



Conditional Use Permit Reviews

Guidance for local governments

Shorelands and Environmental Assistance Program

Washington State Department of Ecology
Olympia, Washington

April 2024

Publication Information

This document is available on the Department of Ecology's website at:
<https://apps.ecology.wa.gov/publications/summarypages/2406002.html>

Contact Information

Shorelands and Environmental Assistance Program

P.O. Box 47600

Olympia, WA 98504-7600

Phone: 360-407-6000

Website¹: [Washington State Department of Ecology](http://www.ecology.wa.gov)

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Introduction

Every Shoreline Master Program (SMP) includes provisions for conditional use permits (CUPs). CUPs are a discretionary permit pathway for proposals that must be reviewed on a case-by-case basis to ensure they are suitable at a specific shoreline location. The purpose of a CUP is to ensure that the strict implementation of an SMP will not create unnecessary hardships or thwart the policy of the Shoreline Management Act (SMA).²

What is a conditional use? A use, development, or substantial development which is classified as a conditional use or is not classified within the applicable SMP.³ Your SMP will establish the types of uses and development that require shoreline conditional use permits. The CUP pathway may be used for a variety of purposes, including:

- To effectively address unanticipated uses that are not classified in the master program as described in WAC 173-27-030.
- To address cumulative impacts.
- To provide the opportunity to require specially tailored environmental analysis or design criteria for types of use or development that may otherwise be inconsistent with a specific environment designation within a master program or with the Shoreline Management Act policies.⁴

In these cases, allowing a given use as a conditional use could provide greater flexibility within the master program than if the use were prohibited outright.

This chapter provides guidance for reviewing CUP applications. You will find:

- Resources for local government staff,
- Guidance on the key factors you should consider when reviewing CUP requests for consistency with the approval criteria, and
- Information about Shorelines Hearings Board (SHB) and court decisions.

In addition to this guidance, your [Ecology shoreline permit specialist](#) can help by attending pre-application conferences, attending a site visit, verifying an OHWM determination, reviewing preliminary site plans, and more. **Because Ecology has final approval on CUPs, we strongly recommend early coordination.**

The **Shorelines Hearings Board** hears and decides appeals of shoreline permit decisions as well as penalty orders issued by local and state governmental agencies. The SHB is a quasi-judicial board created by the Washington State Legislature and housed under the Environmental and Land Use Hearings Office. The SHB decisions referenced throughout this document are available www.eluho.wa.gov.

² The SMA is Chapter 90.58 RCW. The SMA policy is articulated in 90.58.020. The SMA provision calling for the creation of a CUP process is 90.58.100(5).

³ WAC 173-27-030(4)

⁴ WAC 173-26-241(2)(b) provides this framework for when uses and developments will require a CUP.

Resources for Local Governments

This chapter includes three tools that local governments can use during the permitting process. While designed for use by local government staff, they may also be useful as handouts to help applicants understand the CUP process and approval criteria. These resources include:

CUP quick tips. This three-page resource synthesizes the key concepts and most noteworthy Ecology recommendations from this chapter. The tip sheet references page numbers so that you can dig into ideas and concepts as needed without reading the entire document. We encourage you to use the tip sheet as an annotated reference guide to this chapter.

A diagram of the **CUP process**. This diagram is a helpful resource for staff and applicants that communicates the stepwise process, timelines, and important milestones from pre-application conference to construction. Figure 1 illustrates the flow of permit review from application through the state appeal period. It highlights the following key steps:

- WAC 173-27-180, Completeness review
- WAC 173-27-110, Notice of application and the associated 30-day public comment period
- WAC 173-27-130, Filing the permit with Ecology
- WAC 173-27-200, Ecology review and decision
- WAC 173-27-220 and RCW 90.58.180, Appeals to the Shorelines Hearings Board

A CUP submittal checklist that includes all requirements established by WAC 173-27-180. This checklist can be used to ensure that minimum submittal requirements are met.

CUP quick tips

This tip sheet synthesizes the key concepts and most-noteworthy Ecology guidance and recommendations from this chapter. Ecology's guidance is informed by SHB and Washington State courts appeal decisions, the policy of the SMA, and our experience reviewing CUPs. After finding a relevant tip, you can turn to the pages referenced to review the topic more fully.

Pre-application recommendations

1. Notify your Ecology shoreline permit reviewer about upcoming pre-application conferences for projects needing a shoreline CUP. Depending on the project, we may participate in the conference, consult with you beforehand, or send preliminary comments. (See page 14)
2. A CUP cannot be used to authorize a use prohibited by your SMP. (See page 17)
3. A CUP is required for any new use that triggers a CUP under the master program, regardless of whether the proposal includes *development*. (See page 17)
4. A shoreline substantial development permit (SDP) or exemption from the SDP process may still be necessary. Make sure the applicant is aware of all required permits. (See page 18)

Application review pointers

1. CUPs are discretionary permits that require decision makers to deliberate and exercise professional judgment. (See page 19)
2. A staff report should provide a clear, defensible analysis of how a proposal meets, can meet (i.e., with conditions of approval), or does not meet review criteria. (See page 19)
3. Determinations about a proposal's consistency with the CUP approval criteria will always be a fact-specific inquiry and will require you to consider the site-specific conditions and circumstances before you. (See page 19)
4. In authorizing a conditional use, special conditions may be attached to the permit by local government or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMP and SMA. In placing all permit conditions, ensure that conditions are necessary, achievable, and reasonable. (See page 20)
5. Local governments are required to approve, approve with conditions, or deny CUPs before Ecology renders a final decision. (See page 24)

SMA / SMP consistency criterion 101

1. An approvable CUP will result in a use that is consistent with the policies of the SED where it is to be located. An applicant's response should discuss how a project's impacts, use intensity, and site design (height, bulk, and scale of structures) compares to the SED purpose statement and policies. (See page 30)
2. A proposal that clearly conflicts with an SMP regulation is properly denied. (See page 30)
3. The consistency criterion requires the applicant to take a step back from the specific policies and regulations of the local SMP to consider a project's overall compatibility with the policy of the SMA, RCW 90.58.020. (See page 31)

Normal public use criterion 101

1. It is possible to authorize a CUP that will result in some degree of impact to normal public use of public shorelines, especially when that use will serve a public interest. However, such projects will generally need to mitigate impacts to public access. (See page 32)

Compatibility criterion 101

1. That an SMP lists a use as *conditional* does not make it a “use planned for” under the SMP. Conditional uses are exceptions to the standard uses that were planned for and a way to allow flexibility within the code. (See page 3434)
2. An assessment of a proposal’s compatibility with authorized uses must be considered at two geographic scales. First, consider a proposal’s compatibility with immediately adjacent uses. Second, consider a proposal’s compatibility with a wider geographic area. (See page 34)
3. Compatibility with “uses planned for the area” under the SMP means that the CUP would exist in harmony with likely future shoreline uses. (See page 35)
4. Applicants must show that the CUP is compatible with the preferred land use designation given to the site under the local comprehensive plan’s land use element. (See page 35)
5. A proposal can have some degree of visual impact on authorized uses and still be compatible, especially if a proposal otherwise furthers the public interest in shoreline management. (See page 36)
6. When considering compatibility, the size and scale of the proposal is relevant as it compares to other authorized uses and uses planned for the area. (See page 36)

Adverse effects criterion 101

1. “No significant adverse effects to the shoreline environment” means no net loss of shoreline ecological functions. (See page 38)
2. A CUP is properly denied when it will result, or is likely to result, in unmitigated impacts to shoreline ecological functions or if mitigation sequencing cannot be demonstrated. (See page 38)

Public interest criterion 101

1. A conclusion that a project will have no substantial detrimental effects to the public interest cannot be based on the absence of interest from the public or comments on a project alone. On the other hand, a conclusion that a project will have substantial detrimental effects on the public interest cannot be made simply because a proposal is unpopular and has resulted in many public comments in opposition. (See page 40)
2. There is a public interest in protecting natural shorelines from unnecessary human structures. (See page 40)
3. There is a public interest in limiting the encroachment into shoreline buffers/setbacks because of their importance in protecting shoreline ecological functions. (See page 40)

4. A proposal might have a “substantial” detrimental effect if it will obstruct, reduce, render unsafe, or eliminate existing public use of the shoreline without replacing or otherwise mitigating for the impact or loss. (See page 41)

Cumulative impacts criterion 101

1. If a project avoids impacts to shoreline ecological functions, it will not contribute to a cumulative impact on ecological functions. (See page 42)
2. Authorizing a CUP that achieves NNL through extensive compensatory mitigation can result in cumulative impacts concerns because the mitigation may not be successful. (See page 42)
3. An analysis of cumulative impacts will often need to look beyond undeveloped lots to consider the likelihood of similar proposals coming from developed lots. (See page 42)
4. An assessment of cumulative impacts must be based on a study area that is appropriate for the project. (See page 43)
5. An evaluation of cumulative impacts must identify specific sites within the study area where similar circumstances exist and where additional requests for like actions may be generated. (See page 43)
6. There can be no cumulative impacts concerns where land use patterns in the areas will not result in similar request for a CUP or where there is a lack of evidence of similarly situated potential applicants. (See page 43)
7. See Ecology’s suggested approach to assessing cumulative impacts on page 44.

