakably intended local management authority to be a substantial part of the CZMA process, not merely inform the process.

16 U.S.C. 1456 (c)(1)(A) "Each Federal agency activity within or outside the coastal zone that affects any land or water use or natural resource of the coastal zone shall be carried out in a manner which is consistent to the maximum extent practicable with the enforceable policies of approved State management programs".

Please note that the Pacific County local SMP has contained an ocean section in it since 1997 that fully embraces ORMA as an approved enforceable policy and regulation of the approved state management program reaching 200 miles offshore under the Shoreline Management Act. Pacific County Commissioners understood that their SMP ocean section would be fully enforceable regulation out 200 miles for all federal projects including but not limited to, actions, permits, grants, and other federal actions in waters adjacent to and offshore of Pacific County Washington as a part of state law.

16 U.S.C. § 1452. (4) [Congressional declaration of policy (Section 303)] - to encourage the participation and cooperation of the public, state and local governments, and interstate and other regional agencies, as well as of the Federal agencies having programs affecting the coastal zone, in carrying out the purposes of this chapter.

This proposed change strips local people of their rights to challenge a federal action directly in the EEZ applying local regulations directly - Not Acceptable.

Thank you for implementing our comments and not only retaining "Local" authorities in the SMA but also reinstating the full intent of both the Washington state legislature and congress of incorporating the "Local" policy and regulations into the state/NOAA approved CZM process applicable to all federal involvement in coastal waters to the full extent of the **"local",** state, and federal law out to 200 miles from shore.

Very concerned for the future protection of our coastal waters including the County and Cities SMP's,

Dale Beasley

Dale Beasley, president CRCFA

25

PUGET SOUND ENERGY
The Energy To Do Great Things

Puget Sound Energy
P.O. Box 97034
Bellevue, WA 98009-9734

PSE.com

May 12, 2017

Department of Ecology
Fran Sant
PO Box 47600
Olympia, Washington 98504-7600

RE: PSE Comments on Shoreline Management Act Rulemaking

Dear Fran,

Thank you for the opportunity to review and comment on the proposed amendments to Shoreline Management Act (SMA) RCW 90.58. As Washington State's largest electric and natural gas utility, Puget Sound Energy (PSE) is committed to safe, dependable, and efficient energy.

Comments on Definitions. (WAC 173-27-030)

A

(6) "Development" - PSE supports the clarification of the definition of "Development" and to eliminate inclusion of the dismantling or removing of structures when there is no other associated development or redevelopment. This change will encourage clean-up of the shoreline by removing the need for costly and time-consuming permit review.

Comments on Nonconforming use and development standards. (WAC 173-27-080)

PSE conducts frequent repair and maintenance to our gas and electric infrastructure across Western Washington, some of which may be located within shoreline jurisdictions. Maintenance of aging utility infrastructure often means replacement with like-kind equipment that may have slightly different dimensions due to changing equipment standards. It is important for utilities be able to perform timely repairs on critical infrastructure that pose little to no effect on the Shoreline environment. PSE recommends that the nonconforming structures/uses section be amended to include the following clarification for utilities:

(2) Nonconforming structures.

B

(b) Nonconforming structures may be enlarged or expanded provided that said enlargement meets the applicable provisions of the master program. In absence of the other more specific regulations, proposed expansion shall not increase the extent of nonconformity by further encroaching upon or extending into areas where construction

would not be allowed for new structures, unless a shoreline variance permit is obtained. Maintenance or replacement of existing utility poles or other structures that involve an expansion of 15% or less shall not require a shoreline variance permit.

(3) Nonconforming uses.

(b) In the absence of other or more specific regulations in the master program, such uses shall not be enlarged or expanded, except upon approval of a conditional use permit. Maintenance or replacement of existing utility poles or other structures that involve an expansion of 15% or less shall not require a conditional use permit.

PSE appreciates the opportunity to comment on the proposed amendments. Thank you in advance for your consideration of these comments.

Sincerely,

Julie Nelson

Julie Nelson
Associate Land Planner

Sant, Fran (ECY)

26

From: Christian Geitz <CGeitz@kirklandwa.gov>
Sent: Friday, May 12, 2017 11:19 AM
To: ECY RE Shoreline Rulemaking
Cc: Joan Lieberman-Brill
Subject: FW: comments on the proposed SMA rulemaking CR102

Categories: CR102 Comment

Hi Fran,

Thanks for the opportunity to comment on the proposed amendments to the SMP.

The City of Kirkland has the following comments and suggestions for the update:

1. **WAC 173-26-104 Optional joint review process for amending shoreline master programs. (From Joan)**

A This section establishes that the optional joint review is available when doing either a periodic or local government initiated amendment to the SMP. However, it would be helpful to understand what a comprehensive update is to be able to distinguish it from a periodic update. Although it isn't a defined term in RCW 90.58 or WAC 173.26, I think a comprehensive update is the initial adoption of a SMP, but I'm not sure. Clarification by adding a definition or explaining the difference in the text of this section would be appreciated.

2. **WAC 173-27-040(2)(ii)(A) Substantial Development Permit Exemption for construction of replacement docks. (From Christian)**

This section establishes that replacement docks in fresh water under a value of $20K may be considered exempt from a Substantial Development Permit. It would be helpful to clarify what the amendment means by "existing" dock. A strict reading would find that a dock must physically be located on the property in order to come in
B under this exemption with a replacement. However, there are often previously existing docks that are removed due to a number of factors, such as deterioration, storm event, etc.. We are suggesting to include some clarification, whether in the form of a timeframe or legal proof of previous dock, that could be used to confirm an application is exempted by the proposed amendment. We have seen some replacement docks that were replacing a dock that had been removed months or years before for various reasons.

C **3. WAC 173-27-040(2)(b) Normal maintenance or repair of existing structures and Bulkhead Replacement with soft stabilization. (From Christian)**

Currently, this section reads as:

(b) Normal maintenance or repair of existing structures or developments, including damage by accident, fire or elements. "Normal maintenance" includes those usual acts to prevent a decline, lapse, or cessation from a lawfully established condition. "Normal repair" means to restore a development to a state comparable to its original condition, including but not limited to its size, shape, configuration, location and external appearance, within a reasonable period after decay or partial destruction, except where repair causes substantial adverse effects to shoreline resource or environment. Replacement of a structure or development may be authorized as repair where such replacement is the common method of repair for the type of structure or development and the replacement structure or development is comparable to the original structure or development including but not limited to its size, shape, configuration, location and external appearance and the replacement does not cause substantial adverse effects to shoreline resources or environment;

The Kirkland Shoreline Master Program administrative codes in KZC 141 provide the following clarification related to bulkhead removal and replacement with soft stabilization measures:

KZC 141.40.2. Special Provisions – The following provides additional clarification on the application of the exemptions listed in WAC 173-27-040:

b. Normal Maintenance or Repair of Existing Structures or Developments – Normal maintenance or repair of existing structures or developments, including some replacement of existing structures, is included in the permit exemption provided in WAC 173-27-040(2)(b). For the purposes of interpreting this provision, the following replacement activities shall not be considered a substantial development:

1) Replacement of an existing hard structural shoreline stabilization measure with a soft shoreline stabilization measure consistent with the provisions contained in KZC 83.300.

This clarification specifically identifies that a project in Kirkland, which proposes to remove an existing bulkhead and replace with soft stabilization under KZC 83.300, is exempt. We have processed applications under the clarification note in our SMP, considering them exempt from a SDP. However, the WAC exemption language is unclear that this is possible. The section refers to replacement under maintenance when damage has occurred, or as repair after decay or partial deconstruction, implying the bulkhead must have been damaged to be considered maintenance or be deteriorating or falling apart in order to be considered repair. The direction that codes and incentive programs are heading seem to follow the intent that bulkheads should be removed and replaced with soft stabilization. It might be helpful to provide clarity in this section where the act of removing and replacing is specifically called out as exempt. There could be a provision included that clarifies the removal and replacement with soft can only be considered exempt when located in a county, city, or town that has updated its master program consistent with the master program guidelines in chapter 173-26 WAC as adopted in 2003, or something similar that would ensure the local jurisdiction has put in place, codes that identify how to install and what exactly are considered soft stabilization methods.

Sincerely,

Joan Lieberman-Brill, AICP
Senior Planner
Planning & Building Department
425-587-3254
jbrill@kirklandwa.gov
Mon – Thus

and

Christian Geitz
Planner
Planning and Building Department
City of Kirkland
p: 425.587.3246

Confederated Tribes and Bands
of the Yakama Nation

Established by the
Treaty of June 9, 1855

May 12, 2017

Sent via Email

State of Washington Department of Ecology
c/o Fran Sant
P.O. Box 47600
Olympia, WA 98504-7600
Email: smarulemaking@ecy.wa.gov

Re: COMMENTS ON PROPOSED UPDATE TO WASHINGTON ADMINISTRATIVE CODE CHAPTER 173-26

Dear Ms. Sant,

I write on behalf of the Confederated Tribes and Bands of the Yakama Nation ("Yakama Nation") to provide comments on the State of Washington Department of Ecology's ("Ecology") proposed updates to the Shoreline Management Act ("SMA") rules promulgated as Chapter 173-26 of the Washington Administrative Code ("WAC").

A Consistent with the Yakama Nation's preliminary comments to Ecology on this matter,[1] the Yakama Nation recommends additional updates to Chapter 173-26 to clarify the process for compliance with SMA requirements relevant to cultural resources. Specifically, the Yakama Nation recommends updates to WAC § 173-26-221 (and possibly WAC § 173-26-201) to clarify that when local governments update their shoreline master programs, they must:

- Consider, make use of, and incorporate information about historic, archaeological, and cultural resources;
- Obtain information about historic, archaeological, and cultural resources by (amongst other things) consulting with affected Indian tribes, reviewing relevant studies, and conducting additional research or surveys as necessary; and, when appropriate,
- Include clear policies and regulations to identify and protect historic, archaeological, and cultural resources known or reasonably predicted to be in the shoreline areas of their jurisdiction.