Shoreline conditional use and variance permit process

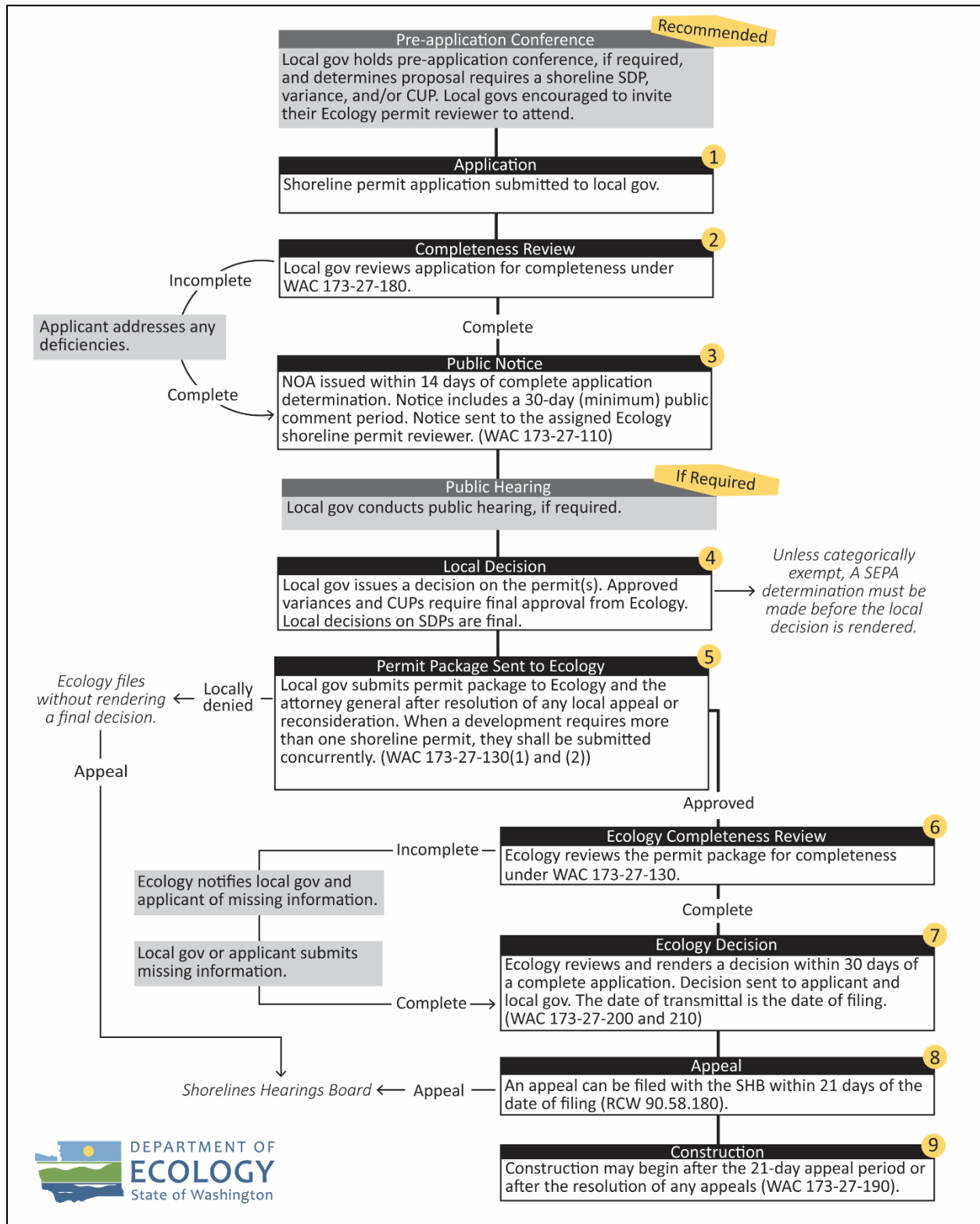


Figure 1. Shoreline CUP and variance permit process.

CUP application requirements - checklist

Minimum permit application requirements are established by WAC 173-27-180 and are listed below. In addition to the standard elements listed below, additional submittal materials may be required by the SMP. This checklist can be used to ensure that minimum application requirements are met.

- 1. The name, address, and phone number of the applicant.** The applicant should be the owner of the property or the primary proponent of the project and not the representative of the owner or primary proponent.
- 2. The name, address, and phone number of the applicant's representative if other than the applicant.**
- 3. The name, address, and phone number of the property owner,** if other than the applicant.
- 4. Location of the property.** This shall, at a minimum, include the property address and identification of the section, township, and range to the nearest quarter, quarter section or latitude and longitude to the nearest minute. All applications for projects located in open water areas away from land shall provide a longitude and latitude location.
- 5. Identification of the name of the shoreline (water body)** that the site of the proposal is associated with. This should be the water body from which jurisdiction of the act over the project is derived.
- 6. A general description of the proposed project that includes the proposed use or uses and the activities necessary to accomplish the project.**
- 7. A general description of the property as it now exists** including its physical characteristics and improvements and structures.
- 8. A general description of the vicinity** of the proposed project including identification of the adjacent uses, structures and improvements, intensity of development, and physical characteristics.
- 9. A site development plan** consisting of maps and elevation drawings, drawn to an appropriate scale to depict clearly all required information, photographs, and text which shall include:
 - (a) The **boundary of the parcel(s)** of land upon which the development is proposed.
 - (b) **The OHWM** of all water bodies located adjacent to or within the boundary of the project. This may be an approximate location provided, that for any development where a determination of consistency with the applicable regulations requires a precise location of the ordinary high water mark the mark shall be located precisely and the biological and hydrological basis for the location as indicated on the plans

shall be included in the development plan. Where the ordinary high water mark is neither adjacent to or within the boundary of the project, the plan shall indicate the distance and direction to the nearest ordinary high water mark of a shoreline.

- (c) Existing and proposed **land contours**. The contours shall be at intervals sufficient to accurately determine the existing character of the property and the extent of proposed change to the land that is necessary for the development. Areas within the boundary that will not be altered by the development may be indicated as such and contours approximated for that area.
- (d) A **delineation of all wetland areas** that will be altered or used as a part of the development.
- (e) A general indication of the **character of vegetation** found on the site.
- (f) The **dimensions and locations of all existing and proposed structures and improvements** including but not limited to; buildings, paved or graveled areas, roads, utilities, septic tanks and drainfields, material stockpiles or surcharge, and stormwater management facilities.
- (g) Where applicable, a **landscaping plan** for the project.
- (h) Where applicable, plans for **development of areas on or off the site as mitigation** for impacts associated with the proposed project shall be included and contain information consistent with the requirements of this section.
- (i) **Quantity, source, and composition of any fill material** that is placed on the site whether temporary or permanent.
- (j) **Quantity, composition, and destination of any excavated or dredged material.**
- (k) A **vicinity map** showing the relationship of the property and proposed development or use to roads, utilities, existing developments and uses on adjacent properties.
- (l) Where applicable, a **depiction of the impacts to views** from existing residential uses and public areas.
- (m) **On all variance applications the plans shall clearly indicate where development could occur without approval of a variance**, the physical features and circumstances on the property that provide a basis for the request, and the location of adjacent structures and uses.

Pre-application Considerations

Ideally, a local government will be aware of a CUP proposal before an application is submitted. Sometimes this will be through preliminary conversations with the property owner, but it may also be through a formal pre-application conference. This section recommends several steps that you can take prior to an application being submitted that can result in a smoother application process.

Pre-application conference

Many local governments have a process for convening pre-application conferences. It is a best practice for local governments to require a pre-application conference for projects proposed within shoreline jurisdiction. The importance of a pre-application conference is greater for CUPs because this category of projects may have undesirable effects or be inconsistent with the goals of your SMP and the SMA.

We encourage you to notify your Ecology shoreline permit reviewer about forthcoming pre-application conferences.⁵ Depending on the project, we may participate in the conference, consult with you beforehand, or send preliminary comments.

The pre-application conference is the best opportunity for you to raise concerns about project design, share information about the CUP process and approval criteria, and to get early feedback from Ecology and other state and federal agencies.

Uses and developments requiring a CUP

Before a pre-application conference, or as part of that meeting, you will want to communicate to an applicant what part(s) of a proposal require a CUP and why. A CUP will be required in one of two situations.

1. The SMP requires a CUP for the proposed use or development to be authorized.
2. The proposed use is not classified in the SMP.

Classified uses

Your SMP will specify that a CUP is needed to authorize certain uses and developments.

These uses and developments are classified or set forth in an SMP as conditional uses and may be authorized provided the proposal can meet the CUP approval criteria of the SMP and WAC 173-27-160. The majority of uses and developments classified as CUPs will be presented in a table like Table 1.

⁵ Find the permit reviewer assigned to your jurisdiction on [Ecology's Shoreline Management Contacts](https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Contacts) webpage, <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Contacts>.

Table 1. Hypothetical use table.

USE	Aquatic	Natural	Rural Conservancy	High Intensity – Public Facility	Shoreline Residential
Agriculture	X	X	P	X	P
Aquaculture	C	X	P	X	X
Mining	X	X	C	X	X

Not all conditional uses are uses! **It is common for certain shoreline modifications⁶ to be authorized through the CUP process.** Uses are the ongoing functional result of development. Shoreline modifications are construction elements that change the physical configuration or qualities of the shoreline in preparation for, or continuance of, a use. For example, a marina is a use, and dredging is a modification to allow for the marina. During SMP planning, many local governments decided the CUP process was appropriate for shoreline modifications with potentially significant environmental impacts, such as fill waterward of the OHWM or hard shoreline stabilization. There are several reasons for this. First, depending on the local government, the CUP pathway may elevate local decision-making authority and/or trigger a requirement for a public hearing. Second, the two-step approval process raises the level of scrutiny given to a project whereby a CUP is allowed only when both the local government and Ecology approve the permit. And finally, the CUP approval criteria require that the cumulative impacts of a project be considered.

A CUP requirement can be written in use regulations and may not otherwise appear in a use table. For example, use regulations for marinas may include a provision such as: “any expanded structure which exceeds a height of 35 feet shall be considered a conditional use.” **It is also common for SMPs to allow the expansion of nonconforming uses and structures through a CUP process.** In this case, the requirement for a CUP is likely to appear only in an SMP’s nonconforming provisions. If the SMP relies on the default nonconforming provisions, see WAC 173-27-080 for specific CUP requirements related to the modification of nonconforming developments and uses.

Deciding whether a CUP is necessary may require you to determine whether a proposed use is water dependent, water enjoyment, and/or water related (see Table 2). This decision may

⁶ SMPs distinguish between *uses* and *modifications*. Shoreline modifications are “generally related to construction of a physical element such as a dike, breakwater, dredged basin, or fill, but they can include other actions such as clearing, grading, application of chemicals, or significant vegetation removal. Shoreline modifications usually are undertaken in support of or in preparation for a shoreline use; for example, fill (shoreline modification) required for a cargo terminal (industrial use) or dredging (shoreline modification) to allow for a marina (boating facility use)” (WAC 173-26-231).

not always be straightforward, and your Ecology shoreline permit reviewer⁷ can provide technical support in making this determination. For example, in *Turner v. Baldwin*, No. 52470-8-II (Wash. Ct. App. Oct. 13, 2020)⁸ a property owner applied for a CUP to construct a “boathouse” within the shoreline setback. The local SMP allowed water-dependent accessory structures to be authorized within the setback with a CUP. In this case, the local government determined that the proposed “boathouse” was not intended for boat moorage but would serve primarily as a pool house. The local government determined that the structure was not water dependent and denied the CUP. That decision was upheld by the Washington State Court of Appeals.

Table 2. Example of a use table that regulates uses based on water orientation.

USE	Commercial	Residential	Rural	Conservancy	Natural	Aquatic
	P	C	C	C	X	See upland designation
Commercial - Water dependent	P	C	C	C	X	See upland designation
Commercial - Water related and water enjoyment	P	C	C	C	X	X
Commercial - Non-water oriented	C	C	C	X	X	X

During SMP planning, local governments identify and require a CUP for those uses and developments that might significantly impair or alter the public’s use of public shorelines or that may have significant impacts on shoreline ecological functions. Ecology’s SMP guidelines require that specific uses and developments be reviewed through a CUP, including:

- Single-family residential development and commercial forestry when within a Natural Shoreline Environment Designation (WAC 173-26-211(5)(a)(ii)).
- Forest practices uses located along shorelines of statewide significance not meeting the timber selective harvest provisions of RCW 90.58.150 (WAC 173-241(3)(e)).
- Fill waterward of the OHWM should require a CUP, except when fill is part of a restoration project (WAC 173-26-231(3)(c)).

⁷ Find the shoreline permit reviewer assigned to your jurisdiction on Ecology’s shoreline management contact webpage, <https://ecology.wa.gov/Water-Shorelines/Shoreline-coastal-management/Shoreline-coastal-planning/Contacts>.

⁸ *Turner v. Baldwin* is an unpublished opinion. The difference between a published and unpublished opinion is that a published opinion is automatically considered precedential, meaning it can be quoted as the final word on an issue. Unpublished cases can still be cited and considered as persuasive authority by other courts.

- Breakwaters, jetties, groins, weirs, and similar structures, except when installed to protect or restore ecological functions (WAC 173-26-231(3)(d)).
- Dredging to obtain fill material for ecological restoration, unless associated with certain habitat restoration projects (WAC 173-26-231(3)(f)).
- New commercial geoduck aquaculture (WAC 173-26-241(3)(b)(iv)).
- Development and uses in critical saltwater habitats (WAC 173-26-241(2)(b)(ii)(C)).
- Mining within any channel migration zone (WAC 173-26-241(3)(h)(ii)(E)).

Unclassified uses

A CUP process is required for uses that are unclassified in an SMP. It is the *only* pathway to authorize a use that is not identified in your SMP as being a permitted, conditional, or prohibited use.

Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program (WAC 173-27-160(3), emphasis added).

The onus is on the applicant to show they are proposing an allowed use. If something is proposed that does not fit within the use categories established the SMP, it would be appropriate to review the project as a CUP.

A CUP cannot authorize a prohibited use

A CUP cannot be used to authorize a use prohibited by your SMP (WAC 173-27-160(4)). The inability to approve a CUP for a prohibited use has been the subject of SHB decisions. For example, in *Lund v. State Dep't of Ecology*, 93 Wn. App. 329 (1998) the Washington Court of Appeals upheld Ecology's denial of a CUP for a new over-water residence. In *Lund*, the Court determined that the SHB correctly found that the local SMP did not permit construction of residences over water and contained no provision that would override this prohibition.

Proposals that do not include "development"

A CUP is required for any new use that triggers a CUP under the master program, regardless of whether the proposal includes *development*.⁹ This precedent was established by an appeal of a CUP that went to the Washington Supreme Court, *Clam Shacks of Am., Inc. v. Skagit County*, 109 Wn.2d 91 (1987). The Clam Shacks case involved the commercial harvesting of

⁹ Under the SMA, development "means a use consisting of the construction or exterior alteration of structures; dredging; drilling; dumping; filling; removal of any sand, gravel, or minerals; bulkheading; driving of piling; placing of obstructions; or any project of a permanent or temporary nature which interferes with the normal public use of the surface of the waters overlying lands subject to this chapter at any state of water level" (RCW 90.58.030).

clams using a hydraulic rake. The Court agreed that under the SMA, conditional use permits could be required by SMPs for activities other than developments.

Proposals that include “development”

The CUP requirement is specific to the use or shoreline modification identified or unclassified by the SMP. Processing a CUP does not eliminate the requirement for a shoreline substantial development permit (SDP). When the proposal also includes components that meet the definition of *development*,¹⁰ an SDP or exemption from the SDP process is required in addition to the CUP.

¹⁰ RCW 90.58.030(3)(a)

Application Review Considerations

The purpose of this section is to highlight your role in CUP review and to provide information on local government concerns that often accompany CUPs.

Professional deliberation and judgment

CUPs are discretionary permits that require decision makers to deliberate and exercise professional judgment. While the onus is on the applicant to demonstrate consistency with the CUP approval criteria of WAC 173-27-160(1), Ecology would like to see staff reports that include independent findings and conclusions. **A staff report should provide a clear, defensible analysis of how a proposal meets, can meet (i.e., with conditions of approval), or does not meet review criteria.** Relying on an applicant's arguments without scrutiny can leave a decision vulnerable on appeal. A well written staff report makes conclusions based on a fact-specific inquiry. Anyone reading your staff report should be clear about your department's position on a proposal.

Fact-specific inquiry

Determinations about a proposal's consistency with the CUP approval criteria will always be a fact-specific inquiry and will require you to consider the site-specific conditions and circumstances before you. As you read this chapter, you'll see discussions of SHB and court decisions on shoreline permits. The citations in this document are from cases that illustrate common themes that emerge from the review of many appeal decisions and may provide useful context for your review of projects. While the facts of the cases shared in this chapter are unlikely to match the exact situations of the proposals you'll review, we cite them here as examples to inform your decisions.

Proposals with multiple uses and/or modifications

Generally, only those aspects of a proposal that require a CUP will be evaluated against the CUP approval criteria. For example, consider a proposal that includes both a dock (a permitted modification requiring a shoreline substantial development permit under the SMP) and new hard shoreline stabilization (listed as a conditional use). Only the shoreline stabilization would be evaluated against the CUP criteria.

However, it will not always be easy, or even possible, to separate out development aspects, especially when the CUP trigger is a shoreline modification¹¹ that directly supports a proposed use. Consider a proposal to widen the shoulder of an existing road. The only way to accomplish the project is to add fill waterward of the OHWM to support the base of the roadway. Roads can be permitted with an SDP but fill below the OHWM would trigger a CUP

¹¹ On page 14, the distinction and connection between uses and modifications is described. Uses are the ongoing functional result of development. Shoreline modifications are construction elements that change the physical configuration or qualities of the shoreline in preparation for, or continuance of, a use.

under the SMP. Unlike the first example where the dock and the shoreline stabilization can be examined separately, here the road widening would be evaluated against the CUP approval criteria because an essential component of the project triggers a CUP. Importantly, this will not always be the case when a shoreline modification is the CUP trigger.

Alternatively, if the use itself is triggering the CUP, then all development and modification components supporting that use should be considered as part of the CUP analysis and justified consistent with the CUP criteria. For example, consider a proposal for a single-family residence (residential use) within the Natural SED with a detached garage, on-site septic system and drainfield, driveway, and fence (appurtenances) and a residential dock and pool (accessory). All the proposed appurtenant and accessory developments and modifications are supporting the conditional use. In this situation, all the project components would be evaluated against the CUP approval criteria.

Time Requirements

Development and uses authorized through a CUP must commence within two years and all development activities must be completed within five years of the effective date of the permit approval.¹² This time period calculation can exclude the time when the use or activity could not actually begin or be finished due to the pendency of permit appeals; legal actions; or other federal, state, or local approvals that have been applied for but not issued.

Additionally, local governments may authorize a single extension of up to one year to both the time requirement to begin and end the project. Such an extension must:

- be issued before the expiration date,
- be based on reasonable factors and evidence or justification provided by the applicant,
- include notice to parties of record and Ecology.

When a one-time, one-year time extension is authorized, the new permit expiration date along with an explanation of the basis for approval of the change shall be provided to Ecology in writing.