These clarifications are consistent with the SMA requirements that shoreline master programs shall (A) when appropriate, include "[a]n historic, cultural, scientific, and educational element for the protection and restoration of buildings, sites, and areas having historic, cultural, scientific, or educational values[,]"[2] and (B) to the extent feasible, consider, make use of, and incorporate information obtained by (amongst other

[1] *See* August 25, 2016 Letter from Yakama Nation to Ecology re: Comments on Preliminary Draft Shoreline Management Act Rule Amendments.

[2] Washington Revised Code ("RCW") § 90.58.100(2)(g).

things) (1) integrating natural and social sciences,[3] (2) consulting with affected Indian tribes,[4] (3) reviewing relevant studies made by federal state, local, or tribal entities,[5] and (5) conducting additional research or surveys as deemed necessary.[6]

These SMA rule clarifications are also consistent with Washington's comprehensive land use planning laws, and associated consistency requirements for planning elements and regulations.[7] For example, the Growth Management Act and its implementing regulations strongly recommend a comprehensive plan historic element that includes goals and policies to identify and preserve historic, archaeological, and cultural resources,[8] and specifically promote the use of predictive strategies and early identification measures:

> . . . [A]ttempt to identify sites with a high likelihood of containing cultural resources. If cultural resources are discovered during construction, irreversible damage to the resource may occur and significant and costly project delays are likely to occur. Establishing an early identification process can reduce the likelihood of these problems.[9]

The Yakama Nation looks forward to the opportunity to work with Ecology to develop specific recommended updates to the SMA rules of WAC Chapter 173-26. Please contact Yakama Nation Deputy Director of Natural Resources Phil Rigdon at (509) 865-5121 ext. 4655 or phil_rigdon@yakama.com to schedule a mutually convenient time to meet and discuss the Yakama Nation's concerns and suggestions.

Sincerely,

JODE GOUDY, CHAIRMAN
YAKAMA NATION TRIBAL COUNCIL

CC: Michelle Wilcox (micw461@ECY.WA.GOV)

Enclosure(s): (1) August 25, 2016 Letter from YN to Ecology

[3] RCW § 90.58.100(1)(a).
[4] RCW § 90.58.100(1)(b).
[5] RCW § 90.58.100(1)(c).
[6] RCW § 90.58.100(1)(d).
[7] *See* e.g. RCW §§ 36.70A.070, .480(1), .480(3)(a). *See also*, WAC 173-26-191(1)(e).
[8] *See* RCW § 36.70A.020; WAC §§ 365-196-445, -450.
[9] WAC § 365-196-450(2)(a)(iv).

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Sant, Fran (ECY)

From: Michelle Simon PhD ND <dr.michelle@earthlink.net>
Sent: Sunday, May 14, 2017 10:59 AM
To: ECY RE Shoreline Rulemaking
Subject: Comments on proposed changes to the WAC definition related to residential on the water use

Categories: CR102 Comment

Hello Tim Gates,

I live on a registered houseboat on Lake Union. I have been an active participant and member of the Lake Union Liveaboard Association. Today I am writing to share my support for the Department of Ecology recent legislative changes to the Shoreline Management Act into the Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241. Specifically **the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.**

A

I do not support the proposed change to the "Vessel" definition at WAS 173-27-030. This change was not required by the legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item as was suggested. An acceptable housekeeping item would be to adopt the Federal "vessel" definition 1 U.S. Code 3 which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of the jurisdiction and federal preemption. This Federal definition has already been litigated to the Supreme Court level providing sound and considerable precedent.

B

Thank you for your attention and the work that you do on behalf of the State of Washington.

Regards,
Michelle

Michelle Simon PhD ND
2401 North Northlake Way
Seattle, WA 98103

Innes Weir, General Manager

Cooke Aquaculture Pacific LLC

May 12, 2017

VIA E-MAIL
SMARULEMAKING@ECY.WA.GOV

Tim Gates
Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Subject: Comments relating to Chapters 173-18, 173-20, 173-22, 173-26, 173-27 WAC, the Shoreline Management Act ("SMA") Rules

Dear Mr. Gates:

Thank you for the opportunity to comment on rule making for Chapters 173-18, 173-20, 173-22, 173-26, 173-27 WAC, the Shoreline Management Act ("SMA") Rules. Our business, Cooke Aquaculture Pacific ("Cooke Aquaculture") operates eight salmon farms in Washington State with plans for continued growth in the area of seafood production. Our local production of sustainably-raised salmon is an important component of the stated national goal of encouraging the development of aquaculture in the United States. Cooke Aquaculture follows rule making closely, as changes to shoreline management have a direct and sometimes dramatic effect on our operations or ability to do business in Washington State. I am writing today to applaud your rule making efforts and express support of two specific changes. The first is the new joint public review process (WAC 173-26-104) and the second is the new section on rules regarding moratoria (WAC 173-27-085).

By way of background, Cooke Aquaculture has been operating facilities in Puget Sound for over thirty years, producing 15,000,000 pounds of salmon annually and creating 75 much needed full-time living wage jobs in many rural and coastal communities in Washington. We have an exemplary environmental track record and have consistently worked to manage our operations in a way that avoids adverse impacts

to the environment. Most recently, we have become part of the global company Cooke Aquaculture Inc., which has salmon farming operations on the east coast of Canada, in Scotland, and in Chile, and is the only salmon farming company in the State of Maine. As a vertically integrated company, Cooke has management over the entire value chain, from egg to plate. This includes in-house feed, farming, processing, sales and marketing, equipment manufacturing and service, transportation and logistics, and research and fish health divisions. With more than thirty years of farming experience, a solid track record of compliance in multiple jurisdictions, and third party certification as well as a successful brand in the marketplace, Cooke is well situated to continue to support its Washington operations at every level.

Recent history has reinforced the clear need for predictability and a reliable framework to support local governments as they update and amend their Shoreline Master Programs ("SMPs"). For example, the recent phenomenon of local government asserting the latitude to ban net pen aquaculture whenever they do not receive a positive comment letter from the industry during their update process, creates a burden-shifting regulatory framework rather than the intended "regulatory program consistent with the policy and provisions of [the SMA]." RCW 90.58.050. This is just one illustration of why your proposed rule making, specifically the new joint public review process and the new section on rules regarding moratoria (WAC 173-27-085) are so critically important in ensuring an orderly implementation of the SMA through its regulations, as envisioned by the Act's legislative findings, which call for "increased coordination in the management and development of the shorelines of the state," brought about by a "planned, rational and concerted effort." RCW 90.58.020.

A First, we would like to endorse the idea of the joint public review process. The only current option for public review, consecutive local and state review periods, is extremely burdensome to parties potentially impacted by changes in local Shoreline Management Plans because it is lengthy and unpredictable. Having the option of folding this dual part process into one condensed period is very appealing. Fewer comment periods and fewer hearings will be less burdensome on parties that may be impacted in terms of time and cost for preparation and appearances, and having to reiterate comments made at the local level to Ecology during the Ecology review process. Further, having the state work closely with local government from the beginning will help ensure that the updates are compliant with state law, and that the state law requirements are implemented consistently across all jurisdictions. We hope that local governments will avail themselves of this new review option, and would encourage Ecology to use its authority under the SMA to require this process in updating local SMPs.

B Second, we would like to express our support for the new section on moratoria. At present, the widespread use of moratoria in light of perceived scientific uncertainty is

causing the regulated community to expend considerable resources early on in the SMP update process, often in response to moratoria that, if adopted, would not be defensible under the SMA. Tracking the individual processes in each locality is a challenging and expensive exercise and yet currently necessary, as the precedential effect of a moratorium in one jurisdiction causes the erosion of our ability to operate everywhere. Creating a standard process for adopting moratoria will give much needed predictability to what may be, in limited circumstances, a necessary tool of local government. We especially appreciate the standardized timeline, required public hearing, and rules regarding nonconforming uses. The threat of our facilities becoming nonconforming uses is serious and we agree with you that this change should require more than the simple adoption of a moratorium.

In over 30 years of net pen fish farming, Cooke Aquaculture has learned that efficiency and predictability are the sole avenue to promoting an environment in which a sustainable and beneficial aquaculture industry can flourish in Washington State. We thank you for the positive rule making changes, which will promote these tenets.

Sincerely,

Innes J. Weir

MILLER NASH | GRAHAM & DUNN LLP
ATTORNEYS AT LAW

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Amalia Walton
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May 15, 2017

VIA E-MAIL
SMARULEMAKING@ECY.WA.GOV

Tim Gates
Department of Ecology
PO Box 47600
Olympia, Washington 98504-7600

Subject: Comments relating to Chapters 173-18, 173-20, 173-22, 173-26, 173-27 WAC, the Shoreline Management Act ("SMA") Rules

Dear Mr. Gates:

Thank you for the opportunity to comment on rule making for Chapters 173-18, 173-20, 173-22, 173-26, 173-27 WAC, the Shoreline Management Act ("SMA") Rules. Our firm represents Cooke Aquaculture Pacific ("Cooke Aquaculture"). Cooke Aquaculture operates eight salmon farms in Washington State and follows rule making closely, as changes to shoreline management have a direct and sometimes dramatic effect on their operations or ability to do business in Washington State. We are writing today to applaud your rule making efforts and express support of two specific changes. The first is the new joint public review process of local shoreline master programs ("SMPs") (WAC 173-26-104) and the second is the new section on rules regarding moratoria (WAC 173-27-085).