Alternatively, upon finding of good cause, based upon the requirements and circumstances of the project proposed and consistent with the policy and provisions of the SMP and chapter 173-27 WAC, the local government may include different time limits from those outlined above, as part of the original permit decision. For example, a linear transportation project may have a six-year construction timeline or may be contingent upon funding that will not be available for more than two years. When these factors are known during the permit review phase, the local government can customize the time requirement to avoid the need for extensions after the permit is issued.

¹² This time requirement is established in RCW 90.58.143 and further implemented through WAC 173-27-090.

Permit conditions

In authorizing a conditional use, special conditions may be attached to the permit by local government or Ecology to prevent undesirable effects of the proposed use and/or to assure consistency of the project with the SMP and SMA (WAC 173-27-160). Depending on the use and the potential impacts, special conditions have been placed on CUPs to require wider buffers, lighting, tree protection, implementation of a mitigation plans, the submission of mitigation monitoring reports, as-built plans, deed restrictions, signage, public access, limits on the hours of commercial and industrial operations, etc.

As with all land use permits, special conditions must be directly related to the proposed use or shoreline modification. **In placing all permit conditions, ensure that conditions are necessary, achievable, and reasonable.** Ecology has removed local conditions of approval that were determined to be unrelated to a regulation, policy, or goal of the SMA or SMP and that may have otherwise prevented a project from moving forward.¹³

Appeal cases highlighting the appropriate use of permit conditions include:

- In *Preserve Our Islands v. Shorelines Hearings Board*, 133 Wash. App. 503 (2006), where the Washington Court of Appeals upheld the SHB’s conclusion that a barge loading facility associated with an upland sand and gravel mine would be compatible with permitted uses if it restricted hours of operation to 7:00 am to 7:00 pm, Monday through Friday. The Court held that, “While the Board’s restrictions cannot entirely alleviate the impact on other permitted uses, substantial evidence supports the Board’s conclusion that the restrictions make the facility compatible with permitted uses (id. at p. 531 ¶44).” In this case the concern was for compatibility with existing recreational uses that typically occurred on weekends including boating, kayaking and canoeing, scuba diving, beach walking, and watching wildlife.
- In *Citizens Against Barge Terminal v. Ecology et al.*, SHB No. 16-003 (Nov. 8, 2016), the SHB upheld approval of a CUP for a new barge terminal on the Columbia River that was appealed by petitioners from a nearby RV park. One objection of the appellants was that noise from the terminal was not compatible with the residential nature of the RV park, an authorized use in the area. The SHB determined that the project must meet statutory noise limits¹⁴ for an industrial property impacting a residential property. As conditioned, the CUP required a noise study within six months of the start of operation to demonstrate that noise limits were met.

Appeal cases highlighting inappropriate permit conditions that go too far and are unnecessary to meet the approval criteria include:

- *Staurset v. Ecology*, SHB No. 99-025 (Jan 31, 2000) where the SHB found that Ecology erred in placing a permit condition that would have required Staurset to add a pitch to the flat roof of his boathouse to prevent it from being used as a rooftop deck. The SHB

¹³ Hopps v. Klickitat County et al., SHB No. 23-007 (Feb 8, 2024)

¹⁴ See WAC 173-60-040, <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-60-040>.

held that the conditions placed by Pierce County were sufficient to ensure the existing roof would no longer be used as a deck. Pierce County had already conditioned the permit such that the CUP would be revoked if the roof was used as a deck. The County had also conditioned the permit to require the removal of deck railings and roof-access stairs, and to require Staurset to record a deed restriction that would be applicable to future property owners.

- *Marnin et al. v. Mason County and Ecology*, SHB No. 07-021 (Feb. 6, 2008). In *Marnin*, the SHB found that conditions required by Mason County were unnecessary for achieving compliance with the SMP. The SHB found that permit conditions would significantly harm oyster farming practices by, among other limitation, placing work hour restrictions that would limit access to oyster beds during low tides, force employees to work split shifts, and prohibit noise from being audible past property lines. In their decision, the SHB found:
 - “A blanket prohibition on all work during the evening or early morning hours does not adequately balance the needs of the aquaculture operation and the interests of the neighbors (*il.* at p. 24-25).”
 - “Impacts on the neighbors are more adequately addressed by requiring less intrusive work practices than by imposing a complex work-time compensation formula (*il.* at p. 26).”
 - “Sound waves do not stop at a property line and requiring complete silence at the property line imposes a virtually impossible standard for tideland aquaculture (*il.* at p. 27).”

Occasionally, Ecology receives a locally approved CUP with permit conditions requiring an applicant to conduct additional studies or to produce additional plans. **While permit conditions can be used to require additional information from applicants, carefully consider whether that new information is needed prior to a local decision on the permit.** In general, permit conditions should not be used to redesign a project, to require that a mitigation plan be developed (although it is common for conditions to require the implementation of a mitigation plan), or to require other plans or studies that may be needed to evaluate a proposal against the approval criteria.

Proposals with multiple CUP triggers

When a project involves more than one use or development component that triggers a CUP, you will need to determine whether an applicant needs to provide separate responses to the CUP approval criteria. Separate responses will often, but not always, be the best approach when a proposal includes multiple *uses* that trigger a CUP. A single response to CUP approval criteria will often be appropriate when one or more of the development components triggering a CUP support a single use. The important thing is to ensure that each aspect of the project requiring the CUP is thoroughly assessed using the CUP criteria. Let’s explore how to treat proposals with multiple CUP triggers through several examples.

Example 1. A residential redevelopment project. Residential property owners are proposing to redevelop their shoreline lot by expanding a nonconforming home and adding a detached

accessory dwelling unit (ADU). The SMP allows nonconforming structures to be expanded with an approved CUP. The SMP also requires a CUP for new ADUs.

In this case, the two project components (e.g., home expansion and ADU) will need to be addressed separately in the applicant's response to the approval criteria, staff report, Hearings Examiner decision, etc. This is the right course of action because one development component does not depend on the other. Instead, the proposal consists of two separate development components that will necessarily elicit different responses to the CUP approval criteria.

Whether a project like this is permitted under one CUP application or two is a local government decision.

Example 2. A new bridge. A new bridge proposal triggers two CUPs. Your SMP classifies bridges as a transportation use requiring a CUP. In addition, the bridge will carry cellular and electric lines beneath the bridge deck, a utility use that also triggers a CUP. Importantly, the utility infrastructure will be integrated into bridge design, and that aspect of the project will not move forward unless the bridge is constructed. It will be difficult to assess the utility project against the CUP approval criteria separately from the bridge. You decide the best approach is for the bridge and utility uses to be evaluated together against the approval criteria. While the evaluation would need to include both the transportation and utility project components because the SMP will have separate applicable policies and regulations for these uses, you determine that this can be accomplished through a single or combined response from the applicant.

Example 3. Road widening project. A road widening project will require fill waterward of the OHWM and shoreline stabilization. Transportation projects (the shoreline use) in the SED require a CUP, and so do the fill (shoreline modification) and shoreline stabilization (shoreline modification). Both the fill and shoreline stabilization support the use, and road widening cannot occur without these development components. You decide that the best approach is for the entire project to be evaluated together against the approval criteria and that a single response from the applicant is appropriate.

The challenge of after-the-fact CUPs

On occasion a local government will require that an SMP violation be addressed through an after-the-fact permitting process. **Ecology recommends that local governments review after-the-fact permits as if the unpermitted work has not been constructed.** While challenging in practice, this approach assures permitting fairness. While some after-the-fact CUP approvals have withstood appeal, the SHB has overturned others and even required the removal of structures. For example, in *Bhatia and Kitsap County v. Ecology*, SHB No. 95-34 (Jan. 9, 1996) the SHB ordered that a foundation and septic system be removed. Bhatia involved residential development with a Conservancy shoreline environment designation where development would be located on unstable slopes and would permanently alter the shoreline environment. Bhatia also involved concerns for cumulative adverse environmental impacts because similar lots were undeveloped.

Local decision, *not* recommendation

CUPs require a two-step approval process to be authorized (See Figure 1, page 11). **Local governments are required to make a decision to approve, approve with conditions, or deny CUPs ([WAC 173-27-130](#))¹⁵ before Ecology renders a final decision.** Because a local government approval is not final approval, local governments should establish a process for ensuring that building permits related to the CUP are not issued before Ecology's decision. Construction authorization cannot occur until at least 21-days from the date of filing¹⁶ or after any appeals filed within that timeframe have been resolved¹⁷.

Submittal to Ecology

CUPs must be submitted to Ecology after the local government decision is final.¹⁸ Final decision by local government means the order or ruling on the permit application, whether it be an approval or denial, which is established after all local administrative appeals have concluded or the opportunity to initiate such appeals have lapsed.

When a project requires an SDP and a CUP or variance, the decision must be consolidated, and the permits must be submitted to Ecology at one time (i.e., concurrently). **This submittal must be consistent with the requirements of WAC 173-27-130.** This includes:

- A copy of the complete application pursuant to WAC 173-27-180.
- Findings and conclusions that establish the basis for the decision including, but not limited to, identification of SED, applicable SMP policies and regulations, and the consistency of the project with appropriate review criteria for CUPs.
- The final decision of the local government.
- The permit data sheet required by WAC 173-27-190.
- SEPA documentation pursuant to chapter 43.21C RCW.
- If revisions occurred during the local review, clearly indicate the final approved plans.

Ecology decision

Importantly, Ecology will render a final decision only on CUPs that have been approved by a local government and will make no final decision on CUPs that are denied by the local government.¹⁹

We review complete submittals for consistency with the policies and provisions of the SMA and the approval criteria in WAC 173-27-160. We do not act on CUP submittals that are incomplete.