A First, we would like to endorse the idea of the joint public review process of SMPs. The only current option for public review, consecutive local and state review periods, is extremely burdensome to parties potentially impacted by changes in local SMPs because it is lengthy and unpredictable. Having the option of folding this dual part process into one condensed period is very appealing. Fewer comment periods and fewer hearings will be less burdensome on parties that may be impacted in terms of time and cost for preparation and appearances, and having to reiterate comments made at

the local level to Ecology during the Ecology review process. Further, having the state work closely with local government from the beginning will help ensure that the updates are compliant with state law, and that the state law requirements are implemented consistently across all jurisdictions. Cooke Aquaculture hopes that local governments will avail themselves of this new review option, and would encourage Ecology to use its authority under the SMA to require this process in updating local SMPs.

Second, we would like to express our support for the new section on moratoria. At present, the widespread use of moratoria in light of perceived scientific uncertainty is causing the regulated community to expend considerable resources early on in the SMP update process, often in response to moratoria that, if adopted, would not be defensible under the SMA. Creating a standard process for adopting moratoria will give much needed predictability to what may be, in limited circumstances, a necessary tool of local government. We especially appreciate the standardized timeline, required public hearing, and rules regarding nonconforming uses. The threat of Cooke Aquaculture facilities becoming nonconforming uses is serious and we agree with you that this change should require more than the simple adoption of a moratorium.

B

Again, we thank you for the positive rule making changes and look forward to their enactment.

Very truly yours,

Amalia Walton

Amalia Walton

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Sant, Fran (ECY)

From: White, Megan <WhiteM@wsdot.wa.gov>
Sent: Monday, May 15, 2017 10:15 AM
To: ECY RE Shoreline Rulemaking
Cc: Stone, Virginia; Wolin, Eric
Subject: WSDOT's comments

Categories: CR102 Comment

Dear Mr. Gates:

Thank you for the opportunity to review the proposed amendments to the state shoreline rules. We offer the following comments on the proposed housekeeping changes:

WAC 173-27-044(3) – Developments not required to obtain shoreline permits or local reviews

A WSDOT appreciates and supports the Department of Ecology's proposal to add a new section (WAC-173-27-044). Acknowledging the recent legislative enactments adopted in 2015 will help local governments be aware of this new law passed for the Department of Transportation.

WAC 173-27-125 – Special procedures for WSDOT projects

B WSDOT appreciates and supports the Department of Ecology's proposal to add a new section (WAC-173-27-125). Acknowledging the recent legislative enactments adopted in 2015 will help local governments be aware of the new laws passed for the Department of Transportation.

If you have any questions about our comments, please contact me at (360) 705-7480.

Thank you -- Megan

Megan White, P.E.
Environmental Services Director
Washington State Department of Transportation
Phone: 360.705.7480
Email: whitem@wsdot.wa.gov

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Sant, Fran (ECY)

From: Bruce Jensen <bwjseattle@mac.com>
Sent: Monday, May 15, 2017 12:30 PM
To: ECY RE Shoreline Rulemaking
Cc: Susan Welch
Subject: Comments re: WAC 173-26-020, 173-26-241 and 173-27-030

Categories: CR102 Comment

Dear Mr. Gates:

We are the owners of a houseboat moored at Gasworks Park Marina at the northern end of Lake Union in Seattle. Please register our comments regarding WAC 173-26-020, WAC173-26-241 and WAC 173-27-030.

A **I support** the adoption by the Department of Ecology of recent legislative changes to the Shoreline Management Act into the Washington Administrative Code (WAC) at WAC 173-26-020 and WAC 173-26-241. Specifically the addition of the definition and legislative intent regarding the legal and conforming status of floating on water residences.

B **I do not support** the proposed change to the "Vessel" definition at WAC 173-27-030. Such a change was not mandated by legislative changes to the Revised Code of Washington (RCW) and is not a "housekeeping" item. The only acceptable housekeeping action would be to adopt the Federal "vessel" definition **1 U.S. Code § 3** which would conform to the majority of the RCW and WAC vessel definitions and reduce potential conflicts of jurisdiction and federal preemption.

Thank you,

Bruce Jensen and Susan Welch

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Sant, Fran (ECY)

From: Warfield, Tony <twarfield@portoftacoma.com>
Sent: Monday, May 15, 2017 12:55 PM
To: ECY RE Shoreline Rulemaking
Cc: Eagan, Sean
Subject: Port of Tacoma SMA rule making comments

Categories: CR102 Comment

Thank you for the opportunity to comment on Ecology's proposed changes to the Shoreline Management Act implementing rules. The Port of Tacoma (Port) appreciates and is generally supportive of Ecology's efforts to clarify and streamline the SMA process. In particular, the Port supports:

A
- Revisions to the definition of "development" to exclude dismantling or removal of structures with no other associated development. That will be particularly helpful in certain mitigation/restoration projects.
- Alignment of state and local review periods. This is an efficiency that will help many project's schedule.

B While the Port is supportive of Ecology's efforts to streamline certain stormwater treatment improvements at facilities subject to the Boatyard permit, the Port believes that same logic should apply to port facilities. If a port facility is subject to the Industrial Stormwater General Permit (ISGP) the circumstances under which boat yards are exempt should also apply in terminal/industrial areas. One facility at the Port of Tacoma is subject to a Level 3 corrective action. There is a project under design to install the necessary treatment and make the necessary corrective actions. Applying the boatyard exemption to this effort would save approximately $50,000 and four-five months off the project schedule. That potential streamlining effort would improve the project's chances of meeting Ecology's Water Quality Program's schedule expectations and would be four-five months with improved stormwater treatment for Puget Sound in this area.

Thank you again for considering our comments. Please let me know if you have questions.

Tony Warfield
Senior Manager I Port of Tacoma I Environmental and Planning Program
253-428-8632

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May 15, 2017

Via Email: smarulemaking@ecy.wa.gov
Department of Ecology
Attn: Fran Sant
PO Box 47600
Olympia, Washington 98504-7600

RE: Proposed Shoreline Management Act Rule Amendments (WSR 17-06-067)

Dear Department of Ecology:

We are submitting these comments on behalf of Taylor Shellfish Farms ("Taylor Shellfish") regarding the Department of Ecology's ("Ecology") proposed Shoreline Management Act ("SMA") rule amendments, WSR 17-06-067 ("Rule Amendments"). Taylor Shellfish is a fifth-generation, family-owned company headquartered in Shelton, Washington that has farmed shellfish on Washington State shorelines for over 100 years. The company cultivates a variety of shellfish species throughout the state, including oysters, clams, geoduck, and mussels, on several thousand acres of tidelands. Taylor Shellfish directly employs over 600 state residents, most of whom live and work in rural counties dependent on sustainable resource production.

Taylor Shellfish appreciates Ecology's hard work in preparing the Rule Amendments and associated explanatory documents. Taylor Shellfish is generally supportive of the Rule Amendments and believes they will help improve clarity and consistency in managing our state's shorelines. Taylor Shellfish does, however, have a concern with the proposed revisions to WAC 173-26-201(1). Specifically, we have a concern with the near-entire deletion of WAC 173-26-201(1)(c)(i). This subsection currently provides important limits for when Ecology may approve a Shoreline Master Program ("SMP") amendment outside of statutorily-mandated timeframes. These limits should be retained or at most revised, not deleted.

Local governments, Ecology, and interested parties have recently expended, and will continue to expend, extensive time and resources in developing comprehensive SMP updates required by RCW 90.58.080(2), and they will similarly spend significant time and resources during the eight-year reviews mandated by RCW 90.58.080(4). Given this, it is appropriate to ensure additional amendments outside of these processes are necessary to achieve important and legitimate objectives. We have already experienced some jurisdictions attempting to enact reactionary SMP amendments to target specific uses opposed by politically influential

individuals,[1] and we are concerned that if the limits in WAC 173-26-201(1)(c)(i) are removed it will incentivize additional inappropriate actions.

Taylor Shellfish understands that there will no longer be "limited SMP amendments" as currently exist if the Rule Amendments are adopted—there will be amendments that occur as a result of the statutorily-mandated eight-year review and amendments that occur earlier at the initiation of local government. Nonetheless, for the reasons stated above, it will be important to retain limits on approving amendments outside of the statutory schedule similar to what is currently in place for limited SMP amendments. The simplest method for retaining these limits would be to revise the first sentence of WAC 173-26-241(1)(c) to refer to "Locally initiated master program amendments" instead of "Limited master program amendments."

Ecology's explanatory materials indicate the revisions to WAC 173-26-201 are also intended to simplify the SMA rules and that the criteria in subsection (1)(c)(i) are redundant with other provisions of WAC 173-26.[2] We appreciate this explanation and hope that, even without the criteria of WAC 173-26-201(1)(c)(i) in place, Ecology would not approve a SMP amendment that is not necessary to respond to new information and improve a plan's consistency with the SMA and implementing rules. However, retaining these criteria will provide a helpful safeguard and reminder that SMP amendments must be fully justified, and retaining them does no harm, even if they are arguably redundant. If, notwithstanding the above, Ecology still feels a need to simplify WAC 173-26-201(1)(c), then we recommend replacing the current criteria with the following standard: "Locally initiated master program amendments may be approved by the department provided the department concludes the amendment is necessary to reflect changing local circumstances, new information, or improved data, and improves consistency with the act's goals, policies, and implementing rules." This standard both reflects the basis for local governments to initiate SMP amendments in WAC 173-26-090 and simplifies the current criteria in WAC 173-26-201(1)(c).

Thank you for your time and consideration of these comments.

Respectfully,

Jesse G. DeNike

JGD:cml
cc: Taylor Shellfish Farms

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[1] For example, soon after a comprehensive SMP update was approved for the City of Bainbridge Island, the City Council directed staff to prepare a limited amendment designed to reinstate numerous provisions pertaining to aquaculture that were previously determined to be inconsistent with the SMA and SMA rules and/or unsupported. This limited amendment contains numerous additional restrictions including a five-acre cap on commercial shellfish farming and a ban on non-biodegradable plastics. While we are confident that this limited amendment will not be ultimately approved, removing the sideboards for approving limited SMP amendments will motivate similar inappropriate actions in the future, waste limited governmental resources, and undermine the hard and valuable work invested in comprehensive SMP updates.