¹⁵ <https://apps.leg.wa.gov/WAC/default.aspx?cite=173-27-130>

¹⁶ RCW 90.58.140

¹⁷ WAC 173-26-190(1)

¹⁸ See Ecology's Shoreline Planner Toolbox for submittal information and data sheet <https://ecology.wa.gov/water-shorelines/shoreline-coastal-management/shoreline-coastal-planning/shoreline-planners-toolbox>.

¹⁹ WAC 173-27-200(1) "After local government approval of a conditional use or variance permit, local government shall submit the permit to the department for the department's approval, approval with conditions, or denial."

Instead, we will provide the local government with a written request and a deadline for providing the necessary documentation or information.

After review, we issue and transmit our final decision approving, approving with conditions, or denying the CUP. The local government is responsible for providing timely notification of Ecology's final decision to interested parties identified during the local process.

Review Criteria for CUPs

WAC 173-27-160 establishes minimum approval criteria for CUPs. This section introduces how the rule is structured before providing guidance on each individual approval criterion. Ecology's guidance is informed by SHB and Washington State courts appeal decisions, the policy of the SMA, and our experience reviewing CUPs.

Minimum approval criteria

The approval criteria of WAC 173-27-160 are **minimum approval criteria**, and some SMPs establish more restrictive or additional requirements (WAC 173-27-210). When approval criteria differ, the additional requirements and more-restrictive standards apply to both the local government's review and Ecology's review (*Buechel v. Ecology*, 1994; reaffirmed in *Jain v. Ecology*, 2004 and *Davidson v. Ecology*, 2019).

Structure of the approval criteria in rule

The CUP review criteria rule (WAC 173-27-160) has four parts that must be addressed in narrative responses. A proposal that cannot meet all approval criteria of WAC 173-27-160 is properly denied.

WAC 173-27-160(1)

The first part of the rule requires:

Uses which are classified or set forth in the applicable master program as conditional uses may be authorized provided that the **applicant demonstrates all** of the following:

- a) That the proposed use is **consistent** with the policies of RCW 90.58.020 and the master program;
- b) That the proposed use will not interfere with the normal **public use** of public shorelines;
- c) That the proposed use of the site and design of the project is **compatible** with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program;
- d) That the proposed use will cause **no significant adverse effects** to the shoreline environment in which it is to be located; and
- e) That the **public interest** suffers no substantial detrimental effect

(WAC 173-27-160(1), emphasis added).

Applicants must provide written responses to A through E above. You will review and scrutinize an applicant's responses for accuracy and omissions. It should be clear whether the local government agrees with the arguments presented by the applicant.

WAC 173-27-160(2)

The second part of the rule requires:

In the granting of all conditional use permits, consideration shall be given to the **cumulative impact of additional requests for like actions in the area**. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(WAC 173-27-160(2), emphasis added)

Applicants should respond to the criterion to the best of their ability. This is an opportunity for applicants to inform your review but does not replace the local government's assessment.

Regardless of information provided by the applicant, local government must independently consider cumulative impacts. In many cases, applicants will not have access to the information necessary to fully consider cumulative impacts. Local governments will typically have unique access to information about past, current, and potential future requests for like actions in the area and are best positioned to develop findings and conclusions about a proposal's cumulative impacts. The cumulative impacts criterion is great place in your review to bring in new information and analyses that haven't been presented by the applicant.

A CUP proposal that will result in cumulative impacts that will conflict with the policy of the SMA or cause substantial adverse effects to the shoreline environment is properly denied.

WAC 173-27-160(3)

The third part of the rule provides:

Other uses which are not classified or set forth in the applicable master program may be authorized as conditional uses provided the applicant can demonstrate consistency with the requirements of this section and the requirements for conditional uses contained in the master program (WAC 173-27-160(3)).

This provision allows consideration of other non-specified uses through a CUP. The specific CUP trigger(s) have already been determined at this point. Either local government staff has determined that a use is unclassified by the SMP and requires a CUP, or the SMP specifically required a CUP for the use or development. If the CUP is for an unclassified use, that use is not contemplated within the SMP, so additional analysis regarding the appropriateness of the use for the SED it is proposed within may be necessary. This should include looking specifically at the SED designation criteria and management policies to ensure this use is compatible and appropriate for its proposed location. Therefore, the applicant's narrative response needs to specify how the proposal will be consistent with the CUP criteria in the WAC and the SMP. Again, you will need to determine whether the narrative is complete and accurate.

WAC 173-27-160(4)

The fourth part of the rule requires: “Uses which are specifically prohibited by the master program may not be authorized pursuant to either subsection (1) or (2) of this section” (WAC 173-27-160(4)).

As noted above, the CUP process is only available for uses that the SMP establishes as conditional uses or for unforeseen uses which the SMP has not contemplated. Use prohibitions are not something that can be varied or overridden through a CUP.

The applicant’s narrative response should address whether the use is specifically prohibited by the SMP. You must verify an applicant’s answer and make clear whether the local government agrees. A CUP cannot be used to authorize a use prohibited by your SMP.

Consistency criterion, WAC 173-27-160(1)(a)

Every SMP includes a CUP approval criterion that addresses SMA and SMP consistency. The criterion requires the applicant to demonstrate:

“That the proposed use is consistent with the policies of RCW 90.58.020 and the master program” (WAC 173-27-160(1)(a)).

When the CUP is for a shoreline modification, and not a use, consider both the use the modification is supporting and whether the result of the modification will be consistent with the policies of the SMA and the local SMP.

Consistency with the SMA policy

To meet the criterion, an applicant must demonstrate that a CUP proposal is consistent with the policy of the SMA. The policy of the SMA is articulated in [RCW 90.58.020](#).²⁰ **The consistency criterion requires the applicant to take a step back from the specific policies and regulations of the local SMP to consider a project’s overall compatibility with RCW 90.58.020.**

During your review, revisit RCW 90.58.020 and include findings of consistency or inconsistency in your staff report, as well as an overall conclusion about SMA consistency. Appeals of CUP decisions often raise questions about a proposal’s consistency with the policy of the SMA.

The SMA policy establishes three priorities (goals): planning for preferred uses, protecting the environment, and promoting public access. The SMA contains use preferences that give priority for: single-family residences, ports, shoreline recreational uses, other improvements facilitating public access to shorelines of the state, industrial and commercial developments which are particularly dependent on their location on or use of the shorelines of the state, and other development that will provide an opportunity for substantial numbers of the people to enjoy the shorelines of the state.

The SMA aims to prevent the inherent harm caused by uncoordinated and piecemeal development of the state’s shorelines. Therefore, it is the policy of the state to provide for the management of the shorelines of the state by planning for and fostering all reasonable and appropriate uses and ensuring that permitted uses are designed and conducted in a manner that avoids impacts and minimizes any resulting damage. This policy further contemplates protecting against adverse effects to the public health, the land and its vegetation and wildlife, and waters of the state and their aquatic life, while protecting generally public rights of navigation.

Coordinated planning through the development of local SMPs is the foundation for meeting the policy of the SMA and the mechanism for protecting the public interest associated with shorelines. Uses and shoreline modifications that require a CUP were not fully planned for in the SMP, so each CUP application should be reviewed against this policy to ensure the proposal is compatible.

²⁰ <https://apptest.leg.wa.gov/RCW/default.aspx?cite=90.58.020>

Consider whether the use being established, expanded or supported:

- Is a reasonable and appropriate use for the SED where it is proposed.
- Could result in uncoordinated or piecemeal development.
- Has been designed and will be constructed in a way that avoids and minimizes adverse impacts to the shoreline ecological functions.
- Could interference with the public's use of the water.
- Is subject to the additional use preferences for shorelines of statewide significance²¹.

Consistency with SMP policies and regulations

To meet the criterion, an applicant must demonstrate that a CUP proposal is consistent with the policies and regulations of the SMP.

The shoreline environment designations (SED) established by your SMP have an associated purpose statement and management policies. **An approvable CUP will result in a use that is consistent with the policies of the SED where it is to be located.** An applicant's response should discuss how a project's impacts, use intensity, and site design (height, bulk, and scale of structures) compares to the SED purpose statement, management policies, and other permitted uses. Your staff report should identify points of consistency and conflict. This guidance is supported by SHB cases, such as:

- In *Bhatia and Kitsap County v. Ecology* (1996), Ecology's denial of a CUP was upheld by the SHB. One of the Board's conclusions was that developing a residence on an unstable slope prone to landslide was inconsistent with the purpose of the Conservancy SED, a designation for areas that are intended to maintain their existing character and for, among other things, activities and uses "of a nonpermanent nature which do not substantially degrade the existing character of an area."
- In *Worthington v. San Juan County and Ecology*, SHB No. 92-47 (Aug. 31, 1993), the SHB held that landfill waterward of the OHWM was inconsistent with the purpose of the Rural SED and upheld the county's denial of the permit. In this case, Worthington constructed (without permits) a cement and rock platform on the beach to create dry land during high tide.

An approvable CUP will also be consistent with all general regulations and development standards of the SMP (e.g., public access, flood hazard reduction, vegetation conservation, environmental protection, archaeological and historic resources, etc.). **A proposal that clearly conflicts with an SMP regulation is properly denied.** This guidance is supported by the SHB decision in *Leonel et al. v. City of Bainbridge Island and Ecology*, SHB Nos. 06-024 and 06-027 (Oct. 25, 2007). In *Leonel*, the SHB held that a proposal to construct hard shoreline stabilization at the toe of a feeder bluff was inconsistent with SMP policies and unable to meet the consistency criterion. The case involved a proposal to construct hard shoreline stabilizations at

²¹ RCW 90.58.030(2)(f)

the base of a feeder bluff to protect five residential lots, including one home that was 16 feet from the bluff. The SHB upheld the denial of the permit primarily because it conflicted with strongly worded policies and regulations in the SMP, including prohibitory language.