[2] Ecology SMA Rule Amendments: Housekeeping, February 2017, at 8 (http://www.ecy.wa.gov/programs/sea/rules/1506pdf/IssuePaperHousekeeping.pdf).

Audubon WASHINGTON

Citizens for a Healthy Bay

CLEAN WATER FOGH FRIENDS OF GRAYS HARBOR HEALTHY ESTUARY

Friends of the San Juans

future wise

LWV LEAGUE OF WOMEN VOTERS OF WASHINGTON

SURFRIDER FOUNDATION

tahoma audubon society

WASHINGTON ENVIRONMENTAL COUNCIL

May 15, 2017

State of Washington Department of Ecology
c/o Ms. Fran Sant, Rule Coordinator
PO Box 47600
Olympia, Washington 98504-7600

Dear Ms. Sant:

Subject: Comments on proposed Amendments to Chapter 173-18, 173-20, 173-22, 173-26, 173-27 WAC part of the Shoreline Management Act (SMA) Rules

Summary

Thank you for the opportunity to comment on the proposed amendments to the Shoreline Master Program (SMP) Guidelines and SMA rules. The one of the purposes of the Shoreline

Management Act is to "prevent the inherent harm in an uncoordinated and piecemeal development of the state's shorelines," and the Shoreline Master Programs are critical elements to achieve the act's purposes and policy. The organizations signing this letter support some of the amendments currently proposed by the State of Washington Department of Ecology (Ecology), but oppose other amendments.

The Shoreline Management Act (SMA) requires periodic Shoreline Master Program (SMP) updates to consider all applicable laws and guidelines, including the SMA and the Shoreline Master Program (SMP) Guidelines,[1] and all available science.[2] We oppose the revisions to WAC 173-26-090(2)(d)(ii) and (iii) which only require SMP updates to comply with SMA provisions and SMP Guidelines that have been added or changed since the last SMP update. WAC 173-26-090 currently requires the periodic reviews of shoreline master programs (SMPs) to determine if the SMP complies with the SMA and the SMP Guidelines, not just newly added or amended provisions. WAC 173-26-090(2)(d)(ii) and (iii) weaken the existing SMP Guidelines and are inconsistent with the SMA because they do not require review of SMPs to determine if the SMPs are achieving the no net loss requirement[3] and the other requirements of the SMA and SMP Guidelines. It is important to recognize that these updates only occur every eight years, so conducting this review is not a significant burden but is necessary to assure the recovery of Puget Sound and to protect the ocean and rivers, streams, and lakes. While we strongly support Ecology's efforts to keep the Shoreline Master Program Guidelines up-to-date and to address the emerging issues in shoreline management, the amendments fail to do that. To comply with the SMA, Ecology should keep existing WAC 173-26-090 rather than the proposed amendments to that section.

In addition, the provisions for sea level rise need to be improved because of the flooding and erosion sea level rise will cause on the state's marine shorelines. The SMA requires SMPs to include "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages[.]"[4] The updated SMP Guidelines should require SMPs to address flood damages from sea level rise and the other adverse impacts of global warming.

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The proposed regulations' requirements for periodic updates of shoreline master programs (SMPs) must be consistent with the Shoreline Management Act (SMA) and because the proposed amendments do not require compliance with the SMA and the SMP Guidelines they are inconsistent with the SMA

RCW 90.58.080(4)(a) provides in full that:

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[1] RCW 90.58.080(4)(a)(1).
[2] RCW 90.58.100(1)(a).
[3] WAC 173-26-186(8) "(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions."
[4] RCW 90.58.100(2)(h).

> (4)(a) Following the updates required by subsection (2) of this section, local governments shall conduct a review of their master programs at least once every eight years as required by (b) of this subsection. Following the review required by this subsection (4), local governments shall, if necessary, revise their master programs. The purpose of the review is:
>
> (i) To assure that the master program complies with applicable law and guidelines in effect at the time of the review; and
>
> (ii) 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.

The existing Shoreline Master Program (SMP) Guidelines are consistent with the Shoreline Management Act (SMA) providing in relevant part that:

> Each local government shall also review any master program under its jurisdiction and make amendments to the master program necessary to comply with the requirements of RCW 90.58.080 and any applicable guidelines issued by the department. When the amendment is consistent with chapter 90.58 RCW and its applicable guidelines, it may be approved by local government and the department or adopted by rule when appropriate by the department.[5]

Unfortunately, the proposed rules repeal this provision and propose to adopt new rules some of which are inconsistent with RCW 90.58.080(4)(a) and other provisions of the SMA. We do appreciate that the proposed amendments include these requirements in proposed WAC 173-26-090(2)(d)(i). Unfortunately, proposed WAC 173-26-090(2)(d)(ii) and (iii) are inconsistent with RCW 90.58.080(4)(a).

WAC 173-26-090(2)(d)(ii) only requires compliance with SMA provisions and SMP guidelines that have been added or changed since the last update. That is very different than what RCW 90.58.080(4)(a)(i) requires which is compliance with all applicable laws and guidelines. This is important because SMPs can become noncompliant due to environmental changes or changes in our scientific understanding of the shorelines. As will be documented below, our shorelines are currently experiencing major changes due to sea level rise. Stream and river runoff patterns are changing due to climate change.[6] Ocean acidification is adversely impacting the ocean, Grays Harbor, Willapa Bay, the Columbia estuary, and potentially Puget Sound.[7] Other changes are likely to manifest themselves. If an SMP

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[5] WAC 173-26-090.

[6] State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State's Integrated Climate Response Strategy* pp. 103 – 105 (Publication No. 12-01-004: April 2012) accessed on April 4, 2017 at: http://www.ecy.wa.gov/climatechange/ipa_responsestrategy.htm.

[7] Washington Marine Resources Advisory Council, *Blue Ribbon Panel "Refresh" Meeting* slide deck pp. 5 – 9 (March 17, 2017) accessed on April 4, 2017 at: http://www.ecy.wa.gov/water/marine/oceanacidification.html.

remains frozen in the mid-2010s it will soon become inconsistent with the SMA and the SMP Guidelines and, perhaps more importantly, reality.

WAC 173-26-090(2)(d)(iii) invents presumptions that have no basis in either the SMA or the SMP Guidelines. The SMA is clear; one of the purposes of the periodic reviews required every eight years is to "assure that the master program complies with applicable law and guidelines in effect at the time of the review ..."[8] The review is not limited to changes in the SMA or the SMP Guidelines, nor can compliance with the SMA or the SMP Guidelines be "presumed."[9] This is particularly the case for SMPs that are trying somewhat experimental approaches such as substituting setbacks and vegetation enhancement requirements for buffers along marine or freshwater shorelines. These approaches need periodic reviews to ensure they are working to achieve no net loss or to adjust them if they are not working.

Instead of presuming compliance with the SMA, counties and cities must review their SMPs to determine if they are compliance with the SMA and the SMP Guidelines including achieving the no net loss requirement.[10] We recommend that Ecology not adopt proposed WAC 173-26-090(2)(d)(ii) and (iii) as they violate the SMA.

B

In addition, Ecology must modify proposed WAC 173-26-090(3)(b) to comply with RCW 90.58.080(4)(a) and the other applicable provision of the SMA. RCW 90.58.100(1)(e) provides that "[i]n preparing the master programs, and any amendments thereto, the department and local governments shall to the extent feasible ... "[u]tilize all available information regarding hydrology, geography, topography, ecology, economics, and other pertinent data ..."[11] RCW 90.58.020 identifies the state interest in the effective management of all shorelines of the state. Therefore, it is not accurate, as proposed WAC 173-26-090(3)(b) does, to refer to the examination of whether new data shows a need for amendments as "local circumstances." Because RCW 90.58.100(1)(e) requires local governments to use all available information in preparing amendments, local governments do not have the option of not using available information. RCW 90.58.080(4)(a) also provides that "[f]ollowing the review required by this subsection (4), local governments shall, if necessary, revise their master programs." So if an SMP is found to be inconsistent with the SMA, the SMP Guidelines, or the local government's comprehensive plan or development regulations the local government shall revise the SMP. The use of "shall" creates a mandatory duty.[12] This is not consistent with saying, as proposed WAC 173-26-090(3)(b), does that "[t]he decision as to whether a changed local circumstance warrants a master program amendment rests with the local government." If the existing data shows there is a material inconsistency, the local government is required to revise the SMP.

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[8] RCW 90.58.080(4)(a)(ii).
[9] RCW 90.58.080(4)(a).
[10] RCW 90.58.080(4)(a); WAC 173-26-186(8) "(b) Local master programs shall include policies and regulations designed to achieve no net loss of those ecological functions."
[11] Emphasis added.
[12] *Goldmark v. McKenna*, 172 Wn.2d 568, 575, 259 P.3d 1095, 1099 (2011) "'shall' when used in a statute, is presumptively imperative and creates a mandatory duty unless a contrary legislative intent is shown."

We recommend the following revisions to proposed WAC 173-26-090(3)(b) with our additions underlined and our deletions struck through.

(b) Review and analysis to determine need for revisions.

(i) Review ~~amendments to~~ the act and shoreline master program guidelines.

Local governments must review ~~amendments to~~ chapter 90.58 RCW and department guidelines ~~that have occurred since the master program was last amended,~~ and determine if local amendments are needed to maintain compliance. The department will maintain a checklist of legislative and rule requirements ~~amendments~~ to assist local governments with this review. The department will provide technical assistance to ensure local governments address applicable provisions ~~changes to~~ of the act and master program guidelines and available data on the effectiveness of shoreline master programs.

(ii) Review relevant comprehensive plans and regulations.

Local governments must review ~~changes to~~ the comprehensive plan and development regulations to determine if the shoreline master program policies and regulations remain consistent with them.

WAC 173-26-191 (1)(e) and 173-26-211(3) provide guidance on determining internal consistency. 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. Local governments should document the consistency analysis to support proposed changes.