Normal public use criterion, WAC 173-27-160(1)(b)

CUP applicants must demonstrate:

That the proposed use will not interfere with the normal public use of public shorelines (WAC 173-27-160(1)(b)).

Here “normal public use” of public shorelines encompasses both physical and visual access to the shoreline. Normal public uses are those like boating, kayaking and canoeing, swimming, hiking or trail walking, beach walking, wildlife viewing, scuba diving, fishing, and view enjoyment.

Here “public shorelines” include publicly owned aquatic lands and shorelands as well as the navigable water over privately owned aquatic lands.

To meet the criterion, an applicant must demonstrate that a CUP proposal will not interfere with normal public use of public shorelines. This should include acknowledgement of the onsite or adjacent public shorelines and an analysis of the how the CUP proposal could impact any physical or visual public use or access.

Water-oriented uses

Because of their location in or near the water, water-oriented uses have the potential to impact normal public use of public shorelines. It is important not to interpret the normal public use criterion too narrowly, especially when considering uses that will promote and enhance the public interest in shorelines of the state (see page 39).²² **It is possible to authorize a CUP that will result in some degree of impact to normal public use of public shorelines, especially when that use will serve a public interest. However, such projects will generally need to mitigate impacts to public access.** This guidance is consistent with the policy of the SMA and is informed by SHB decisions such as:

- In *Nisqually Delta Association et al. v. City of Dupont et al.*, SHB Nos. 81-8 and 81-36 (Dec. 11, 1981), the SHB upheld approval of a wood products export terminal even though the evidence showed that some adverse effects and some interference with the public use of the shorelines would occur. While appellants claimed that this violated the approval criterion, the SHB held that “when the SMP is read as a whole, including the goals, policies, and use regulations, such language should not be construed to, in effect, prohibit or make illusory the proposed use (*il.* at p. 21).” Importantly, the SHB remanded the permit back to the local government to add additional permit conditions related to public access.
- In *Preserve Our Islands v. Shorelines Hearings Board*, 133 Wash. App. 503 (2006), the Washington Court of Appeals upheld an SHB order requiring King County to issue a shoreline substantial development permit and CUP for a barge terminal associated with a gravel mine. The proposal was conditioned to mitigate impacts to shoreline

²² The public interest in shorelines of the state is articulated in the SMA policy goals; see RCW 90.58.020 and WAC 173-26-176 and -181.

recreation, chiefly by restricting hours of operation to 7:00 am to 7:00 pm, Monday through Friday. Since most shoreline recreation was occurring on weekends, the operating restriction was deemed by the SHB to protect the recreational and aesthetic values that depend on public use of surface waters. The Court agreed.

Compatibility criterion, WAC 173-27-160(1)(c)

For you to be able to approve a CUP, an applicant must demonstrate: “That the proposed use of the site and design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program” (WAC 173-27-160(1)(c), emphasis added).

Here “compatibility” means *use* compatibility and *site design* compatibility.

That an SMP lists a use as *conditional* does not make it a “use planned for” under the SMP.

Conditional uses are exceptions to the SMP use regulations and a way to allow flexibility within the code. Unlike permitted uses, conditional uses require a case-by-case review for their suitability at a particular shoreline location. Only those uses listed as *permitted* in your SMP (through a substantial development permit or exemption) were planned for and evaluated for their cumulative impacts.²³

The compatibility criterion for CUPs is substantially like the compatibility criterion for shoreline variances. For this reason, our guidance is informed by SHB and court decision on both permit types.²⁴

Consider a proposal’s compatibility with authorized uses at different scales

An assessment of a proposal’s compatibility with authorized uses must be considered at two geographic scales.

First, consider a proposal’s compatibility with immediately adjacent uses. This decision is supported by past Court and SHB decisions such as:

- In *Jefferson County v. Seattle Yacht Club*, 73 Wash. App. 576 (1994), the Court of Appeals found that the SHB considered too broad a geographical area when considering compatibility because they looked at the entire bay as opposed to the impacts the proposed multi-fingered dock would have on the area immediately adjacent to the proposed site. Significantly, they found that if too broad a view is taken when evaluating for compatibility that almost any project can be justified, writing:

. . . [C]onsideration of a proposed project’s compatibility with the area immediately adjacent to the project site should be paramount. While consideration of a project’s compatibility with more distant uses might be useful in certain instances, consideration of such information must be in addition to, not in lieu of, an evaluation of a project’s compatibility with permitted land and water uses in the area immediately adjacent to the

²³ WAC 173-26-201(3)(d)(iii)

²⁴ WAC 173-27-170(2)(C) is the variance approval criterion related to compatibility. It reads: “That the design of the project is compatible with other authorized uses within the area and with uses planned for the area under the comprehensive plan and shoreline master program and will not cause adverse impacts to the shoreline environment.”

project site. This is essential because if too broad a view is taken when a permit application is evaluated for compatibility with the SMA and the applicable shoreline master program, almost any project can be justified. Such an approach would undermine the protections the aforementioned enactments are intended to provide to individual local shoreline environments. (id. at 594)

Second, consider a proposal's compatibility with a wider geographic area. For each proposal this broader geographic area will be a fact-specific inquiry. It might be a stretch of walkable beach, the viewshed from an important vantage point, a contiguous stretch of forested shoreline, a segment of shoreline that shares land use development patterns, etc. For example, in *Rech v. San Juan County*, SHB No. 07-035 (June 12, 2008), the SHB's decision to affirm the county's denial of a variance to construct a single-family residence included a finding on the project's compatibility. The SHB found that the development would break up a 1.2-mile-long stretch of shoreline that was otherwise undeveloped with residential structures and that placement of a home would conspicuously interrupt the existing expansive views of a natural shoreline setting. The preservation of natural shoreline views is part of the policy of the SMA and is a public interest articulated in RCW 90.58.020.

Compatibility with uses planned for the area

To be approvable, a project that triggers a CUP must be compatible with uses planned for the area under the comprehensive plan and the SMP. This part of the criterion is about how the project will interact with future uses and requires the applicant to consider how the area might develop or redevelop over time.

Compatibility with uses planned for the area under the SMP means that the CUP would exist in harmony with likely future shoreline uses. An applicant should consider how undeveloped or underdeveloped lots are likely to be developed or redeveloped in the future with uses listed as "permitted" under the SMP. Applicants should also look for points of consistency or conflict between the purpose and policies of the SED and the proposal. These parts of the SMP establish a vision for the area.

Applicants must also show that the CUP is compatible with the preferred land use designation given to the site under the local comprehensive plan's land use element. The comprehensive SMP update process will typically have ensured that the SMP designations themselves are compatible with the comprehensive plan.

Local government staff are uniquely qualified to consider whether a proposal is compatible with uses planned for the area under the SMP and comprehensive plan. Your staff report should carefully evaluate the arguments presented by an applicant and, as necessary, further analyze compatibility so that decision makers have more complete information.

View impacts and compatibility

A proposal can have some degree of visual impact on authorized uses and still be compatible, especially if a proposal otherwise furthers the public interest in shoreline management. Key considerations include the degree of visual impact and what features/aspects of a view will be impacted. In some cases, a determination of compatibility will require a professional study/analysis. Our guidance is informed by SHB decisions, including:

- In *Alexander and Tuttle v. City of Port Angeles et al.*, SHB Nos. 02-027 and 02-028 (July 1, 2003), the SHB upheld the approval of a conference center and hotel even though the proposal would result in view impacts to residents living on a bluff. The Board found that important views of natural features, including Ediz Hook, Vancouver Island, and the Straits of Juan de Fuca, would *not* be impacted by the proposal. Instead, view impairment was to portions of the inner harbor and the working part of the harbor that were to be partially blocked by the proposal. In *Alexander*, the degree of view impairment was determined to be five to ten percent. Importantly, the SHB found that a portion of a waterfront trail to be constructed as part of the proposal helped to balance out the view impacts associated with the project: “the construction of the public Waterfront Trail along the shoreline in front of the building more than compensates for the impaired views for the majority of the citizens in Port Angeles” (*il.* at p. 25).
- In *Farber v. Steffen, et al.*, SHB No. 99-005 (Sept. 9, 1999),²⁵ the SHB remanded approval of Steffen’s variance for a residential proposal back to the county and Ecology largely on the basis that the project was incompatible with a neighboring use. In this case, Steffen proposed to replace a small cabin with a three-story, 2,600-sf home within the 50-foot shoreline setback. The proposal would have obstructed his neighbor’s (Farber’s) views. The SHB held the project was incompatible with Farber’s use of his property because of the degree of view impairment that would result from the three-story home. The Board stated that “Views are a recognized part of the shoreline environment that are properly considered and protected under this criteria [sic]” (*id.* at 8). Interestingly, in *Steffen*, the immediately adjacent properties included a three-story, 2,905-sf home and a 2,200-sf home owned by Farber, meaning that the size and scale of the proposal was compatible with immediately adjacent uses in terms of size.

When considering compatibility, the size and scale of the proposal is relevant as it compares to other authorized uses and uses planned for the area. In *Stone et al. v. City of Tacoma et al.*, SHB No. 95-45 (April 10, 1996), the SHB held that the size and scale of a proposed hotel would substantially impair panoramic views that the public enjoyed from the roadways and adjacent pathway and conflict with the SMP’s expressed intent to establish “human scale” development in the area. While the proposal included a public pathway with access to a pier and water views, the Board doubted that the public would take advantage of the public access element. The SHB concluded the proposed building was not at the proper scale as envisioned by the SMP and the proposed design was not compatible with other permitted uses within the area. In

²⁵ *Farber v. Steffen* (1999) is an appeal of a shoreline variance permit.