(iii) ~~Optional review~~Review and analysis of changed ~~local~~ circumstances and shoreline master program effectiveness. Local governments must ~~may~~ consider during their periodic review whether to incorporate any amendments needed to reflect changed circumstances, new information, ~~or~~ improved data ~~as described under subsection (1) of this section~~ or data on the effectiveness of the shoreline master program in achieving the policy and requirements of the Act and the shoreline master program guidelines. Local governments shall ~~should~~ consider whether ~~the significance of~~ the changed circumstances, information, or data shows the master program no longer complies with the SMA and SMP Guidelines and requires ~~warrants~~ amendments. ~~The decision~~

~~as to whether a changed local circumstance warrants a master program amendment rests with the local government.~~ It may ~~is~~ not be necessary to update a comprehensive inventory and characterization to make that determination as long as the inventory and characterization is not out of date and includes the currently available scientific information and data.

C. Update the SMP Guidelines to address sea level rise and increased coastal erosion

RCW 90.58.100(2)(h) requires that the "master programs shall include, when appropriate," "[a]n element that gives consideration to the statewide interest in the prevention and minimization of flood damages …" In addition, RCW 90.58.100(6) provides in full that:

> (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.

Please note that RCW 90.58.100(6) specifically requires standards for nonstructural methods of projection such as setbacks.

However, the proposed amendments' only mention of sea level rise and the erosion it is causing is in WAC 173-26-090(1)(a) which provides that "[l]ocal governments are encouraged to consult department guidance for applicable new information on emerging topics such as sea level rise." This does not give "consideration to the statewide interest in the prevention and minimization of flood damages" or the requirements of RCW 90.58.100(6). Indeed, the SMPs' failures to address increased flooding and erosion from sea level rise will increase demands on limited state and local budgets to protect new developments on top of existing developments. These flood and erosion control measures, if funds can be found, will likely harm shoreline resources.

Sea level rise is a real problem that is happening now. Sea level is rising and floods and erosion are increasing. In 2012 the National Research Council concluded that global sea level had risen by about seven inches in the 20th Century and would likely rise by 24 inches on the

Washington coast by 2100.[13] NOAA has documented that sea level rise could be as high as two meters, six and half feet, by 2100.[14] The general extent of the two to six and a half feet of sea level rise currently projected for coastal waters can be seen on the NOAA Office for Coastal Management Digitalcoast Sea Level Rise Viewer available at: https://coast.noaa.gov/digitalcoast/tools/slr.html

Some Washington State local governments are already address sea level rise. The City of Olympia, City of Tacoma, and King County have taken measures to protect critical infrastructure at increased risk of flooding due to sea level rise.

- The City of Olympia is currently developing a plan to address sea level rise.[15] In 2007, the city's Public Works Department, together with the University of Washington Climate Impacts Group evaluated the city's vulnerability to sea level rise and other climate change impacts. Sea level rise maps indicate a large portion of the downtown area, including critical infrastructure, were threatened by sea level rise. The subsequent 2011 technical report by Coast and Harbor Engineering detailed engineering responses for critical infrastructure such as the wastewater treatment plant outfall and physical barriers.

- The City of Tacoma commissioned a climate risk assessment and resiliency analysis in 2016 by Cascadia Consulting, the University of Washington Climate Impacts Group, Herrera and ESA to help prepare the city of the impacts of climate change.[16] For the built infrastructure, the study identified the need to protect large portions of the wastewater system in the tideflats that are several feet below projected future extreme high tides.

- In 2008, King County completed a vulnerability assessment of its major wastewater facilities from sea level rise.[17] One recommendation was to include sea-level rise "... as a factor in planning for major asset rehabilitation or conveyance planning that involves any of the facilities included in this analysis. Adaptive strategies to reduce the risk of flooding should be adopted and designed into rehabilitation or upgrades based on the outcome of a risk analysis for a site and an analysis comparing benefits

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[13] National Research Council, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* p. 23, p. 156, p. 96, p. 102 (2012) accessed on April 4, 2017 at: http://www.nap.edu/catalog.php?record_id=13389.

[14] NOAA Office for Coastal Management, *Frequent Questions Digital Coast Sea Level Rise and Coastal Flooding Impacts Viewer* p. 8 of 14 (Dec. 2015) accessed on April 4, 2017 at: https://coast.noaa.gov/data/digitalcoast/pdf/slr-faq.pdf.

[15] City of Olympia Sea Level Rise webpage accessed on May 10, 2017 at: http://olympiawa.gov/city-utilities/storm-and-surface-water/sea-level-rise.aspx

[16] City of Tacoma Climate Risk Assessment -OEPS webpage accessed on May 10, 2017 at: https://www.cityoftacoma.org/government/city_departments/environmentalservices/rates/Climate%20Risk%20Assesment%20-OEPS

[17] King County Department of Natural Resource Resources and Parks Waste Water Treatment Division, *Vulnerability of Major Wastewater Facilities to Flooding from Sea-Level Rise* p. 11 (July 2008) accessed on May 10, 2017 at: http://your.kingcounty.gov/dnrp/library/archive-documents/wtd/csi/csi-docs/0807_SLR_VF_TM.pdf

> and costs of adopting the adaptive strategy."[18] The subsequent 2012 hydraulic analysis confirmed that sea level rise must be addressed through infrastructure changes.[19]

While these efforts are helpful, more comprehensive approaches are needed due to the adverse effects of sea level rise on the state's shorelines. Two to six and a half feet of sea level rise will substantially increase flooding. As Ecology writes, "[s]ea level rise and storm surge[s] will increase the frequency and severity of flooding, erosion, and seawater intrusion—thus increasing risks to vulnerable communities, infrastructure, and coastal ecosystems."[20] Not only our marine shorelines will be impacted, as Ecology writes "[m]ore frequent extreme storms are likely to cause river and coastal flooding, leading to increased injuries and loss of life."[21]

A peer-reviewed scientific study ranked Washington State 14th in terms of the number of people living on land less than one meter above local Mean High Water compared to the 23 contiguous coastal states and the District of Columbia.[22] This amounted to an estimated 18,269 people in 2010.[23] One meter, 3.28 feet, is within the projected sea level rise estimates of three to four feet or more for the end of this century.[24] Zillow recently estimated that 31,235 homes in Washington State may be underwater by 2100, 1.32 percent of the state's total housing stock. The value of the submerged homes is an estimated $13.7 billon.[25] Zillow wrote:

> It's important to note that 2100 is a long way off, and it's certainly possible that communities take steps to mitigate these risks. Then again, given the enduring popularity of living near the sea despite its many dangers and drawbacks, it may be that even more homes will be located closer to the water in a century's time, and these estimates could turn out to be very conservative. Either way, left unchecked, it is clear the threats posed by

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[18] *Id.*
[19] King County Department of Natural Resource Resources and Parks Waste Water Treatment Division, *Hydraulic Analysis of Effects of Sea-Level Rise on King County's Wastewater System Phase I Report* (Nov. 2012) accessed on May 10, 2017 at: http://your.kingcounty.gov/dnrp/library/wastewater/cso/docs/2012-11_HydraulicAnalysis_PhaseI_Task2_FINAL.pdf
[20] State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State's Integrated Climate Response Strategy* p. 90 (Publication No. 12-01-004: April 2012).
[21] *Id.* at p. 17.
[22] Benjamin H. Strauss, Remik Ziemlinski, Jeremy L. Weiss, and Jonathan T. Overpeck, *Tidally adjusted estimates of topographic vulnerability to sea level rise and flooding for the contiguous United States* 7 ENVIRON. RES. LETT. 014033, 4 (2012) accessed on April 4, 2017 at: http://iopscience.iop.org/1748-9326/7/1/014033/article This journal is peer reviewed. Environmental Research Letters "Submission requirements" webpage accessed on April 4, 2017 at: http://iopscience.iop.org/1748-9326/page/Submission%20requirements.
[23] *Id.*
[24] Washington State Department of Ecology, *Preparing for a Changing Climate: Washington State's Integrated Climate Response Strategy* p. 82 (Publication No. 12-01-004: April 2012).
[25] Krishna Rao, *Climate Change and Housing: Will a Rising Tide Sink all Homes?* ZILLOW webpage (8/2/2016) accessed on April 4, 2017 at: http://www.zillow.com/research/climate-change-underwater-homes-12890/.

> climate change and rising sea levels have the potential to destroy housing values on an enormous scale.[26]

Sea level rise will have an impact beyond rising seas, floods, and storm surges. The National Research Council wrote that:

> Rising sea levels and increasing wave heights will exacerbate coastal erosion and shoreline retreat in all geomorphic environments along the west coast. Projections of future cliff and bluff retreat are limited by sparse data in Oregon and Washington and by a high degree of geomorphic variability along the coast. Projections using only historic rates of cliff erosion predict 10–30 meters [33 to 98 feet] or more of retreat along the west coast by 2100. An increase in the rate of sea-level rise combined with larger waves could significantly increase these rates. Future retreat of beaches will depend on the rate of sea-level rise and, to a lesser extent, the amount of sediment input and loss.[27]

A recent paper estimated that "[a]nalysis with a simple bluff erosion model suggests that predicted rates of sea-level rise have the potential to increase bluff erosion rates by up to 0.1 m/yr [meter a year] by the year 2050."[28] This translates to four additional inches of bluff erosion a year.

Homes built today are likely to be in use 2100. And new lots created today will be in use in 2100. This is why the Washington State Department of Ecology recommends "[l]imiting new development in highly vulnerable areas."[29]

It is time for Ecology to update the SMP Guidelines that address flooding to require measures to mitigate the impacts of sea level rise and the related hazards. SMP periodic reviews only happen once every eight years. Each periodic SMP update that passes without addressing sea level rise is a lost opportunity that will lead to more property damage from flooding, storm surges, and erosion. Ecology owes it to local governments and state residents, property owners, and taxpayers to update the SMP Guidelines to better protect people and property from these hazards.