Stone, the SHB remanded the CUP back to the local government with additional conditions that required substantial project redesign.

Adverse effects criterion, WAC 173-27-160(1)(d)

For you to be able to approve a CUP, an applicant must demonstrate: “That the proposed use will cause no significant adverse effects to the shoreline environment in which it is to be located” (WAC 173-27-160(1)(d)). Here “no significant adverse effects to the shoreline environment” means no net loss of shoreline ecological functions (see Ecology’s guidance on [Shoreline No Net Loss and Mitigation](#) for more information).²⁶ Importantly, uses and developments that require a CUP were not considered during the programmatic cumulative impacts analysis that was completed when your SMP was comprehensively updated. For this reason, most CUPs will benefit from an analysis that assesses a site’s ecological functions and demonstrates how mitigation sequencing will be applied to achieve NNL.

Inability to mitigate impacts

A CUP is properly denied when it will result, or is likely to result, in unmitigated impacts to shoreline ecological functions.

In some cases, a proposal may be inconsistent with the adverse effects criterion because adequate mitigation is impractical or unachievable. For example, in *Leonel et al. v. City of Bainbridge Island and Ecology*, SHB Nos. 06-024 and 06-027 (Oct. 25, 2007), the SHB held that the construction of a 420-foot bulkhead at the toe of a feeder bluff would interfere with or damage geo-hydraulic and biologic processes. In *Leonel*, the Board found that even though the proposal included mitigation in the form of beach nourishment, the development would still result in an impact.

The adverse effects criterion relates to new impacts to the shoreline environment. Where a proposal will be an improvement over existing conditions, a proposal can be consistent with the criterion. This was the case in *McCoy et al. v. Kitsap County and Ecology*, SHB No. 07-031 (Aug. 28, 2008), where the SHB upheld the approval of a CUP for a road improvement project that added stormwater management to a portion, but not the entirety, of the 0.4-mile roadway stretch being improved. Proposed improvements included widening roadway shoulders to allow for safer bicycle and pedestrian travel. In *McCoy*, the roadway was previously without stormwater treatment.

²⁶ <https://apps.ecology.wa.gov/publications/summarypages/2306008.html>

Public interest criterion, WAC 173-27-160(1)(e)

For a CUP to be approvable, applicants must demonstrate: “That the public interest will suffer no substantial detrimental effect” (WAC 173-27-160(1)(e)).

"Public interest" means the interest shared by the citizens of the state or community at large in the affairs of government, or some interest by which their rights or liabilities are affected including, but not limited to, an effect on public property or on health, safety, or general welfare resulting from a use or development.²⁷ The public interest in shorelines of the state is articulated in the SMA policy goals and SMP Guidelines (see RCW 90.58.020 and WAC 173-26-176 and -181).

Ecology’s Shoreline Master Program Guidelines summarize the policy goals of the SMA in WAC 173-26-176. The SMA’s policy of protecting ecological functions, fostering reasonable utilization, and maintaining the public right of navigation and corollary uses encompasses the following general policy goals for shorelines of the state.

- a) The utilization of shorelines for economically productive uses that are particularly dependent on shoreline location or use.
- b) The utilization of shorelines and the waters they encompass for public access and recreation.
- c) Protection and restoration of the ecological functions of shoreline natural resources.
- d) Protection of the public right of navigation and corollary uses of waters of the state.
- e) Protection and restoration of buildings and sites having historic, cultural, and educational value.
- f) Planning for public facilities and utilities correlated with other shorelines uses.
- g) Prevention and minimization of flood damages.
- h) Recognizing and protecting private property rights.
- i) Preferential accommodation of single-family uses.

The SMA also establishes, that “the interest of all of the people shall be paramount in the management of shorelines of statewide significance.”²⁸ As described in WAC 173-26-181, the SMA identifies special policy goals for “shorelines of statewide significance” that provide direction to Ecology and local governments in preparing SMPs to give preference to uses in the following order of preference which:

- (1) Recognize and protect the statewide interest over local interest;
- (2) Preserve the natural character of the shoreline;
- (3) Result in long term over short term benefit;

²⁷ WAC 173-27-030(14)

²⁸ RCW 90.58.020

- (4) Protect the resources and ecology of the shoreline;
- (5) Increase public access to publicly owned areas of the shorelines;
- (6) Increase recreational opportunities for the public in the shoreline.

The public interest approval criterion for CUPs is the same as that used for shoreline variance permits (WAC 13-27-170(2)(f)), and our guidance is informed by appeal decisions of both permit types.

Public opposition or support

A conclusion that a project will have no substantial detrimental effects to the public interest cannot be based on the absence of interest by the public or comments on a project alone. Conversely, a conclusion that a project will have substantial detrimental effects on the public interest cannot be made simply because a proposal is unpopular and has resulted in many public comments in opposition. Public opposition does not necessarily mean a project is against the public interest. In determining that the public interest will suffer no substantial detrimental effect, “the public interest must be considered regardless of the number, nature, or extent of public comments for or against a proposal” (*Wriston v. Ecology*, SHB No. 05-005, 29-30 (Sept. 28, 2005)).

Visual intrusions on natural shorelines

There is a public interest in protecting natural shorelines from unnecessary human structures. This is consistent with the SMA’s policy direction to preserve the public’s opportunity to enjoy the physical and aesthetic qualities of natural shorelines of the state to the greatest extent possible (RCW 90.58.020). In this guidance, you can see the high degree of interconnectedness between a project’s visual compatibility and the public interest in preserving the aesthetic qualities of natural shorelines of the state. This guidance is consistent with past SHB decisions such as:

- In *Citizens to Preserve the Upper Snohomish River Valley v. S-R Broadcasting*, SHB No. 06-022 (2006) the SHB has recognized the public interest in avoiding undue visual intrusions of human-made structures into an otherwise natural setting.
- In *Rech v. San Juan County and Ecology* (2007) the SHB found that a proposal would result in substantial detrimental effects by visually breaking up a 1.2-mile-long stretch of shoreline that was otherwise undeveloped with residential structures. They found that the proposal would conspicuously interrupt the expansive natural shoreline views available to the general public from waterside vantage points.

Encroachments into protected areas

There is a public interest in limiting the encroachment into shoreline buffers/setbacks because of their importance in protecting shoreline ecological functions. In this way, the minimum necessary and public interest criteria are strongly connected. This guidance is supported by past SHB decisions that have recognized the public interest in avoiding or

minimizing intrusions into protected shoreline areas like setbacks and buffers (*Garlick v. Whatcom County and Ecology*, 1995; *Toskey v. City of Sammamish and Ecology*, 2007).

Impacts to public access

For every CUP proposal, determine whether there is a likelihood of the use having a substantial detrimental effect on existing public access. **A proposal might have a “substantial” detrimental effect if it will obstruct, reduce, render unsafe, or eliminate existing public use of the shoreline without replacing or otherwise mitigating for the impact or loss.** Where this is the case, a proposal is unlikely to be able to meet the public interest criterion.

This guidance is consistent with past SHB decisions such as:

- In *Turner v. Baldwin* No. 52470-8-II (Wash. Ct. App. Oct. 13, 2020), the Washington State Court of Appeals affirmed the decision to deny permits for a dock to the Turners on the grounds that the structure would obstruct and impair recreation, that reasonable moorage alternatives exist, and that the use was not compatible with surrounding environment. This upheld decisions by the Superior Court and SHB that found that the proposed pier/dock would present an impediment to public uses including walking, view enjoyment, and recreational boating.
- In *Bainbridge Island Concerned Citizens v. Ecology et al.*, SHB No. 87-53 (July 21, 1989), the SHB held that Ecology and the local government erred in approving a CUP for a non-water-related commercial building because the proposal failed to adequately mitigate public access impacts. The proposed building would have eliminated existing shoreline views. While the proposal included a pathway between the building and the shoreline, the SHB found that the access plan did not “effectively facilitate public access” largely because the path was too narrow (4 feet wide) and included a narrow access gate (3 feet wide). The SHB remanded the permit back to the local government requiring new conditions that addressed these design flaws.

Cumulative impacts criterion, WAC 173-27-160(2)

The granting of all CUPs, consideration must be given to the cumulative impacts of similar requests:

In the granting of all conditional use permits, consideration shall be given to the cumulative impact of additional requests for like actions in the area. For example, if conditional use permits were granted for other developments in the area where similar circumstances exist, the total of the conditional uses shall also remain consistent with the policies of RCW 90.58.020 and shall not produce substantial adverse effects to the shoreline environment.

(WAC 173-27-160(2), emphasis added)

The criterion asks us to consider “additional requests” for like actions in the area. This means that the focus should be on pending and possible future actions. “Like actions” means proposals for the same type of use or modification.

The consideration of cumulative impacts is critical because while the impacts of one activity may be insignificant, the accumulation of impacts from similar actions can degrade shoreline ecological functions and values or thwart other policy objectives of the SMA, such as public access, navigation, the preference for water-oriented uses, or coordinated planning.

Projects that avoid ecological impacts

If a project avoids impacts to shoreline ecological functions, it will not contribute to a cumulative impact on ecological functions. However, cumulative impacts are not limited to ecological impacts, and your consideration should extend to whether a proposal will have cumulative impacts on other policy objectives of the SMA, including impacts to public access (physical and visual) and recreation, public navigation, and water-dependent uses.