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[26] *Id.*

[27] National Research Council, *Sea-Level Rise for the Coasts of California, Oregon, and Washington: Past, Present, and Future* p. 135 (2012).

[28] George M. Kaminsky, Heather M. Baron, Amanda Hacking, Diana McCandless, David S. Parks, *Mapping and Monitoring Bluff Erosion with Boat-based LIDAR and the Development of a Sediment Budget and Erosion Model for the Elwha and Dungeness Littoral Cells, Clallam County, Washington* p. 3 accessed on April 4, 2017 at: http://www.coastalwatershedinstitute.org/Final%20Report_Clallam%20County%20Bluffs%202014_Final%20revised.pdf.

[29] State of Washington Department of Ecology, *Preparing for a Changing Climate Washington State's Integrated Climate Response Strategy* p. 90 (Publication No. 12-01-004: April 2012).

Unless wetlands and shoreline vegetation are able to migrate landward, their area and ecological functions will decline.[30] If SMPs are not updated to address the need for vegetation to migrate landward in feasible locations, wetlands and shoreline vegetation will decline. This loss of shoreline vegetation will harm the environment. It will also deprive marine shorelines of the vegetation that protects property from erosion and storm damage by modifying soils and accreting sediment.[31] Failing to address these issues violates the policy of the Shoreline Management Act to protect shoreline vegetation as the policy of the SMA requires.[32]

Merely recommending that local governments consult with Ecology on emerging issues such as sea level rise as the proposed amendment to WAC 173-26-090(1)(a) does is not sufficient to comply with RCW 90.58.100(2)(h) and RCW 90.58.020. Every new building or new lot created in harm's way and each loss of the vegetation protecting uplands is creating a problem for our children and their children. It is time to require SMPs to consider these adverse impacts on the shorelines and people and property.

We recommend that Ecology address the "statewide interest in the prevention and minimization of flood damages"[33] and update the SMP Guidelines to address sea level rise and increased coastal erosion. This update should require planning for sea level rise, measures to avoid or mitigate the adverse impacts, provisions to allow shoreline vegetation to migrate landward as sea level rises in appropriate locations, and other necessary measures.

D

We support the optional joint SMP amendment review process

The optional joint review process for amending shoreline master programs authorized by proposed WAC 173-26-105 could save time for local governments and Ecology. We agree that this process should not be used for comprehensive periodic updates. We also think that since many agencies and members of the public will believe that there will be separate local government and Ecology public comment periods that the public and agency notices should be required to specify that this is both the local government and Ecology public comment period and that the public hearing is both the local government and Ecology public hearing.

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[30] Christopher Craft, Jonathan Clough, Jeff Ehman, Samantha Joye, Richard Park, Steve Pennings, Hongyu Guo, and Megan Machmuller, *Forecasting the effects of accelerated sea-level rise on tidal marsh ecosystem services* FRONT ECOL ENVIRON 2009; 7, doi:10.1890/070219 p. *6 accessed on April 4, 2017 at: http://nsmn1.uh.edu/steve/CV/Publications/Craft%20et%20al%202009.pdf. Frontiers in Ecology and the Environment is a peer-reviewed journal. See the Frontiers in Ecology and the Environment webpage accessed on April 4, 2017 at: http://www.frontiersinecology.org/fron/.

[31] R. A. Feagin, S. M. Lozada-Bernard, T. M. Ravens, I. Möller, K. M. Yeagei, A. H. Baird and David H. Thomas, *Does Vegetation Prevent Wave Erosion of Salt Marsh Edges?* 106 PROCEEDINGS OF THE NATIONAL ACADEMY OF SCIENCES OF THE UNITED STATES OF AMERICA pp. 10110-10111 (Jun. 23, 2009) accessed on April 4, 2017 at: http://www.pnas.org/content/106/25/10109.full. The Proceedings of the National Academy of Sciences of the United States of America is a peer-reviewed scientific journal. See the Proceedings of the National Academy of Sciences of the United States of America Information for Authors webpage accessed on April 4, 2017 at: http://www.pnas.org/site/authors/index.xhtml.

[32] RCW 90.58.020.

[33] RCW 90.58.100(2)(h).

We support the changes to WAC 173-26-360(8) that confirm that oil and gas leasing is prohibited by statute in Washington's tidal and submerged lands

E

We support Ecology's amendments to WAC 173-26-360(8) that confirm that oil and gas leasing is prohibited by statute in Washington's tidal or submerged lands extending from mean high tide seaward three miles along the Washington coast from Cape Flattery south to Cape Disappointment, and in Grays Harbor, Willapa Bay, and the Columbia river downstream from the Longview bridge.[34] The deletion of previous regulatory text should not be interpreted as any weakening of environmental concern about oil and gas facilities, including pipelines, but instead as confirmation of the statutory prohibition already in place.

Do not weaken the standards for Coastal Zone Management Act consistency determinations in WAC 173-27-060

F

Currently, WAC 173-27-060(1) provides for the purposes of consistency review under the Federal Coastal Zone Management Act "direct federal agency activities affecting the uses or resources subject to the act must be consistent to the maximum extent practicable with the enforceable provisions of the act, regulations adopted pursuant to the act and the local master program." The proposed rules would provide instead that the "applicable state-approved local master program will inform the department's consistency determinations." Given the time and effort put into the shoreline master program updates, the attention that the coastal communities have given to ocean related issues, the use conflicts developing over the appropriate use of the coastal zone, and the need to better protect the environment of the coastal zone, we believe the current rule is the better rule. We urge Ecology not to adopt the weakening amendments proposed for WAC 173-27-060(1).

Thank you for considering our comments. If you require additional information, please contact any of the organization staff listed below.

Very Truly Yours,

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Bainbridge Alliance for Puget Sound

Melissa Malott, Executive Director
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[34] RCW 43.143.010(2).

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34

Sant, Fran (ECY)

From: Karen Walter <KWalter@muckleshoot.nsn.us>
Sent: Monday, May 15, 2017 2:25 PM
To: ECY RE Shoreline Rulemaking
Subject: Shoreline Management Act Proposed Rule making

Categories: CR102 Comment

To Whom It May Concern,

We have reviewed the proposed rule changes to Washington's Shoreline Management Act available at: http://www.ecy.wa.gov/programs/sea/rules/1506docs.html. We offer two comments about these proposed rule changes:

1. With respect to the amendment and approval procedures, there should be requirements for local governments conducting their 8-year periodic review to report on the progress they are making on their restoration plans.

2. Local governments planning under the SMA should also be required to document any changes in cumulative impacts, particularly from additional and/or larger piers and docks and bulkhead projects.

We could not find any requirements in the proposed rules to address these two concerns.

Please advise.

Thank you,
Karen Walter
Watersheds and Land Use Team Leader

Muckleshoot Indian Tribe Fisheries Division
Habitat Program
Phillip Starr Building
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Auburn, WA 98092

minor in nature and do not alter the findings or conclusions of the previous Cumulative Impacts Analysis that was completed under their comprehensive SMP update.

8. WAC 173-27-080(1) – Suggest adding a definition for "Nonconforming Structures." Currently, the definition for this term is wrapped into the regulations for nonconforming structures, but the definition should be separate as it is for the other terms.

9. WAC 173-27-130(9) – The order is backwards; it should say "Notify the local government and applicant of the date of filing by written communication, followed by telephone or electronic means, to ensure that the applicant has received the full written decision."

Please feel free to contact me with any questions.

Sincerely,

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CITY OF KENT, WASHINGTON
KentWA.gov Facebook Twitter YouTube

Sant, Fran (ECY) 37

From: George, Erin <EGeorge@kentwa.gov>
Sent: Monday, May 15, 2017 5:01 PM
To: ECY RE Shoreline Rulemaking
Cc: Anderson, Charlene; Gilbert, Matthew; Hanson, Kurt; Wolters, Ben; Long, Adam; Brubaker, Tom
Subject: Comments on Proposed SMA Changes

Categories: CR102 Comment

Thank you for the opportunity to review and comment on the proposed changes to Shoreline Management Act rules. The City of Kent offers the following comments:

1. WAC 173-26-090(2)(d)(ii) and (iii) – The subheading of this section is "required minimum scope of review," but items (ii) and (iii) do not list any requirements. Rather they appear to be arguing the *reasoning* for the requirements. We suggest revising (ii) and (iii) to only include "shall" statements or deleting them if no additional requirements apply beyond (i)(A) and (B). A

2. WAC 173-26-104 – Part (1) of this new section duplicates the process in 173-26-100. It would be clearer and shorter to simply cite 173-26-100 under (1). B

3. WAC 173-26-090(3) - The public participation requirements for periodic reviews should be less extensive than for comprehensive reviews. While disseminating a "public participation program" is required by RCW 36.70A.140 for Comprehensive Plan amendments, it is quite possible that periodic SMP reviews will be minor enough in nature to not necessitate a Comp Plan amendment. Per RCW 36.70A.480(1), *only the goals and policies* of SMPs are required to be an element of the City's Comprehensive Plan, and the rest of the SMP is considered part of the city's development regulations. Accordingly, if an SMP periodic review is proposed by a city that does not involve changes to the SMP goals or policies, but only the regulations, no Comp Plan amendment will be required and thus a public participation program should not be required. C

4. WAC 173-26-090(3)(b)(ii) – Recommend replacing "should" with "shall" in the last sentence, which reads "Local governments *should* document the consistency analysis to support proposed changes." D

5. WAC 173-26-130 – Why is the previous reference to RCW 90.58.190 being deleted? It spells out processes specific to SMPs, whereas 36.70A.290 speaks broadly to Comp Plans and development regulations. Suggest citing both. E

6. WAC 173-26-160 – Suggest replacing "adopted" with "approved" rather than having both. Adoption is the action taken by local jurisdictions, whereas approval is the action taken by the Dept. of Ecology. F

7. WAC 173-26-201(1)(c)(iv) – Is demonstration of no net loss of shoreline ecological functions required for periodic reviews? If so, there should be caveats. If a city proposes minor changes to their SMP (for instance, just correcting errors) that do not change the substantive allowances of the SMP, drafting a Cumulative Impacts Analysis would be unnecessary. Suggest allowing cities to submit a statement that the proposed changes are G

Sant, Fran (ECY) 38

From: Susan <snefffff@hotmail.com>
Sent: Monday, May 15, 2017 6:14 PM
To: ECY RE Shoreline Rulemaking
Subject: WAC 173-26/27 comments

Categories: CR102 Comment

15MAY2017

To Tim Gates and Whomever it also Concerns at the DOE:

As an active public participant during the most recent update to Seattle Shoreline Master Plan (SSMP), I consider myself fairly well-informed with issues related to floating residences in Seattle. As a recreational boater and a vessel live-aboard on Seattle's Lake Union since 2000, I've been able to observe the progression up close as floating, non-navigable, residential structures have displaced recreational vessels from the limited moorage space available in the area. Over the years, there has been a significant reduction in the available moorage space for live-aboards in navigable vessels.

Along with the proliferation in the quantity of these floating residential structures, the size of the structures and thus number of occupants, has also increased. Despite claims to the contrary by some members of this 'live-afloat' community, it is my very strong belief that gray water discharge has consequently increased too. It appears some members of the live-afloat community and those with a commercial interest therein, continue to harbor plans for expanding on the number and size of floating, residential, 'pretend-vessel' structures.

A **I support the proposed revision to WAC 173-26-020 (18)**, but due to the slippery nature off this beast and those attempting to circumvent the intent. It seems important to me to clearly as possible to make it clear that these controversially structures do not qualify as vessels. I would suggest the addition (or something similar) written below in bold text:

WAC 173-26-020 (18) "Floating on-water residence" means any floating structure other than a floating home as defined by this chapter:

(a) That is designed or used primarily as a residence on the water and has detachable utilities; and

(b) Whose owner or primary occupant has held an ownership interest in space in a marina, or has held a lease or sublease to use space in a marina, since a date prior to July 1, 2014. and

(c) The ability to float, the capability of being towed or registration as a vessel, do not qualify a "Floating on-water residence" as a vessel for the purposes of (whatever is appropriate here).

B **I also support the proposed revision to WAC 173-27-030 (18)**, but don't think it goes far enough in providing clarity. I can already envision someone presenting a 20-year old photograph of there structure underway in a previous life and claiming "self-propulsion" status, even though the structure hasn't had

working propulsion for 19 years. I would hope something could be included supporting propulsion testing. See my suggestion below in bold text:

WAC 173-27-030 (18) "Vessel" means a floating structure that is designed primarily for navigation, is normally capable of self-propulsion and use as a means of transportation, and meets all applicable laws and regulations pertaining to navigation and safety equipment on vessels including, but not limited to, registration as a vessel by an appropriate government agency. **Propulsion tests in wind and sea conditions appropriate to the vessel design may be required;**

I also have some concerns that the phrase 'designed primarily for navigation' is somewhat open to interpretation. How much is 'primarily'? There are many traditional vessels 'designed' for navigation that are primarily used for other functions, including exclusively residential use. Other vessels may be used time-wise 'primarily' as a residence, but are also regularly used for transportation/navigation. And then there are other, non-conventional structures for which the features supporting navigability are not obvious but are frequently put into use. I suspect the 'designed primarily for navigation' is not needed or at least the 'primarily' should be reconsidered.

C I remain vigorously opposed to the continued encroachment of non-water dependent uses in areas reserved for water-dependent uses and specifically oppose the increasing use of residential (i.e a non-water dependent) use in areas reserved for water-dependent, recreational vessel use. Is it possible to include 'use' language in the appropriate WAC Chapters? For example, **Residential use, except on vessels as defined elsewhere, is not a water-dependent use and does not confer water-dependent status on a non-conventional, floating structure (floating home/house barge/floating on-water residence).**

I support and am thankful for the work done by our government employees in protecting Washington State's waters and shorelands. Keep up the good work.

Respectfully,

Susan Neff
2143 N. Northlake Way
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206-898-6410

Sant, Fran (ECY) 39

From: John Chaney <jchaney@nwlink.com>
Sent: Monday, May 15, 2017 8:38 PM
To: ECY RE Shoreline Rulemaking
Subject: Water Dependent Status - Comments on Rules related to implementing the Shoreline Management Act (SMA) (RCW 90.58)

Categories: CR102 Comment

Dear Mr. Gates,

I am a member of the Board of the Lake Union Liveaboard Association (LULA) and an On-water Resident in Seattle. I was engaged in the legislative changes to the Shoreline Management Act (SMA) regarding Floating On Water Residences and the Seattle Shoreline Management Program (SSMP). I was also a member of the Seattle Living on the Water Stakeholder Group funded by Ecology. Neither I, LULA nor any LULA member that I have found was notified of these proposed Rule changes therefore we did not comment on the draft. We simply did not know it existed, therefore please accept and carefully consider these comments.

Water-dependent Use

A Clarify the status of Floating on-water Residences as a water dependent use. With the inclusion of the Current RCW provisions into WAC 173-26 regarding the legal, conforming use of Floating On-water Residences as a "housekeeping" action. This would also be an appropriate time to undertake the "housekeeping" action of clarifying their water dependent status. As defined:

> "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. (WAC 176-26-020)

On April 7, 2014, Mr. White, of your Department, wrote to members of the legislature regarding ESSB 6450 which defined and established the legal conforming status of Floating on-water Residences. He contended that the "commonalities" with Floating Homes bar the consideration of Floating on-water Residences as a water dependent use. I do not find his logic compelling.

ESSB 6450 states in part: "The 2011 legislation, which clarified the legal status of floating homes, was intended to ensure the vitality and long-term survival of existing floating single-family home communities. (2) The legislature finds that further clarification of the status of other residential uses on water that meet specific requirements and share important cultural, historical, and economic commonalities with floating homes is necessary."

The "commonalities" are clearly cultural, historic and economic not the water dependent status. "Floating Homes" are not vessels and have permanent utility and moorage connections. The intrinsic nature of a Floating Home is that it is not designed for navigation removes it from consideration as a water-dependent use. The Seattle Floating Homes Association in its Amicus Brief to *Lozeman v. City of Riviera Beach* clear stated that Floating Homes are not vessels. I concur with their assessment, Floating Homes could just as easily be located off the water except that the Legislature chose in 2011 to clearly provide protections to these important cultural and historic uses. Unlike when the SMA Rulemaking regarding "over water residences" was made in 2003, "Floating Homes" are now a defined term. ""Floating home" means a single-family dwelling unit constructed on a float, that is moored, anchored, or otherwise secured in waters, and is **not a vessel**, even though it may be capable of being towed." [emphasis added] Floating Homes are not vessels and lack the intrinsic nature of a water dependent use.

The 2014 Legislature chose to protect the cultural, historic and economic use of other residential uses on water by enacting protections for certain "Floating on-water Residences."

A Floating on-water Residence and other vessels with live aboard use (an undefined term) are intrinsically designed and dependent on being on/in the water. The residential use of a Floating on-water Residence or most other vessels cannot exist without the very specific integrated design to be buoyant (Archimedes principle) on the water. This stands in direct contrast to Floating Homes which exist on a float which can and some have been transferred to a traditional land foundation. Floating Homes are not classified as vessels. It is not possible to take any residential structure and drop it into the water expecting it to be buoyant, only a design which actually floats has any use and can only stably exist, as designed, in or on the water.

The buoyant and integrated design of such buoyant features of Floating on-water Residences is intrinsic to the nature of its operations. They are designed for navigation and practically designed to be used for navigation including detachable shore connections and temporary moorage connections both significantly different from Floating Homes. Floating homes, on the other hand, are not designed nor used for navigation and are not vessels. The significant distinction of design for permanent (Floating Home) versus temporary location (Floating on-water Residence) should be taken as a significant intrinsic part of its design when making a determination of Water Dependent status. The residential use of a vessel does not make that vessel any less water dependent. Many vessels are designed to have a residential use. My own small Houseboat stands in stark contrast to the residential amenities of most large cruisers and sailboats. A little or a lot residential is simply a residential use that is on the water not a use that is over the water. The contention that this vessel is not a vessel or not water dependent because it "looks" to residential is a distinction that makes no difference to its intrinsic design as a vessel.

These floating vessels, and their use should be classified as water dependent when legally moored and registered as required by law. The water dependent status should apply even when a locally adopted SMP would permit the legal moorage of Floating On-Water Residences and live aboard vessels, but otherwise prohibit or limit other residential uses in the same zone over water or adjacent to the shorelines.

My floating on water residence and those of my neighbors are vessels. They are designed as a means of transportation over the water. The Ecology "vessel" definition deviates from most definitions stating that a vessel is "designed and used for navigation." The term "navigation" is not defined and I have separately asserted that the Federal Vessel definition should be used. My vessel is registered with the State of Washington as required by federal and state law, floating homes are not vessels and are not registered as vessels. Your department recently approved the Seattle SMP which defines a House Barge as a vessel. It is time to recognize that a house or apartment built over the water is just that an over the water and I agree should be prohibited. A floating on water residence should be recognized as a on water use and dependent on that water as part of its intrinsic design and use.

Live aboard vessels of any type, including Floating on water residences, should be designated as a water dependent use.

Please advise me of all progress and decisions regarding these comments and any changes to the WAC implementing the SMA.

Best Regards, John Chaney
Vessel *Suttree*, Seattle
jchaney@nwlink.com

Oral testimony Comment No. 40 – John Chaney

John Chaney:

Actually, if you don't mind I would rather sit that stand, unless you are going to force me to stand and I would rather not sit behind the podium.

As is turns out after the question and answer period I have five things to talk about.