Projects requiring compensatory mitigation

Ecology recommends that you review proposals that require extensive amounts of compensatory mitigation carefully, especially if mitigation techniques are novel and untested. **Authorizing a CUP that achieves NNL through extensive compensatory mitigation can result in cumulative impacts concerns because the mitigation may not be successful.** Pay close attention to compensatory mitigation that is associated with significant temporal loss in shoreline ecological functions.

Consider both developed and undeveloped lots

An analysis of cumulative impacts will often need to look beyond undeveloped lots to consider the likelihood of similar proposals coming from developed lots. This guidance is supported by past SHB cases. For example, in *Caldwell v. Ecology* (2012), the SHB reversed a Whatcom County approval of a variance requested from a 45-foot bluff setback to accommodate a single-family residence. The Caldwell site included a steep and unstable feeder bluff subject to ongoing erosion. Among other findings, the SHB held that the County erred by

considering only other undeveloped lots along a particular portion of bluff when assessing cumulative impacts. They found that the consideration of cumulative impacts should have been broader because there were many similar bluff areas in the area and because approval of Caldwell’s variance could lead to similar request on both undeveloped and developed lots.

Geographic extent of study area

An assessment of cumulative impacts must be based on a study area that is appropriate for the project. Depending on the project and the shoreline, the geographic extent might be based on natural ecological boundaries, an area that shares a natural feature, an area with a similar land use and development pattern, or the entire shoreline of a lake. In some cases, the shoreline environment designation boundaries will be the appropriate study area. Identifying the study area will be a project-specific task.

Identify sites

An evaluation of cumulative impacts should identify specific sites within the study area where similar circumstances exist and where additional requests for like actions may be generated. This will often be associated with a map that identifies these sites, such as in Figure 2 below.



Figure 2. Example map showing the extent of a cumulative impacts analysis and properties where similar circumstances exist.

There can be no cumulative impacts concerns where land use patterns in the areas will not result in similar request for a CUP or where there is a lack of evidence of similarly situated potential applicants. This guidance is supported by SHB decisions such as:

- In *Wriston v. Ecology* (2005), the SHB found that there must be a factual basis for supporting an assertion that similar activities are likely and that a variance should be denied because of cumulative impacts. The Board held that Ecology lacked a factual basis for denying the permit based on cumulative impacts. Ultimately the SHB found that the land use pattern and bathymetry in the area would not likely result in additional requests for similar variances.
- In *Lee’s Mooring Houseboat Residents v. City of Seattle and Ecology*, SHB No. 05-019 (Nov. 15, 2005), cumulative impacts concerns were one part of the City of Seattle’s decision to deny the permit. However, the SHB found no evidence that there were other properties where similar circumstances existed (i.e., other water-dependent uses

without adequate parking reasonably available that could seek to add parking to an existing overwater parking structure).

Suggested approach to assessing cumulative impacts

Many CUP applications would benefit from a systematic assessment of cumulative impacts. For this reason, Ecology has developed an approach to conducting a cumulative impacts evaluation consistent with the cumulative impacts criterion of WAC 173-27-160(2). This approach can be used by local government practitioners responsible for permit review.

The steps listed below are intended to be scalable depending on the potential effects of an action, the type and condition of resources at risk of cumulative impacts, and the professional judgment of the practitioner performing the analysis. **As the degree of potential impacts increases, so should the level of detail of the cumulative impacts evaluation.** In this way, the evaluation should be commensurate with the potential impacts, resources affected, project scale, and other factors.

Findings and conclusions associated with each of the steps listed below are the basis for a demonstration of consistency with the cumulative impacts approval criterion. Responses should be a combination of qualitative and quantitative information.

Step 1 – Define a study area. Identify a study area that will be used to evaluate cumulative impacts and explain why that geographic extent is appropriate. To do so, consider what area will have resources potentially impacted by the proposed project. Whenever possible, the study area should be based on natural ecological boundaries. Depending on the project, the shoreline environment designation boundary may be the appropriate study area.

Step 2 – Identify sites. Identify sites within the study area where similar circumstances exist and where additional requests for like actions may be generated. This will require an understanding of what physical properties of the site resulted in the CUP application and whether those conditions exist elsewhere in the study area. You will also want to consider factors like whether lots are vacant or developed and how that might influence the likelihood of additional requests. **If you conclude that similar requests are unlikely, no further analysis is necessary.**

Because cumulative impacts will often depend on the proximity of sites to each other, you will want to include a map with Step 2.

Step 3 – Determine the impacts of concern. Identify any shoreline ecological functions and shoreline uses (e.g., public access and recreation, public navigation, and water-dependent uses) in the area that are particularly sensitive to the cumulative impacts of the proposed use. These are the shoreline ecological functions and shoreline uses that should be addressed as part of the cumulative impacts evaluation. **If the project will have no impacts on shoreline ecological functions or shoreline uses, cumulative impacts will not occur, and no further analysis is necessary.**

Step 4 – Establish a time period. Identify over what time period cumulative impacts will be assessed and why that period is appropriate. This should be directly linked to the period where

the proposal may result in impacts. For example, the time period could be the useful life of a structure or the period of time a mine is anticipated to be operational.

Step 5 – Assess impacts. Assess the cumulative impacts that can be attributed to similar actions that are pending or reasonably foreseeable. Ensure that the full range of potential impacts has been considered (e.g., impacts to water quality, habitat features, species, water storage, sediment transport, shoreline views, public recreation, etc.). Cumulative effects can result in a beneficial or adverse effect. The analysis must explain assumptions and limitations so that the reviewer can understand how conclusions were reached.

Table 3 shows one way to present your assessment of cumulative impacts. Importantly, the types of effects assessed will be those identified in Step 3 and will vary based on the project.

Table 3. Sample summary of likely cumulative impacts for a hypothetical project

Type of effect	Likely cumulative impacts
Water quality	Slight adverse contribution due to new impervious surfaces within the buffer and loss of mature trees.
Aquatic habitat	Slight beneficial contribution due to LWD placement.
Riparian vegetation	Slight adverse contribution due to the loss of mature trees and the temporal lag before mitigation plantings mature.
Wildlife	Moderate adverse contribution due to increased habitat fragmentation, noise, and light.
Erosion	Does not contribute to cumulative impacts.
Recreational impacts	Does not contribute to cumulative impacts.
Aesthetic/visual impacts	Does not contribute to cumulative impacts.
Water-dependent use impacts	Does not contribute to cumulative impacts.

Step 6 – Draw conclusions. Draw conclusions based on the assessment of cumulative impacts. You will conclude that the cumulative impacts criterion *cannot be met* if the impacts of the proposed project, when considered together with the impacts of similar pending and reasonably foreseeable actions in the study area, will contribute to a cumulative adverse effect. Your conclusions should explain the assumptions and limitations so that reviewers (e.g., hearings examiner, planning manager, Ecology, etc.) can understand how conclusions were reached.

References

- Alexander and Tuttle v. City of Port Angeles et al.*, SHB Nos. 02-027 and 02-028 (2003)
- Bainbridge Island Concerned Citizens v. Ecology et al.*, SHB No. 87-53 (1989)
- Bhatia and Kitsap County v. Ecology*, SHB No. 95-34 (1996)
- Buechel v. Department of Ecology*, 125 Wn.2d 196, 203, 884 P.2d 910 (1994)
- Citizens Against Barge Terminal v. Ecology et al.*, SHB No. 16-003 (2016)
- Citizens to Preserve the Upper Snohomish River Valley v. S-R Broadcasting*, SHB No. 06-022 (2006)
- Clam Shacks of Am., Inc. v. Skagit County*, 109 Wn.2d 91 (1987)
- Farber v. Steffen*, SHB No. 99-005 (1999)
- Hopps v. Klickitat County et al.*, SHB No. 23-007 (2024)
- Jefferson County v. Seattle Yacht Club* 73 Wn. App. 576 (1994)
- Lawson v. Zosel Lumber Company et al.*, SHB No. 01-021 (2002)
- Lee's Mooring Houseboat Residents v. City of Seattle and Ecology*, SHB No. 05-019 (2005)
- Leonel et al. v. City of Bainbridge Island and Ecology*, SHB Nos. 06-024 and 06-027 Consolidated (2007)
- Lund v. State Dep't of Ecology*, 93 Wn. App. 329 (1998)
- Marnin et al. v. Mason County and Ecology*, SHB No. 07-021 (2008)
- McCoy et al. v. Kitsap County and Ecology*, SHB No. 07-031 (2008)
- Miller v. City of Tacoma and Fallen Firefighters Memorial Association*, SHB No. (2000)
- Nisqually Delta Association et al. v. City of Dupont et al.*, SHB 81-08 and 81-36 Consolidated (1981)
- Preserve Our Islands v. Shorelines Hearings Board*, 133 Wash. App. 503 (2006)
- Rech v. San Juan County and Ecology*, SHB No. 07-035 (2008)
- Rech v. San Juan County and Ecology*, SHB No. 07-035 (2008)
- Spencer v. City of Bainbridge Island*, SHB No. 97-43 (1998)
- Staurset v. Ecology*, SHB No. 99-025 (2000)
- Stone et al. v. City of Tacoma et al.*, SHB No. 95-45 (1996)
- Turner v. Baldwin*, No. 52470-8-II (Wash. Ct. App. Oct. 13, 2020)
- Walker and Leider et al. v. Point Ruston et al.*, SHB Nos. 09-013 and 09-016 Consolidated (2010)
- Worthington v. San Juan County and Ecology*, SHB No. 92-47 (1993)
- Wriston v. Ecology*, SHB No. 05-005 (2005)
- Donovan v. City of Tacoma and Ecology*, SHB No.92-17 (1993)