My name is John Chaney, I am board member of the Lake Union Live Aboard Association

We participated extensively in the Seattle Shoreline Master Program process and have since followed the issue. The first thing is...un I guess I am hopeful you can eventually let us know is whether or not we are on the state interest list regarding the issues of living on the water.

We don't seem to have gotten very much notice about the things you Department has done since the adoption of the SMP related to those issue. I think it is pretty egregious.

40a

The second thing following Ann's comment is that I think at some point there needs to be a formal election process if you are going to provide the local governments with two options, follow the full process, follow the optional combined process, they need to elect that and let the citizens know which process they are going to follow.

If I was you I would attach that as a condition to their application or acceptance of money in support of their work. But that is just my suggestion.

40b

I guess the third thing is that is at what point will Ecology be identifying things that itself has identified as issues since the adopt on the local SMP so that we don't end up finding out that you as a state agency with lots of interest in these things and lots of participation with our local governments and um what you think are the issues are that ought to be dealt with by the local governments periodic review. So I guess at some point I would like see that on your chart. When Ecology will do that sharing with local governments and local citizens within the affected area.

40c

The fourth thing is that I am a trained land use planner so I appreciate your proposal to combine the public hearing process um I think you need to approach that carefully and make sure it is done in a way does not preclude one of the first and primary issues of the SMA which is public participation. That was the only reason you have the SMA, I and perhaps others in this room voted for the it and that is how it got there, but it clearly requires that you have good public participation and there are times where I believe that process has fallen short. So as you are adopting these new rules I think that you should carefully look and make sure that the public's ability to participate in an informed way is preserved thought-out the processes.

We found in the adoption of the full SMA for the city of Seattle that, that process fell short and we felt particularly aggrieved by the process. Because after all the public hearing had occurred, after Ecology had essentially given its draft review um.... it engaged in a process with city staff

that identified and brought a number of issues to the table. As I recall some 120-130 issues were considered in the final Ecology review, some of which resulted in required changes to the Seattle SMP. That was a nonpublic process and it was one that did not allow for a public hearing input or other types of comments.

We tried to follow it as closely as we could but I saw that as a staff driven process and the outcome of that was that we ended up with required changes to the SSMP that city either chose or the elected official chose to adopt or not, and if you didn't you start the entire process over.

So it was, so it was...At the very least I think a coercive activity that was in our view abused in the process by the staff interactions,

I don't want to see that happen in the periodic review process and I don't want to see it made even worse if the combined review process is not allow for a fully transparent interaction between the local agencies, the states and the public. That is the greatest fault that we saw so we have a long list of things that should be dealt with in the periodic review because of how the process ended.

40d

The fifth item has to do with the catch all sort of dustbin housekeeping portion of that. Well I really appreciate housekeeping I wish I had more time for that in my home and in my life. And it clears that somethings, the legislature adopted new definitions you need to deal with those and that is a housekeeping thing.

However as perhaps the major stakeholder group dealing with living on the water we do not believe that altering the definition of "vessel" is at all reasonable. If you feel a new definition is needed I can point to the one single source you should use which is the federal vessel definition. If you are unwilling to adopt that and there are twenty different definitions of vessels in the revised code of Washington adopted by different agencies for different purposes apparently but all adopted though the legislative process or a few of them through the WAC process.

So your adoption of a vessel definition to somehow bring it into conformance with DNR is our view is bogus. There is no..that is a illegitimate reason for dealing with this. If you wish to deal with the vessel definition we offer our availability just as we did in the stakeholder group dealing with living on the water prior to the completion of the Seattle Shoreline Master program. That and we believe that is the only place, the only place where that is a legitimate process is if we go to the legislature. This needs to be a change to the SMA not something that gets scooted in as housekeeping part of the rules changes. So we are adamant, adamantly opposed to a, inclusion of a change in the vessel definition as a part of the housekeeping portion of this rule. Thank you

Oral testimony Comment No. 41 – Ann Aagaard

My name is Ann Aagaard, I am representing the League of Women Voters of Washington. I am the shorelines, wetland and interim land use chair.

First I would echo the first speaker's comment regarding the notification of this I was the league representative on the negation team and have been involved with every one of the groups that had looked at the shoreline guidelines until the negotiation team was pulled together and I have been actively involved in shoreline issues for all of these some 30 some, close to 40 years.

Ant the way I found about this hearing was that our son happens to take the Methow Valley News and there a notice in the Methow Valley News and I just happened to seen it but certainly not notice was given to anyway shape or form to those 2700 people that were notified. So I curious as to how you selected them and whom it went to.

So but I am here, and I thank you for having it in this convenient location.

41a
The first question I have, or the first comment I have is to the discretion given to local government as to whether to update their periodic updates and this is in page 16 of your WAC 173-26-090(b) (3) and it says "during the periodic review discretion is given to local governments as to what is analyzed as what is reflecting changed circumstances and whether the changed circumstances warrant amendments and it is not necessary to update a comprehensive inventory and characterization to make that determination."

So I totally understand why you don't want to update the comprehensive inventory and characterization. That was an enormous amount of work. Any I have found it to be very valuable information. We recently used this information in some of our GMA public hearings and it was very valuable and I realty fully support that. But I do not support this local government determination as to whether there are changed circumstances.

Giving all this discretion to local government seems to make the term no net loss basically moot. And that no net loss was basically a key concept in the guideline negotiations that was the key document. And, you find that on Page 26 of the guidelines where it says that the guidelines are designed ensure at a minimum that not net loss of ecological functions necessary to sustain shoreline natural resources and to plan restoration of ecological functions when they have been impaired.

So when you give total discretion to local governments after 8 years or in many cases over 8 years to say if there have been any changed circumstances. I find that this is really not adequate to

protect this key concept of "no net loss." There needs to be some kind of stronger language included here that will enable Ecology to step if it's clear...you look the inventories that were done, you look at the cumulative impacts studies that were done and it is clear that a whole section of shoreline has been built on. It is clear that there has been a loss of ecological function. And you say it's up to you local governments to decide if somethings happened.

That just seems to me to be setting back from your responsibility. I would encourage you to look at that section and make this key concept of No net loss stronger. I know the language is still in there but to me what you have proposed in this section of the WAC gives Ecology no room to do anything because you have turned it entirely over to local governments.

41b
My second comment has to do with sea level rise. Sea level rise is well studied it is predictable with error margins estimated. Any piece of Washington coastline can be predicted for the next 10 years. It is realistic to make predictions for sea level rise over any piece of coastline in Washington for the next 10 years. You will know what sea levels will do in Willipa Bay, Anacortes, the Columbia River estuary, Grays Harbor, Seattle, Ocean Shores, Bellingham and Everett among others. Regarding storm surges on top of sea levels you cannot predict when they will occur but we know what the surges are like. They can be super imposed on long term sea level. There is no questions regarding the warming of the ocean, the melting of sea, snow and ice around the globe and the settling and rise of land is known.

There has been enormous progress in quantifying and understanding this issue. We live in the center of expertise. From federal agencies such as NOAA, the University of Washington and to top it off Paul Johnson who teaches a class on climate change at the University of Washington had an editorial in the Seattle times where he said it is very important to consider what impact these challenges, these changes will have on us and our children. He is talking about climate change is particular but he specifically lists sea level as one of these issue and he goes onto to say rising the levels from melting Greenland and Iceland ice sheets will continue to accelerate and currently produce coastal flooding during storm surges. And then at the end he says one of his exercises for homework to his students was to use polar ice sheet melting rates to predict when a well know golf course in coastal Florida will be flooded for most of the year. The correct homework year so was the year 2050. Depressingly soon for Atlantic coastal communities to adapt but perhaps far to in the future to capture the attention of the present administration. And then finds to say climate change in not in the future it is here and now. So I would like to encourage you to put more than a tiny little statement about how local governments who would be impacted by the sea level rise that they might look at this.

Um, I am delighted to hear that they are looking at this in their comprehensive plan changes. But if this is true then they should be looking in their SMA as well. So please consider strengthening the statement in the regulations

3998 Wind Crest Ln.
Anacortes, WA 98221
May 10, 2017

State of Washington
Department of Ecology
PO Box 47600
Olympia, WA 98504-7600

Re: Review of local Shoreline Master Programs/Plans

Dear Mr. Gates,

Any revision of RCW's, WAC's or "guidelines" that we the public are expected to follow needs to have

1) a legally noticed public process for initial text or documents;
2) a legally noticed public process and hearing locally prior to adoption. There was no hearing for these revisions for the 4 new WA counties of Skagit, Whatcom, Island and San Juan. 125 - 200 miles is too far.)

Any local SMP (Plan) that is to follow these regulations has to

1) have a legally noticed public process based on real, not fake facts;
2) have a legally noticed hearing held locally.

Since the DOE reserves the right to review any such document, when or if any changes in the locally approved document are requested or are required, the public must have the right to review these at a hearing. It is too easy for state government to bully (as in the process re. Young's Island), or for state employees (on local ones) to be ignorant.

For example, Skagit Code refers to 2 kinds of aquifers and made a map to use to fulfill the Code. I have a GIS copy of that map. When I wanted to buy another, I was told what DOE mandated (with no public process) to represent the DOE aquifer. This is known as the Skagit River Watershed Map. Watershed means that all the rain water will find its way eventually into the river.

So, why is Fidalgo Island part of the Skagit River watershed on that map? It is surrounded by saltwater bays + the Swinomish Slough. Perhaps the error was made in using the Skagit County Coastal Zone Atlas of 1978. The cartographer drew in the Slough, but forgot to color it blue. Neither that person nor those in DOE making Watershed maps actually knew the terrain being mapped. Locals do, and laugh, until government regulates based on ignorance.

There has been no opportunity that I know of to correct that map.

The Skagit SMP of 2016 is still at DOE. When it returns, we must be able to review it at a hearing. There is already one problem I know of to be corrected.

Please make these trust worthy processes.

Sincerely

C. F. Ehlers

Carol Ehlers